UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Deployment of Wireline Services Offering CC
Docket No. 98-147
Advanced Telecommunications Capability

services.(5) To remedy this claimed disincentive, the FCC has proposed as an alternative option: LECs could form "truly separate" affiliates that offer advanced services. The FCC believes that the interconnection and resale requirements of the Telecom Act would not apply to the LEC's separate affiliate offering advanced services.(6)

The use of separate affiliates, however, involves trade-offs. In order to avoid potential anticompetitive problems resulting from cross-subsidization and discrimination (discussed below), the unregulated affiliate must operate according to rules that effectively separate it from the regulated LEC parent, which controls the local network. But, if the affiliate is "truly separate" from the LEC, it may be unable to obtain the network economies of scale and scope that are available to the LEC. Recognizing this fundamental trade-off, the FCC should ensure it does not adopt weak

Generally, there are three methods for deterring cross-subsidization. Firms can be prevented from diversifying into unregulated markets, thereby eliminating the opportunity to cross-subsidize. Second, the regulator can divorce regulated prices from reported costs (e.g., by adopting "price-cap" regulations), thereby eliminating the incentive to anticompetitively diversify.

LEC, as well as whether that message is likely to influence the consumers' purchase decisions. If use of the logo implies to consumers that the relationship is different than what it really is, such use of the logo could be considered deceptive. If this deception results in consumer injury or harm to competition, the FCC may wish to restrict the affiliate from using the parent's logo.(19)

3. Regulatory Approaches to the Affiliate's Use of a Parent Firm's Logo

Given the concerns associated with the affiliate's use of a parent firm's logo, the FCC may wish to consider various approaches that have been suggested to address the issue. For example, in the electric utility industry, some states have proposed to ban generally the use of the regulated distribution firm's logo by its affiliated sellers of electric and natural gas service.(20) This approach eliminates the possibility of deception and reduces the probability of cross-subsidization, both discussed above. This approach is consistent with an assessment that the likely costs of allowing affiliate use of parent distribution firm's logo outweigh the likely benefits.

Other states have considered an alternative approach that is intended to achieve the potential benefits of the affiliate's use of the parent firm's logo while reducing the costs. In particular, some states have considered allowing the use of the logo by affiliates of regulated electric utilities, contingent upon use of a disclaimer intended to avoid consumer deception.(21) A disclaimer that suffices to avoid consumer deception also may suffice to discourage cross-subsidization in the form of excessive investment in reputation. It may be difficult, however, to develop discrimination requirements. Such restrictions will help foster a competitive market for advanced services from the outset.(27)

IV. Conclusion

The FCC has proposed requirements for advanced service affiliates to receive non-incumbent LEC status. The FCC may wish to strengthen these requirements by adding a requirement concerning an affiliate's use of the parent LEC's logo and restrictions on joint marketing activities between the LEC and its affiliate.

Respectfully submitted,

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1. This comment represents the views of the staff of the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. Inquiries regarding this comment should be directed to Michael Wroblewski at (202) 326-2155.

2. Advanced telecommunications services include wireline, broadband digital services including those that rely on digital subscriber line and packet-switched technology.

3. 47 U.S.C. § 251.

4. Notice at ¶ 11.

5. Id. at ¶ 10.

6. If the LEC decides to offer advanced services on an integrated basis, the network unbundling and interconnection requirements will then apply to the LEC.

7. The FCC's separate-affiliate proposal is predicated on an expectation that the market for advanced services will be competitive, absent the problems discussed in this comment.

8. The FCC has proposed that the following requirements be met in order for an advanced services affiliate to be considered truly separate: (1) the incumbent must "operate independently" from its affiliate; (2) transactions must be on an arm's length basis, reduced to writing, and made available for public inspection; (3) the incumbent and affiliate must maintain separate books, records, and accounts; (4) the incumbent and advanced services affiliate must have separate officers, directors, and employees; (5) the affiliate must not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the incumbent; (6) the incumbent LEC, in dealing with its advanced services affiliate may not discriminate in favor of its affiliate in the provision of any goods, services, facilities or information or in the establishment of standards; and (7) an advanced services affiliate must interconnect with the incumbent LEC pursuant to tariff or pursuant to an interconnection agreement, and whatever network elements, facilities, interfaces and systems are provided by the incumbent LEC to the affiliate must also be made available to unaffiliated entities. The FCC seeks comment on the proposed requirements.

22. Consumer research can be used to evaluate the impressions conveyed to consumers by the logo accompanied by a disclaimer.

23. It has been suggested that the LECs also may enjoy a competitive advantage in the advanced services market