FSC'S LAW & ECONOMICS INSIGHTS

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CURRENT PROJECTS

SBC/Ameritech merger impacts on low-income consumers: the proposed mega-merger between Southwestern Bell Telephone Company (known now as SBC) and Ameritech should be disapproved by Ohio utility regulators unless the merger applicants undertake to mitigate the adverse impacts the merger will create for low-income consumers. In testimony filed with the Public Utility Commission of Ohio (PUCO) on behalf of three community-based organizations in Dayton and Cleveland, FSC said the proposed merger would "place the continuing offer of [telecommunications] services in jeopardy" for low-income consumers. According to FSC, "the precarious nature of low-income telephone service in the home makes it evident how important it is for Ohio telecommunications companies to pay particular attention to providing the service(s) necessary to help retain telephone access."

The proposed SBC/Ameritech merger will divert company attention away from the problems of the no-telephone population, according to FSC. This lack of telephone service is a major problem in Ohio. If one looks at penetration rates for having a telephone in the home for the state of Ohio, FSC said, one would conclude that telephone service is virtually universal. According to the most recent Census data, only five percent (5%) of all occupied housing units in the state of Ohio do not have a telephone in the home. Of all households living below 100 percent of Poverty in Ohio, however, 18 percent do not have telephone service.

The lack of phone service is both an urban and rural problem in Ohio, FSC said. There are eighteen Ameritech counties where the percentage of below Poverty Level households living without telephones in the home was equal to or greater than the statewide average. In 14 of those 18 counties, more than one-of-five low-income households lived without telephone service. In six of those 18 counties, roughly one-in-four (or more) of below Poverty Level households lived without telephone service.

FSC challenged the merger application's focus on large customers. The applicant's own testimony said "we can either continue to focus on our current regions and run the risk of losing our large and mid-sized customers who provide a disproportionate share of the revenues that are needed to grow our business or we can expand and compete through the opportunity to follow and serve those customers anywhere they operate around the globe."

In response to these problems, FSC proposed implementation of a two-part "technology diffusion program" as a condition of the merger. This program would include a doubling of the "community computing centers" in urban areas such as Dayton, Cleveland and Columbus. In the last quarter of 1997, FSC noted, there were over 26,000 visits by children and adults to the 14 Ameritech funded centers, with over 6,000 using the centers for the first time during that period.

Many of the centers have people waiting in line at the door when they open. Most of the centers are located in communities where, without them, thee would be no access to this technology.

In addition, FSC recommended expanding the community computer center program to specifically include eight specific rural counties marked by the dual characteristics of a high incidence of extreme poverty and an extremely low telephone penetration rate.

Finally, FSC recommended a "Community Partnership Commitment" similar to that which SBC made as a condition of its merger with PacBell. This Commitment would fund education programs as well as community technology centers in HUD-funded public housing; staff, computers and internet access for libraries and schools serving low-income constituencies; communications technology for neighborhood-based organizations; and a broad brush of innovative and creative programs to bring technology to bear on the problems of low-income communities. FSC told PUCO that "funds [should] be available, upon application, for creative problem-solving directed toward community building, education, creation of employment opportunities, economic development, and other community-based solutions."

A copy of FSC's Ameritech Ohio testimony can be obtained by sending an e-mail request to puborder@fsconline.com.

<u>Tallahassee public housing utility allowances</u>: The Tallahassee public housing authority should make no changes in the public utility allowance it pays to subsidize low-income natural gas and electric bills. According to FSC's analysis for public housing tenants served by the THA, the Tallahassee utility allowance study understates the appropriate electric consumption for both refrigerators and miscellaneous appliances.

The consumption allowed for refrigerators is one major flaw in the THA utility allowance study, FSC said. The electric utility allowances proposed for the Housing Authority assumes a uniform refrigerator consumption of 1,000 kWh per month for all unit sizes in the THA housing. The utility allowance study indicates that this figure is, in fact, a national average figure for refrigerators.

According to FSC, it takes more energy to keep a refrigerator cold in Florida than it does in other parts of the country (and certainly more so than any national average). This conclusion is not mere conjecture, FSC said. The U.S. Department of Energy's *Residential Energy Consumption Survey* presents refrigerator consumption figures for the country as a whole, as well as for the five most populous states. As the RECS states, the average refrigerator consumption for the total U.S. is 1,386 kWh per year. The Florida annual refrigerator energy consumption, however, is 1,679 kWh a year.

FSC said: "If the THA utility allowance is going to be based on published sources (rather than on some type of engineering calculation), it is unreasonable to use a national average when Florida-specific consumption data is available."

Moreover, the proposed THA utility allowance assumes that all PHA residents have energy efficient refrigerators. However, FSC said, the use of an energy efficient refrigerator is inappropriate for setting refrigerator consumption unless the THA actually provides energy efficient frost free refrigerators for its public housing tenants. HUD regulations provide, in relevant part, that "in establishing allowances, the [public housing authority] *shall take into account* relevant factors affecting consumption requirements, including. . .the energy efficiency of PHA-supplied appliances and equipment." Accordingly, unless THA has supplied its public housing tenants with energy efficient refrigerators, to impute the lower consumption associated with such energy efficient appliances would be in contravention of this mandatory duty.

FSC explained further errors in the calculation of electric consumption for small appliances and space cooling in its Tallahassee analysis.

Copies of the FSC Tallahassee analysis can be obtained by sending an e-mail request to puborder@fsconline.com.

Consumer fraud damage settlement: May Department Stores: A damage settlement reached in litigation over allegations of consumer deception practiced by May Department Stores has resulted in substantial benefits to consumers, according to an affidavit filed by FSC in a Massachusetts federal district court. In the litigation *Mazola v. May Department Stores*, the store agreed to provide a monetary relief to the consumers consisting of three components: (1) a refund of the consumer's original payments to May Department Store; (2) interest calculated at eight percent (8%) per year compounded monthly; and (3) a ten percent (10%) "enhancement" payment.

According to the FSC affidavit, in an era where class actions often provide recoveries that represent only a small proportion of the original damages to consumers, the amounts resulting from the *Mazola* settlement "represent a recovery for consumers well beyond each individual's actual original payments to May."

According to FSC: "the ultimate goal of a class action recovery is to place the consumers in the same position they would have been in had the unlawful action not occurred. Few settlements, however, attain this goal. This settlement provides class members with recovery ranging from 181% to 125% of their original payments to May, depending on the date of their payment."

For more information on the *Mazola* litigation, contact John Rao, National Consumer Law Center, 18 Tremont Street, Suite 400, Boston, MA 02108 (617-523-8010).

RECENT PUBLICATIONS

Impact of telecommunications competition on low-income consumers: The introduction of competition into the local telecommunications market will likely harm low-income consumers, FSC told the National Association of Regulatory Utility Commissioners (NARUC) at the NARUC annual meeting in Orlando. In its paper *Just Like Them": The "Benefit" to The Small and Disadvantaged User Arising from Competition*, FSC said that the "benefits" of competition can be categorized into three different areas: (1) price; (2) service; and (3) quality.

With tongue planted firmly in cheek, FSC told the regulatory commissioners that as a result of local competition:

- Small users have been given the opportunity to bear a higher proportion of system fixed costs, and receive little of the benefits of competitive efficiencies. FSC cited the skyrocketing difference between phone rates for small and large users in the natural gas, electric and telecommunications industries as evidence for this conclusion.

- Small and disadvantaged users have been given the opportunity to be excluded from new service opportunities offered by competitive providers. At best, FSC said, the telecommunications industry has approached small users in a "trickle down" fashion, indicating that the technology developed for big business will "eventually" trickle down to small users as well.

- Small and disadvantaged users have been given the opportunity to receive fewer and less quality service. FSC cited evidence showing that U.S. West has reduced its number of employees by 60,000, has reduced its number of customer services centers from 560 to 26, has reached an average waiting time for incoming calls of 22 minutes, and has seen an increase in the number of consumer complaints from 54/month to 752/month.

A copy of the FSC NARUC paper can be obtained by sending an e-mail request to puborder@fsconline.com.

Designing a low-income energy efficiency program: As states begin to develop their electric restructuring legislation, and seek to determine what types of low-income energy efficiency programs might appropriately be supported through a state wires charge (or system benefits charge--SBC), state regulators, legislators, and industry decisionmakers are increasingly seeking guidance on what constitutes a "good" low-income energy efficiency program.

In response to these inquiries, FSC has released a paper presenting a checklist of attributes that would distinguish a low-income energy efficiency program as appropriately addressing a range of design issues. The paper presents eleven separate inquiries:

1. Whether the programs adequately account for, and mitigate, the adverse rate impacts on low-income non-participants;

2. Whether the programs adequately identify and address barriers that tend to exclude low-income households from participation;

3. Whether the programs involve planning and design aspects that result in *de facto* discrimination;

4. Whether the programs have an adequate scope to reach low-income constituencies;

5. Whether the programs adequately fund low-income energy efficiency;

6. Whether the programs adequately identify and incorporate the full range of "avoided costs" into their cost-effectiveness determination;

7. Whether the programs reasonably consider, adopt and implement a targeting principle;

8. Whether the programs adequately seek to "fit in" with other utility low-income initiatives;

9. Whether the programs take adequate advantage of "piggybacking" opportunities, including piggyback efforts with WAP and with affordable housing initiatives;

10. Whether the programs take adequate advantage of potentially available partnerships; and

11. Whether the programs adequately take into consideration the "balance tippers" when benefit-cost ratios are close to, but not exceeding 1.0.

A copy of the FSC publication, *Reviewing Utility-Funded Low-Income Energy Efficiency Programs: A Suggested Framework for Analysis*, can be obtained by sending an e-mail request to puborder@fsconline.com.

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FSC specializes in providing economic, financial and regulatory consulting. The areas in which *FSC* has worked include infrastructure financing, public enterprise planning and development, natural resource economics, community economic development, telecommunications, public sector labor economics, planning and zoning, regulatory economics, energy law and economics, fair housing, and public welfare policy.