

## Key Telecom Restructuring Issues To Be Decided

Implementation of the Telecommunications Act of 1996 — the new law to restructure the telecommunications industry—continued on a number of fronts through the fall and winter.

The Federal Communications Commission put two alternative proposals on access fees out for comment in December. Local competition rules, issued by the FCC last summer, were immediately challenged in court. And, in November, the Federal State Joint Board issued its recommendations on universal service.

"We're restructuring a \$150 billion industry that's been a monopoly for 50 years," said CFA Research Director Mark Cooper. "It is still far from clear what the industry will look like and how quickly change will take place."

Cooper praised the Federal State Joint Board's recommendations on universal service, which came on a unanimous vote. "The Telecommunications Act of 1996 greatly expanded the definition of universal service, and the Federal State Joint Board has put forward a very aggressive public policy to implement the legislation," he said.

The 1996 Act expands the concept of universal service by requiring that rates be not only just and reasonable, but also affordable for all Americans. Furthermore, it identifies specific groups of consumers (low income), institutions (schools, libraries, and rural health care facilities), and geographic areas (high cost and insular areas) for support in ensuring universal access.

Rather than specifying in the legislation how to achieve those goals, Congress created the joint board to recommend specific policies. In keeping with that charter, the board proposed:

- a dramatic expansion of lifeline and link-up programs, which help low income households obtain telephone service;
- discounts for commercially available telecommunications services, including Internet access, for schools, libraries, and health care operations; and
- a redesign of programs to keep the cost of service low in high-cost areas.

### Lifeline Expansior Recommended

Specifically, with regards to lifeline and link-up programs, the board proposed raising the maximum benefits and requiring that criteria for eligibility be based solely on income. High cost companies, many of which have not been offering lifeline rates, would have to have a lifeline program in place to receive federal subsidies designed to lower rates. And lifeline subscribers would be protected from losing their local service

because of unpaid long distance bills, though their long distance service could be blocked.

"As long as the states participate fully, we could expand the reach of the program dramatically," Cooper said.

To encourage expanded telecommunications services to schools and libraries, the board proposed a needs based approach. Under the board's plan, for example, poor schools in high-cost areas would receive a 90 percent discount for the services that they define as necessary to meet their needs while rich schools in low-cost areas would receive a 20 percent discount.

To pay for these services, the telecommunications companies would be required to create a \$2.25 billion a year universal service fund. This is far more generous support than the companies had wanted to provide, and some greeted the proposal with threats that they would have to increase consumers' monthly bills to pay for the subsidy.

"With the exception of Nynex, the Bells all proposed very narrow schools and libraries programs. They wanted tiny pilots that would have lasted for a few years," Cooper said.

Finally, in redesigning programs to keep the price of service low in high-cost areas, the FCC is looking at an approach based on the cost of a forward-looking, efficient telephone network.

Under the program, which could include some urban as well as rural areas, the Commission would identify the revenue earned in an area, including basic service, interlata toll, and enhanced services. Companies would receive support if their costs in an area exceed a benchmark amount of revenue.

### FCC Puts Competing Access Fees Proposals Out for Comment

"The FCC has not yet dealt with the broader question of whether or not subsidies exist in the general rates of companies," Cooper noted. That issue will be raised in federal and state proceedings on "access charges," the charges that long distance companies pay to gain access to the local network.

In December, the FCC issued for comment two alternative plans for reducing these fees.

Under one approach, supported by CFA, the agency would impose a fee reduction timetable on the local phone



companies. Under the second approach, supported by the local telephone companies, the agency would simply lift regulation of the fees and wait for competition to drive down the charges.

The FCC has until May to accept comments on the two proposals and issue a final plan for access fees.

### Local Competition Rules Tied Up In Court

Meanwhile, a key portion of the rules released by the agency in August to promote competition in local markets have been tied up in court.

In September, a three-judge panel of the federal appellate court in St. Louis imposed a stay on the portion of the rule related to charges for unbundled network elements, fees for access to the local network, and pricing formula laid out in the FCC rule. Other portions of the rule remain in effect.

In October, the Supreme Court refused the FCC's request to lift the stay, which will remain in effect until the case goes to trial, possible as early as January.

"Despite all the activity to implement the new law, the final outcome is still unclear," Cooper said. "State proceedings, FCC rulemakings, court decisions, and actual economic activity will determine whether there is effective competition, especially for residential ratepayers, and how universal service is provided."

## Bell Atlantic-Nynex Merger Opposed

Charging that the proposed merger of telephone giants Nynex and Bell Atlantic would deny New Yorkers the benefits of competition, consumer groups have urged New York officials either to reject the merger or to require the new company to lower residential phone bills more than \$1 billion over the next five years.

In testimony delivered to the New York State Public Service Commission in December on behalf of a coalition of consumer groups organized by New York Citizens Utility Board, CFA Research Director Mark Cooper said consumers would be best served if the commission rejected the merger. If the merger is allowed to go forward, however, the commission must protect residential ratepayers "from a number of potential losses and abuses that could arise from the merger" and compensate them "for significant economic value that they afford to the merger," he said.

The consumer coalition — which, in addition to CUB and CFA includes the American Association of Retired Persons, Citizen Action of New York, Consumers Union, the Long Island Consumer Energy Project, and the Long Island Progressive Coalition — petitioned the Public Service Commission in July to investigate the merger.

The Commission, which granted the petition in August, is currently reviewing the proposed merger to determine whether it should be allowed to go forward and, if so, under what conditions.

Cooper cited several ways the merger would harm consumers, including the loss of the most likely competitor and failure to pass on savings resulting from the merger to ratepayers. Cooper also noted in his testimony that service quality, already a problem throughout New York, would be likely to decline under the merger.

In order "to ensure that the merged company does not benefit from the exercise of market power gained through the merger," he recommended that basic residential phone rates be reduced \$150 million in 1997, increased by \$50 million each year until 2001, for a cumulative total of approximately \$1.2 billion over the five-year period.

This amount represents half the efficiency gains projected to flow from the merger, including an estimate of how much customers would have saved if Bell Atlantic had entered New York as a competitor to Nynex, rather than as a partner.

He also urged the commission to maintain strict oversight of service quality in New York. "Nynex has the highest rates in the country for the worst service," he said. "The merger makes it even less likely that market forces will discipline the delivery of telephone service in New York."

In November, the staff of the commission also proposed that the merger be rejected unless Nynex agrees to compensate its customers for the loss of a potential new competitor in the New York telephone market. A decision by the PSC was expected early in 1997.

**Product Safety Update:****Youth Leagues Urged To Use Softer Baseballs**

Seeking to reduce baseball and softball injuries to children, CFA wrote to all children's recreational baseball and softball leagues in November asking that they officially adopt the use of soft core baseballs and softballs for all players 14 years of age and younger.

The request arose out of a study released earlier this year by the Consumer Product Safety Commission, which found that softer-than-standard balls may prevent, reduce, or lessen the severity of the 47,900 ball impact injuries to the head and neck that occur each year.

"Kids don't have to get injured when they get hit by the ball," said CFA General Counsel and Product Safety Director Mary Ellen Fise.

The letter was timed for November because it is the time of year when many leagues and organizations are beginning to make decisions about baseball and softball equipment purchases and are submitting their orders for Spring 1997 delivery, Fise noted. "A decision now to adopt the soft core ball for league use could have a tremendous effect on the degree

of protection afforded youngsters in the very next baseball season," she added.

Of the 162,100 baseball, softball, and tee-ball injuries that occurred in 1995, 55 percent (or 88,700) were due to ball impact, making it the most common cause of baseball-related injury. More than three-quarters of all ball impact injuries occur during organized play or practice.

Between 1973 and 1985, there were 88 baseball-related deaths to children between the ages of five and 14, 77 percent of which were due to ball impact.

Many of the baseballs used in youth leagues are harder than balls used in the major leagues, Fise noted. Soft core baseballs and softballs are made to meet regulation size and weight, she added.

Fise noted that five cities already require the use of youth safety baseballs and that a new youth league has been formed on the West Coast that allows only the softer baseball to be used.

"The actions of these cities is evidence that the soft core ball is a viable safety alternative," she said.

A free fact sheet for parents, which

includes a list of officials to contact, is available by writing to CFA Baseball Fact Sheet at 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036.

**CPSC Opens Crib Safety Rulemaking**

The CPSC voted 2-1 in December to issue an Advance Notice of Proposed Rulemaking on crib slat disengagement hazards.

CFA had written to the agency earlier in December requesting the action on the grounds that cribs with faulty side slats pose a risk of death to infants, and Fise praised the agency for voting to go forward with the rulemaking.

"It is essential that baby cribs provide a safe sleeping area for young children and not pose a risk of death or injury," Fise said. "The hundreds of thousands of cribs with this hazard are evidence of the need for CPSC action to protect babies."

When crib slats disengage or are missing, a child's body can slide through the opening and the child's head can get caught, potentially leading to strangulation or suffocation.

In the last 11 years, CPSC has received hundreds of reports involving crib slats that have disengaged. Twelve children have died due to crib slat disengagement.

Since the CPSC first recalled cribs with this hazard in 1991, five companies have entered into corrective action plans involving more than 674,000 cribs and 32 different models.

CPSC has repeatedly asked the crib industry to address this hazard. Since the agency first requested action on the issue at a voluntary standards meeting in March of 1995, the CPSC staff has attempted on eleven occasions to move the issue forward within the voluntary standards subcommittee or with manufacturers.

"There has simply been no response," Fise said.

**New Lead Disclosure Rules Take Effect**

Rules took effect in December requiring disclosure during real estate transactions of information about lead-based paint in housing.

Under the rules, sellers, landlords, and their agents are responsible for providing specific information on lead-based paint in the housing along with a federal pamphlet with information on identifying and controlling lead-based paint hazards. The information must be provided before an offer to purchase is accepted.

In addition, home buyers are entitled to a 10-day period to conduct a lead-based paint inspection or risk assessment at their own expense.

"This newly required information represents a landmark disclosure provision in terms of providing consumers information when they are most able to use it," Fise said. "By requiring disclosure up front of what is known about lead paint in the house and, especially, by giving home buyers some time to get more information, this law will help consumers make informed purchase decisions regarding their family's housing and will enable them to plan steps to reduce their lead exposure."

The new disclosure is required by the Residential Lead-Based Paint Hazard Reduction Act, enacted by Congress in 1992, under regulations jointly promulgated by the Department of Housing and Urban Development and the Environmental Protection Agency.

The rule does not require any testing or removal of lead-based paint by sellers or landlords, and it does not invalidate leases or sales contracts.

About three-quarters of the nation's housing stock built before 1978 contains some lead-based paint, which is the primary cause of blood-lead levels above safe limits in nine percent of American pre-schoolers, or 1.7 million children.

Lead poisoning can cause permanent damage to the brain and many other organs and, at lower levels, reduced intelligence and behavioral problems. Lead can also cause abnormal fetal development in pregnant women.

**CFA Endorses Massachusetts Handgun Safety Rules**

CFA wrote to the Massachusetts Attorney General in November in support of his recently proposed rules to regulate handgun sales.

The proposed regulations would ban the sale of "Saturday Night Special" handguns, prohibit the sale of defective handguns that are prone to accidental or repeated discharge, and require all handguns sold in the state to be child-proof and have tamper-resistant serial numbers.

"Firearms and ammunition are virtually the only consumer products not subject to health and safety regulation," Fise noted. "The proposed Massachusetts regulations would be a constructive first step toward holding the firearms industry to the same health and safety standards as the manufacturers of other consumer products."

**Brochure Offers Tips On Telephone Service**

To assist consumers in making smart choices for telephone service, CFA has released a brochure that offers tips on how to save money and avoid marketing pitfalls as telephone services are opened to greater competition.

The brochure, "Making the Best Call," highlights important changes that are likely to take place in the coming months and years, including competition for local telephone services, one-stop shopping for local and long distance service, and package deal discounts for all telecommunications services.

"Passage of the new communications law will likely lead to more choices than ever for communications services," said CFA Research Director Mark Cooper. "The fact is, however, that even if federal and state policy makers make all the right decisions in implementing the new law, consumers will benefit only if they make the right choices in the marketplace."

"Many consumers have already been exposed to the various marketing ploys used by competing telephone companies, and there is more on the way," Cooper added. "This brochure is an important part of CFA's overall efforts to make certain that consumers benefit from the fundamental changes taking place in the telecommunications industry today."

"Every consumer can save money by being on the right plan," Cooper said. "The

key is finding out which plan is the best fit and avoiding being tricked into paying too much or buying services you don't need."

Because usage and calling patterns vary greatly, making specific advice about the best plans difficult, the brochure instead outlines good decision-making rules consumers can use to select the best service and resolve problems if they arise.

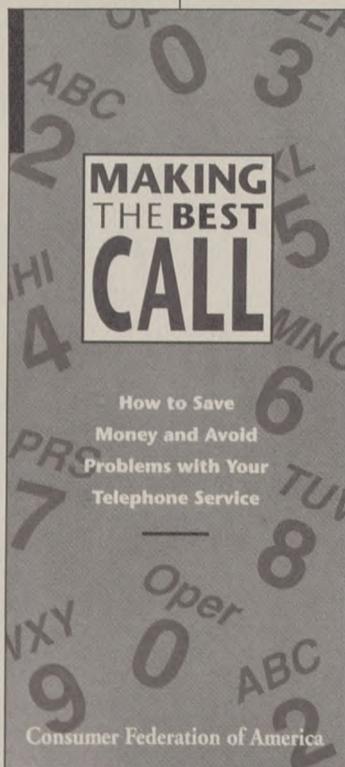
The brochure also describes specific marketing tactics consumers should be aware of and how to avoid them.

"We are at the beginning of a long process that we hope will ultimately lower consumers' telephone bills," Cooper said. "We learned during the transition from monopoly to long distance competition, however, that, without the proper information, consumers can be victimized by slick marketers. This brochure is designed to ensure that

consumers are armed with information before the changes really begin to kick in."

"Making the Best Call" has been endorsed by the Center for Media Education, Consumer Action, National Association of Consumer Agency Administrators, and the National Consumers League. Its printing was donated by MCI.

To receive a free copy of the brochure, send a self-addressed, stamped envelope to CFA's Making the Best Call, P.O. Box 12099, Washington, D.C. 20005-0999. In the future, the brochure will also be distributed by the Consumer Information Center.



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## SEC Proposes Strong Books and Records Rules

The Securities and Exchange Commission has proposed rule changes that would require brokers and dealers to maintain more records in local branches, maintain records that provide a clearer paper trail of transactions, and maintain more complete information about customer complaints.

In comments filed with the agency in December, CFA Director of Investor Protection Barbara Roper said these changes should "significantly enhance the ability of securities regulators to conduct efficient and effective inspections and investigations of broker-dealers."

The SEC developed the proposed rule changes in response primarily to complaints from state securities regulators about inadequacies in the existing rules. Rather than have the states act individually to strengthen the rules, the SEC stepped in to propose uniform improvements to the books and records requirements.

At the heart of the proposals are a number of changes that, taken together, will provide a much clearer paper trail both of the activities of particular sales persons and of the activities within individual customer accounts.

"Enabling regulators to better track the activities of individual sales representatives is essential if inspections are to serve their intended purpose of detecting and deterring fraud," Roper said.

### Rules Should Help Deter Fraud

"Knowing that their activities will be documented in written records accessible to compliance officers and regulators should deter many would-be wrong-doers. Where individuals persist in inappropriate activities, firms should be able to identify problems earlier and put a halt to inappropriate activity before serious damage results," she said.

The proposed changes also include a new requirement that brokers maintain more specific information about customers' investment objectives and specify on account forms the approximate percentage, if any, of the client's assets that are to be allocated to speculative investments.

"This should provide a powerful tool to regulators seeking to identify and build an enforcement action around suitability violations," Roper said.

In its comments, CFA urged the commission to adopt a uniform, plain English definition of speculation as part of the rule and to monitor closely how the rule is implemented, "since some firms may resist classifying even very risky investments as speculative."

The proposed rules also would require brokers to keep certain key records — including memoranda of brokerage orders, complaint and correspondence files, associated person records, and customer account forms — accessible in local branch offices.

Requiring firms to maintain more records in local branches should reduce the delays regulators say they often experience when conducting inspections and investigations of local branches and thus "increase the efficiency of these inspections and reduce waste of limited regulatory resources," she said.

### Complaint Records To Be Maintained

The proposal also would require broker-dealers to maintain files of written materials relating to customer complaints, in-

cluding written memoranda of oral complaints alleging certain types of fraud and theft. In addition, they would be required to provide routine notification on account statements that customers should send their complaints in writing in order to establish an independent record of the complaint.

"These provisions should help not only to provide regulators with valuable information, but also to improve the handling of customer complaints within firms."

"The records required under the new rules are records that any firm serious about compliance should already be keeping," Roper said. "Thus, the proposed rule changes should impose no significant new burden on firms operating adequate compliance programs. Where firms fail to maintain adequate compliance programs, the amendments should provide much needed improvements."

The benefits of these changes — improved industry compliance, more efficient and effective regulatory inspections and investigations, and, ultimately, fewer problem brokers in the industry as a result — clearly outweigh the costs," she concluded.

## Radon Project Continues To Mature

Now in its sixth year, CFA and the Paul H. Douglas Consumer Research Center's project to increase public awareness of the need to test and mitigate for radon continues to mature.

Funded through cooperative agreements with the Environmental Protection Agency, the program consists of three major components:

- grants, training, materials, and technical support to state groups that implement the program in their local communities;
- public service announcements designed to educate the public about the need to test for radon; and
- a toll-free Radon Fix-It Line consumers with high test results can call for information and encouragement to fix their homes.

"Over the course of this project, we have explored a variety of approaches to learn what works and what doesn't work in encouraging individuals to test and mitigate for radon," said CFA General Counsel Mary Ellen Fise, who oversees the program. "The current, more hands-on approach developed as a result of what we have learned as the project has evolved."

### Thousands Served By Fix-It Line

A key component of that hands-on approach is the Radon Fix-It Line. Established in January 1994, the fix-it line provides a wide range of free mitigation information to consumers who receive radon test results above the EPA action level.

The radon testing companies that currently participate include a CFA postcard in their test results mailings to clients with test results of 4pCi/L or higher encouraging them to either write or call the Radon Fix-It Program.

More than 13,000 individuals have contacted the fix-it line, either by telephone or by postcard, in its first three years of operation.

Those who return the postcard are sent a free copy of EPA's "Consumer

Guide to Radon Reduction," a list of EPA-approved radon reduction contractors, and the phone number of their State Radon Office.

Callers speak to operators who offer non-technical information, including consumer tips on how to shop for a contractor, and options for fixing homes. A variety of publications are provided free of charge, and callers with region-specific or technical questions are referred to their State Radon Office.

"Our goal is to demystify the mitigation process and to get people over the hump from testing to doing something about the results," Fise said.

Although it is too early to reach a final conclusion, the program appears to be helping, she said. Nearly half (45 percent) of the individuals who have been in touch with the program have either completed or made progress toward mitigation, she noted. By contrast, a 1993 study sponsored by EPA estimated that nationwide only 23 percent of those who tested above the 4pCi/L action level went on to mitigate.

Fise said the major goal for the project this year is to expand the number of testing labs that participate in the program and to experiment with other methods of getting the word out.

### Education Efforts Progress

While the fix-it program addresses consumers who have already tested for radon, CFA's public service campaign seeks to motivate consumers who have never tested.

CFA has developed television, radio, and print public service announcements that have been distributed to thousands of media outlets.

The most recent PSA, "Dust Particles," takes a new approach to explaining how radon is capable of getting into the lungs and starting the development of cancer.

The state grants program has also grown and matured since it was begun more than six years ago.

In the first year, five states conducted pilot projects focused primarily on encouraging radon testing through the distribution of inexpensive test kits and through media campaigns.

Today, 15 groups in 14 states participate, with projects that range from poster contests for school students, sponsored by Arizona Consumers Council, to work with engineers and architects to increase their awareness of radon issues in both remodeling and new construction, by Consumer Fraud Watch.

Most of the states in the program now work on consumer information programs on a broad range of indoor air quality

issues, including, but not limited to, radon.

In Georgia, for example, the Consumer Law Center of the South is holding community forums to educate low income groups about indoor air quality problems. Consumer Action - San Francisco distributed a publication on environmental tobacco smoke in English, Chinese, and Spanish. And a number of groups are assisting in distributing the "Tools for Schools" materials prepared by the EPA to help school districts avoid indoor air quality problems.

"The state groups have been very creative in building alliances and coming up with new strategies to get the word out," Fise said.

## Fox, Rouleau Join CFA Staff

Two well-known consumer advocates joined the CFA staff in January — Jean Ann Fox as Director of Consumer Protection and Mary Rouleau as Legislative Director.

Rouleau comes to CFA from the American Association of Retired Persons, where she has headed the state legislative department since 1993. Previously, she had served as utilities issues coordinator at AARP, assistant general counsel and consultant for Teleport Communications Group, general counsel for Institutional Communications Company, instructor and teaching assistant at Michigan State University, research attorney for the Michigan Court of Appeals, and litigation associate for a private law firm in Detroit.

In addition to heading CFA's legislative efforts, Rouleau will work on utility issues, health care, and telecommunications.

"I am thrilled with this move to CFA. The issues we work on are important to people's daily lives," Rouleau said. "CFA has always managed to leverage its research into strong, effective policy action."

Fox is a long-time board member and officer of CFA, having served several terms as CFA president. She also serves as vice chair of the Board of Directors of Consumers Union.

Fox served as president of Virginia Citizens Consumer Council for ten years, having joined VCCC in 1984. Before that, she was president of the Pennsylvania Citizens Consumer Council, director of the Allegheny County Bureau of Consumer Affairs in Pittsburgh, and regional manager of the Bureau of Consumer Services of the Pennsylvania Public Utility Commission.

"As CFA's Director of Consumer Protection, I hope to take what I've learned as a grassroots advocate in Virginia and put it to work to help CFA and its state and local members fight for effective consumer protections," Fox said. She added that she hopes to focus her efforts "where low-income and hard-working consumers can least afford to be victims of unfair and abusive market practices."

## Lindsey: Rise in Debt No Cause for Panic

The current rise in consumer bankruptcies is cause for concern, but not panic, Federal Reserve Governor Lawrence Lindsey told attendees at CFA's financial services conference in December.

"As long as banks, consumers, and regulators don't overreact, things should probably work out okay," Lindsey said in a keynote address. A moderate increase in incomes, combined with a moderate decrease in spending, should resolve the problem, he said.

Economic conditions in the United States over the last five years or so have been "very favorable to a rise in consumer debt," Lindsey said, citing the decline in interest rates and the disappointing rise in incomes. In response, many consumers increased the quantity of their debts, he said.

"This is not a sustainable trend," Lindsey noted. Since the second quarter of 1991, consumers have spent \$1.10 of every \$1 increase in income, he said.

"It seems apparent ... that it is excess spending that is the cause of this rise in bankruptcies," exceeding event-specific causes, such as medical expenses and divorce, he said.

Although access to credit has expanded to far more households over the last two decades, this does not appear to be a major cause of the rise in debt, Lindsey said.

### Middle Income Consumers Taking On More Debt

The real problem lies with consumers earning between \$50,000 and \$100,000,



Rep. Barney Frank (D-MA)



Federal Reserve Governor Bruce Lindsey

he said, where consumer debt to income ratios rose almost six points, and mortgage debt ratios rose almost ten points between 1992 and 1995. "That's a very large increase in the amount of debt," Lindsey said.

Lindsey predicted that consumer debt would rise further, but he brushed aside concerns about the possible affect on the banking industry, saying banks are adequately "reserved against potential losses in this area."

He did warn, however, that the increase in bankruptcies will force a reconsideration of bank lending policies. This could make it harder to get credit, which could cause consumers to spend less, which could ultimately result in a recession.

"As long as there is moderation in the responses both by consumers and by banks," such a result can be avoided, he said.

### Conservatives' Pro Free Market, States' Rights Stance Questioned

The conservative movement in this country has no particular sustained commitment either to states' rights or to the free market, Rep. Barney Frank (D-MA) said in a keynote address at the financial services conference.

Instead, conservatives are for states' rights when it comes to protecting poor people, but, when it comes to protecting business, they are for federal action, he said.

Similarly, "they are for deregulation where we try to protect consumers from business, but where businesses have tried to protect themselves from other businesses, they are for regulation," Rep. Frank said. Generally, that regulation ends up being anti-consumer, he added.

Rep. Frank cited numerous examples in which congressional conservatives had acted in opposition to their stated commitment to states' rights and free markets.

For example, he said, there has been "no broader attempt to preempt state law than tort reform," which would have preempted state laws that were more protective of the injured party, but permitted state laws that were more protective of defendants.

Where free markets are concerned, conservatives have supported legislation that makes it "a crime to grow peanuts in America without a license" and "illegal for a retailer to charge a fee to a credit card company for using a card."

"What drives this is a commitment to making life easy for business," Rep. Frank said.

While he dismissed states' rights as having no "great validity," Rep. Frank said, "I think the free market works. The pro-consumer position is often the deregulatory position."

Rep. Frank said, for example, that he is "not interested in protecting banks from insurance and insurance from banks and banks from securities firms. There need to be some rules, but I believe that that level of competition is in the consumer's interest."

Democrats' job in the new Congress will be to prevent the erosion of consumer protections and "not to concede to [conservatives] the notion that they are the defenders of the free market and states' rights."

## FTC Investigates Drug Company Mergers

Responding to a request from consumer groups, the Federal Trade Commission has launched an investigation of antitrust issues related to drug company ownership of pharmaceutical benefit management companies.

CFA Chairman Howard Metzenbaum, who led a delegation of consumer groups to meet with FTC Chairman Robert Pitofsky in November to discuss the issue, said drug company mergers with pharmaceutical benefit management companies "are leading to less competition and higher prices."

Pharmaceutical benefit management companies (PBMs) provide management for health maintenance organizations on drug purchases and are used by the HMOs to control costs.

"Drug manufacturers may discriminate against other drug manufacturers' products and restrict the availability of drugs by influencing what doctors prescribe," explained CFA Senior Projects Director Mary Ponder. "In some cases, patients' medications are switched, sometimes with adverse reactions, as their health plan's list of preferred medications changes to include drugs owned by the parent company's manufacturing arm." Thus, when a drug manufacturer purchases a PBM, "consumers lose, because their access to drugs is restricted, and the cost savings, if any, are not passed on to the patient," Ponder said.

The FTC agreed to look into the issue after CFA, Citizen Action, Families USA, and the National Consumers League wrote to the FTC last summer asking the agency to re-open its antitrust proceeding against Eli Lilly and other drug manufacturers that have purchased PBMs. In their petition, the groups noted that the consent agreement reached with Lilly last year "is inadequate," that there is "a clear need for more consumer protection," and that there is "a need to extend such protections to all drug manufacturer/PBM mergers."

At the November meeting with consumer groups, the FTC said it has subpoenaed Eli Lilly/PCS for records and is reviewing the records. Food and Drug Administration officials have also reportedly begun looking into the issue.

"These joint ventures add to the dangers of growing concentration and declining competition in the development, production, distribution, and sale of prescription medications," Metzenbaum said. "We are encouraged that the FTC and FDA are considering action to address these very real and pressing consumer concerns."

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