

Additional Statement of Commissioner Thomas B. Leary
Before the
U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Commerce, Trade and Consumer Protection

Mr. Chairman and Members of the Subcommittee:

I would like to discuss our unanimous recommendation that the Federal Trade Commission Act be amended to eliminate the special exemption for telecommunications common carriers.

When the common carrier exemption was included in the FTC Act almost 90 years ago, the exemption made sense. The Commission was given the authority to attack "unfair methods of competition." It was logical to exempt the monopoly providers of common carrier services, who were not disciplined by competition but rather by detailed rate and service regulation.

Since that time, the telecommunications industry has changed dramatically and, perhaps even more important, the regulatory role of the federal government has also changed dramatically. Let me summarize some of the changes that are particularly significant:

1. The common carrier activities of telecom companies are less regulated by government fiat and more by competition today. At the same time, telecom companies have been allowed to expand into non common-carrier activities, like internet services. They provide these services in competition with companies that are unqualifiedly subject to our jurisdiction. These telecom companies no longer occupy a special niche in our economy.
2. Over the last century, you have passed myriad laws and regulations, and created entirely new agencies to monitor and regulate specific activities of business enterprises, whether they are common carriers or not. Sector specific regulation, of the kind that the FCC or the FDA provides, has been supplemented everywhere by specific substantive law enforcement of agencies like the SEC, OSHA or the EPA - - agencies that, like the FTC, have a broad jurisdiction over a large number of sectors but monitor a limited range of activities in any one sector. We no longer look to a single government agency to address all problems that may arise in a single sector.
3. We in the FTC have a long experience cooperating with other agencies, to avoid duplication or inconsistency in these situations. Specifically, we want to cooperate with the FCC, and we have no ability or desire to intrude into the FCC's core mission as gatekeeper into the limited communications spectrum. We do not make the same kinds of "public interest" determinations that they do; we are not concerned with the qualifications of companies that compete or the nature of services that they provide. The core mission that you have assigned to us is to see that any company, whatever it does, conducts its business with fairness and with honesty. In carrying out that mission, we have acquired an in-house expertise and a body of precedents that I really believe are unmatched anywhere in this country or, indeed, the world.

Some ask why we are asking for change after all these years. This is a fair question.

The short answer is that technologies are continually converging and we have become increasingly frustrated by our inability to obtain complete relief in situations where (a) there are multiple parties, some who are common carriers and some who are not; (b) where a common carrier engages in deceptive practices involving a mix of common carrier and non-common carrier activities; or (c) the jurisdiction lines are unclear and resources are wasted dealing with an issue that has nothing to do with the merits. Finally, an admitted common carrier may engage in deceptive practices that are similar to those we see all the time, that do the same consumer harm, and for which we have special remedies - - but we are paralyzed by the jurisdictional barrier.

Potential agency overlaps may require discussion and cooperation. We have had an ongoing exchange with the FCC on this subject. However, this problem is not nearly as bad as a situation where companies engaged in the same conduct in competition with one another are subject to different regulatory regimes.

In conclusion, let me assure you that we do not want to intrude into other agencies' business and we do not seek to impose remedial relief absent a need for it. But, you decided long ago that the issues we are talking about here are our business, and we cannot do the best possible job for consumers, whom we both seek to serve, while we are constrained by a barrier that has long outlived its usefulness.