

**FEDERAL COMMUNICATIONS COMMISSION**

**Deletion of Agenda Item From June 10, 2004, Open Meeting**

June 9, 2004.

The following item has been deleted from the list of Agenda items scheduled

for consideration at the June 10, 2004, Open Meeting and previously listed in the Commission's Notice of June 3, 2004.

6	Wireline Competition .....	<p><i>Title:</i> Review of the Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers (CC Docket No. 01-338); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98); and Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98-147).</p> <p><i>Summary:</i> The Commission will consider an Order on Reconsideration concerning requests from BellSouth and Sure West to reconsider and/or clarify unbundling obligations relating to multiple dwelling units and the network modification rules.</p>
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Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04-13568 Filed 6-10-04; 1:18 pm]

**BILLING CODE 6712-01-P**

**FEDERAL RESERVE SYSTEM**

**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2004.

**A. Federal Reserve Bank of Cleveland** (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *S&T Bancorp, Inc.*, Indiana, Pennsylvania; to acquire up to 9.9 percent of the voting shares of Fidelity Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby indirectly acquire Fidelity Savings Bank, Pittsburgh, Pennsylvania.

**B. Federal Reserve Bank of San Francisco** (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *North Valley Bancorp*, Redding, California; to acquire 100 percent of the voting shares of Yolo Community Bank, Woodland, California.

Board of Governors of the Federal Reserve System, June 8, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04-13350 Filed 6-14-04; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL TRADE COMMISSION**

[File No. 031 0134]

**Southeastern New Mexico Physicians IPA, Inc., et al.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached

Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 6, 2004.

**ADDRESSES:** Comments should refer to "Southeastern New Mexico Physicians IPA, Inc., et al., File No. 031 0134," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-3688.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the

above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 7, 2004), on the World Wide Web, at <http://www.ftc.gov/os/2004/06/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before July 6, 2004. Comments should refer to "Southeastern New Mexico Physicians IPA, Inc., *et al.*, File No. 031 0134," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: [consentagreement@ftc.gov](mailto:consentagreement@ftc.gov).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be

considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

#### **Analysis of Agreement Containing Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Southeastern New Mexico Physicians IPA, Inc. (SENM), and two of its non-physician employees. The agreement settles charges that these parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among members of SENM to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

#### *The Complaint*

The allegations of the complaint are summarized below.

SENM is an independent practice association (IPA) with 68 physician members. SENM's members represent 73% percent of all physicians independently practicing (that is, those not employed by area hospitals) in and around Roswell, New Mexico, which is located in southeastern New Mexico.

SENM members refuse to deal with health plans on an individual basis. Instead, two SENM employees, Barbara Gomez and Lonnie Ray, negotiate price and other contract terms with health plans that desire to contract with SENM members.

Contracts that Ms. Gomez and Ms. Ray negotiate for SENM with health plans are presented to SENM's Managed Care Contract Committee for approval, then to SENM's Board of Directors. After SENM's Board approves it, a contract is presented to the general membership, which votes on whether SENM should accept the contract. If a majority of SENM members vote to accept, SENM's president signs the contract. Following this process, respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, have carried out collective negotiations with health plans, and have orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents' desired terms. Although SENM purported to operate as a "messenger"—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.<sup>2</sup>

Respondents have succeeded in forcing numerous health plans to raise fees paid to SENM members, and thereby raised the cost of medical care in the Roswell area. SENM engaged in no efficiency-enhancing integration sufficient to justify respondents' joint negotiation of fees. By orchestrating agreements among SENM members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated Section 5 of the FTC Act.

#### *The Proposed Consent Order*

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The order also includes temporary "fencing-in" relief to ensure that the alleged unlawful conduct by respondents does not continue.

<sup>1</sup> Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

<sup>2</sup> Some arrangements can facilitate contracting between physicians and payors without fostering an agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a "messenger model" arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice at 125. See <http://www.ftc.gov/reports/hlth3s.htm#8>.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." The arrangement, however, must not facilitate the refusal of, or restrict, physicians from contracting with payors outside of the arrangement.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the physician participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of

services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Also, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, for a period of three years, bars Ms. Gomez and Ms. Ray from negotiating with any payor on behalf of SENM or any SENM member, and from advising any SENM member to accept or reject any term, condition, or requirement of dealing with any payor. This temporary "fencing-in" relief is included to ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for three years, requires respondents to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, which applies only to SENM, requires SENM to distribute the complaint and order to all physicians who have participated in SENM, and to payors that negotiated contracts with SENM or indicated an interest in contracting with SENM. Paragraph V.B requires SENM, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts with respect to providing physician services. Paragraph V.C requires SENM to distribute payor requests for contract termination to all physicians who participate in SENM. Paragraph V.D.1.b requires SENM to distribute the complaint and order to any payors that negotiate contracts with SENM in the next three years.

In the event that SENM fails to comply with the requirements of Paragraph V.A or Paragraph V.D.1.b, Paragraph VI would require Ms. Ray to do so.

Paragraphs VII and VIII generally require Ms. Gomez and Ms. Ray to distribute the complaint and order to physicians who have participated in any group that has been represented by Ms. Gomez or Ms. Ray since August 1, 2001, and to each payor with which Ms. Gomez or Ms. Ray has dealt since August 1, 2001, for the purpose of contracting.

Paragraphs V.E, V.F, VIII.B, IX, and X of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 04-13483 Filed 6-14-04; 8:45 am]

**BILLING CODE 6750-01-P**

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## FEDERAL TRADE COMMISSION

### Public Comment To Aid Staff in Preparing the FACT Act Section 318(a)(2)(C) Study

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for public comment.

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**SUMMARY:** The Federal Trade Commission (the "Commission" or "FTC") is conducting a study of the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, as required by the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act). The Commission is requesting public comment on a number of issues to assist in preparation of the study.

**DATES:** Public comments must be received on or before July 16, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to "FACT Act section 318(a)(2)(C) Study, Matter No. P044804" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-159 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: [FACTAStudy@ftc.gov](mailto:FACTAStudy@ftc.gov).