

**FCC Local and State Government Advisory Committee
Advisory Recommendation Number 17:**

**Statement Of Principles To Be Considered In Analyzing
Proposed Telecommunications Mergers**

PREAMBLE

The Communications Act grants the Commission the power to determine whether the applicants in a merger have demonstrated that granting approval of the merger would serve the "public interest." 42 U.S.C. §§ 214(a), 310(d) (1999). While the Department of Justice ("DOJ") shares concurrent responsibility with the Commission with respect to the antitrust issues arising from these mergers, the Commission's responsibility is both broader and distinct from the DOJ's role. *See* U.S.C. § 18; 15 U.S.C. § 21(a) (1999). First, the Commission must consider the effect of the merger on competition in weighing the public interest. *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶12. Second, the Commission's inquiry can extend beyond antitrust principles and judicial standards of evidence. *Id.* at ¶13. Third, the Commission must implement and enforce the national policies articulated in the 1996 Telecommunications Act. *Id.*

The LSGAC believes that the Commission has a unique and essential responsibility in evaluating whether mergers would serve the "public interest," and that the Commission's role in reviewing mergers should not be curtailed in any way. Thus, the LSGAC believes that the power of the Commission to review mergers under the Communications Act should be preserved, and that the Commission should exercise the full extent of this power in determining whether mergers would serve the "public interest."

In the 1996 Telecommunications Act, Congress set forth several guiding principles:

- that telecommunications markets should be open to competition;
- that universal service should be preserved and advanced; and
- that advanced telecommunications capability should be deployed to all Americans.

47 U.S.C. §§ 254, 706. The LSGAC believes that the Commission's review of mergers should fully include and implement these principles.

Recently, Chairman William E. Kennard announced that the following three "C's" should govern Commission action: competition, community and common sense. The LSGAC believes these three concepts create a framework for Commission review of mergers.

The LSGAC adopts the following statement of principles that the Commission should incorporate in reviewing whether proposed mergers would serve the "public interest." While the LSGAC does not take any position on any specific merger, it provides specific examples to illustrate the principles.

PRINCIPLES

1. The merger should provide short-term and long-term competitive benefits to state and local communities.

2. The merger should not adversely affect competition in state and local communities.

a. For example, in some communities, subsidiaries of telecommunications providers have built and operate cable systems that compete directly with incumbent cable companies. Where Ameritech New Media (the cable arm of Ameritech Corporation) has actively built and operated cable systems, competitive prices and services have been offered. Customers have benefitted from the competition that Ameritech New Media provides in three ways: 1) lower rates and improved program offerings; 2) customer service that is superior to that provided by other cable operators; 3) the acceleration of the rebuild of cable systems belonging to incumbent cable operators, providing more channels, and a more reliable and higher quality picture. When incumbent cable operators are faced with this competition, they must attempt to meet or even exceed the new entrants' level of service or be threatened with loss of market share.

Cable competition in communities should continue to be encouraged. If the merger between SBC Communications, Inc. and Ameritech Corp. results in decreased competition in the cable market, the failure to honor existing cable franchises, or the end of any commitment to expand and serve new communities--residential customers in state and local communities would be adversely affected.

3. In evaluating the merger, the Commission should incorporate the interests and experiences of state and local communities that would be affected by the merger. Thus, the LSGAC urges the Commission to conduct local forums such as town meetings in a representative set of affected communities.

4. The Commission should evaluate the past conduct of the merger applicants in state and local communities. For example, the Commission could address whether the applicants have fulfilled commitments made to state and local communities in prior mergers.

a. For example, in 1996, Pacific Telesis Group ("Pacific") and SBC Communications, Inc. ("SBC") proposed to merge. The California Public Utilities Commission ("CPUC") approved the merger on three conditions. First, it required Pacific to refund to ratepayers, the short term and long term economic benefits of the merger. Of the approximately \$248 million required to be passed on to ratepayers, the CPUC ordered \$213 million to be distributed to ratepayers in the form of billing surcredits over a five-year period. Second, it required Pacific to implement the Community Partnership Commitment ("CPC"). The CPC's pledges included: 1) extending access to advanced telecommunications services to a broad spectrum of Californians; 2) establishing a research center in cooperation with a university to investigate ways to advance consumer interests; 3) supporting a universal service task force to increase penetration levels to 98%. Third, it required Pacific to comply with provisions of General Order 133B, which governs customer service quality.

These provisions include requirements for business office answering time and trouble report answering time

Currently, SBC is proposing to merge with Ameritech Corp. In reviewing this proposed merger, the Commission could address whether commitments made to Californians in the SBC/Pacific merger have been met.

b. This principle applies equally to other mergers. GTE Corporation ("GTE") is proposing to merge with Bell Atlantic Corporation ("Bell Atlantic"). In reviewing this proposed merger, the Commission could address whether Bell Atlantic has fulfilled commitments made to communities in the Bell Atlantic/NYNEX merger.

5. As a condition of approval, the Commission should require that the applicants be subject to an enforcement mechanism that sets up a system of measurable standards and benchmarks to evaluate whether the applicants have fulfilled their commitments to consumers and state and local communities.

6. The merger should preserve or advance the provision of universal service to state and local communities.

7. The merger should equitably allocate the total benefits between all of the affected state and local communities. No single community should receive the majority of the benefits.

a. For example, as individual states and local communities reach settlement agreements with parties proposing mergers, it is critical that all benefits be distributed equitably throughout the communities affected by the proposed mergers. Some state and local governments are far along in implementing deregulation and competition, while others have not yet started. It may be the case that those state and local communities who have not yet implemented deregulation and competition may have more leverage with the merger parties because they may have more to offer. Thus, merger agreements may result in a division between communities that gain major benefits, and others that do not. To meet the public interest standard, a proposed merger should be evaluated by the entire array of settlements and benefits offered, with a focus on equitable distribution of the benefits nationwide.

8. The merger should equitably allocate the total benefits between the shareholders and ratepayers.

a. For example, ratepayer benefits have been considered in Bell Atlantic/NYNEX merger petition before the Maine Public Utilities Commission ("MPUC"). In 1996, Bell Atlantic petitioned to merge with NYNEX, and Bell Atlantic has presently petitioned to merge with GTE. In the 1996 merger, the MPUC acknowledged the "efficiency gains" of the Bell Atlantic/NYNEX merger, and found it necessary to ensure that customers realize these benefits. The MPUC found that net cost savings would occur, and reserved the right to impute the savings to the ratepayers, if they did not materialize after the first two to

three years of up-front merger costs. The MPUC is scheduled to review the status of ratepayer pass-through savings in 2000.

The MPUC also considered rate reduction to reflect the increased value of stock from a merger. Ratepayers are entitled to the benefit of any gain (proceeds less net book value) on the sale of an asset, when the ratepayer has borne the risk of loss of a utility asset. In the Bell Atlantic/NYNEX merger, the MPUC rejected this proposed rate reduction because it found that the merger was strictly a stock transfer. However, in the proposed Bell Atlantic/GTE merger, consumer advocates have suggested that rate reduction is appropriate because of the reorganization and proposed use of utility assets for non-utility business.

9. In the era of fast-paced technological advancement and convergence, the merger should advance the utilization of all technologies and their equitable deployment.

Adopted by the LSGAC on this ____ day of _____, 1999.

Kenneth S. Fellman
Chairman