

FEDERAL COMMUNICATIONS COMMISSION

In re:)
)
FCC MERGER EN BANC)
)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
FCC MERGER EN BANC)
)

Commission Meeting Room
FCC Building
1919 M Street, N.W.
Washington, D.C.
Thursday, October 22, 1998

The hearing commenced, pursuant to Notice, at 12:08 p.m., before the Commissioners of the United States Federal Communications Commission, the William E. Kennard, Chairman, Presiding.

APPEARANCES:

On Behalf of the FCC:

WILLIAM E. KENNARD, CHAIRMAN
MICHAEL K. POWELL, COMMISSIONER
SUSAN NESS, COMMISSIONER
HAROLD FURCHTGOTT-ROTH, COMMISSIONER
GLORIA TRISTANI, COMMISSIONER

On Behalf of AT&T/TCI:

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APPEARANCES (Continued):

On Behalf of SBC/Ameritech:

EDWARD E. WHITACRE, JR.
Chairman and Chief Executive Officer
SBC Communications Inc.

RICHARD C. NOTEBAERT
Chairman and Chief Executive Officer
Ameritech Corporation

On Behalf of Bell Atlantic/GTE:

IVAN SEIDENBERG
Vice Chairman
President and Chief Executive Officer
Chairman Designate
Bell Atlantic

CHARLES R. LEE
Chairman and Chief Executive Officer
GTE Corporation

JAMES R. YOUNG
General Counsel
Bell Atlantic

GEOFF GOULD

1 Bell Atlantic, the Bell-operating company that two
2 years ago acquired NYNEX, another of the original banc, now
3 seeks to acquire GTE. GTE is the country's largest non-banc
4 provider of local exchange service. GTE, which
5 unsuccessfully sought to acquire MCI and later opposed the
6 merger of MCI and WorldCom, now argues that GTE can best
7 compete with WorldCom by merging with Bell Atlantic.

8 All of these mergers are being considered against
9 the backdrop of the 1996 Telecommunications Act. That Act,
10 as we all know, promised American consumers more
11 competition. And anyone who reads that Act in the
12 legislative history and anyone who was there when that Act
13 was signed and heard all of the statements from the members
14 of Congress that enacted that legislation know that the
15 vision of that Act was more competition, first and foremost.

16 And the vision was also that the companies,
17 including the companies represented here, would be competing
18 against one another, moving into new markets and not merging
19 with one another.

20 Well, now you have presented us with a somewhat
21 different reality than that vision that was presented in the
22 1996 Act. And this agency is given the task of having to
23 reconcile that vision, that Congressional vision, with --

1 with your vision of a more pro-competitive marketplace
2 through merger.

3 I firmly believe that we have to have a
4 comprehensive, robust, public discussion of these issues.
5 This Commission is confronted with transactions which will
6 fundamentally alter the telecommunications landscape. And
7 we need to know, the public deserves to hear why these
8 mergers have been proposed, why do the parties claim that
9 these mergers will be good for American consumers, how will
10 average Americans benefit, how will it bring more
11 competitive -- competition to telecommunications markets,
12 how do you reconcile these proposals with the pro-
13 competitive vision of the Telecommunications Act.

14 I'm pleased that the leading principals of each of
15 the proposed merging parties is here with us today. And I
16 want to thank you each for taking time out of your schedules
17 to join us today. I was -- I must say though, I was a
18 little bit worried when I saw you all congregating earlier,
19 getting ready for this meeting because I was afraid you
20 would announce yet another merger in the telecommunications
21 industry.

22 (Laughter.)

23 But as we proceed with this en banc, I hope that

1 each of you will answer the following question: How will
2 your merger, not hinder, but advance competition and further
3 our goals of promoting competition, lowering prices and
4 giving greater choice to America's consumers? Thank you
5 again for being here. Commissioner Ness?

6 COMMISSIONER NESS: Thank you, Mr. Chairman.
7 Looking out over the executives that we have here today, I
8 feel a little bit like a minister or a rabbi interviewing
9 couples that are proposing to engage in holy matrimony.
10 It's an odd feeling.

11 Under the Telecommunications Act, the construction
12 permits and radio licenses cannot be transferred unless this
13 Commission affirmatively determines that the transfer serves
14 the public interest. And clearly the public interest is
15 implicated by these transactions we're talking about today.

16 These mergers hold the potential to dramatically
17 and irreversibly alter the communications landscape to
18 either enhance or deter competition. And I recognize that a
19 merged entity may be better able to serve consumers than
20 either of the pre-merger entities. It may be able to make
21 synergistic use of existing plant. It may have greater
22 economies of scope or scale. It may be a stronger
23 competitor, better able to challenge others, both

1 domestically and globally.

2 But mergers can also have negative consequences.
3 They may eliminate the potential for merged parties to
4 compete one against the other. They may make it harder for
5 other parties to enter markets dominated by one merger
6 partner or the other. They may reduce the potential for
7 regulatory benchmarking. We need to review these proposed
8 transactions carefully to assess their likely effects, both
9 pro and con.

10 So I am interested in hearing from all of the
11 interested parties, the participants to the proposed
12 mergers, other proponents of the mergers, competitors and
13 consumers. Today's hearing is but the first step in that
14 process.

15 And I would also add that we have an obligation at
16 the Commission to move as expeditiously as we possibly can.
17 I know that when you are in a merger setting, a lot of
18 things come to a grinding halt. It is difficult for
19 employees. It is difficult for the market. And it is
20 difficult for competitors. And so we have an obligation to
21 move as expeditiously as we possibly can to consider and
22 evaluate the proposals before us.

23 We have a truly distinguished panel of witnesses

1 today: Chairman Armstrong, Hindery, Whitacre, Notebaert,
2 Lee and Seidenberg. I really very much appreciate your
3 taking time from your schedules to come here and join us
4 today as we discuss how these mergers will benefit the
5 American public. Thank you, Mr. Chairman.

6 CHAIRMAN KENNARD: Thank you, Commissioner.
7 Commissioner Furchtgott-Roth.

8 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
9 Chairman. I, too, would like to thank the CEOs for taking
10 time out of their busy schedules to come to the FCC today.
11 Millions of Americans invest in the companies that these
12 CEOs head up. They expect those companies to make wise and
13 prudent decisions, and they are rewarded when they do and
14 they are punished when they do not.

15 We have before us today potentially the
16 consideration of three mergers. I would suggest that we
17 have no specific record before us. The Commission has yet
18 to fully collect information on any of these. And so at
19 least I for one am not in a position to comment on the
20 specific facts that these potential mergers may create.

21 I am interested, though, in process, in the
22 process of this Commission in reviewing mergers. Mergers
23 are common in America today. They occur not just in the

1 telecommunications industry.

2 The past few years have been boom-times for
3 mergers. It's been a good time for Wall Street. But it's
4 also been a good time for the American consumer. It is not
5 necessarily the case that mergers and competitive forces
6 that benefit consumers are antithetical to one another.

7 There have also been many mergers in the telecom
8 industry this year and there have been many mergers in the
9 telecom industry in the past decade. I think it is worth
10 noting that there is today more competition in
11 telecommunications than there was a year ago, more
12 competition than there was five years ago, more competition
13 than there was ten years ago. And I have every reason to
14 believe that this trend will continue regardless of what
15 happens to these specific potential mergers.

16 I hope that the witnesses today will focus on the
17 legal authority of the FCC. Does it pertain just to review
18 of licenses or does it pertain to the review of entire
19 mergers? Does the FCC have the authority to establish
20 specific criteria that are not in legislation? Do we have
21 the authority to go beyond the public interest? Do we have
22 the authority to specify what that public interest is? Do
23 we have the authority to place conditions on mergers that

1 are unrelated to specific license transfers?

2 And finally, I think we are particularly blessed
3 today to have before us CEOs who have set up -- who have
4 been through the merger process time and time again. They
5 know the process. They've been through DOJ. They've been
6 through the SEC. I would be very interested in their
7 opinion about how the two interact.

8 Are there issues that the Department of Justice
9 does not consider? Are there instances where the Department
10 of Justice allows mergers to go through that are not in the
11 public interest? Are there issues that the FCC raises that
12 the Department of Justice does not have the authority to
13 review? Are there issues where the review of the FCC does
14 not overlap directly with the review of the Department of
15 Justice?

16 These sort of process issues are very important to
17 me. I would like to understand better what the proper role
18 of the Federal Communications Commission is in reviewing
19 these mergers. These are the same questions that I will be
20 asking to parties who are quite opposed to these mergers.
21 But I think that it is very important that we understand how
22 we should proceed as an agency. Thank you, Mr. Chairman.

23 CHAIRMAN KENNARD: Thank you, Commissioner.

1 Commissioner Powell.

2 COMMISSIONER POWELL: Thank you, Mr. Chairman.
3 Just out of respect for Y2K Action League (phonetic), I
4 would note that all of you would please take note, we only
5 have 435 days. And I hope each of you is taking this as
6 seriously as your various agents represent. But I'll be
7 back to you on that.

8 (Laughter.)

9 This is an unprecedented if not auspicious
10 occasion to have such an interesting collection of CEOs and
11 have an opportunity to hear from them, their perspectives on
12 not only their -- the consolidations and mergers that are
13 facing them directly, but the trends in the industry
14 generally.

15 I would like to interject a very important note of
16 caution from my perspective. I am firmly convinced that you
17 can make no grand generalizations about merger and
18 consolidation activity and it is dangerous and foolish to do
19 so. I will take public issue with those who would say that
20 any given merger, before looking at any document or any box
21 of filings, would declare it unthinkable merely as a matter
22 of policy. I find that to be not only wrong, but naive.

23 Mergers, in my experience, are incredibly facts-

1 intensive, case-specific exercises and they should continue
2 to be treated as such whether that's at the -- urging the
3 Department of Justice or it be the Federal Communications
4 Commission or anywhere else that might have a role in that
5 regard.

6 I also take issue with any suggestion that one can
7 declare that consolidation and competition are automatically
8 mutually exclusive. The notion that one cannot equal the
9 other in any way, shape or form is also wrong or naive. The
10 mergers can be both competitive or anti-competitive,
11 depending on the case specifics that are presented. And I
12 would always urge the reservation of judgement with respect
13 to that without -- without making those generalizations.

14 This process is useful, however. But the
15 usefulness lies, it seems to me, into hearing from those who
16 are in this industry. What are the trends and pressures,
17 the competitive trends and pressures, the economic trends
18 and pressures, the -- the situation in capital markets and
19 the competition for capital and most importantly perhaps,
20 the technological trends in the industry that have forced
21 you all and your board of directors to make decisions that
22 these are in the best interest of your shareholders and your
23 companies.

1 I am very interested in hearing your insights as
2 to those trends. Any one merger may or may not be blocked
3 or approved, but it will be quickly replaced with another if
4 the trends or the tidal wave that's underlying them
5 continues to be present. And what's most important for us
6 to do is to understand those forces as much or more as
7 understanding the parties that are before us.

8 Let me finally say something about the public
9 interest standard and our standard of pro-competitiveness.
10 These are by definition in a sense very vague and ambiguous
11 terms. And they certainly offer the Commission a wide
12 degree of discretion. But I would insist that they should
13 not be unguided or unprincipled.

14 We should always be rigorous of asking ourselves,
15 irrespective of what we might think about the merger, do we
16 first and foremost have jurisdiction over it. Secondly,
17 even if we do have jurisdiction over it, does it truly -- do
18 the issues presented truly implicate core functions that are
19 a responsibility of the Commission? Is it really about
20 telecommunications or is it another issue disguised to look
21 like it?

22 And finally we have unique expertise and that
23 unique expertise can be valuable in this exercise. But we

1 also need to make sure that the issues presented truly
2 implicate that unique expertise. I've seen it in the
3 context of a number of mergers, very important issues of
4 public interest raised in the proceedings but they don't in
5 any way implicate our expertise, schooling or core
6 jurisdictional functions. And I think that we have been
7 very good to be guarded against accepting those invitations.

8 And with that, I, in the interest of time, will
9 turn the mike back over and look forward to hearing from
10 each of you. Thank you.

11 CHAIRMAN KENNARD: Thank you, Commissioner.
12 Commissioner Tristani.

13 COMMISSIONER TRISTANI: Thank you, Mr. Chairman.
14 Some people have said that in resolving the three merger
15 applications now pending before us, we will effectively
16 decide what the telecommunications market will look in the
17 future. Some say the most efficient, pro-consumer market
18 structure is to have a handful of national or global
19 carriers providing end-to-end service. I expect some of our
20 panelists will make that argument today and I look forward
21 to hearing that viewpoint.

22 The other viewpoint is that allowing these mergers
23 to occur will go too far in concentrating markets and that

1 consumers ultimately will suffer if all the proposed mergers
2 are granted. Indeed, if one is to believe popular magazines
3 and the surveys that they take of consumers in America, some
4 of them say that over 50 percent of Americans are very
5 skeptical of mergers that are occurring not only in the
6 telecommunications industry, but in all the industries.

7 They are skeptical because they do not see
8 consumer benefits. But since that discussion is left for
9 another day, I would simply reiterate that today's hearing
10 is only one side of a very important and multi-faceted
11 public policy debate.

12 I, too, want to thank the panelists for coming
13 here today and I look forward to hearing your comments.

14 CHAIRMAN KENNARD: Thank you, Commissioner. Just
15 a note on our housekeeping matters and procedure. The way
16 we're going to handle this is each of the merger proponents
17 will have 15 minutes to tell us about their merger proposal.
18 And then we'll have a round of questioning from the
19 Commissioners. And then we'll go to the next proposal.

20 I'm told that Mike Armstrong had a pressing
21 engagement and won't be able to stay perhaps for the entire
22 en banc hearing. So if we see you get up and leave, we
23 won't read that the wrong way.

1 And with that, we will begin with the AT&T/TCI
2 presentation.

3 MR. ARMSTRONG: Good afternoon, Mr. Chairman and
4 Commissioners. And thank you for inviting me to talk about
5 what is to me a very exciting subject, and that's our
6 proposed merger with TCI. I am pleased to share why we are
7 proud of this merger and to explain the important benefits
8 it offers to the American consumer.

9 This merger means most importantly real local
10 phone competition for residential customers. It will create
11 a facilities-based alternative to the Bell companies in
12 areas TCI reaches by allowing residential customers to make
13 phone calls over broad band cable.

14 AT&T/TCI consumers will also get more services for
15 less money.

16 After the merger is completed and TCI systems are
17 upgraded, consumers should be able to have many phone lines
18 and services tomorrow for the price they pay for a few phone
19 lines and services today. This merger will also speed the
20 potential of digital, two-way, broad band to the home.

21 AT&T believes that digital broad band is the
22 future of telecommunications. In fact, one of the great
23 attractions of TCI's systems is the potential of bringing

1 digital two-way broad band to the home.

2 AT&T will offer a fully integrated package of
3 communications, electronic commerce, and video entertainment
4 services. And it will do it with the quality and
5 reliability that people have come to expect from AT&T.

6 With this merger, AT&T will become the first major
7 long distance carrier to bring about facilities-based local
8 competition. For several years, AT&T has been trying
9 mightily to find ways to provide our customers with a choice
10 in local phone services. We have previously invested
11 billions of dollars on the premise that two of the paths
12 provided to us by the Telecom Act of '96, resale and the use
13 of unbundled network elements could be made to work.

14 Unfortunately, a combination of incumbent foot-
15 dragging and court-induced uncertainty has made those
16 options either unprofitable or fraught with too many
17 difficulties on which to base a business plan. Our
18 frustration has been particularly acute with respect to
19 reaching our residential customers who are widely dispersed,
20 making facilities deployment to them almost infeasible and
21 always time-consuming and very costly.

22 By tapping into TCI's pre-existing wire into the
23 home, this merger will enable our local entry and allow us

1 to begin to provide competitive services to some of
2 America's telephone consumers, even as we continue to fight
3 for economic access to the incumbent's network.

4 This merger is also just what Congress wanted to
5 see happen when it passed the Telecom Act back in '96.
6 Congress' hope was that cable companies would provide a
7 competitive two-way pipe into residential homes to give
8 these customers a choice of local telephone providers. It's
9 in the conference report for Section 271 which says that
10 "meaningful facilities-based competition is possible given
11 that cable services are available to more than 95 percent of
12 the United States' homes."

13 In short, when it passed the Telecom Act, Congress
14 was counting on the cable wire to help eliminate the Bell
15 monopoly on local telephone service. AT&T with its 48
16 billion dollar investment aims to begin to make that hope a
17 reality.

18 In order to achieve these ambitious goals, a great
19 deal of work with have to be done to the facilities
20 currently in place. This vision just cannot happen
21 overnight. It's going to take time and capital to overhaul
22 TCI's network.

23 TCI has already independently committed to a 1.8

1 billion dollar, three-year upgrade of its network to add
2 more digital capacity, more video channels, two-way
3 capability, and wider access for high speed internet
4 connections. This work will be two-thirds done by year-end
5 '99 and about 90 percent complete year-end 2000.

6 After the cable base is upgraded, we then can add
7 the capability for telephone service. The build-out will be
8 driven by our upgrade ramp rate and, of course, market
9 demand. The timing of this deployment will turn directly on
10 when the merger is approved.

11 The fact is that this Commission, together with
12 your colleagues at the state and local levels, have the
13 ability to speed these efforts by a prompt review of the
14 merger. As such, I would respectfully ask your help in this
15 matter. We are committed to making the initial investment
16 and will make significant additional investments to provide
17 residential customers competition for local service as soon
18 as possible.

19 Getting this merger approved as submitted and
20 allowing us to move forward with our plans is vitally
21 important if we hope to see competition develop for the
22 residential telephone customer.

23 It's also important that I touch just briefly on

1 the question of what happens to consumers outside of TCI's
2 service area. AT&T's goal is to offer all consumers a broad
3 array of communication services which are simple to use and
4 affordable to enjoy. But this merger is only a step in that
5 direction.

6 Of more than one million households in the
7 country, TCI only connects to ten million and passes another
8 seven million. If we are successful in our commercial
9 arrangements with MSOs in which TCI has an interest, we
10 might be able to 20 million homes connected and 30 million
11 passed. But that leaves another 70 million customers
12 without a choice.

13 So our merger is a good start, but only a start.
14 We must still find ways to reach the other two-thirds of
15 American households. For AT&T to be able to serve all of
16 its residential customers and to provide competitive
17 alternatives to the broader market, we will require the use
18 of more facilities including RBOC facilities.

19 AT&T and other new entrants will need your
20 steadfast enforcement of Sections 251 and 271 of the Act to
21 be able to offer all consumers a competitive choice of local
22 services. AT&T's merger with TCI is not an excuse for the
23 incumbents to avoid opening the local exchange market, but

1 rather a step that highlights the necessity to do so.

2 Thank you and I'll welcome your questions.

3 CHAIRMAN KENNARD: Mr. Hindery.

4 MR. HINDERY: Good afternoon, Mr. Chairman and
5 Commissioners. We are very excited about the pending TCI
6 and AT&T merger, and the opportunity to offer consumers a
7 broad range of video, telephony and data services. I would
8 like to provide some context on the thinking that led TCI to
9 join forces with AT&T and on what this merger will mean for
10 consumers.

11 In particular I want to stress, as Mr. Armstrong
12 has, that this merger is about competition. We are
13 committed to competing in local telephony and in all of our
14 businesses. And our merger with AT&T is critical to
15 achieving this goal.

16 Prior to the merger announcement, TCI had been
17 considering a number of options on where to take our
18 business in the next millennium. Underlying each of these
19 alternatives was a central defining vision: TCI had to
20 build an advanced digital, broad band platform that would
21 deliver a wide array of interactive services to our
22 customers. We, therefore, initiated a multi-billion dollar
23 digital upgrade and we began to organize our systems into

1 more efficient geographic clusters.

2 Although we were making significant progress, we
3 recognized that this transformation would take considerable
4 time and investment. Meanwhile, other companies, especially
5 the regional Bell-operating companies, were combining their
6 assets to stake out their own new ground for the broad band
7 future. We realized that if we were going to be a serious
8 competitor in this new world, we had to find a partner that
9 could help us achieve our vision in a much more accelerated
10 time frame.

11 Fortunately, along came Mike Armstrong of AT&T who
12 shared TCI's vision on the future of the broad band network.
13 Before long, Mike, John Malone, John Zagless (phonetic) and
14 I concluded that the synergies made possible by joining our
15 companies were palpable and they were undeniable.

16 As part of the merger, AT&T will combine its
17 current consumer long distance, wireless and internet
18 divisions with TCI's cable, high speed internet and local
19 telephony businesses. Some of these businesses will be --
20 will be placed in a new subsidiary, AT&T Consumer Services.
21 As you know, I will serve as president of this company.

22 AT&T Consumer Services will provide the most
23 compelling selection of high quality, high value local and

1 long distance telephone, video, wireless and internet
2 services ever offered by a single entity, all under the AT&T
3 brand name. It will be the first fully integrated
4 communications shopping center for consumers, making it easy
5 for them to subscribe to, upgrade, downgrade and customize
6 the services of their choice.

7 We will offer these services over a highly
8 sophisticated network platform. TCI's cable head-ends
9 ultimately will be transformed into the nerve centers of an
10 ungraded network based on internet protocol technology.
11 This technology will make it possible to offer video, voice
12 and data services and electronic packets over the same wire.

13 In the home, our customers will receive these
14 packets through advanced digital customer terminals. These
15 terminals are highly complex network computers with enormous
16 processing power and memory. The technical sophistication
17 and investment required to build this advanced platform are
18 significant. This is one of the key reasons, perhaps the
19 most important reason why the merger makes sense.

20 AT&T has unparalleled technical expertise in the
21 areas of network design and implementation. Moreover, AT&T
22 provides a very strong financial base to our rebuild
23 efforts. The merger will significantly accelerate the

1 upgrade of our networks and the delivery to consumers of the
2 advanced services Congress had in mind when it passed the
3 Telecommunications Act of 1996.

4 I am not going to recite here all of the services
5 that will be offered over this new, advanced broad band
6 platform. Rather, I simply want to stress that this merger
7 is the first -- the first truly significant effort to
8 achieve Congress' goal of creating local telephone
9 competition. Absent this merger, both of our companies
10 would have had a difficult time competing in this business.

11 Prior to the merger, TCI did not have plans or the
12 capital in the short-term to provide telephony over its
13 cable systems on a significant commercial basis. However,
14 by combining the complementary assets and expertise of TCI
15 and AT&T, we will be able to provide widespread competition
16 to incumbent local telcos. Let me assure you that Mike and
17 I are both fully committed to this strategy.

18 Equally important, our merger will create local
19 telephone competition without reducing competition in any
20 service. For example, although TCI is one of the largest
21 providers of cable television service in the U.S., AT&T does
22 not compete in the distribution of video programming. As a
23 result, the merger will in no way -- in no way reduce

1 competition in the multi-channel video marketplace.

2 Chairman Kennard, you have spoken forcefully about
3 the need to accelerate the provision of broad band services.
4 In a recent speech, you noted that you do not care who wins
5 the race to bring high capacity broad band services to
6 America's homes. Rather, your goal is "simply to get this
7 capacity into these homes and to get it there quickly."

8 Our merger is premised upon this very same goal.
9 The most important thing the Commission can do to achieve
10 our shared vision is to expeditiously approve this merger.
11 Thank you once again. And I, like Mr. Armstrong, look
12 forward to your questions. Thank you.

13 CHAIRMAN KENNARD: Thank you. A couple of
14 questions. And either Mr. Armstrong or Mr. Hindery could
15 field this. Mr. Armstrong, you mentioned that you will need
16 access to the RBOC facilities in order to provide
17 competition in telephony outside the TCI service areas. And
18 I have two questions that flow from that.

19 First, I'm interested in knowing how competitors
20 who want access to your networks will be able to get access.
21 I mean, you -- you spun out a very compelling vision of a
22 digital, two-way, broad band world for residential
23 consumers.

1 I met not long ago with a gentleman by the name of
2 Rob Glazier who is -- has a very interesting streaming video
3 technology. He tells me that there are agreements between
4 TCI and AtHome which prohibit more than ten minutes of
5 continuous streaming video, presumably to protect the multi-
6 channel video business.

7 Now, obviously, I need to learn a lot more about
8 this situation. But I'm curious about how you assess the
9 competitive dynamic on the AT&T/TCI network for those who
10 want access.

11 And second, I'm interested in your assessment of
12 how the other mergers that we will hear about today might
13 implicate or impact your ability to compete in telephone
14 outside of the TCI regions.

15 MR. ARMSTRONG: Well, let me start, if I may, with
16 access to the broad band infrastructure. I had said in
17 previous testimony before the Congress that to the degree
18 that AT&T in its ownership of TCI, and to the degree that
19 AT&T in its interest in AtHome, but we don't own AtHome, we
20 would further an open broad band strategy. That would be
21 our business philosophy and our business strategy.

22 And it's really predicated on two things: First,
23 it's the right thing to do. And second, it's in our self-

1 interest. Now, if you can't count on one, you should surely
2 be able to count on the second.

3 Content is essential to make money in networks.
4 The only way to make money in networks is to have the
5 highest degree of utilization. It's a very capital-
6 intensive, high fixed cost business. And to invite as much
7 content over that broad band set of network facilities is
8 absolutely, Mr. Chairman, what we want to do.

9 And when I express open broad band, let me be more
10 specific, if I may. By open broad band, I would mean a
11 level playing field in terms of access to that broad band.
12 Number two, I would think that commercial terms of
13 conditions would prevail between the infrastructure and the
14 content providers, and not something that regulators would
15 attempt to get in the middle of.

16 Three, that there be common interfaces so that the
17 content could be at least cost-presented to the distribution
18 system and not a discombobulation of different forms and
19 standards and protocols and specifications and platforms in
20 which for that distribution to take place.

21 The second major point I would make is that our
22 open broad band would be predicated on customer choice in
23 that the broad band facilities would be an open gateway to

1 the internet and not a means for enterprises to capture
2 customers and keep them from the open internet.

3 Number two, we would be very much a supporter of
4 the AtHome approach called AtMedia which enables content-
5 providers to capture customers like a channel today of an
6 HBO captures us when we select it or ESPN or whatever. And
7 so AtMedia, which is a means for content to capture
8 consumers and have a direct relationship.

9 And third, we would also believe that by putting
10 this altogether, what could set us apart is lower prices and
11 that we would favor the unbundling of the modem in order to
12 provide consumers choice and lowest prices.

13 So my answer to your first question is an open
14 broad band environment with a level playing field,
15 commercial terms and conditions, common interfaces, customer
16 choice and lower prices.

17 In terms of the other mergers, before hearing the
18 comments of my compatriots to the left, it is hard to
19 comment before I've heard the proposed great advantages that
20 are going to benefit me. But I would assume that the
21 greatest benefit for America would be the greatest benefit
22 for AT&T, and that is that markets truly open on both an
23 operational and an economic basis so that the resale

1 equation makes sense.

2 All the rhetoric in the world and all the
3 checklists in the world are not worth anything down at the
4 customer level if you cannot operationalize their choice or
5 competitively make the investment of interest. And that
6 probably is my greatest interest that I hope I can stay long
7 enough to hear how that's going to be fulfilled.

8 CHAIRMAN KENNARD: Thank you. Mr. Hindery?

9 MR. HINDERY: Mr. Chairman, if I could just offer
10 a quick -- two quick comments. Before our merger was
11 announced, we had committed ourselves to the same open and
12 level playing field that Mr. Armstrong describes.

13 Everything that we have done in the one area about
14 which there has been some question raised, which is our
15 internet access strategies, has been designed around the
16 concept of complete neutrality -- complete neutrality for
17 any and all OSPs, portals and aggregators. It's a
18 passionate commitment on my part. It's a passionate
19 commitment on Mr. Armstrong's part.

20 We have specifically had conversations with the
21 dominant OSP in this area. We have already offered them the
22 same, the very same access opportunity that they have in the
23 narrow band, dial-up world without any reservation or

1 limitation.

2 On your specific question about Mr. Glazier, the
3 limitation that you're referring to is -- is an AtHome
4 restriction which we imposed on AtHome so that we were the
5 -- we were the determiner of how streaming video worked in
6 our world. I have all the opportunity in the world to have
7 my own relationship with Mr. Glazier. I have met with him
8 on numerous occasions. I think he is a gifted, gifted
9 visionary in this area.

10 I can do anything I want with Mr. Glazier as
11 TCI/AT&T and may well do so. The limitation that he was
12 referring to is one that I imposed on AtHome so that I -- I
13 determined my future in the area of streaming video. But I
14 would simply repeat, this open and level playing field is
15 one that we are both passionately committed to.

16 Every action we've taken has been to stress
17 complete neutrality vis-a-vis any OSP -- any OSP, any
18 portal, any aggregator. And as I said, we have already made
19 overtures to offer them all of the same opportunities that
20 exist for them in the narrow band, dial-up world that they
21 mostly live in today.

22 CHAIRMAN KENNARD: Thank you, both. Commissioner
23 Ness?

1 COMMISSIONER NESS: Thank you, Mr. Chairman. Just
2 to clarify, Mr. Hindery. Does this mean, for example, that
3 a TCI subscriber -- or TCI/AT&T subscriber would -- who
4 chooses to have modem service -- dial-up modem services
5 would not have to pay for AtHome if it wished to have access
6 to a different ISP, or would it still have to pay for that
7 effectively two internet service providers if it chose a
8 different ISP?

9 MR. HINDERY: Commissioner, there is -- there is a
10 distinction between internet service providers and on-line
11 service providers, as you know.

12 COMMISSIONER NESS: Correct.

13 MR. HINDERY: Every customer in my service area
14 has four choices today to access the internet. They can do
15 it in a dial-up, telephone modem-based environment. They
16 can do it through DSL which the gentleman on my left can
17 talk to you more capably than I. They can do it in a
18 wireless setting or they can do it on the broad band network
19 of the cable operator. That -- that's the world that's out
20 there, four ways into the internet.

21 There is this category of provider called an on-
22 line service provider. And there is another group of
23 companies that work in this space called portals or

1 aggregators. What I have adopted, as I said, is a strategy
2 of complete neutrality vis-a-vis both the on-line service
3 providers and the portals and aggregators.

4 And to give you an example, a TCI/AT&T customer
5 who is an AtHome subscriber, having chosen my form of access
6 to the internet as opposed to the other three alternatives,
7 can go to an on-line service provider through my screens
8 where I have designed everything that they can in a sense --
9 a phrase we use called "double click". They can go straight
10 through to the OSP-provider world to the portal and
11 aggregator world without any interference through my system.

12 So the customer has made a choice as to how he or
13 she would like to access the internet. If that choice is my
14 delivery mechanism, then I have gone a further step which is
15 the one I describe of complete neutrality into the internet
16 vis-a-vis the OSPs and the portal-aggregator community.

17 COMMISSIONER NESS: So bottom line, if one wanted
18 to have a different on-line service provider, one would not
19 have to pay twice effectively for the same service. Is that
20 correct?

21 MR. HINDERY: That's correct. Let me give you a
22 specific example. One of the dominant OSPs, Commissioner,
23 has a program called "Bring Your Own Access". It's called

1 BYOA. \$9.95, you bring your provider, whoever he or she
2 might be, and for \$9.95, you then get the services of that
3 OSP. I have specifically confirmed our willingness to
4 support, embrace that program.

5 So very specifically to your question, there is no
6 interference. My BYOA opportunity is exactly similar to
7 that of any other ISP in the country with no limitation.

8 COMMISSIONER NESS: Okay. So that essentially
9 means that we are not going to have objections brought to
10 bear on this merger from on-line service providers. Is that
11 correct? You've addressed their concerns.

12 MR. HINDERY: You should not have them. Whether
13 you will have them, you know --

14 COMMISSIONER NESS: Okay.

15 MR. HINDERY: -- the -- the crickets will tell us
16 whether you will have them. No, you should not,
17 Commissioner.

18 COMMISSIONER NESS: Okay. You have described your
19 plans for upgrading your cable plant to provide two-way
20 service and to provide telephony. I remember from previous
21 conversations well before the announced AT&T merger, that
22 you were well along the way to doing that. And I had
23 applauded your efforts at that time.

1 Two questions. Number one, how does this merger
2 affect those plans? Have you significantly increased your
3 plans to provide telephony and other services, enhanced
4 services to your customers by virtue of this merger because
5 you were already on track to do so previously?

6 And secondly, who will be paying for the plant
7 upgrade? Will these be the rate payers? Will this be your
8 -- your shareholders?

9 MR. HINDERY: I think it has, Commissioner, been
10 greatly accelerated in one respect. My video and data plans
11 and aspirations were -- were, to be frank, fairly well along
12 prior to this announcement. It was the telephone
13 opportunity for my customers that I -- when you and I met on
14 numerous occasions, I was always apprehensive about my
15 company's ability, given some of my prior service history
16 which I am respectful about, the way that I have come in to
17 telecommunications as a company and as an industry, to be
18 successful in all-distance telephony.

19 It was really the -- the opportunity to accelerate
20 that that drove me personally so much in favor of this
21 opportunity. We have at Mr. Armstrong's urging planned --
22 and we certainly will make no plans prior to your approval
23 and others who might have had oversight on the transaction.

1 But we will greatly accelerate by several factors
2 the number of markets in which we will introduce local
3 telephony by reason of this merger. It will be in -- in two
4 senses, both in terms of the number of markets,
5 Commissioner, and in timing magnitudes quicker than you and
6 I have discussed in the past.

7 The capital upgrade to achieve that has largely
8 been under my budget. Both Mr. Armstrong and I spoke about
9 the billion eight number that I've often spoken with you
10 about, as well. That number was already committed by me,
11 but over a much longer time frame than will occur with Mr.
12 Armstrong's encouragement and support.

13 What all of our customers will do then from that
14 point forward is the -- everything sort of from that point
15 forward is incremental per customer. If we are successful
16 in this endeavor as I hope we will be, then it will be a
17 combination as it has always been, to be frank, of my
18 shareholders, my lenders and my customers in balances that
19 have served their interests well and served my shareholders
20 well at the same time.

21 I personally believe strongly that I will deliver
22 telephony services -- specifically telephony services to
23 those customers much more cheaply because of Mr. Armstrong's

1 support and encouragement than I would have for the
2 technology reasons that I alluded to in my opening comments.

3 COMMISSIONER NESS: Thank you very much. Thank
4 you, Mr. Chairman.

5 CHAIRMAN KENNARD: Thank you, Commissioner.
6 Commissioner Furchtgott-Roth.

7 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
8 Chairman. Mr. Armstrong, Mr. Hindery, you are both relative
9 newcomers to your respective companies. And you bring with
10 you a great deal of experience in corporate management. And
11 you both have a lot of experience dealing with the
12 Department of Justice and the FCC.

13 The -- your respective companies have had a great
14 deal of experience in mergers and acquisitions, and going
15 through the Department of Justice review and the SEC review.

16 I would be very interested in your comments and
17 suggestions and guidance as to what you believe the FCC's
18 authority and proper responsibility in reviewing your merger
19 is. And perhaps you might frame that in terms of the
20 experiences that you all have had in going through this
21 process before. What should we be doing and what should we
22 not be doing?

23 MR. ARMSTRONG: I think it is fair to say that,

1 first, I'm not a lawyer; and second, I didn't come fully
2 schooled and prepared to address that which I will do more
3 homework on to get back with you directly and individually
4 on.

5 My prior expectation as AT&T chairman was that
6 there would be interest on the part of the Federal
7 Communications Commission, that your interest would be
8 driven by the public interest, and not necessarily the
9 issues of law that the Justice Department would be
10 reflecting on and judging on.

11 I did have prior experience with the Federal
12 Communications Commission in my first job in Hughes when we
13 put up a satellite to compete with this cable stuff. And
14 maybe it's a little bit because we didn't do too badly there
15 that, today, cable is most interested in digital and two-way
16 and interactive.

17 But I remember those days, too, of confronting
18 issues such as the must-carry issues and the BNB issues,
19 etcetera. And, again, I found that the Commission executed
20 its responsibilities primarily in the area of public
21 interest. That's about as far as I -- I'm sorry, that's
22 about as far as I can go in answering that. And I'll have
23 to get back to you on the jurisdiction issue per se.

1 MR. HINDERY: Commissioner, I have two quick
2 comments. One, I appreciate yours and the other
3 Commissioner's observation of the need for urgency. I think
4 that is the one thing that the Commission can be helpful to
5 us on.

6 In terms of jurisdiction issues, I, like Mr.
7 Armstrong, don't have the privilege of being a lawyer. But
8 the three things that I would comment, there seem to be
9 three interested parties, those that have the -- the men and
10 women who put together the Telecommunications Act of 1996
11 which governs so much of what we do, certainly the
12 Department of Justice and this Commission.

13 I fully am respectful of the Commission's license
14 transfer oversight opportunity. I respect it. I've been a
15 party to it many times in my career and I think it's in the
16 confluence of those three: your very specific license
17 transfer review opportunity, Department of Justice and the
18 framing of the '96 Act that this transaction will be
19 reviewed. Thank you, Mr. Chairman.

20 CHAIRMAN KENNARD: Commissioner Powell?

21 COMMISSIONER POWELL: Well, time is running short.
22 But I did want to talk about an area that there are
23 potential overlaps that neither of you have mentioned, and

1 that's particularly with respect to wireless.

2 As I understand it, TCI does have not trivial
3 ownership interest with respect to Sprint's wireless
4 properties. And AT&T, of course, is a dominant player in
5 wireless. And it's one of the areas that there may actually
6 be potential overlap concerns. And so I just would open up
7 that question in a -- in a general way and see what your
8 responses to that would be.

9 MR. HINDERY: Commissioner, the -- it is my
10 company that has that -- that interest, and so I will
11 comment, if I might. We fully anticipate that our ownership
12 in Sprint must be treated in a way that distinguishes it
13 going forward from what Mr. Armstrong and I are contemplated
14 in AT&T Consumer Services.

15 And whether that be through a voting trust or --
16 or a disposition, either of those outcomes have been
17 anticipated by us and both were respectful to either if that
18 is the choice of, I would suspect in this instance, a mix of
19 yourself and the Department of Justice.

20 The only caution that I would ever raise -- and
21 it's raised not on my behalf, but so much on Sprint's behalf
22 -- is that whatever the resolution of the Commission and the
23 Department is, whether it's voting trust or disposition, it

1 should be over a respectful period of time to not disrupt
2 the capital plans and opportunities of Mr. Esrey who has got
3 a business to build.

4 But we have no interest or intention of seeing
5 that asset go forward in a way that conflicts with AT&T
6 Consumer Services.

7 COMMISSIONER POWELL: Thank you.

8 CHAIRMAN KENNARD: Commissioner Tristani.

9 COMMISSIONER TRISTANI: Yes. I would like to know
10 what your plans are in entering the telephone market, the
11 residential telephone market in places like New York City
12 where TCI has a large equity stake in the incumbent cable
13 operator and in similar areas.

14 MR. HINDERY: Commissioner, we actually do not
15 have that interest any longer. We exchanged our systems in
16 New York for a shareholding in a company called CableVision.
17 We did not have a dominant position in New York. We were
18 not going to be able to be successful. But let me comment
19 because it's an important issue --

20 COMMISSIONER TRISTANI: And you have similar
21 interests in other areas.

22 MR. HINDERY: -- regardless -- yes, regardless of
23 the geography. One of the wonderful things about my

1 industry, Commissioner, is that it is ubiquitous or darn
2 near ubiquitous in this country; 92 or 93 percent of the
3 homes in America are passed by cable. And in my service
4 areas, the number is exactly the same; that I have this --
5 this wonderful opportunity to deal with all customers in my
6 market. It's sort of the magic of the broad band network.

7 It is my intention -- I know it is Mr. Armstrong's
8 intention -- to offer a wonderfully seamless world of video
9 data and telephony, all distance telephony, to every one of
10 those homes just as quickly as I can because to do so
11 otherwise would be rude; it would be bad business and it
12 certainly wouldn't be good for my shareholders.

13 So our intention is ubiquitous deployment to every
14 home as quickly as possible in our service areas of a
15 seamless offering of video, data and telephony services,
16 Commissioner.

17 COMMISSIONER TRISTANI: I have a follow-up on the
18 jurisdictional question that Commissioner Furchtgott-Roth
19 raised. And you talked about -- and maybe I misheard you --
20 but the FCC's opportunity, license renewal opportunity. And
21 I thought it was an obligation.

22 MR. HINDERY: I -- my glass is half full and yours
23 is half empty. It's a great -- this one is a great

1 opportunity for you, Commissioner.

2 (Laughter.)

3 Go at us. It's a great opportunity. It's a
4 semantic distinction, Commissioner. I was not trying to be
5 disrespectful of your oversight.

6 COMMISSIONER TRISTANI: Thank you.

7 CHAIRMAN KENNARD: Thank you. Were there any
8 additional questions for the proponents of the AT&T/TCI
9 merger? We're running out of time, but please go ahead.

10 COMMISSIONER NESS: One quick last question. Your
11 last answer prompted this. MediaOne, Cox and CableVision
12 are all in various stages of offering telephony on their
13 systems. We are finally beginning to see that competition
14 and it's coming not just from folks like Richard Notebaert's
15 company, but also from companies such as these cable
16 systems.

17 Are you prepared where you -- you were talking
18 about ubiquitously going in and offering telephony and other
19 services. Are you prepared to go in and compete against
20 these other cable systems and the provision of all of those
21 services or will we have what has historically been the case
22 with cable where the land has kind of been divided up among
23 the major players?

1 MR. ARMSTRONG: I think, if I could take that on,
2 Commissioner, Leo mentioned that there are a number of ways
3 to bring these services. There is wireless, and that's both
4 fixed and mobile. There is the ADSL. There is the narrow
5 band that exists today. And there is cable.

6 Obviously, all of those are going to be competing
7 for some similar markets, taking their technologies and
8 trying to exploit their inherent advantage against each
9 other. And so from an AT&T perspective, we would like to
10 engage with as much broad band as we can, be it fixed
11 wireless, be it ADSL, or be it cable, in order to bring
12 those services to our some 66 million consumers.

13 And I can envision that, indeed, where we do not
14 engage in commercial arrangements or equity arrangements or
15 affiliate arrangements or any other kind of definition of an
16 arrangement, that we will be competing with those that we
17 have not been able to define an arrangement with.

18 COMMISSIONER NESS: Thank you.

19 CHAIRMAN KENNARD: Thank you very much. We will
20 now move to the next panel which will be the SBC/Ameritech
21 proposal. Mr. Notebaert and Mr. Whitacre are here
22 representing that combination.

23 MR. NOTEBAERT: Good afternoon, Mr. Chairman,

1 Commissioners. Thank you for the opportunity to address the
2 full Commission. For many years, when we talked about a
3 global marketplace, our discussions were largely conceptual.
4 As we approach the twenty-first century, that concept has
5 become a reality.

6 The competitive global marketplace is here,
7 delivered to us by a breakdown of trade barriers, the
8 opening of markets through means such as the WTO and TA '96,
9 sweeping political changes; increased international exchange
10 among individuals, institutions and businesses; and
11 significantly enhanced by communications capabilities.

12 The worldwide business community's response to
13 this paradigm shift is clearly predictable. Visionary
14 companies within the industry and within other industries
15 such as pharmaceuticals, to auto manufacturing and to
16 petroleum, are consolidating. They increasingly recognize
17 that success is a -- in a competitive global environment
18 will necessitate larger, more diverse footprints than they
19 currently possess.

20 And although some insist on casting this logical
21 response in dark and devious light, at least when it applies
22 to others, more rational voices explain that such mergers
23 are predictable. In fact, they are inevitable.

1 In testimony before the Senate Judiciary
2 Committee, for instance, Federal Reserve Chairman Alan
3 Greenspan explained that the U.S. is experiencing not the
4 first, not the second, but the fifth period of major
5 consolidation in this century.

6 He counseled Senators to view mergers in a broader
7 context by saying -- if I could use his quotation -- "When
8 trying to understand how to react to this development, I
9 would hope that we appropriately account for the complexity,
10 the dynamicism of modern free markets."

11 It is those modern free markets, their
12 implications for our industry, and the response of SBC and
13 Ameritech to those implications that I will briefly address
14 before you this afternoon.

15 An international business environment requires an
16 international communications infrastructure. That is
17 fundamental. And quite reasonably, customers increasingly
18 demand that the builders of these infrastructures provide
19 them with the capability to deliver data or connect people
20 across town, across the country or across the world.

21 Corporations with worldwide business interests
22 seek the efficiency of a single provider for all their
23 telecom services. It is clear that the business of these

1 largest and most sophisticated business customers will move
2 to those companies that come closest to providing the goal
3 of one-stop shopping for end-to-end service.

4 And it is clear that to be competitive in the
5 critical high-end market, communications providers must have
6 significant global reach, a large base of existing business
7 customers and a wealth of technical, financial and human
8 resources. Providers here in the United States and around
9 the world are racing to achieve these goals.

10 Over the last couple of years, MCI acquired MFS
11 and UUNet (phonetic) then was acquired by WorldCom. Now,
12 VectrumMine Company (phonetic) had facilities in 21 foreign
13 cities and a clear intent to compete on a worldwide basis.

14 AT&T, already the world's largest communications
15 provider, has reenforced its competitive position by buying
16 TCG and McCaw Cellular forming an alliance with British
17 Telecom as well, and proposing to acquire TCI and Vanguard
18 Cellular. Japan's NTT and the GlobalOne alliance led by
19 DeutscheTelecom, FranceTelecom and Sprint are aggressively
20 targeting international businesses including those
21 headquartered here in the prosperous American market.

22 Please understand, I am not here criticizing any
23 business combination. These companies understand the

1 realities that we understand. They are preparing to compete
2 in the same market environment that is ahead of all of us.

3 We realize that the telecommunications marketplace
4 is moving towards a world in which two kinds of companies
5 will have the opportunity to succeed. One will consist of
6 six to eight large, international providers that offer a
7 full range of services. The other will be a larger number
8 of market-focused niche players that provider services to
9 specific customer groups.

10 Particularly relevant to this discussion, we also
11 realize that those customers caught in the middle are likely
12 to be nibbled away from the top and from the bottom. Now,
13 what does that mean to SBC and Ameritech? That we must grow
14 and be better able to meet our customers' needs. Otherwise,
15 we will be vulnerable to a number of risks including the
16 erosion of business revenues, profitability and eventually
17 viability.

18 Ameritech's preference is to align with a
19 similarly well-run, domestic provider, one that shares our
20 commitment to growth and our excitement about the future of
21 this industry. Our proposed merger with SBC has never been
22 driven by cross-cutting.

23 It has always been driven by growth. Growth

1 sufficiently in scope and scale to meet customer needs and
2 to compete for a place among the global, full-service
3 providers that will emerge to serve a dynamic international
4 marketplace.

5 By merging, we'll have the opportunity to continue
6 to serve customers with whom we have built successful,
7 longstanding business relationships. We will be able to
8 create economies of scale to become an effective global
9 competitor. And we'll be able to capitalize on the
10 technical, financial and human resources needed to carry out
11 a global competitive strategy.

12 In addition, by merging, we will have the freedom
13 to leverage our core competency in providing local service,
14 but in a broader context. Unlike AT&T or MCI which already
15 operate throughout the United States, SBC/Ameritech must as
16 a step in our global effort become competitive in major
17 markets throughout the United States where we do not now
18 operate.

19 Our combined enterprise cannot set out to provide
20 integrated service to global customers in London or in Tokyo
21 without also providing service in New York and in Atlanta.
22 And in a moment, Ed will offer you a more comprehensive
23 explanation of our plans in this area.

1 Ladies and gentlemen, the world is not standing
2 still as we debate this issue. The decisions made here may
3 slow, but they cannot halt the inexorable march toward the
4 global communications marketplace. America's policy
5 decisions will instead determine the extent to which
6 American companies will have the opportunity to be players
7 in the global marketplace.

8 It should be up to customers to decide which
9 companies succeed. The FCC should not try to design the
10 free market up front and push winners and losers. It has an
11 important role in this future, one of enforcement on the
12 back end. The SEC, Securities and Exchange Commission,
13 works this way and it works very effectively. And so should
14 the Federal Communications Commission.

15 Stifling the competitive benefits of mergers in
16 the telecom industry will only result in a diminished
17 leadership role for the United States. The visionary course
18 is to maximize the chances for global success by United
19 States-based telecommunications enterprises. By approving
20 the SBC/Ameritech merger, the Federal Communications
21 Commission will take a significant stride towards that
22 desirable end. Thank you.

23 CHAIRMAN KENNARD: Mr. Whitacre.

1 MR. WHITACRE: Thank you, Mr. Chairman, and good
2 afternoon, Commissioners. Thank you for the opportunity to
3 discuss this merger and why I believe it is in the public
4 interest. I believe this merger is the event that allow SBC
5 and Ameritech to enter local markets served by other
6 companies, be it RBOCs or CLECs or IXC's, and to bring a
7 competitive alternative to the business and residential
8 customers.

9 We are focusing on not just the lucrative business
10 markets, but we are focusing on the business and residential
11 customers. In-region customers I believe will benefit
12 because business customers who have multiple locations
13 outside our territory will have a chance to deal with one
14 vender, and they want that. And I believe they sent you
15 letters to that effect.

16 Another point I think is important, large business
17 customers, as you know, provide a disproportionate share of
18 contribution to our companies. The continued loss of these
19 customers, big customers, as is now occurring and the fixed
20 costs associated with it, which are large, will be spread
21 over residential and small business customers. That will
22 result in rising cost, the very thing that public policy has
23 discouraged up until this point.

1 I believe consumers will have a greater selection
2 of products and services because other companies will be
3 forced into our territory to compete. These other companies
4 will respond to our competitive interests into their
5 companies. And frankly, I think that is already happening
6 because our biggest competitors seem to be our most vocal --
7 seem to be our most vocal opponents.

8 I also believe our capabilities for in-region
9 customers is enhanced by our ability to offer new products
10 and new services due to the scope and scale of this merger.

11 I feel like I must address the question, "Are we
12 trying to recreate AT&T on our own; are we trying to create
13 an AT&T East and an AT&T West. We are not trying to do
14 that. That's wrong.

15 If you will think back, the old AT&T had 50
16 states. It had one hundred percent of the long distance
17 market. It had a legally protected franchise monopoly for
18 80 percent of the access lines and was vertically integrated
19 with the most powerful equipment manufacturer.

20 Look at that in the context of this merger. We
21 will be competing with many other carriers: Bell Atlantic,
22 AT&T, MCI WorldCom, Sprint, CLECs and on and on. We will
23 have zero marketshare in long distance. We will have no

1 legally protected franchise monopoly. Maw Bell is not and
2 should not be put together again.

3 I believe it is in the interest of this country to
4 have another national and international carrier to complete
5 in -- to compete in the global markets as Dick said. This
6 merger is essential, I believe, for SBC to have the size to
7 compete with the AT&T, BTs, the Sprint, DeutschTelecom,
8 FranceTelecoms, the MCI WorldComs and the NTTs.

9 This merger and the national-local plan associated
10 with this merger will open competition as envisioned by the
11 law and it will deliver the benefits of competition to
12 markets around the country.

13 In summary, I believe this merger is good for
14 customers, it's good for employees, it's good for
15 stockholders, it's good for competition and it's good for
16 this country. Thank you.

17 CHAIRMAN KENNARD: Thank you, Mr. Whitacre. Mr.
18 Notebaert, you mentioned your -- your goal which is to be a
19 global competitor. And I certainly don't disagree with
20 that. We obviously -- in this country, we have the finest
21 telecommunications system in the world.

22 We have been in the forefront of developing many
23 technologies that have been driving economic growth here and

1 around the world. And I think I speak for all of my
2 colleagues here in saying that we want to do everything we
3 can to advance that.

4 But my question for you, sir, is don't you think
5 that another important and equally important, I might add,
6 role for this Commission is to ensure that there is
7 competition in local telephony.

8 And what I don't understand about your proposal,
9 and perhaps you can clarify that for me today, is you have
10 told this agency that you have -- you plan to move
11 aggressively into local markets outside your regions. And
12 you are prepared to make huge investments to that end, and
13 to serve residential consumers outside your region.

14 We just heard Mike Armstrong say that his company
15 has invested huge amounts of money in this exercise and been
16 unable to do so for a variety of reasons. Why will you be
17 different? How will you be able to -- to meet the
18 challenges that apparently AT&T was not able to in competing
19 outside your regions?

20 MR. NOTEBAERT: Mr. Chairman, I think -- I think
21 first of all that it is important for a participant in the
22 international or in the world communications marketplace to
23 compete both home and abroad. I think both are important

1 and, therefore, it is within the purview of the Commission
2 to look at both.

3 If I look at our experience in cable television,
4 we've been willing to make investments in 80 franchises to
5 stay the course in spite of a long period of payback or
6 cashflow break-even over three years and five years on
7 profitability.

8 I can't speak to why another company was unwilling
9 to make the type of investment and stay the course and
10 approach profitability the way we have, by investing in
11 infrastructure and facilities. The fact that we have done
12 this already and the fact that we have stated publicly that
13 we will follow a national-local strategy is one that will
14 take the resources of both of our combined companies and
15 create the kind of competition this Commission wants in the
16 domestic markets.

17 MR. WHITACRE: I would say, Mr. Chairman, that we
18 think about 65 or 70 percent coverage is what we need to
19 make this work. This merger will allow us to get 65 or 70
20 percent coverage of the U.S. and the major markets, the 20
21 major markets inside and 30 major markets outside.

22 With that kind of coverage -- and we are willing
23 to make the commitment to go both residential and business -

1 - we think we can make a business case that will work. Now,
2 make no mistake about it, our entry into long distance is
3 critical to that working, the national-local strategy and
4 the bringing long distance. It's certainly a very key part
5 of that.

6 And we're starting with -- we think it will take
7 8,000 employees to do the national-local piece. And
8 remember, we're starting with no brand name in these 30
9 locations, we have no network, we have no business office,
10 we have no long distance, we have no markets. But we
11 believe that given the coverage that Ameritech and SBC can
12 cover, and with our expertise, and with the addition of
13 employees, we believe we can make a viable business case.

14 And this is the first, to my knowledge, promise
15 that a company will go compete in both the residential and
16 business markets.

17 CHAIRMAN KENNARD: Well, is this going to be an
18 acquisition strategy? I mean, wouldn't it be easier if you
19 were to -- to take the efficiencies from this proposed
20 merger and go out and buy CLECs and move into out-of-region
21 markets that way as opposed to trying to do it on the
22 ground, if you will, by hiring employees and doing it from
23 scratch?

1 MR. WHITACRE: Well, we'll do a combination of
2 those. I don't want you to think it's totally from scratch.
3 We will be network-based. We plan to put in our switching
4 machines, as an example. We will put in some of our outside
5 plan.

6 But we will do some of the things that you're
7 talking about, or certainly leasing. And maybe I should
8 look forward to purchasing from Mr. Armstrong unbundled
9 loops in the cable television business where he operates. I
10 might be a customer of his.

11 (Laughter.)

12 CHAIRMAN KENNARD: I'm so sorry you left now.

13 MR. WHITACRE: Yes.

14 (Laughter.)

15 MR. WHITACRE: But there are many different ways
16 to do it. We've done extensive planning as far as we can
17 go. We realize it's a risky strategy, but it's one that
18 will, we believe, bring the competition that the law
19 requires.

20 CHAIRMAN KENNARD: And can you tell us, just for
21 the record, why you haven't pursued this strategy
22 independently to date?

23 MR. WHITACRE: I just told you most of it, is that

1 I don't have 8,000 employees. Ameritech gives us a nucleus
2 of managers to do that is one reason, the big reason. We do
3 not have the financial ability to try this on our own. We
4 are a big company. So is Ameritech. But this is a big
5 project.

6 MR. NOTEBAERT: Mr. Chairman, I would also say
7 it's one thing to do it in one market. But to do it on the
8 scale that we are discussing here takes a great deal of
9 resource. If you look at my company, the company that I
10 work for, we're a fourth or a fifth of the size of an AT&T.
11 We aren't even comparable in revenue streams.

12 And so the idea of gaining the financial
13 resources, we would still combined be smaller than many of
14 our competitors. But we would have the resources to go out
15 and do this on a broader scale which is very important to
16 the success of the venture.

17 CHAIRMAN KENNARD: But, Mr. Notebaert, I'm sure
18 you're familiar with the CLEC industry and its growth over
19 the last few years. And those companies have been able to
20 execute strategies that allow them to compete quite
21 successfully in many cases in local markets without having
22 the economies of scale that a combined SBC/Ameritech would
23 have.

1 MR. NOTEBAERT: There are no CLECs that operate in
2 30 national markets. The CLECs are mostly targeted in
3 individual markets. And if you look at what they have done,
4 they also run from a financial analyst point of view on a
5 cashflow market valuation basis, on a cashflow basis. We
6 are on an earnings model significantly different. And we
7 intend to target a far broader reach rather than to just be
8 in one town or another town.

9 And, yes, you're right, I do have familiarity with
10 it because we have 50 competitors in our market, 20 of whom
11 are building facilities. But they aren't broad across the
12 entire country.

13 MR. WHITACRE: And that's a key difference. We're
14 talking about going to 30 markets and globally versus CLECs
15 who are mostly in one region, one area or are niche players.
16 The commitment we're making is much larger here.

17 CHAIRMAN KENNARD: Thank you. Commission Ness.

18 COMMISSIONER NESS: Thank you, Mr. Chairman. The
19 commitment that you're talking about, going into 30 markets
20 including providing residential service, not just in
21 isolated pockets, but broad-brush, is that an enforceable
22 commitment?

23 MR. WHITACRE: Well, I would hope you wouldn't

1 think it would have to be enforced, you know. Our
2 management decided that together. We've made that
3 commitment to our board of directors and presented that
4 business case to them and they approved it. We've made that
5 commitment to our share-owners and have substantially
6 represented that in the information and material we've put
7 out.

8 I guess there is a matter of trust here. But when
9 we say we'll do it, we'll go do it. I would hope your -- I
10 don't know if that answers your question or not in terms of
11 enforcing. But we're honest people and we'll go do it.

12 COMMISSIONER NESS: One concern that we've had
13 about mergers in general is our ability to benchmark. And
14 benchmarking we've talked about previously in other contexts
15 where multiple Bell-operating companies said that something
16 or other was possible and then it would turn out that a
17 small company called Ameritech would break ranks and would
18 go and do it with customers' first proposal. For example,
19 with the LRN approach to number portability as another
20 example.

21 Mr. Notebaert, hasn't this led to better, more
22 pro-competitive public policies?

23 MR. NOTEBAERT: Well, my comment on benchmarking

1 is that this is a practice we started back in the early
2 '80s. Benchmarking today, I don't believe -- and we -- we
3 have used this -- is as useful as it has been in the past.

4 Most of the benchmarking that, for example, our
5 company does now is outside of our industry. Where we look,
6 for example, for inventory control to a Toyota, we don't
7 look within our industry, where we look for customer service
8 to a Neiman-Marcus or a Nordstroms.

9 And so I think benchmarking, as far as the way
10 it's been used in the past, is something that we've moved
11 away from. I think it's important for the Commission to
12 consider that the utilization of benchmarking is not as
13 effective a tool as it has been in the past. It just
14 doesn't work the same way. And that's all I would say
15 there.

16 COMMISSIONER NESS: We have been pursuing --
17 actually, now opening up all of the markets across the
18 country to competition. You talk very eloquently about how
19 you plan to go into other markets to provide local
20 competition on the ground. Can you comment on the record
21 what you will be doing to increase the openness of your
22 markets, the combined market to your competitors with
23 specificity?

1 MR. WHITACRE: I guess we both can answer that. I
2 think the market is open. I'm sure you expected me to say
3 that.

4 COMMISSIONER NESS: You didn't disappoint me.

5 MR. WHITACRE: Good. But it is open. I went back
6 and looked at some statistics. We've lost almost two
7 million customers. We have exchanged -- I went back and
8 looked just for the heck of it. We have exchanged 17
9 billion minutes with CLECs. Well, that sounds like an open
10 market to me. It's not like there is no traffic, no
11 competition. There are hundreds of competitors against us.
12 And we're wrangling with the 271 process as you know.

13 But if you look at the statistics, they are quite
14 dramatic. I personally believe the market is open. I
15 believe it's open under the definition of the law. And I
16 think the numbers would back that up. I don't know, Dick,
17 if you would want to add something to that or not.

18 MR. NOTEBAERT: Well, I would repeat the fact that
19 in our area, we have 50 competitors. Twenty of them are
20 building facilities. We exchange hundreds of millions of
21 dollars in reciprocal comp. There is competition. We've
22 stated publicly that we've lost close to a million lines in
23 five states.

1 We have competition. It may not be the kind of
2 competition that some people want where a specific company
3 is chosen to compete because of its own strategies. But
4 there are numerous companies who have entered niches or
5 individual cities and communities. And if you read their
6 prospectus and if you listen to what they say to the
7 analysts, they would tell you that they are being very
8 successful. What they may say in this room may be a
9 different agenda.

10 COMMISSIONER NESS: Finally, Mr. Notebaert, your
11 company is saying that its planned entry into Missouri was a
12 limited wireless play on the part of Ameritech Cellular.
13 Sprint, on the other hand, says Ameritech Communications
14 International sought certification from the Missouri
15 Commission to provide exchange services in all areas served
16 by SBC and that ACI had negotiated with SBC comprehensive
17 interconnection agreements covering resale and bundled
18 network elements, etcetera.

19 Can you comment on -- on those two, what would
20 appear on the surface to be very different perspectives on
21 the same transactions?

22 MR. NOTEBAERT: St. Louis was specifically
23 targeted at wireless. All of the work and all of the

1 investment was done within the wireless business, within our
2 St. Louis wireless business. It was not done by any other
3 part of Ameritech.

4 As far as ACI goes, the fact that we applied for
5 those licenses across the entire United States, in almost
6 every state, we did that specifically for a given customer
7 so that a customer such as United Airlines that might tell
8 us that they wanted us to do something, that we could be in
9 a position to do what they asked us to do. That filing was
10 not part of any strategy at all other than to take care of
11 the few customers we have, over 20 customers -- around 20
12 customers -- under our managed services agreements.

13 COMMISSIONER NESS: Thank you, Mr. Chairman.

14 MR. WHITACRE: I might add, in Missouri, there are
15 45 others licensed to compete in Missouri.

16 CHAIRMAN KENNARD: Thank you. Commissioner
17 Furchtgott-Roth.

18 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
19 Chairman. Mr. Notebaert, Mr. Whitacre, you both have been
20 in business for many years and you probably have seen a lot
21 of mergers and acquisitions, not just in the
22 telecommunications industry, but perhaps among your
23 suppliers, perhaps among your customers, perhaps just

1 reading about it in the general trade press.

2 There is a CEO -- what's his name, Bill Gates or
3 something like that -- he has a little company that's in a
4 little bit of trouble with a little agency down the street
5 here. That little agency I think may be reviewing your
6 merger. They certainly review all mergers of any size in
7 this country.

8 I can think of some mergers that have gone through
9 the Department of Justice process that never got out. The
10 Department of Justice imposed conditions or took them to
11 court. The parties backed out.

12 I can think of other instances of mergers that did
13 get through the Department of Justice that turned out to be
14 whopping failures, very bad for business, very bad for their
15 shareholders.

16 The Department of Justice is not a -- they're not
17 an amateur agency. They work very hard at what they do.
18 And I -- I'm sitting up here and I'm trying to think of an
19 example.

20 And I'm hoping maybe you all can help me think of
21 an example of a merger that was not challenged by the
22 Department of Justice or that got through the Department of
23 Justice after being challenged, after having a lot of

1 conditions put on it, that turned out to be in some sense of
2 the words, not in the public interest. I was wondering if
3 you all could help me think of something like that.

4 MR. NOTEBAERT: Well, I can't think of any
5 transaction that goes through the scrutiny that our company
6 goes through every day that would fit your description of
7 not turning out because there are very few companies in this
8 country that go through the daily scrutiny that a company
9 like Ameritech goes through at multiple levels of
10 government: public interest, antitrust. It would be very
11 hard for me to think of one. But that's not to say there
12 isn't one, Commissioner. But I can't think of one.

13 MR. WHITACRE: Well, I'm -- I'm not a lawyer
14 either. But my understanding is that Justice looks at the
15 anti-competitive parts or the antitrust parts of a merger.
16 And then this Commission, for an example, would look at the
17 suitability of the applicant and take into consideration the
18 public interest that it would go with.

19 I'm not experienced particularly mergers. We've
20 done a couple. In fact, we have one pending before you now
21 and we've done Pacific. But what Dick says is correct, and
22 I would hope that we don't get this merger hung up on the
23 fact that the Commission would revisit a lot of things that

1 the Justice Department is charged with doing because it does
2 need to move on. But I can't think of any in the category
3 that Dick is referring to or you are referring to.

4 COMMISSIONER FURCHTGOTT-ROTH: Thank you.

5 CHAIRMAN KENNARD: Commissioner Powell.

6 COMMISSIONER POWELL: I would address this
7 question to both of you because I think there is a tendency,
8 probably drive by the 271 process, to view as synonymous the
9 notion that there are competitors in a market or even that
10 the market is open and blur that with the concept of market
11 power.

12 It would seem to me that you would have to
13 concede, or I will at least let you challenge the
14 proposition, that within your regions you have some
15 significant degree of market power by virtue of the
16 percentage of the markets over which you have customers and
17 the percentage of those customers and markets that are
18 dependent on essential facilities that are within your
19 control.

20 And one thing I think, to get to the nub of it,
21 that I think raises some concern with respect to this merger
22 is not so much that the national -- national-local strategy
23 is not potentially an exciting one or viable one or one that

1 might suit the public interest, but more at what cost;
2 whether the extension of market power over a significant
3 degree of the country in the short-term, how that weighs
4 against the potential benefits of a strategy of national-
5 local.

6 So that would -- I'm going to ask both of my
7 questions at the same time for expeditious purposes. So --
8 so, one, just sort of a general commentary about how you
9 perceive the question of having market power over essential
10 facilities that would exist now in a combined basis in two
11 regions covering a substantial part of a market rather than
12 the focus on national-local strategy.

13 Secondly, Mr. Notebaert, particularly for you, I
14 couldn't agree more at the trend globally. And I can also
15 sympathize with the desire to want to compete effectively
16 with that. And I would -- I think I would go so far as to
17 say that that really is a relatively significant company in
18 terms of size and resources, etcetera.

19 But it doesn't translate or is not intuitively
20 obvious to me why the company that you would want to join up
21 with in that venture would be another domestic local
22 exchange company instead of, for example, a significant
23 company that already had overseas operations or maybe you're

1 going to tell me that each of you do in your own regards,
2 which you do. But -- or potentially even a long haul
3 carrier or long distance carrier as opposed to a domestic
4 purchase.

5 So help me with the story that the -- the
6 importance of globality leads to a combination of two at
7 least primarily domestic local exchange operations.

8 MR. NOTEBAERT: Do you want me to do the first
9 one --

10 COMMISSIONER POWELL: Sure.

11 MR. NOTEBAERT: -- on the market power over the
12 physical infrastructure? The Telecom Act and what has
13 occurred, our markets have been opened up and there is a
14 great deal of scrutiny to ensure fair treatment towards
15 anyone who would like to use an unbundled loop or who would
16 like to buy our product.

17 We have complied with your pricing methodology,
18 our state commissions have. And, in fact, I think if you go
19 back and look under the prior administration with this
20 Commission, Ohio was used as one of the examples to help you
21 create that.

22 So, in fact, we have complied with that. And that
23 takes away any market power we would have that's looked at

1 by the state. And it is definitely looked at by you.

2 And I would also tell you, some mornings when I am
3 standing in my office and I look up and I see AT&T's logo or
4 WorldCom's logo or I pick up the paper and look at 20 ads in
5 the Chicago Tribune maybe or the Detroit Free Press, I think
6 there is a lot going on and a lot of very strong
7 participants in the competitive communications business that
8 we are in.

9 To your second question, as I traveled Europe and
10 the world and I talked to other corporations, what I found
11 was that our customers, a hundred plus Fortune 500 companies
12 that operated out of the upper midwest, operated in far more
13 than just the upper midwest. And they want a global reach.

14 I also found that when I went to other
15 international companies, not American companies, they felt
16 the need to have a larger domestic footprint for us to be
17 able to form alliances and ventures. That brought me to a
18 situation where if you want to participate in the global
19 marketplace, communications marketplace, you needed a
20 partner to increase your footprint.

21 In discussions with SBC, we found a common script.
22 We found a common approach in the sense of customers. That
23 was important to us. We cannot join, nor could we ever nor

1 did we consider in a serious way, joining with a company
2 that is in the long distance business. That would have been
3 a very interesting hearing if I would have been sitting here
4 with you --

5 COMMISSIONER POWELL: That's the next one.

6 (Laughter.)

7 MR. NOTEBAERT: That would have been very
8 interesting. So that is kind of off the table. It's no
9 different than we cannot invest in an ISP facilities
10 carrier, UUNet or anyone like that. We are precluded by you
11 from doing that.

12 So the need for the broader footprint, to follow
13 our customers, to deal with those customers such as Chrysler
14 or General Motors or Ford or the banking industry or
15 manufacturers like Motorola, we had to do this for our
16 customers. Our customers took us down this path.

17 COMMISSIONER FURCHTGOTT-ROTH: Can I just follow
18 up on that real quick? The pro-competitive components that
19 you assert with respect to the global strategy as I hear it
20 seems to be primarily accrues to the benefit of the business
21 segment of the market. Are you simultaneously making an
22 argument that that global connectivity has significant pro-
23 competitive benefits with respect to residential customers?

1 MR. NOTEBAERT: Absolutely. If you look at
2 pricing methodology that we use in this country, social
3 pricing, where we sell to residence consumer customers at or
4 below cost, or very close to that level, you find that the
5 moneys to do that come from other segments of the
6 businesses, business access charges, etcetera.

7 If we lose those major accounts, those large
8 businesses that we're talking about, then in fact the source
9 of funds that we create for the social pricing, it underpins
10 the social pricing that we have in this country and it will
11 be jeopardized. And its viability will really be in
12 question.

13 We are today dealing with access charges. You
14 are; we are. We have been cutting them every year. We also
15 have to deal with the fact that we have to find a way to
16 make sure that service to consumers is affordable --

17 COMMISSIONER FURCHTGOTT-ROTH: Thank you.

18 MR. NOTEBAERT: -- and stays affordable.

19 CHAIRMAN KENNARD: That's interesting. Thank you.
20 Commissioner Tristani.

21 COMMISSIONER TRISTANI: Yes. I have a couple of
22 questions. One is a follow-up on Commissioner Ness'
23 question on benchmarks. And as I understood you said, you

1 don't use them any longer --

2 MR. NOTEBAERT: No.

3 COMMISSIONER TRISTANI: -- because you use --
4 well, you use other --

5 MR. NOTEBAERT: We don't use them as much as we
6 did in the '80s.

7 COMMISSIONER TRISTANI: But -- but what do we as
8 regulators do if we lose the benchmarks because they've been
9 very, very useful?

10 MR. NOTEBAERT: I would urge you to consider
11 enforcement and a shift in the direction that you go. If
12 you look at the 271 filings and what the number of
13 benchmarks that have been created by the regulatory bodies
14 and the Justice Department in that case, you know, it is a
15 huge number. None of us managing a business would consider
16 that number of benchmarks for any purpose.

17 COMMISSIONER TRISTANI: No, but I'm talking about
18 having less players to compare.

19 MR. NOTEBAERT: You still have the same number of
20 customers that you have to deal with. You still have
21 multiple players. In fact, today we have more people
22 participating in the communications industry than we had
23 five years ago. There are far more companies.

1 I think fewer benchmarks that are more specific
2 and targeted should still be used. But not to -- not to the
3 extent -- I mean, it's gone -- it's not even micro. It's
4 really detailed.

5 COMMISSIONER TRISTANI: We may be talking about
6 two different things.

7 MR. NOTEBAERT: Yes, I'm sorry.

8 COMMISSIONER TRISTANI: But let me -- let me
9 follow up on something else which Mr. Whitacre brought up.
10 He said we shouldn't be concerned about a new AT&T, AT&T
11 West, AT&T East. It's a very different picture we're seeing
12 here.

13 I would like to ask both of you, would it be okay
14 to end up in a year or two with one big local exchange
15 company?

16 MR. WHITACRE: Well, I said we shouldn't put AT&T
17 back together. That was a bigger description. Would it be
18 okay? I don't know because it's not even a possibility.
19 It's not going to happen. There are too many companies.
20 There are too many niche players. There are too many
21 regions. I think there is over 1,300 local exchange
22 companies now.

23 COMMISSIONER TRISTANI: But if we --

1 MR. WHITACRE: It's not going to happen.

2 COMMISSIONER TRISTANI: -- approve the two mergers
3 and some of the players aren't here that are before us, who
4 is to say that in a year or so, you come back, say, to even
5 compete better globally, to even do a better job to promote
6 competition because everything hasn't worked the way we
7 wanted; we need to get together.

8 MR. WHITACRE: Well, I suspect -- I'm no lawyer,
9 but I would suspect there would be antitrust concerns crop
10 up, there would be other concerns. And what you -- what you
11 propose or suggest in my opinion is just not going to
12 happen. You reach a certain scale and that's really what
13 you need to do what you want to do, and that's it.

14 MR. NOTEBAERT: You have two national players now
15 in WorldCom and in AT&T and Sprint, so you have three. The
16 fact that you're going to have two or three more or four
17 more, what I said in my opening remarks, six to eight, I
18 think it is a good thing for the country. We should get rid
19 of the expression, "regional". We should think about this
20 as no safe haven. Every company should be able to compete.
21 It should be inclusive. We have a lot to do.

22 I think when you get to that level of having that
23 number of large national and international players, what you

1 will see is not a further consolidation domestically, but
2 something that more along the lines of an outreach on an
3 international basis, the formation of alliances that way.
4 And you've already seen AT&T start that with BT and Sprint,
5 implement that with FranceTelecom and DeutscheTelecom. So I
6 think you will see a shift.

7 COMMISSIONER TRISTANI: Thank you.

8 CHAIRMAN KENNARD: Thank you very much. I wish we
9 had more time. But unfortunately, we will have to move on.
10 But thank you very much for being here. We really
11 appreciate your participation.

12 The next panelists are the principals from Bell
13 Atlantic and GTE who have been waiting patiently in the back
14 of the room through the other panels. I am reminded of my
15 days in law school. When I wasn't quite prepared, I used to
16 back-bench it, which I would sit in the back of the room and
17 hope I didn't get asked questions. So I'm glad that you're
18 now in the front row and prepared to tell us about your
19 merger.

20 MR. LEE: Thank you, Mr. Chairman. And I -- I
21 thank you and the other Commissioners for inviting us and
22 giving us a chance to talk about our merger and how it is
23 going to help this nation move forward in continuing the

1 number one global telecommunications country in the world.

2 Let me say, I submitted some prepared remarks.
3 But in the spirit of time, in essence what I would like to
4 do is just stipulate those for the record and just say a few
5 things off the cuff --

6 CHAIRMAN KENNARD: Certainly.

7 MR. LEE: -- kind of summarize them and then get
8 to the fun part of the day. And Ivan I think will do the
9 same. The fun part of the day is some questions.

10 First, we're here today to ask for your
11 enthusiastic support for this merger because we are going to
12 convince you that it is pro-competitive and it is pro-
13 consumer. The Telecom Act was intended clearly to breakdown
14 geographic barriers and product line restrictions in the
15 spirit of promotion broad-based competition.

16 We ask you to think of our merger in the spirit of
17 this open market, this new national market that is being
18 created and that is being talked about so far. The
19 characteristics of that market are pretty straight forward.

20 One is it's going to be national; that you need a
21 national footprint to be competition. Two, you need
22 international reach. Three, you need a full range of
23 products. The product restrictions do not please customers

1 and are inappropriate for the longer term.

2 And fourth, you have to have a data capability.
3 You have to be -- the internet is exploding. The internet
4 is exciting. All telecommunications companies in the future
5 need internet capabilities in order to serve their
6 customers.

7 Our company has invested a lot in IP networks and
8 IP technologies. That started originally dominated by three
9 inter-exchange carriers. This merger is critical to helping
10 us, our new company, be a major player for expanding and
11 growing the internet.

12 Second, we have a unique footprint that my
13 associate, Allen, will point up here. And, in fact, it
14 gives us unique opportunities to be a player in this new
15 national market that we're talking about.

16 You can see, in essence, GTE is a chain of islands
17 within what we call a sea of RBOCs. As a result, going out
18 of our franchise is an opportunity. But it's slow and it is
19 expensive.

20 Unlike the inter-exchange carriers that -- one of
21 whom was here today, we do not have a national brand. We
22 are not known outside our own franchise territory. Plus, we
23 don't have an existing customer base. We have to start from

1 scratch. We have not -- the inter-exchange carriers have
2 customers across this country ubiquitously today. We do
3 not.

4 So what we have in our merger with Bell Atlantic
5 is an opportunity to follow the customers. They are, as you
6 know, regionally in the northeast. They have major
7 divisions and major operations. They are customers where
8 they have relationships now across the country. And it
9 gives us an opportunity to build our franchise opportunity,
10 many of which are close to our current franchises, but not
11 in our franchises; and then to build after that success into
12 the residential and consumer market.

13 We also have a national backbone. Allen, if you
14 could just put the other chart up for a minute. The red
15 dots on that chart, by the way, are the Bell Atlantic
16 customers who are close to our franchises and would be
17 targets for us in an out-of-franchise strategy.

18 Lastly, we have our -- our national network that
19 we're building. Obviously, it is -- it is principally IP-
20 oriented. It's going to be very expensive to put new
21 products and services on there with our dispersed customer
22 base. It will be much, much more efficient and will do much
23 more for the Internet by having the merger behind us.

1 And lastly, of course, we're also in the long
2 distance business and we have total confidence in Ivan and
3 the Bell Atlantic team winning your approval of 271
4 applications. And by becoming the fourth major facilities-
5 based carrier as a result of this merger, this network will
6 be a significant contribution to the -- to the nation's
7 telecommunications system.

8 In summary, what -- what I'm trying to say, this -
9 - I'm trying to describe the world of future, not the world
10 of the past. Clearly, the new company will be able to enter
11 this new market faster and more effectively than either
12 company could have done before. So we think this merger is
13 clearly in the public interest. And we look forward to your
14 support and we look forward to answering your questions
15 today.

16 CHAIRMAN KENNARD: Thank you, Mr. Lee. Mr.
17 Seidenberg.

18 MR. SEIDENBERG: Good afternoon. Just a quick
19 introduction. We do have a lawyer at the table.

20 (Laughter.)

21 Okay? Jim Young is our general counsel and Geoff
22 Gould of course you all know. I think in the interest of
23 getting to your questions, if you would agree, I can

1 stipulate that all of these mergers are good for America and
2 you would agree with that.

3 (Laughter.)

4 And what I'll try to do here is I'll pass over my
5 written comments and try to address just I think a couple of
6 the points. Chuck and actually all of the panelists made
7 some points I would have made in my own words. But let me
8 just see if I can put emphasis. There are three points I
9 would like to make.

10 It has been said the telecom industry is changing.
11 We all understand that from a different perspective. What I
12 would add to your debate here is the following: The
13 technology and the silos that you have traditionally
14 regulated are breaking down.

15 Wireless is national. Pricing for wireless is
16 national. You have substitutability between current long
17 distance switched and wireless services. Internet and data
18 are boundary-less. Customers want bundling and packaging.
19 They want sole sourcing for service and things of that
20 nature.

21 So as we look at our business, we are not looking
22 at the incumbent industry, but rather looking at industries
23 that are converging across the board, which leads,

1 Commissioner Tristani, to our view of the issue of
2 benchmarks, is you need new ones. The old ones don't work
3 anymore because you can't compare the future industry by
4 looking in the rear-view mirror of companies that used to be
5 incumbents that are no longer incumbents.

6 Under this definition, AT&T is an upstart. And we
7 don't see them that way. So I think our view is you do need
8 benchmarks, but we need to create the kind of benchmarks
9 around the new five or six global players.

10 The second point I would make is that the Bell/GTE
11 merger is clearly pro-competitive. As we said in our public
12 interest filing, if you look at the local, long distance,
13 internet and wireless areas today, the Bell/GTE mergers
14 produces significant new competition in every one of those
15 markets in various degrees. It actually accelerates the
16 competitive model.

17 In fact, the charts that Chuck has described to
18 you show that we don't have to hire 8,000 people. We have
19 an in-place structure between the two companies to get out
20 there and compete in all of these markets the day the merger
21 is closed.

22 To the question, the jurisdiction on this point,
23 just, again, not being an attorney -- and you can question

1 Jim on this -- I'll just explain the experience we had with
2 the Bell/NYNEX merger. At the time, it was perceived to be
3 one of the most radically proposed transactions in the
4 history of the industry. And the primary issue was the
5 issue of competitive potential competition between Bell
6 Atlantic and NYNEX which far oversees any of these potential
7 competition issues that exist in the SBC or even in the
8 GTE/Bell merger.

9 There is nothing the FCC looked at that the
10 Department of Justice didn't look at for 12 months in its
11 infinite detail before that. Not that my view is whether
12 the Commission feels it should look at it or not, the point
13 being is there was nothing that came up afterwards that was
14 any different than we had addressed in the DOJ issue.

15 You do have a question of license transfers. We
16 understand that. I would hope that we would be careful from
17 a businessman's perspective, that in looking at the public
18 interest question, we don't so broaden it that we miss the
19 forest and we get stuck behind any of the trees because what
20 we're looking at here is industries in which you do not
21 regulate: the internet, software companies.

22 So many industries are impacted by the kind of
23 transactions we're talking about, I think we have to be

1 careful to go beyond the license transfer issues and not in
2 effect create standards that really aren't in tune with the
3 future structure of the industry in general.

4 The third point I would like to make that hasn't
5 been made earlier today is that mergers in a restructuring
6 set of industries are actually good for the public. You
7 should welcome them for a different perspective. The
8 Bell/NYNEX merger, the experience there is that everything
9 that we said would happen, happened. And I will just go
10 over a couple of points.

11 We've increased our capital spending by over 600
12 million dollars as a result of the merger. We have
13 increased spending in customer care. We have improved
14 service across the board. We have introduced new products
15 we would never have been introduced to on our own. We've
16 added 4,000 jobs in the company in the areas of service and
17 capital investment.

18 We have also funded the opening of the network in
19 the 271 process. We never would have been able to do the
20 things we are doing in New York State in operating support
21 systems and our attempts to open the network. Without the
22 Bell/NYNEX merger, it never would have happened.

23 And all of this is possible because of the

1 efficiencies and the synergies that were gleaned from the
2 putting together of two companies that can today tackle the
3 globe in the manner in which Ed Whitacre and Dick Notebaert
4 have mentioned.

5 We have the same view of creating a company here
6 between GTE and us that would in effect be one of the five
7 or six global players that would participate in these
8 markets as we go forward. Thank you for your listening to
9 us.

10 CHAIRMAN KENNARD: Thank you. Mr. Lee, you talked
11 about the importance of being able to follow your customers
12 around and that that's one of the principal benefits you see
13 from this proposal. I would like to explore that with you
14 for just a moment.

15 I see from your chart here that you've got
16 facilities located in Los Angeles and San Diego, Phoenix, a
17 number of cities. And I can understand your desire to be
18 able to offer your business customers one-stop shopping. We
19 have seen a fair amount of competition for business
20 consumers in this country. I believe that the principal
21 challenge before us is to bring more competition to
22 residential consumers.

23 And I'm curious what this proposal would do for

1 America's residential consumers. What do you tell the
2 residential consumer in Los Angeles, where my family lives,
3 that this merger -- or how do you respond to the following
4 question that they might propose to you: This merger is in
5 effect eliminating a potential competitor from my market.
6 We have GTE. We would like to have Bell Atlantic someday.
7 But with Bell Atlantic and GTE merging, we won't have Bell
8 Atlantic as a competitor against GTE in that marketplace.
9 How do you respond to that question?

10 MR. LEE: That's a great question. And I
11 obviously feel passionately about the response and it goes a
12 number of ways. First, and that is with our footprint and
13 our history, we have launched a grow strategy for our
14 company which in fact involves BBN and the internet and data
15 and GNI or our global network infrastructure which is -- but
16 it also involves a CLEC.

17 And we are in places where we can within a hundred
18 miles of our current franchise, we are beginning to develop
19 hotter franchise strategies which is focused on small
20 business and high-end consumers or residential. But I think
21 what I would ask the Commission to understand, that is in a
22 very expensive process. We have spent hundreds of millions
23 of dollars developing systems and platforms to compete for

1 this.

2 Now, the distinction I would like to make is that
3 our company has not stopped. Now, you're -- I wish you
4 would have asked one of the people on the panel earlier, the
5 first panel, why he stopped. Our company hasn't stopped.
6 We're going forward. Maybe he has a different agenda for
7 stopping. But we're going forward.

8 Now, how will this merger help us? This merger
9 will help us because it is an expensive proposition. You
10 need -- particularly out-of-franchise, the more you have
11 brand recognition or you have business customers to build
12 the network, to build the capability, to build the scale,
13 the more fundamental and solid the business is going to be
14 over the long term.

15 So not only -- again, the key view that I have on
16 our merger is that it makes the new company faster and more
17 effective by a long shot than either would have been
18 individually. Ivan can tell you about Bell Atlantic. But
19 from my standpoint, faster and more effective is the key to
20 this merger and the key to bringing real competition to the
21 consumer in a residential market.

22 CHAIRMAN KENNARD: Mr. Seidenberg, did you want to
23 add something?

1 MR. SEIDENBERG: Well, no. The only thing I would
2 say is you do get Bell Atlantic in LA through GTE. I mean,
3 the assumption would be that you would get us both. Well,
4 we're too far behind; it's too expensive; we don't have any
5 assets in California to let us do that.

6 I think with a wireless network, with an IP
7 network on a data architecture, what you can do over time is
8 we can then ramp up the scale and compete with the people
9 who are already there like the WorldComs and the AT&Ts and
10 the Sprints and other people.

11 So I don't think you would see a Bell Atlantic
12 having the capacity to tackle the whole country all by
13 itself. We can't do it. We're too far behind and, oh, by
14 the way, without long distance relief, it's not going to
15 happen anyway. So until we get to the full bundle, you're
16 not going to see us venture very far from our footprint
17 simply because customers won't take us seriously.

18 CHAIRMAN KENNARD: Well, should we draw from this
19 discussion today the following conclusion: That the
20 economics of telecommunications in the world today is that
21 an RBOC will not venture outside of its region to compete
22 out of region unless it does through -- does so through
23 merger or acquisition? Is that a fair statement? Is that

1 what we should draw from what we've heard today?

2 MR. SEIDENBERG: No, I don't think that's an
3 accurate statement since I'm the only RBOC left here I
4 guess. The -- here's what I would say, that an RBOC --

5 CHAIRMAN KENNARD: You may be the only RBOC left
6 one day.

7 MR. SEIDENBERG: Yes, well, to be honest about it,
8 that's a little bit of the lens I want to change because
9 don't think of RBOCs, think of cable companies and wireless
10 companies and long distance companies. We're all the same.
11 In a couple of years, we'll all be in the same place.

12 But what I would say is this: The venture out of
13 the region, it's a combination of mergers. It's a
14 combination of acquisitions. We just signed a capacity
15 agreement with a CLEC called InterMedia that said --
16 basically said when we get into long distance, they will
17 provide us the facilities and the access to terminate in
18 Atlanta, in Tampa and in all those other places.

19 So, no, there is no way you should think that we
20 won't go out unless we do it through merger and acquisition.
21 We'll do it through a variety of things. But we do need the
22 basic scale to tackle the global requirements. And we think
23 we're getting closer.

1 I wouldn't suggest we're all the way there, but I
2 think at this point -- and the other -- the only last point
3 on this, if I might, we see this as a little different
4 merger in that Bell Atlantic was not interested in another
5 RBOC-to-RBOC merger.

6 We were interested in a merger that would give us
7 vertical capability in terms of product because within
8 customers, we're looking for bundled services from us in
9 time. GTE has done marvelous work in the area -- in the
10 data area. They've got a great wireless footprint.

11 And they've done some terrific things with
12 bundling in their CLEC strategy. So we feel we have a
13 little different proposition. We weren't looking for a like
14 business. We were looking for one that would add vertical
15 capabilities to let us compete out of territory.

16 MR. LEE: Mr. Chairman, again, we're not an RBOC
17 as you well know. But we do have some of the same
18 characteristics. And what I want to come back to is, again,
19 our footprint and our map because we have gone out of
20 franchise.

21 And we have the ability to bundle now because we
22 are different than -- than an RBOC. So we're bundling long
23 distance, local exchange, international, wireless, paging.

1 And we are developing a business that data-centric; it's
2 centered around BBM. So we are doing business in Chicago.
3 We are doing business in Houston. We are doing business in
4 Dallas.

5 Now, what we need because of the cost and the
6 expense and the scale and the building the brand name and
7 following customers, we need the economics that come as a
8 result of a combination with Bell Atlantic to help us be
9 successful against these other people who are going to be
10 doing the same thing.

11 AT&T, we heard it today, they're going to be doing
12 the same thing. We know MCI WorldCom is going to be doing
13 the same thing. We know SBC and Ameritech are going to be
14 doing the same thing. There are four players.

15 And that doesn't limit what happens to Bell South
16 or what happens to Sprint. And there are going to be lots
17 and lots of competition because of changes in technology and
18 because of the evolution and growth of this industry well
19 into the twenty-first century for as far as I can see.

20 CHAIRMAN KENNARD: Thank you. Commissioner Ness.

21 COMMISSIONER NESS: Following up on the Chairman's
22 question, you said you needed basically to bulk up in order
23 to be able to provide nationwide services or to compete

1 outside of your own territory. How far do you have to go?

2 MR. LEE: Commissioner, let me just correct you.

3 COMMISSIONER NESS: Okay.

4 MR. LEE: One simple way is to talk about bulking
5 up. But the specific thing I said is the new company, the
6 combination of these two, will do it much faster and much
7 more effectively than either of us could do it individually.
8 And that's what America is about. That's what our country
9 is about. That's what the marketplace is about.

10 COMMISSIONER NESS: How large -- how large will
11 you have to be in order to be able to do that. Is the
12 current proposal sufficient in order to be able to advance
13 in markets throughout the country or is it likely that, once
14 again, you are going to have to do another acquisition in
15 order to be able to get that kind of market recognition in
16 areas where you're not presently competing?

17 MR. LEE: Well, I can't deal with hypothetical
18 questions. But I'll tell you who and where that will get
19 answered. And it's very clear. The marketplace will answer
20 that. Our customers and the stock market. And if our
21 customers demand and other companies get some big cost
22 advantage against us because they double and quadruple, then
23 we will have to take action.

1 COMMISSIONER NESS: So in other words --

2 MR. LEE: So it will be a market dynamic
3 constrained by the Department of Justice and the antitrust
4 laws of this country which, you know, I have no doubts
5 about. I mean, we know they're effective as -- as the other
6 Commissioner said. We know the Department of Justice and
7 the laws of this country are very good in limiting the
8 elimination of competition in marketplaces.

9 MR. SEIDENBERG: Can I offer a little different
10 perspective on that?

11 COMMISSIONER NESS: Yes.

12 MR. SEIDENBERG: I just want to clarify the word,
13 "bulk-up". We feel we need to, to use your term, bulk-up to
14 be horizontally -- to expand horizontally. We also feel we
15 need to bulk up to provide technological leadership. To get
16 ADSL out there and all the high speed new networks out, we
17 needed some additional scale. So it isn't just to -- to go
18 nationwide.

19 I feel that with this transaction, we will create
20 an irreversible tract that will answer the question you just
21 raised differently once we get into these markets. See, I
22 think GTE has an enormous integrated data network already
23 that we don't need to buy a long distance company to -- that

1 doesn't mean it won't happen, but it just says you don't
2 need it. We have a wireless footprint that gives us
3 enormous reach, so I think.

4 So I think the opportunity here kind of is the
5 road not traveled. If we're not careful, you'll find
6 companies navigating through the regulatory rules as opposed
7 to chasing the market.

8 If we get into 271 like we feel we can in the
9 first quarter, we can pursue a national wireless footprint.
10 We can pursue a national data footprint. That question gets
11 much differently in three or four years.

12 The long distance companies could have made the
13 investments that Dick Notebaert did, an alternative network,
14 15 years ago. They didn't have to lose whatever they say
15 they lost on local resale. Now they make a 48 billion
16 dollar acquisition.

17 The answer to me is let us build it organically
18 and then we'll see how far that goes. But we think we're
19 pretty big at this point in terms of covering the American
20 footprint. Internationally, I think we have a long way to
21 go to say that we've covered the right territories.

22 COMMISSIONER NESS: You mentioned, Mr. Seidenberg,
23 that we need to look at new benchmarks. I was intrigued by

1 that. What would those new benchmarks be in your view?

2 MR. SEIDENBERG: Bell/GTE. It will be the only
3 company that has it all and will compete across the whole
4 country right on day one, no promises. You don't have to
5 wait for the cable companies to upgrade and you won't have
6 to wait for SBC and AT to acquire the 8,000 people.

7 But I think the answer to the question is, without
8 being flip, is that -- that if we're looking at the
9 companies of the future, I think you should be trying to
10 think through the kind of benchmarks that exist. And just
11 be careful how much the old benchmarks work.

12 You know, the -- if you look at the IBMs of the
13 world, the EDSs of the world, what you'll find is there are
14 companies moving into these spaces that are doing what we're
15 doing in large regard. And I think we have to be careful
16 about it.

17 I -- Dick Notebaert said you look at benchmarks
18 for individual processes in your company like billing or
19 inventory control. We've all been doing that. The Justice
20 Department, when they looked at the Bell/NYNEX merger,
21 looked at a future model and recognized that Bell and NYNEX
22 were never going to compete with each other in a large way.
23 And they got out of the way at that point. As a -- as a

1 businessman, that's the way I read it.

2 So I don't have a specific answer for you. And I
3 think this is the truth we all need to find. But new
4 benchmarks are the answer. The old ones are anachronism to
5 the past.

6 MR. LEE: Another perspective maybe -- and
7 definitely a little bit down the road from the days that
8 Ivan was describing, is that if the vision of these new
9 national markets evolves with your support and your help,
10 the need for benchmarking data is going to be tremendously
11 reduced because benchmarking is going to be done by the
12 customers.

13 There is going to be so much competition across
14 all these markets and against all these products and all
15 these services that the customers are going to do the
16 benchmarking. I mean, people don't ask -- people internally
17 do benchmarking in General Motors. But I don't know of a
18 regulatory agency that is looking over --

19 COMMISSIONER NESS: It sounds wonderful.

20 MR. LEE: So it's internal benchmarking.

21 COMMISSIONER NESS: But we still are faced around
22 this country with very few options for consumers, for
23 residential consumers who wish to have alternatives for

1 local telecommunications services or even a panoply of
2 services.

3 And we still are faced with the enormous cost that
4 has been discussed at length today of being able to enter
5 into a new market where you don't have brand recognition,
6 where you don't already have a footprint, where, as some
7 have said today, the cost perhaps is even -- the revenues
8 perhaps are even below cost of providing the local service.

9 How will this help with companies combining to
10 ensure that the residential consumers of this country have
11 alternatives for local service?

12 MR. SEIDENBERG: Well, A) the premise -- let me --
13 there are two halves to this. First, I would like to just
14 address the premise of the question that consumers don't
15 have choices. I think -- we can get into a long discussion.
16 We probably have had this before. But customers today have
17 all sorts of choices in calling plans, all sorts of choices
18 in wireless, all sorts of choices in data.

19 There is one access line into the home in a lot of
20 places. But the uses of those access lines have changed so
21 extraordinarily, pervasively over the last three or four
22 years that customers have more choice in what they do with
23 that than they've ever had before.

1 There is one statistic that we've been looking at
2 in the last couple of months that has been very instructive
3 here. Bell Atlantic today has 41 million access lines.
4 That's our -- the way we used to measure access lines. What
5 our data-centric people are telling us is that we have
6 another 15 million DSO equivalents that have been introduced
7 into our business through data services over the last three
8 or four years.

9 What is happening is customers -- you can have an
10 access line. But they are getting multiple channels over
11 that. And we're finding CLECs are able to offer services
12 over those things and nobody is counting them.

13 So I think there is a different paradigm coming.

14 Now, to your point, how do you stimulate the
15 obvious optic of having other choices? Well, these mergers,
16 if they go through, you will create five or six national
17 companies all competing. Everybody on the panel said they
18 are coming into New York. Fine, we've got competition;
19 we'll get some more.

20 We have competition everywhere. You won't get
21 competition if you try to grow it regionally. If you want
22 to get it, you will have to let it occur through the
23 formation of national and global businesses.

1 MR. LEE: The one -- the definite adder to
2 everything Ivan says, which I agree with, and I've talked to
3 each of the Commissioners about this point, is the whole
4 issue of the universal service subsidy has got to have a
5 dramatic impact.

6 Madam Commissioner, you just said the revenues for
7 residential service may be below. It's not may be.
8 Revenues for residential services is dramatically below the
9 cost. And overall, our companies are okay because we make
10 up for it on universal service.

11 But we need in a competitive place to have prices
12 that have a true relationship to economic cost. And then
13 people who have stopped building out in the residential
14 market I think you'll see dramatically run to that because
15 it will be a fair opportunity for them to make some money.

16 So I come back with my ongoing dialogue with the
17 Commission and ask that we keep our focus on this universal
18 service which the Telecom Act says very fluidly, "All
19 subsidies are to be made explicit and evenly borne by all
20 competitors in the industry." And I just applaud the
21 efforts you're making to -- to complete that task in the
22 near term.

23 COMMISSIONER NESS: Thank you.

1 CHAIRMAN KENNARD: Thank you, Commissioner.
2 Commissioner Furchtgott-Roth.

3 COMMISSIONER FURCHTGOTT-ROTH: Thank you, Mr.
4 Chairman. Mr. Lee, Mr. Seidenberg, we've heard a lot of
5 discussion today about several mergers. And as you know,
6 I'm very interested on views on what this Commission should
7 be doing. Let's leave aside Bell Atlantic/GTE for a moment.
8 I think you may have something of an interest in that
9 particular merger.

10 How would you recommend this Commission proceed in
11 reviewing in the public interest some of the other mergers
12 that may have been discussed here or just any hypothetical
13 merger? What -- what should this Commission do?

14 MR. SEIDENBERG: Well, I'll take a cut at it.
15 What the heck. The -- here is what I would say, is that
16 when I look at the other mergers, I frankly think if they
17 passed muster at the Justice Department, assuming that they
18 do all the things that they're supposed to do, you'll --
19 you'll deal with a good portion of the issues that you need
20 to deal with. If there are license transfers, you will deal
21 with those.

22 The only other point I would make is -- and it
23 goes to the issue of if there are existing Commission

1 policies that would be violated by any of these mergers.
2 And I think you have an obligation to stand up and tell
3 those companies what they need to do about that.

4 An example of that might be the open broad band
5 promise we heard today. If -- if -- maybe there is some
6 work that needs to be done in that area. Or if there is
7 something in the Bell/NYNEX merger that would be violated as
8 a result of the Bell/GTE merger, then I think the Commission
9 has an obligation to do that.

10 But other than capturing the enforcement of
11 existing policies, I struggle with how far we take the
12 process only because I worry that none of us really knows
13 how this industry will change. And you always worry that --
14 that however well-intentioned, the combination of federal
15 and state regulation tends not to be able to keep up with
16 the technology itself. I worry I can't keep up with it, let
17 along having a process that's intended to do it.

18 So in this general way, I think that's sort of the
19 coming out point. Now, Counsel might have a lot of specific
20 things here that you may want to talk about at another
21 point. But I'm sure we can let that go for another time.

22 MR. LEE: I would just say, very quickly, number
23 one is -- per your question earlier, Mr. Commissioner, I

1 know of no example where the Department, based on my
2 judgement -- where the Department of Justice hasn't done an
3 appropriate job of reviewing the antitrust laws and
4 concentration in various industry.

5 So I know of none. Maybe somebody could prove me
6 wrong.

7 Two, I respect and understand the specific roles
8 of the Commission in terms of transferring licenses,
9 satisfying that its in the public interest. And -- and I
10 think Ivan makes a great point in terms of other conflicts
11 with other policies that should be sorted out by the
12 Commission. And so I feel real, real black and white on the
13 issues that I've just described.

14 MR. SEIDENBERG: If I just could put an
15 exclamation point because I have to live here again is this
16 point: I think that debate and the forum is very positive.
17 I think it's what you do that I think a lot about as we go
18 forward.

19 So I think the question of having the forum and
20 the debate is good. I think you generate the kind of
21 understanding that's necessary to go forward. But the law
22 is the law and you'll decide what that is later on and then
23 we'll see what happens.

1 MR. LEE: Thank you, Mr. Chairman.

2 CHAIRMAN KENNARD: Thank you. Commissioner
3 Powell.

4 COMMISSIONER POWELL: Well, time is getting late
5 and I won't ask but one question. And, Ivan, let me first
6 ask you because I'm intrigued by your statement about the
7 difficulty of growing competition from a regional -- from a
8 regional base or growing it -- and I would expand the
9 question to growing it with the consideration of any kinds
10 of artificial boundaries.

11 That is, I wonder if you wouldn't say something
12 about the pressures being generated by modern technology
13 trends. In particular, sort of the coming of the truly
14 borderless network model which really, less so than the
15 other one ever did, does not respect in any meaningful way a
16 number of boundaries over which legal concepts are drawn.

17 I mean, I primarily think about latas and their
18 inherent artificiality. I think about state boundaries
19 which are constitutionally commanded, but of course they are
20 not necessarily meaningful for efficient network operation.
21 And then we've heard a lot about global and national
22 stresses.

23 And everything seems to be pressuring toward

1 making concepts such as distances and boundary limitations
2 be less important as organizing principles for policy
3 decisions. And I've heard a lot about -- discussion about
4 the economics and the efficiencies, the operational
5 efficiencies. I get 8,000 employees. I get, you know, more
6 money. I get that. That's all very obvious.

7 But could you expand just a little bit on what you
8 believe the technological inevitabilities are that are
9 pushed --

10 MR. SEIDENBERG: Well, I think what you'll see in
11 that question is the very big difference in this merger. I
12 will answer that question using wireless as an example. And
13 I know Chuck will explain the whole data issue.

14 If you look at wireless, years ago you got all
15 these analog licenses. They were all regional. No problem.
16 People put in the systems. They built them up and
17 everything was fine. What happened is you found that
18 technology started driving the prices down. We moved to
19 digital. We expand capacity. People started to expand
20 their footprints.

21 And now what you're finding is we're offering --
22 when Bell/NYNEX merged, we were the first company that
23 reduced its roaming charges to zero. We were the first

1 company that gave first incoming minute free. Now you're
2 finding we're going to ten cents a minute, no roaming, no
3 long distance. You need scale. There are no boundaries to
4 that.

5 So state commissions can't regulate air over this.
6 So you're finding that the wireless business, in its
7 transition from analog to digital, has obliterated the
8 technological boundaries and drove pricing down. It is
9 forcing us to re-think our business and think of ourselves
10 not in a geographic constraint because our customers are
11 looking for the national services and the products to do
12 that. The internet and data networks have done exactly to
13 the core business what wireless has done.

14 MR. LEE: Ivan is exactly right. And, Mr.
15 Commissioner, let me describe two products. And we're int
16 his business now through our acquired company, BBN. But the
17 whole industry is going to IP technology and IP networks.
18 And so we will see more of this in the years ahead.

19 We go to customers and we want to build their IP
20 networks; well, not only their access to the internet, but
21 their own data packet, switching networks that -- that go
22 back and forth.

23 And we say, "Okay, we'll do it here and we'll talk

1 to another RBOC or we'll talk to a long distance guy", and
2 they say no. They -- end-to-end productivity. The
3 technology is so sophisticated, the equipment, the fine-
4 tuning. And in fact, they want us to run the networks
5 because it's so complicated, in addition to building it and
6 to run it and keep operating.

7 Another example is web hosting. And these are
8 just examples. Interesting enough, one of the other
9 panelists earlier talked about a portal company connected
10 with the internet. Well, one of the most famous ones -- and
11 I've probably restricted from using the name -- uses us to
12 be their web host. And so we -- and it's a very big web
13 site.

14 And we -- we tried to build their network and make
15 it access and use other web hosts around the world. And web
16 hosting has gotten complicated with all the demands. And we
17 have a system called hop-scotching where the network is
18 smart enough to figure out which web site, if you have
19 multiple web sites -- which web site is available for the
20 quickest response time. So we call it hop-scotching.

21 So we're selected by this customer because we have
22 this technology. But he wants a global business. So he
23 says, "Where is your hop-scotch, web site, web hosting

1 location in Europe, in Asia?". We are having -- now, this
2 is an important customer so it's all right and it's a
3 pending thing.

4 This guy not only wants the network connectivity
5 all under our control, us running the network, but he wants
6 us to have web sites around the world managed by this hop-
7 scotch technology. So it's -- it's all -- distance is
8 becoming irrelevant with fiber optic technology and all.
9 And it's all becoming one small world, one integrated
10 network.

11 And it's going to be a very vicious competitive
12 battle between us and the other big companies and these top
13 four or five companies that are going to survive this --
14 this dramatic restructuring of our industry.

15 COMMISSIONER POWELL: I would just add more of a
16 summation of a point that I think is going to become
17 increasingly important that I've heard each of you allude to
18 which is that understanding of the communication trend means
19 the universe of entrants and competitors is probably much
20 broader than if you just want to think of the world as voice
21 telephony.

22 We're talking about the introduction of core
23 competencies from the likes of IBMs and CISCOs and enormous

1 numbers of other people who at least for many of the total
2 portfolio of services being offered by a classic phone
3 company today, there will be many, many other participants
4 with respect to them.

5 And it is important that we remember that while
6 local --local residential phone service is incredibly
7 important and I think one of the highest priorities of
8 Congress and our own. But it is one in a whole range of
9 communication suites that we're also trying to foster. And
10 there may be unique challenges with respect to that last
11 one. But I also wouldn't want the last one to dominate
12 everything we think about the others. So thank you for --
13 did you --

14 MR. SEIDENBERG: Okay. No, we'll go on. I know
15 you're -- it's late. Thank you.

16 CHAIRMAN KENNARD: Commissioner Tristani.

17 COMMISSIONER TRISTANI: Mr. Chairman. Let's say
18 I'm a little old fashioned. And let's say I come from New
19 Mexico where the world is pretty different from here in the
20 east. I haven't been there in a while, but I don't think
21 they are about to offer me new cable service any time soon
22 or as a -- if I were living in a residence, any kind of
23 alternative.

1 And I'm a consumer out there and I've heard about
2 the new Act, local competition, and I haven't seen any. And
3 all I see is mega-mergers. And I keep hearing they're good,
4 they're good, they're good. And I asked the previous
5 panelists -- and I think you were here -- what if we end up
6 with one local company. And he said, "Can't happen." And I
7 said, "What if it could happen? Would that be okay?". It's
8 a hypothetical.

9 MR. SEIDENBERG: Well, if I can address it this
10 way. While New Mexico is different, we have communities in
11 Vermont and Maine that are just like that.

12 COMMISSIONER TRISTANI: I know.

13 MR. SEIDENBERG: And we serve just the same -- the
14 same thing. And here's what goes on. In the Bell/NYNEX
15 merger, those customers got better service, lower rates,
16 more feature and functions. And the better we did for those
17 customers, the quicker AT&T got off it's whatever it is and
18 they moved into those markets a lot faster.

19 So I think what's happened is there are lucrative
20 markets in every single state whether they be rural or
21 suburban or the most urban markets. And I think that a
22 strong, healthy, technologically and financially leadership
23 company will incent the kind of people going into those

1 markets.

2 Now, you say, "Can there be one?". The -- the
3 reason we --

4 COMMISSIONER TRISTANI: If -- if there were one.

5 MR. SEIDENBERG: Well, the question that we all
6 struggle with when we hear that is very obvious; that you
7 categorize us as being one group and the long distance
8 companies as another and the cable as another. I think even
9 if there were one of each, that's three. And in the future,
10 there isn't going to be one of anything or we're going to be
11 merged.

12 So in our view, is there can never be less than
13 the three or four providers that you have now. And
14 incenting them to get on with the investments they need to
15 make I think is the right structure in terms of what you are
16 looking for. I don't ever worry that there will ever be
17 one. It's never going to happen. It doesn't exist today
18 and it won't exist in the future.

19 MR. LEE: The antitrust laws in this country, in
20 the Justice Department, just as Attorney General Reno and
21 Joe Kline, I'm sure they would say there is no way there is
22 going to be one. I mean, that's -- that just isn't going to
23 happen. So it's another world.

1 Secondly, in terms of -- we're a company that
2 (inaudible). We are a CLEC. We are what our corporate
3 growth strategy moving us out of our franchise. And I don't
4 know where we are in your -- your home town in New Mexico.
5 But it is very time-consuming and expensive.

6 You heard every panelist, every -- all three
7 enterprises here, AT&T/TCI is going to be competing and
8 presumably your cable company will compete. SBC and
9 Ameritech. So there is competition that is developing. But
10 this is not a quick and easy fix. It is going to take time.
11 But it seems to me that we can feel good about the progress
12 that has been made so far and the commitments that you're
13 hearing out of the -- the future of these arrangements.

14 MR. SEIDENBERG: Commissioner, if I just might, I
15 just can't let go of this question here. You know, the --
16 the -- when Bell and NYNEX merged, which was a cataclysmic
17 event in the legal system here, everybody said, including
18 the long distance companies, the world would come to an end.

19 Well, we merged. We've done our job. What's
20 happened? WorldCom has consolidated with MCI. They are
21 restructuring. What you're finding is AT&T has acquired
22 Teleport. AT&T has acquired now TCI. Bell Atlantic moved a
23 lot quicker to get into 271.

1 So I think that the restructuring of the industry
2 is causing the benefits to flow exactly the way you would
3 like to see them. And you're not going to get to a point
4 where you have to worry about having one monopoly left. It
5 can't happen.

6 COMMISSIONER TRISTANI: Thank you.

7 CHAIRMAN KENNARD: Thank you. I appreciate
8 everyone's patience. We are now about an hour behind our
9 allotted time. But it has been a very, very useful and
10 worthwhile session. And I want to thank each of the
11 witnesses for participating in this en banc hearing.

12 This is the beginning of a process in my view.
13 We're going to have another en banc hearing. And over the
14 next several weeks, we are going to be hearing from lots and
15 lots of people who have interesting things to say about
16 these merger proposals.

17 We've heard some very interesting views today
18 about how technology in the marketplace is changing. And,
19 you know, as we hear more, we're going to be carefully
20 analyzing the records -- the record that is being developed
21 in this proceeding.

22 But I want to emphasize one thing. We are not
23 here to pick winners and losers. The only winner from this

1 process has got to be the American consumer. That's who we
2 represent up here. And we've got to make sure that we are
3 acting in their best interests.

4 We've heard a lot about the efficiencies of these
5 proposals and how they are going to be good for
6 shareholders. And I think that we -- at least speaking for
7 myself, I fully understand that. We've also heard a lot of
8 promises to consumers about how this will be good for
9 consumers, residential consumers.

10 And we have to have a good understand of the basis
11 for those promises. And the only way we can do that is to
12 develop a comprehensive record, talk to a lot of people in a
13 very transparent fashion. And that's what we're going to
14 do.

15 I want to say a word about the respective
16 jurisdictions of the FCC and the Department of Justice.
17 We've heard a lot of non-lawyers speak to this issue today.
18 And as a former general counsel -- and I still consider
19 myself a lawyer -- I wanted to address that issue.

20 We have in this country a Department of Justice
21 and a Federal Communications Commission with related and in
22 some respect overlapping jurisdictions. That's what
23 Congress intended. That's why Congress wrote a

1 communications act that gave this agency responsibility for
2 enforcing some aspects of the anti-trust laws.

3 Now, the Department of Justice, they have primary
4 responsibility for enforcing the anti-trust laws. When they
5 consider a proposed merger like the ones we've heard about
6 today, they have to determine whether they can make a case
7 that that merger violates the anti-trust laws. That is
8 their charge.

9 Our charge is different. Our charge is to
10 determine -- is to determine whether a combination will
11 serve the public interest. Unlike the Department of Justice
12 which carries the burden of demonstrating whether there is a
13 violation of those laws, in our case, the applicants have to
14 come before us and make an affirmative demonstration. You
15 all carry the burden of demonstrating whether these
16 proposals serve the public interest.

17 It is our obligation at this agency, as the expert
18 agency in telecommunications policy, to survey the overall
19 marketplace, determine industry trends and determine whether
20 any of these combinations sink either individually or
21 collectively to serve the public interest.

22 That system has worked well in this country for
23 most of this century. I do not believe the that the way it

1 has been applied, either historically or will be applied
2 today will be duplicative. We will certainly try to do our
3 job efficiently and to minimize the burdens on the
4 applicants and the public. But we will do our job and we
5 will follow the law.

6 And in doing that, I don't believe that we will or
7 should implement any dogmatic or open-ended conception of
8 the public interest. Again, our burden and our job is not
9 to pick winners or losers, not to handicap everybody or not
10 to give everybody advantages.

11 Our job is to analyze carefully the facts of each
12 merger, recognizing that each is different; but that each of
13 them are operating in a marketplace that has lots of
14 dynamics and these companies are going to interact. And
15 above all, to make sure that we keep our eye on the ball
16 which is consumers, ensuring that they get the benefits that
17 they were promised by the United States Congress; more
18 competition, lower prices, more innovation. We are going to
19 do that.

20 We look forward to the next en banc which we will
21 be having on December 14th where we will hear from lots of
22 other people, consumers and competitors and anyone who has
23 an interesting thing, a serious thing to say about these

1 proposals. So, again, I thank you very much for your
2 participation.

3 Commissioner Ness, did you have any closing
4 remarks?

5 COMMISSIONER NESS: No thank you, Mr. Chairman.
6 Just to thank everyone for their participation today and
7 your thoughtful comments.

8 CHAIRMAN KENNARD: Commissioner Furchtgott-Roth?
9 Commissioner Powell? Commissioner Tristani?

10 COMMISSIONER TRISTANI: Thank you all.

11 CHAIRMAN KENNARD: Thank you very much.

12 (Whereupon, at 2:30 p.m. on Thursday, October 22,
13 1998, the hearing was adjourned.)

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