98-178

TESTIMONY OF

THE REVEREND JESSE L. JACKSON, SR.
FOUNDER, RAINBOW PUSH COALITION

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION'S

EN BANC HEARING ON MERGERS AND CONSOLIDATION

December 14, 1998

The Rainbow PUSH Coalition
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Thank you for the opportunity to participate in this historic hearing.

We come here today at a critical juncture in the history of the FCC, corporate expansion and America. The FCC has an historic opportunity to enforce standards of fairness, inclusion and competition. The burden is on the applicants to show that these mergers are in the public interest. In some instances, these applicants have not yet met their burden and that is why oversight and enforcement are critical to the public interest. We come here today not to destroy the mergers, but to enforce the Telecommunications Act of 1996 and its intent, and to protect the covenants between the people and the FCC. We are also here to help the FCC set standards and timetables to open doors and expand opportunities for customers, workers and those who have historically been left behind.

We are concerned that the recent deluge of telecommunications mergers will likely cause consolidation of wealth, consolidation of ownership, and a resegregation of the telecommunications industry. Mergers in the local exchange market and consolidation among cable companies and long distance companies should concern the Commission, since they would put the control of our public wires in the hand of a very few. The Commission must consider whether these companies are willing to extend their telephone lines, offer lower prices and more opportunities to our nation's rural and inner-city areas. Displaced people must have the same access to telephone service as those living in affluent suburbs. That is the spirit of a true democracy. Thus, democratic values must guide your review of these mergers.

The Bell companies, GTE and AT&T/TCI have expressed confidence that their mergers will pass muster with the Commission because the mergers will help them compete on a global basis and offer phone service outside their home regions. On the other hand, consumers are concerned about lower prices. Workers are concerned about the elimination of their jobs through downsizing and outsourcing. And, the historically disadvantaged are concerned with inclusion, opportunity and access to information.

We are here to promote inclusion. The FCC must enforce the law to ensure inclusion.

Their are numerous egregious examples of how the industry has been exclusive rather than inclusive. Historically, the Commission has been a co-conspirator in this practice of exclusion by awarding licenses to a select and small group of communications companies. As the century ends, there are no minority-owned wireline telephone companies, no minority-owned cellular systems, no truly diverse Boards of Directors, no minority merger advisors on Wall Street, and very few minority-owned cable TV franchises. These facts make a big, ugly statement about America.

Competition among a small group of companies targeted at a small segment of our society is not real competition. Competition is meaningful only when it breaks down barriers to entry and expands the market. Competition is meaningful only when telecommunications firms deploy facilities to all parts of society and compete for <u>every</u> customer not just the business customer or the affluent residential customer.

Commissioners, you must dig beneath the surface of each merger application to discover whether these companies are joining forces to improve customer service and the role of workers or merely to protect their territories and make larger profits.

In addition to evaluating the competitive effects of proposed mergers, the Commission must also consider other factors. Discrimination is a factor fundamental to the FCC's public interest review. Minorities and rural Americans pay taxes, contribute to the Social Security system, vote, and are consumers. The public interest is our interest.

Some at the FCC have argued that a merger analysis is not an appropriate forum in which to assess broader social policy questions. I disagree. The public interest demands more than a quick cursory review, more than a brief look.

I believe that it is in the public interest to eliminate **all** forms of discrimination. In reviewing a merger, the Commission should not determine that some discrimination is objectionable, while turning a blind eye to other forms of discrimination. The public interest clearly demands, and deserves, no less.

For example, some of the companies proposing to merge redlined video dialtone, pay phone and cable television service in the past. Inclusion means the end of redlining, a practice which is altogether unfair, unproductive, and illegal. While these companies now have developed anti-redlining policies, departures from company policy occur regularly. Therefore, the Commission should not act on these mergers without receiving commitments against redlining that is subject to close supervision by the FCC.

Irrespective of its decisions on these mergers, the Commission should undertake a comprehensive study of redlining in the long distance, local exchange, and cable TV industries, and develop strong, specific and enforceable standards to prevent these companies from marketing or providing enhanced service on the basis of race, geography or income.

There are bad mergers and good mergers.

All mergers are not inherently bad and merger executives are not necessarily led by greed or selfishness. Bad mergers preempt competition with neighboring service providers. Bad mergers create spinoffs that advantage only large companies and international firms. Bad mergers generate layoffs for thousands of hard working employees. Bad mergers use combined resources to enter overdeveloped not underdeveloped markets.

Historically, MCI and WorldCom committed these acts and that is why we opposed their merger. After the closing of their merger, they have done little to persuade us to change our position. MCI WorldCom sold its Internet company to a large foreign-based firm and is planning to sell its satellite systems without a commitment to diversity. Furthermore, MCI WorldCom last week announced a layoff of three thousand employees. They also continue to be cited by the FCC for imposing casual rates charged to their long distance customers. For nearly a year, the Rainbow Push Coalition has chosen research, education and negotiation over confrontation. We, however, reserve the right to protect the public interest through legislation, agitation and demonstration. Our protest and opposition to MCI WorldCom will continue until an enforceable, specific plan of inclusion is executed.

On the other hand, good people with good intentions along with enforced public policy make good mergers. Good mergers create new opportunities for consumers and entrepreneurs. Good mergers offer new, innovative services to everyone at competitive prices. When good companies merge they spin off facilities to new market entrants at a reasonable prices. Good mergers benefit the public interest and do not result in thousands of layoffs.

The three pending mergers offer potential to be good mergers, but only if they continue to make enforceable commitments to the FCC and Department of Justice that promote inclusion and protect consumer groups and labor organizations. First, there is a possibility that these mergers will increase competition among local telephone providers. For example, GTE has facilities in Santa Monica, San Bernardino and Thousand Oaks, California that will serve as a foundation for Bell Atlantic/GTE to compete for local service in Los Angeles. This facilities-based presence will permit Bell Atlantic/GTE to build out and compete with SBC/Ameritech and other local phone providers outside the Bell Atlantic region. Also, GTE is exploring ways to create the nation's first minority-owned independent telephone company.

Second, GTE's Internet backbone puts the new company in a position to offer enhanced services to residential low income and rural subscribers. However, the Bell Atlantic/GTE plan must include a stronger commitment to Internet and technology training targeted to the minority community. We must not leave anyone behind as we move into the technology millennium.

SBC and Ameritech have good internal EEO and minority procurement programs and are also considering ways to promote minority ownership through spin-offs. SBC has also shown global leadership with their strong initiative to develop telecommunications systems in South Africa. These are positive steps.

However, SBC and Ameritech have outstanding challenges as well. Initially, their post-merger plan redlines residential customers by emphasizing the need to serve their large and mid-size business customers. They must do more to serve rural Appalachia where some inhabitants do not have basic telephone lines; and many Native Americans in the Southwest region are without access to the Internet.

AT&T's proposed acquisition of TCI also raises key issues. AT&T has strong programs that provide training to urban and rural areas and promote minority and women-owned enterprise. However, the proposed merger must still be reviewed closely because of AT&T's recent tax on low volume long distance customers, and TCI's repeated rate increases, questionable employment record and poor level of customer service. Fortunately, these companies are led by men of integrity with excellent track records of community service. Good men; however, must be directed by good public policies that lead to good results.

In closing, we need to develop a new covenant between the government, the private sector, and our communities. We need to create a new approach to evaluate mergers that foster a policy for inclusion and opportunity for consumers, workers and those who historically have been left behind. Let's work together to build a tent large enough to include all segments of society and forge an alliance with the FCC and the telecommunications industry to heal the breach of the American dream.[1]

1. The Rainbow Push Coalition respectfully requests that the written testimony for this proceeding and the field hearing Rainbow Push convened in Chicago be included the record of this hearing and the pending merger proceedings.

THE UTILITY REFORM NETWORK

Regina Costa

Regina Costa is the Telecommunications Research Director for The Utility Reform Network (TURN), a statewide, nonprofit consumer group that represents the interests of California's residential and small business utility customers before the California Public Utilities Commission, the Federal Communications Commission and state and federal legislatures. She is responsible for developing TURN's policies on telecommunication issues.

Costa serves on the telecommunications committee of the National Association of State Utility Consumer Advocates (NASUCA). She has testified as an expert witness in numerous proceedings before the California Public Utilities Commission and before the California state legislature. She has lectured on the history and economics of telecommunications at a training program organized by the National Association of Regulatory Utility Commissioners (NARUC) and appeared on panels concerning local telecommunications competition, universal telephone service, consumer issues and price caps regulation at NASUCA conferences.

Prior to joining TURN in 1991, Costa worked for the Washington Utilities and Transportation Commission (Olympia, Washington), as an analyst for MCI in preparing its second antitrust lawsuit involving the pre-divestiture American Telephone and Telegraph Company, and as a consultant for the British Columbia Public Interest Advocacy Center. A native of Salinas, California, Costa received her B.A. and M.A. (Communications) from Simon Fraser University, Burnaby, British Columbia.

THE UTILITY REFORM NETWORK

Prepared Statement of
Regina Costa

Federal Communications Commission
Merger En Banc
December 14, 1998
Washington, D.C.

INTRODUCTION

Thank you for the opportunity to appear before you today. The Utility Reform Network (TURN) is a statewide, non-profit consumer organization which has represented the interests of residential and small business customers with respect to provision of telecommunications, electricity and gas utility services for the past 25 years.. Much of TURN's work is conducted before the California Public Utilities Commission (CPUC). TURN participates in virtually every major telecommunications proceeding in California. TURN is an associate member of the National Association of State Utility Consumer Advocates (NASUCA).

Pacific Bell provides service to approximately 95 percent of California's residential telephone customers and the vast majority of the state's small businesses. SBC's acquisition of Pacific Telesis was approved by the Federal Communications Commission in January, 1997 and by the CPUC on March 31, 1997.

Since the acquisition there has been a marked change in the behavior of the company toward its customers. Customers have been directly affected in four general areas: 1) quality of service; 2) proposed rate increases for essential services; 3) diminution of service; and 4) introduction of aggressive and misleading marketing efforts.

SERVICE QUALITY

•Customer Complaints

In June, 1997, the CPUC noted that there was a marked increase in the volume of customer complaints pertaining to service provided by Pacific Bell. The most serious problems involved significant delays in service installations and missed commitments. Pacific Bell's service quality problems were the subject of great debate within the Commission about the need for tougher standards and were extensively covered in the press.

The problems with Pacific Bell's service quality were one factor that prompted the CPUC to commence a process to revise its quality of service requirements for telecommunications carriers.[1] The Order, released on June 18, 1998, states:

> We have heard many reports of customer frustration with the long delays in reaching live representatives in utility business offices. In some areas, customers may have to wait for many months to get a second line. Customers' perception that the quality of telephone service provided by local exchange carriers has declined over the last few years is borne out by the numerous service complaints that CSD (Consumer Services Division) and TD (Telecommunications Division) have received.[2]

Precise statistics on the number of complaints received concerning Pacific Bell's service quality are unavailable due to anomalies in the CPUC's data collection process. However, the CPUC staff are clearly convinced that the available information demonstrates a disturbing trend of increased service problems for Pacific Bell's customers.

Due to concern about decreased quality of service for Pacific's customers, California's Office of Ratepayer Advocates (ORA), a state consumer advocate office formerly a division of the CPUC, has prepared an independent analysis of information about customer service problems. ORA's analysis documents what, in its view, is an alarming level of service quality degradation in San Mateo and Santa Clara Counties, the heart of "Silicon Valley," which is a main engine of California's economy. ORA has found that this area suffers more outages and longer delays in repairing service than other areas of the state.

[1] Before the Public Utilities Commission of the state of California, Order Instituting Rulemaking on the Commission's Own Motion into the Service Quality Standards for All Telecommunications Carriers and Revisions to General Order 133-B, R.98-06-029, filed June 18, 1998.
[2] ibid., p. 6.

• Failure to comply with CPUC Order to improve ISDN service quality

Service quality problems associated with Pacific's ISDN service have been well documented. In D. 97-03-21[3], the CPUC found that Pacific did not provide adequate ISDN service and attempted to "motivate Pacific to provide better ISDN service" by requiring the company to submit customer satisfaction survey results to the Commission every six months and to offer ISDN customers billing credits for failure to meet certain service standards in individual cases.

In a Commission Decision issued on September 17, 1998, Pacific was fined $309,000 for failing to comply with D.97-03-021. In D.98-09-071 the CPUC found that Pacific had failed to comply with D.97-03-021 . . .

> . . . because it did not provide customer survey results the Ordering Paragraph required on September 1, 1997, the date specified by the Ordering Paragraph. Instead, Pacific filed a report on September 5, 1997, that excluded results for residential customers and most business customers. The September 5 report showed results that are substantially better for the months reported than the results Pacific ultimately verified here as accurate. (D. 98-09-071, p. 6)

The CPUC further found that Pacific failed to offer an adequate explanation of why the company failed to comply with the Commission's Order.

> The testimony in this proceeding does not explain the reasons for Pacific's delay in presenting the information required by D.97-03-021. Witnesses Fobroy and Anthony, employees who compiled the information, testified only that they were aware of a 'misunderstanding.' Neither had seen the relevant portions of the decision which related to the information they were directed to compile. Apparently, no one in the company assumed responsibility for assuring the accuracy of the information required by the Commission order. Pacific did not otherwise justify the reasons for its failure to submit required reports in a timely manner. It does not dispute the allegation that it violated Ordering Paragraph 4 of D.-97-03-021.
>
> "The December 5 ruling directed Pacific to submit testimony to 'explain its reasons for failing to submit the information required by Ordering Paragraph 4

[3] Before the Public Utilities Commission of the State of California, In the Matter of the Application of Pacific Bell for Authority to Increase and Restructure Certain Rates of its Integrated Services Digital Network Services (Application 95-12-043) and Compaq Computer Corporation and Intel Corporation v. Pacific Bell (Case 96-02-002), D. 97-03-021.

> of D.97-03-021 in a timely fashion." Pacific's failure to present a witness who could provide such information is a violation of the assigned Commissioner's ruling. (D.98-09-071, p. 7)

The CPUC further found that Pacific Bell failed to improve its service quality, despite the issuance of D.97-03-021.

> D.97-03-021 stated our intent to reconsider ISDN service if Pacific's customer satisfaction surveys demonstrated that more than 10% of Pacific's ISDN customers rated ISDN service as either 'poor' or 'terrible.' Table 1 attached to this order provides the results of Pacific's ISDN customer surveys for 1997. It shows that Pacific's ISDN service has been consistently poor for most of 1997. Residential customers were particularly dissatisfied with Pacific's ISDN service. As many as 58% rated the service 'poor' or 'terrible' in July 1997. More than 10% of business and residential customers rated ISDN service quality 'poor' or 'terrible' in response to 47 of the 48 survey questions posed during each of the 12 months of 1997.. In most months, more than 20% rated Pacific's ISDN service quality 'poor' or 'terrible.' The results improve in November and December, 1997. Pacific does not explain either the poor service quality or the improvements at the end of the year. (D.98-09-071, p. 8)

The CPUC further stated:

> We consider two serious issues in this portion of this proceeding. One is Pacific's continuing failure to provide adequate service to ISDN customers. From the record developed in this proceeding since the filing of Pacific's application, we can only conclude that Pacific's ISDN service has been consistently neglected. D.97-03-021 found that Pacific had not been providing adequate service on the basis of its own analysis and the information provided by customers. Relying on Pacific's argument that its service could not improve without a substantial rate increase, we granted Pacific most of the rate increase it requested. We directed Pacific to implement certain tariff provisions designed to provide Pacific an incentive to improve its service quality. In spite of the actions we took, Pacific's ISDN service quality deteriorated after the issuance of D.97-03-021 rather than improved. Service quality improvements increased, perhaps coincidentally, after UCAN [the Utility Consumers Action Network] filed its motion to investigate the matter again and the the Assigned Commissioner stated an intent to take action. (D.98-09-071, p. 11)

D.98-03-021 was issued at the time SBC assumed control of Pacific Telesis. It was under SBC's operation that ISDN service quality deteriorated and the company failed to comply with the CPUC's Order. This is significant in at least three respects.

•According to Pacific, its competitors are targeting sophisticated, higher-end customers -- presumably the same customers who would be inclined to utilize ISDN -- yet, the company provided sub-standard service. If service quality is sub-standard for supposedly lucrative, competitive services, is there any reason to expect the company to provide high quality service for non-competitive, less-competitive, or less lucrative market segments, such as residential and small business customers or customers on low incomes.

•The fact that service deteriorated for a premium service such as ISDN calls into question SBC's efforts to invest in infrastructure. This concern is further heightened by ORA's analysis of customer problems in the Silicon Valley region.

•SBC's failure to comply with the CPUC's order raises questions about the company's interpretation of its public service obligations in California.

PROPOSED RATE INCREASES

Since being acquired by SBC, Pacific has requested substantial rate increases for a number of services. It is important to note that California's regulatory structure utilizes price caps. For services deemed "partially competitive" (Category II) a price ceiling and price floor are established. If a company proposes to set rates at or below the price ceiling and within the price band, the Commission "will not entertain protests" concerning the proposed rate.

For services deemed "fully competitive" or "discretionary," (Category III) a tariffed rate and a maximum rate are established. The company can raise a rate to its maximum level via advice letter on five days notice. In May, 1998, Pacific filed an application requesting permission to raise rates for directory assistance service and four Centrex services. (A. 98-05-038) In February, 1998, Pacific filed an Application to recategorize Business Inside Wire Repair, Interexchange Carrier Directory Assistance, Operator Assistance Service Billing Alternatives and Inmate Call Control Service as Category III services. (A.98-02-017) Subsequently, in April, 1998, Pacific filed an application to recategorize Residence Inside Wire Service as a Category III service.

For services that would remain in Category II if Pacific's proposals were adopted, Pacific has proposed an immediate rate increase to a particular level, but has proposed a much higher price ceiling. If approved, the company could raise the price to the ceiling level and parties would have no opportunity to formally protest.

Pacific has proposed the following increases to its prices or maximum rates:

Service	Current Price	Proposed Price	Proposed Ceiling or Max. Rate
Directory Assistance (Cat. II)	$0.25	$0.50	$1.10
Busy Line Verification "	.50	2.00	3.00
Emergency Interrupt "	1.00	4.00	5.00
Operator Services (proposed Cat. III)			
Credit Card	$0.35		$0.60
Collect	.95		1.60
Person to Person	2.95		4.00
Bill to Third Number	.95		1.60
Interexchange carrier calling/credit card	.35		.60
Res. Inside Wire Insurance	.60		1.50
Bus. Inside Wire Insurance	1.30		2.50
Per Visit Inside Wire Repair (Bus)			
First 15 minutes	$55.00		$80.00
Additional 15 min.	16.00		20.00

In A.98-05-038, Pacific also proposed to reduce monthly "free" DA allowance included with basic residential exchange service from five to three DA calls. The two DA calls included with basic business exchange service would be eliminated.

These applications are currently pending before the CPUC. Briefs were filed in the consolidated proceedings A.98-02-017 and A. 98-04-048 (inside wire) on September 14. 1998. Hearings in A.98-05-038 (directory assistance) concluded on December 10, 1998.

The proposed increases to directory assistance charges and reduction in the number of directory assistance calls included in the price of basic exchange service has met with stiff opposition from telephone customers at public hearings held throughout the state. As recently as October 5, 1998, the Commission found that there is virtually no competition for residential exchange service in Pacific's territory. Thus, customers have no choice but to utilize Pacific for basic local service and utilize Pacific's directory assistance service. The proposal comes at a time when California has experienced a number of area code splits and the introduction of an overlay. These changes will necessitate increased use of directory assistance. The proposed rate increase, and the fact that the company is requesting authorization to set its price ceiling at $1.10 would be a serious blow to customers.

telephone service. We consider the closure of these offices to constitute a diminution of service.

•Proposal to Allow Alternate Payment Locations to Charge Fees to Customers who Pay Bills in Person

On December 15, 1997, hard on the heels of Pacific's first office closure advice letters, the company filed Advice Letter No. 19167 which proposed a modification to Pacific's tariff that would permit Alternate Payment Locations (APLS) -- such as pharmacies and check cashing establishments that accept utility payments -- to charge a fee to Pacific Bell customers who pay their bills in person at these establishments. ORA protested this advice letter. TURN and other consumer advocates filed protests during the first week in January. Following receipt of ORA's protest, the company withdrew its proposal. Based on discussions with Commission staff, TURN fully expects Pacific will resubmit this proposal once it completes its office closures and when the public outcry over proposed directory assistance rate increases has dissipated.

• Proposal to Eliminate Provision of Yellow Pages to Customers Ordering Directories for Rural Communities

On October 2, 1998, Pacific filed Advice Letter No. 19727, pertaining to Foreign Telephone Directory Service. As currently written, the tariff stipulates that yellow pages will be included in directories provided to customers who purchase telephone directories for areas other than their own calling area. Pacific proposes to eliminate the provision of yellow page directories. However, the company does not propose to reduce the price for these directories even though yellow pages are no longer included. The company has argued that this is outside CPUC jurisdiction because yellow pages are deregulated and because there is supposedly no revenue effect.

TURN and ORA have protested this advice letter. The company offered no justification for charging the same price for a white pages directory that was previously charged for provision of both a white and yellow pages directory. Customers would receive a product of diminished value, but would continue to pay the same price. Furthermore, it is disingenuous to suggest that there are would be no revenue effect from this proposal. The discontinued provision of yellow pages directories would result in customers either paying an additional price to purchase the yellow pages, or making greater use of directory assistance -- at a time when Pacific is requesting a substantial increase in the directory assistance rate.

The Commission staff has agreed that the issues raised by TURN and ORA are significant. The CPUC Telecommunications Division has drafted a resolution, due to be voted on by the Commission on December 17, 1998, which would require Pacific to withdraw its advice letter and instruct the company that it is free to file an application containing its proposals and addressing the issues raised by TURN and ORA.

AGGRESSIVE/MISLEADING MARKETING

• Use of Aggressive and Misleading Sales Tactics to Increase Revenue

Privacy issues associated with telephone numbers are very important to Californians, a high percentage of whom have unlisted telephone numbers. Prior to the introduction of Caller-ID and other CLASS services in California, extensive and well-attended hearings were held throughout the state to obtain public input with respect to issues such as Caller-ID blocking options. Based on this public input and on formal evidentiary hearings, the CPUC required Pacific to provide complete line blocking as the default blocking option to customers.

The CPUC was subsequently preempted by the FCC in this matter and per-call blocking was instituted as the default. Before the change became effective, the CPUC launched a comprehensive customer education campaign to ensure that Californians were aware that the default blocking option would change and that they were fully informed of their Caller-ID blocking options. This campaign was funded by over $20 million of ratepayer money. A large percentage of customers opted for complete line blocking.

In December, 1997 and January, 1998, TURN was contacted by customer service representatives employed by Pacific who expressed concern that the company was requiring its service representatives to engage in deceptive and misleading marketing of Caller-ID service and to convince customers to switch from complete blocking to per-call blocking as a means of increasing the revenue from Caller-ID. On January 30, 1998, TURN wrote a letter addressed to all CPUC commissioners asking that they investigate whether Pacific was providing misleading and deceptive information to its customers.

Subsequently, Pacific's employees informed TURN and other California consumer representatives that the company had embarked on a hard-sell campaign in which managers' salaries would be reduced if sales quotas were not met and customer service reps were given prizes for meeting or exceeding sales targets (a practice that in the late 1980s led to deceptive marketing by Pacific and a subsequent $50 million fine levied by the CPUC). TURN was contacted by service representatives who are members of two different unions -- the Communications Workers of America and the Telecommunications International Union. Members of both unions stated that they believed the new, aggressive sales tactics instituted by SBC were detrimental to customers in several respects:

1) customers calling to resolve issues or questions regarding provision of their service first have to negotiate a detailed sales pitch;

2) customers are being sold services that they did not want or need;

3) when a customer calls the company to discontinue a service, the job of the service representative is to convince the customer to retain the service and purchase other services;

4) customer service reps are being trained to add services, not delete them, making it more difficult for customers to cancel services that they do not want.

There are now four complaints and one petition concerning Pacific's marketing tactics pending at the CPUC and these have been consolidated[4]:

•C.98-04-004 (UCAN)

On April 6, 1998, the Utility Consumers Action Network (UCAN) filed a complaint alleging that Pacific Bell was operating in violation of three subject matter categories of statutes and Commission's orders. UCAN specifically alleged that Pacific was (1) unlawfully marketing and providing consumer education regarding Caller ID, (2) deceptively marketing packaged services known as "The Basics" and the "Basics Plus," and (3) employing sales programs and practices which operated to the detriment of customer service and quality customer information.

•C.98-06-027 (UCAN)

UCAN filed a second complaint on June 8, 1998, in which it alleged that Pacific's marketing and customer education of its Caller ID program violated the Federal Communications Commission Order 95-187, P.U. Code §§2896(a) and

[4] Before the Public Utilities Commission of the State of California, The Utility Consumers' Action Network vs. Pacific Bell, Case 98-04-004; The Greenlining Institute and Latino Issues Forum vs. Pacific Bell, Case. 98-06-003; The Utility Consumers' Action Network vs. Pacific Bell, Case 98-06-027; The Telecommunications International Union, California Local 103, International Federation of Professional, and Technical Engineers, AFL-CIO (TIU) on behalf of itself and on behalf of TIU members, as consumers of Pacific Bell services and employees responsible for customer service vs. Pacific Bell, Pacific Telesis, Southwestern Bell Communications, Case 98-06-049; Investigation on the Commission's Own Motion in to the Establishment of a Forum to Consider Rates, Rules, Practices, and Policies of Pacific Bell and GTE-California, Inc., I.90-02-047, Administrative Law Judge's Ruling, June 30, 1998.

2893, Pacific Bell Tariff 5.4.10(C) Regulations - 19 Blocking Options for Caller ID and CPUC Decisions 96-11-062 and 92-06-065.

•C.98-06-003 (The Greenlining Institute and Latino Issues Forum)

On June 1, 1998, the Greenlining Institute and the Latino Issues Forum filed a complaint alleging that Pacific had instructed its service representatives to use deceptive names for packages of expensive optional services; to pressure customers into removing Complete Caller ID blocking and to withhold information critical for consumers to make informed purchasing choices.

C.98-06-049 (Telecommunications International Union)

On June 24, 1998, the Telecommunications International Union filed a complaint alleging that Pacific had unlawfully marketed and fraudulently misrepresented Caller ID service, had deceptively sold and marketed packaged services known as "The Basics" and "The Basics Plus," and had employed deceptive and unfair marketing practices which emphasized sales over service to the detriment of customer service.

Office of Ratepayer Advocates Petition

On June 4, 1998, the Commission's ORA filed a petition in Docket I.90.02-047, the "Forum OII" proceeding, entitled: "Petition of Office of Ratepayer Advocates for an Order that Pacific Bell Immediately Cease All Improper Practices at Its Residential Order Centers and for Other Appropriate Relief." Attached to the petition was a report prepared by ORA which stated the evidence it had gathered during its investigation. The petition alleged that Pacific was using improper and illegal procedures relating to customer privacy, Caller ID, packages of custom calling features, and the Universal Lifeline Service program.

• Proposal to Engage in Direct Telemarketing to Pacific Customers with Unlisted Telephone Numbers

On April 7, 1998, Pacific filed Advice Letter No. 19361, proposing to remove the provision in its tariff precluding the company from contacting nonpublished residential customers for unsolicited sales efforts. this proposal was protested by TURN, ORA and UCAN on the grounds that it would violate customer privacy and was anti-competitive. In a letter to the CPUC dated May 5, 1998, Pacific argued that the objections to its proposal were wholly without merit. On May 6, a California state senator pledged to introduce legislation blocking the company's proposal. On May 6, Pacific withdrew the proposal.

Conclusion

To date, Pacific Bell customers have not benefited in any readily apparent way from from the performance of Pacific following its acquisition by SBC. The volume of calls to the CPUC concerning service quality problems has risen, the company has violated a CPUC order to improve its service quality, the company has proposed significant rate increases for essential services, public offices have been closed, the company has proposed feed be charged to customers paying bills in person, and the company's marketing tactics have raised substantial concerns on the part of consumer advocates and CPUC staff.

Jolynn Barry Butler, Commissioner

of the Public Utilities Commission of Ohio
180 E. Broad St.
Columbus, Ohio 43215-3793

Term Ends: April 10, 1999

Commissioner Butler is an attorney, a former state legislator, and is currently serving her second term as a member of the Public Utilities Commission of Ohio. Jolynn was appointed to a five year term on the Commission in April of 1989 and served as Chair of the Commission from 1989 until 1991. She was reappointed to her second five year term by Governor Voinovich in April of 1994.

She is President of the National Association of Regulatory Utility Commissioners and is a member of the NARUC Committee on Communications. She also serves as a member of New Mexico State University's Public Utilities Advisory Council. Commissioner Butler is a past Chair of Women Executives in State Government, a national bipartisan organization of statewide women office holders and cabinet members.

Ms. Butler previously served four consecutive terms in the Ohio House of Representatives, representing a multi-county rural district in southeastern Ohio. She chaired the House Ethics Committee and also served on the Judiciary and Finance Committees.

Ms. Butler received the Phillips Medal of Public Service from the Ohio University College of Osteopathic Medicine in 1989. She was honored as Legislator of the Year in 1986 by the Ohio Association of Community Mental Health Boards. Ms. Butler is a founding member of the Advisory Council to the Institute of Local Government Administration and Rural Development at Ohio University.

Prior to her appointment to the PUCO, Ms. Butler was a partner in the law firm of Cowles & Boster in Gallipolis, Ohio. Ms. Butler also taught Ohio Politics and Government at Ohio University.

Commissioner Butler earned her bachelor of science from The Ohio State University in 1973 and her juris doctorate, cum laude, from The OSU College of Law in 1976. She is past president of the College of Law Alumni Association and has served as vice-chair of the National Alumni Advisory Council.

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Please send email to Jeff.McNaughton@puc.state.oh.us
updated 6-23-97

NEW YORK STATE
CONSUMER PROTECTION BOARD
George E. Pataki, Governor

Timothy S. Carey
Chairman and Executive Director
(Biography)

Timothy S. Carey serves as Governor George E. Pataki's Chairman and Executive Director of the New York State Consumer Protection Board. Tim has over twenty-five years experience at the local, county, state and federal levels of government. For the past decade, he has been actively involved in campaigns to bring quality government to the people of New York State.

Mr. Carey has a long history of involvement in public and governmental service. Since beginning his career as a volunteer, he has developed a working relationship with elected public officials across the State of New York, Washington, D.C., and most of the other 49 States.

Mr. Carey was elected and served as a Westchester County Legislator, representing the City of Peekskill and the Town of Cortlandt for five consecutive terms, from 1984 to December 1994. Prior to heading the State Consumer Protection Board, Mr. Carey served as the Executive Director of Intergovernmental Relations for Governor Pataki.

As a County Legislator, he served as Chairman of the Board's Committee on Community Affairs and Housing and the Task Force on the Board of Elections and also as a member of the Public Works Committee. He was a member of the County's Criminal Justice Advisory Board.

On April 15, 1992, Mr. Carey was appointed by the then Secretary of Agriculture, Edward Madigan, to serve on the 11-Member Welfare Simplification and Coordination Committee which reported its extensive findings to Congress in 1993.

Mr. Carey also serves as a member of the Board of Trustees of the Westchester Community College and as a member of the New York State Real Estate Board.

Born in Ossining, New York, on January 16, 1947, Mr. Carey is a lifelong resident of Westchester County and attended Ossining parochial and public schools. In July 1966, he entered the United States Army and served as a Military Policeman until his discharge in July 1968. After his military duty, Mr. Carey entered Westchester Community College and earned an Associate of Arts degree in 1971. In 1974, he received his Bachelor of Arts degree from Albany State University.

Tim and his family are also the subject of a new book by Samuel Freedman entitled, "The Inheritance"— How three families and America moved from Roosevelt to Reagan and beyond. The book traces the lives of three families and how their political transformation mirrors changes in America's political landscape over the last 60 years.

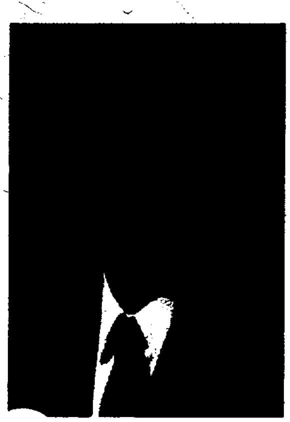
He resides in the Town of Cortlandt with his wife Alida. They have four children, Dawn, Thomas, Sean and Brian and two grandchildren.

NEW YORK STATE
CONSUMER PROTECTION BOARD

Testimony
To

Federal Communications Commission
En Banc Regarding Telecom Mergers

9:30 AM - 12 Noon - Monday, December 14, 1998
Commission Meeting Room
1919 M Street, N.W.
Washington, DC



eorge E. Pataki
Governor

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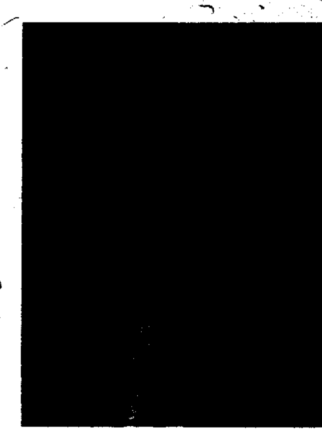

Timothy S. Carey Chairman
and
Executive Director

TESTIMONY OF
TIMOTHY S. CAREY, CHAIRMAN AND EXECUTIVE DIRECTOR
NEW YORK STATE CONSUMER PROTECTION BOARD
TO THE FEDERAL COMMUNICATIONS COMMISSION

Good morning Mr. Chairman, Commissioners and distinguished colleagues. Thank you for the opportunity to discuss the impact of proposed mergers involving the Regional Bell Operating Companies on the goals and objectives of the Telecommunications Act of 1996. I am Chairman and Executive Director of the New York State Consumer Protection Board, an agency in the Executive Department of New York State Government, and I am charged with representing the interests of New Yorkers.

Our belief is that mergers are not necessarily consistent or inconsistent with competition in telecommunications markets or the public interest. All mergers are not created equal and each potential merger must be analyzed thoroughly by considering the facts and circumstances of each proposal, not only at the federal level, but also by state regulators.

In general, consumer advocates are skeptical of mergers, since tangible consumer benefits are not always easily identified. Merger proponents must demonstrate how they will bring more competition to telecommunications markets and how the public interest and average Americans will benefit. Regulators must ensure that the advertised benefits from the mergers are in fact realized in the marketplace.

I'd like to share with you the experiences we've had in New York with the recent merger between NYNEX and Bell Atlantic, because it is a good example of how consumers have been well served by a merger when regulators provide appropriate oversight. Shortly after NYNEX and Bell Atlantic announced their proposed merger in the Spring of 1996, under the direction of Governor Pataki, former Chairman of the State Public Service Commission John O'Mara stated that the PSC would not approve the merger unless the quality of New York Telephone's local service improved substantially. Over the past year, the Company's service quality improved dramatically. To ensure that the Company's service quality did not deteriorate after the merger was approved, the Company was required to hire at least 750 additional employees to address service quality and to invest an additional $1 billion in service-related infrastructure.

The Company's service quality standards were also made more rigorous.

New Yorkers also obtained other benefits from the NYNEX/Bell Atlantic merger:

* The cost savings from that merger are essentially funding the costs of opening local markets to competition, such as the substantial costs of developing Operations Support Systems (OSS);

* Local rates in New York have not increased to fund those costs;

* Those cost savings have also partially funded a reduction in New York's intrastate carrier access charges; and

* The NYNEX/Bell Atlantic merger benefited New York's economy, since the merging companies established their headquarters in New York City and committed to maintain all existing work functions in the state.

Overall, more than one year after that merger was ultimately approved subject to conditions, there is no doubt that the average New Yorker is better off than had the merger not occurred, because the New York PSC ensured that Bell Atlantic satisfied each of those conditions.

If local markets are to be opened and competition expanded, the FCC must ensure that conditions imposed on mergers are implemented in a timely fashion. Unfortunately in the Bell Atlantic/NYNEX merger, some of the conditions imposed by this Commission, particularly the requirement for uniform OSS interfaces, have yet to be satisfied.

Meanwhile, New York State is continuing the hard work to fully open Bell Atlantic's markets to competition. Tests by an independent auditor of the ability of the Company's OSS to handle commercial volumes are now beginning. Under the guidance of the New York PSC, substantial progress has been made, although more work needs to be done. Based on progress to date, I fully expect New York to be among the first states in which you will find that an RBOC's market is fully and irreversibly open to competition, probably before you rule on the proposed Bell Atlantic/GTE merger. Accordingly, while the merger could eliminate one would-be potential competitor to Bell Atlantic in New York, GTE is not well known in New York and has no particular advantages over the literally dozens of companies that are already serving customers in New York. Since New York's local market is expected to be open to competition in the near future, the merger would not materially harm local competition in New York.

Overall, we're looking for verifiable and enforceable conditions to be imposed on these mergers at the state and federal levels. At the state level, we're looking for similar conditions as we obtained in the previous merger involving Bell Atlantic. At the federal level, we recommend that:

1. Bell Atlantic be required to satisfy the conditions imposed by the FCC on its previous merger, and those conditions should be extended to GTE's territory as well;
2. The proponents demonstrate that the mergers will enhance local telephone competition; and
3. The proponents demonstrate that the public interest will be better served by the merger.

Overall, if consumer benefits cannot be shown, the merger should be rejected. Just as with past mergers, the federal determination should not impede the ability of states to conduct their own review and impose their own conditions.

Thank you for the opportunity to address the FCC on this important issue, and also for moving expeditiously in reviewing the proposed merger. To the extent that there are benefits from the proposed merger in terms of reduced prices, more competition in certain markets, innovative new services, etc., the public interest is served if those benefits are realized sooner, rather than later. For the benefit of the Commission, we've attached our comments to our State Public Service Commission regarding the Bell Atlantic/NYNEX merger and the Bell Atlantic/GTE Merger.

Thank you again, and I look forward to your questions.

MARTHA S. HOGERTY

Office of the Public Counsel
Jefferson City, Missouri

Martha Hogerty has been Missouri Public Counsel since 1989. In that capacity she represents consumers of public utility services before the Missouri Public Service Commission and the Courts. Prior to being appointed Public Counsel, Ms. Hogerty served as the Deputy Chief Hearing Examiner of the Missouri Public Service Commission.

Ms. Hogerty has actively participated in State and National forums addressing public utility policy issues. She has testified before the Senate Commerce Science and Transportation Committee and served on the Energy and Transportation Task Force of the President's Council on Sustainable Development. She is the Past-President and current Executive Committee member of the National Association of State Utility Consumer Advocates (NASUCA) She is currently serving as the Chair of NASUCA's Telecommunications Committee. She was appointed by Governor Mel Carnahan to the Commission on Informational Technology. She serves on the Missouri Public Service Commission's Distance Learning, Telemedicine, and Retail Electric Competition task forces. She also serves as a member of the Advisory Council for the Center for Public Utilities New Mexico State University.

As the "consumer advocate" representative currently serving on the Federal Communication Commission's Joint Board, she has been involved in establishing rules to preserve and advance universal service pursuant to the Telecommunications Act of 1996. Most recently, she has been selected to serve on the National Exchange Carrier Association's (NECA's) Board of Universal Service Administrative Company (USAC).

Ms. Hogerty received her J.D. Degree and her B.A. Degree cum laude in Philosophy from the University of Missouri-Kansas City.

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To Ellen Blackler	From Jackie Vargas
Co./Dept. FCC	Co. NASUCA
Phone #	Phone # 202 727-3908
Fax # 202 418-2825	Fax # -3911

FCC En Banc re: RBOC Mergers

December 14, 1998

Presented by Martha S. Hogerty, Missouri Public Counsel

INTRODUCTION

Good morning. I am Martha Hogerty, Public Counsel for the State of Missouri and its ratepayers' advocate. My office has filed comments jointly with 5 other state advocates in the SBC/Ameritech docket and 14 other consumer advocate organizations in the GTE/Bell Atlantic merger. I appreciate the opportunity to be here to present the residential and small business consumer's views on the proposed SBC/Ameritech and GTE/Bell Atlantic mergers.

The consumer community has significant concerns about the ominous trend toward consolidation of the major providers of monopoly local exchange service. We believe that these proposed mergers are a blatant attempt to retain monopoly control over the local exchange bottleneck – the loop. If SBC and Ameritech are permitted to combine, the new entity will control 57 million access lines or 35% of the total nationwide lines. If the GTE and Bell Atlantic merger is consummated, 63 million access lines or 39% of the total nationwide access lines will be under the control of that new ILEC. There is a high probability that the approval of these two mergers will lead to a national local exchange duopoly – a Bell East and a Bell West. The two entities will control 74% of the nation's access lines. Such a market structure will not further the aims of the national telecommunications policy to promote competition.

An indicator of how valuable the ILECs believe the local loop to be is the premium amounts contained in the merger agreements. Using December 3rd stock prices, each Ameritech and SBC access line will have to provide $154 more revenue in order for SBC to

recover the merger premium. Each Bell Atlantic and GTE access line will have to produce $47.50 more revenue in order for Bell Atlantic to recover its merger premium. These amounts are another cost that the companies will desire to recover and it is anticipated that the companies will attempt to pass along some of this cost to residential consumers.

Since the passage of the Telecommunications Act of 1996, incumbent local exchange providers or ILECs have been busier merging with each other than with opening their markets to local competition. This Commission has reviewed and approved three such mergers – SBC and Pacific Telesis, Bell Atlantic and NYNEX and most recently SBC and Southern New England Telephone (SNET). SBC is now before you with their third merger application in less than three years. Bell Atlantic is here with its second merger in a little over two years.

THE CURRENT STATUS OF LOCAL EXCHANGE MARKETS

The local exchange marketplace remains a monopoly for all but the largest telecommunications consumers. Only 1.5% of the total access lines nationwide have been provided to competitors under the resale methodology. Of the 36 million access lines on the SBC system, only 2.8% are claimed to have been lost to competitors. Of that 2.8% only 1% have been lost through facilities based competition. The balance have been "lost" to resellers. The numbers are similar for Ameritech. Out of nearly 21 million access lines, only 3.1% are claimed to have been lost to competitors. Of this number a dismal 0.46% have been lost as unbundled network elements. The balance is, of course, in the hands of resellers. Thus, in the combined service territory, only 0.81% of access lines have been lost on an unbundled network element basis.

The incumbent local telephone companies still control over 97% of the single most essential facility in the provision of local exchange services. By any standard, this qualifies as a monopoly. The prospects for competitive choice for the overwhelming majority of local exchange consumers – in particular residential consumers – remain as bleak as ever. It is our position that the proposed mergers as currently structured will not remedy or improve this situation.

COMPETITIVE CONCERNS RAISED BY PROPOSED MERGERS

The mega-ILECs that will be created if both of these mergers between monopoly providers are consummated may discourage competitive entry in the local market. New competitors' attempts to penetrate a century old monopoly market is difficult enough without having to contend with the enhanced market power of the new merged incumbent providers. Also, these mergers will result in the loss of potential competitors. SBC's and Bell Atlantic's strategy of buying their way into a market instead of entering as a competitor must be stopped. Eliminating major potential competitors such as Ameritech and GTE will not create the competitive environment envisioned by the Telecommunications Act.

THE MERGERS CLAIMED COMPETITIVE BENEFITS

SBC calls the competitive strategy contained in its merger the National-Local Strategy. Bell Atlantic does not have a catchy title for its competitive strategy but suggests that it will enter 21 out-of-region markets within 18 months of the consummation of the merger. Neither strategy should be given much weight when analyzing whether the mergers meet the public interest. It stretches credulity to think that these companies could not have launched such competitive efforts with their current corporation configuration. Indeed, a representative of Salomon Brothers has told FCC staff that SBC could afford to enter 30 or more out-of-region markets on its own. But remember that these mergers are about monopoly retention and maintaining double-digit earnings. This same representative went on to explain that by merging with Ameritech, SBC can substantially increase the revenue base over which to spread the costs of the out-of-region initiative.

The companies claim that they must be national and global in scope in order to compete. The Commission should question the companies' rhetoric about that claim, especially when predictions are that "global provider" WorldCom will never attain more than a high single digit market share. Is this the level of competition from a "global provider" that worries these ILECs to such a degree that they are compelled to merge? These strategies are not driven by the needs of residential consumers. We are very skeptical that our clients will receive any real benefits from allowing these companies to become even larger.

It is far from clear when, if ever, residential customers will receive the competitive benefits from any out-of-region strategy. At best, it appears that residential customers would only benefit indirectly from a "trickle-down" theory of competition. The companies' commitment to residential service seems contingent on:

1. approval of the merger;
2. Section 271 relief; and
3. the merged company's ability to garner market share from large businesses.

SBC acknowledges that serving residential consumers will be "largely incremental." Residential consumers have been shut out of the competitive environment long enough. It is imperative that all customer classes are given due consideration in determining whether these mergers meet the public interest.

CONCLUSION

We ask that this Commission take a deliberate approach in its review and consideration of the mergers before it. Once made, the decision to allow the mergers is irreversible. The Commission should recognize that conditions attached to merger approvals have proven to be difficult to enforce and have not improved the competitive environments for residential customers. On balance, the negative impacts of these mergers far outweigh the speculative benefits alleged by the companies. We urge the Commission to give due consideration to the effect these mergers have on residential consumers. If these mergers are not satisfactorily resolved, the greatest harm will fall on these customers. Therefore, we ask that the Commission make these consumer interests paramount when it determines whether the mergers are in the public interest.

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Hispanic Association on Corporate Responsibility
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Richard José Bela is the President and CEO of the Hispanic Association on Corporate Responsibility (HACR) whose mission is inclusion of Hispanics in Corporate America in the areas of employment, procurement, philanthropy and governance. HACR is a powerful coalition of the eleven most prominent national Hispanic organizations that make up its board of directors and thirty Fortune corporations that serve as its corporate members.

Bela began his career as a lawyer in Washington, D.C. as a member of President Lyndon B. Johnson's administration upon graduation from the University of Texas School of Law in 1967. He worked on President Johnson's "War on Poverty" whose goal was fostering community based economic development programs. After leaving the Johnson Administration in 1970, Bela practiced administrative law, established a successful private government-consulting firm in Washington, D.C. and assisted in the formation of the U.S. Department of Commerce's Minority Business Development Agency.

Bela returned to Texas in 1975 where he continued work in both his legal and consulting practices. In 1978, he formed a highly successful real estate development company that built over $50 million in commercial and multi-family projects in Austin and San Antonio, Texas. During this same period, he was also active in a variety of private ventures including an art-publishing firm, a title insurance company, and a venture capital and management consulting company. He also served as one of the organizers and a principal in a television station (KRRT) in Kerrville, Texas.

Mr. Bela returned to Washington, D.C. in January of 1992 when he assumed the position of President and CEO of the Hispanic Association on Corporate Responsibility. He led the restructuring of the organization, established programs such as the annual symposium on corporate responsibility, annual surveys on corporate Hispanic philanthropy and corporate governance and increased corporate membership to thirty Fortune corporations.

Mr. Bela serves on various national boards including the Alliance for Public Technology, is a member of the National Hispanic Leadership Agenda and Co-chair of the National Latino Telecommunications Task Force. He is a member of the Consumer Advisory Board for Bell Atlantic and Co-Chair of the Consumer Advisory Board for Pacific Bell. He is also Chairman Emeritus of the Board and one of the founders of the national Hispanic Heritage Awards (HHA). HHA presents what has become the premier event of Hispanic Heritage month, which is held annually at the Kennedy Center and broadcast nationally on NBC. He is a former board member of the Mexican American Legal Defense and Education Fund and a recipient of the 1997 Hispanic Achievement Award for Corporate Leadership and the 1995 HAPCO Award. In 1997 Mr. Bela was recognized as number twelve among the "25 Most Powerful Hispanics in Washington D.C." by *Hispanic* magazine's annual survey, and as one of America's Hispanic Business "influentials" by Norwest Bank.

He has extensive experience and expertise in Latin American relations, particularly in Mexico and Latin America where he has been involved in community development and is an alumnus of the Fundación Solidaridad Mexicano-Americano 1993 scholarship program. He also served as an official U.S. election observer in the 1991 national elections of El Salvador.

Mr. Bela received a bachelor's degree in Latin American Studies from the University of Texas at El Paso and a law degree from the University of Texas School of Law at Austin. He is a member in good standing of the Texas and Washington, D.C. Bar Associations.

December 1998

William E. Kovacic

William E. Kovacic is the George Mason University Foundation Professor of Law at the George Mason University School of Law in Arlington, Virginia. For the 1998-1999 Academic Year, Professor Kovacic will be a Visiting Professor at The George Washington University Law School in Washington, D.C. Professor Kovacic has taught Antitrust, Contracts, Economic Law Reform in Transition Economies, Government Contracts, Property, Quantitative Methods for Lawyers, and Unfair Trade Practices. Professor Kovacic also is an Associate Faculty Member with the Rutgers University Center for Research in Regulated Industries and is Of Counsel to Bryan Cave in Washington, D.C., where he practices with the firm's antitrust and government contracts groups.

Professor Kovacic received an A.B. degree from Princeton University in 1974 and a J.D. degree from Columbia University in 1978. Before joining George Mason in 1986, he spent three years as an associate with Bryan Cave. He also spent four years with the Federal Trade Commission, first with the Bureau of Competition's Planning Office and later as an attorney-advisor to Commissioner George W. Douglas. Professor Kovacic is a former law clerk to the Honorable Roszel C. Thomsen, United States District Judge for the District of Maryland. Before completing law school, he also served for one year on the majority staff of the Subcommittee on Antitrust and Monopoly of the U.S. Senate Committee on the Judiciary.

Professor Kovacic is a member of the American Bar Association, where he is vice-chair of the Law Educators Committee of the Section of Public Contract Law and a Contributing Editor to the **Antitrust Law Journal** of the Section of Antitrust Law. He is the Immediate Past Chair of the Antitrust and Economic Regulation Committee of the Association of American Law Schools. He is co-editor (with Richard Zerbe) of **Research in Law and Economics** and is a member of the Editorial Board of the **Journal of Regulatory Economics**. With John Whelan and James Nagle, he is preparing a new edition of Professor Whelan's casebook, **Federal Government Contracts**. He also is the co-author of the Fourth Edition of Ernest Gellhorn's **Antitrust Law and Economics in a Nutshell** (West Publishing: 1994). Since 1992 Professor Kovacic has served as an advisor on antitrust and consumer protection issues to the governments of Egypt, El Salvador, Georgia, Mongolia, Morocco, Nepal, Panama, Russia, Ukraine, Vietnam, and Zimbabwe.

[The Washington Post]

LOOK

Commentary | C

Editorials
Columnists
Close to Home

SUNDAY, DECEMBER 6, 1998 R

The Big, The Bad and The Merged

By WILLIAM E. KOVACIC

Finley Peter Dunne was neither an economist nor a lawyer, but his work as a humorist in the early 1900s grasped Americans' enduring ambivalence toward corporate gigantism.

In one story, Dunne's fictional Mr. Dooley tried to capture the ideas of President Theodore Roosevelt, who began the government antitrust case that broke up Standard Oil in 1911: *'Th' trusts', says he, 'are heejoous monsthers built up be th' inlightened intherprise iv th' men that have done so much to advance progress in our beloved counthry. . . . 'On wan hand I wud stamp thim undher fut; on th' other hand not so fast.'*

For over a century, the United States has relied mainly on antitrust law to reconcile the conflicting impulses of admiration and apprehension toward massive business enterprises. To the Department of Justice and the Federal Trade Commission (FTC) fall the chief burdens of securing the benefits of consolidation while sustaining the power of rivalry.

Recent events put vast demands on the antitrust system's capacity. Between them, the Department of Justice and the FTC have launched high-stakes lawsuits against Intel, Microsoft, Mastercard and Visa—cases that will shape the rules of competition for decades to come. Each week adds to the torrent of multi-

See ANTITRUST, *C5, Col. 1*

William Kovacic is a visiting professor at the George Washington University Law School.

Crime but

Does It Actually Work?

ANTITRUST, From C1

billion-dollar alliances and mergers, a roster that now includes AOL/Netscape/Sun Microsystems, Exxon/Mobil, SBC/Ameritech and Travelers Group/Citicorp.

To some extent, the challenge is familiar. The latest spate of consolidation repeats a pattern that occurred after the Civil War and prompted the Sherman Antitrust Act in 1890. The transportation and communications revolution in the United States in the late 19th century linked insular geographic areas into unified economic markets and helped low-cost producers capture sales in regions once dominated by small local suppliers.

Recent mergers continue this process on a global scale. Advances in information services and transportation have combined with trade liberalization and the demise of central planning to integrate nations and continents into larger economic markets. These developments press firms to build worldwide networks and cut costs by achieving greater economies of scale. The increasingly global nature of many markets makes it unremarkable that we would see the emergence of still-larger companies to serve them.

Structural upheavals in the economic order often raise questions about the antitrust system's efficacy as a safeguard for consumer interests. Even at the turn of the century, many observers called antitrust a hopeless anachronism. In a formative book in 1914, Walter Lippmann damned antitrust laws for "breaking up the beginning of a collective organization, thwarting the possibility of cooperation, and insisting upon submitting industry to the wasteful . . . scramble of little profiteers."

Lippmann's acid comments echoed the views of Standard Oil in resisting the government's famous monopolization case. John G. Johnson, Standard's attorney, told the Supreme Court that dissolving Standard and other trusts would raise prices, turn hundreds of thousands out of work and destroy the country's foreign trade. Entrepreneurs, Johnson warned, would perceive a breakup as a grim reward for industrial genius.

These historical critiques echo in today's debates about competition policy. Microsoft insists that antitrust law gazes into the rear-view mirror and ignores the rush of new firms, new technologies and other market-transforming phenomenons. By the time the typical lawsuit ends, the target firm's monopoly often has been eroded.

Another variant is that antitrust intervention too often shoots at and misses elusive business targets. The Justice Department's 1995 settlement with Microsoft, which sought to bar the company from forcing consumers to purchase Microsoft's Internet browser as a condition of acquiring its Windows operating system, is a prime example. Others point to consent agreements in merger cases that seem to extract minor concessions from firms as a condition of completing massive deals.

In important respects, however, these critiques are too gloomy. In today's antitrust system, intervention probably contributes more to the dynamism of the market and increases its capacity to erode monopoly positions than its critics suggest.

The current Microsoft case provides an illustration. The recently announced merger and alliance involving AOL, Netscape and Sun likely poses a formidable competitive threat to Microsoft. But the government's lawsuit may have influenced the timing and nature of the transaction. The filing of the antitrust case created a buffer between Microsoft and its adversaries by causing Microsoft to pull its punches lest the firm provide more evidentiary fodder for the prosecution. The collaboration among AOL, Netscape and Sun exploits a window of opportunity that will extend through the trial and appellate process—a period of perhaps 18 to 24 months. This could be just long enough for the firms to integrate their operations.

Government enforcement agencies also have not ignored concerns about the speed of the antitrust process. From the late 1960s through the early 1980s, the Justice Department and the FTC unsuccessfully prosecuted monopolization lawsuits against IBM and the nation's largest petroleum refiners. The Justice Department's IBM case ran from 1969 until 1982, when it was dismissed. The FTC's petroleum industry case ran from

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Today's Lesson: You Can't Always

CONFERENCES, From C1

derstand why a good student has suddenly bombed. But I always brace myself for the two or three parents who will put heat on me, usually to raise a grade: "You're ruining her self-esteem," they'll say. "She won't get into the University of Virginia with your C." Or, "But you know how smart he is. Give him a break. . . ."

A few parents have absolutely no qualms about going further. Last year, one mother even asked administrators to regrade the essays her daughter wrote for me. (They refused.) And these exchanges, confrontational as they sometimes become, give me a sense of what

kids get lost in the fray.

I'm not suggesting that parents should never be involved in their kids' schooling. Even in high school, parents need to watch over students; and we teachers need all the assistance we can get to understand those 120 or so individuals who pass through our classes every day. What's clear to me whenever I meet parents, though, is how much is at stake for them—and how that plays out in their dealings with individual teachers and with the school. That tension is right there on the table on conference day. There's no getting away from it.

Often enough, I'm just plain inspired by the families. One father who works two jobs as a chef took time out last month to visit all his son's teachers. His broken Eng-

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BY CHRISTOPHE VORLET FOR THE WASHINGTON POST

The globalization of merger activity and the deregulation of sectors such as electric power and telecommunications are highlighting a new problem with the antitrust system. As global markets have become more integrated, the process of conducting antitrust reviews of individual transactions has become more fragmented.

In the United States, the decision to challenge mergers on antitrust grounds is highly decentralized. For SBC's proposed acquisition of Ameritech or GTE's acquisition of Bell Atlantic, the merging parties will need to withstand scrutiny by federal agencies as well as the public service commission and attorneys general of every state in which they do business. In many instances, the traditional public utility regulators (such as the Federal Communications Commission) substantially duplicate the work done by the Justice Department. Such a mechanism greatly increases the costs and does not improve the competition policy analysis of mergers.

1973 until its dismissal in 1981.

The government agencies involved have learned from these experiences. The Justice Department's Microsoft case reflects an effort to focus on a comparatively narrow collection of alleged infractions. By this approach, the Justice Department has speeded the case and shown that monopolization cases do not necessarily have to drag on for years and invariably die.

Only by conducting experiments and taking some chances—sometimes enforcing aggressively, sometimes declining to intervene, sometimes intervening with a light hand—can the antitrust system move toward a correct mix of policies. The only way to make such judgments is to evaluate the effects of past enforcement experience carefully. But the Justice Department and the FTC seldom undertake systematic studies of past enforcement decisions and even more rarely make the results of such inquiries available to the public. After-the-fact diagnoses are indispensable if we are to reach more reliable conclusions about whether we have the antitrust dosage right.

The situation is more complex in the international arena. At the end of World War II, only the United States had a functioning antitrust system. Today more than 70 countries have antitrust laws, with another 30 likely to add laws in the next decade or so. Exxon's purchase of Mobil will be scrutinized by mature market economies with mature antitrust systems, such as the United States and European Union, and emerging market economies that have adopted antitrust mechanisms as part of the process of market liberalization.

Companies with international operations increasingly face the prospect of review by dozens of national and regional antitrust authorities, each with the ability to substantially alter or even block a transaction. The sensibility of antitrust oversight in the future depends on simplifying the institutional means by which individual nations and international bodies review the competitive effects of mergers and other forms of business transactions.

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ing in a second language.

This year, I also heard from a few parents who volunteered information about how drugs or learning disabilities have affected their kids; several asked advice about colleges. One mom even thanked me for giving her child a D, saying, "The kid's got to wake up." And I well remember a mother who once called me to say that her son—a 6-foot-4-inch bruiser who had been sitting in class looking as if he wanted to kill me—was actually terrified because the girls I was teaching seemed to understand the poems we were studying so much more easily than he could. I needed that feedback!

Feedback is one thing. Intervening is another—and it leaves me with far more mixed feelings. There are times

the kid selling drugs that seems to bother them, but the fact the neighbors will know he's being punished. At disciplinary hearings, our administrators have to sit through incredible venom and abuse from parents. There's no sense of a greater community that we are all part of . . . It's just every parent for his own kid."

What's more, as one Alexandria administrator told me, "There's politics around every corner. We'll make decisions at the school, but if a certain group of parents don't like them, all of a sudden there's a barrage of letters and phone calls and a decision floats down from above contrary to everything that was worked out at the school level."

Today a school principal has to be more "the principal