Section 3: Maintenance & Repair

CTRR: Failure Rate/Trouble Report Rate

Definition
The percentage of initial and repeated circuit-specific trouble reports completed per 100 in-service circuits for the reporting period.

Exclusions
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports/circuits associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this report. The trouble report rate is computed by dividing the number of completed trouble reports handled during the reporting period by the total number of in-service circuits for the same period.

Calculation
Percent Trouble Report Rate = (a / b) X 100
- a = Number of completed circuit-specific trouble reports received during the reporting period
- b = Total number of in-service circuits during the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
    - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

MAD: Average Repair Interval/Mean Time to Restore

Definition
The Average Repair Interval/Mean Time to Restore is the average time between the receipt of a customer trouble report and the time the service is restored. The average outage duration is only calculated for completed circuit-specific trouble reports.

Exclusions
- Trouble reports issued and subsequently cancelled
- Employee initiated trouble reports
- Trouble reports associated with internal or administrative activities
- Customer Provided Equipment (CPE) or customer caused troubles
- Troubles closed by the technician to disposition codes of IEC (Inter-exchange Carrier) or INF (Information)
- Tie Circuits
- No Trouble Found (NTF) and Test OK (TOK)
- Other exclusions as defined by each RBOC to reflect system and operational differences

Business Rules
Only customer direct trouble reports that require the RBOC to repair a portion of the RBOC network will be counted in this measure. The average outage duration is calculated for each restored circuit with a trouble report. The start time begins with the receipt of the trouble report and ends when the service is restored. This is reported in a manner such that customer hold time or delay maintenance time resulting from verifiable situations of no access to the end user premise, other CLEC/IXC or RBOC retail customer caused delays, such as holding the ticket open for monitoring, is deducted from the total resolution interval ("stop clock" basis).

Calculation
Repair Interval = (a – b)
- a = Date and time trouble report was restored
- b = Date and time trouble report was received

Average Repair Interval = (c / d)
- c = Total of all repair intervals (in hours/days) for the reporting period
- d = Total number of trouble reports closed during the reporting period

Report Structure
- Non-Affiliates Aggregate
- RBOC Affiliates Aggregate
  - RBOC 272 Affiliates Aggregate

Geographic Scope
- State

SQM Disaggregation
- Special Access – DS0
- Special Access – DS1
- Special Access – DS3 and above

GLOSSARY

Access Service Request (ASR)	A request to the RBOC to order new access service, or request a change to existing service, which provides access to the local exchange company's network under terms specified in the local exchange company's special or switched access tariffs.
RBOC 272 Affiliates Aggregate	RBOC Affiliate(s) authorized to provide long distance service as a result of the Section 271 approval process.
RBOC Affiliates Aggregate	RBOC Telecommunications and all RBOC Affiliates (including the 272 Affiliate). Post sunset, comparable line of business (e.g., 272 line of business) will be included in this category.
Business Days	Monday thru Friday (8AM to 5PM) excluding holidays
CPE	Customer Provided or Premises Equipment
Customer Not Ready (CNR)	A verifiable situation beyond the normal control of the RBOC that prevents the RBOC from completing an order, including the following: CLEC or IXC is not ready to receive service; end user is not ready to receive service; connecting company or CPE supplier is not ready.
Firm Order Confirmation (FOC)	The notice returned from the RBOC, in response to an Access Service Request from a CLEC, IXC or affiliate, that confirms receipt of the request and creation of a service order with an assigned due date.
Unsolicited FOC	An Unsolicited FOC is a supplemental FOC issued by the RBOC to change the due date or for other reasons, e.g., request for a second copy from the CLEC/IXC, although no change to the ASR was requested by the CLEC or IXC.
Project or ICB	Service requests that exceed the line size and/or level of complexity that would allow the use of standard ordering and provisioning interval and processes. Service requests requiring special handling.
Repeat Trouble	Trouble that reoccurs on the same telephone number/circuit ID within 30 calendar days
Service Orders	Refers to all orders for new or additional lines/circuits. For change order types, additional lines/circuits consist of all C order types with "I" and "T" action coded line/circuit USOCs that represent new or additional lines/circuits, including conversions for RBOC to Carrier and Carrier to Carrier.

STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-65

Today, we vote to approve the mergers of SBC and AT&T as well as Verizon and MCI. These mergers will create national facilities-based providers of telecommunications services that will provide new and advanced services to both mass market and enterprise customers. As end-to-end providers of communications services, these companies will make significant investments in fiber-optic networks and use these networks to provide customers a broad array of voice, data, and video services.

I believe that the transactions we approve today are consistent with and will further many of the Commission's competition, broadband, and public safety priorities. For example, these mergers create strong global carriers that will vigorously compete both internationally and domestically. Further, the complement of the local and long distance network facilities will permit the merged entities to offer a more diverse array of services to a broader range of customers. It is my expectation that these mergers will only increase the incentive and ability of the merged entities to invest in broadband infrastructure and spread the deployment of advanced services to all Americans. Of particular importance to me, the mergers will further the goal of public safety by virtue of the commitments that have been made with regard to compliance with the Commission's November 28th deadline to deploy a 911 solution for VoIP customers.

I know that many have expressed questions about these mergers. For example, some are concerned that these transactions will adversely affect competing providers that rely on the merger applicants for wholesale inputs. Others have been concerned about the effect of these mergers on end users – particularly business end users that purchase special access services. I believe that the remedy imposed by the Department of Justice should adequately address any concerns in this regard. Moreover, I note that under the commitments made by the Applicants, UNE rates are effectively capped for two years and special access prices are essentially frozen for 30 months from the merger closing date.

Concerns have also been raised about the impact of this merger on the Internet backbone market. We have found this market, which has never been regulated, to be sufficiently competitive. It is the Commission's prediction that these mergers will in no way alter this dynamic. In any event, the Applicants have committed to publicly post their peering criteria and to continue settlements-free peering arrangements with the same number of providers post-merger as they did, in combination, pre-merger.

Let me say that I do not believe that all of the conditions imposed today are necessary. I believe that the affected markets would remain vibrantly competitive absent these conditions. Nevertheless, the parties involved have chosen to make these commitments now in order to obtain the certainty of immediate Commission approval for their mergers. I understand their desire to move forward, and agree that the public interest will be well served by providing certainty sooner rather than later.

The fiber optic networks of today that are capable of delivering over 100 mbps worth of capacity have come a long way from the microwave transmission technology that was first used to compete several decades ago. We are seeing both intermodal and intramodal providers aggressively competing for customers using a multitude of new technologies and platforms. The telecommunications industry is a constantly evolving one, and the consummation of these mergers represents the opening of a new chapter in communications history. I look forward to the promise of continued technological innovation.

Finally, I would like to thank my colleagues for their rigorous review of these transactions. I know that these mergers presented difficult issues for them to consider and I appreciate, as always, their professionalism and willingness to always do what it is in the public interest.

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-65

It has often been said that nothing is constant except for change. And we as telecommunications regulators need to be particularly mindful of this because change is the engine that drives progress. Unfortunately, today we focus too much on micromanaging the growth and pace of change, rather than how to harness it to benefit consumers.

During my time as a Commissioner, I have spoken at length about the enormous disruptions in the telecommunications marketplace being wrought by convergence and the great progress it has brought. We now have competition more vibrant than has ever been seen in the telecommunications industry, and this has dictated a significant shift in the business strategies of the companies in that industry. Technological advances that spurred competition now allow us to consider mergers that might have been unthinkable in the "natural monopoly" pre-convergence era. Dramatic changes in the technology, the economics, and the structure of the market have mooted prior concerns.

The principal question before us today is this: whether the particular convergence of SBC and AT&T, on the one hand, and Verizon and MCI, on the other, is compatible with the public interest and, more specifically, whether the two mergers further innovation and the growth of competition. While I am pleased that we are allowing the mergers to go forward, some of the conditions in the Orders reflect a failure to appreciate the degree to which the market has changed and how that constrains market behavior by the applicants.

As the applicants know only too well, today's market for telecommunications is vibrant and challenging and offers no guaranteed rate of return on investment. Perhaps most importantly, the economic foundations of the interexchange market have shifted dramatically as the Bell Operating Companies have won approval to offer in-region long-distance services. The local exchange market has also been transformed as the growing demands of business customers have emphasized the need for high-capacity networks with global reach. The market for data services and Internet access - - something barely on our radar screens 5 years ago - - has exploded as individuals and businesses alike consume more and more high-bandwidth content and require faster and faster broadband connections. And amidst all of this, the rise of high-capacity next-generation networks and fierce competition from wireless, cable-based, and VoIP providers has drastically undermined the rationale for extensive regulation.

These mergers must be viewed in the context of these changes, precisely because they are the natural outgrowth of these changes. As proposed, each of these transactions would marry a Bell Operating Company's extensive local residential facilities and broadband Internet access offerings with an established interexchange carrier's business service offerings, long-distance facilities, and Internet backbone assets. The combination of these capabilities expands the merged companies' scope and scale outside their own regions, improves operational efficiencies, enlarges the companies' range of offerings, and reduces prices for business and residential consumers alike. In short, these mergers are intended to give birth to strong, nimble competitors, able to meet the demands placed on twenty-first century providers by customers with widely disparate needs.

As approved, however, I fear that many of these potential gains will be delayed or compromised. In my judgment, the conditions included in the Orders before us require the merged companies to provide offerings that the market might not demand, to sacrifice synergies by needlessly treating their affiliates at arms' length, and to maintain business relationships based on current assumptions even if those assumptions cease to reflect economic reality. Moreover, the companies will have to abide by these conditions while their most aggressive competitors – whether they use wireline, wireless, cable, or other, next-generation facilities – remain exempt.

I have consistently opposed this kind of micromanaged regulatory oversight in situations where competitive forces discipline market behavior. In addition, it is difficult for me to understand how this approach is consistent with this Commission's support for regulatory parity and competitive neutrality. It is no answer to say that the applicants have agreed to accept these conditions, and therefore they must certainly be good, or at least not all that bad. That position fails to take into account that such conditions are the *quid pro quo* that merger applicants must accept in order to get timely approval.

I would perhaps be less concerned about this aspect of today's decisions if either (a) the Department of Justice had outlined problems arising from the larger competitive impacts of these mergers; or (b) these remedies were clearly needed to cure palpable existing problems. But neither is the case here. While I recognize that the Commission's merger review mandate implicates a broader standard of review than that of DOJ, it remains nevertheless true that DOJ's review was focused on the same issues we are asked to examine: competition in the various markets involved. And all the expert economists, lawyers, and other professionals reviewing these issues for DOJ found no significant cause for concern in most of the areas subject to the conditions.

I am not suggesting that DOJ's evaluation is, or should be, co-extensive with ours. But what I would suggest is that it effectively places on the Commission the burden of showing the existence of other problems so grave and immediate that conditioning the merger agreement is the only effective remedy. It should not be standard operating procedure to craft company-specific merger conditions to address unknown and hypothetical competitive threats. After all, the customary administrative weaponry in the Commission's arsenal – rulemaking, enforcement, and so on – does not suddenly evaporate once a merger is approved. We always have these tools and we can always use them when and if necessary.

The competition unleashed by the convergence of formerly separate lines of business places an additional premium on taking a more circumspect approach to conditioning mergers. Competition is a *process*, not a *product*. This new competitive market is still developing, and it needs to be given reasonable regulatory elbow-room to do so. Imposing *ad hoc* conditions that do not reflect the realities of today's market hamstrings this development rather than helps it and creates market distortions. Therefore, it is my view that we should resort to imposing such conditions only *first*, where the perceived harm is an obvious consequence of the merger, not merely a prediction about what might go wrong; and *second*, where other administrative remedies are inadequate to address this harm. That simply isn't the case in these mergers, with these conditions.

The applicants have looked at their business plans and determined that change is not only inevitable, but necessary, if they are to continue to respond to consumer demand for lower prices and better technology. I agree. They argue that the explosion of competition has rendered extensive conditions unnecessary. Again, I agree. These companies, their customers, and their competitors all understand that we no longer live in the monopoly world of years past and that our job as regulators is to keep pace with change, embrace competition and focus on consumer protection, not the protection of the status quo.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING

Re: SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-65 (Concurring)

The mergers before us are about more than the union of this country's largest telecommunications carriers. They are about consumers' phone bills, the availability of competitive broadband options and the future of the Internet. But in a sense, these mergers can also be seen as an epitaph for the competition that many of us thought we would enjoy as a result of the Telecommunications Act of 1996. That legislation, I am convinced, envisioned a vastly different communications landscape than the one we find ourselves living in today.

If you seek the reason why we haven't arrived at that happy valley of competition rife with consumer benefits, you can start with the misdirected policies of the FCC over the last several years. On too many fronts, the Commission put the spear to the pro-competitive policies of the Telecommunications Act of 1996. It put intra-modal competition for the residential market pretty much beyond reach for new entrant carriers and then proceeded to inhibit enterprise competition, too. We turned our eyes away when enforcement was needed to keep bottleneck facilities open. And all the while we kept singing confidently "Don't Worry, Be Happy"—*inter-modal* competition is going to save us with all its new options. Maybe, but then again maybe not—we're still waiting. I think we ought to be concerned. Thanks in part to our actions, the wireline market became increasingly the province of the few. More than half of the wireless market came under the control of incumbent wireline providers. New services like VoIP have been held back by the high cost of broadband in this country. And now the Internet backbone seems headed in the same direction of control by a favored few.

This state of affairs is not of my making or choosing. The record shows that I objected vociferously to many of these changes. I would have chosen a very different path than the one we travel today. But in the end, we are charged with considering these mergers in the context of the world that is, not the one that might have been.

In this environment, I believe my responsibility is to identify and fight for what we can preserve, so that American consumers can still enjoy some competition in telecom services; that business customers, too, can benefit from competitive rates and innovative service choices and lower prices; and that, when it comes to the Internet, we can all go where we want to go and do what we want to do with this dynamic tool that is so critical to our nation's future. These things are all clearly in the public interest.

The Order the Commission adopts today falls far short of ideal. Maybe a better way to put it on this Halloween Day is to say: It's not a trick or much of a treat, but it's all you get if you come knocking at the Commission's door today. Yet, clearly, this is better than approving these mergers without any conditions. There have been difficult discussions here in recent days, but they have been substantive, productive and fair. And while I wish I could have been more persuasive on a number of issues, we should keep in mind that this outcome is far from a rubber stamp approval of the item we received. I would not—could not—support an unconditioned approach. Would I have preferred to do more? Yes. Am I entirely satisfied? No. But this Order is now conditioned on provisions designed to address numerous possible harms to competition and to consumers, as well as to protect the openness and innovation that must always characterize the Internet.

- *Stand-Alone DSL:* We require the Applicants to make available stand-alone, or "naked" DSL. This means consumers can buy DSL without being forced to also purchase voice service. This is good news. If savvy consumers have cut the cord and use only a wireless phone, why should they have to pay for wireline voice service they don't even want? Looking forward, this condition is important for the development of VoIP. I also am pleased that the Commission has committed to enforce this condition and issue an annual report addressing anti-competitive conduct in this market. And I hope we will have the good sense to find it anti-competitive if the price for stand-alone DSL is not significantly less than the price for bundled voice and DSL.

- *Net Neutrality:* Two years ago I urged the Commission to ensure that its policies protect the openness that makes the Internet such a vibrant place. Two months ago, I pushed for this Commission to approve an Internet Policy Statement outlining the freedoms consumers have a right to expect in the digital age. Today, we make these principles enforceable. As a result, consumers will have an enforceable right to use their bandwidth as they see fit, going where they choose and running the applications they want on the Internet.

- *Internet Backbone:* The Internet's network of networks relies on providers handing traffic off to one another. This free exchange of traffic—known as peering—has been a hallmark of the Internet backbone. We require the Applicants to continue peering with as many providers as they do today. This will help prevent the network outages that come from de-peering. It will also help ensure that the free flow of traffic continues—and that new costs are not passed on to end-users.

- *Special Access:* We provide a measure of stability for businesses and carriers that use special access services—the high capacity facilities that so much of our communications rely on. We freeze rates and provide some protection against discriminatory practices. Let me note, however, that the Commission still has a long-standing and more comprehensive proceeding on special access to complete. It is vitally important that we do so without further delay.

- *UNEs:* To keep competition growing from competitive carriers, we require the Applicants to update the wire center test from the *Triennial Review Remand*. We also provide stability by capping UNE input rates for two years.

These conditions provide only a bare minimum. I can't say we made lemonade out of lemons, but we did the best we could. More would clearly have been better. Surely our statutory obligation to ensure that these mergers are in the public interest provides ample authority for the Commission to go further than it did. In addition to the areas I just discussed, a merger of this magnitude would seem to call for more significant divestiture of overlapping facilities and routes, going beyond the minimalist consent decrees that were announced last week by the Department of Justice. But in the good faith back and forth between my colleagues and me, these are the results we were able to achieve. Similarly, some will argue that several of the commitments outlined above are not in perpetuity and are not long enough. I agree. Commissioner Adelstein and I fought long and hard for lengthier commitments. But at least for the time periods enumerated, this becomes official policy. Once instituted, consumer expectations may compel their extension, and perhaps the Commission itself will come to see the wisdom of extending them. More to the point, Congress will have the opportunity to work its will as it revisits the telecommunications statute.

Going forward, our priority must be on vigilance, expert monitoring, and enforcement as needed. This new era of telecommunication is rife with all sorts of exciting opportunities for both consumers and entrepreneurs. But there are also new perils. No less a source than the *Wall Street Journal* pointed out less than two weeks ago that large carriers "are starting to make it harder for consumers to use the

Internet for phone calls or swapping video files." The more powerful and concentrated our facilities providers grow, the more they have the ability, and perhaps even the incentive, to close off Internet lanes and block IP byways. I'm not saying this is part of their business plans today; I am saying we create the power to inflict such harms only at great risk to consumers, innovation and our nation's competitive posture. Because, in practice, such stratagems can mean filtering technologies that restrict use of Internet-calling services or that make it difficult to watch videos or listen to music over the web. The conditions we adopt today speak directly to this issue—***before*** increased concentration of last mile facilities and the Internet backbone make it intractable. This is why stand-alone DSL, enforceable net neutrality principles, and peering in the Internet backbone are so vital.

I also am pleased that these conditions now express a measure of concern for the effects of these mergers on competitive wireline providers. Competitive carriers will benefit from the reforms we put in place for special access and UNEs. This will provide at least some latitude for competitive players trying to crack open an increasingly concentrated marketplace. We need active and engaged competitive carriers to keep rates low. This is especially important for small business customers.

In addition, this Order takes a cautious view of the impact of these mergers on rural America. We share a concern that the mergers not be allowed to jeopardize interconnection for small and rural providers. To this end, the Commission commits to monitoring the situation on an ongoing basis. This is important because the wrong policies here could actually put rural America at further disadvantage compared to the rest of the country. I, for one, will be vigilant in making sure this never happens.

Looking beyond the transaction before us, it is obvious that the whole telecommunications landscape continues to change dramatically. But despite all of the advances in technology and efficiency over the last decade, local phone rates have failed to decline. Household phone penetration is at the lowest rate in 17 years. Surely being 16th in the world in broadband penetration is nothing to crow to about. And, yes, we still have enormous digital gaps from the inner city to the rural village, and there is a real threat that current policies may widen rather than close those gaps. So there are already ample warning signs something is not right. And it is long past time for the Commission to pay heed.

It may be that we can address all these concerns in a big carrier environment. Conversely, it may be that we are tacking back in time toward an era when concentrated power dictated what limited services we could and could not have and we had no recourse but to accept what was offered. In any case, I am mindful that there are large and portentous questions here—and that their ultimate resolutions often range beyond the boundaries of FCC jurisdiction. The Commission—important as its work is—does not design the legal landscape for telecommunications. Congress is looking at these issues and will hopefully be updating our telecommunications statute in the months or year ahead—and there is no substitute for that kind of guidance. I also believe we need some real national dialogue on these issues regarding consumer rights, Internet openness, broadband deployment and many more. I think we will find the American people more than happy to engage such a discussion. They understand that how these issues are decided is important to them. The bottom line here is that these issues are vitally important to the future of our country. Telecommunications are going to be a major driver of our economy in this new century. We just have to get the legal and regulatory landscape right. If we get it wrong, American consumers will pay and so will American technology, innovation and entrepreneurship. No less than our global competitiveness in the new information age is at stake.

Above all, we must have some humility about what we do. There are honest disagreements over these issues and I don't believe that any one of us has it all figured out. So we have to be always open to new facts and always follow up on the real-world consequences of our actions. If rates go up for residential and business users as a result of our decision today, if our broadband penetration rates fall further in comparison with what other countries with different policies are experiencing, and if consumers find that their Internet freedom is being shackled by monopoly or duopoly control, then we have a clear and pressing duty to revisit what we have done. So we need to put as much or more effort and resources into monitoring the consequences of our actions as we do in bringing them forward for a vote. I have worked in this proceeding to protect against injurious consequences, as best I can under the circumstances, and while I would have liked more, I will concur in these Orders and pledge my close attention to their unfolding consequences.

We at this table are all indebted to the work of the Bureau and to the tireless dedication of our personal staffs as these items matured and particularly their often heroic efforts over the past week. For my part I want to extend my appreciation and admiration to Jessica Rosenworcel. Her tenacity and creativity through all of this have been an inspiration.

STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN, CONCURRING

Re: SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-65 (Concurring)

While I am deeply concerned about the concentration and loss of wireline competition that may occur as a result of these mergers, I concur in these Orders because they each include a minimum set of conditions that tip the balance, albeit narrowly, in favor of approval.

In these proceedings, we consider the mergers of the two largest incumbent telephone companies in the United States with the two largest long distance telephone companies. My job is to determine whether these proposed combinations will advance the public interest.

The Applicants have argued that these mergers will create two companies that are stronger competitors in the global marketplace and that will be better positioned to bring broadband and video services to American consumers. I support the Applicants' efforts to promote ubiquitous broadband and competitive video services and look forward to seeing their continued commitment to these goals.

At the same time, I am concerned about the potential harms of these mergers. AT&T and MCI are, without question, two of the leading providers of competitive choice across the country, and these combinations will, by any measure, create more concentration in markets that are already highly concentrated. We must be particularly careful where a proposed merger would lead to less competition rather than more, so I give these concerns great weight.

Based on my weighing of these potential benefits and harms, I could not support these mergers in the absence of reasonable conditions. Without conditions, there is a real possibility that these combinations would increase rates for both residential and business consumers and put at risk the continued existence of the open and robust Internet. So, my support here is based on the Applicants' offers to comply with a minimum set of conditions that will help promote consumer choice and the development competitive alternatives. Indeed, I would have preferred additional and more rigorous safeguards beyond those set forth in these Orders.

I am particularly pleased that the Applicants have agreed to offer a stand-alone DSL broadband product. Consumer advocates strongly supported this condition, which will substantially expand the options available to residential and small business consumers. By conditioning this merger on the offering of a stand-alone DSL broadband offering, we create an opportunity for the development of competitive Voice Over Internet Protocol (VoIP) and help spur innovative communications technologies. According to consumer advocates, many consumers will want bundled services, but when companies unilaterally mandate that broadband and phone services be purchased together, they diminish the incentive of consumers to purchase VoIP phone service from competing providers or to rely on wireless service as their primary option. In addition, by committing to do annual reports that assess the competitiveness of the consumer broadband market, we also will have the ability to monitor whether these services are being made available to consumers at reasonable prices and under fair terms. Consumers deserve the option of choosing the combination of services that fits their needs, and encouraging greater purchasing flexibility through stand-alone DSL furthers this goal.

A stand-alone DSL offering is an important contribution to the marketplace, but I do not pretend that it is a panacea. It will not provide greater choice for those who cannot afford DSL or who do not have DSL available in their area. Especially vexing is that the stand-alone DSL offering outlined in this Order could also have been more robust. For example, we could have done more to enable consumers to purchase DSL services free from any voice service, rather than just traditional circuit-switched voice services.

Some have argued that AT&T and MCI had already made irreversible decisions to exit the entire consumer market, but it is worth noting that this exit was certainly hastened, if not precipitated, by the actions of this Commission and the courts. In a very tangible way, we reap what was sown in prior Commission decisions that consistently undercut competitors' ability to offer choice to American consumers. As many of you know, I was a frequent dissenter to those FCC decisions, which form the prologue for today's action. I predicted then that those decisions would lead to less choice for consumers. In some ways, these transactions fulfill that prophecy. So while I am pleased that we are able to take some meaningful steps in these Orders to promote the interests of consumers, this Commission must closely monitor the affordability and availability of the broadband services and the intermodal competition that we count on to fill the gaps.

I also find compelling that the Applicants have agreed to comply with the Commission's Internet Policy Statement as an enforceable condition of these mergers. Commenters have voiced concern that the horizontal and vertical integration of the Applicants' Internet backbone networks, particularly considering the two mergers together, may create an incentive and ability to discriminate against other providers in what has heretofore been a competitive market. Maintaining an open and robust Internet is absolutely critical. Just two months ago, the Commission set out in this Policy Statement a basic set of consumer expectations for broadband providers and the Internet. With this Statement, we sought to ensure that consumers are entitled to access the lawful Internet content of their choice, to run applications and use services of their choice, subject to the needs of law enforcement, and to connect their choice of legal devices that do not harm the network. While I applaud the Applicants for agreeing to comply with this statement of principles as an enforceable condition of their mergers, I must admit a deep foreboding that this commitment is only for two years. Given that it is Halloween, I hope that there are no tricks up anyone's sleeve. If any attempt to disrupt consumers' ability to unfettered access to the content of their choice occurs before or after the conditions expire, I expect the Commission will treat such a violation of the public trust and our policy with the seriousness it deserves.

The Applicants have also made notable commitments to protect against concentration in the Internet backbone market. In the face of concern over their Internet backbone practices, the Applicants argued that there are sufficient incentives to facilitate a competitive market and that concerns about anticompetitive practices in the Internet backbone peering arrangements are ill-founded. By agreeing to publicly release their peering policies and by committing to maintain settlement-free peering with at least as many backbone providers as they peered with pre-merger, we give competitors important tools to assess and monitor the accuracy of these claims.

For American business customers, these mega-combinations may present the greatest risks. Although business users tend to have more options than residential users, the Commission concludes that there is still a high level of concentration in the enterprise market in most areas of the country today, and the record makes clear that AT&T and MCI are two of the largest sources of choice for business users and largest suppliers of wholesale special access services to competitive carriers. Indeed, the record suggests that even the mere presence of AT&T or MCI in the competitive bidding process results in lower wholesale prices. Based on these competitors' national positions and ability to apply competitive pressure to wholesale prices, I believe that a more substantial divestiture of overlapping facilities would have been appropriate with this merger. I am not convinced that the relatively minor number of facilities where the Applicants are required to lease high-capacity lines – representing far less than one percent of their commercial buildings – is sufficient by itself to remedy this significant loss of actual and potential competition. The Department of Justice's action leaves 99.9% of commercial buildings in SBC and Verizon territory wholly unprotected from the loss of competition that AT&T and MCI brought to bear.

In the absence of more thorough protections, I believe it is imperative that this Commission adopt safeguards to protect against the loss of competition. So, I am pleased that these Orders include price freezes for all four companies' current special access offerings. The Orders also include anti-discrimination provisions, which will help ensure that the combined companies do not discriminate in favor of their own affiliates or in favor of each other. I also commend the Applicants for including provisions to ensure against unreasonable grooming restrictions, which might otherwise prevent competitors from choosing the least cost option for providing service. While I would have gone further to ensure fair pricing of services to retail and wholesale customers, and done so for a longer period than thirty months, we do afford some modest protection from price hikes that could otherwise occur after the loss of such formidable competitors.

I also am pleased that the Applicants have agreed to freeze rates for the wholesale network elements used by competitors and to recalculate the impairment triggers for determining the availability of these elements. This later point was particularly critical for my support.

In approving these mergers, I rely specifically on the companies' assurances that they will fully implement the commitments they have made both in their applications and in their more recent filings. In these Orders, we state our expectation for increased competition among a broad array of intermodal and intramodal competitors. We also state our expectation for vigorous out-of-region competition by the Applicants. Unfortunately, the record on meeting past commitments on out-of-region competition is not what it could be. So, it is imperative that this Commission commit to monitor and vigorously enforce the terms of these merger orders.

The market changes approved in these Orders are historic in scope, but they are also part of a larger industry restructuring that is quickly changing the landscape for consumers of telephone, Internet and video services. The opportunities from these technologies are greater than ever, but so is the penalty for those left without options. We consider these mergers in light of these larger industry trends, but I must note that there is much analysis in these Orders that I find lacking or downright troubling. The Orders' sweeping conclusions about the lack of impact of these combinations requires us to take a lot on faith: more than consumers should expect. But given the willingness of my colleagues and the parties to compromise, we strike a reasonable balance. So, while I can agree to support the package of conditions agreed to by the Applicants and my colleagues, I can only concur to the Orders given my concern with the overall analysis in these items.

I would like to commend my colleagues for their cooperation and willingness to accommodate many of my concerns here. I also commend the staff of the Wireline Competition Bureau for their hard work on this item right down to the wire. These fine public servants have been willing to stay many late nights and weekends to move the business of the Commission forward and I thank them for their efforts.