

A.05-02-027

D.05-11-028

Concurrence of Commissioner Susan P. Kennedy
SBC/AT&T Merger

I fully support the findings and reasoning contained in this order granting SBC and AT&T the authority to execute this merger and acquisition transaction.

Exempting the SBC-AT&T merger from § 854(b) is fully warranted. The application of the statute here is certainly “not necessary to the public interest.” As the reasoning and review of the legislative history in this order makes clear, § 854(b) was written to apply to transactions between traditionally regulated utilities operating principally in California. The statute was premised upon a regulatory regime in which monopoly franchise companies provided service under cost-of-service rate of return regulation in which the Commission, not the market, set the rates. Under this regime, most merger benefits would not flow to consumers without explicit state action to lower rates.

It is difficult to think of a transaction further removed from the simple premise of this statute. Now neither of the merging companies is subject to traditional cost-of-service regulation. Furthermore, neither company operates principally in California. AT&T is a multinational company doing only a small portion of its business in California. SBC is primarily a national company, with only a subset of its business in California.

Under these modern-day conditions, the market is best-suited to encourage the efficient distribution of merger benefits to the companies’ consumers. SBC and AT&T face significant market pressures. Consequently competition with companies providing telecommunications services through cable and IP networks will drive prices down to the benefit of customers. In contrast, relying upon the regulatory regime to distribute merger benefits would undercut the public interest. This regulatory overdependence would jeopardize the smooth functioning of this competitive market and would impose transactional uncertainties that would endanger jobs of many Californians employed by these firms.

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Also I want to stress that an exemption here does not mean any further exemptions are automatic. As the decision notes, this exemption is based on the “specific facts and circumstances” of the particular merger under review, and the decision does not require us to grant an exemption in other proceedings. We will continue to review each merger before us on a case-by-case basis.

I, therefore, concur with this decision. The application of § 854(b) to this transaction is more than “not necessary in the public interest.” Application of this statute would undermine the effective operation of the competitive market and would be detrimental to the public interest.

Dated November 18, 2005, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Commissioner