

## **Concurrence of Commissioner Dian M. Grueneich SBC/AT&T Merger**

First, I want to thank the efforts of Administrative Law Judge Tom Pulsifer, the Commission's Telecommunications Division, and the Office of Ratepayer Advocates. I know that the workload for all of them this year has been extraordinary and they have done an extremely professional job and certainly helped me a great deal in sorting out the issues in the merger cases.

With regard to the SBC merger, there were some key issues that I looked at in making my decision on whether or not to approve the President Peevey/Commissioner Kennedy Alternate Decision. The first issue is whether the Commission should approve the merger under the Public Utilities Code §853(b) exemption or whether it should be subject to all of the provisions of §854. I personally would advocate using the latter approach. However, I have been assured by our general counsel that we do not err legally by relying upon the §853(b) exemption provision.

Secondly, I applaud President Peevey for his leadership in proposing the California Emerging Technology Fund. However, I remain concerned that the directorship of the fund is not sufficiently independent from SBC and the business interests of the providers and that there is insufficient directive in the proposed order to ensure that the funding will go to the low income, non-English speaking, and disabled communities who I believe should have the highest priority use of the monies.

Third, I am also concerned that much of the substantive conditions of the proposed decision have been superseded by the FCC decision and I believe that

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we could have and should have gone further in imposing additional conditions to provide more benefits to ratepayers in California.

However, in support of the proposed decision it is critical for me that it was based on a developed record, with the benefit of evidentiary hearings and the opportunity for formal cross-examination, under oath. While I believe we could go further in terms of the conditions that we would impose and provide greater benefits from the merger to our ratepayers and particularly low income, non-English speaking and disabled customers, I have concluded that the proposed decision is legally sufficient and overall acceptable.

Dated November 22, 2005, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich

Commissioner