STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, Memorandum Opinion and Order, WC Docket No. 05-75

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.