

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service; Petitions for Reconsideration of the Universal Service First Report and Order; Petitions for Reconsideration of the Local Competition First Report and Order; Petitions for Reconsideration of the Local Competition Second Report and Order, CC Docket Nos. 96-45, 96-98, Order on Reconsideration

I am encouraged that the Commission is taking this step to reduce the substantial backlog of outstanding petitions for reconsideration in the local competition and universal service dockets. I write separately, however, to express my disappointment that the petitions we dismiss today have become moot simply because we have allowed them to remain pending so long. Rather than periodically cleaning up our dockets in this fashion, we should adopt procedures to ensure that such backlogs do not develop in the first place.

I have spoken publicly about the need for more expeditious processing of petitions for reconsideration and applications for review.¹ The local competition and universal service dockets dramatically illustrate the problem: most of the petitions for reconsideration we dismiss today have been pending for more than five years, and the remaining petitions have been pending more than four years.

I recognize that, in some cases, the Commission appropriately declined to resolve particular issues, because they were being decided by the courts of appeals. But allowing so many petitions to remain pending for so long undoubtedly created substantial uncertainty in the marketplace. And much of this uncertainty could have been avoided if the Commission had established procedures to ensure that petitions placed on the back burner do not remain there indefinitely.

Where petitions for reconsideration raise no new issues, I encourage the Commission to consider the use of form orders to deny such petitions within a fixed — and relatively short — time frame. Petitions for reconsideration that simply rehash or elaborate on arguments that already have been considered and rejected by the Commission seldom require a great deal of time or new analysis to resolve. If the Commission were subject to a deadline of, for example, 45 days, it could deny most petitions, using a form order, for the reasons that prompted the original decision.

Absent such a mechanism, there appears to be no means of preventing situations like the one we are faced with here — where scores of petitions have been pending so long that the passage of time has rendered them moot. I look forward to working with my colleagues and the Office of General Counsel to develop new procedures that will ensure that the agency disposes of petitions for reconsideration in a timely manner.

¹ See FCBA Luncheon Address, September 17, 2001, available at www.fcc.gov/Speeches/Abernathy/2001/spkqa102.html.