

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Federal-State Joint Board on Universal Service, et al., Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-45 et al. (released December 13, 2002).

Today's Order represents an important step in our effort to overhaul the contribution methodology for the federal universal service support mechanisms. But much work remains. While the interim measures we are adopting will help alleviate some of the inequities associated with our existing contribution rules, they do not address the fundamental shifts in the communications marketplace that call into question the long-term viability of a revenue-based contribution scheme. Most significantly, the increasing prevalence of bundling — of interstate and intrastate services, on the one hand, and of telecommunications services, information services, and customer premises equipment, on the other — tentatively persuades me that a connection-based contribution methodology would best promote the critical statutory objective of preserving and advancing universal service.

Commission staff have exhaustively combed through the existing record in an effort to develop an assessment methodology based (at least in part) on physical connections to interstate networks. I commend them for their efforts. Introducing a connections-based component to our contribution methodology will bolster the stability of universal service funding. We must also ensure that all carriers will contribute on an equitable and nondiscriminatory basis, as section 254(d) requires, and that any new regime will not impose undue administrative burdens and transaction costs. On the current record, the Commission was unable to conclude that any connection-based proposal satisfies all of these objectives. Moreover, legitimate concerns have been raised about our ability to gauge the likely consumer impact of leading proposals — which were being tweaked almost daily — without additional data and analysis. But I am optimistic that the proposals described in the Further Notice, together with the input we expect to receive from commenters, will enable the Commission to implement more comprehensive reforms in the coming year.

I understand that not all of my colleagues are persuaded at this juncture that a pure revenue-based methodology is unsustainable. Nor am I completely certain myself. But it seems increasingly clear that any methodology that assesses contributions based solely on revenues from end-user interstate telecommunications services is fundamentally incompatible with the direction of the communications industry. I have often spoken about the need for our regulations to keep up with the rapidly changing pace of technologies and markets. This is a perfect example: There is no question that the industry is moving headlong from a marketplace dominated by distinct offerings of local and long distance services to one in which bundles of any-distance telecommunications services are becoming the norm (for wireless) or at least commonplace (for wireline). And in this new environment, telecommunications services are increasingly being packaged with information services and CPE.

Some argue that instead of giving up on a revenue-based methodology, we can ensure sustainable support by assessing the telecommunications component of information services and adopting additional revenue-allocation rules for bundled services. But that is easier said than done.¹ When a telecom carrier offers, for example, an integrated bundle of local and long distance voice services plus broadband Internet access for a single monthly price, it is not clear how the Commission could accurately assess the revenues attributable to the interstate voice service and to the telecommunications component of the information service. By the same token, when cable modem providers offer broadband services, the fact that most do not separately provide broadband transmission services would make it very difficult to segregate the revenues attributable to the telecommunications portion of the information service. These line-drawing conundrums will become even more problematic as bundled service offerings become more varied and complex. As a result, providers will have the opportunity and incentive to contribute less than their fair share by understating the portion of their bundled offering that is attributable to an interstate telecommunications service.

The upshot, I fear, will be a continued decline in the reported base of interstate telecommunications service revenues — and a corresponding increase in the contribution factor. If, on the other hand, providers of end-user connections to interstate networks contributed based on these connections, rather than on a portion of their revenues, all of these intractable revenue-allocation issues would disappear.

Finally, although the Commission did not raise the question of assessing contributions on broadband Internet access services in this proceeding (it is raised in the pending *Wireline Broadband* rulemaking), some of my colleagues have suggested resolving that issue now. I do not think it would be appropriate to do so until we complete our analysis of the statutory classification of wireline broadband services, which bears directly on our authority to assess contributions. I would also like to have a better sense of whether the Commission will adopt a connection-based approach before deciding whether and how broadband providers should contribute, because the merits of separately assessing the telecommunications component of broadband services may differ in that case. I would have taken a more limited step in this interim period, however, by exempting from assessment any DSL transmission service provided to ISPs, pending the outcome of the *Wireline Broadband* proceeding. There are two reasons for doing so. First, the fact that LECs providing DSL service currently contribute to universal service, while cable modem providers do not, creates an obvious competitive distortion. We should either assess both broadband platforms or neither. Second, the Commission already has determined in another context that incumbent LECs' sale of bulk DSL transmission services are properly considered wholesale telecommunications services,² and it seems logical to treat those services as wholesale — and thus not subject to any

¹ Others argue that we should preserve a revenue-based methodology *without* assessing the telecommunications functionality underlying information services, but that would seem to be a recipe for sky-high contribution factors going forward.

² *Deployment of Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (*AOL Bulk Services Order*).

contribution obligation — for universal service purposes as well. I regret that the Commission was unable to agree on a means of ending the DSL/cable modem contribution disparity, but I am hopeful that we will do so in the *Wireline Broadband* proceeding.