

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING**

Re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region InterLATA Services in Arkansas and Missouri

Today's decision is the closest of calls. Questions raised in the closing hours of deliberation, arguably going beyond the section 271 process, compel further consideration which the Commission today agrees to undertake in a new and separate proceeding to be initiated by the end of the year and completed as soon as possible next year. This proceeding could conceivably lead to changes in the implementation of the majority decision to authorize SBC to provide long-distance services in Missouri and Arkansas. With assurances for the timely disposition of a Notice of Proposed Rulemaking and completion of an Order on the extant issues, I have agreed, with no small reluctance, to concur in this decision.

Let me begin by noting that SBC has made laudable progress to open its local markets to competition and I commend the company for its significant efforts. I also commend the Arkansas and Missouri Commissions which have worked very hard to promote competition in their markets.

My major concern in this application is whether SBC has complied with an important checklist requirement – the obligation to ensure that telecommunications services are made available for resale. More precisely, the issue concerns whether SBC has met its obligation to make its DSL services available for resale. The majority concludes that our precedent is not adequately clear. While I believe it would have been preferable to resolve these issues here, I believe that a separate proceeding with a full record can clarify the situation and provide relatively prompt redress if the facts indicate the need for remedy.

This is a tremendously important issue. Through the Telecommunications Act of 1996, Congress sought to promote competition in all telecommunications markets, including especially the replacement of monopoly with competition in the local telecommunications market. At the heart of the Congressional framework is the clear requirement that Bell companies may enter the long-distance market only after they have opened their local markets to competition.

The 1996 Act provides for three modes of entry for competitors in the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale of the incumbent's services. Congress incorporated these three paths into the competitive checklist of section 271. I am committed to preserving all of these statutory paths for competitive entry.

I am seriously troubled that, for small business and residential customers, SBC does not make available for resale pursuant to section 251(c)(4) any DSL service offerings. SBC currently offers two types of broadband DSL services. First, SBC sells directly to large businesses. These services **are** retail offerings, and SBC makes them available at a wholesale discount to competitors wishing to resell them. For small businesses and residential customers, however, SBC generally provides DSL services only to its own Internet provider and to unaffiliated Internet providers. Citing the *AOL Bulk Services Order*, SBC claims that it is not providing DSL at retail, thus triggering no obligations under section 251(c)(4). Yet, a strong argument can be made that the *AOL Bulk Services Order* was premised on the expectation that there would be a retail offering from which discounts would be calculated.

The need to resolve these issues soon in the separate proceeding is made even starker when one considers the harmful impact of the failure to provide such an offering. SBC and other incumbents could attempt to use a DSL loophole that need not exist to spread beyond the provision of DSL services. Although there is some confusion in the record, SBC appears to have the ability to limit the provision of broadband DSL for Internet providers, affiliated or independent, to those customers who purchase its **voice** services. Customers may not be able to obtain a separate line for DSL services without also purchasing SBC's voice services. Thus, by tying the provision of broadband to the purchase of voice services, SBC might effectively limit competition for voice services as well. Not only should this issue be addressed in the separate proceeding, but I would also urge the Commission to pursue aggressively enforcement options should violations of rules that are outside the competitive checklist come to light, or even the existence of conditions tolerating such violations.

I understand the majority's conclusion that these issues raise complex and far-reaching questions that should be addressed in a general rulemaking. Under the circumstances, I support conducting and concluding an expeditious rulemaking in the close near term to answer these questions once and for all. I would expect that we will complete this proceeding with a full record that will allow us to promulgate clear rules that advance the pro-competitive objectives of the Congress and preserve the three paths of competitive entry.