

**JOINT STATEMENT OF
COMMISSIONER MICHAEL J. COPPS AND
COMMISSIONER JONATHAN ADELSTEIN,
CONCURRING**

Re: SBC's petition for forbearance from application of dominant carrier status to its provision of advanced services

We concur, with both reluctance and disappointment, in this Order to forbear from requiring SBC's separate affiliate to file tariffs or cost support for its provision of certain broadband services. We support this Order, not because it is the optimal outcome, or even a good one, but because it is significantly superior to the option presented to us of no decision from the Commission and the resultant forbearance from such Commission inaction. A failure to reach agreement would have resulted, under the Communications Act, in an automatic grant of SBC's entire request for forbearance, a result that we find incomprehensible in light of the record before us.

Previously, the Commission concluded that a separate affiliate providing advanced services is not a successor or assign of the Bell company and therefore, unlike the Bell company, would be nondominant. The D.C. Circuit overturned the Commission's decision, thereby eliminating the basis for the Commission's determination that the affiliate does not exercise market power. Thus, in the absence of a finding of nondominance, we must presume that SBC's affiliate exercises market power in its provision of advanced services.

We do not believe the forbearance criteria are met to detariff and eliminate cost support for a dominant carrier. In previous orders forbearing from tariff requirements, the Commission has rested its decision on its conclusion that carriers lacking market power could not successfully charge rates that violate the Communications Act. In today's Order, we extend that conclusion to a provider with market power. Some may read this Order to prejudice our decision in the broader proceeding in which we are examining whether incumbents are dominant in their provision of broadband. We want to express explicitly that this Order does not support such a conclusion.

We believe that a vastly preferable approach would have been for the Commission to conduct the requisite market analysis first. We could then detariff SBC or its affiliate only in those markets in which we had first determined the carrier does not exercise market power. But in the absence of an economic market analysis, we do not see how we can conclude that the forbearance criteria are met. Therefore, we would have preferred to deny SBC's request for forbearance and required it to maintain its tariffs and cost support until the Commission completes its examination of dominance in the broadband market.

We recognize that the Commission has been operating under tight deadlines which require difficult resource allocation decisions. Nonetheless, we believe that as a result of the Commission's having not completed its work in this proceeding in a timely

fashion, and in order to avoid more far-reaching forbearance through Commission inaction, we are left only with the option to concur in the Order.