

SEPARATE STATEMENT OF COMMISSIONER KEVIN MARTIN

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, CC Docket No. 01-194

I am pleased that the local exchange markets in Arkansas and Missouri are open to competition and that SBC will be permitted to compete for long distance service in those states. I am writing separately on the narrow issue of the high-speed Internet access service offered by SBIS. Some commenters argue that this service is available to end users “at retail,” and that therefore SBC must make the underlying DSL transport component available to competitive LECs pursuant to section 251(c)(4). SBC argues that this service is not subject to section 251(c)(4) because (1) this is an information service, not a “telecommunications service;” and (2) DSL transport is merely a *component* of the overall information service, and is not separately offered “at retail.” Accordingly, SBC argues that the obligations of section 251(c)(4), which are triggered only by services that are “telecommunications services” provided “at retail,” simply cannot apply.

Section 251(c)(4) imposes on incumbent LECs the duty “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” As today’s order states, SBIS is offering a “high-speed Internet access service.” The Commission has definitively concluded that “Internet access services are appropriately classed as information, rather than telecommunications, services.”¹ Moreover, the Commission has concluded that “the categories of ‘telecommunications service’ and ‘information service’ in the 1996 Act are mutually exclusive.”² While the Commission may ultimately address this issue in more detail, those who argue that this high-speed Internet access service provided to end users should be subject to section 251(c)(4) must show how, in light of the precedent described above, this is a “telecommunications service” being offered “at retail.”

¹ *Federal-State Joint Board on Universal Service*, Report to Congress, CC Docket No. 96-45, FCC 98-67 (rel Apr. 10, 1998) (“Report to Congress”) at ¶ 73. A “telecommunications service” is defined in the Act as a transmission of information of the user’s choosing “without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43). The Commission explained that “Internet access providers do not offer a pure transmission path; they combine computer processing, information provision, and other computer-mediated offerings with data transport.” Report to Congress at ¶ 73. The Commission summarized this distinction by explaining that “if the user can receive nothing more than pure transmission, the service is a telecommunications service,” and “if the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service.” *Id.* at ¶ 59.

² Report to Congress at ¶ 12; see also *id.* at ¶ 59.