Separate Statement of Commissioner Harold W. Furchtgott-Roth

***Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services**
and
1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements

Further Notice of Proposed Rulemaking

I support adoption of this Further Notice of Proposed Rulemaking. I question, however, whether the FCC is prepared to meet its statutory obligation to review all of its regulations in 1998.

Contrary to the captioning of this Further NPRM (and at least one other item that the staff has presented to the Commission for decision), we may be neglecting the express directives of a terse but important provision of the Telecommunications Act of 1996. In this provision, codified as Section 11 of the Communications Act, Congress directed the FCC to conduct, beginning in 1998, a biennial review of "***all*** regulations issued under [the Act] in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service" and determine whether any of these regulations are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." 47 U.S.C. Section 161 (emphasis added). Section 11 also requires that the FCC "repeal or modify any regulation it determines to be no longer necessary in the public interest."

Clearly, Section 11 has two components: a policy against unnecessary regulations and a procedure to find and remove all such regulations every two years. In this Further NPRM, the Commission fully addresses only the policy component of Section 11.

Although the Commission thus appears to have fulfilled its duty to implement the policy of Section 11 in the context of this particular proceeding, I am concerned that -- because of this item's caption and the many references to Section 11 throughout the text -- we may be leaving the misimpression that we also are addressing the procedural requirements of Section 11. To my knowledge, the

FCC has no plans to review affirmatively ***all*** regulations that apply to the operations or activities of any provider of telecommunications service and to make specific findings as to their continued necessity in light of current market conditions. Indeed, the comprehensive and systematic review of all FCC regulations required under Section 11 certainly would take many months to complete, yet we have not published a specific schedule to ensure completion of this task in 1998.

Nor has the Commission issued general principles to guide our "public interest" analysis and decision making process across the wide range of FCC regulations. I believe that, in addition to the direction given us within the law, the public interest determinations we eventually make pursuant to Section 11 should be made based on a straightforward analysis: regulations are in the public interest only if their benefits significantly outweigh their costs. We have not yet adopted any such guidance.

It is unfortunate that this public discussion of our responsibilities under Section 11 has first surfaced in the context of a seemingly unrelated action in the decade-old *Computer III* proceedings. In my view, however, we should not let this or any other such limited Commission analysis and decision making (or even the sum of such limited actions) be mistaken for complete compliance with Section 11 as envisioned by Congress.

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