

## **STATEMENT OF COMMISSIONER KEVIN J. MARTIN**

*Re: Implementation of the Telecommunications Act of 1996; CC Docket No. 96-115*

*Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information;*

*Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; CC Docket No. 96-149*

*2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; CC Docket No. 00-257*

I commend the Chairman and Bureau staff for their hard work and effort to craft rules that attempt to implement the customer proprietary network information ("CPNI") provisions of the Act and continue to protect the privacy of consumers in the face of court decisions that have limited our previous privacy safeguards.

I believe that the Commission must remain vigilant with respect to protecting sensitive personal information of customers of telecommunications carriers. Indeed, our Congressional directive is to empower consumers with the ability to protect the confidentiality of their sensitive personal information. Previously, the Commission sought to protect customer privacy rights by requiring carriers to obtain express customer consent (i.e., an "opt-in" requirement) prior to obtaining access to CPNI. The U.S. Court of Appeals for the Tenth Circuit, however, struck down the Commission's original "opt-in" rules, finding that the rules impermissibly regulated protected commercial speech and thus violated the First Amendment. In particular, the court determined that the "opt-in" rules failed constitutional scrutiny because they were not narrowly tailored as a result of the Commission's failure to adequately consider an "opt-out" regime.

Today's recommendation seeks to find the appropriate balance between the continued privacy interests of consumers and the First Amendment rights of carriers to communicate with their customers. While I generally support the majority's dual opt-in/opt-out approach set forth in the decision, I remain cognizant of the imperfect science we implement today to effectuate the Court's mandate.

While I believe that the notification requirements outlined in today's recommendation to protect customer's privacy interests are adequate, we may need to do more to empower consumers to protect their personal information and I will not hesitate to revisit this decision if evidence in the marketplace indicates that these rules are insufficient to protect the consumers' right to safeguard their personal information.

