

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: IP-Enabled Services, Notice of Proposed Rulemaking (adopted Feb. 12, 2004).

With this NPRM, the Commission launches an inquiry into a revolutionary set of services and applications. We stand at the threshold of a profound transformation of the telecommunications marketplace, as the circuit-switching technology of yesteryear is rapidly giving way to IP-based communications. In the IP world, voice communications, once restricted to a dedicated, specialized network, represent but one application — one species of bits — provided alongside many others. Although I firmly believe that prescriptive regulation in many instances will prove unnecessary, I strongly support this effort to develop an appropriate regulatory framework. Indeed, it may seem paradoxical but it is undoubtedly true that we can ensure freedom from regulation only if we commence a regulatory proceeding.

While it is premature to say precisely what this framework will look like, there is no question that the time is right for the Commission to build a record. As service providers are developing business plans and courts and state commissions are starting to reach potentially divergent conclusions about the rules of the road, the risks of inaction are great. This Commission must step forward and provide guidance, or providers may be subject to a patchwork of inconsistent rules. The promise of IP-enabled services is too great to risk such an outcome.

As we conduct this rulemaking, I will keep an open mind but at the same time I will be guided by some overarching predispositions. *First*, I believe that the regulatory framework for IP-based services must be predominantly federal. A federal scheme will facilitate nationwide deployment strategies and avoid the burdens associated with inconsistent state rules. Moreover, most forms of IP communications appear to transcend jurisdictional boundaries, rendering obsolete the traditional separation of services into interstate and intrastate buckets. *Second*, I am deeply skeptical about the application of economic regulation to these nascent services. Public-utility regulations have traditionally been imposed on local exchange carriers to restrain their market power. Services such as VOIP, by contrast, appear to have low barriers to entry and it does not appear that any provider occupies a dominant market position. Rather than reflexively extending our legacy regulations to VOIP providers, we need to take this opportunity to step back and ascertain whether those rules still make sense for *any* providers, including incumbents. *Third*, notwithstanding my interest in maintaining a light touch, I am committed to ensuring that our regulatory approach meets certain critical social policy objectives. As most policymakers at the federal and state level have recognized, we will need to find solutions to guarantee access to 911 services, the ability of law enforcement agencies to conduct surveillance, the preservation of universal service, and access by persons with disabilities. Some of these goals may well be achieved without heavy-handed regulation, but I am willing to support targeted governmental mandates where necessary.

Finally, although the NPRM appropriately refrains from proposing actual service categories and classifications at this early stage, I strongly support taking action to clarify the existing state of the law. The NPRM asks many broad questions about the regime we will establish at the *conclusion* of this rulemaking, but we plainly have rules on the books *today* — rules concerning interstate access charges and universal service contributions, among other things — that appear to apply to some services offered in the marketplace. Providers have filed petitions for declaratory rulings because clarity is sorely needed: most notably, some interexchange carriers are paying access charges for terminating so-called phone-to-phone IP calls, whereas some are not. This disparity distorts competition as well as the flow of capital. In an upcoming order or orders, I urge my colleagues to provide as much clarity as possible regarding our existing rules in the interest of our shared goal of promoting regulatory certainty.