

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Petition for Declaratory Ruling that Pulver.com's Free World Dialup is neither Telecommunications nor a Telecommunications Service

Today we affirm our commitment – and fulfill our statutory obligation – to keep the Internet free from unnecessary government regulation. In today's Order, we declare the Free World Dialup (FWD) offering of Pulver.com to be a service subject to exclusive federal jurisdiction. Like email and instant messaging, FWD builds on consumer acceptance of those services and operates as a free, peer-to-peer application that connects consumers around the corner and across the globe. Our ruling formalizes the Commission's policy of "non-regulation" of the Internet and, in so doing, preserves the Internet as a free and open platform for innovation. Just as important, today's ruling removes barriers to investment and deployment of Internet applications and services by ensuring that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels.

At the outset, I would like to acknowledge the positive cooperation we have received from the law enforcement community in this and related proceedings. Make no mistake, this item fully addresses law enforcement's legitimate interests in this area. We have worked extensively with law enforcement and established a process to specifically address unique issues associated with implementing the Communications Assistance for Law Enforcement Act (CALEA) – a process that fully satisfies the Department of Justice.

There is another related freedom at work in this proceeding – the freedom of consumers to increasingly choose innovative, personalized Internet applications and services. We know from experience that IP-enabled services such as Pulver.com's FWD offering can spur demand for broadband connections by providing consumers with a feature-rich set of Internet voice applications. We also should be mindful that the largest barriers to progress and the development of this and other services like it, are conflicting sets of economic regulations and onerous taxes. While many states have not acted to produce an outright conflict between federal and state law that justifies Commission preemption, today's Order confirms that the Commission possess significant authority to act in this area if a conflict of law should occur. Whether state or federal in origin, regulation of Internet applications such as FWD is not only inconsistent with the network architecture of the Internet, but also with Congress's directive to ensure the Internet remains free of unwarranted federal or state regulation. Among other provisions, section 230 of the 1996 Telecommunications Act states Congress's unambiguous preference for a national policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services [] unfettered by Federal or State regulation."¹ Today, we give some substance to this statutory command.

We should all work to implement Congress's clear preference for a vibrant free market in Internet applications. In this sense, FWD is really only the beginning. As we

¹ See 47 U.S.C. § 230(b)(2).

embark on the next phase of the digital migration, our end goal must remain a world in which consumers choose how they communicate, rather than one in which that choice is dictated to them by a monopoly or the government. Today's Order provides an excellent foundation for a house that is becoming more and more filled with innovative products and greater digital opportunities.