

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

Re: Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates; Petition of SBC for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions under Sections 53.203(a)(2) and 53.203(a)(3) of the Commission's Rules and Modification of Operating, Installation, and Maintenance Conditions Contained in the SBC/Ameritech Merger Order; Petition of BellSouth Corporation for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2)-(3) of the Commission's Rules; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Report and Order in WC Docket No. 03-228; Memorandum Opinion and Order in CC Docket Nos. 96-149, 98-141, 01-337

Regulators bear an important obligation to retire rules that no longer serve their intended purpose. Today's Order is faithful to that charge. This item eliminates the unnecessary and costly prohibition on certain types of sharing between Bell operating companies (BOCs) and their separate affiliates.¹ In this instance, the items find the costs of prohibiting BOCs from sharing operations, installation and maintenance (OI&M) now outweigh the purported benefits. Moreover, other, less intrusive rules already minimize the risk of discrimination and cost misallocation by the BOCs. As a result, the time for requiring the prohibition on OI&M sharing has passed.

Significantly, today's order does not represent an exercise of our forbearance authority. Instead, the Commission has fulfilled its obligation to reexamine the Communications Act in light of our experience and marketplace changes. While I am pleased that the Commission has acted, I also believe that this Commission could have achieved this pro-competitive result through the use of our forbearance authority. Indeed, as Commissioner Abernathy rightly points out, a forbearance approach would have avoided any tension between today's action and past Commission Orders on this subject. Nonetheless, I am pleased that the Commission has moved to update our rules and appreciate the support of my colleagues in this proceeding. Consumers benefit when providers can direct resources away from complying with unnecessary regulations and toward competing in the marketplace.

¹ 47 C.F.R. § 53.203(a)(2)-(3).