SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING IN PART, DISSENTING IN PART

Re: Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-147, FCC 04-191.

In this Order, we reconsider portions of our *Triennial Review Order*, which set out a regulatory framework for local telephone competition. Throughout this proceeding, I have sought to take a careful and balanced view of the benefits and burdens of our unbundling rules. That approach led me to support measured unbundling relief for broadband investment in our prior order. I concur in much of this Order in that I support granting targeted additional unbundling relief to address issues that were not squarely before us when we adopted the *Triennial Review Order*. I cannot, however, join in the full decision because it is unnecessarily vague and overbroad. While this Commission speaks often about the importance of regulatory certainty, I am concerned that this Order unfortunately will raise as many questions as it answers.

The focus of this Order is the deployment of broadband services, a goal that I strongly support. Ensuring that all Americans have reasonable and timely access to broadband services is our charge under the Act and is an issue of critical importance to the health of our economy and the vibrancy of our nation. In the *Triennial Review Order*, this Commission took dramatic steps with the goal of encouraging incumbent providers to build fiber facilities to their mass market customers. I supported that decision to refrain from unbundling fiber-to-the-home developments know as "greenfield areas" because the record supported a finding that incumbents and competitors stand on roughly equal footing in competing for these construction projects. By eliminating unbundling for greenfield fiber-to-the-home projects, we hoped to speed the deployment of these large information pipes, which have the greatest potential to deliver innovative and beneficial services to consumers.

I concur in today's decision to the extent that it injects more symmetry to our treatment of residential consumers, whether they reside in single family homes or multi-tenant buildings (referred to as MDUs). Much as I supported unbundling relief for the deployment of fiber loops to single family homes in greenfield developments, I support similar relief for residential consumers in multi-tenant buildings. This relief should encourage investment in broadband facilities to serve these customers. The record shows that a sizeable portion of the American population lives in multi-tenant buildings. The record also contains evidence suggesting that a disproportionate number of these Americans are persons with disabilities, seniors, minorities and low income citizens, and that these citizens stand to benefit dramatically from the expanded educational, career, and health opportunities that are available through broadband.

The decision to impose or lift unbundling requirements under section 251 is not a trivial matter. Our local competition rules are of enormous importance to providers, both competitors and incumbents, alike, and, ultimately, to American consumers. As contemplated by Congress, the development of competition has brought enormous benefits to residential and business consumers. Consistent with Congress' vision, where barriers to deployment are equivalent, we

should give providers every incentive to invest in and roll-out next generation facilities that will bring the benefit of advanced services to American consumers. I can only concur in my support because I believe that this Order could have provided much more analytical depth to address the specific requirements of the Act. The Order is virtually silent in its factual consideration of impairment, failing to address in any comprehensive way the level of competition between incumbents and new entrants to serve residential apartment buildings. These concerns are amplified by a lack of precision in this Order. For example, by failing to adopt a specific definition of what buildings are "predominantly-residential," we invite a host of disputes.

Beyond this, I am forced to dissent in part because the Order fails to consider potential distinctions in the analysis of greenfield developments as compared with so-called brownfield developments, where providers are overbuilding their existing networks. In my view, this Order should have delved far more deeply to address these very different factual scenarios. Similarly, the Order declines to adopt a customer-specific approach, despite evidence in the record that such an approach is possible. Nor does the Order fully address the relationship of these rules with our existing high capacity loop rules, which the Commission, last year, endorsed as necessary for competition. Cumulatively, I am concerned that this Order will not only leave many small business customers without the full benefit of competitive options, but that it will leave both incumbents and competitors yet again unclear about the scope of our rules.

For these reasons, I concur in part and dissent in part.