SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Report and Order in CC Docket Nos. 00-199, 97-212 and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301 and 80-286

I support the action taken by the Commission in this Report and Order and Further Notice of Proposed Rulemaking, and I write separately to emphasize a few points regarding the benefits of the streamlining we have ordered, our cooperation with state commissions, and future directions for our Uniform System of Accounts, ARMIS reporting requirements, and related rules.

There are a number of reasons why it is critical for the Commission to undertake such reviews of its complex and detailed legacy rules. First, section 11 of the Act requires us to consider whether the development of meaningful economic competition has rendered such requirements unnecessary, and to eliminate regulations where we determine that to be the case.[1] The increasingly competitive environment fostered by the Commission's implementation of section 251 therefore suggests that the need for regulatory strictures on a carrier's accounting practices is on the wane.[2]

Second, even apart from marketplace developments, there have been significant changes in the regulatory landscape that call into question the rationale for our various accounting safeguards. Most notably, the Commission's adoption of price cap regulation for large ILECs — the only carriers subject to the detailed Class A accounting requirements — has significantly diminished the incentive of these carriers to engage in improper cost-shifting or similar anticompetitive conduct. The accounting requirements and affiliate-transaction rules at issue were adopted in large part to address threats of cost misallocation associated with rate-of-return regulation. If a carrier is assured of a prescribed rate of return on its investment in regulated operations, it arguably has an incentive to shift costs from any nonregulated operations to its regulated operations. In a price cap regime, by contrast, it is not clear that an incumbent LEC would profit from such cost-shifting, since its ability to raise rates is only indirectly related to its costs. And where incumbent LECs have obtained pricing flexibility — and thereby have waived low-end formula adjustments[3] — their incentive to misallocate costs is further diminished.

Third, the accelerating convergence of the telecommunications marketplace suggests the possibility that imposing detailed accounting and reporting obligations only

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[1] 47 U.S.C. § 161.

[2] While some commenters have decried the pace at which local competition has developed, there is little question that, notwithstanding some much-publicized failures, competitive carriers have made significant inroads in local markets, particularly among business customers. Last year, the share of competitive local carriers doubled in the market for medium and large business customers, moving from 4.9 million to 9.7 million access lines in that category. *See* FCC, Industry Analysis Division, *Local Telephone Competition: Status as of December 31, 2001*, at Table 2 (May 2001). Likewise, CLECs' share doubled in the market for residential and small business customers, moving from 3.4 million to 6.7 million. *Id.*

[3] *See Phase II Report and Order, supra* ¶ 46 n.72.

on one set of providers — incumbent LECs — will distort competition and create opportunities for regulatory arbitrage. Providers from formerly distinct market segments — local telephony, long distance telephony, wireless telephony, cable television, and satellite communications — are increasingly competing in the provision of functionally equivalent voice, data, and video services. While this convergence has not occurred as rapidly as some anticipated following the passage of the 1996 Act, we are clearly seeing the emergence of a converged broadband marketplace. Requiring incumbent LECs, but no one else, to comply with costly regulations and to open their books to competitors raises obvious questions of competitive neutrality. I accordingly believe that we have a heightened responsibility to ensure that, if we impose burdensome rules on only one set of providers, those rules have sound justifications.

While some commenters in this proceeding have discounted the burdens associated with our accounting and reporting requirements, it is clear to me that requiring a carrier to establish the systems necessary to collect particular investment, expense, and revenue information, and to report that information in prescribed formats, imposes substantial costs. And it is equally clear that our decision to impose such costs necessarily diverts scarce resources away from other uses, including investment in infrastructure and the deployment of innovative new services.

In light of all these factors, I came to this proceeding with a fair amount of skepticism toward our requirements that Class A carriers maintain 296 separate accounts and file 10 detailed ARMIS reports. At the same time, however, I recognize that eliminating safeguards prematurely can stifle competition and undermine our implementation of the Telecommunications Act of 1996. What is required, therefore, is a careful balancing of the asserted justifications for these rules and the burdens they impose.

I believe that the Report and Order we have adopted reflects an appropriate balancing of these costs and benefits. We have reviewed the record closely; in particular, we have considered extensive submissions from state commissions and taken their views very seriously. I am convinced that the accounts and requirements that we have eliminated cannot be justified in light of the various factors discussed above. Similarly, the purported benefits of the proposed new accounts that we have declined to adopt failed to outweigh the costs associated with them, particularly in light of the increasingly competitive and converged marketplace.

Some state commissions may be disappointed by the fact that we did not accede to *all* of their requests. I strongly believe that, if anything, we have erred on the side of preserving too many rules and adopting too many new accounts. In some instances, we have relied on *potential*, rather than certain, federal regulatory needs for the information captured in the Class A accounts. For example, we have concluded that detailed investment and expense accounts are necessary for our administration of our high-cost universal service support mechanism,[4] but that will be the case only if we decide to

[4] *See Phase II Report and Order*, ¶ 45.

conduct a new proceeding on the cost-model inputs *and* we assume that relying on ad hoc information requests is somehow ineffective. Similarly, we note that price cap carriers may seek exogenous adjustments or allege that authorized rate levels are so low as to be confiscatory,[5] but again our use of Class A accounting data depends on these contingencies actually occurring as well as our assumption that collecting data on an as-needed basis would not suffice.

Moreover, we have required large incumbent LECs to continue accounting for costs at the Class A level of disaggregation notwithstanding that, in allowing smaller carriers to account for costs at the more generalized Class B level, we have implicitly determined that Class A accounting is not indispensable to our fulfillment of our regulatory responsibilities. If Class A accounting were indispensable, we would presumably not have exempted some carriers based merely on our assessment of their ability to tolerate burdens[6] — as opposed to a finding that these carriers have a diminished incentive or ability to engage in anticompetitive conduct.[7] I do not mean to suggest that smaller carriers should be subject to increased burdens; I agree that a carrier's size is a relevant consideration. But I do think it is apparent that, in exempting certain carriers from Class A accounts, we have necessarily made the judgment that regulators can manage to implement statutory mandates and promote the public interest even in the absence of any Class A information from some classes of carriers.

In spite of these arguments against preserving Class A accounts, I have supported the Report and Order — which not only preserves many Class A accounts but establishes several *new* accounts — largely in deference to our state colleagues. State commissioners hold a wide variety of viewpoints: Some believe that detailed accounting and reporting requirements are more necessary than ever, and others believe that marketplace developments and other factors warrant a substantial relaxation of these requirements. But my review of the record suggests that a substantial number of state commissions are more convinced than I that the disaggregated level of accounting preserved by the Report and Order remains necessary, and indeed that various other categories of new accounts are warranted. I have not supported establishing accounts where I believe the data in question are unnecessary or otherwise available, but I do believe that the Report and Order accommodates these state commissions' most pressing concerns.

In addition to being motivated by comity, my support for the Report and Order rests on our inclusion of the Further Notice of Proposed Rulemaking. This Further Notice asks important questions about more fundamental changes to our Uniform System of Accounts and ARMIS reporting requirements and our rules concerning continuing property record (CPR) rules and affiliate transactions. The Further Notice raises the possibility of fixed sunsets, which may be preferable to having the prospect of further

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[5] *Id.*, ¶ 46.

[6] *See Phase II Report and Order* ¶¶ 188-90.

[7] Indeed, we have preserved the most detailed level of accounting for those carriers that, by virtue of price cap regulation, arguably have the *least* incentive to shift costs improperly.

streamlining hinge on more ambiguous trigger mechanisms.[8] By raising this issue now, we affirm that continued streamlining remains an important priority for this Commission even after the release of the Report and Order. The Further Notice also gives state commissions and other commenters an early opportunity to comment on further streamlining and to prepare for the possibility that we will eliminate many of our remaining Class A accounting rules and related requirements. I look forward to the continued participation of the state commissions as we enter Phase III of this proceeding.

[8] While I believe it is important to pose the question of whether our CPR rules should sunset automatically, I would have preferred to refrain from reaching any tentative conclusion on that issue until after we have received and reviewed the comments. I have assented to this tentative conclusion because I believed that doing so was necessary to reach agreement with my colleagues on the Report and Order and Further Notice. In any event, I look forward to hearing from state commissions and other commenters regarding this proposal.