

**JOINT STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN AND
COMMISSIONER MICHAEL J. COPPS,
DISSENTING**

Re: *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements,
WC Docket No. 02-112.*

Today the Commission releases a Public Notice announcing the sunset of the separate affiliate requirement in section 272 for SBC in Texas. We are troubled that the Commission reaches this result without providing any analysis and that it does so despite the clear reservations of our state colleagues at the Texas Public Utility Commission.

In section 272, Congress required Bell companies to provide long distance and manufacturing services through a separate affiliate. In implementing these requirements, the Commission concluded that Congress adopted these safeguards because it recognized that Bell companies might still exercise market power at the time they enter long-distance markets. Congress provided that these requirements would continue for three years, but could be extended by the Commission by rule or order.

Congress clearly gave the Commission the charge to determine whether these structural, accounting and auditing safeguards remain necessary to prevent anticompetitive discrimination in the market. Yet the Commission has neglected to analyze the market in Texas and determine whether there is a continuing need for these or alternative safeguards.

We have been here before. Last December, the Commission allowed the separate affiliate requirements in section 272 to sunset for Verizon in New York without the review we believe is required and at a time when the New York Public Service Commission found that elimination of these requirements would be premature. Just as we did last year, we give short shrift to the opinion of our state colleagues here.

Only last week the Commission noted in its *Qwest Minnesota 271 Order* that, “compliance with section 272 is of ‘crucial importance’ because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that [Bell companies] compete on a level playing field.” Just last month, the Commission sought comment in a second proceeding involving issues related to the continuing need for section 272 affiliates. We are left to wonder how the Commission can justify sunset while it seeks comment on these related matters and leaves stalled on the side development of alternative safeguards in its performance measurements docket.

Against this background, the Commission fails to address arguments raised in the record in the instant proceeding and does not provide any analysis supporting its action in today’s Public Notice. For these reasons, we believe the Commission has fallen short of fulfilling its statutorily mandated responsibilities.

