

**STATEMENT OF  
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338.*

This Order and Notice of Proposed Rulemaking represent an important step along the road to sustainable, facilities-based competition. In the wake of the D.C. Circuit's decision invalidating many of the Commission's unbundling rules, we must expeditiously build a record and develop a revised framework. For too long the Commission has given short shrift to the direction provided by the courts in pursuit of a policy of maximum unbundling. Now, we have an opportunity to craft judicially sustainable rules that promote competition in a manner that more fully embraces free-market principles and is less dependent on regulatory micromanagement. While our rules must change, I remain committed to ensuring that bottleneck transmission facilities continue to be unbundled, consistent with our statutory mandate; the challenge ahead is to develop an appropriate framework that distinguishes true bottlenecks from facilities that can be self-supplied or obtained on a reasonable wholesale basis.

As we address the court's directives on remand, this Order will ensure the stability of the telecommunications marketplace and will minimize disruption to consumers. By freezing existing interconnection and access arrangements for six months, we provide full protection for competitors that purchase access to elements in markets where the Commission is likely to find impairment and reinstitute unbundling obligations that are consistent with the court decision. And to the extent that some competitors will have to diminish their reliance on unbundled network elements, the six-month freeze, along with the subsequent period during which wholesale rate increases will be constrained for existing customers, will provide for an orderly transition to alternative arrangements.

I recognize and appreciate competitors' anxiety that DS-1 transmission facilities — which can be critical inputs in bringing competition to the small business market — could be subject to significant price increases following the end of the six-month freeze. This risk is an inevitable byproduct of the D.C. Circuit's vacatur of significant portions of the Triennial Review Order. But it is fully within the Commission's power to prevent any price increases from occurring. Indeed, it bears emphasis that a clear majority of the Commission has advocated the continued unbundling of DS-1 facilities in most circumstances and has also called for issuing new unbundling rules well before the interim period ends. If we fulfill our responsibilities, as I am confident will be the case, then there will be no price increases for any DS-1 loops or transport facilities that are designated as UNEs; rather, TELRIC rates would continue to apply as they do today. I will do everything in my power, and I trust the same is true of my colleagues, to develop an appropriate analytical framework that yields procompetitive and judicially sustainable unbundling rules — hopefully by the end of the year, but in all events within the next six

months.

As the Commission undertakes this task, the upcoming months provide a further opportunity for commercial negotiations. Competitors that make use of network elements that seem most vulnerable under the D.C. Circuit decision — most notably, circuit switching — may continue to obtain access to the relevant capabilities at just and reasonable rates. I applaud the efforts of those carriers that have already reached commercial deals regarding the price and other terms of such access, and I encourage others to do so. Yet I am disappointed that the Commission did not clarify in this Order the legal status of commercial agreements that pertain to services or facilities for which no section 251 mandate exists. Because both incumbent LECs and competitors have cited lingering uncertainty on this issue as a stumbling block to further agreements, we should have removed that obstacle now. I only hope that the Commission does so in the near future.

Finally, I am committed to working with my colleagues to reach consensus on unbundling rules that provide meaningful competitive opportunities while heeding the admonishments of the courts. While we have differed on some issues in the past, the Commission was unanimous in its support for unbundling high-capacity transmission facilities in many circumstances. I see no reason why we cannot reach agreement on these issues once again. As we move toward the adoption of permanent rules, we must be willing to reach compromises to produce a sustainable order that will finally bring certainty and stability to the competitive landscape.