

**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

In this Order, we once again reconsider portions of our Triennial Review Order and our unbundling rules for high-speed fiber loops capable of delivering advanced data, video and voice service to the mass market. Throughout this proceeding, I have sought to take a careful and balanced view of the benefits and burdens of our unbundling rules. In our prior Orders, that approach led me to support measured unbundling relief for broadband investment in so-called “greenfield areas,” where there is no existing loop plant and competitors and incumbents stand on equal footing. I concur in much of this Order in that I support granting targeted additional unbundling relief for “fiber-to-the curb” (FTTC) loops to serve mass market customers in greenfield areas. I cannot, however, join in the full decision because it is unnecessarily overbroad and lacks the analytical depth to address the specific requirements of the Act.

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. I concur in today’s decision because it extends symmetry to our treatment of two closely related network architectures, fiber-to-the-home (FTTH) and FTTC, each of which make possible the next generation broadband services that Congress directed us to promote. Given the close functional characteristics of FTTH and FTTC, I support the Order’s conclusion that unbundling relief in greenfield areas should encourage investment in broadband facilities to serve mass market customers.

The decision to impose or lift unbundling requirements under section 251 is not a trivial matter. The Act’s local competition provisions are of enormous importance to providers, both competitors and incumbents, alike, and, ultimately, to American 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. That is what the Commission does in the “greenfields” portion of this Order. I can only concur in my support, however, because I believe that this Order could have provided much more analytical depth. The Order is lacking in its factual consideration of impairment, failing to address in any comprehensive way the level of competition between incumbents and new entrants to deploy FTTC or FTTH loops. One predicate of the original Triennial Review Order was that unbundling relief would create incentives for both incumbents and competitors to deploy last mile FTTH loops. Yet, the Order includes no new analysis of the level of FTTH deployment to mass market customers by competitors, whether intramodal or intermodal, despite the fact that this approach has now been in place for well-over a year and it has been over two years since the record closed on the original proceeding.

The lack of analysis of deployment by competitors is perhaps more stark in the consideration of so-called brownfield developments, where providers are overbuilding their existing networks. In my view, the Commission once again fails to delve deeply to address these very different factual scenarios. I have similar concerns about the Order's revision of our network modification rules, which seems to invite more questions than it answers. Given this lack of evidence and analysis, I cannot join these portions of the Order.

I am also concerned that, despite the functional similarities between FTTH and FTTC architectures, the Commission moves the bar in this Order without a clear vision for the evolution of these technologies. By extending relief here we shift the clear distinctions drawn between FTTH loops and "hybrid loops," which use combinations of fiber and copper technology and which warranted a separate analysis and regulatory treatment under our previous orders. While this Order rests on standards for functionality supported by industry consensus, I question whether the Order articulates a clear standard that will serve us for long in this quickly evolving technological marketplace.

This Order does respond partially to one of my chief concerns about our prior Order concerning fiber-to-multi-dwelling units, adopted earlier this year, by explicitly confining its relief to mass market customers. This is a useful clarification, though the Commission would assist all parties by providing a clear definition of that line, something that is once again missing in this item. The importance of competitive choice for small business consumers has been widely recognized as a driver of economic growth, so it is unclear why the Commission once again fails to articulate clearly our rules in this area.

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