

**DISSENTING STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

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

We are living in a new world when it comes to wireline competition. It is not a world of my making or my choosing, and I am deeply troubled by the conviction that this new world will be characterized by dramatic changes that will negatively impact American consumers. In decision after decision over the past three years, this Commission has taken actions curbing competition and limiting consumer choices, in the process straying far from the paradigms of competition laid out in the Telecommunications Act of 1996.

Our challenge today is to craft rules that will be acceptable to the courts and true to our statutory directives. I entered this remand proceeding hopeful that we could reach a compromise that would ensure some future for competition among wireline service providers and to provide a decent future for facilities-based carriers. We have had a long and serious dialogue over this item, extending through most of the night and right into today. I appreciate my colleagues' willingness to engage in this discussion and to make the effort to achieve consensus. Unfortunately, in the final analysis, consensus eluded us. I thought we were getting close, but we couldn't cross the finish line. I cannot support the decision that resulted.

What we have in front of us effectively dismantles wireline competition. Brick by brick, this process has been underway for some time. But today's Order accomplishes the same feat with all the grace and finality of a wrecking ball. No amount of rhetoric about judicially sustainable rules and economically efficient competitors can hide the blockbuster job this Commission has done on competition. During its tenure, the largest long distance carriers have abandoned the residential market. And as a result of today's decision, other carriers will follow suit. In their wake we will face bankruptcies, job losses and customer outages. Billions of dollars of investment capital will be stranded. And down the road consumers will face less competition, higher rates and fewer service choices.

After having abandoned residential competition earlier, today the majority also hangs up on small business consumers. Small business likes competition. It has voted with its feet for competition. In fact, the Small Business Administration tells us that in metropolitan areas competitive carriers serve 29 percent of small businesses. The inroads competitive carriers have made in this community are important, because small business is the engine of our economy. Small businesses generate between two-thirds and three-quarters of all new jobs in this country. They represent over 90 percent of employers and they produce over half of the nation's private sector output. The savings they enjoy from competitive telecommunications services go straight to the bottom line. But the majority's action today pulls the bottom out from under small business competition. It places restrictions on access to high-capacity loop and transport facilities that are vital for carriers serving small businesses. It imposes economically unsound tests. In short, it burns the bridges competitive carriers have made in serving the small business community.

For a Commission that has laced its decisions with praise for facilities-based competition, today's action is a funny way of showing its continued support. As a result of this decision there will be less competition, less choice and higher rates. The people who pay America's phone bills deserve better. I dissent.

Some would have us believe that this is the road we have to travel in the wake of court decisions. Yet it is this Commission that refused to seek review of the very court decisions they now claim constrain us.

Though I do not join this decision today, I wish to thank the Commission staff for their hard work on this item. This proceeding—and its predecessor—have not been easy. But throughout the Bureau has been helpful, candid and generous with their time. I am grateful for their devotion to the task at hand and hope that there is some well-deserved time for rest and relaxation in the weeks ahead.