

**JOINT STATEMENT OF
COMMISSIONERS MICHAEL J. COPPS AND JONATHAN S. ADELSTEIN**

Re: *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, Memorandum Opinion and Order, WC Docket No. 04-29 (May 5, 2005)

In Section 10 of the Communications Act, Congress provided the Commission with the authority to forbear from application of statutory or regulatory provisions in order to “promote competition in provision of telecommunications service.” To exercise this authority, the Commission must find that enforcement of the statute or its regulations is not necessary to ensure against discriminatory behavior and is not necessary for the protection of consumers. In addition, the Commission must find that forbearance is in the public interest.

The petition in the instant proceeding procedurally misses the mark. It falls short of defining the specific services for which relief is sought, the statutory and regulatory provisions at issue, the carriers to which this relief applies and the geographic markets where this relief is directed. Without this kind of data and information, the Commission is unable to apply the test laid out by Congress in Section 10. Moreover, a petitioner seeking forbearance from key provisions of the Act—like Sections 201 and 202—bears a heavy burden under Commission precedent. The petition before us lacks the detail necessary to meet this burden. We support the outcome of today’s decision but we write separately to emphasize that we find the insufficiency of the record before us is the appropriate basis for denying this petition.

We have some concerns about the remainder of the Order, which suggests that the Commission may not forbear from requirements that “may or may not” apply. This Order should not be read to make any particular determinations about whether specific requirements apply to IP-enabled services. Although we have reservations about the potential for confusion created by this language, we support the decision because it is superior to Commission inaction. Failure to issue a decision would have resulted in an automatic grant of this petition, a result that we find untenable in light of the record before us.