

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

*Re: Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109.*

In today's decision, the Commission addresses a wide-ranging forbearance petition concerning the appropriate regulation of the incumbent local exchange carrier in the unique circumstances of Anchorage, Alaska. Anchorage is a relatively small market, geographically removed from the lower 48 states. Moreover, a competitive facilities-based carrier has extensively built out its network and has taken significant market share for certain services from the incumbent provider. Because we find that this Order is inconsistent in its consideration of these factors, we concur in part and dissent in part.

We support this Order's decision to grant conditional relief in Anchorage for certain services where there is clear evidence of a vigorous rivalry between the incumbent cable and wireline provider; where there are few, if any, other competitors seeking to enter the market; and where the principal competitors previously reached a long-term commercial agreement that may in fact foster competition in the mass market. However, we continue to have concerns with a general approach that suggests that consumers should be satisfied with only two providers. The goal of the Telecommunications Act of 1996 is to establish a competitive and de-regulatory telecommunications environment. While today's order reduces regulation by eliminating some incumbent obligations and demonstrates that the Commission can respond to a dynamic marketplace, the Commission relies on the intermodal efforts of a single alternative provider to conclude that sufficient competition exists. While we concur in the forbearance of certain regulations based on the aforementioned factors that affect the unique Anchorage market, we believe the statute contemplates more than just competition between a wireline and cable provider.

Moreover, the Commission is forced to craft a novel litany of conditions in order to grant forbearance in this case. While we appreciate the efforts of the parties and the Bureau to limit potential adverse effects of this decision on universal service, access charges, consumer prices, and for cost allocation purposes, here we create an almost entirely new regulatory structure out of whole cloth. It will be important for the Commission to monitor the effects of these safeguards, and we encourage the Commission to diligently verify whether its predictions about their sufficiency are accurate.

For business customers, this Order is a particularly mixed bag. We support the decision to deny relief from the Commission's existing pricing rules for "traditional TDM-based" special access services, for which relief the Order finds a lack of evidence about market shares and the development of competitive forces. Yet, in an inexplicable turn, the Commission forbears from the pricing rules for other special access services, referred to in this Order as enterprise broadband services. While we appreciate the Commission's effort not to rely explicitly on generalized marketplace conditions for these services or to characterize explicitly the marketplace as nationwide, in doing so it is left with an Order that is devoid of virtually any analysis. The Order readily admits "that the record in this proceeding does not include detailed market information for particular enterprise broadband services in the Anchorage MSA." Much of the data pointed to for support is in fact for services offered by providers everywhere but Anchorage. In addition, the Commission finds that "potential" competition is sufficient to forbear from regulation. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as "potential" competitors will have even less ability to successfully

compete. These kinds of decisions are too important to be made without the in-depth market analysis that might support them. Recent Congressional hearings have demonstrated to us a growing impatience with policymaking via analysis-poor forbearance decisions. The Commission needs to mend its ways.

While we certainly appreciate the Order's decision to retain key interconnection, universal service, privacy, disabilities access, and other Congressionally-mandated provisions -- forbearance from which would have been devastating for consumers and competition -- we cannot support this Order's decision to forbear from rules that provide critical pricing protection. We hope that the grant of forbearance here, without analysis of specific market forces and conditions, is not an ominous sign for customers in other regions of the country, many who have fewer options than those available in Anchorage.