

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
CONCURRING**

Re: *Section 272(b)(1)'s "Operate Independently Requirement for Section 272 Affiliates (WC Docket No. 03-228, CC Docket Nos. 96-149, 98-141, 01-337)*

In Section 272, Congress required Bell companies to provide long distance services through a separate affiliate. Under the statute, the affiliate must maintain separate books, records and accounts; have separate officers, directors and employees; and must conduct all business with its parent on an arm's length basis, with transactions reduced to writing and available for public inspection. A separate affiliate may not obtain credit under conditions that permit creditors to have recourse to its parent. Bell companies are prohibited from discriminating between their own affiliate and other entities in the provision of services. This is a strikingly detailed list of obligations. Congress required every one of them in the Communications Act. None are negotiable. All must be vigorously enforced.

Congress also required that the separate affiliate "operate independently" from its Bell company parent. As the Commission suggested as far back as 1996, this phrase is more ambiguous than its counterpart requirements in Section 272. As a result, the Commission came up with two rules to implement its meaning. The Commission eliminates one of these rules today—the requirement that affiliates provide separate operation, installation and maintenance functions. I support today's action because I do not believe that the statute compels this particular OI&M requirement.

I limit my support to concurring because I believe that with the removal of this kind of structural safeguard, it is the right time to consider a non-structural safeguard, namely, special access performance metrics. It was more than two years ago that the Commission introduced this idea with unanimous support. Special access services are critical to the business telecommunications economy. This proposal could be a tool to ensure quality and nondiscriminatory service. Instead it is gathering dust on the regulatory shelf. I hope the Commission will undertake a re-examination of its special access policy as the logical complement to the step we take here.