SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN,
CONCURRING

Re: Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates, et al.; Report and Order in WC Docket No. 03-228, Memorandum Opinion and Order in CC Docket Nos. 96-149, 98-141, 01-337

I concur in this Order on the belief that the complete prohibition against sharing of operating, installation, and maintenance (OI&M) services is not necessary based on this record, while retention of the joint ownership prohibition is.

Through section 272, Congress required a separate affiliate and imposed structural and transactional requirements between a Bell operating company (BOC) and its long distance affiliate, requiring such separation for a minimum of three years. Congress did not, however, explicitly specify how the affiliate was to "operate independently" from the BOC. The Commission adopted the particular rules at issue here to give meaning to the "operate independently" statutory directive.

The lifting of structural protections is not a trivial matter. In this case, nevertheless, I am persuaded by this record that the complete prohibition on sharing of OI&M services is no longer necessary. A complete ban on such sharing is not statutorily mandated, and the record suggests that concerns against cost misallocation and discrimination in both price and performance can be addressed effectively in other ways.

Without question, the sharing of OI&M services between a BOC and its section 272 affiliate will result in measurable efficiencies. A complete OI&M restriction imposes costs and denies the economies of scale and scope inherent in the integration of some services. Allowing OI&M sharing will enable the BOCs to make better use of their dedicated and experienced workforces. On an integrated basis, the BOC local exchange companies' many office and field technicians could perform the same work more efficiently.

It is critical, however, that revising our rules to permit OI&M sharing not sacrifice the important goals of preventing improper cost allocation and discrimination, both in price and performance, by a BOC and its section 272 affiliate. I place heavy reliance on the BOCs' full compliance with the other statutory and regulatory safeguards, including the nondiscrimination provisions, the biennial audit and other public disclosure requirements, separate governance and arm's length dealings, and accounting protections. Full compliance with these other safeguards will go a long way toward protecting competitors and the public.

I would have liked to have seen more analytical depth to this item, however. For example, we could have examined more specifically the services at issue to understand their operational impact or whether to draw any distinction between back office personnel

and systems, as the sharing of systems may cause greater concern. We also have more direct experience with the section 272(d) audits and underlying performance data than what is reflected in the item. I would have liked for that audit experience to have shed further light on the sufficiency of the other protections. In addition, I would have examined the relationship between special access performance measures and the issues implicated in this item. The Commission opened a proceeding on special access performance measurements more than two years ago, and I would have considered that in tandem with today's action.

These concerns, however, do not lead me to disagree with the sharing of OI&M services and the benefit of better workforce utilization. Rather, I concur insofar as I would have examined in greater depth the services at issue and assured that any potential gaps in safeguards were fully addressed through protections such as special access performance measurements.