STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability* (CC Docket Nos. 01-338, 96-98 & 98-147)

Though today's Order speaks in glowing terms about broadband relief, the reality is far less radiant. I don't believe competitive telecommunications have been faring very well under our watch and this particular proceeding strikes me as yet another in a series of prescriptions this Commission is willing to write to end competitive access to last mile facilities. It seems every month brings a new onslaught.

I did not support the basic approach embraced here when the Commission set out to restrict access to fiber loops in the *Triennial Review*. So it will surprise no one that I do not support it here with the majority venturing even deeper into the denial of access to bottleneck facilities. By expanding the fiber-to-the-home unbundling exemption to fiber-to-the-curb architectures—a huge step even in light of the dramatic competitive restrictions in the *Triennial Review*—this decision restricts broadband competition for residential consumers. It also constitutes an ominous precedent for the small business community. Neither does it bode well for independent providers of VoIP services who don't own or control the physical layer of the network.

Here is why I think this approach is dangerous. The loop represents the prized last mile of communications. Putting it beyond the reach of competitors can only entrench incumbents who already hold sway. Monopoly control of the last mile created all kinds of problems for basic telephone service in the last century, and now we seem bent on replicating that sad story for advanced services in the digital age. Unfortunately, the digital age is going to take a lot longer to get here because of the blows we are inflicting on competition. In the *Triennial Review*, the majority started down a hazardous path. They began by exempting fiber-to-the-home loops from competition. Last summer the majority extended this exemption to "primarily residential" buildings. In doing so, they blurred the line between mass market and small business customers. As a result, millions of small businesses located in buildings that also have residential apartments are now going to be denied the enhanced services and lower prices that competition can bring. Now, today, the Commission treks even further down this road by exempting fiber-to-the-curb facilities from competition. And they add to the damage by adopting an incomprehensible routine network modification policy.

If we aren't going to listen to consumers, one would think this Commission would at least listen to the investors who wrote us again last week that our broadband policies are undermining competition, undermining facilities-based carriers who need last-mile

access to service small business customers, and undermining the confidence of investors who want to put money into this kind of competition—in fact who have already done so!

It doesn't take a compass to see what direction this is heading. With fewer and fewer loops available to competitors, more and more control will be wrestled away from consumers and placed with the entrenched owner of the last mile facility. By shutting off the last mile to competitors, the Commission is not ushering in a new era of broadband. It is returning to the failed and non-competitive policies of the past. Residential consumers, small businesses, edge providers of VoIP and others who rely on competitive broadband will be stuck with the consequences, and the consequences will be with us for a long time and will, I predict, kick us further down that broadband penetration ladder where your country and mine now ranks Number 11. Number 11.   I think the policy is wrong, I think it's dangerous, I think it runs against the direction set by Congress, and I feel compelled to dissent.