

**STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN**

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173

I lend my support to today's Notice because I believe that it is reasonable and appropriate to look once again at our pricing rules for unbundled network elements, interconnection, and resale of service under Sections 251 and 252 of the Act. These pricing rules, while certainly esoteric, have an enormous impact on the telecommunications industry and on consumers. If prices for unbundled network elements are too high, competitors may face much greater hurdles than Congress intended -- particularly given our recent decision in the Triennial Review Order, that limits unbundling to those facilities for which competitors are truly impaired -- and may be limited in the services which they can offer. On the other hand, if the prices for unbundled elements are too low, this could have serious consequences for our nation's incumbent carriers. For the American consumers who obtain more than 18 million lines from competitors by resale or unbundled elements, our decision can mean the difference between having a choice of providers or returning to a world of one option. So, the stakes are high.

While I am sympathetic to concerns that this Notice may open another source of regulatory instability, it has been seven years since the FCC adopted these rules and this is the first comprehensive review. Through the Triennial Review process, our section 271 review, and discussions with carriers, numerous concerns have been raised. We must look carefully at these concerns and it is fair to open this dialogue.

That said, I enter this proceeding with a very open mind. Our TELRIC pricing rules have been challenged in almost every forum and on just about every basis since their adoption in August of 1996. Despite those challenges, our rules have been upheld by the highest court of the land. The Supreme Court's affirmation of our rules sent a strong signal that the Commission had struck the right balance. Indeed, by making parts of the incumbents' network available to competitors at economic cost, our rules enable consumers to reap the benefits of the incumbents' economies of scope and scale, as well as the benefits of competition. Moreover, the investment that these rules have encouraged has been remarkable; as noted by the Supreme Court, competitors have invested approximately 51 billion dollars between 1996 and 2000, which is now up to 71 billion dollars according to recent estimates. I recognize, however, that there may be ways to improve these rules.

Given the Supreme Court's endorsement of our existing rules, the importance of this proceeding, and the fact that we have no direct record on these issues, I would strongly prefer to issue this Notice without any tentative conclusions, simply seeking comment on how we might improve our rules. The Notice seeks comment on several alternatives for modifying our rules, but I am pleased that the item does not specifically endorse any single alternative methodology. I nonetheless join in a limited tentative conclusion that our TELRIC rules should more closely account for certain real-world factors -- namely, the routing and topography of the incumbent LEC's network. Because this issue has become a flash-point for criticism of our TELRIC rules, I believe that it is worthwhile to signal to the outside community that the FCC has concerns about

how our rules account for these factors. I should make clear, however, that I remain open to all possibilities in this proceeding and will look carefully at the evidence filed on this and other issues.

It is critical that we develop a full and comprehensive record in this proceeding and that we not rush to judgment before analyzing this record. To this end, I encourage and fully expect that we will see active participation by our colleagues from the state public utility commissions. They have front line experience implementing our rules and are perhaps best positioned to explain how the current rules have been implemented, where they are ambiguous, where they are problematic, and where they have functioned well.

I would like to thank my colleagues, particularly the Chairman, for seeking our input on this item and working to accommodate many of our concerns. I would also like to thank Bill and his team for their hard work on this item and to wish them well as we kick off what will be, I'm sure, a challenging proceeding.