SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY
APPROVING IN PART AND DISSENTING IN PART

Re: Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Further Notice of Proposed Rulemaking (rel. August 21, 2003).

The release of this Order and Further Notice concludes a long and difficult chapter in the Commission's review of its rules regarding unbundled network elements. As I explained upon adoption of the Order,[1] I strongly support the decision to create a national policy that exempts new broadband investment from unbundling at deeply discounted TELRIC rates. This bold action should restore incentives for carriers to build next-generation fiber-based networks that will support a host of exciting new broadband applications. I also support ensuring access to the bottleneck transport and loop elements that are critical to the continued development of facilities-based competition, and I am encouraged that my colleagues have unanimously supported my call to seek comment on proposed modifications of the pick-and-choose regime.

Nevertheless, I remain disappointed by the Commission's decision to perpetuate reliance on the unbundled network element platform (UNE platform or UNE-P) in the face of widespread switch deployment by competitive LECs. While the majority has modified the unbundled switching framework since the February 20 decision, and I am gratified that their changes address some of my previously stated concerns, the majority's framework still falls short. The core flaw in the decision — its failure to impose meaningful limits on the availability of unbundled switching — unfortunately remains. Indeed, the majority's framework all but ensures that state commissions will preserve UNE-P in virtually all markets throughout the country for CLECs serving mass market customers. The Communications Act and the D.C. Circuit's *USTA* decision plainly preclude such an approach. Moreover, from a policy perspective, I would have placed greater faith in market forces and facilities-based competition where CLECs have deployed their own switches. Relying on state commissions to apply a convoluted regulatory framework inevitably will produce disparate results in similarly situated markets and will engender litigation in each and every state for years to come. I believe we should have brought far greater certainty to a turbulent market that craves it. I therefore dissent from the majority's treatment of unbundled switching.

I also dissent from the portion of the item concerning line sharing. The question of impairment regarding the high-frequency portion of the loop presents a close call on which

[1] Press Statement of Commissioner Kathleen Q. Abernathy, *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147* (February 20, 2003).

reasonable minds can differ. But I cannot discern any lawful basis for grandfathering all existing line sharing arrangements. In light of the majority's determination that competitors are not impaired without access line sharing, the Commission plainly lacks authority to mandate unbundling indefinitely for existing customers.

I elaborate below on the two most pressing issues in this proceeding, broadband loops and unbundled switching, and I further explain my reasons for dissenting from the line sharing decision.

A. Broadband Loops

One of the 1996 Act's most important mandates, and accordingly one of my core goals as a Commissioner, is to facilitate the deployment of broadband infrastructure. The key question posed in this proceeding is *how* we should accomplish that end. The answer, in my view, is to remove regulatory obstacles to deployment and thereby ensure that network owners have adequate incentives to make the costly and risky investments needed to deliver broadband to all Americans.

The stakes in this debate could hardly be higher: While the FCC has been pondering the appropriate unbundling framework for broadband facilities, capital expenditures have fallen off a cliff. Carriers and equipment manufacturers alike have laid off thousands of workers, and bankruptcies have become commonplace. Despite our historical global leadership in communications technology and deployment, several other countries now surpass the United States in terms of broadband penetration and performance. American service providers and equipment vendors have been forced to slash research and development budgets and this trend is not easy to reverse.

Faced with this situation, the Commission is forced to balance two sometimes competing goals in the statute: preserving carriers' incentives to invest in new facilities, on the one hand, and providing competitive access to incumbents' networks, on the other. I believe that the balance we strike should vary both with the degree of new investment at issue and the bottleneck nature of the facility in question. At one end of the spectrum is fiber-to-the-home (FTTH) investment, which entails a complete replacement of legacy facilities (or entirely new construction in greenfield situations) and thus imposes immense costs and risks on incumbents as well as new entrants. The Order accordingly refrains from unbundling these new, non-bottleneck FTTH facilities. At the other end of the spectrum is existing copper plant. Granting competitors access to copper loops or to the high-frequency portion of the loop (line sharing) in my view does not create any real disincentive to invest, because the loops in question already exist and the electronics used to provide line sharing already have been exempted from unbundling. As discussed below, I therefore believe that the majority should have preserved our line sharing requirements.

I am heartened by the Commission's decision to provide significant regulatory relief for new broadband investment. I firmly believe that this decision, in due time, will bring consumers the benefits of increased investment and innovation — which translates into better, faster, more

robust services. I also believe that consumers will benefit from broadband competition — both intermodal (from cable modem, wireless, satellite, and powerline broadband providers) and intramodal (from competitive LECs using their own facilities and incumbents' loops and subloops). And because the telecom sector has become such an important driver of overall fiscal health, I expect that regulatory relief for broadband will serve as a much-needed stimulant to the economy.

B. Unbundled Switching (UNE-P)

While I enthusiastically support the decision to remove regulatory obstacles to broadband deployment, I remain opposed to the majority's resolution of the unbundled switching issue. As described in detail below, the majority seems intent on preserving UNE-P in virtually all markets throughout the country in spite of the widespread deployment of CLEC-owned switches in most areas.

As I indicated in February, I believe the statute does not permit this Commission to transfer ultimate decisionmaking authority to the state commissions. I thus dissented on the ground (among others) that, unlike our impairment frameworks for interoffice transport and high-capacity loops, which conclusively find an absence of impairment in markets where a threshold number of competitors have deployed alternative facilities, the majority's decision on switching made no findings at all.[2] Throughout this proceeding, and in particular in my February 20 statement, I argued that there were a number of reasonable options proposed in the record, including pegging non-impairment findings to deployment of a threshold number of switches in a LATA (or other geographic area) — an approach backed by two respected former Chairpersons of NARUC's Telecommunications Committee.[3] The one thing I was not willing to do was transfer the ultimate decision on the presence of impairment to the state commissions.[4]

---

[2] Rather, the majority merely adopted presumptions that gave state commissions virtually unfettered discretion to make impairment findings based on a myriad of factors. Particularly problematic was the majority's refusal to find non-impairment even where CLECs seek unbundled switching to serve enterprise customers at a DS-1 capacity and above; in spite of overwhelming record evidence demonstrating that dozens of CLECs serve such customers using self-provisioned switches, the majority was only willing to adopt a presumption of non-impairment, which states were free to overcome at their discretion. Aggrieved parties could not appeal state impairment findings to the Commission, ensuring that states would exercise the ultimate decisionmaking authority.

[3] *See* Joint Statement of Bob Rowe, Chairman, Montana Public Service Commission, and Joan Smith, Commissioner, Oregon Public Utility Commission (Jan. 30, 2003).

[4] As I explained in my statement accompanying the February 20 decision, the Commission plainly may not abdicate its statutory responsibility under section 251(d)(2) to determine which network elements shall be unbundled. As Justice Scalia explained for the Court in *Iowa Utilities Board*, "the question . . . is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to matters addressed by the 1996 Act, *it unquestionably has*." *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999) (emphasis added); *see also id.* (opining that the notion of "a federal program administered by 50 independent state agencies is surpassing strange"). Other courts also have made clear that the FCC may not thwart Congress's intention to create a federal scheme by surrendering its ultimate decisionmaking authority. *See, e.g.*, *American Civil Liberties Union v. FCC*, 823 F.2d 1554, 1574-75 (D.C. Cir. 1987) (affirming that "the *ultimate* responsibility for (continued….)

The released version of the majority's decision does not utilize a rebuttable presumption of non-impairment in the enterprise market, but instead makes a national finding of non-impairment. For mass market customers, the majority has found impairment on a national level and mirrored the consensus approach to transport and high-capacity loops by adopting federal triggers that (theoretically, at least) require states to make non-impairment findings in certain circumstances. As described below, however, the majority's framework still falls short in a number of respects.

The majority's revised impairment framework for unbundled switching used to serve mass market customers provides only illusory constraints. The majority's failure to account for the extensive deployment of circuit switches by CLECs and its failure to limit unbundling to situations where entry would be uneconomic in its absence flout the clear mandate of the D.C. Circuit in the *USTA* decision.[5]

In particular, the majority directs state commissions to find non-impairment where there are three competitor-owned switches deployed in a particular geographic area — *unless* those switches are being used only to serve enterprise customers.[6] This exception completely swallows the rule: While more than 200 competitors of all sizes have deployed circuit switches — totaling approximately 1,300 nationwide[7] — the majority declares that these simply do not count. The majority assumes away the existence of virtually all CLEC-owned switches because, with a limited number of exceptions, CLECs have chosen not to serve mass market customers using their own switches. The majority attempts to justify its exclusion of most existing circuit switches by characterizing them as "enterprise switches" — as if they were a different species of equipment. In actuality, the very same switches can be used to serve customers of all sizes and classes. The majority's assertion that CLECs cannot economically serve residential or small business customers using their own switches is unavailing for two principal reasons, even apart from the fact that some CLECs *are* in fact serving mass market customers on a UNE-L basis.[8]

(Continued from previous page)

ensuring a 'national policy' . . . lies with the federal agency responsible for administering the Communications Act" and upholding FCC rule at issue on ground that "the Commission has *not totally abdicated its ultimate responsibility* for enforcing the [statutory] provision," and thus did not thwart "Congress' efforts to establish a federal standard") (emphasis in original).

[5] *USTA v. FCC*, 290 F.3d 415, 425-28 (D.C. Cir. 2002).

[6] The majority also declares that state commissions must find a lack of impairment where there are two wholesale switching providers apart from the incumbent LEC, but the majority readily acknowledges that no wholesale switching market exists.

[7] Order at para. 436.

[8] *See BOC UNE Fact Report* at I-9, Figure 6-*Use of UNE Platforms by CLECs Providing Service to 25,000 or More Residential Lines Using Their Own Switches* ("CLECs providing service to 25,000 or more facilities-based residential lines include: ALLTEL, Broadview, Cavalier Telephone, Intermedia, Knology, McLeodUSA, RCN, TDS, TOTALink"); WorldCom Reply at 144 (stating the Cavalier is a "small competitive LEC experimenting with a UNE-L strategy"). *See also* Letter from Joseph O. Kahl, Director, Regulatory Affairs, RCN Telecom Services, (continued….)

First, the majority simply ignores the possibility — indeed, likelihood — that CLECs are generally refraining from using their own switches to serve mass market customers *because of the availability of UNE-P*. Why undertake the cost of connecting loops to your own switch if you can avoid investing any capital or taking any risk by purchasing the entire platform at a superefficient TELRIC price?[9] Bootstrapping from the pervasive reliance on UNE-P to justify the continued availability of UNE-P is hardly the kind of rigorous impairment analysis required by Congress and the reviewing courts.

Second, the majority makes unwarranted assumptions about incumbent LECs' ability to connect loops to competitors' switches in a timely, reliable, and cost-effective manner. While incumbent LECs have submitted declarations attesting to their willingness and ability to handle any requested volume of hot cuts, the majority concludes that "it is *unlikely* that incumbent LECs will be able to provision hot cuts in sufficient volumes absent unbundled local switching in all markets."[10]

Such a predictive judgment *might* warrant deference if the Commission were writing on a blank slate, but we are not. In granting 37 section 271 applications by February 20 (now 43 applications), the Commission found time and again that the BOCs' hot cut processes are timely, cost-effective, and accurate.[11] The Commission cannot wipe these findings away by questioning whether the BOCs would be able to meet increased volumes in the absence of UNE-P. To the

(Continued from previous page)

Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 23, 2003); Letter from Mark Jenn, Manager-Federal Affairs, TDS Metrocom. to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-338, 96-98, 98-147 (filed Oct. 24, 2002); Florida Digital Network February 2003, Presentation to the FCC, *in* Letter from Michael C. Sloan, Counsel to Florida Digital Network, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-338 (filed Feb. 6, 2003) (all describing UNE-L strategies).

[9] The majority has great faith that batch cut processes will induce UNE-P providers to transition voluntarily to a UNE-L model, but the record does not bear this out: Despite the availability of managed hot cut processes in some states, carriers with their own switches have been *increasing* their reliance on UNE-P. *See 2002 Local Competition Report* at Tables 3 & 5; *2000 Local Competition Report* at Table 5. That is hardly surprising given that UNE-P reduces costs to the level of a hypothetical, superefficient competitor; reduces risk; and eliminates the need to invest capital in new facilities.

[10] Order at para. 468 (emphasis added).

[11] *See, e.g.*, *Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, 17 FCC Rcd 9018, 9146 (2002) (finding that BellSouth provisions hot cuts "in a timely manner and at an acceptable level of quality, with a minimal service disruption and a minimum number of troubles"); *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, 15 FCC Rcd 18354, 18486-95 (2000) (same); *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, 15 FCC Rcd 3953, 4104-4115 (1999) (same).

contrary, in evaluating the BOCs' operational support systems, the Commission affirmatively found that the BOCs "will be able to handle reasonably foreseeable demand volumes."[12] At a minimum, to avoid an arbitrary departure from Commission precedent, the majority should have presumed that the BOCs' hot cut processes are workable in states for which section 271 authority has been granted. In those states and others, it would have been perfectly appropriate to authorize state commissions to impose strict performance standards, and to require switch unbundling as a post-hoc remedial measure in the event of an ILEC's unsatisfactory performance. Indeed, I favored such an approach to avoid backsliding. But to assume failure at the outset and make a *nationwide* finding of impairment — in the face of the Commission's repeated findings regarding the adequacy of BOC hot cut processes — is plainly unjustified. The Supreme Court has made clear that the burden of demonstrating impairment rests with the Commission;[13] we cannot mandate unbundling on the ground that that the BOCs have not yet *proven* non-impairment. In addition, since the Supreme Court has made clear that "[t]he Commission cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network,"[14] the majority certainly cannot blind itself to the availability of the CLECs' own already-deployed switches.

Given the illusory nature of the switching triggers, as a practical matter, the only way a state can make a finding of non-impairment for CLECs serving mass market customers is if it finds that each and every one of a long list of potential entry barriers have been overcome (*see* Order at paras. 511-20). The majority states that, while CLEC switches that are serving enterprise customers cannot be counted for purposes of the "triggers," such deployment nevertheless should be given "substantial weight."[15] But this is mere lip service. The majority's multifactor test starts with a default presumption of impairment and cannot be overcome unless every conceivable obstacle to profitability has been eliminated. In this respect, it is essentially the same flawed framework that has been twice rejected by the reviewing courts.[16] This

[12] *New York 271 Order*, 15 FCC Rcd at 3993 (setting standard that has been deemed satisfied in each section 271 approval order). The majority asserts that demand for unbundled loops in the absence of UNE-P could not have been reasonably foreseen at a time when many section 271 applications were granted as a result of UNE-P competition. Order at para. 469 n.1435. This assertion ignores the fact that UNE-P competition was practically non-existent in numerous states where section 271 applications were granted. More fundamentally, it is hard to fathom how the majority can square their assertion that increased volumes of hot cuts were unforeseeable with their characterization of UNE-P as a transitional mechanism designed to promote facilities-based competition. In other words, if we all agree that facilities-based competition has long been the Commission's goal (and in some cases is a reality already), then it is untenable to contend that increased volumes of hot cuts were not "reasonably foreseeable."

[13] *Iowa Utils. Bd.*, 525 U.S. at 390-91.

[14] *Id.* at 389.

[15] Order at para. 508.

[16] Indeed, the majority's "all relevant factors" approach, Order at para. 458, is essentially the same as the totality-of-the-circumstances approach in the *UNE Remand Order*, which was struck down in *USTA*.

approach fails to heed the Supreme Court's mandate to avoid providing blanket access and instead impose a limiting standard rationally related to the goals of the Act.[17] It even more starkly violates the D.C. Circuit's instruction that the Commission's impairment framework cannot be based on "an open-ended notion of . . . cost disparit[ies]."[18]

First, the majority directs states to consider "operational barriers" before making any finding of non-impairment. Specifically, a state would have to conclude that "the incumbent's facilities, human resources, and processes are sufficient to handle adequately the demand for loops, collocation, cross-connects, and other services required by competitors."[19] The majority fails to recognize, however, that remedies far less intrusive than unbundling — such as performance metrics tied to penalty payments for poor performance — have been found adequate (during the section 271 process and otherwise) to address such issues. Indeed, the costs, delays, and physical constraints associated with collocation[20] already have been addressed through rules adopted pursuant to section 251(c)(6). Perhaps state and federal regulators need to improve their oversight and enforcement, but any failings on regulators' part cannot be considered impairment.

Second, and just as problematically, the majority lists a number of "economic barriers" that also must be overcome to warrant a finding of non-impairment. The majority directs states to examine both revenues and costs in a manner that seems destined to perpetuate reliance on UNE-P. For example, states must consider the retail revenues a CLEC would earn from serving residential customers; presumably, if those revenues are low, that would warrant a continued finding of impairment. Here, again, the majority engages in bootstrapping, rather than an appropriately limited impairment analysis: If states have set residential rates artificially low, for example in rural areas, that would justify continued reliance on UNE-P under the majority's framework, even though the real barrier to competition is the retail rate structure (which states are free to change), as opposed to a natural monopoly cost. Thus, the majority still has failed to explain how "want of unbundling can be said to impair competition in such markets, where, given the ILECs' regulatory hobbling, any competition will be wholly artificial."[21]

On the cost side of the equation, the majority instructs state commissions to consider "the recurring and non-recurring charges paid to the incumbent LEC for loops, collocations, transport, hot cuts, OSS, signaling, and other services and equipment necessary to access the loop."[22] And, as if that were not enough, states also must somehow determine "an entrant's

[17] *Iowa Utils. Bd.*, 525 U.S. at 388-90.

[18] *USTA*, 290 F.3d at 426.

[19] Order at para. 512.

[20] *Id.* at para. 513.

[21] *USTA*, 290 F.3d at 422.

[22] Order at para. 520.

likely market share, the scale economies inherent to serving a wire center, and the line density of the wire center; . . . the impact of churn on the cost of customer acquisitions; the cost of maintenance, operations, and other administrative activities; and the competitors' capital costs."[23] Among other problems, the majority overlooks the fact that recurring and non-recurring charges for collocation, transport, hot cuts and the like are already set at TELRIC prices. Permitting findings of impairment based on such costs is another example of impermissible bootstrapping, given that these inputs are priced based on a hypothetical, forward-looking cost model that sets wholesale rates below the incumbent LEC's own embedded costs. In other words, unbundled transport, loops, and other UNEs are the *remedy* for impairment, not a source of it.[24] Moreover, in telling states to consider whether "rolling UNE-P" can mitigate any impairment resulting from the above factors, the majority further violates *USTA*. If a competitor can quickly overcome a temporally limited startup disadvantage — such as a high churn rate experienced during the first few months of service — then the Commission should conclude that there is no impairment at all, given that new entrants in all industries typically must operate at a loss for an initial period.[25]

At bottom, the majority's open-ended framework does nothing to prevent state commissions from finding impairment based solely on their "belief in the beneficence of the widest unbundling possible."[26] A state need only cite low retail rates, or high startup costs, and it may preserve UNE-P forever, notwithstanding that numerous CLEC-owned switches may be available for use serving mass market customers. Thus, rather than narrowly employing switch unbundling to alleviate natural monopoly conditions, as the courts have instructed, the majority has told states they may treat switch unbundling as a cure-all. If the hot cut process is not functioning properly, despite the Commission's findings in the section 271 proceedings, they say: unbundle the switch. If transport costs are high, unbundle the switch. If collocation and cross-connect take months to provision, unbundle the switch. As we have been told in successive decisions vacating our rules, the law does not permit such extensive and indiscriminate use of the unbundling remedy.[27]

---

[23] *Id.*

[24] I recognize that high backhaul costs and other expensive inputs do in fact make it difficult for CLECs to compete in rural areas, where retail rates are quite low, but, far from demonstrating impairment, this signals the need for rate rebalancing.

[25] *See USTA*, 290 F.3d at 427 ("To rely on cost disparities that are universal as between new entrants and incumbents in *any* industry is to invoke a concept too broad, even in support of an initial mandate, to be reasonably linked to the purpose of the Act's unbundling provisions.")

[26] *Id*.

[27] In my February 20 press statement, I noted that the majority had abandoned the previous four-line limit that prevented competitors from purchasing unbundled switching to serve most business customers. The majority now announces that it is preserving that limit on an interim basis. Once that initial period ends, however, the majority will have expanded the potential availability of UNE-P to CLECs serving business customers with up to 20 lines. *See* Order at paras. 497, 525. As noted in my earlier statement, while justifying the status quo seems difficult enough, it is even harder to see how a potentially massive *expansion* of UNE-P, in the face of evidence that dozens (continued….)

C. Line Sharing

Finally, I also dissent from the majority's decision to eliminate line sharing. This is a close call, but, on balance, I believe that line sharing provides substantial procompetitive benefits without unduly constraining investment by incumbent LECs. Unlike the prospect of unbundling fiber-to-the-home loops or next-generation hybrid architectures, the record suggests that line sharing spurs ILEC investment in DSL, rather than retarding it. The reason is that, by definition, line sharing is available only over legacy copper loops — there is simply no loop upgrade that incumbents are deterred from making. Thus, as we weigh the goals of competitive access and promoting investment in new facilities, the balance favors reinstatement of a line-sharing obligation.

I am certainly mindful of the arguments against line sharing. For example, cable modem providers, rather than DSL providers, currently lead the broadband marketplace, making a line sharing obligation for LECs alone somewhat incongruous. Moreover, data LECs can obtain an entire unbundled loop and provide a combination of voice and data service, as the incumbent LECs do. Yet I believe that the record rebuts these arguments. Most importantly, the presence of cable modem service in many (but not all) local markets does not seem sufficient to support a blanket finding of non-impairment for telecommunications carriers seeking to provide DSL service. I am also sympathetic to the argument that a carrier should not be forced to enter the voice telephony market simply to provide competitive DSL service. On balance, I cannot join the majority's decision to eliminate line sharing because the record demonstrates that line sharing promotes competition *and* investment. But the issue is, as noted, a close call, and I can appreciate the legal reasoning underlying the conclusion that carriers are not impaired without access to the high frequency portion of the loop (HFPL).

By contrast, I have significant concerns about the majority's post-adoption decision to grandfather existing customers indefinitely. In light of the majority's finding of non-impairment, and its resultant decision not to unbundle the HFPL, there is plainly no basis to require incumbent LECs to continue unbundling the HFPL indefinitely for existing customers. The majority attempts to couch this as a "transitional" mechanism, but these grandfathered customers are not being transitioned *to* any new carrier or arrangement. And the fact that the Commission will have an opportunity to revisit this decision during the next Biennial Review does not provide any certain end date. Rather, CLECs will continue to service such customers using the TELRIC-priced HFPL, notwithstanding the majority's unequivocal determination that the HFPL is no longer an unbundled network element under section 251(c)(3). This decision is inconsistent with the rule of law.

* * *

(Continued from previous page)

of CLECs serve business customers of such size using their own switches, can possibly be squared with *USTA*.

In conclusion, the Order is a decidedly mixed result in my view. It scores a big win for consumers by promoting broadband investment, but it potentially undermines that victory by turning unbundled switching into a regulatory morass that carriers will be stuck in for years to come. I therefore approve in part and dissent in part.