

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART AND DISSENTING IN PART**

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)*

Seven years ago, the Commission adopted a forward-looking economic cost policy for pricing unbundled network elements. We did the right thing. The Supreme Court blessed our action—pretty heady stuff for a Commission not always accustomed to such approbations from above. So we're building on solid ground here, with no judicial charge to start all over or to perform drastic reconstruction. It's clear to me that from time to time we should review and recalibrate our policy, known as Total Element Long Run Incremental Cost, or TELRIC. We have a duty to adjust it over time to ensure that, as Congress intended, incumbents are justly compensated for their network costs plus a reasonable profit. At the same time, we need to ensure that competitors pay prices that induce efficient market entry. There is also the need to adjust our policy to reflect the new realities of the recent *Triennial Review*.

To a significant extent we initiate a proceeding today that lays the groundwork for accomplishing these objectives. There is much in this item that I am pleased to support. I regret, however, that I cannot support today's Notice of Proposed Rulemaking *en toto*. I just don't believe the record at hand justifies the making of important, even if tentative, conclusions. Such tentative conclusions often have a curious way of becoming final. On the basis of little or no prior record, the majority today adopts a tentative conclusion concerning so-called real-world network attributes that I believe is confusing and inconsistent with basic premises of TELRIC that were upheld as a reasonable interpretation of Section 252(d)(1) by the Supreme Court. For a Commission striving to provide clarity to an industry, this is a strange way to do it.

Moreover, some of the questions that flow from this tentative conclusion come close to saying that the assumptions that undergird our TELRIC policy are misdirected and flawed. Again, these are the same assumptions that passed muster with the highest court in the land. I have no objection to asking probing questions; I just think that a tentative conclusion here is unnecessary and probably unwise.

Despite this reservation, I appreciate my colleagues' willingness to engage in a dialogue and their efforts to accommodate some of my concerns. I think this is a stronger item as a result. I look forward to our continuing work together on this.

Finally, I hope—I really hope—that we can encourage all the parties interested in TELRIC to sit together and discuss the issues attending it in something approaching candor and maybe even a little cooperation. I think all the company CEOs and others directly impacted have heard my plea on this over the past two years since I came here. Frankly, it was easier to get the Russians and the Chinese to sit down with us during the

latter days of the Cold War than it is to convene a TELRIC dialogue. It's not that I expect everyone to come to a joyous outcome on this, but rather just a hope that there might be one or two or maybe even three facts we could agree on and then see if from a small patch of common ground we can't do some building out. I'd like to see everyone a part of this—incumbents and competitors, our Commission and the State Commissions, traditional and non-traditional stakeholders. Crafting appropriate rules for our unbundled network element pricing policy will be a daunting task. We cannot get it done without less rhetoric and more dialogue among all the players. Toward that end, Mr. Chairman and my colleagues, I would very much like to see us hold some hearings or a forum to bring the players together, or perhaps even commence a Joint Conference to jumpstart discussion and engage our counterparts in the States on this important topic. I think this would be an excellent way to follow through on the work this proceeding today commences.