SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL

RE: Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92).

Today we act to begin the second-phase of our unified intercarrier compensation docket. This proceeding sets in motion an ambitious task for the agency because it touches upon two of our most cherished principles – ensuring fair competition and protecting universal service. Currently, different compensation rules apply to different types of traffic even if carriers are using the Public Switched Telephone Network in the same way. In today's rapidly changing telecommunications marketplace, however, different treatment creates both opportunities for regulatory arbitrage and incentives for inefficient investment and deployment decisions. These disparities mean that we simply do not have a choice to reform the current intercarrier payment system; we must, or technology will render it a quaint antique of a forgotten time when only one carrier provided service to all customers.

A number of parties have proposed answers to the interrelated set of questions we pose today – including the Intercarrier Compensation Forum (ICF), Western Wireless, the Alliance for Rational Intercarrier Compensation (ARIC) and the Expanded Portland Group (EPG). The record generated from previous Commission inquiries into this subject teaches us that certain abiding principles must be followed if intercarrier reform is to be durable. First, rate structures should be *unitary* and must eliminate arbitrage opportunities between federal and state jurisdictions and between local and long distance termination rates. Second, our rules should better reflect sound economic principles. In my view, a regime built upon "bill-and-keep" proposals is the solution that is most faithful to principles of cost causation. As the staff report demonstrates, a bill and keep regime encourages the development of competition by rewarding carriers based on their ability to serve customers efficiently rather than their ability to exploit regulatory arbitrage opportunities. It sends rational pricing signals to the market because consumers are equipped with information that allows them to avoid higher cost networks. Third, to the extent reforms are made to our compensation rules that raise universal service concerns from rural carriers, forgone access revenues should be replaced by support mechanisms that are both explicit and portable. By adhering to these principles we ensure that our compensation rules are competitively neutral and support the goal of achieving lasting facilities-based competition.

I am disappointed that the Commission was unwilling to resolve most of the disputes that have been raised in declaratory ruling petitions – many of which have been pending for years. The Wireline and Wireless Bureaus jointly proposed a balanced solution to these very difficult issues and it is unfortunate that some of my colleagues declined to fully consider the merits of this proposal. This Commission bears an important responsibility to provide regulatory clarity to parties who have waited for years in intractable intercarrier disputes. I have heard the concerns of some who argue that the Commission should avoid a piecemeal approach – but the torrent of state litigation that we leave unresolved is far more piecemeal and disruptive to carriers than decisions by this Commission. I urge my colleagues to reconsider their positions and act upon the pending petitions for declaratory ruling expeditiously – these problems are not going to get any easier with time.

SEPARATE STATEMENT OF
FCC COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking.

I am pleased that the Commission is launching this important rulemaking regarding intercarrier compensation. There is no shortage of metaphors to describe these rules that have been developed by the FCC and state commissions over the previous decades — quicksand and quagmire leap to mind — and all of them recognize the troubled state of affairs for the industry and consumers. The rules are premised on at least two eminently sound principles: ensuring full compensation for the costs of building and operating telecommunications networks, and promoting universal service in all areas of the Nation. But a system premised on neat jurisdictional distinctions (intrastate versus interstate) and legacy service categories (telecommunications service versus information service) is no longer sustainable in light of the inexorable march of technological innovation and marketplace convergence.

As reflected in the varying proposals submitted in the record, we are a long way from reaching consensus on appropriate reforms. But the good news is that most, if not all, industry and consumer groups recognize the crying need for change, and most appear to agree that we must develop a *unified* compensation system. The upcoming proceeding will determine whether the best solution is a unified system based primarily on bill-and-keep principles, or instead one that entails positive payments based on embedded or forward-looking costs. The one certainty is that the status quo must yield, because it is increasingly untenable to have carriers subject to several vastly different rate structures depending on arcane service classifications and jurisdictional assignments. Until policymakers develop a fairer and simpler set of requirements, connecting carriers unfortunately will remain embroiled in disputes over payment obligations, and many will continue to devise ways to avoid payment or bypass the public switched network altogether.

I am disappointed that the Commission was unable to resolve the disputes that have been raised in declaratory ruling petitions and have been pending for some time. I am also disappointed that several of my colleagues refused to allow the Commission to seek comment on the staff analysis of intercarrier compensation reform proposals. I would encourage commenters to read this analysis and submit any comments they may have.

I am encouraged, however, that we are commencing the reform process in earnest, and I look forward to working with my colleagues in an open dialogue where all options are on the table. I also want to thank all of the industry groups, state regulators, and others who have been laboring for more than a year to develop comprehensive reform proposals, and I urge all of you to say involved and to be open to compromise solutions. The Commission cannot possibly duplicate the knowledge base of the industry, and our best hope for a workable reform involves continued discussions with all of the interested parties.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking (CC Docket Nos. 01-92)

Our intercarrier compensation system is Byzantine and broken. We have in place today a scheme under which the direction and amount of payments vary depending on whether carriers route traffic to a local provider, a long distance provider, an Internet provider, a CMRS carrier or a paging provider. In a marketplace defined by convergence and technological change, this hodgepodge of rates looks more like an historical curiosity than a rational compensation system.

Intercarrier compensation is a must-do item for this Commission this year. It should be our number one telecommunications priority. I believe we can do this. If it turns out we cannot and we have to go to Congress, so be it, but for my part—and I'll bet for Congress' part, too—the preference is to resolve this issue here at the Commission. To really get reform done this year, we must have everyone engaged in the intercarrier compensation dialogue. I am pleased that so many groups and individual carriers provided us with detailed proposals. Putting these proposals out in a neutral and open fashion is the best way to ensure the kind of dialogue we need to get the job done. To those who participated in early industry talks and left them, I hope today's Further Notice brings you back to the table. To those who are not yet a part of the discussions, become a part—and remember the old adage that "Decisions without you are very often decisions against you." I look forward especially to the active participation of our colleagues at the state regulatory level. Their experience, judgment and granular knowledge are essential to any successful outcome. In this regard, let me take a moment to commend my friends at NARUC for the tremendous effort they are putting into convening different parties and varying viewpoints in an attempt to build understanding—maybe even something approaching occasional consensus—on the thorny issues teed up by this discussion. I urge carriers of all types to socialize their plans and ideas with our state counterparts. Their input and insights will be especially important as we map a course that leads us toward a unified rate structure.

Appended to today's Further Notice is a staff report on bill-and-keep. Bill-and-keep has much to recommend it as a theoretical construct. But its operational realities leave me with deep concerns about its impact on communications in rural America. I welcome the opportunity for debate on this issue, but wish to note that the staff appendix is not the product of a Commission vote, nor does it reflect my opinion at this time.

Finally, there is at least one issue that merits prompt resolution that is not a part of today's effort. It is not a part because my sense is that several of us, including me, believe it should be dealt with on a separate but still fast track. Two and a half years ago, a group of wireless carriers jointly filed a petition for declaratory ruling asking the Commission to clarify that wireless termination tariffs are not the right mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic. In the intervening years, disagreements have grown and devolved into litigation. We have an opportunity to fix this now. I hope we can seize that opportunity. Were a decision clarifying this issue to cross my desk today, I would vote it today. If it takes longer to reach my office, I will vote it as soon as it does.

Countless individuals in the Wireline Competition and Wireless Telecommunications Bureaus worked long hours to bring us this item. So did our able and dedicated personal staffs. I am impressed with the depth of their knowledge and appreciate their unwavering commitment to finding the right answer. They will remain a tremendous resource for us all in the great press for intercarrier compensation

reform. By pulling and hauling together, we can—we must—bring these issues to resolution this year.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking.

With this item, the Commission adopts a detail-rich inquiry into vexing questions about how telecommunications firms compensate one another. We should not conclude, however, that this is a proceeding solely of interest to rival companies on the rapidly-evolving telecommunications landscape. The decisions that this Commission will make in this proceeding will have profound effects on the prices that consumers pay for telecommunications services and on the choice of services available to them.

This Notice is not the first step in the Commission's revision of its intercarrier compensation regime. Since the passage of the Telecommunications Act of 1996, the Commission has acted on several occasions to address the interplay of its long-standing access charge rules and its reciprocal compensation rules, adopted to implement the 1996 Act. In that time, the Commission has also made substantial changes to the pre-1996 Act rules, reducing rates for access services and seeking to preserve universal service by providing explicit support for hard-to-serve areas of our country.

These actions notwithstanding, there is a widespread call for further reform of the intercarrier compensation regime, particularly with developing intermodal competition and the advent of Internet-Protocol-based services like VoIP. The voices calling for further reform represent a wide diversity of interests: state policymakers, consumer groups, incumbent and competitive local wireline carriers, wireless carriers, long distance carriers, VoIP providers, and others. It is remarkable and encouraging that numerous parties from all segments of the industry have come forward to offer goals, principles and specific proposals for further reform. These parties have expended significant resources to develop proposals and many have tried to find common ground, even if it means moving off of their initial positions.

With this Notice, we hope to capitalize on these parties' hard work and to encourage others to roll up their sleeves and recommit themselves to this effort. Without that broad participation and commitment to find compromise, we may end up with a less than optimal result, and parties may find that the final solutions do not fully reflect their interests.

The proposals included in this Notice are diverse in scope and solutions: some advocate moderate reform, others more far-reaching changes. I'm pleased that this Notice seeks comment on these proposals comprehensively and quickly, so that we can harness the momentum provided by these collective efforts. While this Notice may not precisely reflect my balance of the competing policy goals for intercarrier compensation reform, I am pleased that the item sets out our commitment to harmonize and unify our rules. Given the rapid changes in the communications marketplace, we must work both promptly and carefully to make sure that our regulatory framework continues to promote the innovation and customer choice that drive so much economic growth and benefit for American consumers.

I also give heavy weight to our statutory obligation to preserve and advance universal service even as we move forward with reform proposals. We must quantify with some specificity and weigh carefully the impact of any proposals on all consumers, including those consumers who live in high costs areas or who are low volume users. In addition, this Commission has traditionally been sensitive to drastic shifts in the way that carriers, particularly small companies serving the hardest-to-reach areas, recover their costs. We will need more than idle assurances about the importance of universal service to

be successful here; rather, we must develop coherent and responsive approaches to this Congressional directive.

As we move forward, I want to commend in particular the National Association of Regulatory Commissioners (NARUC) for its efforts to bring parties together. A collaborative process is essential, particularly given the complex jurisdictional issues raised in this proceeding, and I appreciate NARUC's leadership on this front.

Finally, I want to thank the staff of the Wireline Competition Bureau and the Wireless Telecommunications Bureau. While I cannot endorse today the separate staff analysis of intercarrier compensation proposals, which is not the product of Commission vote, I thank the staff for their dedication from the beginning to the end of this process and look forward to working with them as we tackle the challenges ahead.