

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

*Re: Unbundled Access to Network Elements, WC Docket No. 04-313; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338.*

For all involved, this Order continues the “one step forward, two steps back” saga of the local competition provisions of the Telecommunications Act of 1996. After eight years of divisive litigation and a summer of promises, the Commission adopts an approach that prolongs the regulatory uncertainty for incumbents, competitors, and consumers alike. Indeed, the only things that are certain here are that consumer prices will go up and that the telecommunications industry will fight the same old battles come the new year.

Through this Order, the Commission adopts an ambiguous approach that is perhaps designed to give a little to everyone but that ultimately grants stability to none. The Order leaves unclear which elements are available to competitors and at what prices they will be available. It is difficult to imagine how either competitors or incumbents will plan for the future, develop business plans, or seek investor support with this foggy vision into the long-term framework. If savvy industry players will be left wondering about the rules of the game, consumers surely will have little guidance about how to choose among the ever-dwindling list of providers.

In response to this ambiguity, this Order promises Commission action before the end of this year. Promises of swift action are laudable, but, rather than deferring the difficult decisions, we should be working right now to develop permanent rules that provide certainty for all involved. At the very minimum, it is unfair to incumbents, competitors, and consumers to “hide the ball” with the ambiguous approach adopted here.

If regulatory certainty is elusive in this Order, what is clear is that prices for consumers are likely to rise. Rather than respond to the D.C. Circuit’s decision on a tailored and responsive basis, this Order calls for higher rates for consumers and competitors without any linkage to the requirements of the statute. For new customers in particular these rates could rise dramatically without any consideration of “impairment,” the statutory touchstone when deciding which elements should be available at cost-based prices.

Though I cannot join this Order, I have appreciated recent dialogues with my colleagues. I was disappointed that we could not take limited action to provide meaningful protection for carriers serving small business customers, but remain open to reconsideration of these issues. A more daunting but equally pressing challenge now is to move forward as expeditiously as possible with the final rulemaking process. Our chief goal now should be to develop permanent rules for all UNEs as soon as possible, so that the American public and the telecom industry will understand what the choices and price tag will be. The Act and the American consumer deserve no less.