

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

Re: *Review of the Section 251 Unbundling Obligations for 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)*

I believe this decision puts competitive telecommunications services out of reach for many small business and residential consumers. No matter how this decision is dressed up in the sheep's clothing of broadband relief, the wolf beneath means less choice and less price competition for anyone who lives and works in a multi-tenant building. This outcome is inconsistent with the pro-competitive, market-opening legislation that Congress put in place in the 1996 Telecommunications Act. It is an overbroad and ill-conceived expansion of the Commission's exemption for fiber facility unbundling in the *Triennial Review*. I do not support it.

Small business is the engine that drives America's economy. We know that small businesses generate between two-thirds and three-quarters of all new jobs in this country. They represent way over 90 percent of all employers, and they produce over half of the nation's private sector output. Yet today's decision is fundamentally at odds with the telecommunications needs of so many small business consumers, not to mention tens of thousands of Americans who live in the apartment buildings that are being reclassified. I found the Commission's anti-competitive broadband policies bad enough when they were rolled out in the *Triennial Review* decision. Today stretches them way beyond that, and it does so in spite of the fact that the court found no need for us to do this.

The Small Business Administration tells us that in metropolitan areas where most multi-tenant buildings are located, competitive carriers serve 29 percent of small businesses. Small business likes competition. It has voted with its pocketbook for competition. That is because small business has been a chief beneficiary of the enhanced services and lower prices that competition brings to market.

But today's decision means that small businesses located in buildings that also have residential apartments will henceforth be unable to enjoy the full panoply of competitive voice and data services. In most cases, small businesses in multi-tenant units that are "primarily residential" will be left with one service option—the incumbent carrier. By sweeping into today's decision law offices, doctor's offices, copy shops, stock brokers, real estate offices, dry cleaners, coffee shops, dentists' offices, grocery stores and other small retail and service businesses located on the ground floor of so many apartment buildings, the majority denies them the opportunities for cost savings and innovative services that come with having a competitive array of carriers to choose from. In cities like New York and Chicago and Washington, where residential buildings routinely include ground floor commercial tenants, whole swaths of downtown small businesses will find themselves ineligible for competitive wireline services.

This decision also reduces choice for people who make their homes in apartment buildings. As long as the incumbent carrier brings fiber facilities to the basement, competitive carriers will be restricted from offering services to residents on the floors above. When it comes to broadband, the best scenario these residents can hope for is a choice between the cable and DSL duopoly. Otherwise, they'll have no choice at all.

Why are we restricting broadband competition for these businesses and apartment dwellers? Where is the evidence that broadband deployment to multi-tenant facilities is dragging comparatively behind, or that apartment dwellers are at higher risk of being left on the wrong side of the digital divide? To the contrary, it strikes me that the economies of scale that come with serving a single building with many—even hundreds—of residential units would put such facilities first on the list of economically viable broadband deployments.

Finally, I believe this decision is a prescription for administrative headache. It saddles every state commission in this country with the task of determining just what buildings in their state fit the blurry parameters of “primarily residential.” Some people were worried before about the ability of fifty jurisdictions to characterize the state of switching competition within their borders. What we have here is exponentially more complex. Every building, in every city and every town, in every state, from brownfield to greenfield, will need to be tagged as eligible or not eligible for the full scope of competitive carrier services. This fails to provide small business consumers, residential consumers, carriers, investors or our hard-working state counterparts with the regulatory clarity they need. For these reasons, I respectfully dissent.