

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Federal-State Joint Board on Universal Service, Order on Remand, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order, CC Docket No. 96-45*

In many ways, our action today is the ultimate truth-in-billing measure. In 1996, Congress recognized that the amalgam of implicit support mechanisms that had creaked along in a monopoly environment would no longer function in a competitive market for the simple reason that companies would abandon the artificially unprofitable markets and swarm the artificially profitable ones. In adopting the 1996 Act, Congress directed the Commission and the states to stop doing what they had done for sixty years. Rather than require companies to artificially lower prices on high-cost residential lines, Congress directed this Commission to meet the goals of affordability and ubiquity by providing consumers with explicit discounts for supported telecommunications services. And rather than permitting companies to recoup costs for unprofitable lines through higher prices for business services Congress directed us to take steps in furtherance of a regulatory regime where retail rate structures reflect the cost of providing service.

In the face of years of hidden costs, uneconomic pricing and cross-subsidies, Congress gave the Commission the difficult task of determining the “real” cost of service in all parts of the country, maintaining a fund sufficient to provide reasonably comparable rates and distributing money in an equitable manner. Today’s *Order and Further Notice* moves the nation one step closer to dismantling the system of false pricing information that regulators have imposed on the public. Admittedly, our action today does not eliminate all implicit support in local rate structures. However, I remain convinced that in a competitive market, we can only achieve Congress’ universal service goals by creating an explicit support fund to benefit consumers who need it and by eliminating the vestiges of implicit support that misallocate resources and distort competition.

Over the last seven years, the Commission has adopted several measures to establish explicit universal support mechanisms that remain resilient to intense competition, including a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic cost. Consistent with the Act, the Commission’s 1999 *Ninth Report and Order* chose to determine the amount of federal support given to non-rural carriers in each state by comparing the statewide average cost per line, as estimated by the Commission’s forward-looking cost model, to a nationwide cost benchmark of the national average cost. Non-rural carriers whose costs exceed the benchmark would receive universal-service support.

I voted in favor of the *Ninth Report and Order*, because I believed it is “imperative that we introduce some notion of economic cost into universal service

support.”<sup>1</sup> While I questioned the adequacy of the Commission’s rationale, I said then that, without some type of a forward-looking economic cost model, states and carriers would have had no objective way of knowing how much money they needed, much less where they should spend the money they got.<sup>2</sup>

In the appellate litigation that followed the *Ninth Report and Order*, the Tenth Circuit largely agreed with the Commission’s ruling. It upheld the Commission’s cost model, though it remanded the methodology for determining the precise level of non-rural support for further analysis. Specifically, the Tenth Circuit directed us to define the statutory terms “reasonably comparable” and “sufficient” more precisely and then to assess whether and how the non-rural mechanism we choose would prove sufficient to achieve the statutory principle of making rural and urban rates reasonable comparable. The Tenth Circuit also told us to do more to induce states to ensure local rate comparability and to create positive incentives for them to abandon their long-standing practice of permitting implicit cost subsidies based on little more than back-of-the-envelope perceptions of need.

Today’s order fulfills the Tenth Circuit’s directives. We have taken this opportunity to define our goals more precisely and we have done a better job in determining that support which is “sufficient” to achieve “reasonably comparable” rates. We have also adopted a rational threshold to determine when non-rural, high-cost support should become available by balancing legitimate state need against the risk of excessive support. And we have reviewed our comprehensive plan for supporting universal service in high cost areas and sought comment on how to adapt the overall plan to meet changing conditions. I support fine-tuning our forward-looking cost model by comparing statewide average costs to a nationwide cost benchmark closely tied to relevant market data. I also support measures such as the expanded rate-review and certification processes that should induce states to achieve reasonably comparable rates in response to the court’s remand. I look forward to working with my colleagues in the states to achieve the long-term goal of dismantling the system of cross-subsidies that persists in many of the nation’s telephone rates.

The creation of a rational, economically sound support mechanism, of course, is only one half of the solution to the problem of cross subsidies in the telecommunications market. The other half of the solution lies in the *Triennial Review Order*. No matter how rational and well reasoned, an economic support mechanism will prove meaningless if states remain able to avoid its strictures simply by offering suppliers the option of buying essential telecommunications inputs at super-efficient prices – untethered from the realities of providing that wholesale service. While I therefore support today’s decision, true reform will prove elusive as long as the other half of the problem – the pricing of wholesale inputs – goes unaddressed. For this reason, we should redouble our efforts along a number of different regulatory vectors. We should seek out new ways for

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<sup>1</sup> Separate Statement of Commissioner Michael K. Powell, Concurring in Part, *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 99-45, 14 FCC Rcd. 20432 (1999).

<sup>2</sup> *Id.*

federal and state regulators to work together and rationalize state support mechanism to achieve Congress' twin goals of universal service and sustainable local competition. At the same time, the Commission's universal service focus will turn to the Joint Board's recommendation in the *Portability* proceeding and the Commission's efforts to ensure that wholesale rate structures more accurately reflect the forward-looking economic costs of providing service to competitors.