Separate Statement of
Commissioner Michael J. Copps,
Approving in Part, Concurring in Part

Re: Application by Verizon New England, Inc., Verizon Delaware, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in New Hampshire and Delaware (WC Docket No. 02-157)

I write separately to explain the reasons that I concur in part in this Order granting Verizon's application to provide long-distance services in New Hampshire and Delaware. Verizon has done a great deal to open its local markets to competition in these states. I also commend the New Hampshire and Delaware Commissions for their significant efforts to ensure competition.

The major issue in this proceeding has been the pricing of network elements, and in particular, the rates for unbundled switching. In the New Hampshire application, the majority concludes that the statute permits Bell companies in all instances to demonstrate compliance with the checklist by aggregating the non-loop elements. I disagree with the majority's analysis. Section 271 requires a BOC to provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)." Section 252(d)(1) in turn provides that the just and reasonable rate for network elements shall be based on the cost of providing the *network element.* I believe the better reading of the statute is that the rate for each network element must comport with Congress' pricing directive. Indeed, in previous applications in which the Commission has conducted a bottom-up analysis of the forward-looking rates, it has examined the switching element independent of transport.

Notwithstanding my concern with the legal reasoning, I agree that we should grant Verizon's application. The Commission has recognized that states may reach different decisions on the optimal network configuration when they set rates. These differences could result in trade-offs among rates for elements when compared in our benchmark analysis. That may well be the case in this instance. Here, our benchmark model indicates that rates for transport could be significantly higher in New Hampshire than in New York, but the actual transport rates in New Hampshire are 35 percent lower. On the other hand, the switching rates in New Hampshire are approximately 10 percent higher than the benchmark would allow. I concur in this decision, because the record indicates that the commercial reality in New Hampshire is that competitors are only purchasing switching with transport. In another situation in which competitors were purchasing unbundled switching or another network element on its own, we would need to scrutinize more closely the trade-offs among the element rates. In that instance, the statute could well compel a different result.