SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115 and 96-149 (adopted July 16, 2002).

The Report and Order we adopt today appropriately balances the critical governmental interest in protecting consumers' privacy with carriers' First Amendment right to communicate with their customers. Recognizing that customers' privacy interests are strongest and carriers' First Amendment interests are weakest where the disclosure of CPNI *to third parties* is at stake, the Report and Order imposes a stringent "opt in" approval mechanism for such disclosures. In contrast, because *intracompany* disclosures of CPNI generally are consistent with consumers' expectations of privacy and implicate much stronger First Amendment interests, the Report and Order adopts an "opt out" approval mechanism for intracompany information sharing. I am pleased that this bifurcated approach both respects legitimate privacy interests and heeds the concerns expressed by the 10th Circuit Court of Appeals in vacating the Commission's previous approval requirements.

At times in the past, the Commission has responded to court remands by making only cosmetic changes to items, proceeding as if the court decision were an inconvenience to be overcome through creative lawyering. Such an approach not only fails to respect the authority of reviewing courts, but also engenders tremendous regulatory uncertainty. When decisions on remand fail to take seriously a court's instructions, they are often remanded yet again, throwing the industry and consumers into regulatory chaos. We have already had a long period of uncertainty regarding CPNI approval requirements in the wake of the court remand; we certainly do not need another. Thus, while some may have preferred to reinstate an opt-in requirement for *all* uses of CPNI, I do not believe that such a decision could withstand scrutiny under the standard espoused by the 10th Circuit; as the item explains, an opt-in requirement for intracompany disclosures of information would be more restrictive than necessary to protect consumers' expectations of privacy. Because an opt-in requirement for such disclosures almost certainly would subject the Commission to a further court remand and thus would subject consumers to additional uncertainty and diminished protection as we would once again be left without rules in place today's decision is the only responsible and consumer-friendly course available to us.