

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket Nos. 01-338, 03-235, 03-260, 04-48 (adopted Oct. 22, 2004).

In the Triennial Review Order and subsequent reconsideration orders, the Commission took the bold step of fencing off next-generation broadband facilities from unbundling obligations. This forbearance decision is an important component of that deregulatory policy, and it will help deliver the promise of broadband networks and IP-enabled services to Americans throughout all parts of the country.

The Commission declined to subject broadband facilities to unbundling obligations under section 251 to encourage greater investment in deep-fiber networks – investment that is massive in scope and carries no assurance of profit. While curtailing unbundling requirements undeniably creates challenges for wireline competitors, the Commission was rightly concerned that new broadband investment would be severely chilled if incumbents were required to share the fruits of their labors on terms and conditions set by regulators. Moreover, in a broadband marketplace where cable operators enjoy a significant lead over wireline incumbents, it is difficult to justify saddling the less-dominant platform – but not the market leader – with unbundling obligations.

Forbearance from unbundling obligations imposed under section 271 is necessary to ensure that the Commission's broadband relief has its intended effect. The Commission has determined that the costs of unbundling outweigh its benefits in the broadband context, and that determination warrants relief from unbundling irrespective of which statutory provision it arises under. While access obligations under section 271 have been argued to be less burdensome than those imposed under section 251 (because the TELRIC standard is inapplicable under section 271), unbundling in all events "spread[s] the disincentive to invest in innovation and create[s] complex issues of managing shared facilities." *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

Notably, the Commission retains regulatory authority to ensure that consumers will be protected if robust broadband competition fails to live up to its potential. I do not expect such an outcome, but the Commission stands ready to act if a market failure occurs. In addition, this grant of forbearance is without prejudice to our ongoing proceeding regarding the *Computer Inquiry* nondiscrimination provisions, so the Commission will have a full opportunity to determine the extent to which those separate requirements remain necessary.