STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Bright House Networks, LLC, et al., Complainants, v. Verizon California. Inc., et al., Defendants*.

Today's decision is good news for consumers and competition.

First, there is nothing pro-consumer about allowing Verizon to wait until a customer decides to terminate service before making the company's best and final offer. After today's ruling, Verizon will have additional incentive to focus on making sure that ***all*** its customers are happy with their service, rather than reserving the red carpet treatment for those who have already decided to leave but whose transfer has not yet been technically implemented.

Second, it is essential to understand that this entire situation arises only because incumbents control the technical process—which still takes inexplicably up to four days, in distinct contrast to the switch between wireless carriers, which takes as little as four hours—that allows a customer to retain his or her phone number while switching to a competitive carrier. The FCC plainly needs to ensure that incumbents do not tamper with this process in order to discourage customers from switching, especially by using proprietary information that competitive carriers must share in order to initiate the process. Competitive telephone service will never take hold if incumbents are permitted to manipulate the system to interfere with customers seeking better terms and conditions with another carrier.

Third, I am surprised and disappointed with the argument that the majority should not have taken efforts to limit the scope of the statutory interpretation in today's item to the facts of this case. The critical point to remember here is that today's decision is reached in the context of a proceeding that is "restricted" under the Commission's rules—meaning that the record reflects only the comments of direct parties to the case. A "restricted" proceeding is most assuredly not the right venue for interpreting a statutory term in a way that carries broader implications for the public and other stakeholders not represented in this proceeding. Yet, in order to decide the case before us, we must resolve this term as it applies to a particular section of the Communications Act—and I recognize that this decision may indeed bear on how we resolve it in future contexts.

But make no mistake, the real villain here is ***not*** the decision we reach today. It is the fact that this basic statutory question has not yet been decided, even ***years*** after it first became clear that the Commission needed to do so in order to dispel the unwelcome uncertainty that presently infects this set of issues. This is most decidedly ***not*** a situation of my choosing. Indeed, as I have stated on countless occasions over the past few years, we should have dispelled this regulatory fog years ago—when broadband and VoIP were still emerging technologies and not the mainstream offerings they are today—through an open, general proceeding that solicits comment from the public as well as all affected industries and stakeholders.

Nevertheless, despite my strenuous and frequent objections, important statutory questions remain unanswered. So how can the Commission make the best of this sad state of affairs? One argument that has been made is that the Commission should reach a result that would allow us to avoid the question. But this would propel putting-the-cart-before-the-horse to new and unheard of levels. It would in fact require reaching an ***anti-consumer, anti-competitive*** result in the case before us—just because the Commission has been derelict in its duty (for several years now) to resolve the statutory question in a broader, more open proceeding. The American public plainly deserves better. Another path would be to decide the question for all time and in all contexts, without giving the public or other interested parties an opportunity to comment on this important issue. Though some might describe that as decisively resolving a hard case, I see it as moving forward blindly and irresponsibly – not the way for a regulatory agency to conduct the people's business. The essence of reasoned agency decision-making is that it be based on a full record, and with wide input from the public and all affected stakeholders. I see no virtue to departing from those principles in this case.

The only responsible decision that I can see in this context is a third path—the one we take today. That is to decide the statutory question before us in this case in a way that will benefit consumers and competition—but to make our decision as narrow as possible pending a further, non-"restricted" consideration of the issues. Today's decision accomplishes this much.

Our work in this area must not end with today's decision. The next logical step is to (at long last) create clear statutory and regulatory rules of the road for VoIP and broadband technologies. And—of critical importance—we must reach this decision on the basis of broad comment from the public and all affected stakeholders and industries. I have advocated this step for years now and it gives me no pleasure to say that today's difficult situation simply underscores the cost of the Commission's unwillingness to heed this call.