CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,* WC Docket No. 07-97

I support today's Order which denies petitioner forbearance relief from dominant carrier regulation and from its UNE and Computer III obligations. In doing so the Commission continues to advance the notion that its decisions in *Qwest-Omaha*, *ACS-Anchorage*, and *Qwest-Terry, Montana* were based on some truly unique sets of circumstances. In contrast, the Commission's denial of the *Verizon 6 MSA Forbearance Petitions* and today's denial of Qwest's petition for regulatory relief in Denver, Minneapolis-St. Paul, Seattle and Phoenix should hopefully send a signal to those considering similar requests that the Commission is cautious, even skeptical, of granting this kind of hurried and ill-considered relief. I support the denial of these petitions because to do otherwise would result in less competition and higher prices – to the clear detriment of consumers in the aforementioned metropolitan areas. As I have previously done in these types of cases, however, I limit myself to concurrence in this decision because the Commission herein relies too heavily on the intermodal efforts of a single alternative provider to decide whether we should forbear from the incumbent's retail and wholesale obligations. That is not the level of competition envisioned by our governing statute.

I continue to believe that the Telecom Act envisioned more than just a cable-telephone duopoly as sufficient competition in the marketplace. For example, as the Commission looks to establish policies that promote broadband the lack of competitive alternatives in this market are a severe drag on these efforts. As a recent study by the Pew Internet and American Life Project points out, 35% of dial-up users would switch to broadband if it were more affordable. More competition would certainly put downward pressure on broadband prices and yet the current cable-telephone form of competition has been insufficient to reach those with the least disposable income. Accordingly, I have always been extremely leery of the test established in *Qwest-Omaha* and its progeny that rely so heavily on cable-telephone competition to determine whether there is sufficient competition in the marketplace. I would have been more comfortable with an analysis less accepting of duopoly as a competitive marketplace and that did not lead us further down this road.

There was much debate in the record as to the role that "cut-the-cord" customers (those who use a wireless phone service in place of a wireline phone service) should play in the Commission's market share analysis. This is certainly an important question to be answered, particularly as the number of cut-the-cord customers grows. The Order concludes – too quickly in my view – that these customers should be included in the market share analysis. Important questions about what is the appropriate market, does wireless substitution act to constrain pricing, how do you account for the fact that wireless service is generally not a substitute in the business market, and what type of survey data is appropriate to be used are all questions that were not sufficiently considered. The Order's conclusion that cut-the-cord customers should be included in the market analysis may or may not withstand such a rigorous analysis but it is important to conduct such an analysis if we are going to grant such widespread relief on this basis in the future.

It is also important to note that the public service commissions in Colorado, Washington, Arizona, and Minnesota, as well as NASUCA and numerous consumer and public interest organizations strongly opposed these petitions. These commissions and organizations have a

front row seat as to the level of competition that exists in the relevant cities today and the consumer harm that forbearance would cause. Certainly their strong concern is evidence that Qwest has not met the forbearance standard set forth in section 10 – permitting forbearance only where, among other things, current regulations are no longer needed to protect consumers and to serve the public interest.

Finally, while the final outcome in this case is a good one, I continue to be less than enthused about the forbearance process generally. Recent Congressional hearings suggest that some help may be on the way. Nevertheless, I continue to hope that the Commission begins to tack on our own towards industry-wide rulemakings, where appropriate, rather than continue with the piecemeal, time consuming, and resource heavy forbearance process. At a bare minimum, the Commission should complete its NPRM on forbearance procedures as expeditiously as possible.

For the foregoing reasons, I concur in today's decision.