

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

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

In today's decision, the Commission denies a yet another petition seeking broad exemption from the retail and wholesale obligations of Act and the Commission's rules. I agree with the Order's finding that the petitioner has not met its burden of showing that sufficient competitive conditions exist to justify the relief requested, a decision buttressed by the filings of numerous state commissions and consumer advocates with close vantage to the particular markets in question.

I concur in this decision because I continue to believe that the Commission could improve its analysis of local competitive conditions and the impact of forbearance on consumers. Petitions such as this would have a profound impact on the telecommunications and broadband options available to millions of business and residential customers. Given these implications, the Commission should base its decisions on careful and sound examination of specific geographic and product markets. I do agree with the Order's findings that the record here does not permit the Commission to determine with any degree of confidence that competition from mobile wireless providers would satisfy the statutory criteria for forbearance. The Commission grapples seriously with this question for the first time in this Order, but it is clear that there are many questions raised and more work to be done to determine the appropriate framework for weighing the impact of mobile wireless services, and wireless substitution in particular, in our competitive analysis.

As I've stated before, I also continue to be concerned about the Commission's balancing of the pro-competitive and deregulatory goals of the Act. Section 10 requires the Commission to consider, among other things, competitive conditions, the protection of consumers, and the public interest. It is apparent that the Act contemplates a competitive environment based on more than a simple rivalry – or duopoly – of a wireline and cable provider. The Commission must be ready to respond to a dynamic marketplace but it must also beware of the potential to lock consumers into a choice between two providers, a result that would have been more likely had relief been granted here and one that would fall short of the vital goals of the 1996 Act.

Finally, I must observe that the forbearance process continues to consume a tremendous amount of resources of the Commission, our state commission colleagues, and market participants. Moreover, the emerging cycle of filing and re-filing petitions for forbearance does little to promote regulatory stability in the market. I note that numerous Members of Congress have expressed concern about the forbearance process and, particularly, the “deemed grant” provision of section 10, which puts at peril the very standard for forbearance articulated by Congress. Although the decision about whether to modify the statute rests with Congress alone, I again encourage the Commission to do all it can by moving forward with our pending proceeding concerning the need for procedural rules to govern the forbearance process.