

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

Re: *Petitions of OrbitCom, Inc. for Forbearance from CLEC Access Charges*, WC Docket No. 08-162

In today's decision, the Commission denies a petition seeking forbearance from the Commission's tariff rules for interstate access services. I agree with the Order's finding that the petitioner has fallen far short of meeting the standard for forbearance set by Congress. I have consistently encouraged the Commission to base its decisions on a careful and sound examination of specific geographic and product markets, and it is clear that this petition provided no such evidence.

While the Commission reaches the right result here, this case reinforces the need for procedural rules to govern the forbearance process. The appearance of this item on the public circulate list before the Commission sought public comment predictably evoked questions from interested parties and raises questions about the Commission's approach to facially deficient petitions. Wielding our Section 10 authority carefully is particularly important given the nature of the forbearance statute and its "deemed grant" provision, in particular.¹ Congress alone has the power to modify the statute, but we are again reminded of the need to develop meaningful procedural rules to govern the forbearance process. For these reasons, I concur in this decision.

¹ I share the concerns of the many Members of Congress who have expressed unease about the "deemed grant" provision of section 10, which allows private parties to exempt themselves from the law without consideration of the very standard for forbearance articulated by Congress.