

**CONCURRING STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *Petition of Qwest Corporation for Forbearance Under 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, Memorandum Opinion and Order*

I vote to concur because I agree with the outcome, but not the justification for, this decision. To be sure, in its remands of the Commission's prior forbearance decisions, the D.C. Circuit tasked the Commission with devising a new analytical framework. On the other hand, it appears that this analysis may set too high a bar – a test so stringent that *no* requesting carrier will ever satisfy it. I question whether, in reality, today's action eliminates the opportunity for achieving forbearance, which was expressly provided to carriers by Congress. As we move forward to consider the two pending cases, as well as any new petitions that may be filed, I hope that we will not find ourselves shackled by the stringent test established today.

I am hopeful that our fresh examination will lead to a stronger analysis of the effects of mobile wireless access penetration in the retail and wholesale markets in particular. Today's order states that this is a "complicated issue." This may be true. It is hard to believe, however, that a 25 percent rate of mobile wireless-only households does not have any effect on the market for access to telecommunications services. Indeed, in order to even try to keep up with the dynamism of the marketplace, the Commission must maintain the necessary flexibility to make adjustments when circumstances warrant. This is especially the case here as the analysis set forth in today's order is novel and untested.

I thank the staff of the Wireline Competition Bureau for their work on this matter. I am hopeful that my questions will be addressed in the record as we move forward.