

**CONCURRING STATEMENT OF
COMMISSIONER MEREDITH A. BAKER**

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 applaud the Commission for its efforts in this Order to implement a more rigorous, predictable and consistent analysis of forbearance petitions such as this, and in particular for attempting to develop a data-driven approach that relies on hard evidence of competition in the market. Despite my support for developing a data-driven approach, I concur today because I have concerns about how this analytic framework might function in practice going forward.

As a general matter, I have continuing concerns that requiring too much infrastructure sharing among competitors at TELRIC rates skews incentives to invest for both incumbents and new entrants. I strongly believe that facilities-based competition best serves consumers under most market conditions and that we should intervene in the market only when there is persuasive evidence of market failure—and even then as narrowly as possible to address the failure without distorting market incentives. In the Telecommunications Act of 1996, Congress mandated that the Commission *shall* forbear when the three-prong test laid out in the statute is satisfied. Although I agree with the conclusions for the petition before us, I hope that the application of the statutory test using the analytic framework in this Order will not become an insurmountable hurdle for petitioners, which in turn would undermine the will of Congress to relieve regulatory burdens where competition can better regulate the market. I fear that if the bar is too high, findings of market failure will be overinclusive, the regulatory response will not be narrow enough, and infrastructure investment will suffer.

Moreover, although this Order finds that Qwest did not carry its burden of showing that mobile wireless constrains wireline prices, a recent study found that nearly one in four American homes have “cut the cord.” In future forbearance proceedings, I hope the Commission will take the opportunity to consider in more depth the competitive effect of mobile wireless competition in the rapidly changing marketplace. Finally, my support for this analytic framework rests in part on our acknowledgment that other analyses may be appropriate under the statute in contexts other than forbearance from section 251 unbundling for legacy facilities—most notably in examining the market for broadband services.

For these reasons, I respectfully concur and as we gain experience with this new approach, I hope the Commission will be willing to modify it—with appropriate administrative procedure—if this test proves to be impossible to satisfy or conditions otherwise warrant. I thank the staff of the Wireline Competition Bureau for their thoughtful work on this item. I am also pleased that we are requesting additional comment on applying this analytic framework in similar forbearance proceedings. I hope that my concerns will be addressed in the record as we move forward.