DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c),* Memorandum Opinion and Order (WC Docket Nos. 01-338, 03-235, 03-260 & 04-48)

The mismatch between the Commission's broadband rhetoric and reality reaches new heights with today's decision. The reality is that the International Telecommunications Union reports that the United States is now ***thirteenth*** in the world in broadband penetration. This is a fall even from our sobering perch at eleven that the Commission reported just a few months ago. It's an ominous trend when we recall that just two-and-a-half years ago the Commission reported that the United States ranked number four in the world in broadband penetration.

While the country experiences broadband freefall, the Commission has embarked on a policy of closing off competitive access to last mile bottleneck facilities. In the *Triennial Review*, the majority restricted access to fiber-to-the-home loops. Last summer, the majority extended this exemption from competition to facilities serving "primarily residential" buildings, an action that clouded the line between mass market and small business customers. The result: millions of small businesses located in buildings where there are also residential units are shut off from the benefits of having competitive broadband options. Last week brought another onslaught when the majority insulated fiber-to-the-curb architectures from competition. This action further restricted broadband choice for residential consumers and further tightened the noose on small businesses seeking competitive broadband services.

Today, the majority pounds another nail into the coffin it is building for competition. In all prior decisions, the majority used Section 251 to restrict access to last mile facilities. But to ensure at least the possibility of access and the possibility of competition—even though it might be at higher prices—the Commission unanimously required continued access to these facilities under the less stringent requirements of Section 271. In *USTA II*, the D.C. Circuit upheld this approach. But in today's decision, the majority casts aside the court's holding and moves on to slash even the residual bare requirements of Section 271 access. As a result, there is now absolutely no obligation to provide competitive access to any broadband facilities—from fiber-to-the-home to fiber-to-the curb to packetized functions of hybrid loops to packetized switching capabilities—at just and reasonable rates. The majority accomplishes this final feat using the Commission's Section 10 forbearance authority to shut off any obligation to provide fair access to last mile bottleneck facilities. In doing so, they replace their will for that of Congress, finding that competition is not required for just and reasonable charges or for the protection of consumers. They conclude that the public interest is served by

retreating to a policy of non-competition and last mile monopoly control. I cannot support such conclusions nor the underlying analysis.

The majority attempts to assure us that today's action is part of an effort to promote local competition. They contend that in the broadband market preconditions for dominance are not present because promising technologies are flooding the marketplace. But broad rhetoric about the power of competition does not make it happen. And choosing to ignore the Commission's own data does not help the weak analytical structure on which this decision is built.

The facts are clear. This Commission's most recent report on high-speed services shows that the residential and small business market is a duopoly. Our data show that new satellite and wireless technologies—exciting though they are—together serve only 1.3 percent of this market. Broadband over powerline does not yet even register. Yet the majority chooses to ignore the Commission's statistics, preferring instead sweeping rhetoric about regulatory relief and broadband competition.

One problem here is that the majority gets so carried away with its vision of the country's telecom future that they act like it is already here, that competition is everywhere flourishing, and that intermodal competition is already ubiquitous reality. But their cheerful blindness to stubborn market reality actually pushes farther into the future the kind of competitive telecom world they say they want.

The lack of analysis in this proceeding—and in the Commission's approach to broadband generally—amounts to a regulatory policy of crossing our fingers and hoping competition will somehow magically burst forth. With the international economy increasingly dependent on broadband facilities, faith-based approaches to advanced telecommunications are insufficient. We cannot afford to wait. As *Business Week* recently made clear: "If the U.S. is not to lose out in the global race of the next-generation Internet and the new businesses it can spawn, change is needed. The country must create vigorous competition to drive the low prices and high speeds that can usher in a prosperous broadband economy." I agree. There may not be a "one-sized-fits-all" competition policy out there, but if we want to enter the brave new world of broadband, we need to move away from our current course. The facts show we are headed in the wrong direction at warp speed. I dissent.