

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

Re: Application by Qwest Communications International Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota

Today we grant Qwest the authority to provide in-region, interLATA service originating in New Mexico, Oregon and South Dakota. I approve this Order and commend the New Mexico Public Regulation Commission, Oregon Public Utility Commission and the South Dakota Public Utilities Commission for their hard work. I would also like to commend the Wireline Competition Bureau for all of its efforts.

It is great that consumers in these states, including my home state of South Dakota, will have greater choices among long distance providers. They can also benefit from new calling plans, packages and lower rates. Since the advent of competition in the long distance market we have seen rates decline and new and creative packaging of services. I hope to see comparable results in these states for which we are granting Section 271 authority.

As with SBC in the Nevada 271 Order, we grant section 271 relief to Qwest Communications, Inc., to provide long distance services in New Mexico based on our finding that Qwest has satisfied "Track A" of Section 271. Although I approve the grant of Section 271 authority to Qwest in New Mexico, I have the same concerns here that I did in the SBC Nevada Order.

Track A requires that one or more competing providers collectively serve business and residential subscribers using their own telephone exchange service facilities. I am somewhat concerned about relying on the existence of broadband PCS competition in demonstrating the presence of competition under Track A. However, our precedent, in the *BellSouth Second Louisiana Order*, clearly states that broadband PCS satisfies the definition of a telephone exchange service for purposes of Section 271(c)(1)(A). And the Commission specifically found that the most persuasive evidence of competition between PCS and wireline local telephony is evidence that customers are actually subscribing to PCS in lieu of wireline service. Qwest has established such a connection in this proceeding.

To disrupt this precedent and find that Qwest has not satisfied the Track A analysis with the presence of wireline PCS competition would be to effectively create a "Catch 22" for the company. Under Commission precedent, the company would not be able to satisfy Track B, either. The Commission in the *BellSouth South Carolina Order* found that Track B may only be satisfied if a State Commission certifies that "the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under Section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." The State Commission has not so certified.

Simply stated, this Commission has clearly established precedent under both Track A and Track B. The RBOCs have relied on that precedent in filing for their Section 271 approval. In this particular case, if we were to overturn the Track A precedent and determine that Qwest must use Track B, we would be holding Qwest hostage to the business plans of its competitors.

Such a result would penalize the consumers in New Mexico. Our decisions are meant to ensure that consumers have access to telecommunications services at reasonable rates. Our section 271 analysis is ultimately about bringing choice to consumers. If we were to eschew our Track A analysis precedent, the citizens of New Mexico might not have the opportunity for greater choice among long distance providers for a very long time. This means they might not have access to lower rates, new calling plans or packages to which many others now have access. On this basis, given that possibility, I support relying on the existence of broadband PCS service to demonstrate the Track A compliance, consistent with the Commission's precedent.