

**STATEMENT OF COMMISSIONER KEVIN J. MARTIN**  
**Approving in Part, Concurring in Part**

*Re: Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota (WC Docket No. 03-11)*

Today we grant Qwest authority to provide in-region, interLATA service originating in the States of New Mexico, Oregon, and South Dakota. I commend the New Mexico Public Regulation Commission, the Public Utility Commission of Oregon, and the South Dakota Public Utilities Commission for their hard work.

The Commission approves Qwest's application in New Mexico based on the Commission's precedent in the *BellSouth Second Louisiana Order*<sup>1</sup>. Under that decision, a BOC can satisfy its market-opening requirements by showing that consumers are using broadband PCS as a substitute for wireline telephone service. This showing can be demonstrated in the form of: (i) surveys identifying customers that had used broadband PCS in lieu of wireline service; and (ii) evidence of marketing efforts by broadband PCS providers designed to induce replacement of wireline service with broadband PCS service.

I have some trepidation with the Commission's decision and our precedent in the *BellSouth Second Louisiana Order*.<sup>2</sup> First, I would prefer a more comprehensive study that does not require multiple attempts to determine whether consumers actually use wireless service at home as a substitute for wireline service. Moreover, our finding of Track A compliance relies solely on the presence of just one PCS provider. Given that this provider has just filed for Chapter 11 bankruptcy protection, I have some concerns with the long-term health of competition in New Mexico. At this point, however, no evidence exists indicating that the PCS provider has stopped offering or providing service in the state.

I must concur, however, with the decision to determine checklist compliance of UNE TELRIC rates based on a benchmark analysis of aggregated non-loop rate elements. As I have stated in the past, Section 252(d)1 sets forth the pricing standard used for

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<sup>1</sup> See *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Louisiana*, CC Docket 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633-35 (1998)(*BellSouth Second Louisiana Order*).

<sup>2</sup> See *Statement of Commissioner Kevin J. Martin, Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide-In-Region, InterLATA Service in the State of Nevada*, (April 14, 2003).

determining compliance in Section 271 applications.<sup>3</sup> I continue to believe that this standard requires that we examine UNE rates by each individual “network element.”

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<sup>3</sup> See e.g., *Statement of Commissioner Kevin J. Martin, Approving in Part and Concurring in Part, Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance) NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C. and West Virginia (WC Docket No. 02-384).*