

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
Providing Eligible Entities	)	WC Docket No. 07-38
Access to Form 477 Data	)	GN Docket Nos. 09-47, 09-51
Under the BDIA	)	

**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“Qwest”) submits these comments with respect to the Federal Communications Commission’s (“Commission”) Public Notice in the above-captioned proceedings.<sup>1</sup> Even before enactment of the Broadband Data Improvement Act of 2008 (“BDIA”), Qwest was supportive of the Commission sharing Form 477 data with other regulatory agencies.<sup>2</sup> Such information sharing will facilitate the gathering of information, use of consistent information by all agencies, and minimize the information compilation and production burden on carriers. With this sharing of information, however, there is a need to ensure that the data receive consistent treatment by agencies in regard to preservation of the confidentiality that may attach to some, or all, of the data. The protection that the data is afforded by one agency should not be imperiled or diluted by another agency.

In regard to data that carriers produce on Form 477, the carrier is provided the option of designating as confidential the entirety of the submission, or portions thereof.<sup>3</sup> The BDIA,

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<sup>1</sup> Public Notice, DA 09-1550, rel. July 17, 2009.

<sup>2</sup> See Comments of Qwest Communications International Inc., WC Docket No. 07-38, filed July 17, 2008 at 5.

<sup>3</sup> Providers are allowed to indicate “whether non-disclosure is requested for some or all of the information in this submission because the filer believes that this information is privileged and confidential and public disclosure of such information would likely cause substantial harm to the competitive position of the filer.”

however, does not afford such complete protection. It provides that an eligible entity “shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity.”<sup>4</sup> This raises two important distinctions between the treatment accorded under Form 477 and the BDIA treatment. One, the language does not specify how the information is designated as confidential, *i.e.*, whether the eligible entity makes the determination or the submitting party does. Two, the eligible entities may be designated after the Commission shares the information with the state. If that is the case, there will not be a “mutual” agreement between the entity and the provider as to the confidentiality of the information. Thus, there is a significant risk that the Form 477 information, which may have been submitted under the confidential designation by a provider, may lose such treatment when it is shared pursuant to the BDIA. Such a situation is disconcerting enough, but when the eligible entity is a non-governmental entity with which Qwest has had no prior dealings, the concern is exacerbated. Since the raw data involve the types of broadband services Qwest provides by census tract throughout its service area, and subscription to said services, such information is commercially sensitive to Qwest as it would be for any other Form 477 provider.

For these reasons, Qwest urges that information that a broadband service provider provides on its Form 477 under a confidential designation automatically retain that confidential designation when it is shared with eligible entities pursuant to the BDIA. The Commission collects Form 477 data pursuant to its statutory mandate to promote the deployment of advanced

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<sup>4</sup> BDIA § 106(h)(2); 47 U.S.C. § 1304(h)(2).

telecommunications capability.<sup>5</sup> While the BDIA requires the Commission to share “aggregate data” collected by the Commission based on the Form 477, there is nothing in the BDIA provisions to vitiate the treatment of the raw data accorded by the Commission.<sup>6</sup> Thus, the confidential treatment accorded to the Form 477 data should not be disturbed when the data is shared with eligible entities pursuant to the BDIA.

Respectfully submitted,

QWEST COMMUNICATIONS  
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July 30, 2009

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<sup>5</sup> Section 706, Pub. L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153, reproduced in notes accompanying 47 U.S.C. § 157; *In the Matter of Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717 (2000); *In the Matter of Local Telephone Competition and Broadband Reporting*, Report and Order, 19 FCC Rcd 22340 (2004).

<sup>6</sup> BDIA Section 106(h)(1) (Requires the Commission to “provide eligible entities access . . . to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.”).

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed via ECFS with the Office of the Secretary of the FCC; and 2) served via email on the FCC's duplicating contractor Best Copy and Printing, Inc. at [fcc@bcpweb.com](mailto:fcc@bcpweb.com).

/s/ Richard Grozier

July 30, 2009