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EX PARTE OR LATE FILED

EX PARTE

FILED/ACCEPTED

OCT 21 2009

Federal Communications Commission
Office of the Secretary

REDACTED – FOR PUBLIC INSPECTION

VIA COURIER

October 21, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

ORIGINAL

RE: *In the Matters of a National Broadband Plan for Our Future, GN Docket No. 09-51; Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 09-137; High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link Up, WC Docket No. 03-109; Universal Service Contribution Methodology, WC Docket No. 06-122; Developing A Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68; IP-Enabled Services, WC Docket No. 04-36; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135*

Dear Ms. Dortch:

On October 20, 2009, Mary LaFave, Peter Copeland, Carolyn Hammack, Melissa Newman and Olivia Trusty, in person, and Loretta Huff, Tiffany Smink and Tim Boucher, by telephone, all of Qwest, met with Carol Matthey, Rebekah Goodheart, Rob Curtis, Thomas Brown and Thorton Kendall of the Federal Communications Commission to discuss the above-captioned proceedings.

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In connection with this meeting, for its *ex parte* presentation, Qwest used a series of slides, entitled “Qwest Response to National Broadband Plan Interim Report”, as the basis for discussion. This submission, in non-redacted and redacted formats, includes (only) slide 5, entitled “Qwest’s Cost to Deploy Broadband: Urban vs. Rural”, which contains highly/confidential information. The remaining slides from the presentation, which contain no highly/confidential information are being filed simultaneously today under separate cover in the above-captioned proceedings. Slide 5 was extracted and included with this submission, to be filed separately pursuant to 47 C.F.R. § 0.459(a).

Pursuant to the October 8, 2009 Protective Order in GN Docket No. 09-51, DA 09-2187, Qwest has marked slide 5, which contains highly confidential information, as follows: **“HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”**. The redacted version of slide 5 is marked **“REDACTED – FOR PUBLIC INSPECTION”**. This cover *ex parte* letter contains no confidential information and is included (with the same text except for the markings) with both the non-redacted and redacted versions of the submission. Pursuant to paragraph 7 of the Protective Order, two copies of the non-redacted version (with highly confidential information) are to be delivered in person either to Elvis Stumbergs (Room 2-C125) or Simon Banyai, Room 4-C458 of the Media Bureau of the Federal Communications Commission at 445 12th Street, S.W., Washington, DC 20554. In GN Docket No. 09-51, for the non-redacted version of the submission, Qwest is submitting via courier one copy with the Office of the Secretary, along with an additional copy to be stamped and returned to the courier.

In addition, pursuant to the June 8, 2005 Order and Protective Order in WC Docket No. 05-25, 20 FCC Rcd 10160 (2005), Qwest has marked slide 5, which contains confidential information as follows: **“CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25 before the Federal Communications Commission”**. Pursuant to paragraphs 3 of the Order and 8.d. of the Protective Order, two copies of the non-redacted version (with confidential information) are to be delivered in person either to Margaret Dailey (Room 5-A221) or Pamela Arluk (Room 5-A266), Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission at 445 12th Street, S.W., Washington, DC 20554. In WC Docket No. 05-25, for the non-redacted version of the submission, Qwest is submitting via courier one copy with the Office of the Secretary, along with an additional copy to be stamped and returned to the courier.

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For the redacted version of the submission, wherein the highly/confidential information has been omitted), for both GN Docket No. 09-51 and WC Docket No. 05-25, Qwest is submitting via courier, four copies (two for each docket) to the Office of the Secretary, along with an additional copy to be stamped and returned to the courier.

For the other proceedings, GN Docket No. 09-137, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36 and WC Docket No. 07-135, Qwest requests highly confidential treatment of the information included with slide 5, submitted pursuant to 47 C.F.R. §§ 0.457 and 0.459. Qwest provides justification for the highly confidential treatment of slide 5 in the Appendix to this cover letter, pursuant to 47 C.F.R. §§ 0.457(d) and 0.459. Qwest considers the information in slide 5 to be confidential trade secret, commercial and customer information that is “not routinely available for public inspection.” 47 C.F.R. § 0.457(d). For each of these proceedings, Qwest is filing with the Office of the Secretary, via courier, one copy of the non-redacted version and two copies of the redacted version.

This *ex parte* is being filed pursuant to 47 C.F.R. § 1.1206(b). Please contact me at 202.429.3120 if you have any questions.

/s/ Melissa E. Newman

Melissa E. Newman
Vice President-Federal Relations

Attachment

Two copies of the non-redacted version via in-person delivery to:
Elvis Stumbergs or Simon Banyai
Margaret Dailey or Pamela Arluk

A copy of the redacted version to:
Carol Matthey
Rebekah Goodheart
Rob Curtis
Thomas Brown
Thorton Kendall

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APPENDIX

Confidentiality Request and Justification

Qwest requests highly confidential treatment of the attached slide 5 associated with this correspondence in GN Docket No. 09-51, pursuant to the Protective Order, released October 8, 2009, as well as confidential treatment of slide 5 in WC Docket No. 05-25, pursuant to the Order and Protective Order, released June 8, 2005. Slide 5 contains information that Qwest considers highly confidential under the GN Docket No. 09-51 Protective Order because it includes “detailed or granular information concerning the location, type, and cost of last-mile infrastructure used by [Qwest] to offer broadband service”, which is not available from public sources and is not routinely made available for public inspection. Qwest also considers the slide 5 information to be confidential under the June 8, 2005 Order and Protective Order in WC Docket No. 05-25. Such information also should be afforded highly confidential and confidential treatment, under both 47 C.F.R. § 0.457(d) and § 0.459, in these and the other dockets referenced in this submission.

47 C.F.R. § 0.457(d)

Information contained in slide 5 is highly confidential and proprietary to Qwest as “trade secrets” and/or “commercial information” or is otherwise confidential under Section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary commercial information. Therefore, in the normal course of Commission practice this material should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information included with this submission is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

Qwest requests that its submission containing highly/confidential information be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. The submission contains sensitive trade secrets, commercial or other information which Qwest maintains as proprietary and/or confidential and is not normally made available to the public. Release of the

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material could have a substantial negative competitive impact Qwest. The material which Qwest considers highly/confidential is marked with the following legend: **“HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”** and **“CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 05-25 before the Federal Communications Commission”**.

Commission proceeding in which the information was submitted

The filing is being submitted in *In the Matters of a National Broadband Plan for Our Future*, GN Docket No. 09-51; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Developing A Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92; *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36; *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The material designated as highly/confidential contains sensitive trade secrets, commercial and other information which Qwest maintains as proprietary and withholds from public inspection. This material is not normally made available to the public. Release of the material could have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of trade secrets consists of “detailed or granular information concerning the location, type, and cost of last-mile infrastructure used by [Qwest] to offer broadband service[.]” The sensitive information or proprietary internal Qwest material or other highly/confidential commercial information contained in slide 5 would generally not be subject to routine public

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inspection under the Commission's rules (47 C.F.R. § 0.457(d)), which demonstrates that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of this highly/confidential information would cause it competitive harm by allowing competitors to become aware of sensitive trade secrets, commercial or other confidential information regarding the operation of Qwest's business as it relates to the provision of broadband services.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the information disclosed in this material as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this material should not be considered confidential or would become stale for purposes of the current action, except that the material would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the material in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) trade secrets or commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.



Qwest's Cost to Deploy Broadband: Urban vs. Rural