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REDACTED – FOR PUBLIC INSPECTION

VIA HAND DELIVERY

October 28, 2009

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

RE: *In the Matter of a National Broadband Plan for Our Future*, GN Docket No. 09-51
In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, GN Docket No. 09-47
In the Matter of 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

Dear Ms. Dortch:

Qwest Communications International Inc. (Qwest) is filing today in the above-referenced dockets Comments in response to the FCC's October 8, 2009 Public Notice #12 (DA 09-2194) concerning cost estimates for connecting anchor institutions to fiber. Qwest seeks confidential treatment of its submission in GN Docket No. 09-51 pursuant to the October 8, 2009 Protective Order (DA 09-2187). Qwest has marked its submission with confidential information as follows: "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**". The redacted version of its submission is marked "**REDACTED – FOR PUBLIC INSPECTION**". This cover 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 in GN Docket No. 09-51, two

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copies of the non-redacted version (with 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. 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. Qwest is filing the redacted version of its submission (which omits the confidential information) via the FCC's Electronic Comment Filing System.

Qwest also seeks confidential treatment of its submission in GN Docket Nos. 09-47 and 09-137 pursuant to 47 C.F.R. §§ 0.457 and 0.459, for which it provides justification in the attached Appendix. Qwest considers the information in its Comments to be confidential trade secret, commercial information that is "not routinely available for public inspection." 47 C.F.R. § 0.457(d). For GN Docket Nos. 09-47 and 09-137, Qwest has marked its submission with confidential information as follows: "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION**. As previously noted regarding GN Docket No. 09-51, the redacted version of Qwest's submission is marked "**REDACTED – FOR PUBLIC INSPECTION**". For GN Docket Nos. 09-47 and 09-137, in each proceeding, Qwest is filing with the Office of the Secretary, via courier, one copy of the non-redacted version and the redacted version of its submission (which omits the confidential information) is being filed via the FCC's Electronic Comment Filing System.

Please contact me at 303-383-6608 if you have any questions.

/s/ Timothy M. Boucher

Attachments

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

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APPENDIX

Confidentiality Request and Justification

Qwest requests confidential treatment of its Comments-NBP Public Notice #12 in GN Docket No. 09-51, pursuant to the Protective Order, released October 8, 2009 (DA 09-2187), as well as confidential treatment of the Comments in GN Docket Nos. 09-47 and 09-137 pursuant to 47 C.F.R. § 0.457(d) and § 0.459.

47 C.F.R. § 0.457(d)

Qwest considers information contained in its Comments to be confidential and proprietary 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 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 material could have a substantial negative competitive impact Qwest. The confidential version of Qwest's Comments is marked with the following legend: "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**" and "**CONFIDENTIAL, NOT FOR PUBLIC INSPECTION IN GN DOCKET NOS. 09-47 AND 09-137**".

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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; *International Comparison and Consumer Survey Requirement in the Broadband Data Improvement Act*, GN Docket No. 09-47.

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

The material designated as 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 cost information related to fiber build-out in connection with the provision of broadband service by Qwest. This sensitive, proprietary internal Qwest information would generally not be subject to routine public 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 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 its Comments as confidential and has protected it from public disclosure to parties outside of the company.

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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 information 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.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
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

COMMENTS-NBP PUBLIC NOTICE #12
OF QWEST COMMUNICATIONS INTERNATIONAL INC.

In these comments, Qwest Communications International Inc. (Qwest) responds to the NBP (National Broadband Plan) Public Notice #12, issued by the Commission in the above-referenced proceedings on October 8, 2009 (Public Notice No. 12).[1]

I. INTRODUCTION AND SUMMARY

In Public Notice No. 12, the Commission seeks comment on numerous issues relating to cost models and estimates and other issues arising in connection with fiber build-outs to anchor institutions such as public schools and libraries, community colleges, and hospitals.[2] Most of the

[1] Public Notice, GN Docket Nos. 09-47, 09-51, 09-137, Comment Sought on Cost Estimates for Connecting Anchor Institutions to Fiber, DA 09-2194 (Oct. 8, 2009).

[2] *Id.* at 1.

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specific questions raised in Public Notice No. 12 are directed at the Gates Foundation Cost Model (the Gates Report) which is attached to the notice.[3] As discussed in greater detail below, the Gates Report suffers from numerous flaws. To begin with, because it only provides cost data relating to the last mile aspects of a fiber build-out to anchor institutions, the Gates Report provides a very incomplete cost picture. It also does not account for right-of-way issues that both materially increase the cost of fiber build-out to anchor institutions and adversely impact the timeline for such build-outs. Additionally, the partial cost data that is contained in the Gates Report is not accurate. Perhaps most importantly, anchor institution fiber build-out would not materially improve the economics of the last mile build-out needed to address the un- and underserved challenges facing the Commission. Finally, the Commission should use consistent categories of population density in all aspects of the NBP.

II. DISCUSSION

A. The Gates Report Provides An Incomplete Cost Picture For Anchor Institution Fiber Build-Out

Because the Gates Report only provides cost data relating to the last mile aspects of a fiber build-out to anchor institutions, it provides a very incomplete cost picture. The Gates Report provides cost data for last mile aspects of fiber build-out to anchor institutions across four different categories of population density. However, as the Gates Report itself expressly acknowledges, it wholly ignores the cost to get fiber to a given area to begin with.[4] Non-last mile or backhaul build-out costs are likely to be significant for many areas. Thus, it is likely that

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[3] *Id.*, Appendix A.

[4] *Id.*, Appendix A at 2.

the Gates Report significantly understates the cost of a fiber build-out to anchor institutions, particularly for those located in more remote areas.

B. The Gates Report Does Not Account For Right-of-Way Issues

The Gates Report also does not appear to account for the impact of right-of-way issues in connection with fiber build-out to anchor institutions.[5] As Qwest has detailed in prior filings, those issues are likely to both materially increase the cost of fiber build-out to anchor institutions and adversely impact the timeline for such build-outs.[6]

C. The Partial Cost Data That Is Contained In The Gates Report Is Not Accurate

The partial cost data that is contained in the Gates Report is also not accurate.

To begin with, Qwest's experience suggests that the key assumptions underlying the Gates Report comparative cost breakdowns and at least some aspects of the cost data are not accurate.[7] For example, it is not reasonable to assume that aerial plant will be an option in any area - urban, suburban or rural. Indeed, aerial build-out in all areas is problematic in many instances. In the best case, there are transactional costs entailed in obtaining the necessary rights to use aerial plant which impacts the business case. Additionally, factors such as neighborhood restrictions designed to maintain aesthetics impact on the availability of aerial deployment. Also, in many instances where aerial plant is available in a neighborhood, it is not available to build-out to the neighborhood. Where poles exist, they are often unable to handle additional

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[5] Public Notice at 2.

[6] Comments of Qwest Communications International Inc., WC Docket No. 09-153 (Oct. 15, 2009) at 3-9.

[7] Public Notice, Appendix A at 3-5.

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capacity and, when they are able, additional aerial deployment may require significant maintenance cost. Due to these and other complicating factors, all-aerial is simply not a viable option in any area – urban, suburban or remote. In other words, it is not accurate to portray, as the Gates Report does, the availability of all-aerial as the low cost alternative in any of these areas. And, for rural areas, it is Qwest's experience that aerial deployment in any part of the build-out is cost-prohibitive. Thus, not only is non-aerial build-out not cost-prohibitive in rural areas, it is the only option. *****BEGIN CONFIDENTIAL*****[redacted]*****END CONFIDENTIAL*****[8]

Finally, in response to the question in Public Notice No. 12 regarding whether the termination costs per building reflected in the Gates Report are accurate,[9] it is simply not possible to tell. The Gates Report does not make clear what is included in that categorization. Without that information, it is not possible to answer the question.

D. Anchor Institution Fiber Build-Out Will Not Materially Improve The Economics Of The Last Mile Build-Out Challenge

In response to what are likely the most important questions raised in Public Notice No. 12,[10] targeting significant government resources to anchor institution fiber build-out would not materially improve the economics of the last mile build-out needed to address the un- and underserved problems facing the Commission. Funding fiber build-out to anchor institutions

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[8] *Id.*, Appendix A at 4.

[9] *Id.* at 2.

[10] *Id.*

could incrementally improve the build-out economics to a limited number of currently un- or under-served areas. This is because, where density and other narrow site-specific factors (*e.g.*, distance) were just right, some last-mile build-out cost for residences or businesses close to the anchor institution would be eliminated. However, even where that occurs, there would be additional build-out costs left in many areas that could still render the last mile build-out business case cost prohibitive. And, for many other areas, where the site-specific factors were not just right, a fiber build-out to anchor institutions would result in no real improvement to the economics of last mile build-out. For example, where the anchor institution in a rural area is located in town, it would still take long fiber build-out at a considerable cost to get to a subdivision four miles away. In that event, an anchor institution build-out would not eliminate much of the cost entailed. Rather than hoping for some indirect spill-over improvement to un- or under-served deployment economics through anchor institution build-out, government funding directed at un- and underserved broadband deployment should be targeted first to support business cases for direct last mile build-out to residences and businesses.

E. Any Support For Anchor Institution Build-Out Should Focus First On Capital Costs

In the event the NBP does provide funding of any kind for anchor institution fiber build-out, it should not fund operating expenses as part of any plan for anchor institution fiber build-out.[11] As Qwest and others have demonstrated in other recent filings, any support plan to address

[11] *Id.*

un- or underserved broadband deployment should focus only on build-out capital costs.[12] Government resources are limited and funding should be used to support build-out business cases where operating costs can be addressed through on-going operations.

F. The Commission Should Use Consistent Population Density Categories In All Aspects Of The National Broadband Plan

Public Notice No. 12 also asks whether the four population density categories used in the Gates Report are appropriate.[13] The Gates Report breaks geographical areas into four categories using zip code population density as follows: rural is <1,000 persons per square mile; suburban is between 1,000 and 4,000 persons per square mile; urban is between 4,000 and 10,000 persons per square mile; and dense urban is >10,000 person per square mile.[14] Regardless of what labels are used, it is essential that the Commission uses consistent labels in different aspects of the NBP and tie all categories to household or population density per square mile. It is also questionable whether the Gates Report category definitions are useful in the western United States where Qwest's service territory is located.

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[12] *See, e.g.*, Comments of Qwest Communications International Inc., GN Docket No. 09-51 (June 8, 2009) at 11-14; Comments-NBP Public Notice #1 of Qwest Communications International Inc., GN Docket No. 09-51, *et al.* (Aug. 31, 2009) at 6-9; Workshop Response of Qwest Communications International Inc. to Initial Set of Staff Workshops, GN Docket No. 09-51 (Sept. 15, 2009) at 3-7; *Ex parte* letter from Melissa Newman, Qwest to Marlene Dortch, FCC, GN Docket No. 09-51, *et al.* (Oct. 21, 2009) and attachment thereto, Qwest Response to National Broadband Plan Interim Report (Oct. 20, 2009) at 3-8.

[13] Public Notice at 1.

[14] *Id.*, Appendix A at 3 and n. 1.

Respectfully submitted,

QWEST COMMUNICATIONS
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Its Attorneys

October 28, 2009

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CERTIFICATE OF SERVICE

I, Joan O'Donnell, do hereby certify that I have caused: 1) one hard copy (in each docket) of the foregoing **COMMENTS-NBP PUBLIC NOTICE #12 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (NON-REDACTED)** to be filed with the Office of the Secretary in GN Docket Nos. 09-51, 09-47 and 09-137; 2) an electronic copy (in each docket) of the foregoing **COMMENTS-NBP PUBLIC NOTICE #12 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (REDACTED)** to be filed via the FCC's Electronic Comment Filing System; 3) two hard copies of the foregoing **COMMENTS-NBP PUBLIC NOTICE #12 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (NON-REDACTED)** to be delivered in person either to Elvis Stumbergs or Simon Banyai of the Media Bureau of the FCC; and 4) an electronic copy of the foregoing **COMMENTS-NBP PUBLIC NOTICE #12 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (REDACTED)** to be served via email on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/ Joan O'Donnell

October 28, 2009