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REDACTED – FOR PUBLIC INSPECTION

VIA COURIER

November 4, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
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 #11 (DA 09-2186) concerning the middle mile and second mile transport to provide connectivity to the Internet. 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 each page of its submission with confidential information as follows: "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**". Each page of 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

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November 4, 2009

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Protective Order in GN Docket No. 09-51, two copies of the non-redacted version (with confidential information) are to be delivered 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 each page of its submission with confidential information as follows: “**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION - PURSUANT TO 47 C.F.R. SECTIONS 0.457 AND 0.459 FOR GN DOCKET NOS. 09-47 AND 09-137**”. As previously noted regarding GN Docket No. 09-51, each page of the redacted version of Qwest's submission is marked “**REDACTED – FOR PUBLIC INSPECTION**”. For GN Docket Nos. 09-47 and 09-137, Qwest is filing with the Office of the Secretary, via courier, one copy of the non-redacted version its Comments in each proceeding. The redacted version of Qwest's Comments (which omits the confidential information) is being filed, in each proceeding, via the FCC's Electronic Comment Filing System.

Please contact me at 303-383-6650 if you have any questions.

/s/ Robert B. McKenna

Attachments

Two copies of the non-redacted version for 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 #11 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 information 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 and/or commercial or other information which Qwest maintains as proprietary and/or confidential and is not normally made available to the public. Release of the information could have a substantial negative competitive impact on 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 - PURSUANT TO 47 C.F.R. SECTIONS 0.457 AND 0.459 FOR 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 information designated as confidential contains sensitive trade secrets and/or commercial or other information which Qwest maintains as proprietary and withholds from public inspection. This information is not normally made available to the public. Release of the information 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 sensitive trade secrets and/or confidential commercial or other information includes rate information related to transit agreements entered into by Qwest with broadband Internet service providers, pricing information as it relates to the provision of service by Internet backbone providers and a map of the Phoenix MSA showing the routes for which middle mile and/or second mile transport is available from facilities-based providers. 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 and/or confidential commercial or other 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

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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.

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 information 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 information 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)	GN Docket No. 09-47
Requirements in the Broadband Data)	
Improvement Act)	
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A National Broadband Plan for Our Future)	GN Docket No. 09-51
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Inquiry Concerning the Deployment of Advanced)	GN Docket No. 09-137
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)	

COMMENTS - NBP PUBLIC NOTICE #11

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INTERNATIONAL INC.

November 4, 2009

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Improvement Act)	

COMMENTS - NBP PUBLIC NOTICE #11

Qwest Communications International Inc. (Qwest) submits the following comments in response to NBP Public Notice #11. NBP Public Notice #11 generally seeks information concerning middle mile and second mile transport to provide connectivity to the Internet. In these comments Qwest submits information responsive to Questions 3, 4 and 5 of the Public Notice.

I. INTRODUCTION AND SUMMARY

In this Public Notice, the Commission seeks information concerning the characteristics of what it calls the provision of “middle mile” and “second mile” broadband transport services and facilities. The Public Notice analogizes these two types of services and facilities to the transport and feeder portions of a typical incumbent LEC switched access service. In the special access

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area, they are more analogous (but again only roughly so) to special access channel terminations and interoffice transport facilities.

In these comments Qwest endeavors to provide information responsive to three of the five questions asked in the public notice. Basically “middle mile” and “second mile” transport services and facilities are simply part of a continuum of wireline broadband services, which are generally suitable for competitive supply in most areas (and are actually subject to competition in many areas today). Additional regulation, price or otherwise, of the broadband transmission services and facilities, including middle mile and second mile, currently provided by incumbent providers (including incumbent LECs) is not warranted or justified. This conclusion is documented in part in these comments.

II. PRICING AND AVAILABILITY OF INTERNET CONNECTIVITY (QUESTION 3)

Question 3 deals with the ability of Internet service providers to obtain broadband connectivity from Internet backbone providers.

(a) The price per megabyte per month for a DIA port charged by a Tier 1 Internet backbone service provider has dropped dramatically, partially as a result of the recent recession and has tended to be volatile lately. The price per megabyte per month varies based on the volume, dollar commitment and term of the contract entered into by the purchaser. Based on Qwest’s experience, in today’s market, a purchaser who purchases approximately 15 Gigabytes of bandwidth would expect to pay about*****BEGIN CONFIDENTIAL*****

*****END CONFIDENTIAL*****a purchaser who only purchases 100 Mbps on a 1

gigabyte port would expect to pay approximately*****BEGIN CONFIDENTIAL*****
*****END CONFIDENTIAL*****.

In Qwest's experience, broadband Internet service providers enter into transit agreements only for very large bandwidth commitments. Rates under a transit agreement today might go below*****BEGIN CONFIDENTIAL*****if the bandwidth commitment was sufficiently large. Anecdotal information available to Qwest suggests that Tier 2 and 3 Internet backbone service providers may be going below*****BEGIN CONFIDENTIAL*****for very large amounts of bandwidth that most broadband Internet service providers never reach.

Generally, the per unit prices for Internet backbone connectivity decline as the volume demanded or ordered increases. The price of Internet backbone connectivity has tended to decline over time and has declined rapidly in the present economic environment. It is very difficult to predict the rate of decline over the next five to ten years.*****BEGIN CONFIDENTIAL*****
*****END CONFIDENTIAL*****

(b) The price for connecting to an Internet backbone does vary from location to location. It depends on whether there is infrastructure in a particular location to handle the demand. Some providers choose to average their costs across the country while other prices vary by market. The pricing difference usually depends upon the backhaul distance required to reach the Internet backbone. Backbone connectivity in smaller municipalities usually includes a middle mile transport component.

(c) The concentration ratio broadband ISPs utilize in purchasing Internet backbone connectivity varies greatly from provider to provider. It tends to vary based on the number of users served by the broadband provider and their bandwidth demands. Normally, an incremental additional megabit of required throughput in the last mile will translate into some increase in the need for second and middle mile transport, but it may not be a one-for-one increase.

III. ECONOMICS OF DEPLOYMENT (QUESTION 4)

Question 4 deals with the economics of deploying high capacity transport services.

(a) A natural monopoly exists when the costs of production are such that it is less expensive for market demand to be met with one firm than with more than one.¹ For the single product firm, this situation exists when there are economies of scale and scope over the entire range of demand for that product. For a multi-product firm, a natural monopoly occurs when the cost of production for the entire set of products would be minimized if produced by one firm.

Generally, the provision of a high-capacity fiber optic middle mile or second mile connection to a particular location is just one part of a larger network that provides a range of services. A single route is not normally a product market in itself because the economics of constructing a single route necessarily depend upon the economics of the entire network.

Viewed in this context, it is unlikely that the provision of a single high capacity fiber optic middle mile or second mile connection to a particular location could be properly defined to be a

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17031 ¶ 76, n.259 (2003) (citations omitted) (subsequent history omitted).

natural monopoly from the perspective of competitors. Of course, in another context the “terminating monopoly” that last mile providers possess with regard to delivery of long distance traffic to particular end users presents its own issues. This “terminating monopoly” does not affect the issues raised in the Public Notice.

(b) Self-provisioning of middle mile and second mile transport is extensive and growing, especially where the “customers” of the transport facilities are also carriers. Wireless carriers are increasingly constructing and using their own wireless backhaul infrastructure to satisfy their middle mile and second mile needs. For example, Clearwire Corporation intends to build its own backhaul transport network relying almost exclusively upon microwave backhaul.²

Cable providers also self provision middle mile and second mile transport. These providers deploy and maintain relatively ubiquitous physical plant -- including plant serving hotels and large office buildings in urban business districts, and routinely advertise the availability of extensive broadband transport capability. Multi-system operator Cox Communications, which competes in Qwest’s region, offers a wide array of services by leveraging the capacity of its SONET fiber rings. Similarly, Comcast uses its network in the major cities within Qwest’s region to provide wholesale services to other carriers. Comcast Commercial Services claims to leverage “the massive network” of its parent company. It boasts that its “reach is broad and deep, with capacity in dense urban, sprawling suburban and even

² Kevin Fitchard, “Clearwire leans heavily on wireless to backhaul WiMax network,” Telephony Online, September 14, 2009; <http://telephonyonline.com/3g4g/news/clearwire-wireless-backhaul-wimax-0914/>, Clearwire Corporation 2008 10K, p. 15, available at <http://investors.clearwire.com>.

many rural areas that others can't reach.”³ Cable providers are also using their fiber networks to provide middle mile and/or second mile transport to wireless broadband service providers.

(c) The categories of capital expenses of constructing second mile and/or middle mile transport include the cost of the fiber, the cost of the fiber multiplexers, the cost of outside plant structure (conduit, manholes and cabinets), right-of-way costs for aerial and buried rights of way, and labor. In addition, capital expenses are incurred when provisioning transport circuits, including line cards and in some cases for second mile transport, customer termination equipment.

The categories of operating expenses for operating second mile and/or middle mile transport include labor associated with central offices, outside plant labor, labor overhead associated with maintaining 24-hour operations, utilities, incidental materials (fiber jumpers, jacks and other miscellaneous equipment), building-related costs, overhead, certain right-of-way costs, and taxes.

The levels of each of these categories of capital and operational expenses vary greatly on a per-mile basis. Certain expenses involve fixed costs that are not mileage dependent. Other expenses such as fiber placement and labor are highly mileage dependent and vary based on terrain and placement methods. Right-of-way, pole attachment and permit fees and charges are a significant source of costs for outside plant and operations and vary greatly by municipality and region. These charges do vary based on who owns or controls the pole, duct, conduit or right of way.

³ Comcast's assertions about its network capabilities can be found at <http://www.pdxinet.net/services/default.html>.

Construction costs are generally lower for aerial plant than for placing cable into existing conduit or in a buried environment. However, this must be weighed against the long term operational costs associated with maintaining aerial plant, which is higher, and a lower level of reliability associated with aerial plant.

(d) Long haul providers can and do offer middle mile or second mile transport service to communities that are passed by their long-haul fiber. For example, Level 3 recently announced its tower access service in which it will allow carriers to access its backbone at various in-line amplification sites.⁴ According to Level 3, its service “provides wireless carriers with more efficient and cost-effective options for wireless backhaul in metropolitan and rural locations.”⁵

(e) The availability of adequate, reasonably priced, and efficiently provided middle mile and second mile transport infrastructure in an area does depend upon access to capital. Each provider’s ability to make capital investments is constrained at least in part by the cash flow it receives from the telecommunications services it provides.

Generally, the availability of capital for an investment in middle mile or second mile transport will depend upon the relative risks and return for the particular investment. High risk investments require a higher rate of return to attract capital. If the return is sufficient, capital will be available for even very risky investments. Conversely, if the prospective return is low, capital may not be available even for very low risk investments.

⁴ Kevin Fitchard, “Level 3 gets in the backhaul tower business,” Telephony Online, Oct. 22, 2009.

⁵ Level 3 Press Release, “Level 3 Launches Wireless Tower Access Service” Oct. 22, 2009.

Depending on the area in question, there are usually many risks that will determine the rate of return required before a provider is willing to commit its capital. Actual or potential competition from other providers is one factor that may make an investment to provide middle mile or second mile transport more risky. The prospect that anticipated demand will not materialize is another risk that the provider must consider in deciding whether to invest capital.

Increased regulation of rates for middle mile or second mile infrastructure is likely to make access to capital more difficult. Rate regulation reduces the potential return that providers may earn on their investments and this reduces the incentive to invest and therefore the availability of capital to the regulated company. Conversely, if the prices of an existing competitor are constrained by regulation and are kept below the market costs of the incumbent's service, the availability of artificially low priced services will operate to severely constrain the availability of capital to be used for the construction of competitive facilities.

(f) Competing or neighboring broadband service providers will work together (such as in consortia or collaboration) to upgrade and share middle mile facilities where it makes economic sense to do so and where anti-trust laws are not traduced. One circumstance in which it makes sense to collaborate is when each provider could not independently upgrade the middle mile facilities by itself. In South Dakota, for example, a coalition of independent telephone companies formed SDN Communications. SDN Communications has deployed 21,000 miles of fiber to tie together 300 South Dakota cities. It provides carrier-to-carrier services including wireless backhaul. Similar fiber networks have been deployed in Iowa and Minnesota.

(g) Any government action to facilitate construction of second mile or middle mile facilities should be done in connection with a universal service support plan for broadband deployment.

For several years now, market mechanisms have worked well to spur broadband deployment including the deployment of second mile and middle mile facilities. In many urban and other areas where companies have been able to anticipate and earn a reasonable return on their deployment investments, they have made those investments. Any government action to spur broadband deployment, including deployment of second mile or middle mile facilities, should be focused on aiding deployment to unserved areas where the market has not supported that deployment, and significant government support has not been available (such as in rural areas served by non-rural ILECs). The government should not use public monies to overbuild where private industry has already built out facilities.

Qwest has previously proposed a new federal universal service program that would provide one-time grants to selected applicants to deploy broadband to unserved areas. Any subsidy for deployment of second mile or middle mile facilities should be considered as part of such a universal service program.

IV. NATURE OF COMPETITION AND AVAILABILITY OF ALTERNATIVES (QUESTION 5)

Question 5 seeks information on the availability of competitive alternatives for broadband transport services, including middle mile and second mile facilities.

(a) Firms compete in providing broadband transport services, including middle mile transport services, by competing for the customer (that is, by offering the customer a broad package of services over multiple routes). Firms do not normally compete on a circuit-by-circuit basis. Typically, customers have a need for many circuits covering many routes. Firms attempt to win the customer by offering the best package or combination of terms and conditions that are

important to the customer. In Qwest's experience, the negotiations with customers have been intense and broad-sweeping. The terms and conditions of interest to customers include such things as price, volume and term discounts, service quality assurances, provisions permitting migration to more advanced or higher capacity offerings, flexibility to add or change circuits, construction and build-out terms, and other customer specific situation and business needs.

New entrants who provide broadband transport facilities, including middle mile and second mile transport, in a particular area generally seek to select the most profitable business opportunities. They focus their proposed customer packages on the high margin opportunities and leave the high cost, low margin routes for the incumbent. Competition is more intense in areas in which high-speed transport network facilities are already in place, as opposed to areas in which such facilities would need to be constructed in order to provide the connectivity requested by the customer. Carriers who have already invested in facilities in a particular MSA, for example, have sunk costs that they need to recover (or at least have avoidable costs that need to be avoided). Also, in areas where new construction is required, because these are most often rural and sparsely populated, fewer providers are likely to be willing to undertake the construction. However, in these areas the incumbent LEC does not generally have the efficiency advantages that often mark incumbency in other locations.

The lack of competitive alternatives for some circuits that a particular customer demands does not affect or limit the ability of that purchaser to acquire or self-provide other circuits for which alternatives are available. Because there are no non-economic barriers to construction of alternative facilities on routes where only a single provider has current facilities, the cost of alternative construction is a part of the overall market. The existence of such routes would create

problems for competitors only where: 1) the circuits on these routes are priced dramatically above what they would be priced at in a competitive market; 2) there are a large number of such circuits in a customer's needed network footprint; and 3) the cost of constructing such facilities is so high as to make the entire project uneconomical.

(b) The presence of a second or third facilities-based provider (including providers of middle mile or second mile) transport serves as a constraint on prices overall, although it would drive prices down only to the extent that additional efficiencies are implemented in order to meet competition (or if prices were too high to begin with). In most cases, the competitive impacts on prices occur over some transition period. Most major purchasers of middle mile and second mile transport buy these services pursuant to contracts that have a fixed term of one or more years. At the expiration of these contracts, the purchasers usually reevaluate their alternatives, seek competitive bids and generally try to obtain more favorable terms and conditions (including price) that better suit their particular needs at that time. Contracts come up for renegotiation at different times, and it is over the course of these transition points that competitors must respond either with lower prices or other terms and conditions that better meet the particular needs and circumstances of each purchaser.

When a second provider of middle mile transport service enters the market, its services are usually priced in such a way as to give the second provider an advantage over the incumbent provider in the provision of the best overall package of terms and conditions sought by customers, or to price a piece of the overall package in such a manner as to attract the customer to use that piece as part of its network. Its ability to price flexibly often depends on whether the new player has existing facilities in part of the geographic market, or whether it is an entirely

new player in the area. Costs and prices are also affected by the technology utilized by the second provider (for example, microwave instead of fiber) to provide the transport service needed by the customer (including middle mile or second mile transport).

(c) Providers of either middle mile or second mile transport often compete with differentiated products. An example is the use of microwave backhaul to compete with wireline special access services. Microwave technology offers many of the strengths of traditional wireless special access services, but is in some cases better suited to modular deployment calibrated to the specific customers needs. Many microwave products have capacity that is turned up via software and is priced per increment added. For example, microwave provider FiberTower uses distinguishing characteristics of microwave technology to differentiate its backhaul offerings from those of other providers.⁶ The company holds licenses in the 11, 18, 23, 24 and 39 GHz bands and has a footprint covering 99 percent of the United States, with an “[a]verage bandwidth per market of 650 MHz...[and] 740 MHz in top markets.”⁷

When a second provider of middle mile transport service enters the market, it will normally attempt to differentiate its product to the extent possible in order to appeal to customers with different and often changing needs and preferences. The incumbent provider (*i.e.*, whoever is providing service to the customer at that time) will thus be faced with the potential loss of the customer to a bid which is competitive on some level (that is, on price, service, or other

⁶ FiberTower, *Designing Superior Backhaul Networks*, available at <http://www.fibertower.com/corp/solutions-backhaul.shtml>.

⁷ FiberTower, *Spectrum Assets*, available at <http://www.fibertower.com/corp/company-spectrum-assets.shtml>.

attributes). The response of the incumbent to competitive inroads of this nature is one of the key components of proper functioning of the marketplace.

FiberTower's microwave backhaul offerings for middle mile and second mile transport exemplify competition through product differentiation. Namely, the customer is able to choose based on the preferred transmission technology. However, product differentiation is possible even when providers are using the same technology. One provider might offer higher service quality assurances with its product, perhaps at some cost, in order to differentiate its product from that of another provider using the same technology. The entire thrust of the competitive market is that the various players will ultimately be driven towards the best customer solutions based on customer choice.

(d) Qwest is not familiar with all of the contract terms and conditions employed by other carriers in contracts for the provision of broadband transport services, including middle mile and second mile transport. However, the terms and conditions in Qwest's contracts that include the provision of broadband transport services are pro-competitive and do not impair or impede the ability of competitors to compete or for customers to maximize the consumer benefits that competition can bring about.

Volume discounts can provide a number of consumer and market benefits. They enable customers to leverage their purchasing power in order to obtain lower prices for services, while at the same time enabling sellers to recognize the efficiencies and stability that volume offerings and commitments can provide. Qwest offers volume and term discounts under its interstate tariff

(known as its “Regional Commitment Plan” offerings).⁸ Qwest also offers discounts pursuant to contract tariffs where it has phases I and II pricing flexibility,⁹ and tailors prices to the needs of customers for those broadband services subject to forbearance from dominant carrier regulation.¹⁰

Term and volume discounts and packaging arrangements of the sort employed by Qwest are standard elements in virtually every market. The Commission has authorized or acknowledged term and volume discounts in a wide variety of contexts, including long distance resale,¹¹ satellite hardware,¹² satellite services,¹³ telephone number pooling administration,¹⁴

⁸ Qwest Corporation Tariff F.C.C. No. 1, Section 7.1.3.B. (Private Line Transport Service).

⁹ Qwest Corporation Tariff F.C.C. No. 1, Section 24 (Contract Tariffs); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U.S. West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix MSA*, CC Docket Nos. 96-262, 94-1, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999).

¹⁰ Qwest Corporation Rates and Services Schedule Interstate No. 1; *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 2008 FCC Lexis 8123 (2008), *appeals dismissed sub nom., Ad Hoc Telecommunications Users Committee v. FCC*, No. 08-1288 (D.C. Cir. Aug. 7, 2009).

¹¹ *See, e.g., Ryder Communications, Inc. v. AT&T Corp.*, 18 FCC Rcd 13603, 13604-05 ¶ 4 (2003); *AT&T Corp v. Winback & Conserve Program, Inc.*, 16 FCC Rcd 16072, 16075 ¶ 3, n.5 (2001); *American Communication Services, Inc., et al.*, 14 FCC Rcd 21579, 21605 ¶ 52 (1999).

¹² *See, e.g., EchoStar Communications Corporation, et al.*, 17 FCC Rcd 20559, 20635 ¶ 206 (2002).

¹³ *See, e.g., IDB Mobile Communications, Inc. v. COMSAT Corporation*, 16 FCC Rcd 11474, 11477-78 ¶ 7, n.28 (2001).

¹⁴ *See, e.g., The Commission Seeks Comments on the Thousands-Block Pooling Administrator Technical Requirements*, 16 FCC Rcd 3710, Appendix A, Sec. 4.2 (2000).

CMRS resale,¹⁵ wireline customer premises equipment,¹⁶ and the provision of telecommunications services to schools and libraries that receive universal service support.¹⁷ In the specific context of high-capacity transmission circuits, the Commission has permitted volume discounts for more than twenty years since the early private line rate structure inquiries.¹⁸ Volume discounts are clearly appropriate as a customer friendly marketing method in a competitive market.

Volume and term discounts are commonplace elements of pricing structures in all markets, and the discounts that Qwest offers for its services that include middle mile and second mile transport are reasonable responses to its legitimate needs to recover its investments and retain usage levels on its network.

(f) & (g) Broadband transport services, including middle mile and second mile transport are available from multiple facilities-based providers in each of the MSAs in which Qwest has received Phase II pricing flexibility. To show all of the routes for which there is more than one facilities-based provider was not possible within the time constraints given by the notice of inquiry. For illustrative purposes, Qwest attaches as Confidential Exhibit A a map of the

¹⁵ See, e.g., *David S. Poole and Michigan Multimedia & Telecommunications, Inc. v. Michiana Metronet, Inc. and Lucas J. Caruso*, 15 FCC Rcd 9944, 9950 ¶ 16 (1999).

¹⁶ See, e.g., *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 15 FCC Rcd 16221, 16223-24 ¶ 4 (2000).

¹⁷ See, e.g., *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, 14 FCC Rcd 18756, 18788-89 ¶ 53, n.176 (1999).

¹⁸ *Private Line Rate Structure and Volume Discount Practices*, CC Docket No. 79-246, Report and Order, 97 FCC 2d 923, 929-30 ¶ 10 (1984).

Phoenix MSA showing the routes for which middle mile and/or second mile transport is available from facilities-based providers.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL, INC.

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Its Attorneys

November 4, 2009

EXHIBIT A

REDACTED IN ITS ENTIRETY

**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN
GN DOCKET NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS
COMMISSION**

**CONFIDENTIAL - NOT FOR PUBLIC INSPECTION - PURSUANT TO 47
C.F.R. SECTIONS 0.457 AND 0.459 FOR GN DOCKET NOS. 09-47 AND 09-137**

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 #11 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 #11 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 #11 OF QWEST COMMUNICATIONS INTERNATIONAL INC. (NON-REDACTED)** to be delivered 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 #11 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

November 4, 2009