

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
International Comparison and Consumer Survey)	GN Docket No. 09-47
Requirements in the Broadband Data)	
Improvement Act)	
)	
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 #7
OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. DISCUSSION	2
A. Government Initiatives Should Support Private Broadband Investment and Public-Private Partnerships in Unserved Areas	2
1. Local Public-Private Partnerships that Promote Broadband Investment.....	2
2. Federal Public-Private Partnerships that Promote Broadband Investment.....	5
B. Government Broadband Initiatives Should Not Promote Public Ownership of Broadband Networks or the Overbuilding of Existing Broadband Networks.....	9
III. CONCLUSION.....	12

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In these comments, Qwest Communications International Inc. (Qwest) responds to questions concerning the contribution of federal, state, tribal, and local government to broadband presented in NBP Public Notice #7, issued by the Commission in the above-referenced proceedings on September 25, 2009 (Seventh Public Notice).¹

I. INTRODUCTION AND SUMMARY

Communications services in the United States have historically been provided by private sector companies. Private sector communications infrastructure investments bring long-term advantages to governments and taxpayers by growing the tax base, enabling the delivery of high quality broadband services and placing the financial risk for the undertaking on private owners and investors. Qwest does not support public ownership and operation of communications

¹ Public Notice, DA 09-2122, *Comments Sought on the Contribution of Federal, State, Tribal, and Local Government to Broadband*, NBP Public Notice #7, rel. Sept. 25, 2009.

networks. Qwest supports public-private partnerships to extend broadband facilities and services into unserved areas.

Qwest's experiences with public-private partnerships for the deployment of broadband in unserved areas with states in its service territory have been successful. These experiences demonstrate that where market failures exist because it is uneconomic for private sector companies alone to make the broadband infrastructure investments required by unserved communities, government can combine its ability to provide additional capital with the construction and operational expertise of private sector broadband service providers to deliver high-speed broadband and Internet access to those communities. Qwest shares its experiences and the lessons learned from these public-private partnerships in these comments.

Government has a poor track record as a broadband service provider. Too often, it has underestimated costs and overestimated demand. Taxpayers have then been left with the burden of bailing out failed government broadband networks. Qwest describes two such misadventures in these comments.

II. DISCUSSION

A. Government Initiatives Should Support Private Broadband Investment and Public-Private Partnerships in Unserved Areas

1. Local Public-Private Partnerships that Promote Broadband Investment

Qwest supports private broadband investment and state and local initiatives establishing public-private partnerships to upgrade existing broadband infrastructure and extend broadband to unserved areas. The provision of communications services has not been viewed historically as a core government function in the U.S. The U.S. has a long history of successful private sector provision of communications services. Government has not demonstrated the same degree of

success as the U.S. private sector in the provision of sustainable and reliable communications services.

Qwest has significant experience working with local and state governments to upgrade and deploy broadband. Based on its experience, Qwest has found that states and local governments are best positioned to attract private capital and promote the successful deployment of sustainable broadband infrastructure and services when they: aggregate and leverage state and local government demand for communications services; enact or modify local ordinances and regulations to encourage private sector investment (*e.g.*, ordinances and regulations concerning rights-of-way access, utility pole attachments and access to conduits, construction fees, facilities re-location cost assignment, and franchise fees and conditions); provide targeted construction subsidies to private sector service providers to reduce the cost of network upgrades and build-outs; and collaborate with private sector service providers to drive increased demand.

Qwest's recent experiences participating in the broadband infrastructure grant programs of two of its states, Idaho² and Utah, illustrate the merits of utilizing public-private partnerships to expand broadband infrastructure to unserved areas. It is significant that these successful broadband infrastructure programs were grant programs. Virtually all areas in the U.S. that lack broadband today are unserved because it is uneconomic to build broadband infrastructure without substantial subsidization. Significant additional broadband deployment to unserved areas in Qwest's service territory is not economically feasible at this time without grant funding.

² The Idaho program was particularly successful due to the engagement of the Department of Commerce and Labor (DCL) which issued a program guide containing the rules within 60 days of the program's legislation being enacted. The DCL reviewed applications within 30 days of the application submission deadline. Qwest's proposal included 53 separate projects totaling \$7,543,900. Qwest and Idaho each provided 50% of the project cost (\$3,771,950). Each project was defined on a community-by-community basis. Collectively, the projects brought broadband infrastructure and services past over 30,000 homes and businesses in many of Idaho's smallest and most rural communities.

Qwest believes that it is not atypical in this regard among wireline broadband service providers. With adequate grant funding in its 14 states, Qwest could deploy facilities in unserved areas that would provide customers Internet access service at speeds of at least 7Mbps.

Local and state governments that are willing to partner with private sector broadband services providers to bring broadband service to unserved areas by making broadband infrastructure grants available may increase the service provider response to RFPs if certain considerations are taken into account. First, available grants must be sufficient, relative to the deployment costs for targeted unserved areas, to support an economically sound business case by prospective applicants. It is also important that clear, specific and comprehensive guidance issue as quickly as possible describing how the program is to work. The sooner the guidance is publicly released, the sooner potential applicants can make final decisions on whether to participate in the program and to what degree. While a certain amount of preplanning can be done before final rules, applications and instructions are issued, preplanning is necessarily based in part on assumptions that may or may not prove valid once the final program guidance issues. Changes in the application process or in the rules after initial release can slow the process if the changes require a reworking of an applicant's application.

As much of the application process as possible should be handled electronically rather than through the submission of paper. This should facilitate the prompt exchange of information and submission and processing of applications. Electronic and telephonic access to knowledgeable government officials for responses to questions and assistance with the application process should minimize the submission of incomplete or otherwise noncompliant applications. Reasonable deadlines for both application submissions and grant awards should be set.

An application amendment process should be established, both pre-approval and post-approval, to accommodate modifications to project costs resulting from unforeseeable and uncontrollable events that affect construction costs (*e.g.*, extraordinary weather conditions or labor disruptions). An applicant should not have to re-file its application and start over again for other than major modifications to the application. A successful applicant should not be so locked into the approved application that it is forced to abandon the project rather than develop an acceptable project modification.

2. Federal Public-Private Partnerships that Promote Broadband Investment

The Commission's Schools and Libraries Universal Service Support Mechanism (E-rate program) provides schools, school districts, libraries, and consortia with discounts on telecommunications services, Internet access, and data transmission wiring and components used for educational purposes -- that is, activities that are integral, immediate, or proximate to the education of students or to the provision of services to library patrons, such as activities that occur on library or school property. "Based on indicators of need, eligible schools and libraries qualify for a discount of 20 percent to 90 percent on the cost of services and must show that they can pay for the undiscounted portion of services. Indicators of need include the percentage of students eligible for free or reduced-price lunches through the National School Lunch Program and whether the entity is located in a rural area."³

USAC, the day-to-day administrator of the E-rate program, states that the E-rate program "is a significant source of federal support for technology funding for schools and libraries, providing about \$2 billion each year to help eligible entities procure telecommunications and

³ GAO Report to Congressional Requesters, *TELECOMMUNICATIONS Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses*, GAO-09-253 (GAO E-rate Program Report), Mar. 2009 at 6 (footnotes omitted).

Internet services -- including the installation of wiring and components needed to transmit data.”⁴ Funding commitments made to eligible E-rate entities from the program’s beginning in 1998 to 2007 totaled about \$22B.⁵ Eligible E-rate entities secure telecommunications and Internet services, as well as inside wiring and components, from a variety of private sector services/equipment providers. The eligible E-rate entities apply for discounts for the services and equipment that they receive, the services/equipment providers provide the services/equipment to them at a discount, and USAC reimburses the services/equipment providers out of program funds.

The E-rate program has been closely scrutinized over the years and has its critics. GAO recently recommended that the Commission report to Congress on its strategic vision for the E-rate program, including long-term goals, and that it report annually in its performance plan on un-disbursed funding associated with expired funding commitments.⁶ Nonetheless, it is indisputable that the E-rate program has resulted in expanding Internet access to many schools and libraries across the country that would be without such access in its absence. As Senator John Rockefeller, Chairman of the Senate Commerce, Science and Transportation Committee, and an original sponsor of the E-rate program, has noted, the E-rate program has been “a hugely successful effort to promote Internet connectivity in classrooms and libraries across the country. Since the inception of the E-Rate program, the number of schools connected to the Internet has grown from 14 to 92 percent nationwide, and schools in low-income areas have grown from 5

⁴ www.usac.org/sl/about/overview-program.aspx . E-rate funding is capped at \$2.25B per year.

⁵ GAO E-rate Program Report at 1-2.

⁶ *Id.* at 50. The Commission is also conducting an examination of issues concerning the administration of the E-rate program. See *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Notice of Inquiry, 23 FCC Rcd 13583 (2008).

percent to over 90 percent.”⁷ The E-rate program has proven to be an imperfect, yet successful, public-private partnership for bringing Internet access to the Nation’s schools and libraries.

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act).⁸ The goal of the Recovery Act is to provide a “direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth.”⁹ Two of the Recovery Act’s five purposes are: to provide investments needed to increase economic efficiency by spurring technological advances in science and health; and to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.¹⁰ The Recovery Act provides the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) with \$7.2 billion to increase access to broadband services in the Nation. These funds must be obligated to conforming projects by September 30, 2010.¹¹

The Recovery Act expands RUS’s authority to make broadband infrastructure loans and provides new authority to make grants to increase broadband deployment in rural areas. It appropriates \$2.5B to RUS for the award of loans, grants and loan/grant combinations to entities through a competitive application process.¹² RUS developed the Broadband Initiatives Program (BIP) as the vehicle through which to fund broadband infrastructure in qualifying areas.

⁷ Senator Rockefeller’s Senate website, <http://rockefeller.senate.gov/issues/education/erate.cfm>.

⁸ *American Recovery and Reinvestment Act of 2009*, 111 Pub. Law No. 5, 123 Stat. 115 (Feb. 17, 2009).

⁹ President Obama, Statement on Signing the American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009).

¹⁰ Recovery Act, Section 3(a)(3) and (4).

¹¹ Recovery Act, Division A, Title XVI, Section 1603.

¹² Recovery Act, Division A, Title I, Department of Agriculture, Rural Utilities Service, Distance Learning, Telemedicine, and Broadband Program.

The Recovery Act also appropriated \$4.7B to NTIA to provide grants for broadband initiatives (infrastructure, public computer center and sustainable broadband adoption projects) throughout the United States.¹³ The Broadband Technology Opportunities Program (BTOP) is the vehicle through which NTIA will evaluate competing project applications and award grants to successful applicants.

BIP and BTOP are in the early stages of their implementation. Private sector entities, among others, are eligible to apply for BIP and BTOP funding. Broadband project applications have been submitted pursuant to the first of two anticipated BIP/BTOP Notices of Funds Availability (NOFAs).¹⁴ RUS and NTIA “received over 2,200 applications requesting nearly \$28 billion in funding for proposed broadband projects reaching all 50 U.S. States, five territories, and the District of Columbia.”¹⁵ RUS and NTIA are expected to begin making awards to successful applicants in December 2009.

BIP and BTOP have the potential to successfully achieve the Recovery Act’s purposes of promoting the deployment of the broadband infrastructure investments needed to increase economic efficiency and provide sustainable long-term economic benefits. The likelihood of fulfilling these purposes will be significantly increased if: 1) funding for infrastructure projects is targeted toward those projects that will expand broadband access to unserved areas; 2) the use of grant funding is maximized; and 3) the experience of private sector firms that have historically been the builders and operators of the Nation’s telecommunications networks is leveraged. BIP

¹³ Recovery Act, Division A, Title II, Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program.

¹⁴ Federal Register, Vol. 74, No.130, July 9, 2009 at 33104-28.

¹⁵ Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information, NTIA, U.S. Department of Commerce, before the Subcommittee on Communications, Technology and the Internet, Committee on Energy and Commerce, U.S. House of Representatives, Sept. 10, 2009 at 3-4.

and BTOP can be model public-private partnerships for moving the Nation forward in its mission to fill broadband infrastructure gaps, enhance existing broadband networks and lay the foundation necessary for economic growth in a digital world.

B. Government Broadband Initiatives Should Not Promote Public Ownership of Broadband Networks or the Overbuilding of Existing Broadband Networks

Qwest does not support public ownership of communications infrastructure.¹⁶ Instead, Qwest encourages private investment which brings long-term advantages to states, local communities, and tax payers by growing the tax base and exposing tax payers to less risk. Qwest believes that the most effective government broadband infrastructure initiatives are those that favor the provision of broadband service by private companies rather than government providers for whom the provision of broadband service has not traditionally been considered a core government function.

Local governments, in particular, have had a poor track record in entering the communications market.¹⁷ Often, demand projections have fallen short resulting in revenue shortfalls and the need for additional infusions of public capital.¹⁸ “The overwhelming majority

¹⁶ The exception would be where there is a market failure and an inability on the part of government to undertake corrective or mitigating actions (*e.g.*, removal of unreasonable/unnecessary regulatory barriers; or subsidization of private sector infrastructure investment) that would incentivize private sector investment.

¹⁷ See Comments of Randolph J. May, President, The Free State Foundation, filed in NTIA/RUS Docket 090309298-9299-01, *In the Matter of Broadband Technologies Opportunity Program*, 03/20/2009, at 3, n.2, citing to Institute for Policy Innovation paper, *We Told You So! Continue to Say No to Municipal Broadband Networks*, Mar. 6, 2009, authored by Barry Aarons, IPI Senior Research Fellow. Found at: www.ipi.org.

¹⁸ See *Local governments rethink municipal Wi-Fi initiatives*, by Wailin Wong, chicagotribune.com, May 21, 2008, www.chicagotribune.com/business/chi-wed-municipal-wifimay21,0,4594741.story. See also *Boston comes up short in Wi-Fi effort*, by Robert Weisman, boston.com, Apr. 4, 2008, www.boston.com/business/technology/articles/2008/04/04/boston_comes_up_short...

of municipalities offering commercial fiber services are reporting operating losses, and virtually all the municipalities evaluated . . . appear to have operations that will prove to be negative in terms of net present value.”¹⁹ Too often, taxpayers are burdened with making up for government officials’ overstated demand projections and revenue shortfalls. Municipal personnel that could be performing traditional governmental functions are often siphoned off to manage municipal networks or address issues related to their operation. Further, the ability of local governments to discriminate against other service providers in applying local ordinances, rules and policies relating to taxes, the use of public rights-of-way, permitting, performance bonding and reporting raises serious concerns. Accordingly, Qwest believes that private broadband service providers should be preferred over public broadband service providers.

Funding an additional broadband service provider in served areas where the current level of broad demand makes the sustainability of existing broadband service marginal, at best, jeopardizes the economic viability of each service provider. Further, promoting new entry into already served areas unfairly skews the economic risk of providing broadband service against existing service providers. Government support of broadband over-builds unfairly puts the capital investment of incumbent broadband service providers at risk from a non-market force. Using tax payer dollars to promote new entry where broadband services are already offered by private sector providers creates a disincentive for existing broadband service providers that have used private risk capital to deploy and maintain their broadband facilities from further investing in those communities.

The over-building of existing broadband networks by municipalities has been particularly costly for the tax payers that have financed them. Most municipalities lack the necessary

¹⁹ *Municipal Broadband: Digging Beneath the Surface*, Balhoff & Rowe, LLC, Sept. 2005 at 123.

expertise to ensure the long-term viability of a competitive broadband network. Municipalities that over estimate subscriber take rates and do not accurately predict the construction and operating costs of a broadband network risk having to return to the tax payers for additional funds that could be better used for core governmental services such as health, education, housing and other social services. Further, the potential for unfair cross subsidization and conflicts of interest are substantial when municipalities seek to compete against private sector broadband service providers.

Below are two examples of municipal entry into the competitive broadband market in areas served by Qwest and others that demonstrate how problematic and ill-conceived such initiatives tend to be.

Utah Telecommunication Open Infrastructure Agency (UTOPIA)

UTOPIA was established in 2002 to deploy and operate a wholesale broadband network that would lease capacity to any retail service provider interested in using the system's fiber-optic lines to serve customers. In most areas where UTOPIA has or is constructing its network, private sector broadband service providers, such as Qwest, already offer broadband service.

Eleven cities²⁰ originally pledged a combined \$202M of their sales tax revenues to support a 20 year bond that provides financing for UTOPIA.²¹ The UTOPIA business case was predicated on a feasibility study that assumes broadband take rates of over 50% by year five of UTOPIA's fiber deployment. The cities' pledges allowed for a lower interest rate for the bond used to finance the project.

In mid-2008, low customer take rates, among other reasons, resulted in a plan to refinance UTOPIA's debt. Ten out of the 11 cities agreed to increase their sales tax pledges to almost \$500M over 32 years in conjunction with the refinancing.

At this time, parts of the project have not been completed, customers in several cities do not yet have services, customer take rates remain lower than projected, and operating revenues to be used for the June 2010 bond payment are inadequate. The pledged sales tax revenues from the participating cities are expected to be required in order to satisfy bond interest obligations.

²⁰ Brigham City, Centerville, Layton, Lindon, Midvale, Murray, Orem, Payson, Perry, Tremonton and West Valley.

²¹ <http://www.utahtaxpayers.org/wp-content/uploads/2009/06/utopia1.jpg>.

Estimates of the collective sales tax revenues to be contributed by the 11 cities range as high as \$11.8M annually. Operating losses for Utopia through 2008 are estimated to be up to \$32M.²²

iProvo²³

iProvo is a \$39.5M FTTP network built and operated by the city of Provo, UT. It is in its fifth year of operation. Its yearly net operating and non-operating expenses have outpaced its yearly operating revenues through 2007. It has been reported that in 2003 iProvo incurred a net loss before contributions and transfers of \$1.360M. It reportedly lost \$1.419 million in 2004, \$1.668M in 2005, \$1.939M in 2006, and \$2.004M in 2007.

iProvo has fallen short of its expected average revenue per user. iProvo revenue projections were based on a very high customer take rate for its triple play service offering. In the first several years of operations, iProvo has fallen short of the number of customers necessary to break even. As of October 2007, only about 17% of iProvo's customers had subscribed to the triple play offering.

Both Qwest and Comcast offered broadband service in Provo prior to the iProvo overbuild. "The city sold the troubled fiber-optic network to Broadweave Networks in 2008 in a deal in which Broadweave would take over the payments on the city's \$39.6 million bond. Since November [2008], Broadweave has had the city draw on its \$6 million surety deposit to make its bond payments in a bid to build up cash to pay for growth."²⁴ Provo ultimately remains liable on the bond. The Salt Lake Tribune has reported that Provo subsidized the network with Energy Department funds while it owned it.

III. CONCLUSION

Governments are best positioned to attract private investment capital and promote the successful deployment of broadband by aggregating and leveraging state and local government demand for communications services, removing regulatory disincentives for private broadband investment, providing targeted grants for extending broadband to unserved areas and collaborating with private sector broadband service providers to stimulate demand. A majority

²² Utah Telecommunications Open Infrastructure, Financial Statement, 2004-2008.

²³ Sources: *iProvo Revisited: Another Year and Still Struggling* by Steve Titch, Reason Foundation Policy Brief No. 69, Apr., 2008, <http://reason.org/files/0ed1e38947a206981804b66dfd19b9f7.pdf>; *Mayoral candidates agree iProvo must be saved* by Donald W. Meyers, The Salt Lake Tribune, 09/07/09, http://www.sltrib.com/news/ci_13287017.

²⁴ *Mayoral candidates agree iProvo must be saved*.

of municipal broadband initiatives have underperformed and many have placed substantial, unanticipated ongoing subsidy burdens on taxpayers. Local governments that provide commercial communications services have the ability to unfairly compete against other service providers when they act in their governmental capacity and apply local ordinances, policies and revenue generation (taxing and bond issuance) authority.

The public-private partnership model has proven successful for expanding broadband into unserved areas. Virtually all areas in the U.S. that lack broadband are unserved because it is uneconomic for private sector service providers to build broadband without subsidization. Grant funding is the most effective form of subsidization that governments can offer as an incentive for private sector broadband service providers to partner with them and expand the availability of broadband to unserved areas.

Respectfully submitted,

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November 6, 2009

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS-NBP PUBLIC NOTICE #7 OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be: 1) filed with the FCC via its Electronic Comment Filing System in GN Docket Nos. 09-51, 09-47 and 09-137; and 2) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpweb.com.

/s/Richard Grozier

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