

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC 20054**

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| In the Matter of                               | ) |                      |
|  | ) |                      |
| Inquiry Concerning the Deployment of           | ) |                      |
| Advanced Telecommunications Capability         | ) |                      |
| to All Americans in a Reasonable and Timely    | ) | CC Docket No. 98-146 |
| Fashion, and Possible Steps to Accelerate      | ) |                      |
| Such Deployment Pursuant to Section 706 of the | ) |                      |
| Telecommunications Act of 1996                 | ) |                      |

**COMMENTS OF THE  
RUBY RANCH INTERNET COOPERATIVE ASSOCIATION**

The Ruby Ranch Internet Cooperative Association (“the Coop”) submits these comments in response to the Third Section 706 Notice of Inquiry, wherein the Commission asks “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>1</sup> The answer is a resounding “no.” As discussed below, if the FCC wishes to promote the goal of deployment of advanced telecommunications capability to all Americans, it will have to do a lot more than it is presently doing.

**I. EXECUTIVE SUMMARY**

One problem facing our country is that advanced services provided by commercial operators are not even available in most areas (even on a monopoly basis). If you throw a dart at a map of the United States, more than three-quarters of the time the dart will land in a place where no advanced telecommunications capability is available. If

you select at random a county in the United States, more likely than not, no advanced telecommunications capability is available in the county.

But there is a second, more fundamental problem: incumbent local exchange carriers ("ILECs") are inhibiting the ability of ordinary Americans from providing advanced services to themselves. Our Coop was formed to provide DSL to ourselves because no commercial provider wants to serve our neighborhood. We have purchased the necessary equipment, but cannot launch service because our local ILEC (Qwest) refuses to provide needed subloops on reasonable terms and conditions.

The Coop filed a complaint against Qwest on September 4, 2001 (EB-01-MDIC-0028).<sup>2</sup> We asked for a decision by the end of October, because we live at an elevation of 9,000 feet and winter often arrives by the end of October. Although Qwest is intimately familiar with the nature of our allegations (given our extended discussions, given our prior correspondence and given that we shared a draft of our complaint two weeks before we filed it), the Enforcement Bureau nonetheless gave Qwest over three weeks, until October 1, 2001, to respond to the complaint. We thus face three more weeks of delay that benefit Qwest's apparent strategy to forestall the availability of DSL service to our neighborhood.

Congress has commanded that the Commission "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Ameri-

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<sup>1</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, CC Docket No. 98-146, *Third Notice of Inquiry*, FCC 01-233, at ¶ 1 (Aug. 10, 2001), summarized in 66 Fed. Reg. 44636 (Aug. 24, 2001)(hereinafter, "*Third Section 706 NOP*").

<sup>2</sup> A copy of our complaint is attached and may also be seen at <http://www.rric.net/sept4.htm>. All relevant documentation pertaining to the complaint is available at our web site, <http://www.rric.net>.

cans,” and it has further directed that the Commission “take immediate action to accelerate deployment of such capability.”<sup>3</sup>

The Commission may not be able to control the locations where cable companies and LECs provide their advanced services. But one would think that the Commission would want to do everything in its power to assist average Americans to provide advanced services themselves, especially when commercial operators deem them unworthy of commercial service.

The Ruby Ranch Internet Cooperative Association repeats its request that the Commission act expeditiously on its complaint. Given Qwest’s refusal to enter into an interim agreement pending resolution of the outstanding legal issues, we are precluded from enjoying advanced services until the Commission acts. Put another way, *it will be this Commission that determines whether and when the residents of the Ruby Ranch neighborhood can enjoy the benefits of advanced telecommunications capabilities.*

## **II. INFORMATION ABOUT THE RUBY RANCH INTERNET COOPERATIVE ASSOCIATION**

The Ruby Ranch Internet Cooperative Association is a non-profit association located in Summit County, Colorado. The Coop is composed entirely of volunteers, and its goal is to provide “always-on” high-speed Internet access in the Ruby Ranch neighborhood in Summit County. The Coop’s web site is at <http://www.rric.net>. We formed our Coop because no one else was interested in serving our neighborhood. We have purchased the necessary equipment to provide service, but cannot launch service until we lease subloops from Qwest. Although Qwest has ample subloops available for rental (it

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<sup>3</sup> See Sections 706(a) and 706(b) of the 1996 Act.

is using for its own services only 120 of the 400 available subloops), it refuses to provide on reasonable terms and conditions the dozen or subloops we need to launch our own DSL service.

As but one example, Qwest has demanded that our tiny Coop obtain a \$1 million insurance policy, but it refuses to identify the technical risk it believes the Coop presents. But without knowing the risk, we cannot insure against the risk, a point Qwest has conceded. Qwest has thus placed us in a classic “Catch 22” —saying we need insurance to lease subloops, but not explaining why we need insurance, nor even providing us with the information we would need to obtain a policy. But what makes the situation even more outrageous is that Qwest has conceded that its insurance requirement is completely unnecessary — so long as we pay higher (but unspecified) “retail” rates.

### **III. BARRIERS TO THE WIDESPREAD AVAILABILITY OF ADVANCED TELECOMMUNICATIONS CAPABILITIES**

As things now stand, for most Americans the only hope in the near term for advanced telecommunications capability is from cable modem service or DSL. Unfortunately, many American households are located in places where neither service is presently available. The reasons for the unavailability of these services are well known and will not be discussed in detail here. Briefly:

Cable TV providers are slow to roll out cable modem Internet service. Some cable companies are presently cash-strapped and simply cannot afford to do the things that would be needed to launch cable modem service, including replacing unidirectional RF amplifiers with bi-directional RF amplifiers, bringing fiber-optic or other very-high-bandwidth connectivity to head-end cable locations, and subsidizing customer purchase

of cable modems. In practical terms, a randomly selected American household that contacts its cable company will be told that cable modem Internet access is not available.

Many American homes and businesses are located too far from telephone company central offices to get DSL. Many more American homes and businesses are blocked from getting DSL because the local ILEC has installed a "digital loop carrier" ("DLC") box between them and the central office. The DLC makes it impossible for the customer to have uninterrupted copper to the central office where a DSL access multiplexer ("DSLAM") may be located. Finally, even those American homes and businesses that have the good luck (a) to be within DSL distance of the central office, and (b) not to have DSL blocked by a DLC may still not be able to get DSL, because the central office does not contain a DSLAM. The absence of a DSLAM in the central office will generally be due to two unfortunate conditions. First, the local ILEC will likely have chosen to install DSLAMs only elsewhere, presumably in central offices that it perceives will be more profitable to it. Second, any would-be competitive providers (*e.g.*, Northpoint, Rhythms, Covad) will likely have been put out of business or severely hampered by the ILEC's anticompetitive activities.

Under the 1996 Act, ILECs are supposed to provide interconnection to competitors (*e.g.*, Northpoint, Rhythms, Covad) on a nondiscriminatory basis. We have all read reports of anticompetitive ILEC practices with respect to such competitors, and the Coop will not needlessly repeat such reports here. Suffice it to say that regulators need to redouble their efforts to permit nondiscriminatory interconnection by DSL competitors so that eventually there might be viable competition in the DSL marketplace. Given the

rash of bankruptcies that has occurred, we only hope that the Commission has not missed the window of opportunity to promote a truly competitive market.

#### **IV. THE PARTICULAR BARRIERS ENCOUNTERED BY THE RUBY RANCH INTERNET COOPERATIVE ASSOCIATION**

The Ruby Ranch Internet Cooperative Association was founded by residents of a neighborhood who found that it was impossible to get high-speed Internet access at any price from any company. Our neighborhood is located in Summit County, Colorado, one of the fastest-growing counties in the country. Residents of our county and our neighborhood include telecommuters and people with high-tech businesses in their homes. Several of our residents have clients throughout the world. High-speed Internet access is desperately needed in our neighborhood and in our county generally.

But the local cable company (AT&T) has said that it has no plans to offer cable modem Internet access in this county. The local ILEC (Qwest) has also said that it has no plans to offer DSL in this county. No other company presently offers DSL in our area.<sup>4</sup> Our neighborhood is served by a DLC box, which affects our neighborhood in two ways – first, it means we are blocked from getting DSL even if someone were to install a DSLAM in the local Qwest central office, and second, it provides analog telephone lines of such poor quality that it is impossible to get an analog modem to connect faster than 26K bits per second.

These circumstances prompted a group of volunteers in our neighborhood to set up the nonprofit Ruby Ranch Internet Cooperative Association. We have purchased a

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<sup>4</sup> A private company called Netbeam launched a wireless Internet access service in our county about a year ago. But the wireless service requires “line of sight” to a serving antenna, and most

DSLAM (a Copper Mountain CE-150) and DSL modems.<sup>5</sup> We have strung our own cable between a few of the homes in our neighborhood to be able to test the system, and it works perfectly. We chose to install SDSL on dedicated copper pairs, rather than ADSL on shared pairs, so as to avoid any metallic connection to any part of the Qwest network, thereby eliminating any concerns that our system would interfere in any way with Qwest's services.

Qwest has not, however, made it easy for us to launch service to our neighborhood even though (a) we are good customers of Qwest (averaging three Qwest lines per household), and (b) we decided to commence our DSL venture only after Qwest said it had no plans to serve our neighborhood.

Normally when someone installs a DSLAM, one critical resource that is needed is a T-1 line connecting an Internet service provider (which, in turn, is connected to the Internet backbone) and the place where the DSLAM is located. Qwest says it is unable to install a T-1 line for us to any point in our neighborhood. We have overcome that problem by making use of our own point-to-point microwave system, which connects our neighborhood to an office location two towns away, where Qwest *has* managed to install a T-1 line.

The sole remaining critical resource which we need to launch service is, of course, copper pairs between our DSLAM location (a horse barn in our neighborhood) and the homes of our member/subscribers. These copper pairs are sometimes called

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of our neighborhood does not have line of sight because of the topography of the neighborhood. In addition, Netbeam has filed for bankruptcy.

<sup>5</sup> We were pleasantly surprised to find that SDSL modems, which normally cost \$300 each, can be purchased on bay for \$10-30 each. It seems that most of the sellers of these modems are ex-

“F2s” or “distribution subloops.” In our neighborhood, all of the telephone wires are buried under the roads of the neighborhood, and from every home in the neighborhood the wires go to a cross-connection location that, through some good luck, is near the horse barn. There is another bit of good luck in this – the buried cables which were installed by the local telephone company some twenty years ago turn out to be about three times as big as are actually needed for the neighborhood. Stated differently, there are an enormous number of spare F2s. If our Coop were to install service to every home in the neighborhood, we would still use only about one-third of the spare F2s, leaving over a hundred spare F2s.

This would seem to be a positive-sum game for us and for Qwest. The grossly overbuilt installed plant in our neighborhood, most of which generates no monthly revenue at all for Qwest, could provide “found money” for the ILEC in terms of monthly rental fees from our Coop from otherwise unused spare F2s. For the telephone company, renting us the pairs we need would come nowhere close to using up the spare F2s, thus protecting it from any fear of using up its spares. Qwest had already made some business decision not to provide DSL in our county, so we would not be taking away DSL revenue from the telephone company. Finally, we are on the “wrong side” of a DLC box (one that is quite full and has no room in it for a DSLAM), so the telephone company would not have been able to provide DSL to us anyway, even if it wanted to.

For the shareholders of Qwest, this ought to be very good news. The company would get to make money it would otherwise never get. Moreover, by neighborhood

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customers of the now-bankrupt Northpoint. We likewise had the good luck to be able to purchase the DSLAM used at a much lower price than that of new equipment.



residents converting from dialup Internet access to DSL, Qwest would enjoy capacity savings in its local central office.

Our Coop is, however, unable to launch service. Qwest will not rent us the F2s, or, more strictly speaking, will only rent them to us on terms that make it impossible for us to do so.

Qwest's SGAT (statement of generally available terms) says that we would have to purchase an \$11-million insurance policy naming Qwest as beneficiary. Yet Qwest has refused to identify any particular risk that it says our service would create, that would require such a policy. Common sense suggests that if Qwest cannot say what risk is to be insured against, it is rather difficult to find an underwriter to insure against that risk. Of course, since we would have no metallic connection to the Qwest network, we present less risk to the network than, say, an ordinary POTS customer (who is connected metallically to the Qwest network). Yet an ordinary POTS customer is not required, as a precondition of obtaining POTS service, to purchase an \$11-million insurance policy naming Qwest as a beneficiary. After two months of fruitless interconnect discussions with Qwest (it would be difficult to characterize these discussions as "negotiations"), we eventually drafted a regulatory complaint and provided a draft of it to Qwest, explaining that a week later we would file the complaint. The requirement of an \$11-million-dollar insurance policy was suddenly dropped, without explanation, to a requirement of a "mere" \$1-million- insurance policy. Even then, Qwest still refused to identify the risk that supposedly needed to be insured against.

Another problem area was the rental cost-per-month for the F2s. Qwest's SGAT defines four monthly rates, called "base rate area" (\$8.33 per month), "zone 1" (\$15.12

per month), “zone 2” (\$18.38 per month), and “zone 3” (\$21.32 per month). Qwest first stated that our F2s were in zone 3, due to the distance from our F2s to the central office. (Qwest could never explain why the distance from the F2s to the central office should make any difference in the monthly rent of the F2s.) Later Qwest shifted, again without explanation, to the position that our subloops were in zone 1. Finally, after we provided to Qwest our draft of a regulatory complaint, Qwest again without explanation shifted its position, this time to the view that our F2s were in the base rate area.

Another problem area was the price for installing our F2s. The SGAT sets a price of \$126 to install an F2. Qwest has said that this price is non-negotiable. Yet Qwest charges a mere \$54 to install a business POTS line, which requires sending Qwest personnel to four locations (the central office, the DLC box, the cross-connect box in our neighborhood, and the customer premises). Installing an F2 for our Coop would require sending Qwest personnel to only two locations (the cross-connect box and the customer premises). Thus it seems to us the correct price for the installation should be \$27. Qwest’s non-negotiable \$126 seems to us to be an anticompetitive \$99 gouge.

Still another problem arises from the fact that we will need Qwest to install a block of binding posts for us at the cross-connect box, so that our cable from our DSLAM can be interconnected with the binding posts for the F2s. We estimate this will cost at most a couple of hundred dollars for Qwest to install. Qwest’s SGAT sets a \$1,707 “quote preparation fee” for Qwest simply to prepare a quotation for the installation of the block of binding posts. Qwest says this fee is non-negotiable. It seems to us that this non-negotiable fee is designed simply to increase the cost to us of the binding posts by a factor of more than 900%.

In one of our early interconnect discussion sessions, Qwest stated that it questioned whether it had any obligation to deal with us at all, on the grounds that our Coop had not been licensed by our state regulator as a CLEC. Qwest promised that it would give us an answer to this question within one week. Two weeks later, Qwest had still not done so, other than tacitly withdrawing the threat not to deal by conducting another negotiation session with us.

Most of Qwest's prices were said to be non-negotiable, take-it-or-leave-it matters. Never in any of our discussions has Qwest provided any support for the various non-negotiable prices.

Through three months of discussions, Qwest has steadfastly refused to let us sign an interim agreement that would allow us to launch service and defer for later discussion the areas of disagreement. So we are still unable to launch our services.

The Coop volunteers who have been involved in the Qwest "negotiations" have dealt with arrogant companies during the course of our professional careers. However, we can say with confidence that we have never dealt with a company as arrogant as Qwest, one so committed to act inconsistently with the interests of its own customers and shareowners. We are not competitors of Qwest for the simple reason that Qwest has chosen not to offer DSL in our county. We are simply trying to provide to our neighborhood a service that Qwest won't provide, and in the process we are trying to hand money to Qwest for monthly rental of F2s that otherwise would never generate a penny of revenue for Qwest. Yet Qwest says no.

If Qwest treats us, a non-competitor, in this way, we shudder to imagine how Qwest treats actual competitors (the Northpoints and Rhythms and Covads of the world).

We are, quite frankly, not surprised that Northpoint has been put out of business, that Rhythms has filed for bankruptcy, and that Covad is hurting.

Our group of volunteers is trying as hard as we can to bring advanced telecommunications capability to our neighborhood, a neighborhood forsaken by Qwest. Yet we have not managed to launch service, since Qwest offers F2s only on anti-competitive terms and conditions. We must assume the same thing is happening everywhere in Qwest's 14-state service area whenever anyone tries to offer advanced telecommunications capability that requires interconnection to Qwest facilities.

We know that Qwest is required by statute to negotiate in good faith, but we readily admit that we are not familiar with the legal definition of good faith in this context. But from an ordinary business perspective, Qwest's positions and conduct have been anything but in good faith.

## **V. COOP COMMENTS TO OTHER ISSUED RAISED IN THE NOI**

The Ruby Ranch Internet Cooperative Association below shares its views regarding some of the other issues raised in the NOI.

### **A. Suggested Improvements to Definitions**

The FCC proposes to retain its current definitions of "advanced telecommunications capability" and "advanced services," but does request "suggested improvements."<sup>6</sup> The Coop submits that the definitions can be improved upon.

The FCC defines "advanced telecommunications capability" as having the capability of supporting bi-directional bandwidth in excess of 200K bits per second. The FCC

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<sup>6</sup> *Third Section 706 NOI* at ¶¶ 5-7.

also chooses to lump together residential and small business customers. Surprisingly to us, the FCC's definitions somehow manage to omit even mentioning the Internet, the TCP/IP protocol, or IP addresses. It is easy to postulate a variety of data connectivity services that do not connect to the Internet, and yet which would satisfy the FCC's definition of "advanced telecommunications capability." Simple examples are a service that merely provides remote backups of data, or a service that permits passing video between two points.

The definition of "advanced telecommunications capability" needs to include the requirement that the customer be able to connect to the Internet. In technical terms, this means among other things that the customer should be able to send and receive IP (internet protocol) packets by means of a routable IP address.

"Advanced telecommunications capability" needs also to include the ability for the customer to host one or more servers. A customer who will be said to have "advanced telecommunications capability" ought to be able to host a web server, an email server, or an FTP (file transfer protocol) server. Many providers of Internet connectivity, however, forbid hosting of servers. This prohibition of server hosting is most often enforced in three ways – by means of customer terms of service which forbid such hosting, by giving the customer a "dynamic" IP address, and by blocking certain so-called "TCP ports." A dynamic IP address is, by definition, one that changes from time to time, thus frustrating any effort on the part of a customer to provide a server, which could be reliably reached by third parties. The service provider can, for example, block TCP port 80 in the direction toward the customer, as a way of making it impossible for the customer to host a web server.

In addition, “advanced telecommunications capability” needs to include the notion of fairly symmetric bandwidth, and acceptable latency. Some types of Internet access are extremely asymmetric, with very slow uplink speeds (speeds for data originating at the customer location); for example some ADSL (asymmetric DSL) and cable modem services have slow uplink speeds. Some types of Internet access have much greater latency than others; for example, satellite Internet services have much greater transmission latency than ground-based services such as cable modem and DSL. These bandwidth and latency characteristics make or break the ability of a customer to do videoconferencing or to connect to a virtual private network (“VPN”), to give two examples.

Videoconferencing and VPN connections are an important part of this country’s future. VPNs allow telecommuting and all of its benefits such as reduction of air pollution from burning of fuel to drive to work and improved productivity as people no longer waste their time being stuck in traffic. Video-conferencing saves pollution from burning of jet fuel, and promotes “distance learning.”

**B. Most Satellite Services Should Be Omitted from Calculation of Success Rates in Providing Advanced Capabilities**

In its Third NOI, the FCC repeatedly counts satellite-based Internet services toward success rates. It is easy to see why one might wish to include satellite-based services. After all, the wide majority of U.S. households are in areas where (a) the local cable company does not provide Internet access and (b) it is impossible to get DSL (digital subscriber line) Internet service. Satellite services can be deployed anywhere that is able to see toward the south, toward geosynchronous satellites above the equator. Thus, a single would-be Internet customer anywhere in the United States who wants Internet access can

sign up for the satellite service (*e.g.*, Starband) and get always-on, high-speed Internet access even if cable modem and DSL Internet access are not available.

Does the availability of some satellite services mean that we as a nation can declare victory and conclude that nothing further needs to be done to promote advanced telecommunications capability? Do satellite services mean that no more Notices of Inquiry are needed to conclude that everyone who wants high-speed Internet access can get it?

The answer to both questions is, of course, “no,” for several reasons.

*First, the satellite services are not scalable.* Right now, at a time when only a few tens of thousands of customers have signed up for satellite Internet access, there are bandwidth problems both in the downlink and in the uplink directions. Only with aggressive web caching at the customer location in the downlink direction are download speeds tolerable at peak times. The uplink direction is particularly limited as all customers in North America must share a limited-bandwidth pathway for uplinked data.

Adding one more customer is not necessarily a problem for the satellite Internet services. But if everyone in the US who wants advanced telecommunications services (and who can't get them from the cable company or a DSL provider) were to sign up tomorrow for satellite Internet service, the service would slow to a crawl. There is nowhere near enough bandwidth available in the present satellites to serve a substantial fraction of US households or businesses.

It might be thought that the satellite Internet systems could scale by simply placing more satellites in the sky. But the narrow strip of the sky above the U.S. in which

geosynchronous satellites are capable of being placed is quite crowded and there are only limited remaining additional slots where new ones can be placed.

Second, the satellite services do not provide "advanced telecommunications capability," if properly defined. Advanced telecommunications capability, we suggest, needs to include the ability to host servers, connect to VPNs, and the ability to engage in videoconferencing. The satellite services make no secret of the fact that their much greater data latency and very limited upload speeds make it unworkable to do videoconferencing. They likewise forbid server hosting by a customer (which admittedly is a very sensible course of action give the very limited available upload bandwidth).

Third, not all would-be customers of satellite Internet services are able to sign up for the service. Some would-be customers, due to topography, are unable to see the southern sky, which is where the satellites are. Other would-be customers are situated in multi-tenant premises such as apartment buildings and office buildings where it is impossible to install an antenna because the landlord does not permit such an antenna to be installed or does not permit running cables from the roof to the premises of the would-be customer. Even if the landlord permitted such activity, the costs of cabling and labor may make the project very difficult as a practical matter.

We should emphasize here that these comments are *not* meant to be critical of the satellite Internet services provided by Starband and others. We feel that Starband and others provide an extremely valuable service, a provider of last resort for those who need high-speed Internet access and who cannot get it any other way.

We should also emphasize that we do not mean to suggest that we feel the satellite Internet service providers are doing anything to mislead would-be customers of their



services about the limitations discussed above. On the contrary, we note that the web sites of the satellite Internet service providers go to great lengths to disclose the limitations discussed above.

We mean merely to point out that if “advanced telecommunications capability” is properly defined, for example to include the ability to host servers, connect to VPNs, and engage in videoconferencing, then the availability of satellite Internet service does not mean that advanced telecommunications capability is available to all. It is premature, probably by at least another decade, to declare victory. There is much work to be done if we are to achieve a goal of providing advanced telecommunications capability to all Americans.

**C. The Commission Should Revise Its Form 447 So It Does Not Rely on Misleading Data**

FCC Form 477 requires service providers to report the number of high-speed customers in a given state. It also requires operators to indicate whether they provide service within a given Zip code. The FCC does not today require service providers to identify the number of customers in each Zip code because service providers apparently have claimed that such information would have created “an appreciable regulatory burden.”<sup>7</sup>

The FCC says that “by analyzing the zip codes where there are actual high-speed subscribers, we can gain useful insight into the deployment and location of high-speed-

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<sup>7</sup> *Third Section 706 NOI* at ¶ 10.

capable infrastructure.”<sup>8</sup> The Coop agrees with this statement, but the data the FCC collects does not enable it to make this assessment. Indeed, as the FCC acknowledges:

As a result [of not obtaining number of customers by zip code], we cannot determine from our data the extent to which the presence of high-speed service in a given zip code indicates that high-speed services are widely available, or whether they are restricted to certain types of customers located in limited areas.<sup>9</sup>

The claim by service providers that providing customer counts by zip code imposes “an appreciable regulatory burden” is pure poppycock.

First, when ILECs take orders for DSL, they do so in an order-taking system that knows perfectly well what Zip code contains the customer, since the Zip code is one of inputs which the sales representative can use to locate the customer's premises for finalizing the order. The ILECs should have no difficulty extracting the Zip code when generating reports for the FCC.

Second, the ILECs mail paper bills to their DSL customers. Those paper bills are addressed by Zip code. ILECs should have no difficulty extracting this Zip code when generating reports for the FCC. Yes, of course it occasionally happens that a DSL customer will have service in one location and have the bill mailed to a different location. But this is relatively rare; most often the bill goes to the address where the DSL service is installed.

For either of these reasons, the ILECs should incur no burden whatsoever in generating reports for the FCC. Indeed the present approach, which aggregates all DSL subscriber data on a per-state basis, and which requires a report listing Zip codes in which

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at n.15.

there is at least one customer, is probably more work for the ILEC, computationally, than merely listing out the results based on Zip codes that are already in the ILECs' records.

The present approach, which calls for the ILEC merely to identify Zip codes in which the ILEC has at least one customer, is flawed from at least two perspectives. First, for reasons discussed above, it is probably actually more work, computationally, than simply listing out the records based on Zip codes that are already in the ILECs' records. Second, it permits over-optimism regarding the supposed progress of deployment of advanced telecommunications services.

For example, our county has three telephone company central offices. The incumbent local telephone company (Qwest) does not offer DSL from any of these central offices. But it is possible, in certain locations in our county, to purchase frame relay and point-to-point T1 lines from Qwest that have connectivity to the Internet. Such a line fully satisfies the FCC's definition of "advanced telecommunications capability" even though the installation cost and monthly cost exceed by many times what a typical residential or small-business customer would be able to pay. Indeed our Coop will be using just such a frame relay T1 line for Internet connectivity to our DSLAM (together with our point-to-point microwave link). The presence of this frame relay T1 line in our county permits Qwest to list this county as a county in which it has at least one "advanced telecommunications capability" customer.

As the reader can appreciate, this sort of counting would lead to an overly optimistic impression of the state of deployment of advanced telecommunications capability in our county. Restating the problem, the report from Qwest to the FCC regarding our county under present FCC reporting requirements might well be identical on either of two

scenarios: (a) there is one customer paying many hundreds of dollars per month for a T1 line connected to the Internet, or (b) every resident of the county has DSL. A reporting system in which (a) and (b) are treated as identical is a reporting system that can only serve to mislead those who rely upon the reports. The presence of a single Internet-connected T1 line in a county would make it all too easy for the ILEC to represent that deployment is as it should be, and would make it all too easy for the FCC to declare victory in the fight for advanced telecommunications capability for "all Americans."

It might be thought that this reporting problem could be overcome by simply defining away expensive options such as T1 lines. For example, one could redefine "advanced telecommunications capability" to exclude solutions that cost more than, say, \$400 per month. This would exclude T1-based solutions from the reports. But even this step would still lead to ILEC reports that unreasonably treat disparate situations as if they were identical. For example, as mentioned above, our county contains three Qwest central offices. It also happens that some three-fourths of customers in this county are on the "wrong side" of a DLC box, and thus are blocked from any DSL that would come from a DSLAM in the central office.

Consider, then, what would follow if Qwest were to install a DSLAM in a single central office in our county. Two-thirds of the residents of our county, served by central offices other than the lucky one with the newly-installed DSLAM, would still not be able to get DSL. Among the one-third of the residents who were served by the central office having the newly-installed DSLAM, three-fourths of them would still not be able to get DSL due to the barrier imposed by the presence of a DLC box between them and the central office. Realistically, only perhaps one-twelfth of the residents of the county

would be able to get DSL from such a DSLAM. Yet, under the FCC's reporting requirement that the ILEC merely list counties in which there is at least one DSL customer, our county would be listed by the ILEC with exactly the same status as a county in which all residents were able to get DSL.

For all of these reasons, the present failure of the FCC to require total numbers of customer per county leads to a reporting system that fails at its goal. It provides reports that make it all too easy to reach a false conclusion that deployment of advanced telecommunications capability is proceeding nicely.

It may well be that a completely different methodology would give a more realistic sense of the extent of deployment of advanced telecommunications capability. It is suggested that the FCC select, say, one thousand households in the U.S., twenty at random in each of fifty states. Then have an investigator try, from each household, to sign up for DSL and try to sign up for cable modem service. In general, the likely outcome for most households would be that the investigator would be unable to achieve either goal. The percentage success rate would probably be much lower than the optimistic percentages set forth in the Third Notice of Inquiry.

## **VI. CONCLUSION**

For the foregoing reasons, the Ruby Ranch Internet Cooperative Association respectfully requests that the Commission rule expeditiously on its complaint against Qwest (EB-01-MDIC-0028). We in our neighborhood will not enjoy the benefits of advanced services until the Commission acts.

Respectfully submitted,

**Ruby Ranch Internet Cooperative  
Association**

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