

**BEFORE THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

SUBCOMMITTEE ON CRIME AND DRUGS

**HEARING ON
THE SECONDARY METAL THEFT PREVENTION ACT OF 2009**

July 22, 2009

TESTIMONY OF FRANK COFFEY

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Senator Klobuchar, Senator Hatch, and Members of the Sub-Committee, my name is Frank Coffey, and I am the Director of Critical Infrastructure for Qwest Communications. I am testifying today on behalf of Qwest Corporation, which operates as an incumbent local exchange carrier (ILEC) in fourteen mid-western and western states. I appreciate the opportunity to talk about the issue of metal theft and to share Qwest's views on proposed legislation addressing the problem.

I. ABOUT QWEST

Before I address the metal theft issue directly, I'd like to tell you a bit about Qwest and why we care so much about this proposed legislation. Qwest provides voice, data, Internet and video services nationwide and globally, and Qwest provides local telephone service and broadband service in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. As of March 31, 2009, Qwest provided 11.2 million voice-grade access lines and serves 2.9 million broadband subscribers in our territory, and currently has broadband available to 86 percent of our customer base.

Qwest's local service territory is diverse. It includes urban areas like Denver, Salt Lake City, Seattle, Minneapolis and Phoenix. But it also includes many smaller cities and towns, and many rural communities and areas of low household density.

II. THE PROBLEM

Qwest, along with other telecommunications companies, public utilities, as well as the transportation, construction and other industries, have been plagued by the theft of metal, particularly copper, during the past few years. Thefts of Qwest materials range from scrap cable in recycle bins, reels of cable in garages and other facilities, to live

deployed copper cable. Thieves literally cut down or dig up and cut our telephone lines, and then attempt to sell the copper.

A 2007 Department of Energy study determined that rising demand in world markets is primarily responsible for the increase in the cost of copper – and thus, the increase in copper theft - over the past several years. Copper producing companies have been unable to meet the increased demand which pushed prices higher. The demand for recycled copper has grown as well, making copper theft a lucrative endeavor for individuals looking to make easy cash. The study also identified several other factors which contributed to the increase in copper theft including the amount paid by secondary metal recycling agents for copper, ease with which copper can be stolen, likelihood that perpetrators will not be arrested, and the relatively low fines and short prison stays for the few who are convicted.¹

The spot price for copper reached historical highs throughout much of 2007 and 2008.² Despite the fact that copper prices have dropped from the recent highs, the copper theft problem persists.

III. OPERATIONAL AND SAFETY IMPACT OF METAL THEFT

The impact of stolen cable to Qwest and its customers goes well beyond just the cost of the stolen cable. The effort to restore service and replace stolen cable reduces the availability of technicians to address legitimate issues not caused by intentional criminal activity. However, the impact to Qwest's customers and the wider community is the greater problem. Community safety is compromised when deployed lines are cut,

¹ An Assessment of Copper Wire Thefts from Electric Utilities, Infrastructure Security and Energy Restoration, by the Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, April 2007.

² http://www.kitcometals.com/charts/copper_historical_large.html#5years.

causing outages that impact a citizen's ability to contact emergency services, as well as to make other phone calls and use the Internet.

In 2008, Qwest responded to 220 reported incidents of cable cuts or cable theft with approximately 73,690 customers impacted and losses of approximately \$858,633.

IV. CASE STUDIES

While the copper theft problem occurs throughout the Qwest region, and the country, I thought it would be useful to provide you with a few specific examples of the problem and its consequences.

1. Duluth, Minnesota

On May 1, 2008, thieves in Duluth, Minnesota stole approximately 1400 feet of aerial copper cable, which disrupted service to 50 customers. Service was restored and on May 11, 2008, thieves cut the same span of cable disrupting service for the second time to the same customers.

2. Longview, Washington

Beginning in January 2008, cable thieves operating in south-western Washington and northern Oregon cut and stole aerial cable impacting local and long-distance telephone service, including the ability of customers to contact emergency 911 service. Additionally, in two separate instances thieves cut fiber-optic cable, believing it was copper cable, thus disrupting telephone and DSL service to approximately 20,000 customers for several hours each time.

Investigation determined that the thieves transported the stolen copper cable to Oregon to sell to secondary metal recycling agents, as state laws regulating secondary metal recycling agents in Oregon at that time were weak or non-existent. Notably, the

thieves burned the insulation off the cable before selling it. Due to the interstate nature of these thefts, as well as the significant community impact, the Federal Bureau of Investigation (FBI) and the Cowlitz County, WA Sheriff's Office investigated this matter. Three defendants were federally prosecuted in the Western District of Washington, and others were prosecuted in state court. Despite the suspicious circumstances, neither federal nor state law prohibited the secondary metal recycling agents from purchasing the significant quantities of cable with insulation burned off, or required them to report the transactions.

The proposed legislation includes a provision making it unlawful for a secondary metal recycling agent to purchase any secondary metal where the sheathing has been burned off.

3. Prescott, Arizona

In December of 2007, Qwest experienced several thefts of copper cable from one of our facilities in Prescott, Arizona. Qwest employees visited area secondary metal recyclers attempting to locate the market for the cable because local police indicated they did not have jurisdiction over secondary metal recycling facilities located outside the city limits. While visiting one of the secondary metal recycling agents, a Qwest manager discovered thousands of feet of Qwest copper cable. The recycler revealed that three employees of a road construction crew were bringing in the copper.

Investigation determined that the three individuals were removing Qwest retired cable³ as they performed road construction projects in Prescott, Arizona. The construction company should have notified Qwest, as they had been doing previously, that the cable had been located so that a determination could be made as to whether

³ Qwest retired cable is cable owned by Qwest which is inactive, but left in place for possible future use.

Qwest should move the cable or recover it. The three thieves were responsible for stealing 23,000 pounds of Qwest copper cable and were prosecuted in state court for the thefts.

4. Valencia and Bernalillo Counties, New Mexico

In mid to late 2008, Qwest experienced 25 thefts of aerial cable in rural Valencia County and Bernalillo County, NM, several of which involved theft of the same spans of cable after they were replaced. In at least one case, a line was cut and stolen and within a few days of the repair, the same line was cut and stolen again, replaced, and then stolen a third time. During this time frame, Qwest network personnel answered a repair call at a secondary metal recycling facility and while there identified Qwest cable at the facility; however, at the time New Mexico did not have a law requiring secondary metal recyclers to keep records of purchased material. Thus, there was no way to trace the thieves.

During the first quarter of 2009, Qwest was the victim of cable theft eight additional times in these counties. Most of these thefts occurred along state highways in rural areas where the thieves had little chance of being spotted.

In order to resolve the theft problem in New Mexico, Qwest hosted a conference attended by representatives of city, county and federal law enforcement agencies. During that conference, a representative from the U.S. Department of Homeland Security described another instance of copper theft in New Mexico in which thieves stole approximately six miles of copper telecommunications cable along railroad tracks which enables the railroad dispatch center to communicate with trains. This theft disrupted railroad transportation as trains had to be slowed down due to the lack of communication

capability. The thieves responsible for stealing the cable along the railroad tracks were subsequently apprehended.

V. QWEST'S RESPONSE TO METAL THEFT

Qwest has developed a copper theft strategy which includes liaison with law enforcement agencies to support full investigations, especially in high theft areas; employment of security firms to conduct patrols in high theft areas; development of relationships with secondary metal recycling agents by encouraging our network employees to visit recycling facilities after thefts occur in an attempt to locate our cable and to alert recycling agents to the theft; participation in law enforcement metal theft task forces and conferences to raise awareness of the problem; and, support of enhanced metal theft legislation.

Many states have enacted laws addressing the metal theft problem, and several states have recently proposed legislation; but not all states have such laws. Most of the state laws are directed at secondary metal recycling agents, placing more stringent record-keeping requirements on the metals they purchase. Within Qwest's 14-state region, the 11 states that do have laws in effect generally require the secondary metal recycler to keep specific transaction records detailing purchase transactions. Such records are required to include a description of the metal purchased, date and place of purchase, name and address and identification of the seller and the amount paid to the seller. These laws require that secondary metal recycling agent records be made available to law enforcement, on demand, during normal business hours. Some of the states require recycling agents to record information about the vehicle used to deliver the metal, including vehicle description and license plate number. A few states require a

photograph of the seller, fingerprints of the seller, or that payments over a threshold amount be made by check or electronic transfer. The non-uniformity of these state laws makes some more effective than others. Federal legislation would provide uniform requirements applicable in all states.

Law enforcement intervention has been helpful as we at Qwest have sought to address this problem. In 2008, 29 individuals were arrested in connection with the theft of copper from Qwest. It has been our experience that the arrest and prosecution of copper thieves alleviates the theft problem in an area at least for a period of time. Unfortunately, many local law enforcement agencies do not have the resources available to adequately investigate these thefts. Law enforcement is more likely to become involved if the theft involves live cable, as the threat to the community and emergency services is increased. Increased involvement from law enforcement generally occurs if they can be provided with good information to follow up on. As I will detail below, S. 418 is expected to provide law enforcement with logical leads to pursue copper thieves.

VI. COMMENTS CONCERNING S. 418

The proposed legislation is intended to regulate the activity of secondary metal recycling agents, which Qwest believes will deter thieves by diminishing the marketability of stolen copper cable, as well as other metals. The primary provisions contained in the legislation that serve this purpose include a limit on the amount a seller can receive in cash, with amounts exceeding that threshold paid by check or electronic transfer; inclusion of the “Do Not Buy” list, which prohibits purchase of marked and altered telephone company cable; and, requirements for secondary metal recycling agents

to keep accurate records, including seller identification and vehicle information. The requirements pertaining to the seller's identity and payment by check or electronic transfer for larger transactions should prove effective aids to law enforcement in tracking down and prosecuting sellers of stolen metal.

In order to strengthen the law further and to serve as an additional deterrent, we recommend an additional provision requiring that check payments be mailed to the seller. This requirement would further limit the ability of thieves to provide fictitious data to the secondary metal recycling agent and possibly deter use of nominee sellers.

A further enhancement would be the addition of criminal penalties for non-compliance by secondary metal recycling agents or by those knowingly attempting to sell stolen metal to a secondary metal recycler.

The legislation prohibits secondary metal recycling agents from disclosing the identity of the seller to third parties, limiting a victim's ability to pursue civil remedy. For this reason, strong enforcement of the legislation is necessary in order for it to serve the desired purpose.

VII. CONCLUSION

Congress has an important opportunity to deter the theft of metal and reduce its impact on businesses across the nation and the communities they serve.

Again, thank you for your attention to this problem and for the opportunity to testify today on this important issue. I look forward to your questions.