

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 05A-011T

**IN THE MATTER OF THE APPLICATION OF QWEST CORPORATION FOR
AUTHORIZATION TO RECOVER THE ACTUAL COSTS INCURRED FOR THE
RELOCATION OF INFRASTRUCTURE OR FACILITIES REQUESTED BY A STATE
OR A POLITICAL SUBDIVISION**

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into by and among Qwest Corporation (“Qwest”), the Colorado Office of Consumer Counsel (“OCC”), and the Staff of the Colorado Public Utilities Commission (“Staff”) (collectively “the Parties”). This Agreement sets forth the terms and conditions by which the Parties have mutually agreed to resolve certain issues in the above-captioned docket.

RECITALS

A. Section 40-3-115 of the Colorado utilities law permits a provider of basic local exchange service subject to regulation pursuant to Parts 2, 3 or 5 of Article 15 to Title 40 to seek authorization from the Public Utilities Commission of the State of Colorado (“Commission”) to recover actual costs incurred for the relocation of infrastructure or facilities requested by the state or a political subdivision. C.R.S. § 40-3-115. The statute allowing such recovery of utility relocation costs, i.e., C.R.S. § 40-3-115, became effective August 6, 2003. The statute is to be used to recover those actual costs that are incurred for work that the Commission determines to be “beyond the normal course of business.” C.R.S. § 40-3-115 (2) (a).

B. "Actual costs" are defined as "the non-facility costs incurred in the relocation plus the un-depreciated amount of the facilities being replaced." C.R.S. § 40-3-115 (2) (a).

C. When an application for recovery of actual relocation costs incurred is filed, the Commission is required to, among other things, "verify the actual costs that may be recovered, determine the allocation of costs to various customers and services, and prescribe the method of such recovery." C.R.S. 40-3-115 (2) (b). The statute provides that "in no event shall the period of recovery of the relocation costs exceed three years. *Id.*

D. In determining the allocation of the costs to be recovered, the Commission is to "consider the jurisdiction requiring the relocation and the geographic area that most directly benefits from the required relocation to determine the customers or services that will bear the costs." C.R.S. 40-3-115 (2) (c).

E. On January 6, 2005, Qwest filed an application pursuant to § 40-3-115, C.R.S. and 4 CCR 723-1-22, in which it sought authorization from the Colorado Public Utilities Commission (Commission") to recover the actual costs incurred for the relocation of infrastructure or facilities requested by a state or a political subdivision ("Application").

F. In the Application, Qwest sought recovery of the actual costs incurred for the relocation of infrastructure or facilities requested by the State of Colorado, the Regional Transportation District ("RTD") and the City and County of Denver.

G. In the Application, Qwest recited the fact that the State of Colorado requested that Qwest relocate its infrastructure and facilities to accommodate the expansion of Interstate 25 in and near the city of Denver. In addition, RTD also requested relocation. This project is

popularly known as the "T-REX" project, which stands for "Transportation Expansion Project." Qwest also recited the fact that the City and County of Denver requested that Qwest relocate its infrastructure and facilities to accommodate the expansion of the Colorado Convention Center ("Convention Center Project").

H. In total, Qwest sought to recover \$ 6,397,058.00 for the relocation of facilities related to T-REX, and \$641,584.00 for the relocation of facilities related to the Convention Center Project. Qwest's Application specifically excluded costs associated with the relocation of infrastructure or facilities used to provide deregulated or interstate services.

I. The Commission assigned this matter to an Administrative Law Judge, who entered an order on May 2, 2005 setting this matter for a prehearing conference on May 9, 2005. Decision No. R05-0510-I.

J. On May 6, 2005, counsel for the Parties contacted the Administrative Law Judge and sought to have the May 9, 2005 prehearing conference rescheduled because counsel for the Parties were currently appearing before the Commission in another pending matter. The Administrative Law Judge granted the request, and rescheduled the prehearing conference for May 24, 2005. Decision No. R05-0541-I.

K. On May 23, 2005, counsel for the Parties contacted the Administrative Law Judge stating that they had stipulated to a procedural schedule and hearing dates. Pursuant to the Parties' agreement, the Administrative Law Judge entered an order accepting the Parties' proposed dates and establishing a procedural schedule in this docket. Decision No. R05-615-I.

L. On May 26, 2005, Qwest filed a notice of waiver of the statutory deadline for deciding this matter ("Notice"). The Notice waived the statutory deadline to and including February 1, 2006.

M. In Joint Motions filed on August 8, 2005, September 15, 2005, October 11, 2005 and November 4, 2005, the Parties sought modifications of the procedural schedule. In the motions filed on September 15, 2005, October 11, 2005 and November 4, 2005, the Parties specifically stated that they were seeking the schedule modifications in order to pursue settlement negotiations. The Administrative Law Judge granted the first three motions for modification of the procedural schedule. See Decision Nos. R05-1014-I, R05-1146-I, and R05-1271-I.

N. On September 16, 2005 and November 4, 2005, Qwest filed a second and third notice of waiver of the statutory deadline for deciding this matter ("Second Notice" and "Third Notice" respectively). The Second Notice waived the statutory deadline to and including April 1, 2006 and the Third Notice waived the statutory deadline to and including May 1, 2006.

O. The Parties have reached a settlement concerning the matters raised in this docket and believe that this Agreement reflecting the terms of that settlement is in the public interest and should be approved by the Commission, as more fully explained below.

AGREEMENT

WHEREFORE, the Parties agree and stipulate as follows:

1. This Agreement only governs the recovery of the actual costs Qwest incurred after August 6, 2003 to relocate its infrastructure and facilities as a result of requests from the State of

Colorado through the Southeast Corridor Constructors ("SECC") and the Regional Transportation District's ("RTD") to accommodate the T-REX Project.

2. The State of Colorado is a "state" as that term is used in C.R.S. § 40-3-115(1)(b) and RTD is a "political subdivision" as that term is used in C.R.S. § 40-3-115(1)(a). The State of Colorado and RTD requested that Qwest relocate its infrastructure and facilities to accommodate the T-REX Project.

3. The actual costs Qwest incurred after August 6, 2003 as a result of the State of Colorado's and RTD's request that it relocate its infrastructure and facilities to accommodate the T-REX Project is \$1,828,022. This amount represents only those actual costs incurred after August 6, 2003 to relocate infrastructure and facilities Qwest uses to provide intrastate services that are regulated by the Commission. This amount also represents only those "non-facility costs incurred in the relocation plus the undepreciated amount of the facilities being replaced" as that phrase is used in C.R.S. § 40-3-115 (2) (a).

4. The \$1,828,022 in actual costs Qwest incurred after August 6, 2003 to relocate its infrastructure and facilities to accommodate the T-REX Project were incurred beyond the normal course of business because Qwest would not have relocated its infrastructure and facilities but for the State of Colorado's and RTD's request.

5. C.R.S. § 40-3-115 (2) (c) provides statutory guidance concerning cost allocation by stating: "In determining the allocation of costs to be recovered, the commission shall consider the jurisdiction requiring the relocation and the geographic area that most directly benefits from the required relocation to determine the customers or services that will bear the costs."

[Emphasis added]. The State of Colorado and RTD as joint jurisdictions required the subject T-REX project utility relocation. The customers that most directly benefit from the required relocation of Qwest's facilities are those customers that reside in the seven (7) county Denver metropolitan area, because the highway and rail improvements and additions, that are the subject of the TREX project will serve primarily residents of these seven (7) counties.¹ As a result, a per-line per month charge shall be assessed, in general, on Qwest's retail access line customers located in the 303/720 numbering plan area ("NPA") in conjunction with Qwest's application for authorization to recover TREX project relocation costs actually incurred. While the Parties agree for purposes of this agreement that wholesale customer lines will not be assessed, such agreement does not limit in any way the Parties' right to advocate in future proceedings of this type that wholesale customer lines should be assessed charges.

6. The charge described in Paragraph 5 shall be \$.05 per month per retail access line. Confidential Exhibit 1 consists of two (2) pages: a one (1) page summary of costs and lines, and a one (1) page schedule of retail access lines by wire center/NPA as of June 30, 2005. Subject to the true-up provision discussed herein below, and to be conducted pursuant to Paragraph 8, the charge shall be assessed for a period of twenty-seven (27) months. The charge shall remain constant over the term of the recovery period.

7. Qwest shall issue two reports to the Staff and the OCC that detail the actual amounts collected. The reports shall be issued after months twelve (12) and twenty-four (24) of the twenty-seven (27) month recovery period. The reports shall be issued by Qwest to the OCC

¹ The seven counties are: Denver, Boulder, Broomfield, Adams, Arapahoe, Douglas and Jefferson.

and Staff not later than forty-five (45) days after the conclusion of the respective reporting period.

8. A true-up shall be conducted by Qwest not later than thirty (30) days after the twenty-seven (27) month recovery period has concluded and Qwest will report the results of the true-up to the OCC and Staff within a fifteen (15) day time frame following the conclusion of the true-up analysis or no later than forty five (45) days after the conclusion of Month 27 of the recovery period. The true-up shall determine if the actual amount collected during the twenty-seven (27) month recovery period was greater than, equal to or less than the amount needed to recover the \$1,828,022 in actual costs.

9. No later than forty-five (45) days after the conclusion of the twenty-seven (27) month recovery period, the Parties shall, if possible, make a joint recommendation to the Commission as to whether: (a) an additional charge must be levied on the customers described in Paragraph 5 to recoup authorized costs not recovered during the twenty-seven (27) month recovery period, as well as the period such charge should be levied; (b) a credit should be issued to the customers described in Paragraph 5 to refund any overcharges collected during the twenty-seven (27) month recovery period, as well as the period over which such credits should be issued; (c) another solution is appropriate if the overcharge or undercharge is less than \$0.01 per retail access line customer located in the 303/720 NPA, or, (d) whether no action should be taken. If the Parties are unable to make a joint recommendation, the Parties shall make individual recommendations to the Commission regarding this recovery amount issue. In no event shall the total recovery period exceed three (3) years, as set forth in C.R.S. 40-3-115, nor shall the amount

recovered by Qwest exceed a total of \$1,828,022, except as otherwise recommended to the Commission by the Settling Parties under this Paragraph 9. .

10. The charge shall be identified on the bills of customers as "Facility Relocation Cost Recovery Fee TREX."

11. No later than 60 days of a final Commission order approving this Settlement, which order does not contain any modification of the terms and conditions of this Agreement that is unacceptable to any of the Settling Parties, Qwest shall make the tariff filings necessary to implement the charge to be effective on one (1) day's notice.

12. This Agreement is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Agreement. Furthermore, this Agreement does not constitute agreement, by any Party, that any principle or methodology contained within this Agreement may be applied to any situation other than the above-captioned case. No binding precedential effect or other significance, except as may be necessary to enforce this Agreement or a Commission order concerning the Agreement, shall attach to any principle or methodology contained in the Agreement.

13. The Parties will support all aspects of the agreement embodied in this document in any hearing conducted to determine whether the Commission should approve this Agreement, and/or in any other hearing, proceeding, or judicial review relating to this Agreement or the implementation of its terms and conditions. Each Party also agrees that, except as expressly provided in this Agreement, it will take no action in any administrative or judicial proceeding, or

otherwise, which would have the effect, directly or indirectly, of contravening the provisions or purposes of this Agreement. Furthermore, each Party represents that, except as expressly provided in this Agreement, in any proceeding in which this Agreement or its subject matter may be raised by a non-party, it will support the continued effectiveness of this Agreement and its terms and conditions. Without prejudice to the foregoing, the Parties expressly reserve the right to advocate positions different from those stated in this Agreement in any proceeding other than one necessary to obtain approval of, or to implement, this Agreement or its terms and conditions. Nothing in this Agreement shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Agreement.

14. This Agreement shall not become effective and shall be of no force and effect until the issuance of a final Commission order approving this Agreement, which order does not contain any modification of the terms and conditions of this Agreement that is unacceptable to any of the Settling Parties. In the event the Commission modifies this Agreement in a manner unacceptable to any Party hereto, that party may withdraw from the Agreement and shall notify the Commission and the other Parties to the Agreement in writing within ten (10) days of the date of the Commission order. In the event a Party exercises its right to withdraw from the Agreement, this Agreement shall be null and void and of no effect and no force in these or any other proceedings.

15. In the event this Agreement becomes null and void or in the event the Commission does not approve this Agreement, this Agreement, as well as the negotiations or

discussion undertaken in conjunction with the Agreement, shall not be admissible into evidence in these or any other proceedings.

16. The Parties state that they have reached this Agreement by means of a negotiated process that is in the public interest, and that the results reflected in this Agreement are just, reasonable, and in the public interest. The Parties agree that approval by the Commission of this Agreement shall constitute a determination that the Agreement represents a just, equitable, and reasonable resolution of the issues raised.

17. The Parties agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations to the extent necessary to permit all provisions of this Agreement to be carried out and effectuated.

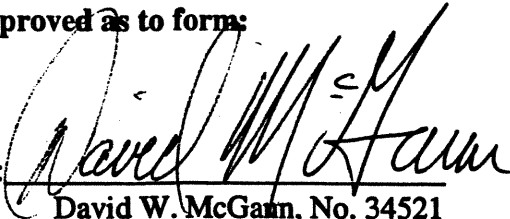
18. This Agreement is an integrated agreement that may not be altered by the unilateral determination of any Party to the Agreement.

19. This Agreement may be signed in counterparts, each of which shall be deemed an original. This Agreement may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by the Parties to the same extent that an original signature could be used.

Dated this 17th day of November, 2005.

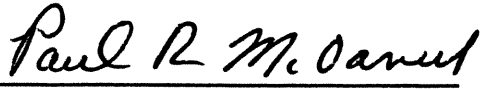
Respectfully submitted,

Approved as to form:

By: 

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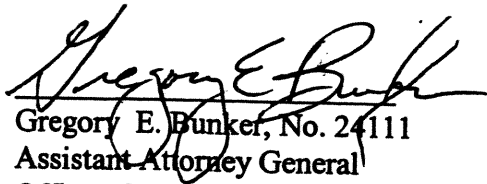
Dated this 18th day of November, 2005.

Respectfully submitted,

Approved as to form:

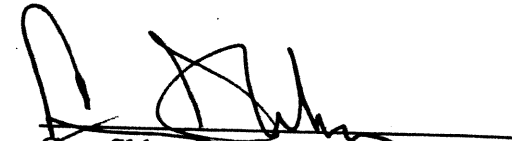
**COLORADO OFFICE OF CONSUMER
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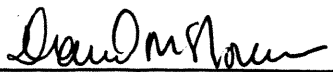


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Dated this 18th day of November, 2005.

Approved as to form:

By:

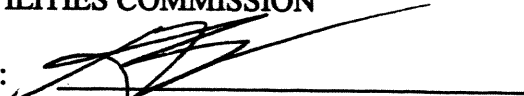


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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2005, an original and 5 copies of the foregoing **STIPULATION AND SETTLEMENT AGREEMENT** was hand-delivered to:

Doug Dean, Director
Colorado Public Utilities Commission
1580 Logan Street, Office Level 2
Denver, CO 80203

and a copy was placed in the United States mail, postage prepaid, addressed to the following:

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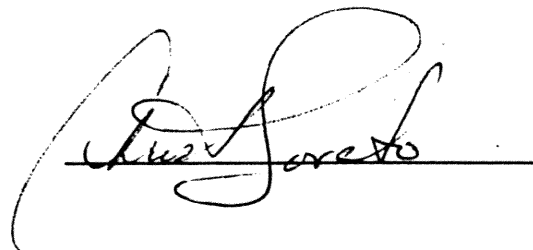
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* Signed Nondisclosure Agreement



A handwritten signature in black ink, appearing to read "Doug Dean", is written over a horizontal line.