

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

Docket No. 06F-039T

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IN THE MATTER OF THE COMPLAINT OF ADAMS COUNTY E-911 EMERGENCY  
TELEPHONE SERVICE AUTHORITY AGAINST QWEST CORPORATION

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**STIPULATION AND SETTLEMENT AGREEMENT**

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Qwest Corporation (“Qwest” or the “Company”), The City of Federal Heights (“Federal Heights”), the Boulder Regional Emergency Telephone Service Authority (“BRETSA”), Adams County E-911 Emergency Telephone Service Authority (“Adams E-911”), Jefferson County Emergency Telephone Service Authority (“Jefferson County ETSA”), Arapahoe County E-911 Emergency Communications Service Authority (“Arapahoe County ECSA”), Larimer Emergency Telephone Authority (“Larimer ETA”), Douglas County Emergency Telephone Service Authority (“Douglas County ETSA”) and El Paso Teller E-911 Authority (“El Paso Teller”) (collectively “Complainants”), the Staff of the Public Utilities Commission of the state of Colorado (“Staff”), the Colorado Office of Consumer Counsel (“OCC”) and the City of Aurora (“Aurora”)(Complainants, Staff, the OCC, Aurora, and Qwest collectively, the “Parties”), hereby state that they have resolved by settlement (as among the Parties) all issues necessary to resolve the complaints in Colorado Public Utilities Commission (“Commission”) Docket No. 06F-039T,. The Parties have memorialized their compromise in this Stipulation and Settlement Agreement (“Agreement”).

**I. Recitals**

A. E911 service is provided in Colorado pursuant to 29-11-100.5, *et seq.*(“E911 law”) In the E911 law, the Colorado legislature created a unique entity known as the “Basic Emergency Services Provider or “BESP.” § 29-11-101(1.2), C.R.S. The BESP is defined as

"any person authorized by the commission to undertake the aggregation and transportation of 9-1-1 calls to a PSAP."

B. On November 25, 1992, Qwest's predecessor, U S WEST, filed an Application for Authority to be a BESP for the provision of E911 service in the exchanges served by the Independent Telephone Companies, except the Haxtun and Holyoke Exchanges. As the result of subsequent Commission orders, Qwest became the sole BESP that provides, via tariff, various services utilized to provide E911 service.

C. The E911 services Qwest provides in its role as a BESP are subject to specific Commission rules. See 4 CCR 723-2-2130 *et seq.*

D. The E911 services Qwest provides were specifically excluded from Qwest's recent application to reclassify and deregulate a number of its services. See Docket 04A-411T, Third Corrected Stipulation and Settlement Agreement, p. 19.

E. Complainants are various Authority Boards, except Federal Heights which operates a PSAP. The Authority Boards, on behalf of the PSAPs, collect the E911 emergency telephone charge assessed on subscriber lines. In part, the Authority Boards use the E911 emergency telephone charge funds collected from subscriber lines to pay Qwest for the services it provides pursuant to its E911 Tariff.

F. On January 26, 2006, Adams E-911 filed with the Commission a Complaint against Qwest seeking a determination of the appropriate rate that should be charged it if it reduced the number of PSAPs it operates from two (2) to one (1).

G. Federal Heights, BRETSA, Jefferson County ETSA, Arapahoe County ECSA, Larimer ETA, Douglas County ETSA, El Paso Teller and Staff each filed motions to intervene in Docket No. 06F-039T. The intervention motions of Federal Heights, BRETSA, Douglas County

ETSA and El Paso Teller were granted by Decision No. R06-1064-I, and the intervention motions of Jefferson County ETSA, Arapahoe County ECSA, and Larimer ETA were granted by Decision No. R06-1373-I. The intervention motion of Staff was granted by Decision No. R06-0503-I. The OCC filed a motion to intervene on April 20, 2007.

H. The intervenors filed complaints in intervention, and Adams E-911 amended its complaint, to assert various claims against Qwest pertaining to the Tariff. These claims are:

1. Qwest is not authorized to apply its rates to wireless handsets;
2. Qwest is double billing costs for wireless Automatic Location Identification;
3. Qwest lacks legal authority to assess PSAPs wireless cost recovery charges;
4. Qwest has improperly billed PSAPs for costs related to transporting wireless E911 calls;
5. Qwest has improperly billed PSAPs costs relating to tandem porting of wireless E911 calls;
6. Qwest's enhanced selective routing rates are excessive;
7. Qwest has improperly backbilled PSAPs;
8. Qwest has improperly billed PSAPs for calls outside of their jurisdiction;
9. Qwest's charges have resulted in earnings in excess of its authorized rate of return;
10. Indemnification language should be removed from the tariff;
11. the two-year limitations period should not be applied to the PSAP claims;
12. Qwest should pay the fees and costs incurred by the PSAPs to prosecute this case;
13. Qwest should pay the Authority Boards the monthly emergency telephone charge assessed pursuant to 29-11-103 for Qwest's own lines;
14. Qwest has engaged in discrimination by providing enhanced routing services to the City of Denver but not charging for it;
15. Qwest engaged in discrimination by advising the City of Denver how to avoid paying for enhanced selective routing;
16. Qwest has engaged in discrimination by failing to charge certain small PSAPs for enhanced selective routing services;
17. Qwest has failed to implement its tariff properly in the manner in which it charges PSAPs throughout the state for enhanced selective routing;
18. Qwest has generally engaged in discrimination in the manner in which it has applied its tariff;
19. Qwest has applied its tariff in a discriminatory manner based on the technical configurations of the various PSAPs throughout the state;
20. Qwest is forcing PSAPs to purchase enhanced selective routing when they are not needed;
21. Qwest has failed to provide certain of the PSAPs with accurate line counts for billing purposes;
22. Qwest's E911 rates are generally excessive; and,

23. Qwest will require Adams County to purchase enhanced selective routing services even if the number of PSAPs it operates is reduced from two to one.

I. On November 15, 2006, Qwest filed Advice Letter No. 3052 proposing to amend the Tariff.

J. Qwest and the parties subsequently engaged in a confidential informal information exchange and negotiations regarding the issues raised in Docket 06F-039T and the Tariff provisions and rates, and have reached a mutually acceptable compromise, which they have memorialized in this Agreement.

K. On March 23, 2007, Qwest withdrew Advice Letter 3052 in order to coordinate the filing of a new E911 tariff (the "Revised Tariff") with the terms of this Agreement.

L. The parties believe that the mutually acceptable compromise they have reached is in the public interest.

## **II. General Description of the Agreement**

1. The Parties have agreed that:

(a) the Tariff will be amended consistent with this Agreement and the conditions set forth herein.

(b) Qwest will issue certain bill credits to Complainants, as described in further detail below;

(c) Complainants will not file protests to the Tariff as amended; and,

(d) the Parties will jointly seek dismissal of the Claims with and without prejudice as set forth in this Agreement, and termination of all proceedings in Docket No. 06F-039T. The date upon which the last order necessary to fully effectuate the requirements of this Paragraph 1(d) becomes final and no longer subject to administrative or judicial review shall be the "Effective Date," for purposes of this Agreement.

## **III. The Tariff**

2. After approval of this Agreement without any modifications unacceptable to any of the Parties, Qwest will file with the Commission a new Advice Letter and the Revised Tariff

that conforms to the provisions of Exhibit A, attached hereto and incorporated into this Agreement by reference.

3. The rates under the Revised Tariff “Monthly Rate” sections (“Monthly Recurring Charge” or “MRC”) elements of “ALI, per 100 Records,” “Selective Routing, per 100 Records,” and “E911 Transport Service, per 100 Records” in Section 9.2.1.E.9 of the Revised Tariff will be \$3.26, \$2.58 and \$4.66, respectively, for an aggregate MRC of \$10.50. The Revised Tariff is supported by an analysis of Qwest’s costs performed by Qwest, Staff and experts hired by Complainants, and a cost study which is a product of the Parties’ compromise and settlement of this docket. The cost study is attached to this Agreement as confidential Exhibit B.

4. The above-described rates and aggregate MRC will be effective for a minimum of three years from the Effective Date. The above-described rates and MRC may be changed within the three (3) year period in the following circumstances:

- (a) If the state-wide total number of records in the Selective Router Database increases or decreases 10% or more above or below the current record count of 3,114,500, within three years of the Effective Date, Qwest shall adjust the rates through a new filing with the Commission so that its aggregate gross annual Colorado MRC revenues are Three Million Nine Hundred Fifty-Four Thousand, Four Hundred Seventy-Six Dollars and Fifty-Two Cents (\$3,954,476.52 );
- (b) If the Commission orders a change to the rates, including a change to the “wireless cost recovery” rate, the MRC rate elements shall be increased or decreased in accordance with such Commission Order or, if the Commission does not allocate the increase or decrease among the rate elements, the rate elements shall be adjusted ratably; or,
- (c) the services Qwest is required to provide as the BESP are changed through statute, Commission order or Commission rule and the Commission orders a change to the rates as a result of the change in services.

5. No further rate reductions, increases or analysis of the rate elements reflected in the Revised Tariff will be advanced by the Parties and the Parties will not protest the Revised Tariff for at least three years after the Effective Date. However, as further described below, the

Complainants may refile the claims being dismissed without prejudice pursuant to Paragraph 10 below. The Parties will actively support the settlement and the Revised Tariff memorialized herein and will jointly seek a Commission order approving the settlement as an integrated, non-severable package, and finding that the rates in the Revised Tariff are just, reasonable and non-discriminatory.

**IV. Consideration to Complainants and Aurora**

6. The Complainants and Aurora will receive bill credits calculated as set forth below.

7. In the Revised Tariff, Qwest uses "Records" -- instead of "Lines" -- as the basis for billing. The \$10.50 aggregate MRC to which the Parties have agreed to place into the revised Tariff is an aggregate MRC for each 100 Records contained in the Selective Routing Database for each E911 Customer.

8. When calculating the bill credits, Qwest will first determine what the Complainants and Aurora were actually billed for the time periods specified below. For the Complainants, this calculation shall be performed for the time period from September 15, 2006 to the Effective Date. In the case of Aurora, this calculation shall be performed for the time period from February 15, 2007 to the Effective Date. Qwest will then calculate what the Complainants and Aurora would have been billed for these respective time periods using, in lieu of the rate then in effect, the aggregate \$10.50/100 records MRC contained in the Revised Tariff. Performance of this calculation will necessarily require that Qwest determine the number of Records contained in the Selective Routing Database for each of the Complainants and Aurora. To perform the calculation, Qwest will use the number of Records contained in the

Selective Routing Database for each of the Complainants and Aurora as of June of 2006. These

Record counts are set forth below:

	<u>Entity</u>	<u>Records</u>
a.	BRETSA	195,400
b.	Adams E-911	100,100
c.	Jefferson County ETSA	412,000
d.	Arapahoe County ECSA	275,400
e.	Larimer ETA	141,700
f.	Douglas County ETSA	188,800
g.	El Paso Teller	321,600
h.	Aurora	156,600

9. Using the methodology set forth above, the Complainants' and Aurora's bill credits shall be calculated as follows. The Complainants' bills from September 15, 2006 through the Effective Date will be recalculated using, in lieu of the pre-tariff filing rate then in effect, the new aggregate MRC of \$10.50/100 Records. The resulting difference between the actual bills as rendered and the bills as recalculated will be refunded to the Complainants in the form of a one-time bill credit to appear on the Complainants' bills. If the Complainant to which Qwest owes the bill credit is current in its payments to Qwest, the bill credit shall be applied against MRCs accruing after the Effective Date. If the Complainant is not current in its payments to Qwest, Qwest shall apply the bill credit to the past due amounts and then apply any remaining bill credit against MRCs accruing after the Effective Date. Aurora's bills from February 15, 2007 through the Effective Date will be recalculated using, in lieu of the pre-tariff filing rate then in effect, the new aggregate MRC of \$10.50/100 Records. The resulting difference between the actual bills as rendered and the bills as recalculated will be refunded to Aurora in the form of a one-time bill credit to appear on Aurora's bill. If Aurora is current in its payments to Qwest, the bill credit shall be applied against MRCs accruing after the Effective Date. If Aurora is not current in its payments to Qwest, Qwest shall apply the bill credit to the past due amounts and then apply any

remaining bill credit against MRCs accruing after the Effective Date. For illustrative purposes, were the Effective Date to be March 1, 2007, Qwest would provide Complainants and Aurora with bill credits as follows:

- a. Qwest would provide BRETSA a bill credit of \$259,554.52.
- b. Qwest would provide Adams E-911 a bill credit of \$219,884.72.
- c. Qwest would provide Jefferson County ETSA a bill credit of \$563,219.47.
- d. Qwest would provide Arapahoe County ECSA a bill credit of \$288,451.08.
- e. Qwest would provide Larimer ETA a bill credit of \$226,881.60.
- f. Qwest would provide Douglas County ETSA a bill credit of \$151,900.32.
- g. Qwest would provide El Paso Teller a bill credit of \$501,231.50.
- h. Qwest would provide Aurora a bill credit of \$3,722.60.

**V. Dismissal of Claims**

10. The Parties shall file with the Commission the joint motion for approval of this Agreement contemplated in paragraph 13 (a) below. Then, upon the occurrence of all of the conditions precedent set forth in paragraph 13 (a) through (e), the Parties further agree to file the joint motion for dismissal of Complainant's claims in Docket No. 06F-039T described in Paragraph 13 (e). Pursuant to the joint motion for dismissal, the dismissal of Federal Heights and BRETSA's Claim No. 14 concerning Qwest's obligation to remit the Emergency Telephone Surcharge on access lines it uses in its operations, shall be without prejudice; provided, however, that Federal Heights and BRETSA's claim for damages under that claim accruing on or before the date of dismissal shall be dismissed with prejudice. All other claims shall be dismissed with prejudice and all other Complainants likewise dismiss any right to assert a claim for damages

accruing before the date of dismissal for Qwest's failure to remit the Emergency Telephone Charge on its own lines

11. Docket No. 06F-039T is not closed by this Stipulation and Settlement Agreement. This docket will be closed only upon approval of the two Motions contemplated in paragraphs 13 (d) and (e) below.

12. The Parties agree that the Complainants remain free to file a complaint with the Commission to determine whether Qwest must remit the Emergency Telephone Charge on access lines it uses in its operations. Qwest specifically reserves its right to contest the Commission's jurisdiction to adjudicate whether it is obligated to remit the Emergency Telephone Charge on access lines Qwest uses in its operations.

**VI. Conditions Precedent That Must Occur Before the Agreement Becomes Effective**

13. The Agreement will only become effective upon the occurrence of all of the following conditions precedent:

- a. The Administrative Law Judge acting on behalf of the Commission or the Commission enters an interim order approving -- without any modification that is unacceptable to any of the Parties -- this Agreement.
- b. The Revised Tariff is filed pursuant to a new Advice Letter, to become effective on not less than thirty days notice. The Advice Letter will be filed two business days after the interim order in paragraph 13 (a) is entered. The Revised Tariff will set forth, on a separate page, a new rate entitled "Wireless Cost Recovery." The Parties' decision to place the "Wireless Cost Recovery" rate element on a separate page is intended to permit the Commission to suspend this page of the Revised Tariff while permitting the remaining portions of the Revised Tariff to become effective. The decision to place the Wireless Cost Recovery rate element on a separate page should not be construed in any way as a concession or admission by the Parties that the Wireless Cost Recovery rate element is unjust or unreasonable. The Parties specifically reserve their right to object to any protest that may be filed concerning the Wireless Cost Recovery rate element.

- c. The Commission approves Qwest's petition for variance from compliance with rules 4 CCR 723-2-2136(d) and (e) in Docket No. 06V-644T. The Commission does not suspend the Revised Tariff and permits the Revised Tariff to become effective. The only exception to this condition precedent is that, pursuant to subparagraph b above, the Commission may suspend the page of the Revised Tariff that contains the Wireless Cost Recovery rate element.
- d. Upon occurrence of all the conditions set forth in paragraph 13 (a) through 13 (c) above, the Parties file a joint motion for an order declaring the Revised Tariff to be just, reasonable and non-discriminatory.
- e. Upon entry of an order declaring the Revised Tariff to be just, reasonable and non-discriminatory, the Parties will file a Joint Motion to Dismiss Complaints and to close this docket as outlined in Section V.
- f. The Administrative Law Judge acting on behalf of the Commission or the Commission grants the Parties' motion filed pursuant to paragraph 13 (e) above and enters a final order dismissing the complaints as outlined in Section V.

14. This Agreement shall not become effective and shall be of no force and effect until all of the conditions precedent set forth in Paragraph 13 above have been met. If one or more of the conditions precedent set forth in Paragraph 13 above are not met, each party may: elect to accept the terms of this Agreement as modified by the Commission and ratify the Agreement as modified; elect to waive a condition precedent and ratify their acceptance of the Agreement; or, withdraw from the Agreement.

15. If the Commission modifies the Agreement, or a condition precedent does not occur as described in this Agreement, and a party determines that it will ratify the Agreement as modified or waive the condition precedent, the party need not do anything. If a party desires to exercise its right to withdraw from the Agreement, that party shall notify the other parties as soon as practicable of its desire to withdraw from the Agreement. The Parties shall meet as soon as practicable thereafter in an effort to resolve the issue or issues. If the Parties are unable to resolve the issue(s) and the party elects to withdraw from the Agreement, the party shall so

notify the Commission and the other Parties to the Agreement in writing. The notification shall be within ten (10) days of the party's receipt of the Commission's modification to the Agreement or within ten (10) days of a condition precedent not occurring. In the event a party exercises its right to withdraw from the Agreement, this Agreement shall be null and void and of no force or effect in this or any other proceeding.

16. In the event a party exercises its right to withdraw from the Agreement and the Agreement becomes null and void, all Parties shall be restored to the *status quo ante* that existed prior to the execution of this Agreement.

## **VII. General Terms and Conditions**

17. 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, discussions and information exchanged between the Parties in conjunction with the Agreement, shall not be admissible into evidence in this or any other proceeding.

18. This Agreement reflects compromise and settlement of all issues raised or that could have been raised by Complainants, Aurora, Staff and the OCC in Docket No. 06F-039T. The Parties state that reaching this Agreement to settle matters in Docket No. 06F-039T by means of a negotiated settlement is in the public interest, and that the results of the compromises and settlements reflected by this Agreement are just, reasonable, and in the public interest.

19. The Parties agree it is appropriate to waive or vary from any Commission rule to the extent necessary to implement or to effectuate this Agreement. The Parties agree jointly to apply to the Commission for a waiver or variance 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.

20. This Agreement shall be filed as soon as possible for approval.

21. Except as expressly provided herein, the Parties agree to support all aspects of the stipulations and agreements embodied in this Agreement in any hearing or proceeding conducted to determine whether the Administrative Law Judge (“ALJ”) or the Commission should approve this Agreement, including, but not limited to, any pleadings, comments filed, or testimony given in such a proceeding, or in any appeal of the decision. Each Party also agrees that 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 and purposes of this Agreement. Without prejudice to the foregoing, the Parties and each of them expressly reserve the right to advocate positions different from those stated in this Agreement in a proceeding different from this proceeding. Nothing in this Agreement shall constitute a waiver by the Parties or any of them with respect to any matter not specifically addressed in this Agreement.

22. No Party concedes the validity or correctness of any claim or defense asserted in Docket No. 06F-039T. Nothing contained herein shall be deemed to constitute an admission or an acceptance by any party of any fact, principle, or position contained herein. No precedential effect or other significance, except as may be necessary to enforce this Agreement or an ALJ or Commission order concerning the Agreement, shall attach to any principal or methodology contained in the Agreement, the Revised Tariff attached hereto as Exhibit A or the confidential cost study attached hereto as confidential Exhibit B.

23. Approval by the Commission of this Agreement shall constitute a determination that the Agreement represents a just, equitable and reasonable resolution of all issues that were or could have been contested among the Parties in this proceeding.

24. This Agreement may be executed in separate counterparts, which taken together shall constitute the whole Agreement.

25. This Agreement constitutes the Parties' entire, integrated agreement on all matters set forth herein and supercedes any and all prior oral and written understandings or agreements on such matters that previously existed or occurred in this proceeding, and no such prior understanding or agreement or related representation shall be relied upon by the Parties. Accordingly, the Parties specifically request that the ALJ and, if necessary, the Commission approve this Agreement in its entirety, without modification.

26. This Agreement is an integrated agreement that may not be amended except as set forth in writing and signed by all the parties hereto.

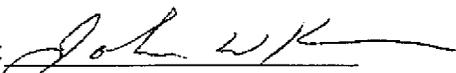
27. The Parties acknowledge that this Agreement is the product of negotiations and compromise and shall not be construed against any Party on the basis that it was or was not the drafter of any or all portions of this Agreement.

28. Each of the Parties shall bear their own costs and attorneys fees.

Dated this 4th day of May, 2007.

Respectfully submitted,

Approved:  
Qwest Corporation

By:   
John W. Kure  
Director, Public Policy  
Qwest Services Corporation  
1801 California, 47<sup>th</sup> Floor  
Denver, Colorado 80202  
(303) 896-6428

Approved:  
City of Aurora

By: \_\_\_\_\_  
John Hilton  
Deputy City Manager of Administrative  
Services  
City of Aurora

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Dated this \_\_ day of May, 2007.

Respectfully submitted,

Approved:  
Qwest Corporation

By: \_\_\_\_\_  
John W. Kure  
Director, Public Policy  
Qwest Services Corporation  
1801 California, 47<sup>th</sup> Floor  
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Approved:  
City of Aurora

By:   
John Milton  
Deputy City Manager of Administrative  
Services  
City of Aurora

Approved:

Boulder Regional Emergency Telephone  
Service Authority

By: \_\_\_\_\_  
Mark Beckner  
Chair  
1805 33<sup>rd</sup> Street  
Boulder, CO 80301

By: \_\_\_\_\_  
Larry Donner  
Vice Chair  
1805 33<sup>rd</sup> Street  
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Jefferson County Emergency Telephone  
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Approved:

Larimer Emergency Telephone Authority

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Approved:

Adams County E-911 Emergency Telephone  
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Approved:

Douglas County Emergency Telephone Service  
Authority

By: \_\_\_\_\_  
Michael Coleman  
President, Board of Directors  
P.O. Box 507  
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Approved:

Boulder Regional Emergency Telephone  
Service Authority

By: \_\_\_\_\_  
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By: \_\_\_\_\_  
Larry Donner  
Vice Chair  
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Approved:

Jefferson County Emergency Telephone  
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Larimer Emergency Telephone Authority

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Adams County E-911 Emergency Telephone  
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Approved:

Arapahoe County E-911 Emergency  
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Approved:

Douglas County Emergency Telephone Service  
Authority

By:  \_\_\_\_\_  
Michael Coleman  
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FEDERAL HEIGHTS

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Exhibit A

Docket No. 06F-039T

Decision No. R07-0989

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Approved:

The City of Federal Heights

By: Charles M. Reid 5/3/2007  
Charles M. Reid  
City Manager  
2380 W. 90<sup>th</sup> Avenue  
Federal Heights, CO 80260

Approved:

El Paso Teller E-911 Authority

By: \_\_\_\_\_  
Tim Sullivan  
Chairman  
2350 Airport Rd.  
Colorado Springs, CO 80910

Approved:

The Staff of the Colorado Public Utilities  
Commission

By: \_\_\_\_\_  
Lynn Notarianni  
Rate Financial Analyst V  
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Approved:

The Colorado Office of Consumer Counsel

By: \_\_\_\_\_  
PB Schechter  
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Approved:  
The City of Federal Heights

By: \_\_\_\_\_  
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Approved:  
The Staff of the Colorado Public Utilities  
Commission

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1560 Broadway, Suite 250  
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Approved:  
El Paso Teller E-911 Authority

By:  \_\_\_\_\_  
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2350 Airport Rd.  
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Approved:  
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Approved:  
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By: *Lynn Notarianni*  
Lynn Notarianni  
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Approved:  
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