

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 04M-388T

2009 MAY -7 AM 10:34

*agenda*

IN THE MATTER OF THE ADMINISTRATION OF THE COLORADO HIGH COST  
SUPPORT MECHANISM (CHCSM) AND THE FURTHER DEVELOPMENT OF A  
PROXY COST MODEL

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**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement ("Agreement" or "2009 Agreement") is entered into by and among Qwest Corporation ("Qwest") and the Staff of the Colorado Public Utilities Commission ("Staff") (collectively "Settling Parties").<sup>1</sup>

This 2009 Agreement sets forth the terms and conditions by which the Settling Parties have mutually agreed to resolve certain issues in the above-captioned docket.

<sup>1</sup> The following parties have been contacted concerning the 2009 Agreement and state that they will not challenge the 2009 Agreement:

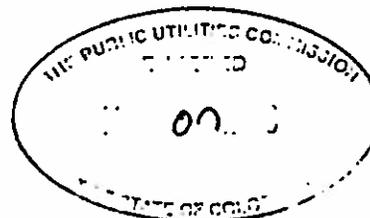
- Colorado Telecommunications Association
- The Colorado Office of Consumer Counsel

The following parties take no position on the 2009 Agreement:

- The regulated subsidiaries formerly of MCI, Inc.

Attempts were made to contact the following parties. These parties either did not respond or did not indicate how they desired their position to be represented regarding the 2009 Agreement:

- AT&T Communications of the Mountain States, Inc. ("AT&T");
- Cbeyond Communications, LLC; and,
- Citizens Telecommunications Company of Colorado;
- Comcast Phone of Colorado, LLC;
- Eschelon Telecom of Colorado, Inc.
- ICG Telecom Group, Inc.;
- Level 3 Communications;
- Northeast Colorado Cellular, Inc. N/K/A Viaero Communications; and
- San Isabel Telecom, Inc.;
- SBC Telecom, Inc. N/K/A AT&T
- South Park Telephone Company;
- TCG Colorado;
- Time Warner Communications; and,
- XO Colorado LLC



## RECITALS

A. On July 30, 2004, by Decision No. C04-0869, the Commission opened this docket for the purpose of investigating and further developing a permanent proxy model to be used to determine state high cost funding for providers of local exchange telecommunications service. Decision No. C04-0869 joined a number of parties as indispensable to the docket. All of the Settling Parties to this 2009 Agreement are participants in the Commission's continuing proceedings to adopt a cost proxy model identified in the Commission's High Cost Support Mechanism and High Cost Administration Fund, 4 CCR 723-2-2840 through 2869 (as adopted In the Matter of Proposed Repeal and Reenactment of Rules Regulating Telephone Utilities and Providers, Docket No. 03R-524T, effective April 1, 2006)<sup>2</sup>.

B. To calculate the Colorado High Cost Support Mechanism ("CHCSM") support for Qwest for the 2009 calendar year, the Settling Parties have agreed to use a procedure similar to that used to determine the 2004, 2005, 2006, 2007 and 2008 high cost support amounts, except that Staff with Qwest's assistance revised the financial input data and line count information to update it to 2007 data.<sup>3</sup> The proposal involves the use of average line costs produced by the HAI Consulting, Inc.'s ("HAI") model used in Docket No. 99A-577T (HAI model 5.2a), with Staff's adjustments, and updating the Qwest expense and investment figures consistent with Qwest's 2007 financial data and line count information.

C. Using the calculation process specified in the Commission's Rules, Staff's adjustments from Docket No. 99A-577T (HAI model 5.2a), with Qwest's 2007 benchmark

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<sup>2</sup> These rules were previously entitled, High Cost Support Mechanism and Procedures for Administering the Colorado High Cost Fund, and codified at 4 CCR 723-2-4.

revenues and 2007 line counts, and some updated HAI modeled access line count adjustments provided by Qwest, Qwest's 2009 CHCSM support for calendar year 2009 would be \$56,174,188.

D. For Qwest's 2008 support, Staff and Qwest updated the HAI model and the revenue benchmark to reflect 2006 costs, revenues and lines; however, instead of using the support levels calculated in this manner to establish Qwest's 2008 support, Staff and Qwest agreed to continue to use the support levels in place for 2007. For 2009 the Settling Parties have agreed to use the levels of support calculated from the updated HAI cost model updated for 2007 costs and lines and have used the revenue benchmark calculated for 2007. The calculated support for 2009<sup>4</sup> reflects a \$1,717,179 decrease in support from Qwest's 2008 support of \$57,891,367. The per line support results are shown in attached Confidential Exhibit A.

E. In Section XIV of the Stipulation and Settlement Agreement reached by the parties in Docket Nos. 04A-411T and 04D-440T, the parties agreed to request that, within 60 days after the effective date of the Stipulation and Settlement Agreement, the Commission open an investigation into the CHCSM. The matters to be explored in the investigation were to include, among other things, which services are supported and the appropriate level of support for such services, and alternative methodologies for assessment and contribution. On October 12, 2005, the Commission opened Docket No. 05I-431T to conduct a thorough evaluation of the

<sup>3</sup> See Decision Nos. R-03-0923-I and R04-0692, Docket No. 98M-147T, and Decision Nos. C05-1329 and C06-1246, Docket No. 04M-388T, which are the Commission's decisions approving the Stipulation and Settlement Agreements which set forth the stipulated 2004, 2005, 2006 and 2007 CHCSM support amounts.

<sup>4</sup> Pursuant to Decision Nos. R03-0923-I and R04-0692, Docket No. 98M-147T, the HAI 5.2a model was used to calculate Qwest's 2004 and 2005 CHCSM funding. Qwest's 2005 support from the CHCSM was \$58,386,874. Qwest's 2006 support from the CHCSM was frozen at the same level as granted for 2005. Pursuant to Decision No. C06-1246 in this docket, Qwest received \$57,891,367 of CHCSM support for 2007, which was a reduction of \$495,507 from the CHCSM support Qwest received for 2006, and the Settling Parties agreed that Qwest could recover the amount from increases to other rates. In Decision No. C07-0963 the support Qwest was to receive for 2008 was set at the same level as for 2007.

CHCSM (“CHCSM Investigation”). On July 11, 2008, the Staff filed a Report with the Commission that summarized the workshops held as part of the CHCSM Investigation. On that same day, the Administrative Law Judge assigned to the CHCSM Investigation entered an interim order seeking comments on the report, and noted in the interim order that “Absent further Order of the Commission, there will be no further activity in [the CHCSM Investigation] docket after the participant comments are filed.” See Decision No. R08-719-I. . The Settling Parties anticipate that the Commission will use the staff report to initiate further proceedings concerning the CHCSM.

F. Because the Commission’s investigation of the CHCSM is on-going and the potential for significant changes to the CHCSM process exists, the Settling Parties propose that Qwest’s CHCSM support for calendar year 2009 be updated using 2007 costs, revenues and lines for a calculated support level of \$56,174,188.

G. Based on the above, the Settling Parties agree to the terms set forth below for the purpose of determining Qwest’s CHCSM support for calendar year 2009.

H. The Settling Parties believe that this Agreement is in the public interest, as more fully explained below.

#### **AGREEMENT**

WHEREFORE, the Settling Parties agree and stipulate as follows:

1. Average Monthly Basic Service Cost Per Line. Without endorsing the use of the HAI 5.2a model, the Settling Parties agree to recommend that the Commission adopt the average monthly basic service cost per line produced from the HAI 5.2a model, including Staff’s Docket No. 99A-577T adjustments, Qwest’s updated 2007 financial data and updates to the model’s line count information. Qwest’s average 2007 line counts and revenue benchmarks with access

charge increases were used along with the updated HAI modeled access line costs to produce wire center specific support that totaled \$56,174,188 for the year.

2. Limitation to Calendar Year 2009. The Settling Parties agree that the proposal outlined in Paragraph 1 above is applicable only to Qwest's calendar year 2009 CHCSM distribution and recognize that the Commission's investigation into the CHCSM support process may result in significant changes in the future to the computation process used to develop wire center support for all providers.

3. Agreement for Settlement Purposes. This Agreement is made for settlement purposes only. No Settling 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 Settling Party, that any principle or methodology contained within this Agreement may be applied to any situation other than the above-captioned cases. No 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.

4. Support of Agreement. The Settling 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 Settling 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 Settling 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 Settling 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 Settling Party with respect to any matter not specifically addressed in this Agreement.

5. Agreement in Effect. 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 Settling Party hereto, that party may withdraw from the Agreement and shall so notify the Commission and the other Settling Parties to the Agreement in writing within ten (10) days of the date of the Commission order. In the event a Settling Party exercises its right to withdraw from the Agreement, this Agreement shall be null and void and of no effect and no force in this or any other proceeding.

6. Not Evidence. 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 this or any other proceeding.

7. Negotiated Agreement. The Settling 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 Settling 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.

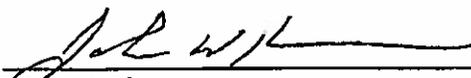
8. Rule Waiver Agreement. The Settling Parties agree jointly to apply to the Commission for a waiver of compliance with any requirements of the Commission's Rules and Regulations to the extent necessary to permit all provisions of this Agreement to be carried out and effectuated.

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

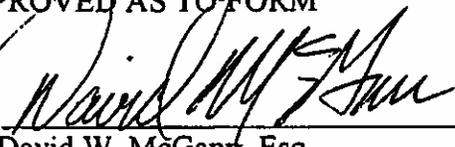
10. Separate Counterparts. This Agreement may be executed in separate counterparts. The counterparts taken together shall constitute the whole Agreement.

Dated: November 6, 2008

**QWEST CORPORATION**

By:   
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Dated: November 6, 2008

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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **STIPULATION AND SETTLEMENT AGREEMENT IN DOCKET NO. 04M-388T** upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, or as otherwise indicated below, this 7<sup>th</sup> day of November, 2008 addressed as follows:

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