

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 07A-414T

IN THE MATTER OF THE APPLICATION OF BANDWITH.COM FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AND FOR A LETTER OF REGISTRATION TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Stipulation") is entered into by and between Staff of the Colorado Public Utilities Commission ("Staff") and Bandwidth.com CLEC, LLC ("Bandwith"). Staff and Bandwidth collectively are referred to as Parties, and individually as Party.

INTRODUCTION AND BACKGROUND

1. Bandwith.com CLEC, LLC is a limited liability company with its principal office located at 4001 Weston Parkway, Suite 100, Cary, North Carolina 27513.
2. On October 25, 2007, Bandwidth initiated this docket by filing its Application for Certificate of Public Convenience and Necessity ("CPCN") to Provide Local Exchange Telecommunications Services and for a Letter of Registration to Provide Emerging Competitive Telecommunications Services ("Application").
3. On October 31, 2007, Staff sent a letter to the applicant seeking additional information. The applicant timely filed the response on November 7, 2007.
4. Staff timely filed its Notice of Intervention in this matter on November 27, 2007. Staff is the only intervener in this Docket.
5. The Parties now stipulate and agree that the Commission should approve the Application on the terms set forth in this Stipulation.

TERMS OF STIPULATION AND SETTLEMENT

6. Pursuant to Section 40-15-503.5, C.R.S., Bandwidth shall maintain a bond for a period of three (3) years from the date that its initial tariff to provide regulated telecommunications service to any customer in Colorado becomes effective, which shall occur after the CPCN becomes effective. Such bond must be renewed annually by Bandwidth for a period of three (3) years. Concurrent with the filing of an Advice Letter and initial tariff to provide such telecommunications services in Colorado, Bandwidth shall file with the Commission a verified statement, signed by an officer of Bandwidth, attaching the original and two copies of the bond to the verified statement. The beneficiary of the bond shall be the Colorado Public Utilities Commission.

7. Initially, the bond shall be in the amount of fifty thousand dollars (\$50,000), which will be the minimum amount required for the duration of the bond. The formula used to calculate the amount of the bond is attached to this Stipulation as Exhibit A and incorporated herein.

8. The issuer of the bond shall be rated "Secure" by A.M. Best Company, Inc.

9. Within thirty (30) calendar days of the calendar date that the number of Bandwidth's revenue producing lines¹ reaches one thousand (1,000) lines, Bandwidth shall recalculate the amount of the bond that will be required and shall file a report with the Commission that clearly shows the number of revenue producing lines and the recalculated amount of the bond that is then required, using the same formula used for determining the initial amount of the bond, which is found in and is attached as Exhibit A. Within thirty (30) calendar days of the day after the thirty-day report period set forth above in this same Paragraph No. 8 has expired, an officer of Bandwidth shall file with the Commission a verified statement that the bond has been increased to the required amount, clearly

¹ The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed. In the event Bandwidth sells systems that serve multiple lines, the calculation of "revenue producing lines" or the equivalent shall be made pursuant to Federal Communications Commission Form 477, "Instructions for the Local Competition and Broadband Reporting Form."

identifying the new amount and the new term of the bond and attaching the original and two copies of the bond to the verified statement.

10. Bandwidth shall file a report with the Commission no later than December 31 of each year that the bond is required, beginning in the year that Bandwidth offers regulated telecommunications services to its customers under its effective tariff. This report shall include the following:

- (a) The total number of revenue producing lines of Bandwidth for regulated telecommunications services to end user customers in Colorado for the six (6) months preceding the date of the report;
- (b) Any change in the number of revenue producing lines of Bandwidth for regulated telecommunications services to end user customers in Colorado for the six (6) months preceding the date of the report;
- (c) the amount of the existing bond; and
- (d) any recalculation of the amount of the bond that may be required.

11. An increase in the amount of the bond will not be required unless the recalculation of the amount of the bond as calculated using the formula set for in Exhibit A exceeds twenty percent (20%) of the amount of the existing bond.

12. The monies from the bond shall be disbursed as set forth in this paragraph in the event of the issuance of an order by the Commission resulting from a formal complaint pursuant to paragraph 14 below. Disbursement shall be made on a percentage basis, which percentages are included in Exhibit A. Disbursement of the bond shall be made as described below:

a. To funds mandated by the Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service;

b. To wholesale telecommunications provider(s), specifically for services provided to Bandwidth for which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if Bandwidth fails to do so due to Bandwidth's discontinuance of providing service, after verification of those costs by Staff;

c. To refund customer deposits and prepayments for telecommunications services not yet received in the event that Bandwidth discontinues service to its customers. Upon attestation by an officer of Bandwidth that all refunds owed to customers for payment for services not yet received has been rendered and the disbursement of the funds to all other parties has been completed, the Commission shall disburse to Bandwidth any remaining proceeds from the bond up to the amount of the refunds Bandwidth issued to customers; and

d. For Commission-incurred costs for items including, but not limited to, notices mailed by the Commission or the designated default provider if Bandwidth discontinues service and fails to mail notice to customers, as required by 4 Code of Colorado Regulations (CCR) 723-2-2108 ("Rule 2108"); any Commission-incurred costs associated with the transitioning of customers to another provider; and any Commission-incurred bankruptcy court costs.

13. At any time any portion of the bond is disbursed, Bandwidth shall obtain an addition to the current bond or a new bond for the amount required based on the formula set forth in Exhibit A.

14. Bandwidth shall be considered in default of the bond in the following circumstances:

a. If Bandwidth

i. untimely (late by more than thirty (30) calendar days which period shall begin on the first day after the due date) remits or fails to remit payments to statutory funds (including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service);

ii. untimely remits or fails to submit undisputed payments to wholesale providers;

iii. untimely pays or fails to pay any refunds, credits or deposits owed to customers; and

b. untimely files or fails to file Commission-required reports including, but not limited to:

i. annual reports;

ii. line count report when the number of revenue-producing lines first exceed one thousand (1,000) lines for the first time;

iii. verified annual statements of line counts and bond amounts;

iv. verified statements of bond renewal or modification;

iv. and/or violation of any Commission rules concerning regulated telecommunication providers.

15. Occurrence of any or all of the items described in Paragraph No. 13(a) and (b) above shall be cause for Staff to request that the Commission issue a formal complaint concerning the actions of or failure to act by Bandwidth as well as to make recommendations to the Commission concerning Bandwidth's bond and the status of Bandwidth's CPCN. In the event the Commission issues an order resulting from a formal complaint that finds Bandwidth is in breach of any or all of the items described in Paragraph No. 13(a) and (b) above, the Commission may authorize its representatives to draw on the

bond. No demand for a draw on the bond shall be honored by the issuing financial institution, absent an order resulting from a formal complaint issued by the Commission authorizing its representative to draw on the bond.

16. Bandwidth agrees that it will not discontinue service to customers for any reason unless the Commission has granted its application to discontinue pursuant to Rule 2108. For so long as Bandwidth is obligated to provide the bond, in the event that Bandwidth files an application pursuant to Rule 2108, Bandwidth shall file with the Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by such discontinuance; (b) a customer list, including the name, address and telephone number of each customer; (c) the amount of any refund due to each individual customer for payment of service not received by the customer; and (d) the identity of all underlying providers supporting the regulated telecommunications services affected by such discontinuance.

17. Bandwidth expressly acknowledges that, in accordance with Section 40-5-105, C.R.S. (2004), as amended, it cannot sell, assign, or otherwise transfer its Colorado assets that are used in the provision of regulated telecommunications services, including, without limitation, Billing Account Numbers, customers, Interconnection Agreements, and its CPCN, without first having obtained Commission approval.

18. In this docket, Bandwidth shall provide Staff notice, within thirty days' of its execution, of any agreement between Bandwidth and a third party for the provision of marketing, customer service, or customer acquisition services in connection with Bandwidth's regulated telecommunications service in Colorado. If such third party agreement is entered into with a party that is affiliated with Bandwidth and over whom Bandwidth exercises substantial oversight, Bandwidth shall provide notice of such agreement within seven (7) days of its entry into the agreement. This

requirement does not include employment agreements with Bandwidth employees who may be hired to perform inside sales, marketing or customer service or acquisition activities.

19. For the three (3) year period that Bandwidth is required to maintain a bond pursuant to Paragraph No. 5, above, Bandwidth shall file a report with the Commission in writing within ten (10) calendar days of any of the following occurrences in connection with the regulated telecommunications services provided by Bandwidth or one of its regulated affiliates:

- a. Assessment of civil penalties by any court or regulatory body;
- b. Assessment of criminal penalties by any court or regulatory body;
- c. Injunctive relief awarded by any court or regulatory body;
- d. Any corrective action taken by any court or regulatory body;
- e. Any refund of more than one hundred dollars (\$100) in any individual case, or any refund of two hundred fifty dollars (\$250) or more to any class of customers awarded by any court or regulatory body;
- f. Reparations to any party awarded by any court or regulatory body;
- g. Initiation of a show cause or formal complaint proceeding by any court or regulatory body;
- h. Initiation of disciplinary proceedings by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate a CPCN or offer any service;
- i. Refusal to grant authority to operate or provide a service by any court or regulatory body;
- j. Revocation of authority to operate or to provide a service by any court or regulatory body;

k. Voluntary surrender of any certificate or authority to operate in lieu of any action by a court or regulatory body; or

l. Any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings.

20. If Bandwidth fails to perform any or all of the obligations set forth in this Stipulation including, but not limited to, failing to obtain and maintain a bond according to the terms outlined in this Stipulation and/or fails to timely report to the Commission any events set forth in Paragraph 18 above, Staff shall consider Bandwidth to have breached this Stipulation. In that event, Staff may request that the Commission issue a formal complaint to determine whether the Commission should take action against Bandwidth's CPCN. In the event the Commission issues an order resulting from a formal complaint that finds Bandwidth is in breach of any or all of the obligations set forth in this Stipulation, the Commission may authorize its representatives to draw on the bond. No demand for a draw on the bond shall be honored by the issuing financial institution, absent an order resulting from a formal complaint issued by the Commission authorizing its representative to draw on the bond.

GENERAL SETTLEMENT TERMS AND CONDITIONS

21. This Stipulation 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 Stipulation. Furthermore, this Stipulation does not constitute agreement, by any Party, that any principle or methodology contained within this Stipulation may be applied to any situation other than the above-captioned case. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning the Stipulation, shall attach to any principle or methodology contained in the Stipulation.

21. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this Docket under a new procedural schedule. The withdrawing Party shall notify the Commission and the other Party to this Stipulation in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation ("Notice"). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation.

22. In the event this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding. Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise.

23. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable, and in the public interest. Each Party pledges its support of this Stipulation and urges the Commission to approve same, without modification.

24. Except as otherwise specifically agreed in this Stipulation, nothing contained herein shall be deemed as constituting either a settled practice or precedent for the purposes of any other

proceeding, and by entering into this Stipulation, no Party shall be deemed to have agreed to any specific principles of ratemaking. The Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or to implement, this Stipulation or its terms and conditions. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

25. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement.

26. The signatories represent that the signatories to this Stipulation have full authority to bind their respective Parties to the terms of this Stipulation.

Dated this _____ day of January 2008.

FOR BANDWIDTH.COM, CLEC, LLC.

By: _____

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APPROVED AS TO FORM

By: _____

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**FOR STAFF OF THE COLORADO PUBLIC
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By: _____

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APPROVED AS TO FORM

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EXHIBIT A

Bond

Calculation

Estimated Number of Customers: 500

Average Revenue per customer per month: \$ 25.00 Monthly Revenue per customer

Fixed Utilities Fund (FUF): 1.433% of Intrastate revenues

911 Fund: \$0.50 per line per month

Colorado High Cost Support Mechanism (CHCSM): 1.6% of revenues

Low Income Fund: \$.00 per line per month

TRS Relay Fund: \$.10 per line per month

PUC Administrative Costs In the event CLEC does not perform customer transition obligations, calculated at \$3.70 per customer.

Prepayments assume each customer prepays one month of service $((\$25 \times 1) \times 500 \text{ customers})$

Wholesale Supplier Regulatory Obligation, 2 months of service $((\$25 \times 2) \times 500 \text{ customers})$

Customer deposits assume 10% of retail customers will need to place a 2 month deposit of \$50

Number of Customers	500	<u>% of Total</u>	
Annual Revenues	\$150,000		
FUF	\$2149	4%	
911	3000	6%	
CHCSM	2400	5%	
Low Income	0	0%	
TRS Fund	600	1%	
PUC Administrative Costs	1851	4%	
Customer deposits	2500	5%	
Customer Prepayments	12,500	25%	
Wholesale Supplier Obligation	<u>25,000</u>	<u>50%</u>	
Total Deposit/BOND Requirement	\$50,000	100%	