

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 04M-388T

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

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement” or “2011 Agreement”) is entered into by and among Qwest Corporation (“Qwest”) and the Staff of the Colorado Public Utilities Commission (“Staff”) (collectively “Settling Parties”).¹

This 2011 Agreement sets forth the terms and conditions by which the Settling Parties have mutually agreed to resolve certain issues in the above-captioned docket.

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 cost model to be used to determine state high cost funding for providers of local exchange telecommunications service.² Decision No. C04-0869 joined a number of parties as indispensable to the docket. The Settling Parties to this 2011 Agreement are Parties to this docket.

B. To calculate the Colorado High Cost Support Mechanism (“CHCSM”) support for Qwest for the 2011 calendar year, the Settling Parties have agreed to use a procedure similar to

¹ The following parties have been contacted concerning the 2011 Agreement and state that they will not challenge the 2011 Agreement or take any position on it:

Colorado Telecommunications Association
The regulated subsidiaries formerly of MCI, Inc.

² See generally 4 CCR 723-2-2840 through 2869 and in particular 4 CCR 723-2-2848(c)(I) as to the requirement that a proxy cost model be adopted.

that used to determine the 2004 through 2010 high cost support amounts.³ The procedure 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 2009 financial data and line count information.

C. Using the calculation process specified in the Commission's Rules, adjustments from Docket No. 99A-577T (HAI model 5.2a), with Qwest's 2009 benchmark revenues and 2009 line counts, Qwest's CHCSM support for calendar year 2011 would be \$62,142,489, an increase of \$5,968,301 compared to the previously stipulated amount. However, the Settling Parties agree that Qwest will not request an increase in its CHCSM support from 2010 to 2011 and agree to maintain the 2010 CHCSM support of \$56,174,188 for calendar year 2011. The 2011 per line support results are shown in attached Confidential Exhibit A and the data supporting the 2011 calculations is attached as Confidential Exhibit B.

³ See Decision Nos. R-03-0923-I and R04-0692, Docket No. 98M-147T, and Decision Nos. C05-1329 and C06-1246, C07-0964 and C08-1214, C09-1292, Docket No. 04M-388T, which are the Commission's decisions approving the Stipulation and Settlement Agreements which set forth the stipulated 2004 through 2010 CHCSM support amounts for Qwest.

- Pursuant to Decision No. R03-0923-I in Docket No. 98M-147T, Qwest's 2004 support from the CHCSM was \$66,676,388.
- Pursuant to Decision No. R04-0692 in Docket No. 98M-147T, Qwest's 2005 support from the CHCSM was \$58,386,874.
- Pursuant to Decision No. C05-1329 in this Docket, 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 in this Docket, the support Qwest received for 2008 was set at the same level as for 2007.
- In Decision No. C08-1214 in this Docket, the support Qwest received for 2009 was set at \$56,174,188.
- In Decision No. C09-1292, in this Docket, the support Qwest received for 2010 was set at \$56,174,188.

D. On October 29, 2008, the Commission issued a Notice of Proposed Rulemaking in order to “re-examine the high cost support rules to accommodate new regulatory schemes, changes in the federal Universal Service Fund (USF) program, and recent dockets that have direct implications on the high cost support mechanism rules.”⁴ That docket is now closed ⁵.

E. On April 7, 2010, the Commission issued a Notice of Proposed Rulemaking (“NOPR”), in Docket 10R-191T. Parties have filed testimony and a hearing was held on September 27 and 28, 2010. That docket is pending.⁶

F. Because the Commission’s rulemaking concerning 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 2011 be \$56,174,188 annually, which is the support amount Qwest received for calendar year 2010, unless the adopted CHCSM rules necessitate Qwest’s CHCSM support amount to be adjusted.

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 2011.

H. The Settling Parties believe that this 2011 Agreement is in the public interest, as more fully explained below.

AGREEMENT

WHEREFORE, the Settling Parties agree and stipulate as follows:

⁴ Notice of Proposed Rulemaking, *In The Matter of Proposed Rules Relating to the Colorado High Cost Support Mechanism*, Docket No. 08R-476T, Decision No C08-1129, p. 3 (Co. P.U.C. October 19, 2008)

⁵ Decision No. C10-0328 in Docket 08R-476T adopted April 7, 2010

⁶ Notice of Proposed Rulemaking, *In The Matter of Proposed Rules Relating to the Colorado High Cost Support Mechanism, Regulations 723-2*, Docket No. 10R-191T, Decision No. C10-0325 adopted April 7, 2010 opening docket and subsequent orders and filings.

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 Docket No. 99A-577T ordered 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 annually.

2. 2011 CHCSM Funding. The Settling Parties agree to maintain Qwest's calendar year 2011 CHCSM support at the current level of \$56,174,188 unless the adopted CHCSM rules necessitate Qwest's support amount to be adjusted.

3. Limitation to Calendar Year 2011. The Settling Parties agree that the proposal outlined in Paragraphs 1 and 2 above is applicable only to Qwest's calendar year 2011 CHCSM distribution and recognize that the Commission's rulemaking concerning 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

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

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

Dated: November 17, 2010

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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 e-filing system, or as otherwise indicated this 18th day of November, 2010 addressed as follows:

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**CONFIDENTIAL
EXHIBIT A**

NOTICE OF CONFIDENTIALITY:

THIS DOCUMENT HAS BEEN FILED UNDER SEAL.

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**CONFIDENTIAL
EXHIBIT B**

Notice of Confidentiality:

This Document Has Been Filed Under Seal