

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF COLORADO

Proceeding No. 14C-0222T

JOINT MOTION FOR SATISFACTION OF THE COMPLAINT

IN THE MATTER OF THE ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES RELATING TO: 1) REQUIRED CONTRIBUTIONS TO THE FIXED UTILITY FUND, THE COLORADO HIGH COST SUPPORT MECHANISM, THE DISABLED TELEPHONE USERS FUND, AND THE LOW INCOME TELEPHONE ASSISTANCE FUND; 2) FILING OF ADVICE LETTERS FOR COMMISSION ORDERED CHANGES IN SURCHARGES, AND 3) COLLECTION AND REMITTANCE OF EMERGENCY TELEPHONE CHARGES TO THE APPROPRIATE GOVERNING BODIES AGAINST ZIPPYTECH INCORPORATED

Staff of the Colorado Public Utilities Commission, via undersigned counsel, and ZippyTech Inc., appearing *pro se*,¹ jointly and respectfully submit this Joint Motion for Satisfaction of the Complaint stating the following in support:

Executive Summary

ZippyTech and Staff jointly propose satisfaction of the Commission's formal complaint against ZippyTech. Key conditions include: (1) ZippyTech consents to a full audit of its financial records for reporting years 2010, 2011, 2012, and 2013 by an auditor approved by Staff and paid for by ZippyTech; (2) ZippyTech shall amend as necessary annual reports and CHCSM reports already filed with the Commission based on intrastate revenues determined from the audit; (3) using the intrastate

¹ Counsel for Staff has advised Mr. Jeff Fink, Vice President of ZippyTech, Inc., that ZippyTech can retain counsel in these proceedings if it chooses to do so. Mr. Fink

revenue figures indicated on the CHCSM reports already on file, ZippyTech shall pay fixed utility fees and CHCSM surcharges past due from reporting years 2010, 2011, and 2012 in three installments; (4) the amounts due shall change, if necessary, based upon results of the audit; (5) ZippyTech shall pay past due LITAP and TRS surcharges (which do not depend on intrastate revenue) without delay; (6) ZippyTech shall certify to Staff when it has satisfied all back payments due to the various 911 authorities in the areas ZippyTech serves; (7) ZippyTech shall submit to three future annual attestation audits to ensure its compliance with generally accepted accounting procedures (GAAP); and (8) ZippyTech shall petition the Commission to declare its intent to serve within the RLEC territory it is already in. Additional details, including deadlines, are provided in a section below entitled “Conditions for ZippyTech’s Satisfaction of the Complaint.” These conditions will not only satisfy the Complaint, but also, will facilitate ZippyTech’s future compliance with the rules of the Commission.

Summary of the Formal Complaint Against ZippyTech

The instant proceeding arises from a March 12, 2014 formal complaint issued by the Commission against ZippyTech, a telecommunications provider based in the Four Corners area of Colorado.² The Complaint contains four primary allegations:³

(1) ZippyTech has incorrectly reported its regulated intrastate revenue in its annual reports filed with the Commission; (2) ZippyTech has not paid certain fixed

has represented to counsel for Staff that he has the authority to speak for ZippyTech in these proceedings.

² See Decision No. C14-0275 (“the Complaint”).

utility fees and CHCSM, LITAP, and TRS surcharges to the Commission; (3) ZippyTech has not collected and remitted emergency telephone charges to the appropriate governing authorities responsible for E911; and (4) ZippyTech needs to update its tariffs to reflect current surcharge rates. The Commission referred the matter to an administrative law judge who promptly established a procedural schedule (modified by subsequent decisions).⁴ After much discussion and exchanges of information, ZippyTech and Staff have devised a plan by which to fully resolve the Complaint.

Discussions Between Staff and ZippyTech

Between issuance of the Complaint and the present day, ZippyTech and Staff have engaged in numerous teleconferences, exchanges of information, and email discussions aimed at resolving the Complaint. While it is a relatively straightforward matter for ZippyTech to update its tariffs, ZippyTech and Staff encountered two primary difficulties during their discussions regarding the remaining subjects of the Complaint. First, ascertaining ZippyTech's actual annual intrastate revenues (so that Staff may calculate the CHCSM and fixed utility fee amounts past due to the Commission) has been challenging. To work through this issue, ZippyTech agrees to calculating the amounts past due based on revenues reported in its CHCSM reports on file with the Commission (which both ZippyTech and Staff agree are probably too high) and to three installment payments that will be adjusted pending the outcome of a full audit of its financial records. Second, it

³ See Decision No. C14-0275 ¶ 11.

will take time for ZippyTech to work with the many 911 authorities to whom ZippyTech owes surcharge payments. ZippyTech agrees to contact each 911 authority and provide Staff with written certification from them after it resolves past due surcharge payments. By working through these two primary issues, Staff and ZippyTech formulated the seven conditions for satisfaction of the Complaint, as discussed in the next section.

During the course of these discussions, Staff discovered two other issues which Staff, if it had known of them, would have asked the Commission to include in the Complaint. First, Staff does not believe that ZippyTech keeps its financial records in accordance with generally accepted accounting principles (GAAP), as required by 4 CCR 723-2-2005(d)(I). Second, ZippyTech never filed a petition stating its Declaration of Intent to Serve, as required by 4 CCR 723-2-2106, in the RLEC territory of Colorado that it currently is in. As part of resolution of the Complaint, ZippyTech has also agreed to rectify these two deficiencies. Staff appreciates ZippyTech's willingness to do so, and also, for agreeing to the following conditions for satisfaction of the Complaint.

Conditions for ZippyTech's Satisfaction of the Complaint

Staff and ZippyTech jointly propose the following conditions for ZippyTech's satisfaction of the Complaint:

(1) **Reporting of Intrastate Revenue**: ZippyTech consents to a full audit of its financial records for reporting years 2010, 2011, 2012, and 2013 by an

⁴ Decision Nos. R14-0317-I & R14-0409-I.

auditor selected by ZippyTech, approved by Commission Staff, and paid for by ZippyTech. The auditor shall be a licensed Colorado CPA with an “active” status.⁵ Longevity of experience, number of engagements, and experience in auditing telecommunications providers shall be factors in Staff’s approval (or rejection) of a candidate auditor. An important aspect of the audit shall be to determine the correct intrastate revenue figures that ZippyTech should have reported in its CHCSM reports to the Commission for these same four years. The reports filed by ZippyTech are attached as **Exhibit 1**.⁶ The audit shall identify revenue down to a specific service/product level, and also, to an interstate/intrastate level. The intrastate revenue figures ascertained by the auditor will enable a calculation of the correct fixed utility fee and CHCSM surcharge for reporting years 2010, 2011, 2012, and 2013. The audit shall be completed on or before August 1, 2014. Based on the outcome of this audit, ZippyTech shall amend both its annual reports and CHCSM reports for 2010, 2011, 2012, and 2013, if necessary, on or before September 15, 2014.

(2) **Payment of Fixed Utility Fees Plus CHCSM, LITAP, and TRS**

Surcharges: Based upon the revenue numbers reported by ZippyTech in the CHCSM reports already on file with the Commission and shown in **Exhibit 1**, the back payments ZippyTech owes for its utility fees and CHCSM surcharges, are shown in **Confidential Exhibit 2**. The back payments ZippyTech owes for LITAP

⁵ According to <https://www.colorado.gov/dora/licensing/Lookup/LicenseLookup.aspx>.

⁶ Line 233 of these reports contains the revenue figures used in the calculations shown in **Confidential Exhibit 2**.

and TRS surcharges, which are based on line counts, are also shown in that same exhibit. ZippyTech shall pay the indicated LITAP and TRS amounts to the Commission by May 15, 2014. ZippyTech shall pay 1/3 of the sum of the total fixed utility fee and CHCSM surcharges indicated in **Confidential Exhibit 2** on or before May 15, 2014. It shall pay the next 1/3 on or before November 15, 2014 and the final 1/3 on or before May 15, 2015. However, if the audit described in #1 above results in different intrastate revenues than those reported in the annual reports shown in **Exhibit 1** (and the fixed utility fee and CHCSM surcharges shown as due in **Confidential Exhibit 2** change accordingly), ZippyTech shall either receive a refund or shall pay a reduced amount on November 15, 2014 or May 15, 2015 until it has paid in full. ZippyTech shall not add a surcharge of any kind to its customer bills in order to pay these amounts past due.

(3) **Collection and Remittance of Emergency Telephone Charges:**

ZippyTech shall contact the authorities shown in **Confidential Exhibit 3** and report to them the number of ZippyTech customers in the service area to that authority for 2009, 2010, 2011, 2012, and 2013. Zippy Tech shall use the form letter shown in **Exhibit 4** for this purpose and collect the response forms received from each authority. ZippyTech shall email copies of all letters and responses it receives to these letters to PUC Staff members Judith Swinnerton and John Scott. Only after all the authorities have responded that ZippyTech has remitted the appropriate 911 surcharge amounts on all response forms shall ZippyTech have satisfied the 911 portion of the Complaint. ZippyTech shall complete this process

on or before May 16, 2014. If ZippyTech encounters an unresponsive authority, ZippyTech shall contact Staff members Swinnerton or Scott for assistance in working with that authority. If the authority continues to be unresponsive, Staff shall have the discretion to either extend the May 16, 2014 deadline with respect to the unresponsive authority or consider the 911 portion of the Complaint satisfied for that unresponsive authority in lieu of a response to the letter in **Exhibit 4**. ZippyTech shall not add a surcharge of any kind to its customer bills in order to pay these amounts past due.

(4) **Tariff Sheets**: ZippyTech shall update its tariffs to reflect current surcharge rates on or before 5PM on Friday, April 25, 2014 by filing an advice letter and related tariff pages with the Commission.

(5) **Petition**: ZippyTech shall file an appropriate petition for a declaration to serve within the territory of a rural telecommunications provider on or before 5PM on Friday, April 25, 2014.

(6) **Financial Records Attestation Audit**: ZippyTech shall submit to annual attestation audits of its financial records to ensure compliance with generally accepted accounting principles (GAAP) starting with calendar year 2013 financials and for the following two years. The auditor shall be approved by Staff and paid for by ZippyTech. Such audits shall be completed on or before August 1, 2014⁷ and the last calendar day of March in 2015 and 2016.

⁷ This date enables the full audit described in condition number 1 and the first attestation audit to be done concurrently.

(7) **Other Conditions:** Without waiting for the Commission to act on this motion, ZippyTech shall immediately begin taking appropriate actions to satisfy the conditions outlined in #1 through #6 above. Staff shall monitor ZippyTech's compliance (or lack thereof) with these conditions. If ZippyTech satisfies them all, Staff shall move to dismiss the Complaint within 10 calendar days. If ZippyTech falls short on any one condition, Staff shall, within 10 calendar days of learning of the shortfall, file a motion to proceed towards an evidentiary hearing on the Complaint.⁸

Procedural Matters

To facilitate the seven conditions described above, the Commission should take four additional measures. First, it should vacate the procedural schedule established by Decision Nos. C14-0275, R14-0317-I, and R14-0409I. Second, the Commission should hold the instant proceeding in abeyance until Staff either files a motion to dismiss (if ZippyTech satisfies all seven conditions)⁹ or a motion to set a procedural schedule (if ZippyTech does not satisfy any one condition). Third, the Commission should waive response time to the motion because ZippyTech and Staff jointly support the relief requested by it (and, moreover, no party will be prejudiced by it). And finally, fourth, the Commission should adopt the seven conditions for satisfaction of the Complaint as an order of the Commission. These four measures

⁸ An affidavit from Vijay Bastawade, President of ZippyTech, Inc., affirming ZippyTech's commitment to satisfying the Complaint is attached as **Exhibit 5**.

⁹ These proceedings could be in abeyance until approximately March 2016 given ZippyTech's requirements under condition number six.

will ensure that not only will ZippyTech satisfy the Complaint, but also, keeps its books and records in a manner that complies with Commission rules.

Conclusion

For the foregoing reasons, the Commission should adopt the conditions for ZippyTech's satisfaction of the Complaint in an appropriate order.

WHEREFORE, Staff of the Colorado Public Utilities Commission and ZippyTech Inc. jointly and respectfully request that the motion be GRANTED and that the Commission: (a) vacate the procedural schedule set in place by Decision Nos. C14-0275, R14-0317-I, and R14-0409-I; (b) hold the instant proceedings in abeyance until Staff either files a motion to dismiss or a motion to set a procedural schedule; (c) waive response time to the motion; and (d) adopt the conditions for ZippyTech's satisfaction of the Complaint as an order of the Commission.

DATED April 25, 2014.

Respectfully submitted,

JOHN W. SUTHERS
Attorney General

____/s/ Paul J. Kyed_____
Paul J. Kyed, 37814*
Assistant Attorney General
Revenue and Utilities Section

Attorney for Staff of the
Public Utilities Commission
1300 Broadway, 8th Floor
Denver, Colorado 80203
Telephone: (720) 508-6332
Fax: (720) 508-6038
Email: paul.kyed@state.co.us
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that on this 25th day of April 2014, I have served the foregoing **JOINT MOTION FOR SATISFACTION OF THE COMPLAINT** upon those listed below via the Commission's E-Filing system:

Jennifer Dwan	jdwan@mydurango.net	ZippyTech
Jeff Fink	jfink@cedarnetworks.com	ZippyTech
Todd Lundy	todd.lundy@state.co.us	Commission Counsel
**Judith Swinnerton	Judith.Swinnerton@state.co.us	Trial Staff
** Jerry Enright	Jerry.Enright@state.co.us	Trial Staff
**John Scott	Johnt.scott@state.co.us	Trial Staff
Ron Davis	ron.davis@state.co.us	Advisory Staff
	Jb2923@att.com	AT & T/TCG Colorado
Betty Sanders	Betty.Sanders@charter.com	Bresnan
Tommy Varnell	Tommy.Varnell@cbeyond.net	Cbeyond
Michael Nelson	Michael.Nelson@cable.comcast.com	Comcast Phone
Ted Hankins	Ted.Hankins@centurylink.com	CenturyTel of Colorado
	cleagle@centurylink.com	CenturyTel of Eagle
Bethany Becker	Bethany.Becker@megapath.com	DIECA Comm/Covad
Cathy Murray	camurray@integratelecom.com	Eschelon/Integra
Ben Kley	ben@falconbroadband.net	Falcon
Dave Aspension	daspension@kiesling.com	FastTrack
Kelly Hebbard	khebbard@fasttrackcomm.net	FastTrack
	jb@forethought.net	Futurum
Lori Blakely	lori.blakely@level3.com	Global Crossing Local
Michael Shortley	Michael.Shortley@level3.com	Global Crossing Telecom
Kay Hubbartt	kayh@gvii.net	Grand Valley
Dennis Cox	Dcox@microtech-tel.com	iLOKA
Heather Kavanaugh	Heather.Kavanaugh@level3.com	Level 3 Comm
Jim Hinsdale	jim@livewirenet.com	Live Wire Networks
Haleh Davary	Haleh.Davary@verizonbusiness.com	MCI Comm
David Eichler	wci.colorado.govaffairs@windstream.com	McLeodUSA
Shannon Brown	Shannon.Brown@verizon.com	MCIMetroAcess
Tim Kunkleman	Timothy_Kunkleman@centurylink.com	Qwest Corporation
Tim Kunkleman	Timothy_Kunkleman@centurylink.com	Qwest Communications
Douglas Wagner	doug@sanisabel.com	San Isabel
Jon	jons@secom.net	SECOM Inc
Richard Morris	Rich.r.Morris@sprint.com	Sprint
Stacy Hannah	Stacy.Hannah@twcable.com	Time Warner CIS
Kristie	kristie@twtelecom.com	tw Telecom
Rex Knowles	Rex.Knowles@xo.com	XO Communications

The parties below were duly served via the United States mail, first class postage prepaid and addressed as follows to:

Dave Aspenson
FastTrack Communications Inc
1155 Kelly Johnson Blvd South Ste 303
Colorado Springs CO 80920

Rex Knowles
XO Communications Services
7050 Union Park Avenue Ste 400
Midvale UT 84047

Katherine Mudge
DIECA Communications
1835-B Kramer Suite 100
Austin TX 75758

_____/s/ *Melvena Rhetta-Fair*_____