

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

**DOCKET NO. 03S-539E**

**RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY  
AQUILA, INC., DOING BUSINESS AS AQUILA NETWORKS-WPC, WITH ADVICE  
NO. 586.**

**STIPULATION REGARDING ISSUES RAISED IN DECISION NO. C04-0335 AND  
MODIFIED PROCEDURAL SCHEDULE**

Respondent, Aquila, Inc., doing business as Aquila Networks – WPC (“Aquila”), the Trial Staff of the Commission (Trial Staff), and the Colorado Office of Consumer Counsel (OCC), by and through their respective counsel, respectfully submit this Stipulation, pursuant to Rule 723-16.3.2 of the Commission’s Rules Relating to the Claim of Confidentiality of Information Submitted to the Colorado Public Utilities Commission, 4 *Colo. Code Regs.* 723-16, resolving the Motion for Protective Order filed by Aquila on March 15, 2004. As grounds for this Stipulation, Aquila, the OCC and the Trial Staff state as follows:

1. This docket is Aquila’s Phase II rate case involving cost of service, rate design and tariff issues. *See*, Decision No. C03-1423 (mailed December 18, 2003, the Suspension Order).
2. On February 11, 2004, the Commission held a prehearing conference in this docket. One issue raised by the Commission *sua sponte* was a requirement to provide to the Advisory Staff a copy of the executable electronic version of the cost of service study model used for the rate design proposed by Aquila in the direct testimony. At the Prehearing Conference, the Commission was advised that the OCC and Trial Staff wanted to have a copy of the executable electronic version of the cost of service model and would be seeking it in discovery. Aquila explained that providing copies of the cost of service model to Advisory Staff,

the OCC, and the Trial Staff may be difficult because the cost of service study model used by Aquila is a proprietary model owned by Threshold Associates (Threshold).

3. In Decision No. C04-0176 (mailed February 18, 2004), the Commission expanded the production of the cost of service model “to all other parties and the Advisory Staff of the Commission.” *See*, Decision No. C04-0176, ¶ I.A.5 (at page 3).

4. On March 15, 2004, Aquila filed a Motion for Protective Order, seeking extraordinary protection for the proprietary cost of service model (called the Threshold Associates Cost of Service [or “TACOS”] software), and limiting access to such confidential and proprietary information to the members of the Commission’s Advisory Staff, who execute non-disclosure agreements.

5. Responses to the Motion for Protective Order were filed by the OCC and the Trial Staff on March 19 and 22, 2004, respectively. No responses were filed by the other intervenors. Aquila was allowed to file a reply, *see*, Decision No. C04-0335, ¶ I.A.15-17 (at pages 5-6), and a hearing on the Motion was set for Friday, April 9, 2004. *See*, Decision No. R04-0346-I (mailed April 2, 2004).

6. After negotiations between Aquila, the OCC and the Trial Staff, a compromise has been reached resolving the Motion for Protective Order. Aquila has obtained additional concessions from the owner of the model and agreed to provide to the OCC and the Trial Staff a copy of the executable electronic version of the TACOS software used by Aquila in its direct case. Aquila, the OCC and the Trial Staff also agreed that the Motion for Protective Order and this Stipulation can be approved without the need for a hearing, and that the hearing set for April 9, 2004 can be vacated. An executable electronic version of the TACOS software was delivered to the OCC and the Trial Staff on April 6, 2004.

7. In return, the OCC and Trial Staff have consented to the entry of a Protective Order containing the extraordinary protections requested by Aquila, which include the following extraordinary restrictions with respect to the use of the TACOS software by employees of the OCC, members of the Trial Staff and their attorneys who have signed non-disclosure forms:

a. that the TACOS software shall not be transmitted at any time using e-mail, nor shall additional electronic copies of the software be made by a party other than Aquila or Threshold.

b. that the TACOS software shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed, distributed, transmitted, modified, used, reused or provided to anyone, other than Threshold, for commercial or public purposes in any manner.

c. that all persons who obtain copies of the TACOS software must return the copy to Aquila within seven days of a final non-appealable Commission order in this docket.

d. that all computer files which use the TACOS software must be destroyed within seven days of a final non-appealable Commission order in this docket, and an affidavit of destruction shall be provided to Aquila and Threshold, upon request.


8. The OCC and the Trial Staff also request an extension of approximately three weeks within which all parties may file answer testimony and exhibits, to May 4, 2004, which also necessitates an extension of the date for filing rebuttal and cross-answer testimony and exhibits to June 4, 2004. This change preserves the hearing dates of June 23 – July 2, 2004, but also requires two discovery-related adjustments to the procedural order: 1) a shortening of the time to serve discovery on rebuttal and cross-answer cases to the close of business June 15, 2004 and 2) shortening the response time for such discovery to 7 calendar days, or no later than close of business June 22, 2004. Aquila agrees with those changes to the procedural schedule.

9. This Stipulation has been provided to counsel for the other intervenors in the docket, who have not specifically requested the TACOS model in discovery. Aquila, the OCC and the Trial Staff are authorized by counsel for the other intervenors to state herein that they have no objections to the Stipulation, to the entry of the requested protective order, to vacating the hearing set for April 9, 2004, or to the changes to the procedural schedule set forth herein.

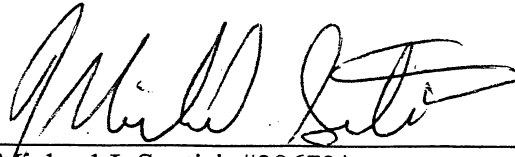
WHEREFORE, Aquila, the OCC and the Trial Staff respectfully request that the Commission approve this Stipulation, grant Aquila's Motion for Protective Order Affording Extraordinary Protection to the confidential and proprietary TACOS software, and modify the procedural schedule in this docket to extend the due date by which all parties may file answer testimony and exhibits, to May 4, 2004, to extend the date for filing rebuttal and cross-answer testimony and exhibits to June 4, 2004, and to adjust the procedural order by shortening the time to serve discovery on rebuttal and cross-answer cases to the close of business June 15, 2004 and by shortening the response time for such discovery to 7 calendar days, or no later than close of business June 22, 2004.

RESPECTFULLY SUBMITTED this 7th day of April 2004.

ABEL, BAND, RUSSELL, COLLIER,  
PITCHFORD & GORDON, CHARTERED  
240 South Pineapple Avenue  
Post Office Box 49948  
Sarasota, Florida 34230-6948  
(941) 364-2773 (direct)  
(941) 366-3999 (fax)  
(303) 623-6660 (Denver number)  
Attorneys for Aquila, Inc.

By:   
Steven H Denman  
Colo. Reg. # 7857  
Florida Bar # 0191732

KEN SALAZAR, ATTORNEY GENERAL



Michael J. Santisi, #29673\*

David A. Beckett, #23098\*

John J. Roberts, #30124\*

Assistant Attorneys General

Business and Licensing Section

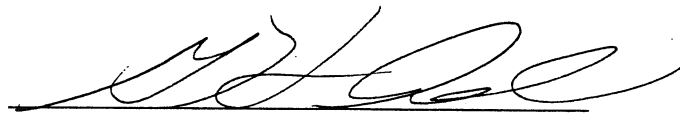
1525 Sherman Street, 5th Floor

Denver, Colorado 80203

COUNSEL FOR STAFF OF THE PUBLIC UTILITIES COMMISSION

\*Counsel of Record

KEN SALAZAR, ATTORNEY GENERAL



Harris Adams, #19668\*

Assistant Attorney General

Office of the Attorney General

1525 Sherman Street, 5th Floor

Denver, Colorado 80203

(303) 866-5441

(303) 866-5342 (Fax)

COUNSEL FOR THE OFFICE OF CONSUMER COUNSEL

\*Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>TH</sup> day of April 2004, a true and correct copy of the foregoing **STIPULATION REGARDING ISSUES RAISED IN DECISION NO. C04-0335 AND MODIFIED PROCEDURAL SCHEDULE** was served via e-mail on trial counsel [\*] and by United States mail, first class postage prepaid, addressed to the following:

W. Scott Keith\*  
Aquila Networks  
P.O. Box 11739  
Kansas City, MO 64138

Steven H. Denman, Esq.  
Anthony J. Abate, Esq.  
ABEL, BAND, RUSSEL, COLLIER,  
PITCHFORD & GORDON, CHARTERED  
240 South Pineapple Avenue  
Post Office Box 49948  
Sarasota, FL 34230-6948

Richard L. Fanyo, Esq.\*  
Mark A. Davidson, Esq.\*  
DUFFORD & BROWN, P.C.  
1700 Broadway, Suite 1700  
Denver, CO 80090-1701

Gregory L. Johnson, Esq.  
Anderson, Dude & Lebel, P.C.  
111 S. Tejon, Suite 400  
P.O. Box 240  
Colorado Springs, CO 80901-0240

Marty Blake  
The Prime Group, LLC  
P.O. Box 7469  
6711 Fallen Leaf  
Louisville, KY 40241

John D. Havens, Esq.  
City Attorney for the City of Canon City  
831 Royal Gorge Blvd., #412  
Canon City, CO 81212

William F. Mattoon, Esq.  
Peterson & Fonda, P.C.  
215 W. Second Street  
Pueblo, CO 81003

William H. McEwan, Esq.\*  
3257 E. Fremont Drive  
Littleton, CO 80122

P.B. Schechter  
Rate/Financial Analyst  
Office of Consumer Counsel  
1580 Logan Street, Suite 740  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

G. Harris Adams, Esquire\*  
Assistant Attorney General  
Office of the Attorney General  
1525 Sherman St., 5<sup>th</sup> Floor  
Denver, CO 80203  
BY INTRADEPARTMENTAL MAIL

**\*\*Frank Shafer**  
Advisory Staff  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Karl Kunzie**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Wendell Winger**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Geri Santos-Rach**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Sharon Podein**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Saeed Barhaghi**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Inez Dominguez**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Larry Shiao**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Bridget McGee-Stiles**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Sandy Johnson Jones**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Gary Schmitz**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Warren Wendling**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**\*\*Pamela Fischhaber**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

**John Trogonoski**  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL



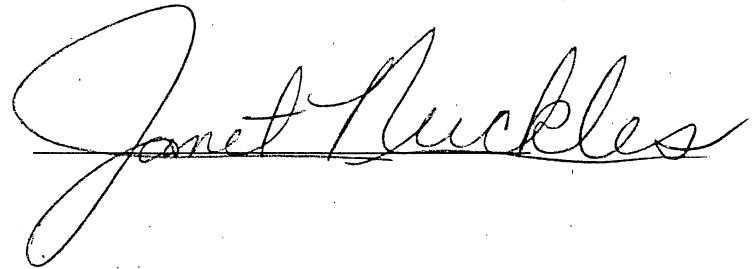
Vivian Pederson  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

\*\*Wendie Allstot  
Advisory Staff  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

Paul C. Gomez, Esq.  
Commission Counsel Advisory Staff  
State Services Section  
1525 Sherman Street, 6<sup>TH</sup> Floor  
Denver, CO 80203  
BY INTRADEPARTMENTAL MAIL

Randy Garroutte  
Public Utilities Commission  
1580 Logan Street OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

Michael Zimmerman  
Advisory Staff  
Public Utilities Commission  
1580 Logan Street, OL-2  
Denver, CO 80203  
BY INTERDEPARTMENTAL MAIL

A handwritten signature in black ink that reads "Janet Ruckles". The signature is written in a cursive style with a horizontal line drawn through the middle of the name.