

Decision No. C06-0510

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02I-572T

IN THE MATTER OF THE INVESTIGATION INTO UNFILED AGREEMENTS EXECUTED
BY QWEST CORPORATION.

**ORDER APPROVING JOINT REPORT AND
FUNDING FOR THE 9-1-1 RESOURCE CENTER**

Mailed Date: May 9, 2006
Adopted Date: April 19, 2006

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a Joint Report of the Settling Parties Regarding Decision No. C05-1483 and Funding for the 9-1-1 Resource Center (Joint Report) filed by Staff of the Commission (Staff), the Colorado Office of Consumer Counsel (OCC), Qwest Corporation (Qwest), AT&T Communications of the Mountain States, Inc. (AT&T), and DIECA Communications, Inc., doing business as Covad Communications Company (Covad) (collectively the Settling Parties). The Joint Report was filed March 31, 2006.

B. Background

2. The investigatory docket in this matter was opened by Decision No. C02-1214 on October 28, 2002, to investigate certain unfiled interconnection agreements (ICAs) entered into between Qwest and various competitive local exchange carriers (CLECs). The stated purpose of the investigatory docket was to: 1) examine the general nature of an ICA; 2) determine potential remedies available to the Commission if the ICAs were not filed that should have been filed;

3) determine the measure of harm or prejudice, if any, if agreements were not filed that should have been filed; and 4) determine the regulatory controls that should or could be implemented by the Commission to ensure that ICAs are timely and appropriately filed on a going forward basis.

3. It was determined at a January 15, 2004 status conference, with the parties concurring, that given the nature of this investigatory docket and the Commission's directives in its order opening the docket, an evidentiary hearing would not be appropriate as part of this docket. Rather, a report or recommendation to the Commission for further action, after the receipt of comments by the interested parties, was found to be the most appropriate course of action. In response to that solicitation for comments, AT&T, TCG Colorado, Global Crossing Local Services, Inc., Qwest, Electric Lightwave, Inc., Time Warner Telecom, Inc., Covad, Eschelon Telecom of Colorado, Inc., Level 3 Communications, LLC, XO Communications Services, Inc., McLeodUSA Telecommunications Services, Inc., WorldCom, Inc., OCC, and Staff filed comments. In the meantime, on April 15, 2004, Qwest and OCC filed a Stipulation and Settlement Agreement.

4. The CLECs that provided comment on the Settlement Agreement generally opposed its terms. Staff also recommended against its approval. Generally, the parties offering comment on the Settlement Agreement found it deficient in several ways: 1) the terms and dollar amount inadequately addressed the damage caused by Qwest to the CLECs, competition, and the regulatory process; 2) it was not global in scope since only Qwest and OCC participated; 3) it was prejudicial to the rights of CLECs; 4) it failed to address Commission concerns and objectives, such as whether Qwest should have filed certain ICAs, harm to the CLECs, competition, as well as regulatory controls to prevent future harm; 5) it failed to specify that Qwest would not ultimately benefit from its contribution to the Colorado Low-Income Telephone

Assistance Program (LITAP) fund; 6) it included credits for CLECs who elect to participate in the Settlement for only §§ 251(b) and (c) services; and 7) it barred future action by the Commission regarding sanctions against Qwest regarding this matter.

5. The Administrative Law Judge (ALJ), in his Recommended Decision No. R04-1488, rejected the settlement agreement outright, finding that it failed to provide an adequate remedy to address the alleged harm to competition, the regulatory process, and the CLECs, particularly when compared to similar cases in Minnesota and Arizona. The ALJ also found that the Settlement Agreement failed to provide an adequate remedy to address the alleged harm to competition, the regulatory process, and the CLECs, particularly when compared to recent similar cases in Minnesota and Arizona. The ALJ expressed concern that the Settlement Agreement represented the agreement of only two parties (Qwest and OCC). The ALJ found that, in order for a settlement agreement to be meaningful, just, and in the public interest, it should be a global agreement that represents the agreement of most, if not all of the competing public and private interests.

6. The ALJ was persuaded by Staff's recommendation for a show cause proceeding in a separate docket. According to the ALJ, a show cause proceeding would require a full evidentiary hearing to consider the factual allegations against Qwest as well as potential remedies. A show cause proceeding would also allow CLECs claiming harm because of the favorable treatment by Qwest to certain CLECs to establish a factual basis on the record of the harm and any subsequent damages.

7. Qwest and OCC filed exceptions to the Recommended Decision on January 25, 2005.

8. We denied the parties' exceptions; however, we noted that while we found Staff's findings from its investigation compelling, we were not convinced that a show cause hearing was the most effective means of disposing of this matter given the difficulty in quantifying harm to CLECs. *See* Decision No. C05-0455. Additionally, while we were encouraged by the two-party Settlement Agreement, we nevertheless expressed concern that the Settlement was not more global. We were also concerned about the vague nature of several terms of the Settlement Agreement. Specific to this current decision, we expressed reservations about the payment of \$2 million to a non-existent 9-1-1 Resource Center. While we applauded the parties' efforts, we found supporting information regarding the resource center lacking. Therefore, we set the matter for hearing. After numerous extensions of time, an Amended Stipulation and Settlement was filed on September 30, 2005, and signed by Qwest, the OCC, Staff, AT&T, and Covad. This Amended Stipulation was substantially similar to the first Settlement. However, the Amended Settlement clarified many matters with which we had previously expressed concern.

9. However, on November 3, 2005, we denied the Settling Parties' Motion to Approve Amended Settlement Agreement Without a Hearing in Commission Decision No. C05-1325. In that Order, we indicated we still had concerns regarding the \$2 million set aside for a 9-1-1 Resource Center. We also indicated we required further information regarding the \$5.5 million designated for the LITAP fund and the affect on the end-user surcharge. Additionally, we required further information regarding the hiring process for the Independent Auditor, and the cap on credits for CLEC purchases. At a hearing held on November 21, 2005, Qwest and Staff provided testimony regarding the terms of the Amended Settlement. The witnesses provided some clarification to the concerns we had on several issues.

10. At the conclusion of the hearing, we were generally satisfied with the terms of the Amended Settlement. However, we still harbored reservations regarding funding of a 9-1-1 Resource Center. The Amended Settlement, as the first settlement, provided that \$2 million be allocated to a Commission-designated private non-profit foundation to fund a 9-1-1 Resource Center. The OCC provided the pre-filed testimony from Christopher H. Olson, Director of Safety Services for the City of Englewood, Colorado. While we found that testimony most helpful in describing the functions of a 9-1-1 Resource Center, we found that many questions remained.

11. Consequently, we ordered that the \$2 million be placed in an interest bearing escrow account pending workshops to be attended by all relevant stakeholders to a 9-1-1 Resource Center. Further, we ordered the Settling Parties to hold workshops and provide a report to us by the end of the first quarter of 2006. We stated that, should we find that our questions were answered adequately, we would initiate a rulemaking process to implement a 9-1-1 Resource Center program. Should we find that the report provided inadequate information regarding the resource center, we reserved our right to determine how best to expend the \$2 million at a later date.

12. We now consider the Joint Report filed on March 31, 2006 in response to Decision No. C05-1438.

C. Analysis

13. In response to our questions, the Joint Report states that the \$2 million will be adequate to fund the 9-1-1 Resource Center for 10 to 15 years. The proposed initial start-up year budget will be limited to \$150,000, with an estimated \$200,000 per year thereafter. The Joint Report states that these expenditures could be less based on a competitive vendor bidding

process. The \$2 million would remain in the interest-bearing escrow account, administered by the Commission until a private non-profit organization is established, unless the Commission approves an alternative structure. This initial funding will make the 9-1-1 Resource Center more legitimate in a manner that would make it possible to apply for grants and other federal and state subsidy funds such as Homeland Security Act funding support.

14. The Joint Report states that the chain of authority for the 9-1-1 Resource Center would be: management personnel of resource center report to the PUC 9-1-1 Task Force Oversight Subcommittee, which reports to the PUC 9-1-1 Task Force, which reports to the PUC Commissioners. The management of the resource center will submit a report to the Commission and the Task Force regarding the state of 9-1-1 in Colorado. Further, the management will provide an annual performance and budget report with a proposed budget for approval and transfer of funds for the following year or years based upon measurable criteria and outcomes.

15. Further, the Joint Report asserts that the 9-1-1 Resource Center's primary purpose is to provide assistance to all 9-1-1 Authority Boards and Public Safety Answering Points (PSAPs) in the State of Colorado. The 9-1-1 Resource Center will be a clearinghouse for information; the focal point in the state for national, state, and local information for 9-1-1 issues; and for emerging technology issues and needs, including regulatory matters related to emerging technology such as wireless and Voice over Internet Protocol 9-1-1 issues. The 9-1-1 Resource Center will assist in coordinating training, holding classes, and providing evaluation and support regarding 9-1-1 matters.

16. However, according to the Joint Report, the 9-1-1 Resource Center will not become a statewide 9-1-1 Authority Board or its functional equivalent. It is not intended to

become an entity that directly provides subsidies of funds to PSAPs, Authority Boards, or providers.

17. Finally, the Joint Report states that the parties have concluded that no changes to the Commission's rules are necessary to implement this resource center. This includes the agreement that the Basic Emergency Service Provider's duties and obligations will not change as a result of the opening of a resource center.

18. The parties to the Joint Report agree that the creation of the 9-1-1 Resource Center will benefit the citizenry of Colorado and the 9-1-1 community and will promote general public safety interests. The Settling Parties request that we issue an order authorizing the creation of this 9-1-1 Resource Center and Qwest's payment of \$2 million for its initial funding.

19. While we still retain a certain level of discomfort with the on-going concern of a 9-1-1 Resource Center, we approve the Joint Report and authorize the \$2 million for the initial funding of such a resource center. Our discomfort is lessened by the statements made in the Joint Report regarding the chain of authority over the resource center, as well as its annual performance and budget reporting to the Commission. With the aid of these additional oversight measures, we retain the right to investigate the effectiveness of the resource center in the future, if necessary. It is our hope that this 9-1-1 Resource Center will be a clearinghouse for information on all facets of 9-1-1 service for all stakeholders in the 9-1-1 community and that it will aid communications among those stakeholders.

20. We request either the 9-1-1 Task Force Subcommittee or the management of the resource center, if established, file the first annual report on the performance and budget of the resource center by the end of 2006 so that we can monitor the progress of implementation.

II. ORDER

A. The Commission Orders That:

1. The Joint Report on a 9-1-1 Resource Center filed by Qwest Corporation, Commission Staff, the Colorado Office of Consumer Counsel, AT&T Communications of the Mountain States, Inc., and DIECA Communications, Inc., doing business as Covad Communications Company, is approved.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

3. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 19, 2006.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners