

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-06-IH-2959
)	
Qwest Communications Company, LLC)	NAL/Acct. No. 201032080029
)	
)	FRN No. 0018421941

ORDER

Adopted: June 28, 2010

Released: June 29, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Qwest Communications Company, LLC f/k/a Qwest Communications Corporation (“QCC” or the “Company”). The Consent Decree resolves and terminates the Bureau’s investigation into QCC’s compliance with section 276 of the Communications Act of 1934, as amended (the “Act”),¹ and the Commission’s rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits in order to enable payphone service providers (“PSPs”) to collect compensation for coinless calls originated from pay telephones.²

2. The Bureau and QCC have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether QCC possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,³ and Sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 276.

² See, e.g., *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Report & Order, 18 FCC Rcd 19975, 19992, ¶ 35 (2003); *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Memorandum Opinion & Order, 13 FCC Rcd 4998, 5020, ¶ 37 (Common Carrier Bureau 1998).

³ See 47 U.S.C. § 154(i), 503(b).

6. **IT IS FURTHER ORDERED** that the above-referenced investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class certified mail, return receipt requested, to Harisha J. Bastiampillai, Esq., Senior Attorney, Qwest Communications Company, LLC, 607 14th Street, N.W., Suite 950, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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⁴ See 47 C.F.R. §§ 0.111, 0.311.

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Qwest Communications Company, LLC)	
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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and Qwest Communications Company, LLC f/k/a Qwest Communications Corporation (“QCC” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into QCC’s compliance with section 276 of the Communications Act of 1934, as amended (the “Act”),¹ and the Commission’s rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits in order to enable payphone service providers (“PSPs”) to collect compensation for coinless calls originated from pay telephones.²

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-714.
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (f) “Investigation” means the investigation commenced by the Bureau’s August 31, 2006, August 22, 2007, and October 7, 2008 Letters of Inquiry³ regarding QCC’s compliance

¹ 47 U.S.C. § 276.

² See, e.g., *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Report & Order, 18 FCC Rcd 19975, 19992, ¶ 35 (2003) (“2003 Payphone Order”); *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Memorandum Opinion & Order, 13 FCC Rcd 4998, 5020, ¶ 37 (Common Carrier Bureau 1998) (“1998 Payphone Order”).

³ See *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications Corporation (Aug. 31, 2006) (“August 31, 2006 LOP”); (continued...)

with section 276 of the Act,⁴ and the Commission's rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits in order to enable PSPs to collect compensation for coinless calls originated from pay telephones.⁵

- (g) "Local Exchange Carrier" or "LEC" means a person or company engaged in the provision of telephone exchange service, as defined under section 153(47) of the Act.⁶ "LECs" include incumbent local exchange carriers, as defined under section 251(h) of the Act,⁷ and all other LECs, including competitive local exchange carriers.
- (h) "Order" or "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (i) "Parties" means Qwest Communications Corporation and the Bureau.
- (j) "Qwest Communications Corporation" or "QCC" means Qwest Communications Company, LLC f/k/a Qwest Communications Corporation and its predecessors-in-interest and successors.
- (k) "Payphone Service Provider" or "PSP" means a person or company engaged in the provision of payphone service, as defined under section 276(d) of the Act.⁸
- (l) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (m) "Switch-Based Reseller" or "SBR" means a reseller of telecommunications service that possesses switching equipment and can therefore physically receive a call and route it onward, either to the LEC serving the call recipient or to the switch of another reseller.⁹

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Qwest Commc'ns Corp., EB-06-IH-2959, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications Corporation (Aug. 22, 2007) ("*August 22, 2007 LOP*"); *Qwest Commc'ns Corp.*, EB-06-IH-2959, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications Corporation (Oct. 7, 2008) ("*October 7, 2008 LOP*").

⁴ 47 U.S.C. § 276.

⁵ See, e.g., *2003 Payphone Order*, 18 FCC Rcd at 19992, ¶ 35; *1998 Payphone Order*, 13 FCC Rcd at 5020, ¶ 37.

⁶ 47 U.S.C. § 153(47). See 47 U.S.C. § 153(26).

⁷ 47 U.S.C. § 251(h).

⁸ *Id.* at § 276(d).

⁹ E.g., *APCC Services, Inc. v. Network IP, LLC*, 20 FCC Rcd 2073, 2075-76, ¶¶ 5-6 (Enforcement Bureau 2005).

II. BACKGROUND

3. Pursuant to section 276(b)(1)(A) of the Act, the Commission has prescribed regulations that “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”¹⁰ The Commission’s rules governing payphone compensation obligations and procedures are codified under sections 64.1300-1320 of the Commission’s rules.¹¹

4. On August 31, 2006, the Bureau issued a letter of inquiry (“LOI”) to QCC.¹² The *August 31, 2006 LOI* directed QCC, among other things, to submit a sworn written response to a series of questions relating to the Qwest’s compliance with the Commission’s payphone compensation rules. QCC responded to the *August 31, 2006 LOI* on October 4, 2006.¹³ On April 13, 2007, QCC voluntarily disclosed to the Bureau an issue regarding QCC’s ability to transmit payphone-specific coding digits to switch-based reseller customers using Integrated Services Digital Network (“ISDN”) technology.¹⁴ Therefore, on August 22, 2007, the Bureau issued a letter of inquiry to QCC relating to the QCC’s compliance with the Commission’s rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits.¹⁵ QCC responded to the *August 22, 2007 LOI* on September 14, 2007, and provided supplemental responses on October 12, October 31, and November 30, 2007.¹⁶ On September 8, 2008, PSPs provided the Bureau information regarding calls that were not being identified as payphone-originated calls. Therefore, the Bureau issued a letter of inquiry to QCC on October 7, 2008 regarding possible coding digit issues with these calls.¹⁷ QCC provided a

¹⁰ 47 U.S.C. § 276(b)(1)(A).

¹¹ 47 C.F.R. §§ 64.1300-1320.

¹² See *supra* note 3.

¹³ *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Jacqueline Spindler, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Oct. 4, 2006).

¹⁴ *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 13, 2007).

¹⁵ See *supra* note 3.

¹⁶ *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Michele Berlove, Attorney Advisor, and Elizabeth Mumaw, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Sept. 14, 2007); *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Michele Berlove, Attorney Advisor, and Elizabeth Mumaw, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Oct. 12, 2007); *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Michele Berlove, Attorney Advisor, and Elizabeth Mumaw, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Oct. 31, 2007); *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Daphne Butler, Attorney, Qwest Communications Corp. to Michele Berlove, Attorney Advisor, and Elizabeth Mumaw, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Nov. 30, 2007).

¹⁷ *Qwest Commc’ns Corp.*, EB-06-IH-2959, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications Corporation (Oct. 7, 2008) (“*October 7, 2008 LOI*”).

response to the *October 7, 2008 LOI* on November 6, 2008,¹⁸ and in response to a March 5, 2009 Bureau letter QCC supplemented its November 6, 2008 response to the *October 7, 2008 LOI* on April 2, 2009.¹⁹

III. TERMS OF AGREEMENT

5. **Adopting Order.** The parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** QCC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date: Violations.** The parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, and without any determination of liability on the part of QCC, QCC agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion or in response to a third party objection, or recommend to the Commission, any new proceeding, formal or informal, or take any action on its own motion, or recommend to the Commission any action, against QCC concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion or in response to a third party objection, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion, or recommend to the Commission any action, against QCC with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, QCC agrees to implement the following Compliance Plan related to future compliance with the Act, and the Commission's rules and orders regarding the obligations of telecommunications service providers to receive and transmit payphone-specific coding digits in order to enable PSPs to collect compensation for

¹⁸ *Qwest Commc'ns Corp.*, EB-06-IH-2959, Letter from Harisha Bastiampillai, Senior Attorney, Qwest Communications Corp. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Nov. 6, 2008).

¹⁹ See *Qwest Commc'ns Corp.*, EB-06-IH-2959, Electronic Message from Letter from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Melissa Newman, Vice President-Federal Regulatory, Qwest Communications Corporation (Mar. 5, 2009); *Qwest Commc'ns Corp.*, EB-06-IH-2959, Letter from Harisha Bastiampillai, Senior Attorney, Qwest Communications Corp. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 2, 2009).

coinless calls originated from pay telephones. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Official(s)**. QCC designates its Vice President - Customer Service Operations as the point(s) of contact for QCC's obligations related to payphone compensation and who will be responsible for implementation of this Compliance Plan. The Compliance Official(s) will be familiar with the Commission's payphone compensation rules and orders.
- (b) **Compliance Training**. QCC will conduct training of appropriate employees with respect to the Commission's payphone compensation rules within six (6) months of the Effective Date of the Consent Decree and will update the training at least annually for such employees.
- (c) **Compliance Procedures**. QCC will diligently investigate and take prompt action to resolve any problems QCC has transmitting coding digits from QCC to SBRs. Likewise, QCC will diligently investigate and take prompt action to resolve possible payphone-specific coding digit failures reported by a third party to QCC. Whenever QCC discovers a payphone-specific coding digit failure, it will share all relevant, non-proprietary information with representatives of any affected LECs, SBRs, or PSPs to enable affected LECs, SBRs or PSPs to take action to resolve the coding digit failure as soon as possible and to minimize the loss or delay of payphone compensation. Relevant, non-proprietary information includes but is not limited to the following information available to QCC:
 - (1) the cause of the payphone-specific coding digit failure;
 - (2) the dates when the payphone-specific coding digit failure began and either was resolved or is expected to be resolved;
 - (3) the specific QCC facilities affected by the payphone-specific coding digit failure;
 - (4) if applicable, for each calendar quarter, the specific QCC switch types affected by the information-digit failure;
 - (5) the means QCC is using to identify compensable calls that were affected by the payphone-specific coding digit failure, and the action QCC is taking to assist SBRs to identify compensable calls that were affected by the payphone-specific coding digit failure;
 - (6) regarding information provided to PSPs, any information that, because of the payphone-specific coding digit failure, QCC was unable to include in its quarterly Completing Carrier and Intermediate Carrier reports submitted under section 64.1310 of the Commission's rules;²⁰ and
 - (7) any other relevant information that enables affected LECs, SBRs and PSPs to take steps to resolve payphone-specific coding digit failures as soon as possible and to minimize the loss or delay of payphone compensation.

²⁰ 47 C.F.R. § 64.1310.

QCC will update and post to its billing agents website information regarding the failure to transmit payphone-specific coding digits as soon as possible. At a minimum, QCC will update the posting with status reports on a quarterly basis until the information-digit failure is resolved. Until the payphone-specific coding digit failures and associated compensation issues are resolved, Qwest has an ongoing obligation to ensure its information is complete and accurate.

(d) **Compliance Reports.** QCC will submit Compliance Reports to the Commission Twelve (12) months and twenty-four (24) months after the Effective Date. Each Compliance Report will include a certification by the Compliance Official stating that he or she has personal knowledge that QCC (1) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, with section 276 of the Act,²¹ and with the Commission's rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits;²² (2) has been utilizing those procedures at all times since the previous Compliance Report was submitted; and (3) is not aware of any instances of non-compliance. If the Compliance Official is not able to so certify, he shall explain fully the reason(s) therefore. All Compliance Reports shall be directed to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The certification must comply with section 1.16 of the Commission's rules,²³ and be substantially in the form set forth therein.

(e) **Self-Disclosure.** QCC will report any occurrences of non-compliance with the terms and conditions of this Consent Decree, with section 276 of the Act, and with the Commission's rules and regulations regarding the obligations of telecommunications service providers to transmit payphone-specific coding digits, within 60 days after QCC's Compliance Official or senior executive management becomes aware of the matter (whether from a report from an employee or otherwise), to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, provided that this report shall not be required if QCC cures the violation before the report is due.

(f) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

10. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against QCC or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new allegations of noncompliance by QCC of the Act, the rules, or the Order.

11. **Voluntary Contribution.** QCC agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$75,000 within 10 days after the Effective Date of the Adopting

²¹ 47 U.S.C. § 276.

²² See, e.g., *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Report & Order, 18 FCC Rcd 19975, 19992, ¶ 35 (2003); *Pay Tel. Reclassification & Compensation Provisions of the Telecomms. Act of 1996*, Memorandum Opinion & Order, 13 FCC Rcd 4998, 5020, ¶ 37 (Common Carrier Bureau 1998).

²³ 47 C.F.R. § 1.16.

Order. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. QCC will also send electronic notification within forty-eight (48) hours of the date said payment is made to david.janas@fcc.gov.

12. **Waivers.** QCC waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. QCC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither QCC nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and QCC shall waive any statutory right to a trial *de novo* regarding the terms and conditions of this Consent Decree. In addition, nothing in the Consent Decree shall preclude QCC from petitioning the Commission for relief as to future obligations under Part 64 of these Rules. QCC hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²⁴ relating to the matters addressed in this Consent Decree.

13. **Subsequent Rule or Order.** The parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which QCC does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** QCC agrees that the provisions of this Consent Decree shall be binding on its successors and any entity to which QCC assigns or transfers substantially all of its assets.

15. **Final Settlement.** The parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the parties. The parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, QCC does not admit or deny noncompliance, violation or liability for violating the Act or Commission rules or orders in connection with the matters that are the subject of this Consent Decree.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both parties.

17. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

²⁴ 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Roland Thornton
Executive Vice President -- Wholesale Markets
Qwest Communications Corporation

Date