

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_ (\_\_\_)

**Securities and Exchange Commission,**

**Plaintiff,**

vs.

**Roger B. Hoaglund,**

**Defendant.**

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**COMPLAINT**

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Plaintiff Securities and Exchange Commission (“Commission”), for its complaint, alleges as follows:

**I. SUMMARY**

- 1) This matter involves the activities of Roger B. Hoaglund in connection with four transactions that were part of a scheme by Qwest Communications International Inc. (“Qwest”) to inflate revenue and earnings artificially. In two transactions, Hoaglund, a Qwest executive, provided, or knew others provided, a secret side agreement allowing the purchaser of activated fiber-optic cable or “capacity” to exchange or “port” the capacity purchased for different capacity. The explicit purpose of making the side agreements secret was to conceal from Qwest’s accountants and outside auditors the purchasers’ ability to port, since such exchange rights would have defeated, under generally accepted accounting principles (“GAAP”), the immediate recognition of revenue. Moreover, in two other transactions, Hoaglund backdated, or knew others backdated, contract

documents. The explicit purpose of backdating contract documents was to demonstrate falsely that the contracts were completed by the end of the quarter as required by GAAP to recognize revenue in that quarter. As a result, Qwest's accountants and auditors were led to believe that recognizing revenue in those quarters was proper.

- 2) Hoaglund's actions caused Qwest to recognize improperly \$273 million in revenue. Specifically, Hoaglund's actions caused Qwest to recognize improperly approximately: \$10 million in revenue for the fourth quarter ended December 31, 1999; \$109 million in revenue for the fourth quarter ended December 31, 2000; \$69 million in revenue for the first quarter ended March 31, 2001; and \$85 million in revenue for the third quarter ended September 30, 2001.
- 3) Hoaglund violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], violated Securities Exchange Act of 1934 ("Exchange Act") Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], violated Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1], and aided and abetted Qwest's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]. Unless restrained and enjoined, Hoaglund will in the future violate or aid and abet violations of such provisions.
- 4) The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)] for an order permanently restraining and enjoining Hoaglund and granting other equitable relief.

- 5) The Commission seeks an order requiring Hoaglund to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and to disgorge all ill-gotten gains, including prejudgment interest.

## II. JURISDICTION AND VENUE

- 6) This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Venue lies in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].
- 7) In connection with the transactions, acts, practices, and courses of business described in this Complaint, Hoaglund, directly or indirectly, has made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.
- 8) Certain of the transactions, acts, practices and courses of business constituting the violations of law alleged herein occurred within this district. Moreover, Hoaglund resides in this district.

## III. DEFENDANT

- 9) **Roger B. Hoaglund**, a resident of Evergreen, Colorado, was a Qwest executive from February 1998 through October 2002, and at various times was the vice president and senior vice president of Qwest's pricing and offer management unit. Hoaglund's pricing unit supported Qwest's wholesale business unit in negotiating and closing Indefeasible Rights of Use ("IRU") transactions.<sup>1</sup> Hoaglund's responsibilities included structuring

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<sup>1</sup> An IRU is an irrevocable right to use a specific amount of capacity for a specified time period.

IRU transactions to obtain immediate revenue recognition and negotiating with IRU customers to close the transactions. Hoaglund also communicated with Qwest's accountants and auditors regarding IRU transactions.

#### **IV. RELATED PARTY**

- 10) **Qwest Communications International Inc.**, based in Denver, Colorado, is one of the largest telecommunications and Internet services companies in the United States.
- 11) Qwest's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and the company is obligated to file reports on Forms 10-K and 10-Q. Qwest's common stock is traded on the New York Stock Exchange.

#### **V. FACTUAL ALLEGATIONS**

- 12) During 2000 and 2001, as well as in other time periods, in Commission filings and in public statements, Qwest senior executives emphasized its projected revenues and earnings growth, and focused investors on the revenues and growth generated from its nationwide fiber-optic network. In turn, Qwest senior executives placed extraordinary pressure throughout the company to meet or exceed the publicly announced revenue targets. Qwest could not, however, meet its targets through legitimate means.
- 13) Therefore, Qwest senior management relied on undisclosed IRU sales as a method to make up the difference between Qwest's real revenues and its projected revenue targets. Qwest accounted for IRUs as sales-type leases, and recognized immediately revenue upon purported delivery and acceptance of the capacity. Qwest senior management commonly referred to IRUs as "gap fillers." IRUs were further referred to as "heroin," and Qwest as a drug user, meaning that Qwest was addicted to using IRUs as an illegitimate means to meet revenue targets.

- 14) In two IRU transactions in which Hoaglund was involved between December 1999 and December 2000, Qwest's IRU customers purchased capacity on the condition of having the ability to port, or exchange, the capacity they purchased for other capacity in the future. In each instance, Hoaglund understood that the customers would not complete the IRU transactions without an agreement to port. Hoaglund also knew that Qwest's corporate accountants would reject immediate revenue recognition if the IRU agreements contained any reference to portability because portability created a future contingency defeating the prohibited immediate revenue recognition under GAAP.
- 15) Hoaglund knew that all aspects of each IRU agreement had to be fully communicated to Qwest's accountants so that they could review the agreement thoroughly. Therefore, in order to circumvent Qwest's internal accounting controls, on one occasion Hoaglund participated in providing an IRU purchaser with a secret side agreement to port and, on a second occasion, he personally provided the purchaser with a secret side agreement to port. In each instance, Hoaglund knew that providing a secret side agreement, rather than including portability in the IRU agreements, would conceal material facts from Qwest's internal accountants.
- 16) Because the IRU sales falsely appeared eligible for upfront revenue recognition as a result of the secret nature of the portability side agreements, Hoaglund caused Qwest to recognize improperly approximately: \$10 million of revenue in the fourth quarter ended December 31, 1999; and \$109 million of revenue in the fourth quarter ended December 31, 2000.
- 17) Additionally, in the rush to complete enough IRU transactions by quarter close to attempt to meet Qwest's revenue targets, Qwest backdated two IRU agreements to make it appear

falsely that they had been completed by March 31, 2001 and September 30, 2001, respectively. Hoaglund knew that the quarters ended March 31, 2001 and September 30, 2001, respectively, had closed, but Qwest senior management desired the revenue from the transactions to be included in those quarters. Hoaglund knew also that Qwest's internal accountants and auditors would not permit revenue recognition in those quarters if they knew the agreements had not been completed until after the quarters closed because GAAP requires contract completion by the end of the quarter in which the revenue is recognized. Therefore, in each instance, Hoaglund participated in backdating the IRU agreements to give the false impression that the contracts had been completed.

- 18) Because the two backdated IRU agreements falsely appeared eligible for immediate revenue recognition, Hoaglund caused Qwest to recognize improperly approximately \$69 million of revenue in the first quarter ended March 31, 2001, and approximately \$85 million of revenue in the third quarter ended September 30, 2001.

**FIRST CLAIM FOR RELIEF**  
**Securities Act Section 17(a)(1) [15 U.S.C. § 77q(a)(1)]**

- 19) The Commission repeats and realleges paragraphs 1 through 18 above.
- 20) Hoaglund directly or indirectly, with scienter, in the offer or sale of Qwest securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has employed a device, scheme, or artifice to defraud.
- 21) Hoaglund violated and unless restrained and enjoined will violate Securities Act Section 17(a)(1).

**SECOND CLAIM FOR RELIEF**  
**Securities Act Sections 17(a)(2) and 17(a)(3) [15 U.S.C. § 77q(a)(2) and (3)]**

- 22) The Commission repeats and realleges paragraphs 1 through 21 above.

- 23) Hoaglund directly or indirectly, in the offer or sale of Qwest securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, has obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of Qwest securities.
- 24) Hoaglund violated and unless restrained and enjoined will violate Securities Act Sections 17(a)(2) and (3).

**THIRD CLAIM FOR RELIEF**  
**Exchange Act Section 10(b) [15 U.S.C. § 78j(b)]**  
**and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5]**

- 25) The Commission repeats and realleges paragraphs 1 through 24 above.
- 26) Hoaglund, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.
- 27) Hoaglund violated and unless restrained and enjoined will violate Exchange Act Section 10(b) and Rule 10b-5 thereunder.

**FOURTH CLAIM FOR RELIEF**  
**Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and**  
**Exchange Act Rules 12b-20, 13a-1, 13a-11, and 13a-13**  
**[17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]**

- 28) The Commission repeats and realleges paragraphs 1 through 27 above.
- 29) Qwest, an issuer of a security registered pursuant to Section 12 of the Exchange Act, filed materially misleading annual, periodic, and quarterly reports with the Commission and failed to file with the Commission, in accordance with rules and regulations the Commission has prescribed, information and documents required by the Commission to keep current information and documents required in or with an application or registration statements filed pursuant to Section 12 of the Exchange Act and annual reports and quarterly reports as the Commission has prescribed.
- 30) By reason of the foregoing, Qwest violated Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder and Hoaglund aided and abetted Qwest's violations. Unless restrained and enjoined, Hoaglund will aid and abet violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

**FIFTH CLAIM FOR RELIEF**  
**Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)]**

- 31) The Commission repeats and realleges paragraphs 1 through 30 above.
- 32) Qwest failed to make and keep, and directly or indirectly falsified or caused to be falsified, books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements.



- 33) By reason of the foregoing, Qwest violated Exchange Act Section 13(b)(2)(A) and Hoaglund aided and abetted Qwest's violations. Unless restrained and enjoined, Hoaglund will aid and abet violations of Exchange Act Section 13(b)(2)(A).

**SIXTH CLAIM FOR RELIEF**  
**Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]**

- 34) The Commission repeats and realleges paragraphs 1 through 33 above.
- 35) Qwest's books, records and accounts were subject to Section 13(b)(2)(A) of the Exchange Act, and Hoaglund, directly or indirectly, caused to be falsified Qwest's books, records and accounts.
- 36) Hoaglund violated and unless restrained and enjoined will violate Rule 13b2-1 under the Exchange Act.

**SEVENTH CLAIM FOR RELIEF**  
**Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)]**

- 37) The Commission repeats and realleges paragraphs 1 through 36 above.
- 38) Hoaglund knowingly circumvented a system of internal accounting controls and knowingly falsified books, records, or accounts described in Exchange Act Section 13(b)(2).
- 39) Hoaglund violated and unless restrained and enjoined will violate Exchange Act Section 13(b)(5).

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

- 1) Find that Hoaglund violated or aided and abetted violations of the provisions of law and rules as alleged in this Complaint:

- 2) Enter an injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Hoaglund from violating, or aiding and abetting violations of, directly or indirectly, the provisions of law and rules alleged in this Complaint;
- 3) Order Hoaglund to disgorge all ill-gotten gains, including prejudgment interest, resulting from the violations alleged herein; and
- 4) Order Hoaglund to pay civil penalties pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)], in an amount to be determined by Court.

Dated: \_\_\_\_\_, 2005

Respectfully submitted,

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