

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 51375 / March 15, 2005**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2212 / March 15, 2005**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-11855**

<p><b>In the Matter of</b></p> <p><b>Bryan K. Treadway, CPA</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Bryan K. Treadway ("Treadway" or "Respondent").<sup>1</sup>

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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<sup>1</sup> This matter is related to a civil action, Securities and Exchange Commission v. Bryan K. Treadway, Civ. Action No. 05-N-484 (PAC), filed on March 15, 2005, in which Treadway has consented to pay a \$40,000 civil penalty.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>2</sup> that:

#### A. Respondent

Bryan K. Treadway, 39, of Atlanta, Georgia, was hired by Qwest Communications International Inc. ("Qwest") in April 2001 as assistant controller and was promoted to controller in January 2002. Treadway resigned from Qwest in May 2002. Treadway is licensed as a certified public accountant in Georgia and is currently employed by a publicly owned company based in Atlanta, Georgia.

#### B. Related Party

Qwest, based in Denver, Colorado, is one of the largest telecommunications and Internet services companies in the United States. 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.

#### C. Qwest's Improper Accounting for Indefeasible Rights of Use ("IRUs") Transactions

1. During 2001 and earlier, Qwest emphasized in Commission filings and in public statements its projected revenues and earnings growth, and issued aggressive growth and revenue targets to the investment community. In turn, Qwest's most senior executives, including Treadway's superiors, placed extraordinary pressure throughout the company to meet or exceed the publicly announced revenue targets. Qwest could not, however, meet its targets through transactions generating recurring revenue. The lack of recurring revenue created a gap between Qwest's publicly stated revenue targets and actual revenue.

2. To make up for the shortfall between Qwest's actual revenue and its projected revenue targets, Qwest relied on one-time sales of portions of its network in the form of IRUs.<sup>3</sup> Qwest accounted for IRUs as sales-type leases, and recognized that revenue immediately.

3. Prior to Treadway's arrival at Qwest and as far back as 1999, Qwest's accounting department failed to maintain proper accounting policies, procedures, and practices relating to IRU revenue recognition generally and immediate revenue recognition on IRUs in particular. Furthermore, Qwest's IRU revenue recognition policy, which was put into place two years prior to Treadway's arrival at the company, failed to meet several generally accepted accounting principles ("GAAP") criteria and Qwest improperly recognized approximately \$1 billion in IRU revenue during fiscal year 2001. While Treadway did not independently examine Qwest's IRU policy that

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<sup>2</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>3</sup> An IRU is an irrevocable right to use specific fiber optic cable or fiber capacity for a specified time period.

had been implemented in 1999, he was aware of certain red flags suggesting Qwest's IRU accounting was not in conformity with GAAP. As a result, Treadway failed to ensure that Qwest's IRU accounting met the immediate revenue recognition criteria under GAAP, and did not confirm that Qwest had an adequate system of internal controls and procedures concerning its IRU accounting.

4. Starting in the summer of 2001 through early 2002, Treadway learned information that suggested Qwest's upfront revenue recognition on IRUs was not in compliance with GAAP. Treadway learned that Qwest sometimes allowed customers to return or "port" the assets purchased in exchange for different assets. On two occasions, Treadway did not inform Qwest's auditors of accounting issues raised by legal opinions concerning promises by Qwest to port. Moreover, Treadway became concerned with Qwest's ability to pass title, the fair market value of IRUs, the failure to identify IRU inventory, and the business purpose of IRU sales. Had Treadway independently examined Qwest's established accounting policies and practices for IRUs after learning of these red flags, he would have determined that Qwest's revenue recognition on IRU sales was not in accordance with GAAP.

5. Qwest's improper accounting for IRUs resulted in material misstatements of the company's revenues, income and earnings per share in, among others, Qwest's periodic reports filed with the Commission on Form 10-K for the year ended December 31, 2001, on Form 10-Q for the quarters ended June 30 and September 30, 2001, and earnings releases attached to Qwest's current reports on Form 8-K filed with the Commission for the same periods. Treadway, along with others, was responsible for the content of the quarterly reports and annual report and he reviewed them prior to their filing with the Commission. He also reviewed the earnings releases filed with the Commission in Qwest's Forms 8-K for the same periods and reviewed the Forms 8-K before they were filed with the Commission.

#### **D. Arizona School Facilities Board**

6. In January 2001, the Arizona School Facilities Board ("ASFB") and Qwest entered into an agreement providing that Qwest would design and implement a statewide network and provide internet and local area network connections for Arizona schools within a two-year period using equipment provided by Qwest. In an effort to meet aggressive revenue targets, Qwest separated the equipment sale from the installation services of the ASFB contract, wrongfully characterizing the sale as a bill and hold transaction under GAAP.

7. Treadway was involved in the decision to characterize inappropriately the sale as a bill and hold transaction. Treadway knew, and informed others, that a bill and hold sale would be closely scrutinized by the auditors. Treadway knew that failure to meet any of the GAAP requirements for a bill and hold sale would make recognition of the revenue indefensible. Treadway requested that other Qwest personnel provide him with documentation of facts sufficient to satisfy the GAAP requirements for a bill and hold sale. In fact, Treadway authored an e-mail message on June 23, 2001, saying that he was "very supportive" in making the bill and hold deal work but was concerned about "ensuring the facts hang together" if questioned.

8. In June 2001, Treadway reviewed and edited a memorandum, which contained false information, analyzing the transaction with ASFB as a bill and hold transaction. Had Treadway independently examined the facts stated in the memorandum, he would have learned that the memorandum contained false information regarding the bill and hold nature of the transaction and the delivery schedule for the equipment.

9. As a result of the characterization of the transaction with the ASFB as a bill and hold transaction, Qwest improperly recognized approximately \$34 million in revenue on the sale of the equipment in its second quarter ended June 30, 2001. As a result, Qwest's June 30, 2001 and September 30, 2001 quarterly reports were materially false and misleading.

**E. Understatements of Compensated Absences Expense and Failure to Disclose Changes in Accounting Methodology**

10. Prior to June 30, 2001, Qwest established and consistently maintained a standing liability for compensated absences (paid time off) of its occupational employees equal to 100 percent of the compensated absences owed to these employees for the entire year. Qwest's occupational employees were credited with all of their compensated absences for the year on January 1. The employees' rights to receive payment for each year's vacation were fully vested and not contingent upon performing future services.

11. To help meet its 2001 financial targets, Qwest, on three occasions, improperly reduced its compensated absences liability resulting in the understatement of 2001 pre-tax loss by \$71.3 million, thereby increasing EBITDA by \$71.3 million. The first improper adjustment reduced the June 30, 2001 compensated absences liability by 50 percent resulting in a \$44.5 million decrease to Qwest's second quarter selling, general and administrative ("SG&A") expenses. The second adjustment made to Qwest's year-end December 31, 2001 financial statements improperly reduced the then-current liability by an additional 50 percent resulting in Qwest's fourth quarter and full year SG&A expenses being reduced by an additional \$23.5 million. Finally, in early 2002, Qwest improperly reduced its December 31, 2001 compensated absences liability and SG&A expenses by another \$5 million. Treadway, pursuant to the instructions of others, carried out these reductions. Treadway did not adequately evaluate the rationale for these reductions. Had Treadway fully evaluated the rationale for these reductions, he would have learned that these reductions were improper.

12. Contrary to GAAP, Qwest failed to disclose its change in accounting for compensated absences and the resulting 2001 financial impact of this change in its filings with the Commission, including its Forms 10-Q for the quarters ended June 30, 2001 and September 30, 2001, and its Form 10-K for the year ended December 31, 2001. Treadway, along with others, reviewed Qwest's Forms 10-Q for the quarters ended June 30, 2001 and September 30, 2001, and its Form 10-K for the year ended December 31, 2001 before they were filed, but failed to add disclosures of these changes.

## **F. Violations**

1. Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1, 13a-11 and 13a-13 require all issuers with securities registered under Section 12 of the Exchange Act to file annual, current, and quarterly reports with the Commission on Forms 10-K, 8-K and 10-Q, respectively. These reporting requirements necessarily include the requirement that the issuer supply accurate information. In addition, Rule 12b-20 requires that reports contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. As a result of the conduct described above, Qwest violated, and Treadway was a cause of Qwest's violations of, Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, with respect to Qwest's Form 10-K for the year ended December 31, 2001; Forms 10-Q for the quarters ended June 30 and September 30, 2001; and Forms 8-K to which Qwest's earnings releases for the same periods were attached.

2. As a result of the conduct described above, Qwest violated, and Treadway was a cause of Qwest's violations of, Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and Section 13(b)(2)(B), which requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

3. Also as a result of the conduct described above, Treadway violated Section 13(b)(5) of the Exchange Act, which prohibits persons from knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record or account; Exchange Act Rule 13b2-1, which prohibits persons from directly or indirectly falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act; and Exchange Act Rule 13b2-2, which prohibits persons from directly or indirectly, making materially false or misleading statements, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an accountant and/or independent auditor in connection with an audit or examination of financial statements or in the preparation or filing of any documents or reports filed with the Commission.

## **Undertakings**

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent undertakes to cooperate with the Commission staff and: (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's

travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Treadway's Offer.

Accordingly, it is hereby ORDERED that Respondent Treadway cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder, and from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Jonathan G. Katz  
Secretary