

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51373 / March 15, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2210 / March 15, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11853

In the Matter of

Mark A. Schumacher,

Respondent.

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 Mark A. Schumacher ("Schumacher" or "Respondent").¹

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.

¹ This matter is related to a civil action, Securities and Exchange Commission v. Mark A. Schumacher, Civ. Action No. 05-N-483 (OES)(USDC D. Colorado), filed on March 15, 2005, in which Schumacher has consented to pay a \$40,000 civil penalty.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

A. Respondent

Schumacher, age 46, of Littleton, Colorado, was controller of Qwest Communications International Inc. ("Qwest") from January 2001 through December 2001. Prior to working for Qwest, Schumacher worked for 17 years in various positions at US West, Inc., which was acquired by Qwest in 2000. Schumacher is licensed as a certified public accountant in Colorado.

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 Schumacher'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 recurring revenue generating transactions. 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.³ Qwest accounted for IRUs as sales-type leases, and recognized revenue immediately upon purported delivery and acceptance of the capacity.

3. Dating back to at least 1999, Qwest's accounting department did not maintain proper accounting policies, procedures, and practices relating to IRU revenue recognition generally and immediate revenue recognition on IRUs in particular. In fact, Qwest's IRU revenue recognition policy failed to meet several GAAP criteria and Qwest improperly recognized approximately \$1 billion in IRU revenue during fiscal year 2001. Upon assuming the position of

² 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.

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

controller in January 2001, Schumacher inherited the flawed system of accounting procedures and controls relating to IRUs. After becoming aware of errors and inconsistencies in Qwest's IRU revenue recognition policies and procedures, Schumacher took several significant steps to correct Qwest's IRU accounting practices and policies. Despite these steps, Schumacher was unsuccessful in ensuring 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. In 2001, Schumacher learned information that suggested Qwest's upfront revenue recognition on IRUs was not in compliance with GAAP. He learned that Qwest allowed customers to return the assets purchased in exchange for different assets, and he 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 Schumacher 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 quarterly reports filed with the Commission on Form 10-Q for the quarters ended March 31, 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 quarters in 2001. Schumacher, along with others, was responsible for the content of the quarterly reports 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. Qwest's Improper Disclosures Relating to Dex

1. In an attempt to show revenue and earnings growth every quarter sufficient to meet publicly announced revenue projections, Qwest accelerated the recognition of revenue from Dex for 2000 by publishing one directory in December 2000 rather than in January 2001, as originally scheduled. This allowed Qwest to recognize an additional \$28 million of Dex revenue in 2000. Qwest's Form 10-K for the year ended December 31, 2000 stated that Dex's revenue in 2000 increased by nearly \$100 million over the previous year due to "an increase in the number of directories published." This statement was misleading because it failed to inform investors that more than one-quarter of the revenue increase was due to the fact that one directory had been published twice in 2000, and that the schedule change would produce a commensurate decline in Dex revenue for the first quarter of 2001.

2. Schumacher should have known that Qwest's disclosures concerning its Dex revenues were misleading. He reviewed Qwest's 2000 Form 10-K before it was filed with the Commission. At the same time, he should have known that the directory schedule change accounted for more than one-quarter of the \$100 million revenue increase mentioned in that report.

3. Additionally, in the first three quarters of 2001, Qwest shortened the lives of some directories, thereby allowing it to recognize revenue in earlier quarters, and lengthened the lives of

other directories from twelve months to thirteen months, thereby allowing the company to bill each advertiser for one additional month of advertising fees. This allowed Qwest to recognize an additional \$42 million in revenue in 2001. Qwest's Forms 10-Q for the quarters ended March 31, June 30 and September 30, 2001 stated that period-over-period changes in Dex's revenue were attributable to changes in the "mix" and/or "lengths" of directories published. These statements were misleading, because they failed to inform investors that Qwest had manipulated its directory publishing schedule to meet financial targets.

4. Schumacher reviewed Qwest's Form 10-K for the fiscal year ended December 31, 2000 and Forms 10-Q for the quarters ended March 31, June 30 and September 30, 2001, and should have known that the disclosures concerning the Dex revenue were misleading.

E. 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 Schumacher 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, 2000; Forms 10-Q for the quarters ended March 31, June 30 and September 30, 2001; and Forms 8-K to which Qwest's earnings releases for the first three quarters of 2001 were attached.

2. As a result of the conduct described above, Qwest violated, and Schumacher caused 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, Schumacher 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; and 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.

Respondent's Cooperation

In determining to accept his Offer, the Commission considered Respondent's cooperation afforded the Commission staff.

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 Schumacher's Offer.

Accordingly, it is hereby ORDERED that Respondent Schumacher cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 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