

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telecom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S.

DOCKET NO. 090538-TP
ORDER NO. PSC-11-0014-PCO-TP
ISSUED: January 4, 2011

ORDER DENYING MOVANTS' JOINT MOTION TO FILE VERY SHORT REPLY AND FINDING QWEST'S MOTION TO STRIKE MOOT

On December 13, 2010, Access Point Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PaeTec Communications, Inc. and US LEC of Florida, LLC d/b/a PaeTec Business Service (Movants) filed a Joint Motion for Leave to File a Very Short Reply to Qwest's Response to Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds.

Joint Motion for Leave to File a Very Short Reply (Joint Motion to File Reply)

The Movants request leave to file a reply to Qwest's Response to Joint Motion to Dismiss Qwest's Response to Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds (Response) to the Movants' Motion to Dismiss arguing that good cause exists to allow the Movants to respond to "incorrect legal assertions" contained in Qwest's Response. The Movants further argue that Qwest was given more time to respond than the Movants were afforded under Rule 28-106-204, Florida Administrative Code, and therefore they should be accorded an exception also since the submission will not delay the case.

Pursuant to Rule 28-106.204(3), Florida Administrative Code, the Movants state that Qwest opposes the Joint Motion to File Reply. Granite Telecommunications, LLC, BullsEye Telecom, Inc, MCI Metro Access Transmission Services d/b/a Verizon Access Transmission Services, XO Communications Services, Inc., Windstream Nuvox, Inc., Birch Communications, Inc., tw telecom of florida, l.p., and DeltaCom, Inc. do not object to or oppose the Motion. No other parties responded prior to the filing of the Motion.

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Qwest's Response and Motion to Strike

On December 14, 2010, Qwest filed a Response and Motion to Strike, requesting the specific points made by the Movants be stricken and denial of the Joint Motion to File Reply. Qwest argues that Rule 28-106.204, Florida Administrative Code, does not permit the Movants to file a reply to a response. Qwest contends that the Commission has already stated that the Commission does not allow reply briefs in Order No. PSC-10-0696-PCO-TP, issued on November 22, 2010. Therefore, the Movants' Motion to File Reply should be denied. Qwest further argues that the Movants have used the Joint Motion to File Reply to improperly argue the merits of the Motion to Dismiss and improperly includes arguments on the merits of Qwest's Response. Qwest requests that the bullet point material on pages 1 and 2 of the Joint Motion to File Reply be stricken.

Movants' Joint Response to Motion to Strike

In response to Qwest's Motion to Strike, the Movants filed a Joint Response to Qwest's Motion to Strike on December 15, 2010. The Movants argue that Qwest failed to comply with Rule 28-106-204(3), Florida Administrative Code, by failing to indicate communications with all other parties of record regarding its Motion to Strike and whether there were any objections. The Movants further assert that without their "illustrative examples" of Qwest's response, the Movants would have no ability to show their need to file a reply. The Movants request that Qwest's Motion to Strike be denied.

Decision

As stated in the Order No. PSC-10-0696-PCO-TP, this Commission does not allow reply briefs to responses.¹ The Movants consistently state that they received an unequal amount of time to write their response to the amount of time Qwest requested and received. However, the Movants were neither precluded from requesting an extension of time to file their Answer to the Complaint nor from requesting additional time to file their Motion to Dismiss. Neither the Uniform Rules nor our rules contemplate a reply to a response to a Motion. Therefore, the Joint Motion to File a Reply is denied.

The Movants had the opportunity to file a request for oral argument, concurrently with the filing of their Reply. Rule 25-22.0022(1), Florida Administrative Code, states that "oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested ... Failure to timely file a request for oral argument shall constitute waiver thereof." Such a request is the appropriate manner by which a party may address the Commission after filing its response.

Additionally, I find that Qwest's Motion to Strike is moot because the Motion to File a Reply Brief is denied. Therefore, the information and arguments contained within the Motion will be given no weight.

¹ Rule 28-106.204, Florida Administrative Code, does not contemplate replies to a Response to a Motion.


This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Access Point Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PaeTec Communications, Inc. and US LEC of Florida, LLC d/b/a PaeTec Business Service's December 13, 2010, Joint Motion for Leave to File a Very Short Reply to Qwest's Response to Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds is hereby denied. It is further

ORDERED that Qwest Communications Company, LLC's December 14, 2010 Motion to Strike is moot.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 4th day of January, 2011.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.