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090538-TP

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Subject: Docket No. 090538-TP - Answer of Granite Telecommunications, LLC
Attachments: 090538-TP Answer of Granite Telecommunications, LLC.pdf

Attached for electronic filing in the above-referenced docket, please find the Answer of Granite Telecommunications, LLC. If you have any questions, please do not hesitate to contact us.

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b. Docket No.: 090538-TP – In re: Complaint of Qwest Communications Company, LLC against MCImetro Access, et al.

c. Filed on behalf of: Granite Telecommunications, LLC

d. Total pages: 9

e. Brief Description: Answer of Granite Telecommunications, LLC to Complaint of Qwest Communications Company, LLC

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

_____))
In re: Complaint of Qwest Communications))
Company, LLC against MCImetro Access))
Transmission Services (d/b/a Verizon Access) Docket No. 090538-TP
Transmission Services); XO Communications))
Services, Inc.; tw telecom of florida, l.p.; Granite))
Telecommunications, LLC; Cox Florida Telcom,))
L.P.; Broadwing Communications, LLC; and John))
Does 1 through 50 (CLEC's whose true names are))
currently unknown) for rate discrimination in))
connection with the provision of intrastate))
switched access services in alleged violation of) Filed: January 29, 2010
Sections 364.08 and 364.10, F.S.))
_____)

**ANSWER OF GRANITE TELECOMMUNICATIONS, LLC TO
COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

Pursuant to Order No. PSC-10-0012-PCO-TP issued in the above-captioned matter, Respondent Granite Telecommunications, LLC (“Granite”) respectfully submits this Answer to the Complaint of Qwest Communications Company, LLC (“Qwest”) filed on December 11, 2009 in the above-captioned matter. Simultaneously with this Answer, Granite has moved to dismiss certain of the requests for relief set forth in Qwest’s Complaint. *See* Joint CLECs’ Partial Motion to Dismiss (filed Jan. 29, 2010). Granite reserves the right to later seek dispositive relief based on any or all of the affirmative defenses raised herein.

In response to the specific allegations set forth in the Complaint, Granite states as follows:

1. Granite denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 1 of the Complaint.

2. Granite denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 2 of the Complaint, except admits the allegations contained in subparagraph 2.d.

3. The allegations of paragraph 3 state a legal conclusion and, as such, Granite neither admits nor denies the allegations. Granite respectfully refers all questions of law to the Commission for determination after hearing.

4. The allegations of paragraph 4 state a legal conclusion and, as such, Granite neither admits nor denies the allegations. Granite respectfully refers all questions of law to the Commission for determination after hearing.

5. The allegations of paragraph 5 state a legal conclusion and, as such, Granite neither admits nor denies the allegations. Granite respectfully refers all questions of law to the Commission for determination after hearing.

6. Granite denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 6 of the Complaint, except admits that Granite has filed a price list with the Commission for intrastate switched access services provided in Florida.

7. Granite denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 7 of the Complaint, except admits that Granite has provided intrastate switched access services to Qwest in Florida and has billed Qwest in accordance with its price list on file with the Commission.

8. Granite denies the allegations set forth in paragraph 8 of the Complaint, except admits that the Minnesota Public Utilities Commission opened dockets to investigate the terms under which various carriers were providing intrastate switched access services in Minnesota, and respectfully refers to the public record of those proceedings for the scope and results thereof.

9. Granite denies the allegations set forth in paragraph 9 of the Complaint, except admits that certain agreements between CLECs and IXC's relating to intrastate access services, including a settlement agreement between Granite and AT&T, were identified during the Minnesota Public Utilities Commission proceedings, and respectfully refers to the public record of those proceedings for the scope and results thereof.

10. Granite denies knowledge or information sufficient to form a belief as to each and every allegation contained in subparagraphs 10.a., 10.b., 10.c., 10.e., 10.f, and 10.g.

11. Granite denies each and every allegation contained in paragraph 10.d.i., except admits that Granite has a price list on file with the Commission and has billed Qwest intrastate access charges in accordance with the rates and terms of such price list, including Section 5.1 of Granite Telecommunications, LLC, Florida P.S.C. Price List No. 1.

12. Granite denies each and every allegation contained in paragraph 10.d.ii, except admits that Granite has billed Qwest intrastate access charges in accordance with the terms of its filed price list; that Granite was compelled to enter into a "settlement agreement" with AT&T in 2003, under which access rates charged to AT&T were capped on a nationwide basis; that Qwest sent correspondence to Granite demanding, *inter alia*, off-tariff rates, terms and conditions, and copies of third-party agreements; and that Granite sent to Qwest correspondence responsive to Qwest's demands. Granite respectfully refers all questions of law to the Commission for determination after hearing.

13. Granite responds to the allegations contained in paragraph 11 to the extent and in the same way Granite has responded to Qwest's allegations contained in paragraphs 1 through 10.

14. Granite denies each and every allegation contained in paragraph 12 to the extent they relate to Granite, except to admit that a telecommunications company may in appropriate circumstances enter into contracts with customers that deviate from its tariffs, and respectfully refers all questions of law to the Commission for determination after hearing.

15. Granite denies each and every allegation contained in paragraph 13 to the extent they relate to Granite, and respectfully refers all questions of law to the Commission for determination after hearing.

16. Granite responds to the allegations contained in paragraph 14 to the extent and in the same way Granite has responded to Qwest's allegations contained in paragraphs 1 through 13.

17. Granite denies each and every allegation contained in paragraph 15 to the extent they relate to Granite, except to admit that Granite has a price list on file with the Commission that contains rates and terms for intrastate switched access services, and respectfully refers all questions of law to the Commission for determination after hearing.

18. Granite denies each and every allegation contained in paragraph 16 to the extent they relate to Granite, except admits that Granite has billed Qwest intrastate access charges in accordance with the terms of its filed price list; that Granite has entered into settlement agreements with IXCs that relate to intrastate access rates in Florida; and that Granite was compelled to enter into a settlement agreement with AT&T in 2003, under which access rates charged to AT&T were capped on a nationwide basis and deviate from the price list rate. Granite respectfully refers all questions of law to the Commission for determination after hearing.

19. No response is required to the allegations in paragraphs 17, 18, and 19, as they do not apply or relate to Granite.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

20. Qwest cannot benefit from the rates and terms of an invalid and/or unenforceable agreement. To the extent the alleged settlement agreements are determined to be invalid or unenforceable, the IXCs must pay Granite in accordance with Granite's duly filed tariff.

SECOND AFFIRMATIVE DEFENSE

21. Qwest has failed to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

22. Granite has not engaged in any unlawful rate discrimination under Florida law, or otherwise violated applicable laws and regulations.

FOURTH AFFIRMATIVE DEFENSE

23. Granite has complied with all obligations imposed under Florida statutes and regulations in all material respects.

FIFTH AFFIRMATIVE DEFENSE

24. The rates for switched access service set forth in Granite's price list on file with the Commission are just, reasonable, nondiscriminatory, and otherwise lawful.

SIXTH AFFIRMATIVE DEFENSE

25. Any rates for switched access services charged by Granite under agreement are just, reasonable, nondiscriminatory, and otherwise lawful.

SEVENTH AFFIRMATIVE DEFENSE

26. Qwest's claims are barred by applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

27. Qwest lacks standing to allege a violation of any applicable statute or regulation.

NINTH AFFIRMATIVE DEFENSE

28. Qwest's claims, including without limitation its claim for "reparations," are barred by Florida law and/or the filed rate doctrine.

TENTH AFFIRMATIVE DEFENSE

29. The Commission does not have jurisdiction to hear the Complaint and/or award the relief that Qwest's Complaint seeks.

ELEVENTH AFFIRMATIVE DEFENSE

30. Qwest's claims are barred in whole or in part by laches, waiver, estoppel, and/or unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

31. The Complaint is barred, in whole or in part, since Qwest is not similarly situated to any IXCs with which Granite may have an agreement for intrastate switched access services.

WHEREFORE, having responded to the Complaint, Granite Telecommunications, LLC, respectfully requests that the Commission issue and Order dismissing the Complaint and granting to Granite such further relief as the Commission deems just and proper.

Respectfully submitted,

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Dated: January 29, 2010

By: s/ Andrew M. Klein
Andrew M. Klein
Counsel for Respondent
Granite Telecommunications, LLC

*Request for naming of qualified representatives to be separately filed in Docket No. 100008-OT

**CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP**

I hereby certify that a true and correct copy of the foregoing was served by regular U.S.

Mail and electronic mail on this 29th day of January 2010, to the following:

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