

**Dorothy Menasco**

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**Sent:** Friday, January 29, 2010 4:08 PM  
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**Subject:** Docket No. 090538-TP  
**Attachments:** Broadwing.Answer.01 29 2009.pdf

**The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:**

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**The docket number and title of docket:**

Docket No. 090538-TP

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 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 Sections 364.08 and 364.10, F.S.

**The name of the party on whose behalf the document is filed:**

Broadwing Communications, LLC

**The total number of pages in the attached document: 9****A brief but complete description of each attached document:**

Broadwing Communications, LLC's Answer and Affirmative Defenses

**Marsha E. Rule, Esq.**

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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 Telcom, L.P.; Broadwing )  
Communications, LLC; and John Does 1 )  
through 50 (CLECs whose true names are )  
currently unknown) for rate discrimination )  
connection with the provision of intrastate )  
switched access services in alleged of )  
Sections 364.08 and 364.10, F.S. )  

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Docket No. 090538-TP

Filed: January 29, 2010

**BROADWING COMMUNICATIONS, LLC'S  
ANSWER AND AFFIRMATIVE DEFENSES**

Pursuant to Rule 28-106.204, Florida Administrative Code, Broadwing Communications, LLC, ("Broadwing") files its Answer and Affirmative Defenses Qwest Communications Company, LLC's ("Qwest") Complaint in the above-filed docket. In support, Broadwing states:

**INTRODUCTION**

Broadwing's Answer and Affirmative Defenses are filed subject to and without waiving the Joint CLECS' Partial Motion to Dismiss previously filed on January 29, 2010. Broadwing reserves the right to amend, add or delete portions of its Answer and Affirmative Defenses if necessary after further investigation and discovery.

The name and contact information for Broadwing's designated representatives in this matter are:

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DOCUMENT NUMBER-DATE  
00687 JAN 29 2010  
FPSC-COMMISSION CLERK

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Qwest generally asserts a statutory basis for its claims and summarizes its allegations in two unnumbered introductory paragraphs of its complaint. These paragraphs are not identified as allegations in support of the complaint and thus do not require response. However, to the extent a response may be required, Broadwing denies that the cited statutes and rules support Qwest's claims or permit the relief sought, and denies the second unnumbered paragraph in its entirety insofar as it relates to Broadwing. Broadwing denies allegations relating to other CLECs due to lack of knowledge.

### **ANSWER**

Broadwing responds to the numbered paragraphs of Qwest's complaint as follows:

#### **PARTIES AND JURISDICTION**

1. Broadwing acknowledges Qwest's designation of representatives. Broadwing has no knowledge regarding the remaining allegations in paragraph 1 and therefore denies them.

2. Broadwing has no knowledge regarding the allegations in paragraphs 2.a., b., c., d., e. and g. and therefore denies them. Broadwing denies that Chapter 364, Florida Statutes or Chapter 25, Florida Administrative Code, authorize claims against "John Doe" respondents.

In response to paragraph 2.f., Broadwing admits that it is an indirect and independent subsidiary corporation of Level 3; admits that it is a limited liability company organized under

the laws of the state of Delaware; denies that its principal place of business is in Austin, Texas; admits that it is registered as an IXC and certificated as a CLEC in Florida pursuant to CLEC certificate number 5618; admits that the Commission's website shows its regulatory contact address as c/o Level 3 Communications 1025 Eldorado Blvd., Broomfield, CO 80021-8869; and states affirmatively that this is its principal place of business. Broadwing admits that Focal Communications Corporation was acquired by Broadwing Corporation prior to Broadwing being acquired as an indirect subsidiary of Level 3. Broadwing denies any remaining allegations contained in paragraph 2.

3. Broadwing admits that the statutes cited in paragraph 3 provide for the Commission's jurisdiction over the matters set forth in such statutes, denies that any rule can confer jurisdiction on the Commission, denies that the cited statutes and rules support Qwest's claims or permit the relief sought, denies that the Commission has jurisdiction over this matter to the extent, if any, that it involves interstate services, and denies that the Commission has jurisdiction to award the relief sought by Qwest.

4. Broadwing denies the allegations in paragraph 4 except as follows: Broadwing admits that the Commission's jurisdiction is set forth in Chapter 364, which speaks for itself.

5. Broadwing denies the allegations in paragraph 5 except as follows: Broadwing admits that carriers are permitted to enter into contracts or agreements for switched access services, which contracts or agreements need not mirror the terms of the carrier's tariff or price list. Sections 364.08 and 364.10, Florida Statutes, speak for themselves.

6. Broadwing has no knowledge regarding allegations in paragraph 6 pertaining to other respondents and therefore denies them. Broadwing admits that it filed a price list with the Commission for intrastate switched access services in Florida.

7. Broadwing has no knowledge regarding the allegations in paragraph 7 and therefore denies them.

8. The public record of the Minnesota Public Utilities Commission speaks for itself. Broadwing is generally aware that the Minnesota Public Utilities Commission has held various proceedings.

9. The public record of the Minnesota Public Utilities Commission speaks for itself. Broadwing is generally aware that the Minnesota Public Utilities Commission has held various proceedings.

10. Broadwing has no knowledge regarding the allegations in paragraphs 10.a., b., c., d., e., and g. and therefore denies them. Broadwing denies that Chapter 364, Florida Statutes or Chapter 25, Florida Administrative Code, authorize claims against “John Doe” respondents.

Broadwing denies the allegations in paragraph 10.f. except as follows: Broadwing admits that it has a CLEC price list on file with the Commission that specifies rates, terms and conditions for Broadwing’s intrastate switched access services, and admits that it bills Qwest the rates set forth therein for intrastate switched access services in Florida. Broadwing denies that the contracts identified in this paragraph were solely for intrastate services, denies that said contracts are in effect or were in effect at any time within the applicable statute of limitations, and denies that Broadwing currently has any such contracts that would be applicable to Qwest.

**FIRST CLAIM FOR RELIEF -RATE DISCRIMINATION**

11. Broadwing restates and incorporates its response to each paragraph restated and incorporated in paragraph 11.

12. Broadwing denies the allegations in paragraph 12 except as follows: Broadwing admits that carriers are permitted to enter into contracts or agreements for switched access

services, which contracts or agreements need not mirror the terms of the carriers' tariffs or price lists. Sections 364.08 and 364.10, Florida Statutes, speak for themselves.

13. Broadwing denies the allegations in paragraph 13.

**SECOND CLAIM FOR RELIEF: FAILURE TO ABIDE BY PRICE LISTS**

14. Broadwing restates and incorporates its response to each paragraph restated and incorporated in paragraph 14.

15. Broadwing denies the allegations in paragraph 15 except as follows: the Commission's statutes and rules speak for themselves.

16. Broadwing denies the allegations in paragraph 16.

**THIRD CLAIM FOR RELIEF FAILURE TO PROVIDE CUSTOMER-SPECIFIC CONTRACT TERMS TO SIMILARLY-SITUATED CUSTOMERS (XO, COX)**

17. Broadwing restates and incorporates its response to each paragraph restated and incorporated in paragraph 17.

18. Broadwing denies the allegations in paragraph 18 except as follows: the Commission's statutes and rules speak for themselves.

19. Broadwing has no knowledge regarding the allegations in paragraph 19 and therefore denies them.

**BROADWING'S AFFIRMATIVE DEFENSES**

1. Qwest's complaint fails to state a cause of action against Broadwing upon which relief can be granted by the Commission.

2. Qwest's claims against Broadwing are barred by the statute of limitations.

3. Qwest's claims against Broadwing are barred for failure of a condition precedent.

4. Even if Qwest's complaint did contain allegations which could be read to state a cause of action against Broadwing, which Broadwing denies, there is no discrimination because Qwest is not of a similar customer class and is not similarly situated in all respects with the contracting parties to any agreements which Qwest claims are discriminatory, and there is a reasonable and rational basis for treating Qwest differently.

5. Even if Qwest's complaint did contain allegations which could be read to state a cause of action against Broadwing, which Broadwing denies, Qwest's claims are barred by the lawful price list filed with the Commission and the filed rate doctrine.

6. Qwest is barred from recovery because Broadwing has complied with all applicable rules, laws and price lists.

7. Even if Qwest's complaint did contain allegations which could be read to state a cause of action against Broadwing, which Broadwing denies, to the extent that the alleged contracts include interstate services or mixed interstate and intrastate services, or the complaint otherwise seeks relief beyond that which the Commission may award, this Commission lacks subject matter jurisdiction.

8. To the extent Qwest seeks an order directing or prohibiting activities of unidentified "John Doe" CLECs or other statement of general applicability, the requested relief would constitute a rule as defined in Section 120.52(16), Florida Statutes, and therefore is beyond the Commission's authority in this proceeding.

9. Qwest's claims are barred because the relief sought would constitute retroactive ratemaking.

10. Qwest's complaint is barred by waiver and estoppel.

11. Qwest's complaint is barred by laches.

12. Qwest's complaint is barred by the doctrine of unclean hands.

13. Broadwing reserves the right to designate additional defenses as they become apparent throughout the course of discovery, investigation and otherwise.

**WHEREFORE**, Broadwing respectfully requests the Commission to dismiss Qwest's complaint with prejudice.

Respectfully submitted this 29<sup>th</sup> day of January, 2010.

*/s/ Marsha E. Rule*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing has been furnished by U.S. Mail and email to the following this 29<sup>th</sup> day of January, 2010:

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*/s/ Marsha E. Rule*

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Marsha E. Rule