

Diamond Williams

100274-TP

From: beth.keating@akerman.com
Sent: Friday, June 04, 2010 10:58 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 100274
Attachments: 20100604103112184.pdf

Attached for electronic filing, please find the Answer of Cox Florida Telcom, L.P. to Qwest's Complaint and Petition for Relief in this Docket. If you have any questions, please do not hesitate to contact me.

Sincerely,

Beth Keating
Akerman Senterfitt
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A. Person Responsible for this Filing:

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B. The docket number and title of docket:

Docket No. 100274-TP - In re: Complaint and Petition for Relief Against Cox Florida Telcom, L.P. Regarding a Revised Price List Filing, by Qwest Communications Company, LLC

C. Filed on behalf of: Cox Florida Telcom, L.P.

6/4/2010

DOCUMENT NUMBER-DATE

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D. Number of Pages in Document: 10

E: Brief Title: Answer of Cox Florida Telcom, L.P.



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June 4, 2010

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

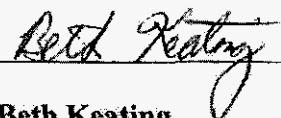
Re: Docket No. 100274-TP – Complaint and Petition for Relief Against Cox Florida Telcom, L.P. Regarding a Revised Price List Filing, by Qwest Communications Company, LLC

Dear Ms. Cole:

Attached for electronic filing in the above-referenced Docket, please find the Answer of Cox Florida Telcom, L.P. to the Complaint and Petition of Qwest Communications Company, LLC. Service is being made in accordance with the attached Certificate of Service.

Please don't hesitate to contact me if you have any questions whatsoever. Thank you for your assistance with this filing.

Sincerely,



Beth Keating
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Enclosures

cc: Parties of Record
Staff Counsel

DOCUMENT NUMBER-DATE
04667 JUN-4 09
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint and Petition for Relief Against)
Cox Florida Telcom, L.P. Regarding a Revised) Docket No. 100274-TP
Price List Filing, by Qwest Communications)
Company, LLC.) Filed: June 4, 2010
_____)

ANSWER OF COX FLORIDA TELCOM, L.P.
TO THE COMPLAINT AND PETITION FOR RELIEF OF QWEST
COMMUNICATIONS COMPANY, LLC

Cox Florida Telcom, L.P. ("Cox"), through its undersigned counsel and pursuant to Rule 28-106.203, Florida Administrative Code, hereby files this Answer to the Complaint of Qwest Communications Company, LLC ("Qwest").

Qwest's latest Complaint against Cox should be rejected outright by the Florida Public Service Commission ("Commission"), because Qwest fails to identify any factual allegation that would constitute a violation of Florida law or any rule administered by the Commission. Instead, throughout its Complaint, Qwest poses numerous questions, hypotheticals, and "what ifs" that in no way constitute a "statement of fact" that Qwest is, or will be, harmed or discriminated against by virtue of Cox's Revised Price List.¹ Qwest's Complaint is wholly dependent upon unsupported allegations that the discounts in Cox's Revised Price List are discriminatory -- statements that stand in awkward contrast with Qwest's own acknowledgment that distinctions can be made between customers for sound economic reasons.² Moreover, the Revised Price List

¹ Moreover, Qwest completely mischaracterizes Cox's tariff filing. The filing does not add a "Contract" to the Price List. Instead, the revision provides greater clarity with regard to the terms and conditions of switched access service provided by Cox, as well as more specificity as to the options available to Cox's access customers depending upon their situation and product needs.

² Qwest Complaint, p. 5.

clearly states that the terms made available to a particular customer will also be made available to any other similarly situated customers.

In an effort to bolster the Complaint, Qwest also complains that certain provisions in the Revised Price List are unclear in their application. To address this concern, Qwest asks the Commission to conduct a full evidentiary hearing to find out what the provisions in Cox's Price List mean, rather than simply asking Cox for an explanation. Thus, at best, the instant Complaint appears to be a thinly-veiled attempt to incorporate additional arguments into the proceedings in Docket No. 090538-TP, and at worst, interposed for purposes of harassment.

With regard to the specific allegations set forth in Qwest's Complaint, Cox states as follows:

I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION

1. The allegations of Section I contain numerous legal conclusions or arguments to which no response is required, but to the extent a response is required, Cox denies the allegations set forth in Section I. Cox admits that local access accomplished by switching connections is called switched access. Cox is without direct knowledge regarding Qwest's assertion that switched access represents a "significant expense" to IXCs. Cox admits it is a CLEC providing switched access services in Florida. Cox specifically denies Qwest's assertion that Cox's revised price list is intended to work an "end run" of the pending proceeding in Docket No. 090538-TP. There is simply no support for this allegation, particularly since the Complaint in Docket No. 090538-TP raises concerns regarding off-tariff agreements, and does not challenge Cox's tariff. Likewise, Cox denies that Qwest has or is being charged discriminatory and unjust rates. Qwest

improperly, and inaccurately, assumes that the tariff as applied to Qwest will result in Qwest paying rates that are higher than those paid by other IXCs to Cox in Florida. Cox denies all of the remaining allegations in Section 1 of the Complaint.

II. STANDING

2. The arguments in Section II of Qwest's Complaint are largely legal conclusions or arguments to which no response is required at this time. However, to the extent Qwest contends that it will be adversely affected because it will not be eligible for lower rates, the allegation is denied. Likewise, Cox denies any implication that Qwest will be charged a rate for switched access services that is higher than the rates paid by other "select" IXCs to Cox for switched access services.

III. PARTIES

3. Paragraph 1 of the Complaint simply contains identifying information for Qwest and need not be admitted or denied by Cox. To the extent Qwest alleges it provides interexchange (long-distance) telecommunications services throughout the State of Florida, Cox is without sufficient knowledge or information to form the basis for any belief or understanding as to the veracity of the allegation.

4. To the extent paragraph 2 provides contact information for Qwest, this information need not be admitted or denied by Cox.

5. Paragraph 3 is admitted, with the exception that Cox denies that it is a limited liability company in Florida.

IV. STATEMENT OF FACTS AND APPLICABLE LAW

6. To the extent Section IV references Cox's Revised Price List on file with the Public Service Commission, the referenced Price List speaks for itself.

7. To the extent Section IV defines "special access," Cox admits that, generally speaking, "special access" amounts to a private line connected directly from the IXC to its customer.

8. To the extent that Qwest references provisions of Florida Statutes in Section IV, those referenced statutory provisions speak for themselves. Likewise, to the extent that Qwest offers legal conclusions as to the application of these statutes, these statements are legal conclusions arguments to which no response is required at this time. However, Cox specifically denies that its Revised Price List violates Florida law. Likewise, Cox is not aware of any docketed decision of the Florida Commission wherein switched access provided by CLECs has been determined to be a "non-competitive, bottleneck service."³

9. To the extent Qwest references Sections 364.10(1) and 364.14, Florida Statutes, those provisions of Florida law speak for themselves; however, Cox emphasizes that Section 364.10(1), Florida Statutes, does not speak specifically to switched access as suggested by Qwest's Complaint. In addition, CLECs, including Cox, are exempt from Section 364.14, Florida Statutes, as clearly set forth in Section 364.337(2), Florida Statutes.⁴ Cox denies that its Revised Price List violates these provisions and denies that these provisions apply to Cox's Price List in the first instance. Moreover, Cox is unaware of any Florida Commission decision or provision of Florida law that would prohibit discounts as provided by Cox's Revised Price List.

³ See Complaint at p. 4.

⁴ In the event that the Commission allows Qwest's Complaint to proceed, Cox respectfully suggests that all references made by Qwest to Section 364.14, Florida Statutes, as a basis for relief should be stricken.

To the contrary, under the limited level of regulation applied to CLECs in Florida, CLECs are provided with great flexibility to bundle and discount their service offerings.

10. Cox denies all other assertions set forth by Qwest at page 4 of its Complaint, to the extent not specifically addressed herein.

11. Cox denies that the question posed by Qwest at page 5 of its Complaint is a correct representation of the facts or law of this case.

12. Cox specifically denies that its Revised Price List unlawfully favors one class of switched access customers over another.

13. Cox denies all other factual allegations set forth on page 5 of Qwest's Complaint, not otherwise specifically addressed herein.

14. Cox denies that the questions posed by Qwest at page 6 of its Complaint are correct representations of the facts or law of this case.

15. Cox specifically denies that the Revised Price List is offered for anything other than the appropriate purposes as set forth in the Revised Price List itself. Here, at page 6, Qwest again mischaracterizes Cox's tariff filing by suggesting that the Revised Price List was offered, in bad faith, as "ubiquitously available." The fact is that the tariff revisions were filed to provide a greater level of specificity and clarity regarding the availability of discounts to Cox's switched access rates. The tariffed discounts are, in fact, available to any carrier that can comply with the terms and conditions therein and Cox made Qwest directly aware of such availability long before Qwest filed the complaint with this Commission.⁵ More importantly, though, is that the

⁵ While open and available to all carriers, it is not likely that all carriers will be positioned to accept the terms and conditions associated with the discounts set forth in the Revised Price List. Clearly, carriers that can accept the terms and conditions are not "similarly situated" to those carriers that cannot.

mechanics of this tariff, which has been filed across the Cox footprint, does not result in an actual rate differential as applied in Florida.⁶

16. To the extent Qwest references Cox's Revised Price List, the document speaks for itself.

17. Cox denies the allegation that the discounts offered by Cox's Revised Price List are unjust, unreasonable, and unduly discriminatory.

18. Cox specifically denies that any allegations raised for the first time in the instant Complaint by Qwest should be incorporated into the proceedings in Docket No. 090538-TP.

19. Cox denies any and all other allegations set forth on page 6 of Qwest's Complaint to the extent not specifically addressed herein.

IV. JURISDICTION

20. Cox admits that the Commission has jurisdiction to interpret and enforce the provisions of Chapter 364, Florida Statutes, and the rules implemented thereunder. In so admitting, Cox does not also admit that Qwest has correctly interpreted or applied the statutes and rules referenced in its Complaint, nor does Cox agree that Qwest is entitled to relief under the referenced provisions of law. Moreover, Cox does not hereby concede that the provisions of Chapter 364, Florida Statutes, apply to give the Commission jurisdiction over all aspects of Qwest's Complaint.

⁶ Pursuant to the terms of the Price List, any carrier that elects to enter into a contract pursuant to the Price List and that is eligible for a discount, will not pay less than the incumbent local exchange carriers' (ILECs) switched access rate in Florida.

V. STATUTES AND RULES

21. Denied. Moreover, Section 364.14, Florida Statutes, does not apply to CLECs at all and Section 364.337(5), by its plain language, pertains to the provision of basic local exchange telecommunications service by CLECs, not switched access service. In addition, Chapters 25-22 and 28-106, Florida Administrative Code, set forth the procedural requirements for administrative proceedings. In and of themselves, these rules do not provide a substantive basis for relief.

VI. RELIEF

22. Cox denies that Qwest has established a basis, either in fact or law, for the requested relief.

23. To the extent Qwest suggests that this proceeding might be consolidated with the ongoing proceeding in Docket No. 090538-TP, Cox would oppose such consolidation to the extent certain allegations and issues have been raised or argued for the first time by Qwest in its Complaint in this Docket.⁷ Qwest should not be allowed to use consolidation of these Dockets as a means to bootstrap new, additional arguments and allegations into the Commission's consideration of the issues in Docket No. 090538-TP. If, however, the Commission were able to accomplish consolidation of this matter with the proceedings in Docket No. 090538-TP with clear delineation that the Dockets are consolidated solely for purposes of hearing and that the records of the proceedings in this Docket and Docket No. 090538-TP will be maintained separately with

⁷ Moreover, this Complaint should be rejected outright for all the reasons suggested herein, thereby eliminating any question of consolidation.


no overlap, Cox might be amenable to such consolidation for purposes of administrative efficiency.

AFFIRMATIVE DEFENSE

1. As applied in Florida, the terms and conditions for discounts to Cox Florida Telcom's rate for switched access service, as set forth in Cox's Revised Price List, do not function to provide a lower switched access rate than is otherwise available to all IXCs under Cox's Price List. As such, Qwest's allegation that Cox has engaged in undue or unjust rate discrimination is utterly unsustainable.

WHEREFORE, Cox respectfully requests that the Commission deny Qwest's Complaint.

Respectfully submitted this 4th day of June, 2010.

By: 
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Attorneys for Cox Florida Telcom

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and U.S. Mail on June 4, 2010 to:

<i>Qwest Communications Company, LLC:</i> Mary F. Smallwood, Esquire GrayRobinson, P.A. 301 S. Bronough St., Suite 600 Pl. O. Box 11189 Tallahassee, FL 32302-3189 mary.smallwood@gray-robinson.com	<i>Qwest Communications Company, LLC:</i> Adam L. Sherr, Esquire Qwest Communications Company 1600 7 th Avenue, Room 1506 Seattle, WA 98191 adam.sherr@qwest.com
<i>Florida Public Service Commission:</i> Theresa Tan, Esq. Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 Email: ltan@psc.state.fl.us	<i>Qwest Communications Company, LLC:</i> Alex M. Duarte, Esq. Qwest Communications Company, LLC 421 SW Oak Street, Rm. 810 Portland, OR 97204 Email: alex.duarte@qwest.com

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