

**Marguerite McLean**

090538-TP

**From:** Lacey, Kimberly A. [kimberly.lacey@bingham.com]  
**Sent:** Tuesday, November 16, 2010 12:41 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Macres, Philip J.; Branfman, Eric J.  
**Subject:** FL PSC Docket No. 090538-TP - Answer of Lightyear Network Solutions, LLC to the Amended Complaint of Qwest Communications Company, Inc.  
**Attachments:** FL PSC Docket No 090538-TP Answer of Lightyear Network Solutions LLC to Amended Complaint of Qwest Communications Company, LLC.pdf

Attached for electronic filing in the above-referenced docket, please find the attached Answer of Lightyear Networks Solutions, LLC to the Amended Complaint of Qwest Communications Company, Inc. If you have any questions, please do not hesitate to contact us.

a. Persons responsible for this filing:

Eric J. Branfman  
Philip J. Macres  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
Tel: (202) 373-6000  
Fax: (202) 373-6001  
Email: eric.branfman@bingham.com  
philip.macres@bingham.com

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c. Filed on behalf of: Lightyear Network Solutions, LLC

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e. Brief Description: Answer of Lightyear Network Solutions, LLC to the Amended Complaint of Qwest Communications Company, Inc.

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Kimberly A. Lacey  
Associate  
T 202.373.6288  
F 202.373.6001  
kimberly.lacey@bingham.com  
B I N G H A M  
Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC 20006-1806

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11/16/2010

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (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, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.

Docket No. 090538-TP

Filed: November 16, 2010

**ANSWER OF LIGHTYEAR NETWORK SOLUTIONS, LLC TO THE AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

John Greive  
Vice President of Regulatory Affairs and  
General Counsel (not admitted in Florida)  
Lightyear Network Solutions, LLC  
1901 Eastpoint Parkway  
Louisville, Kentucky 40223  
Tel: (502) 253-1508  
Fax: (502) 558-1687  
Email: john.greive@lightyear.net

Eric J. Branfman, Esq. (not admitted in Florida) (\*)  
Philip J. Macres, Esq., Fla. Bar No. 137900  
Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC 20006-1806  
Tel.: (202) 373-6000  
Fax: (202) 373-6001  
E-mail: eric.branfman@bingham.com  
E-mail: philip.macres@bingham.com

*Outside Counsel for Respondent Lightyear Network Solutions, LLC*

(\*) Request for being named a qualified representative has been separately filed in Docket No. 100008-OT.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (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, ACCESS POINT, INC., BIRCH COMMUNICATIONS, INC., BUDGET PREPAY, INC., BULLSEYE TELECOM, INC., DELTACOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., STS TELECOM, LLC, US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.

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**ANSWER OF LIGHTYEAR NETWORK SOLUTIONS, LLC TO THE AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

Lightyear Network Solutions, LLC (“Lightyear”), by and through its undersigned counsel, hereby files its Answer to the Amended Complaint filed by Qwest Communications Company, LLC (“Qwest”), and states as follows:

**ANSWER**

1. As to the allegations in the first and unnumbered paragraph of Qwest’s Amended Complaint that assert that Qwest has submitted its Amended Complaint against various named parties (“Respondent CLECs”), Lightyear admits that Qwest has filed its Amended Complaint, but denies the charges against Lightyear. Moreover, Lightyear denies Qwest’s allegation that Rule 25-4.114, Florida Administrative Code, applies to Lightyear or is applicable in this proceeding. As to the allegations in the second unnumbered paragraph preceding the paragraph that Qwest numbered Paragraph 1 of its Amended Complaint that assert that Lightyear violated

Florida law, Lightyear denies those allegations. Moreover, the paragraph preceding Paragraph 1 of Qwest's Amended Complaint state conclusions of law to which no response is required. To the extent the legal conclusions can be deemed factual allegations, Lightyear answers those allegations in the discussion associated with Paragraph 10 below. As for allegations in these unnumbered paragraphs that pertain to other Respondent CLECs, Lightyear lacks sufficient knowledge or information to respond to them and, accordingly, neither admits nor denies those allegations. To the extent further answer is required for the paragraphs that precede Paragraph 1 of Qwest's Amended Complaint, Lightyear denies those allegations. As to the allegations in Paragraph 1 of Qwest's Amended Complaint, Lightyear lacks knowledge or information sufficient to form a belief as to whether the allegations are accurate or complete and therefore, neither admits nor denies those allegations.

2. As to the allegations in subparagraph 2(p), Lightyear admits that it is a limited liability company organized under the laws of the State of Kentucky and is certified to provide telecommunications services in Florida. Lightyear admits that its regulatory contact address is 1901 Eastpoint Parkway, Louisville, Kentucky 40223-4145. Lightyear lacks sufficient knowledge of the facts alleged in the other subparagraphs in Paragraph 2 as to the status of other Respondent CLECs and therefore, neither admits nor denies those allegations.

3. The allegations in Paragraph 3 of Qwest's Amended Complaint state a conclusion of law to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

4. The allegations in Paragraph 4 of Qwest's Amended Complaint state conclusions of law to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

5. The allegations in Paragraph 5 of Qwest's Amended Complaint state a conclusion of law to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

6. Lightyear admits that it has a price list containing intrastate switched access rates on file with the Commission but lacks sufficient knowledge concerning the other Respondent CLECs, and accordingly Lightyear neither admits nor denies the allegations in Paragraph 6 with respect to other Respondent CLECs.

7. Lightyear admits that it bills Qwest for intrastate switched access services that Qwest uses, but lacks sufficient knowledge of Qwest's intended meaning and use of the term "large" in Paragraph 7 and therefore, denies this characterization. Lightyear lacks sufficient knowledge of the other facts alleged in Paragraph 7 and, therefore, neither admits nor denies those allegations.

8. Lightyear states that the allegations in Paragraph 8 of Qwest's Amended Complaint are a matter of public record and respectfully refers the Commission to the documents referenced as they speak for themselves and Lightyear denies any and all factual allegations that are inconsistent with that record. Lightyear denies that it was one of the subjects of the MN PUC's investigations. To the extent any further answer is required, Lightyear denies the allegations in Paragraph 8.

9. Lightyear states that the allegations in Paragraph 9 of Qwest's Amended Complaint are a matter of public record and seek to characterize and interpret certain documents, and respectfully refers the Commission to the documents referenced as they speak for themselves and Lightyear denies any and all factual allegations that are inconsistent with the record. To the extent any further answer is required, Lightyear denies the allegations in Paragraph 9.

10. As for the allegations in subparagraphs 10(a)-(m), 10(o)-(t) of Qwest's Amended Complaint, they pertain to other Respondent CLECs and, therefore, Lightyear lacks sufficient knowledge or information to respond to them and, accordingly, neither admits nor denies those allegations. As to the allegations in the first and second full sentences in subparagraph 10(n)(i) of the Amended Complaint, Lightyear admits that it has a price list on file with the Commission specifying rates, terms and conditions for its provision of intrastate switched access services and admits that absent any inadvertent billing mistakes, the intrastate switched access rates that it bills Qwest are set out in Section 5 of the price list that Qwest references, i.e., *Lightyear Network Solutions, LLC, Florida Price List No. 3* ("Price List"). As to the allegations in the third full sentence of subparagraph 10(n)(i) (which is the last sentence of subparagraph 10(n)(i)), Lightyear states this Price List speaks for itself and denies any allegations that are inconsistent with this Price List.

As for the allegations contained in the first sentence of subparagraph 10(n)(ii) of Qwest's Amended Complaint, Lightyear admits it is a party to a confidential settlement agreement which settled a bona fide dispute concerning previously billed amounts with an IXC, that is national in scope and includes terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that it did not file with the Florida Public Service Commission ("Commission"). Lightyear admits that this confidential settlement agreement includes intrastate switched access services in which certain rates are different from and lower than the rates set forth in its filed Florida Price List. However, even though Lightyear entered into this confidential settlement agreement, for Florida intrastate switched access services, Lightyear has been charging all IXCs the same rate for intrastate switched access services since Lightyear began operations in the State of Florida. As for the allegations

contained in the second sentence of subparagraph 10(n)(ii) of Qwest's Amended Complaint, Lightyear admits that it has not submitted the confidential settlement agreement to this Commission, has not disclosed copies the confidential settlement agreement to Qwest, and has not provided Qwest certain settlement-specific provisions received by the IXC that entered into the confidential settlement agreement with Lightyear. In response to the third sentence of Paragraph 10(n)(ii) of Qwest's Amended Complaint, Lightyear does not recall Qwest making a demand on Lightyear to disclose copies of its off-price list arrangement and to provide Qwest intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs.

Lightyear denies all remaining allegations in all sentences of Paragraphs 10(n)(i) and 10(n)(ii) of Qwest's Amended Complaint, including, without limitation, any allegation relating to off-price-list, unfiled agreements for intrastate switched access services Lightyear had or has via its "affiliates, subsidiaries or predecessors" that are not named as parties to this suit.

11. In response to Paragraph 11 of Qwest's Amended Complaint, Lightyear restates and incorporates its answers to the allegations above as if fully set forth here.

12. The allegations in Paragraph 12 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

13. Lightyear denies the allegations in Paragraph 13 of Qwest's Amended Complaint as they relate to Lightyear. As explained in paragraph 10, Lightyear has been charging all IXCs the same rate for intrastate switched access services since Lightyear began operations in the State of Florida. Lightyear lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations.

14. In response to Paragraph 14 of Qwest's Amended Complaint, Lightyear restates and incorporates its answers to the allegations above as if fully set forth here.

15. The allegations in the first, second, third and fourth full sentences of Paragraph 15 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law. As for the fifth full sentence of Paragraph 15 (which is the last sentence of Paragraph 15), Lightyear (1) admits that it filed its Price List for its intrastate switched access services in Florida with the Commission and (2) lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations.

16. As to the allegations in Paragraph 16 of Qwest's Amended Complaint, Lightyear lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations. With respect to Lightyear, and as explained in Paragraph 10 above, Lightyear admits it is a party to a confidential settlement agreement which settled a bona fide dispute concerning previously billed amounts with an IXC, that is national in scope and includes terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that it did not file with the Commission. Lightyear admits that this confidential settlement agreement includes intrastate switched access services in which certain rates are different from and lower than the rates set forth in its filed Florida Price List. However, even though Lightyear entered into this confidential settlement agreement, for Florida intrastate switched access services, Lightyear has been charging all IXCs the same rate for intrastate switched access services since



Lightyear began operations in the State of Florida. Lightyear denies all remaining allegations of Paragraph 16 of Qwest's Amended Complaint.

17. In response to Paragraph 17 of Qwest's Amended Complaint, Lightyear restates and incorporates its answers to the allegations above as if fully set forth here.

18. The allegations in Paragraph 18 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Lightyear neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

19. Lightyear lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs referenced in Paragraph 19 of Qwest's Amended Complaint and therefore, neither admits nor denies those allegations. With respect to the first sentence of Paragraph 19, Lightyear states that the terms of its Price List speak for themselves and denies any allegations in Paragraph 19 that are inconsistent with its Price List. As to the allegations in the second and fourth sentences of Paragraph 19, Lightyear admits, as noted in Paragraph 10, that it is a party to a confidential settlement agreement which settled a bona fide dispute concerning previously billed amounts with an IXC, that is national in scope and includes terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that it did not file with the Commission. Lightyear admits that this confidential settlement agreement includes intrastate switched access services in which certain rates are different from and lower than the rates set forth in its filed Florida Price List. However, even though Lightyear entered into this confidential settlement agreement, for Florida intrastate switched access services, Lightyear has been charging all IXCs the same rate for intrastate switched access services since Lightyear began operations in the State of Florida. Lightyear denies the remaining allegations in all sentences of Paragraph 19.

**RESPONSE TO QWEST'S PRAYER FOR RELIEF**

Lightyear denies Qwest is due any of the relief it requests.

**AFFIRMATIVE DEFENSES AND OTHER DEFENSES**

1. Qwest's Amended Complaint fails to state a claim upon which relief may be granted.
2. Qwest's Amended Complaint is barred, in whole or in part, by the applicable statute of limitations.
3. Qwest's Amended Complaint is barred, in whole or in part, by the filed rate doctrine.
4. Qwest's Amended Complaint is barred, in whole or in part, by doctrines of laches, waiver, estoppel, and/or unclean hands.
5. Qwest's Amended Complaint is barred, in whole or in part, because the Commission may lack jurisdiction over Lightyear's confidential settlement agreement with an IXC that is referenced herein but not identified, or portions thereof.
6. Qwest's Amended Complaint is barred, in whole or in part, because Lightyear's confidential settlement agreement with an IXC that is referenced but not identified herein must be read as a whole in determining whether a carrier is being unlawfully discriminated against.
7. Qwest's Amended Complaint is barred, in whole or in part, because Qwest is not similarly situated to the IXC with respect to certain important terms and conditions in the confidential settlement agreement referenced herein between the IXC and Lightyear.
8. Qwest's Amended Complaint is barred, in whole or in part, because the Commission lacks jurisdiction over the subject matter and/or to order the relief requested.
9. Qwest's Amended Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.

10. Qwest's Amended Complaint is barred, in whole or in part, because Lightyear has been charging all IXCs the same rate for intrastate switched access services since Lightyear began operations in the State of Florida.

11. Qwest's Amended Complaint is barred, in whole or in part, by virtue of the confidentiality provisions precluding Lightyear from filing its confidential settlement agreement referenced herein between an IXC and Lightyear with this Commission.

12. Qwest's Amended Complaint is barred, in whole or in part, to the extent it seeks to make any claims against affiliates, subsidiaries, predecessors or any other separately certified entity associated with Lightyear that is or are not specifically named in Qwest's Amended Complaint. Qwest is barred from bringing such non-particularized claims.

13. Qwest's Amended Complaint is barred, in whole or in part, from seeking reparations for the alleged unlawful discrimination because Qwest failed to allege facts or specifically show how it has been harmed by such alleged discrimination.

14. Qwest is not entitled to any reparations because, assuming arguendo, that the confidential settlement agreement referenced herein that Lightyear had with the IXC referenced herein but not identified violates Florida law, the remedy is to require that the IXC pay Lightyear its Price List access rates, to the extent it did not already do so, not to award Qwest any reparations based upon an agreement that violates Florida law.

15. Qwest's Amended Complaint is barred, in whole or in part, because Qwest did not make a timely bona fide request for contract rates.

16. Qwest's Amended Complaint is barred because the rates for intrastate switched access services set forth in the Lightyear Price List on file with the Commission are just, reasonable, nondiscriminatory, and otherwise lawful.

17. Qwest's Amended Complaint is barred in part because Qwest has no standing to assert a claim that Lightyear violated § 364.04, Fla. Stat.

18. Qwest's Amended Complaint is barred, in whole or in part, because the reparations in the form of refunds that Qwest seeks for discrimination is, by law, unavailable to it.

19. Qwest's Amended Complaint is barred, in whole or in part, because the confidential settlement agreement that Lightyear has with a certain IXC that is at issue herein is not available to Qwest because it is invalid and unenforceable since it was the result of economic duress and/or lack a valid form of consideration.

Lightyear reserves the right to assert additional affirmative defenses and other defenses.

WHEREFORE, for the reasons discussed above, Respondent Lightyear respectfully requests that Qwest's Amended Complaint be dismissed with prejudice as it relates to Lightyear, or in the alternative deny all the relief requested therein, and grant such other and further relief.<sup>1</sup>

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<sup>1</sup> Any correspondence concerning this matter that pertains to Lightyear and/or filings made in this proceeding should be addressed and sent to the individuals referenced at the end of this Answer.

Dated this 16th day of November 2010.

John Greive (not admitted in Florida)  
Vice President of Regulatory Affairs and General  
Counsel  
Lightyear Network Solutions, LLC  
1901 Eastpoint Parkway  
Louisville, Kentucky 40223  
Tel: (502) 253-1508  
Fax: (502) 558-1687  
Email: john.greive@lightyear.net

Respectfully Submitted,

Lightyear Network Solutions, LLC

/s/ Philip J. Macres

Eric J. Branfman, Esq. (not admitted in  
Florida) (\*)  
Philip J. Macres, Esq., Fla. Bar No. 137900  
Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC 20006-1806  
Tel.: (202) 373-6000  
Fax: (202) 373-6001  
E-mail: eric.branfman@bingham.com  
E-mail: philip.macres@bingham.com

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