

Diamond Williams

From: Leslie McLaughlin [Leslie.McLaughlin@gray-robinson.com]
Sent: Tuesday, December 14, 2010 4:35 PM
To: Filings@psc.state.fl.us
Cc: Lee Eng Tan; adam.sherr@qwest.com; De.oroark@verizon.com; mfeil@gunster.com; BKeating@gunster.com; marsha@reuphlaw.com; Jason.topp@qwest.com; JaneWhang@dwt.com; aklein@kleinlawpllc.com; azoracki@kleinlawpllc.com; eric.branfman@bingham.com; Philip.macres@bingham.com; agold@acgoldlaw.com; Richard.brown@accesspointinc.com; john.greive@lightyear.net; mike@navtel.com; Mary Smallwood
Subject: PSC Docket No. 090538-TP
Attachments: Qwest's Response and Motion to Strike.pdf

Attached please find: QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE AND MOTION TO STRIKE for filing in the referenced matter.

Leslie McLaughlin

Legal Assistant to Bill Williams, Amy Schrader & Michael Riley

GrayRobinson, P.A.

301 South Bronough Street, Suite 600

P.O. Box 11189 (32302-3189)

Tallahassee, Florida 32301

Main: 850-577-9090 | Fax: 850-577-3311

GRAY | ROBINSON

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09941 DEC 14 2010

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12/14/2010

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

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: December 14, 2010

**QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE AND MOTION
TO STRIKE**

Pursuant to Rule 28-106.204, Fla. Admin. Code, Qwest Communications Company, LLC ("QCC"), by and through its counsel, hereby moves to strike portions¹ of the December 13, 2010 motion to reply filed by counsel for Access Point, Lightyear, PAETEC and US LEC (hereinafter, the "Moving Parties"). QCC urges the Commission to deny the Moving Parties' motion to file a reply brief and to strike those portions of the Motion to File Reply Brief that constitute an unauthorized reply. The grounds for this response and motion to strike are as follows:

1. Rule 28-106.204 governs motion to practice before this Commission. Subsection (1) of the rule provides for a party to file a response in opposition to a motion

¹ Specifically, QCC moves that the Commission strike the bullet pointed material found on pages 1 and 2 of 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 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 ("Motion to File Reply Brief").

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to dismiss. Pursuant to that provision and to the ORDER GRANTING EXTENSION OF TIME TO RESPOND TO MOTION TO DISMISS (“Order Granting Extension”) issued by the Prehearing Officer in this docket on November 22, 2010, QCC timely filed its response in opposition to the Moving Parties’ motion to dismiss on December 8, 2010. As the Moving Parties are well aware, Rule 28-106.204 does not permit the Moving Parties to file a reply or sur-response to a response in opposition to their motion. Nor has this Commission traditionally permitted replies.² All of this has repeatedly been pointed out to counsel for the Moving Parties by QCC and, more recently, by the Commission.

2. Nothing in the Motion to File Reply Brief merits overturning the unequivocal precedent of this Commission in disfavoring reply briefs and holding that Commission rules and the uniform rules do not authorize them. The Moving Parties have not described or demonstrated any meaningful basis for the extraordinary relief they request. They have not established that they will suffer any prejudice from the briefing cycle ending consistent with the Commission’s rules and practice. Rather, the Moving Parties use their motion to improperly argue the merits of the Motion to Dismiss, contrary to (among other sources) the Order Granting Extension that clearly explained that “it is not the practice of this Commission to grant such replies.”³ In light of the clarity of the Prehearing Officer’s directive, the Moving Parties’ surreptitious reply (in the guise of requesting the opportunity to reply) is highly improper, and the Commission should strike those portions of the Motion to File Reply Brief that contain argument on the merits.

WHEREFORE, QCC respectfully requests that the bullet pointed material on pages 1 and 2 of the Motion to File Reply Brief be stricken, and that the Motion to File Reply Brief be denied.

DATED this 14th day of December 2010.

² The Commission has routinely refused to allow attempts by a movant to have the last word in contravention of the rules. *See, e.g., In re: Petition for increase in rates by Florida Power & Light Company, Order No. PSC-09-0602-PCO-EI (Sep't 4, 2009)* at 2 (Florida Uniform Rules do not authorize a reply to a response to a motion to dismiss); *In re: Petition for approval to revise customer contact protocol by BellSouth Telecommunications, Inc., Order No. PSC-04-0636-FOF-TL, Docket No. 031038-TL (July 1, 2004)* at 4 (“the Uniform Rules of the Administrative Procedure Act do not expressly authorize replies.”); *In re: Investigation into the establishment of operations support systems permanent performance measure for incumbent local exchange telecommunications companies, Order No. PSC-04-0511-PAA-TP, Docket No. 000121A-TP (May 19, 2004)* at 2 (“we do not have rules which allow for a Reply to a Response”); *In re: Review of Florida Power & Light Company’s Proposed Merger with Entergy Corporation, the Formation of a Florida transmission Company (“Florida Transco”), and Their Effect on FPL Retail Rates, Order No. PSC-01-1930-PCO-EI, Docket No. 010944-EI, (September 4, 2001)*, (Commission struck an answer to FPL’s response to the South Florida Hospital and Healthcare Association’s request for clarification/reconsideration holding that “The Uniform Rules of Procedure do not authorize the movant to reply to a response.”); *In re: Adoption of Numeric Conservation Goals by Florida Power & Light company, Order No. PSC-98-1435-PCO-EG, Docket No. 971004-EG (October 26, 1998)* at 3, (Commission struck a reply to a response to a motion for a procedural order, holding that “the pleading cycle must stop at a reasonable point” and “unequivocal precedent” prohibited such replies).

³ In utter disregard of the Prehearing Officer’s clear statement on this issue, the Motion to File Reply Brief, in fact, contains an approximately 300 word reply set forth in five paragraphs within the motion.

By: s/ Mary F. Smallwood

Mary F. Smallwood
(Fla. Bar No. 242616)
GrayRobinson, P.A.
301 S. Bronough Street, Suite 600 (32301)
Post Office Box 11189
Tallahassee, FL 32302-3 189
Telephone: (850) 577-9090
Facsimile: (850) 577-3311
mary.smallwood@grav-robinson.com
Counsel for Qwest Communications
Company, LLC

Adam L. Sherr (not admitted in Florida)
Associate General Counsel
Qwest
1600 7th Avenue, Room 1506
Seattle, WA 98191
Tel: 206-398-2507
Fax: 206-343-4040
Email: Adam.Sherr@qwest.com

Attorneys for Qwest Communications
Company, LLC fka Qwest Communications
Corporation

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

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 14th day of December, 2010, to the following:

Florida Public Service Commission
Theresa Tan
Florida Public Service Commission
Office of General Counsel
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

Qwest Communications Co., LLC
Adam Sherr
Associate General Counsel
Qwest Communications Co., LLC
1600 7th Avenue, Room 1506
Seattle, WA 98191
adam.sherr@qwest.com

Qwest Communications Co., LLC.
Jason D. Topp, Corporate Counsel
Qwest Communications Co., LLC
200 S. Fifth Street, Room 2200
Minneapolis, MN 55402
Jason.topp@qwest.com

tw telecom of florida, l.p.
XO Communications Services, Inc.
Windstream NuVox, Inc.
Birch Communications, Inc.
DeltaCom, Inc.
Matthew J. Feil
Gunster Yoakley & Stewart, P.A.
215 S. Monroe Street, Suite 618
Tallahassee, FL 32301
mfeil@gunster.com

Cox Florida Telecom, LLC
Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe Street, Suite 618
Tallahassee, FL 32301-1839
BKeating@gunster.com

Broadwing Communications, LLC
Marsha E. Rule
Rutledge, Ecenia & Purnell
P.O. Box 551
Tallahassee, FL 32302-0551
marsha@reuphlaw.com

MCImetro Access Transmission Service
d/b/a VerizonAccess Transmission Services
Dulaney O'Roark
VerizonAccess Transmission Services
Six Concourse Pkwy, NE, Ste 800
Atlanta, GA 30328
De.oroark@verizon.com

XO Communications Services, Inc.
Jane Whang
Davis Wright Tremain
Suite 800
505 Montgomery Street
San Francisco, California 94111-6533
JaneWhang@dwtd.com

CERTIFICATE OF SERVICE

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Granite Communications, LLC
BullsEye Telecom, Inc.
Andrew M. Klein
Allen C. Zoraki
Klein Law Group, PLLC
1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036
aklein@kleinlawpllc.com
azoracki@kleinlawpllc.com

STS Telecom, LLC
Alan C. Gold
1501 Sunset Drive
2nd Floor
Coral Gables, FL 33143
agold@acgoldlaw.com

Access Point, Inc.
Lightyear Network Solutions, LLC
Navigator Telecommunications, LLC
PAETEC Communications, Inc.
US LEC of Florida, LLC d/b/a PAETEC
Business Services
Eric J. Branfman
Philip J. Macres
Bingham McCutchen, LLP
2020 K Street NW
Washington, DC 20006-1806
eric.branfman@bingham.com
Philip.macres@bingham.com

Access Point, Inc.
Richard Brown
Chairman-Chief Executive Officer
Access Point, Inc.
1100 Crescent Green, Suite 109
Cary, NC 27518-8105
Richard.brown@accesspointinc.com

Lightyear Network Solutions, Inc.
John Greive, Vice President of
Regulatory Affairs & General Counsel
Lightyear Network Solutions, LLC
1901 Eastpoint Parkway
Louisville, KY 40223
john.greive@lightyear.net

Navigator Telecommunications, LLC
Michael McAlister, General Counsel
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P. O. Box 13860
North Little Rock, AR 72113
mike@navtel.com

PAETEC Communications, Inc. and
US LEC of Florida, LLC d/b/a
PAETEC Business Services
John B. Messenger, Vice President and
Associate General Counsel
PAETEC Communications, Inc.
One PaeTec Plaza
600 Willowbrook Office Park
Fairpoint, NY 14450

**CERTIFICATE OF SERVICE
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Flatel, Inc.
c/o Adriana Solar
2300 Palm Beach Lakes Blvd.
Executive Center, Suite 100
West Palm Beach, Florida 33409

Ernest Communications, Inc.
General Counsel
5275 Triangle Parkway
Suite 150
Norcross, GA 30092

Budget Prepay, Inc.
c/o NRAI Services, Inc.
2731 Executive Park Drive, Suite 4
Weston, Florida 33331

and

Budget Prepay, Inc.
General Counsel
1325 Barksdale Blvd., Suite 200
Bossier City, LA 71111