

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended 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; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; 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  
ORDER NO. PSC-12-0523-CFO-TP  
ISSUED: October 2, 2012

ORDER GRANTING CONFIDENTIAL CLASSIFICATION  
OF DOCUMENT NOS. 03890-12, 03893-12, AND 03896-12.

On June 14, 2012, Qwest Communications Company, LLC d/b/a CenturyLink (QCC) filed its Direct Testimony and Exhibits for Dennis L. Weisman, Derek Canfield and William R. Easton. Concurrently, pursuant to Section 364.183, Florida Statutes, (F.S.) and Rule 25-006, Florida Administrative Code (F.A.C.), QCC filed Requests for Confidential Classification, stating that a portion of the direct testimony and exhibits contains proprietary business information.

In its requests for confidential classification, QCC asserts that portions of the Direct Testimony and Exhibits for Dennis L. Weisman, Derek Canfield and William R. Easton, Document Nos. 03890-12, 03893-12, and 03896-12, respectively, pertain to the CLEC respondents, is intended to be proprietary, is treated as proprietary, and has not been publicly disclosed by QCC.<sup>1</sup> QCC requests that the Commission grant confidential classification for these documents for a period of 18 months from the date of the issuance of this Order, pursuant to Section 364.183, F.S.

In its Requests for Confidential Classification, QCC assert that portions of the Direct Testimony and Exhibits for Derek Canfield, Dennis L. Weisman, and William R. Easton consist of confidential business information related to competitive interests, regarding the agreements between certain IXCs and CLECs, including rates and agreement terms, which if disclosed

<sup>1</sup> To accommodate the number of parties participating in this docket, QCC and several of the CLECs have entered into a Nondisclosure Agreement, under which the CLECs provided responses to QCC's discovery requests.

DOCUMENT NUMBER-DATE

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would impair competitive business of QCC and the CLECs. QCC also states that Sections 364.183(3)(a), (d) and (e), F.S. provide that "proprietary confidential business information" includes "trade secret information," "customer-specific information," and "information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information." QCC therefore asserts that this information should be classified as proprietary, confidential business information and pursuant to Section 364.183(3)(a)(d) and (e), F.S., is exempt from the Open Records Act, and should be granted confidential classification.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm. Section 364.183(3), Florida Statutes, in pertinent part, provides:

The term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Upon review, I find that the information contained in Document Nos. 03890-12, 030893-12, and 030896-12, described in the Requests, is treated by QCC as private, has not otherwise been disclosed, and appears to be proprietary confidential business information which should be granted confidential status. I find that disclosure of the identified information would cause harm to QCC and the Respondent CLECs. As such, pursuant to Sections 364.183(3)(a), (d) and (e), F.S., QCC's Requests for Confidential Classification for portions of the Direct Testimony and Exhibits of Dennis L. Weisman, Derek Canfield and William R. Easton, are hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that QCC's Request for Confidential Classification for portions of the Direct Testimony and Exhibits of Dennis L. Weisman, Document No. 03890-12, as described by QCC's Request, is hereby granted. It is further

ORDERED that QCC's Request for Confidential Classification for portions of the Direct Testimony and Exhibits of Derek Canfield, Document No. 03893-12, as described by QCC's Request, is hereby granted. It is further

ORDERED that QCC's Request for Confidential Classification for portions of the Direct Testimony and Exhibits of William R. Easton, Document No. 03896-12, as described by QCC's Request, is hereby granted. It is further

ORDERED that the information in Document Nos. 03890-12, 03893-12, and 03896-12, for which confidential classification has been granted, shall remain protected from disclosure for a period of 18 months from the date of issuance of this Order. At the conclusion of the 18 month period, the confidential information will no longer be exempt from Section 119.07(1), F.S., unless Qwest Communications Company, LLC d/b/a CenturyLink or another affected person shows, and the Commission finds, that the records continue to contain proprietary confidential business information. It is further

ORDERED that this Order shall be the only notification by the Commission to the parties of the date of declassification of the materials discussed herein.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 2nd day of October, 2012.



LISA POLAK EDGAR

Commissioner and Prehearing Officer

Florida Public Service Commission

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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and

time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.