

Eric Fryson

From: Cooper, Roberta G [Roberta.G.Cooper@centurylink.com]
Sent: Monday, October 22, 2012 1:53 PM
To: Filings@psc.state.fl.us
Subject: FW: 090538-QCC Resp in Opposition- Motions for Official Recognition
Attachments: 090538 QCC Opposition to Official Recognition.pdf

Please swap out this one for the one I just sent you per Shawn, has a slight correction. Thanks, Roberta

Roberta Cooper

Legal Assistant III- Susan Masterton and Kevin Zarling
 Voice: 850-599-1563 | Fax: 850-224-0794
 Email: Roberta.G.Cooper@centurylink.com
 315 S. Calhoun Street, Suite 500 | Tallahassee, FL 32301
 Mailstop: FLTLHZ0501-5001

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From: Cooper, Roberta G
Sent: Monday, October 22, 2012 1:44 PM
To: 'filings@psc.state.fl.us'
Cc: Masterton, Susan S; Sherr, Adam
Subject: 090538-QCC Resp in Opposition- Motions for Official Recognition

Filed on Behalf of: Susan S. Masterton
 Senior Corporate Counsel
 CenturyLink QCC
 315 S. Calhoun Street, Suite 500
 Tallahassee, FL 32301
 Telephone: 850/599-1560
 Email: susan.masterton@centurylink.com

Docket No. 090538

Title of filing: CenturyLink QCC's Response in Opposition Motions for Official Recognition

Filed on behalf of: CenturyLink QCC

No of pages: 6

Description: CenturyLink QCC's Response in Opposition Motions for Official Recognition

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FPSC-COMMISSION CLERK

Roberta Cooper

Legal Assistant III- Susan Masterton and Kevin Zarling

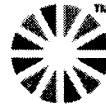
Voice: 850-599-1563 | Fax: 850-224-0794

Email: Roberta.G.Cooper@centurylink.com

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CenturyLink™

October 22, 2012

VIA ELECTRONIC FILING

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

Re: Docket No. 090538-TP - Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BULLSEYE TELECOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., NAVIGATOR TELECOMMUNICATIONS, LLC, AND JOHN DOES 1 THROUGH 50, for unlawful discrimination

Dear Ms. Cole:

Enclosed is Qwest Communications Company, LLC, d/b/a CenturyLink QCC's Response in Opposition Motions for Official Recognition, which we ask that you file in the captioned docket.

Copies are being served upon the parties in this docket pursuant to the attached certificate of service.

Sincerely,

/s/ Susan S. Masterton

Susan S. Masterton

Enclosures

SUSAN S. MASTERTON
Senior Corporate Counsel
315 S. Calhoun St., Suite 500
Tallahassee, FL 32031
Tel: (850) 599-1560
Fax: (850) 224-0794
susan.masterton@centurylink.com

DOCUMENT NUMBER-DATE

07167 OCT 22 2012

FPSC-COMMISSION CLERK

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

I hereby certify that a true and correct copy of the foregoing has been served upon the following by electronic mail delivery and/or U.S. Mail this 22nd day of October, 2012.

<p>Florida Public Service Commission Theresa Tan Office of General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ltan@psc.state.fl.us</p>	<p>Division of Regulatory Analysis Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us</p>
<p>Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com</p>	<p>Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net</p>
<p>BullsEye Telecom, Inc. David Bailey 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com</p>	<p>Gunster, Yoakley & Stewart, P.A. Matthew J. Feil 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 mfeil@gunster.com † <i>Confidential Documents provided in accordance with signed Protective Agreement</i></p>
<p>Navigator Telecommunications, LLC David Stotelmyer 8525 Riverwood Park Drive North Little Rock, AR 72113</p>	<p>Klein Law Group Andrew M. Klein/Allen C. Zoracki 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com † <i>Confidential Documents provided in accordance with signed Protective Agreement</i></p>
	<p>TW Telecom of Florida L.P. Carolyn Ridley 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com</p>

/s/ Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against tw telecom of florida, l.p.; BullsEye Telecom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; and John Does 1 through 50, for unlawful discrimination.

DOCKET NO. 090538-TP

DATED: October 22, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S RESPONSE IN OPPOSITION TO REQUESTS FOR OFFICIAL NOTICE

On October 18, 2012, tw telecom of florida, l.p. ("tw") filed its Request for Official Notice with the Commission. On October 19, 2012 BullsEye Telecom, Inc. ("BullsEye") filed its Request for Official Notice with the Commission. Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") files this Response in Opposition to oppose certain matters identified in these requests for the reasons set forth below.

1. Requests for official notice (official recognition under s. 120.569(2)(i), F.S.) at the Commission are governed by sections 90.201-90.207, Florida Statutes.¹ Section 90.201 governs the limited types of matters that the Commission must take official notice of, including among other things, Florida decisional, constitutional and statutory law. Section 90.202 governs matters that the Commission may take official notice of and includes, among other things, the decisional and statutory law of other states, official

¹In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC, Docket No. 090451-EM; Order No. PSC-10-0310-PCO-EM, Issued, May 13, 2010 at 2. See, e.g., In re: Petition by Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone for arbitration of an interconnection agreement with Quincy Telephone Company d/b/a TDS Telecom, pursuant to Section 252 of the Federal Communications Act of 1934, as amended, and Sections 120.57(1), 120.80(13), 364.012, 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., Docket No. 080731-TP, Order No. PSC-09-0546-PCO-TP, Issued August 6, 2009 at 3;

actions of legislative, executive and judicial departments, published rules promulgated by state governmental agencies and, more generally, facts that are not subject to dispute because they are generally known or are capable of accurate and ready determination. Section 90.203 sets forth the process for a party to obtain official notice for matters under 90.202, which includes timely written notice that enables “the adverse party to prepare to meet the request.”

2. In twt’s and BullsEye’s Requests for Official Notice, Item No. 1, both parties ask the Commission to officially recognize their “access price lists on file with the Commission” (twt specifies that the prices lists are “housed in Room 266 of the Gunter Building”) but do not provide a copy of these documents. While QCC does not object to the Commission taking official recognition of these documents, it is QCC’s experience that these documents are not readily available from the Commission. In QCC’s experience, to obtain these documents a request must be submitted to the Office of the Clerk which must then research and copy the documents. Further, the requester of this information must pay for the copies as allowed under the statutes governing access to public records (ch. 119, F.S.) and the Commission’s practice and procedure. Because the records are not readily available, QCC believes that twt and BullsEye should provide copies of these documents to QCC to the extent that the Commission grants the requests for official recognition and the documents are made a part of the record of the proceeding.
3. QCC also objects, in part, to twt’s Item No. 5 which requests official recognition for “[a]ll documents in Commission rulemaking Docket No. 950918.” Again, twt has failed to provide a copy of these documents with its request, but instead provides a list of the

documents available on the Commissions' website. The number of documents is fairly extensive and includes many items that have not previously been identified or discussed by any witnesses in this proceeding. In addition, many of the items do not appear to be appropriate for official recognition under any of the categories set forth in section 90.202 (twf has not identified the specific category of information that it believes applies to this information).

4. QCC does not object to official recognition of the items on this list that represent official actions of the Commission (e.g., orders, vote sheets and filings with the Joint Administrative Procedures Committee or the Department of State), since these matters appear to fall squarely within 90.202(5). Nor does QCC object to official recognition of the items that have been previously referenced in twf's witness testimony, which include the staff recommendation filed on November 8, 1995 and the related comments filed by WorldCom, Inc. d/b/a LDDA WorldCom on October 20, 1995 (discussed in the Rebuttal Testimony of Terry Deason at pp. 8-9).
5. However, QCC objects to official recognition of the other items (which include such things as letters from legislators and another company's notice of intent to participate). Twf has failed to establish either relevance or a foundation for including these items in the evidentiary record of this proceeding.

WHEREFORE, QCC requests that the Commission require twf and BullsEye to provide QCC with copies of the tariffs for which they have requested official recognition (if the Commission grants the request) and that the Commission deny official recognition of Item No. 5 in twf's request to the extent set forth above.

RESPECTFULLY SUBMITTED on this 22nd day of October, 2012.

/s/ Susan S. Masterton
Susan S. Masterton
CenturyLink QCC
315 S. Calhoun Street, Suite 500
Tallahassee, FL 32301
850-599-1560
850-224-0794 (fax)
Susan.Masterton@centurylink.com

Adam L. Sherr
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, Washington 98191
206-398-2507
206-343-4040 (fax)
Adam.Sherr@centurylink.com

ATTORNEYS FOR QWEST COMMUNICATIONS
COMPANY, LLC D/B/A CENTURYLINK QCC