

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S.

DOCKET NO. 090538-TP  
ORDER NO. PSC-10-0629-PCO-TP  
ISSUED: October 22, 2010

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT

This Order addresses Qwest Communications Company, LLC's (Qwest) Motion for Leave to File an Amended Complaint filed on September 29, 2010, pursuant to Rule 28 - 106.202, F.A.C. Qwest requests leave to file an amended complaint for the purposes of adding additional respondents. Pursuant to discussions at the May 4, 2010, Agenda conference, Qwest has also removed its Part D Prayer for Relief in which the company asked for a "cease and desist" order from the Respondents' actions. On October 11, 2010, Qwest filed a Motion to Substitute a Corrected Copy of the Amended Complaint, citing non-substantive, typographical errors contained within the September 29, 2010 Amended Complaint.

The existing parties of record have stated to Qwest that no position was taken beyond reservation of their right to respond for the Motion for Leave to File an Amended Complaint. For the Motion to Substitute a Corrected Copy of the Amended Complaint, the existing parties of record do not object to the motion. Qwest states that at the time of the filing of the substitute motion, Granite Telecommunications had not responded.

Qwest argues that granting both motions will not cause undue delay or prejudice to the parties because no action has occurred in this docket pending the review of the subpoenaed information.

Section 120.569(2)(c), Florida Statutes, provides for the right to amend a complaint "unless it conclusively appears from the face of the petition that the defect cannot be cured." Pursuant to Section 120.569(2) Florida Statutes, Qwest is permitted to at least once file a timely amended petition. It is a general principle that an amendment should be allowed until the privilege to do so has been abused or the opposing party is prejudiced. See Fouts v. Margules, 98 So. 2d 394 (3d D.C.A. 1957).

CLERK NUMBER DATE

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FPSC-COMMISSION CLERK

Upon consideration, it appears reasonable and appropriate to grant Qwest's Motion for Leave to File an Amended Complaint and Motion to Substitute a Corrected Copy of the Amended Complaint. The amended complaint includes new respondents to the Motion. The respondents shall have 25 days from the issuance of this Order to file a response to Qwest's Amended Complaint, if any.


Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Qwest Communications Company, LLC's September 29, 2010, Motion for Leave to File an Amended Complaint is hereby granted. It is further

ORDERED that Qwest Communications Company, LLC's October 11, 2010 Motion to Substitute a Corrected Copy of the Amended Complaint is hereby granted. It is further

ORDERED that the respondents shall have 25 days from the issuance of this Order to file a response to Qwest's Amended Complaint, if any.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 22nd day of October, 2010.

  
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LISA POLAK EDGAR  
Commissioner and Prehearing Officer

( S E A L )

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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.