

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-10-0696-PCO-TP
ISSUED: November 22, 2010

ORDER GRANTING EXTENSION OF TIME TO RESPOND TO MOTION TO DISMISS

On December 11, 2009, Qwest Communications Company, LLC (Qwest) filed a complaint 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 (CLEC's 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, Florida Statutes.

Qwest filed its Motion for Leave to File an Amended Complaint on September 29, 2010, and its Motion to substitute a corrected copy of Amended Complaint on November 11, 2010. On October 22, 2010, Qwest was granted leave to amend its Complaint to include thirteen additional CLECs¹ as Respondents. Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc, and US LEC of Florida, LLC (Movants) filed a Joint Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds on November 16, 2010. On November 17, 2010, Windstream NuVox filed a Notice of Joinder to the Motion to Dismiss.

On November 17, 2010, Qwest Communications, LLC filed its Motion for Extension of Time to Respond to Joint Motion to Dismiss, requesting an extension until December 16, 2010. Qwest requests an extension of time to respond to the issues raised in the Motion to Dismiss,

¹ Order No. PSC-10-0629-PCO-TP added the following CLECs: 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 d/b/a PaeTec Business Services, and Windstream Nuvox, Inc.

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including the numerous appellate decisions and decisions of this Commission and other regulatory Commissions. Qwest further requests additional time to prepare and file its Response to the Motion to Dismiss, especially in light of the Thanksgiving holiday and family travel plans. In support of its Motion, Qwest asserts that no hearing date or other procedural dates or events have been scheduled in this docket and no party will suffer any prejudice by granting its request for extension of time. Qwest asks that if its requested extension is denied, that Qwest be given seven days to respond from the issuance of the order.

Pursuant to Rule 28-106.204(3), Florida Administrative Code, Qwest's counsel contacted counsel for all Respondents. Qwest states that the Movants did object to Qwest's request unless Qwest agreed not to oppose Movants' request for the opportunity to file a reply brief. Qwest further states that MCI, and Cox do not object to the Request for Extension of Time to Respond and that counsel representing the remaining Respondents did not respond at the time of filing its Motion for Extension of Time.

The Movants filed a Response to Qwest's Motion for Extension of Time on November 18, 2010. The Movants request that Qwest's Motion for Extension of Time be denied in its entirety. The Movants argue that Qwest's request for Extension of Time is overreaching and is more time than the companies were allotted to respond to the complaint. The Movants further argue that the respondents will be prejudiced by the extra time because Qwest will be able to make "multiple complex arguments". The Movants request an opportunity to file a reply to Qwest's Response to the Joint Motion to Dismiss, stating that if an exception to the rule is granted to Qwest, the Movants should likewise be provided an exception, in order to reduce litigation and administration costs to both parties and the Commission.

In addition to Rule 28-106.204, Florida Administrative Code, which does not contemplate replies to a Response to a Motion, it is not the practice of this Commission to grant such replies. In its Response to the Motion to Dismiss, Qwest should only be responding to the issues raised by the Movant's Motion to Dismiss. Furthermore, as no dates have been established, the extension will not delay this proceeding.

Upon consideration, Qwest's Motion for an Extension of Time to Respond to the Motion to Dismiss is granted with the modification that Qwest shall file its Response to the Joint Motion to Dismiss no later than December 8, 2010.

This Order is issued pursuant to the authority granted by Rule 28-106.211. Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy and inexpensive determination of all aspects of the case.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Motion of Extension of Time to Respond to Joint Motion to Dismiss is hereby granted. It is further

ORDERED that Qwest Communications Company LLC shall file its Response to the Joint Motion to Dismiss no later than December 8, 2010.

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



LISA POLAK EDGAR
Commissioner and Prehearing Officer

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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.