

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCI metro 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.; 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
ORDER NO. PSC-11-0304-PCO-TP
ISSUED: July 18, 2011

ORDER GRANTING EXTENSION OF TIME TO RESPOND AND POSTPONEMENT OF
ISSUE IDENTIFICATION

On December 11, 2009, Qwest Communications Company, LLC (Qwest) filed a complaint alleging rate discrimination in connection with the provision of intrastate switched access services against MCI metro 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 Telecom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown).

On May 19, 2011, Access Point, Inc.; Birch Communications, Inc.; Broadwing Communications, LLC; Bullseye Telecom, Inc.; DeltaCom, Inc.; Granite Telecommunications, LLC; Lightyear Network Solutions, LLC; MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; tw telecom of florida, l.p.; US LEC of Florida, LLC d/b/a PaeTec Business Services; XO Communications Services, Inc.; and Windstream NuVox, Inc. (Joint CLECs) filed a Motion for Abeyance. On June 28, 2011, Order No. PSC-11-0282-PCO-TP (Order Denying Abeyance) denied the Joint Movants' Request for Abeyance, finding that abeyance would result in unnecessary delay and that issue identification would promote clearer understanding of the specific issues to be litigated in this proceeding.

On July 8, 2011, the Joint Movants filed a Joint Motion to Dismiss Qwest's Amended Complaint for Lack of Subject Matter Jurisdiction and a Joint Motion to Stay Proceeding. Both Motions are accompanied by Requests for Oral Argument. The Joint Movants argue that the issues raised in their Motion to Dismiss concern the Commission's authority, and therefore a stay

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in this docket will ensure that the Commission does not exceed its delegated authority and will promote administrative economy.

On July 11, 2011, Qwest filed its Motion for Extension of Time to Respond to Joint Motion to Dismiss. Qwest specifically asks for a two week extension until August 1, 2011, stating that the Motion raises critically important issues and requires more than the standard seven day response time. Qwest notes that in-house counsel is also unavailable from July 17 through July 21, 2011. Qwest states that MCI, Broadwing, Access Point, Lightyear, Navigator, PAETEC, US LEC, Birch, DeltaCom, STS Telecom, tw telecom and XO do not object to the extension. BullsEye and Granite oppose the requested extension. NuVox Windstream takes no position and Budget, Flatel and Ernest did not respond to Qwest.

On July 13, 2011, Qwest filed a response to the Joint Movants' Motion to Stay, stating that it does not oppose a stay in the docket until the Commission renders a decision on the Joint CLECs' Motion to Dismiss.

In Order Denying Abeyance, a date was established to identify a preliminary list of issues, and determine areas of agreement, disagreement, and consolidation regarding the instant complaint. While I do not find it necessary to grant the requested stay, I do find it appropriate to postpone the issue identification until the Joint Motion to Dismiss has been heard by the Commission. Since the parties all agree that the Joint Motion to Dismiss should be addressed prior to the issue identification meeting, no party will be prejudiced.

In addition, Qwest's request for extension of time is granted. Qwest's Response to the Motion to Dismiss shall be due no later than August 1, 2011.

Based on the foregoing, the requests are reasonable and are hereby granted.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the issue identification meeting is postponed until after the resolution of the Joint Movants' Motion to Dismiss. It is further

ORDERED that Qwest's Response to the Motion to Dismiss is due no later than August 1, 2011.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 18th day of July, 2011.



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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.