

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.; 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-12-0210-FOF-TP
ISSUED: April 23, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL OF LIGHTYEAR NETWORK SOLUTIONS, LLC.

BY THE COMMISSION:

Case Background

On March 7, 2012, Qwest Communications Company, LLC d/b/a CenturyLink (QCC) filed a Voluntary Dismissal of Lightyear Network Solutions, LLC (Lightyear) in the above referenced docket. QCC asserts that it has entered into a settlement agreement resolving the issues raised in its Amended Complaint¹ as they relate to Lightyear. The remaining Respondents

¹QCC filed a complaint on December 11, 2009, alleging rate discrimination in connection with the provision of intrastate switched access services. QCC was granted leave to file an Amended Complaint on October 22, 2010, adding additional Respondents.

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include 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.; 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.²

The law is clear that a plaintiff's right to take a voluntary dismissal is absolute³ and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.⁴ Both of these legal principles have been recognized in administrative proceedings⁵ and are consistent with past Commission decisions.⁶ Therefore, we find it appropriate to acknowledge QCC's voluntary dismissal with prejudice of its Complaint against Lightyear as a matter of right. We are vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes, (F.S.).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that QCC's Voluntary Dismissal with Prejudice of Lightyear Network Solutions, LLC, is hereby acknowledged. It is further

ORDERED that Lightyear Network Solutions, LLC shall be dismissed from the instant complaint. It is further

ORDERED that this docket remain open.

² On April 6, 2011, Qwest filed a Notice of Voluntary Dismissal without Prejudice of Cox Florida Telecom, L.P., releasing Cox Florida Telecom, L.P. as a party to the complaint.

³ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

⁴ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

⁵ Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

⁶ See Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In Re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; Order No. PSC-08-0493-FOF-TP, In Docket 070408-TP, In re: Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.

By ORDER of the Florida Public Service Commission this 23rd day of April, 2012.



ANN COLE
Commission Clerk
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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.