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**Subject:** Electronic Filing - Docket No. 090538-TP  
**Attachments:** 20100129144526192.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

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**Docket No. and Name:** Docket No. 090538-TP - 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 (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, F.S.

**Filed on behalf of:** XO Communications

**Total Number of Pages:** 9

**Description of Documents:** The answer of XO Communications Services, Inc. ("XO") to the complaint of Qwest Communications Company, LLC.

**Nicki Garcia**

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January 29, 2010

**VIA ELECTRONIC FILING**

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

**Re: Docket No. 090538-TP - 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 (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, F.S.**

Dear Ms. Cole:

Please find enclosed for filing in the above-captioned docket the Answer of XO Communications Services, Inc. ("XO") to the complaint of Qwest Communications Company, LLC. XO is also a party to the Joint CLECs' Partial Motion to Dismiss also filed in this docket today.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil

Attachments

DOCUMENT NUMBER-DATE

00674 JAN 29 9

FPSC-COMMISSION CLERK

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF FLORIDA**

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 Telecom, 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, F.S.

Docket No. 090538-TP

**ANSWER OF XO COMMUNICATIONS SERVICES, INC.**

XO Communications Services, Inc. ("XO"), by and through its undersigned counsel, and pursuant to Rule 28-106.203, Florida Administrative Code, hereby files its Answer to the Complaint of Qwest Communications Company, LLC ("QCC"),<sup>1</sup> and states as follows:

**ANSWER**

1. XO lacks personal knowledge of the facts alleged in Paragraph 1 and accordingly neither admits nor denies those allegations.
2. XO admits the allegations in the first sentence in subparagraph b of paragraph 2. XO also admits that XO acquired substantially all of the assets and assumed some of the contractual obligations of Allegiance Telecom, Inc., in Florida, but denies the

<sup>1</sup> XO has joined with several other CLECs in a Partial Motion to Dismiss which has been filed in this docket on the same day as this Answer.

remainder of the second sentence in subparagraph b. XO admits the allegations in the third sentence in subparagraph b. XO lacks personal knowledge of the facts alleged in the other subparagraphs in paragraph 2 as to the status of other companies and accordingly neither admits nor denies those allegations.

3. Paragraph 3 states a legal conclusion, rather than an allegation of fact, and accordingly XO neither admits nor denies that conclusion.

4. Paragraph 4 states a series of legal conclusion, rather than allegations of fact, and accordingly XO neither admits nor denies those conclusions and denies any statements that are inconsistent with applicable law.

5. Paragraph 5 states a series of legal conclusion, rather than allegations of fact, and accordingly XO neither admits nor denies those conclusions and denies any statements that are inconsistent with applicable law.

6. XO admits that it has filed a price list with the Commission for intrastate access services and rates in Florida. XO lacks personal knowledge of the facts alleged as to the other companies and accordingly neither admits nor denies those allegations.

7. XO admits that it provides and bills QCC for intrastate switched access services in Florida. XO lacks personal knowledge of the extent of QCC's operations in Florida, including but not limited to the quantity of intrastate switched access services that QCC purchases from other local exchange carriers, and therefore, XO neither admits nor denies the remainder of the allegations in paragraph 7.

8. The public record in the Minnesota Public Utilities Commission proceeding referenced in paragraph 8 speaks for itself, and XO denies any and all factual allegations that are inconsistent with that record.

9. The public record in the Minnesota Public Utilities Commission proceeding referenced in paragraph 9 speaks for itself, and XO denies any and all factual allegations that are inconsistent with that record.

10. XO lacks personal knowledge of the allegations in subparagraphs (a) and (c)-(g) in paragraph 10 concerning other carriers and accordingly neither admits nor denies those allegations. With respect to the allegations in subparagraph (b), XO states as follows:

i. XO admits the allegations in the first six sentences, including price list citations, in subparagraph 10b.i. With respect to the seventh and eighth sentences in this subparagraph, Sections 6.4 in XO Price List No. 7 and Section 5.2 in XO Price List No. 8 speak for themselves, and XO denies any characterization of those provisions that is not consistent with their language. XO lacks personal knowledge of the activities of the former Allegiance Telecom of Florida, Inc., prior to XO's acquisition of Allegiance's assets and accordingly neither admits nor denies the allegations in the last sentence of this subparagraph. XO otherwise denies the allegations in subparagraph 10.b.i.

ii. XO denies the allegations in the first and second sentences as applied to Florida within the limitations period in the price lists and relevant statute of limitations; as applied to states other than Florida and the time period outside the relevant limitations period(s), any such allegations are beyond the Commission's jurisdiction and accordingly XO neither admits nor denies those allegations. The agreements referenced in the third and fourth sentences speak for themselves and were not in effect in Florida during the applicable limitations period, and thus XO neither admits nor denies these allegations. XO denies the remainder of the allegations in the third and fourth sentences.

XO admits that it provides and has provided QCC with intrastate switched access services in Florida under the rates, terms, and conditions of XO's applicable price lists rather than any agreement but otherwise denies the allegations in the fifth sentence. XO admits that QCC operates as an IXC in Florida but otherwise denies the allegations in the sixth sentence. XO admits that QCC made the request alleged in the seventh sentence but otherwise denies the allegations in this sentence. With respect to the seventh sentence, XO admits that it did not provide QCC with copies of any agreements that XO has or had with any other telecommunications service provider in direct response to QCC's initial request but otherwise denies that XO did not "honor" QCC's requests. XO denies the remainder of subparagraph 10.b.ii.

11. XO restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

12. Paragraph 12 states legal conclusions, rather than allegations of fact, and accordingly XO neither admits nor denies those conclusions. Florida statutes speak for themselves, and XO denies any characterization of those statutes that is not consistent with applicable law.

13. XO denies the allegations in Paragraph 13 as they relate to XO. XO lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those allegations.

14. XO restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

15. XO admits that it has filed price lists for its intrastate switched access services in Florida, but XO lacks personal knowledge regarding the allegations in the last

sentence of paragraph 15 concerning other Respondent CLECs and accordingly neither admits nor denies those allegations. The remainder of paragraph 15 states legal conclusions, rather than allegations of fact, and accordingly XO neither admits nor denies those conclusions. Florida statutes and Commission rules speak for themselves, and XO denies any characterization of those statutes and rules that is not consistent with applicable law.

16. XO denies the allegations in paragraph 16 as they relate to XO within the applicable limitations period. XO lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those or the other allegations of fact in paragraph 16 that are outside the Commission's jurisdiction.

17. XO restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

18. Paragraph 18 states legal conclusions, rather than allegations of fact, and accordingly XO neither admits nor denies those conclusions. Florida statutes and Commission rules speak for themselves, and XO denies any characterization of those statutes and rules that is not consistent with applicable law.

19. XO's price lists speak for themselves, and XO denies all characterizations and allegations concerning those price lists that are not consistent with the price list language. XO denies the allegations in the second sentence of paragraph 19 as applied to XO in Florida within the limitations period in the price lists and relevant statute of limitations; as applied to states other than Florida and the time period outside the relevant limitations period(s), any such allegations are beyond the Commission's jurisdiction and

accordingly XO neither admits nor denies those allegations. XO admits that QCC is, or operates as, an IXC in Florida, but XO denies the remainder of the third sentence in paragraph 19. XO denies that it has not abided by its price lists when providing switched access services to QCC, and therefore XO denies the remainder of paragraph 19 with respect to the allegations concerning XO. XO lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those allegations.

#### **PRAYER FOR RELIEF**

XO denies that QCC is entitled to the relief it requests in its Prayer for Relief or any other relief, and XO otherwise denies all allegations in QCC's complaint that XO has not expressly addressed above. XO, therefore, requests that the Commission deny QCC's complaint and dismiss it with prejudice.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint is barred, in whole or in part, by the applicable limitations period(s) established by applicable law.
3. The Complaint is barred, in whole or in part, by the filed rate doctrine.
4. The Complaint is barred, in whole or in part, by the doctrines of waiver and estoppel.
5. The Complaint is barred, in whole or in part, because the Commission lacks jurisdiction over the subject matter and/or to order the relief requested.
6. The Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.



7. QCC lacks standing to seek the relief it has requested in its Complaint.

Dated this 29th day of January, 2010.

Respectfully submitted,

XO Communications Services, Inc.

By:



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the forgoing has been furnished by U.S. Mail or email to the following this 29<sup>th</sup> day of January, 2010:

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