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**Subject:** Docket No. 090538-TP  
**Attachments:** SKMBT\_C55010012916070.pdf

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**The docket number and title of docket:**

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.

**The name of the party on whose behalf the document is filed:**

tw telecom of florida, l.p.

**The total number of pages in the attached document: 8**

**A brief but complete description of each attached document:**

Answer and Affirmative Defenses of tw telecom of florida, l.p.

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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (D/B/A VERIZON ACCESS TRANSMISSION SERVICES), XO COMMUNICATIONS SERVICES, INC., TWTELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, COX FLORIDA TELECOM. L.P., BROADWING COMMUNICATIONS, LLC, AND JOHN DOES 1 THROUGH 50.  
For unlawful discrimination.

Docket No. 090538-TP

**ANSWER AND AFFIRMATIVE DEFENSES OF TW TELECOM OF FLORIDA, L.P.**

COMES NOW, tw telecom of florida, l.p., (tw telecom of florida) and files this its answer and affirmation defenses to the Complaint of Qwest Communications Company, LLC, and would respectfully show to the Commission the following:

tw telecom of florida, l.p. denies that as a CLEC it has subjected Qwest Communications Company ("QCC") to unjust and unreasonable rate discrimination as alleged in the prelude to the Complaint. tw telecom of florida is without knowledge of the corporate organization of QCC.

1. tw telecom of florida admits that Qwest Communications Company operates in Florida pursuant to Certificates issued by the Florida Public Service Commission. tw telecom of florida is without knowledge as to the type of telecommunications services provided by QCC throughout the State of Florida. tw telecom of florida is without knowledge of the attorney's information and the Company's ability to participate in the proceedings.

2. tw telecom of florida pursuant to paragraph 2.c. admits it is a limited liability company organized under the laws of the State of Delaware, with its principle place of business in Littleton, Colorado. tw telecom of florida admits it is certified to provide telecommunications services in Florida through Certificate # 3167. tw telecom of florida admits it is a subsidiary of tw telecom holdings, inc., formerly Time Warner Telecom Holdings, Inc. tw telecom of florida

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admits it is an affiliate of tw telecom of minnesota. llc. formerly Time Warner Telecom of Minnesota. LLC. tw telecom of florida admits that its regulatory contact address is as alleged. tw telecom of florida is without knowledge and no response is required of tw telecom of florida for the remaining parts of paragraph 2 and the allegations contained in each paragraph.

3. tw telecom of florida acknowledges that the Florida Public Service Commission has limited jurisdiction for the regulation of telecommunications companies. tw telecom of florida denies that the Public Service Commission has jurisdiction to grant the relief requested by portions of this Complaint.

4. tw telecom of florida admits that the Florida Public Service Commission has limited jurisdiction over telecommunications companies. The statutes as cited speak for themselves as to the law of Florida and the jurisdiction of the Commission.

5. tw telecom of florida admits that the Florida telecommunication statutes provide for regulation of price lists or tariffs of telecommunications companies. tw telecom of florida denies and objects to the characterization of Qwest concerning the statutes providing jurisdiction as the statutes speak for themselves as to the authority and jurisdiction of the Commission.

6. tw telecom of florida admits it has filed price lists with the Florida Public Service Commission for intrastate switched access service and rates.

7. tw telecom of florida is without knowledge of the allegations of paragraph 7 and therefore denies same.

8. tw telecom of florida admits it is aware that the Minnesota PUC conducted a proceeding focused on certain contracts of certain CLECs. but does not agree with the characterization of the alleged findings.

9. tw telecom of florida admits that it has knowledge of the allegations in paragraph 9, but denies that any of its off-tariff agreements were discriminatory.

10. In response to paragraph 10.c.i., Respondent tw telecom of florida admits that it has on file with the Commission a tariff or price list specifying rates, terms and conditions for the provision of intrastate switched access in Florida. Respondent tw telecom of florida does in fact bill QCC the rates set out in section 3.6 of the price list for intrastate switched access services in Florida. tw telecom of florida admits that the tariff provides that tw telecom of florida may enter into customer-specific contracts pursuant to the tariff and that the terms of the contract may be made available to similarly situated customers. tw telecom of florida admits knowledge of an agreement between tw telecom of minnesota, llc. formerly Time Warner Telecom of Minnesota, L.L.C., and AT&T. tw telecom of florida acknowledges it has not disclosed to QCC copies of any other of its current off-tariff arrangements for intrastate switched access services as QCC is not entitled to such information, which are proprietary contractual arrangements. tw telecom of florida denies that QCC is an IXC under like circumstances, or is substantially situated so as to receive the same contract agreement, terms and conditions. tw telecom of florida denies all other allegations of paragraph 10.c. tw telecom of florida is without knowledge or is not required to answer any of the other allegations of paragraphs 10.a.-10.g. and therefore denies same.

11. tw telecom of florida restates and incorporates its answers to the allegations of the foregoing paragraphs 1-10 as if fully set forth herein.

12. tw telecom of florida objects to the characterization by QCC of the wording of the statutes. The statutes will speak for themselves as to the jurisdiction and laws of Florida.

13. tw telecom of florida denies the allegations of paragraph 13 and denies that it has violated the laws of Florida to the detriment of QCC.

14. tw telecom of florida restates and incorporates its answers to the allegations to paragraphs 1-13 as if fully set forth in this paragraph.

15. tw telecom of florida admits that it has filed price lists for its intrastate switched access services in Florida. tw telecom of florida objects to the characterizations of Florida law. The statutes speak for themselves as to the jurisdiction and the laws of Florida.

16. tw telecom of florida admits that it has entered into contract service arrangements for intrastate access service in Florida. tw telecom of florida denies that it has violated Florida law by failing to abide by its published price list and denies that it has subjected QCC to unreasonable prejudice, disadvantage and discriminatory treatment. tw telecom of florida has provided intrastate switched access services to QCC and billed for such services pursuant to tw telecom of florida's price list rates. terms and conditions in Florida.

17. tw telecom of florida restates and incorporates its responses to the foregoing paragraphs as if fully set forth in paragraph 17.

18. tw telecom of florida objects to the characterizations of the Florida statutes. The statutes speak for themselves with regard to the law and jurisdiction in Florida.

19. Paragraph 19 requires no response from tw telecom of florida.

#### **AFFIRMATIVE DEFENSES**

tw telecom of florida hereby asserts the following affirmative defenses in response to the complaint:

a. The complaint, as filed by QCC, fails to state a cause of action against tw telecom of florida for which relief can be granted.

b. The Florida Public Service Commission lacks jurisdiction to grant QCC any "reparations" with or without interest of any amount. This lack of jurisdiction is also the subject of a Motion to Dismiss filed with other CLECs.

c. The Florida Public Service Commission lacks jurisdiction to grant a cease and desist order or other injunctive relief regardless of how titled. This lack of jurisdiction is also the subject of a motion to dismiss filed jointly with other CLECs.

d. Pursuant to Florida Statutes, legal or equitable actions on a contract, obligation or liability founded on a written instrument or any action on a statutory liability must be pursued within the statute of limitations. QCC failed to pursue its legal or equitable claims against tw telecom of florida and these claims are now barred by the statute of limitations.

e. QCC is estopped from pursuing its claims based on alleged contractual prices which may be different from the actual price list. QCC asked for and received the price list terms and condition and QCC is estopped pursuant to the price list and the filed rate doctrines.

f. QCC is estopped from complaining that the price list rates may be inequitable, discriminatory or otherwise inequitable. tw telecom of florida asserts QCC is not of a similar customer class or under like circumstances and is not substantially situated as other contractual customers and that any agreements are not discriminatory. tw telecom of florida asserts there is a rational basis for treating QCC in a different manner.

g. tw telecom of florida denies the allegations of QCC state a cause of action against tw telecom and to the extent the alleged contracts include interstate services or mixed interstate and intrastate services, or the complaint other seeks relief beyond that which the Commission may award, this Commission lacks subject matter jurisdiction.

h. To the extent QCC seeks an order directing or prohibiting activities of unidentified "John Doe CLECs" or other statement of general applicability, the requested relief would constitute a rule as defined in s. 120.52(16), Florida Statutes, and therefore is beyond the Commission's authority to grant in this proceeding.

i. QCC's complaint is barred by laches.

j. tw telecom of florida reserves the right to assert additional affirmative defenses as they may become apparent during the course of discovery and denying the proceedings

WHEREFORE, tw telecom of florida asks that this Commission deny the Complaint of Qwest Communications Company for the relief specified. that it dismiss the claims for "reparations." and injunctive relief and that it order such other and further relief as it shall deem just and proper in this cause.

Respectfully submitted this 29<sup>th</sup> day of January 2010.

s/Howard E. Adams

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically by U.S. Mail on this 29<sup>th</sup> day of January 2010 to the following:

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s/Howard E. Adams  
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