

Dorothy Menasco

From: beth.keating@akerman.com
Sent: Friday, January 29, 2010 3:54 PM
To: Filings@psc.state.fl.us
Cc: matthew.feil@akerman.com; Lee Eng Tan; steve.denman@dgsllaw.com; alex.duarte@qwest.com; adam.sherr@qwest.com; Marsha@reuphlaw.com; gene@Penningtonlawfirm.com; AKlein@KleinLawPLLC.com; AZoracki@KleinLawPLLC.com; de.oroark@verizon.com; gregkopta@dwt.com; Kenneth.Culpepper@cox.com
Subject: Docket No. 090538-TP
Attachments: 20100129135813123.pdf

Attached for filing, please find the Answer of Cox Florida Telcom, L.P. to the Complaint of Qwest Communications Company, LLC. If you have any questions, please do not hesitate to contact me.

Sincerely,
 Beth Keating
Akerman Senterfitt
 (850) 224-9634
 (850) 521-8002 (direct)
 beth.keating@akerman.com

A. Person Responsible for this Filing:
 Beth Keating
Akerman Senterfitt
 106 East College Ave, Suite 1200
 Tallahassee, FL 32301
 (850) 224-9634
 (850) 521-8002 (direct)
 (850) 222-0103 (fax)
 beth.keating@akerman.com

B. 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.

C. Filed on behalf of: Cox Florida Telcom, L.P.

D. Number of Pages in Document: 11

E: Brief Title: Answer of Cox Florida Telcom, L.P.



Dme
2/4/10
REV.

www.akerman.com | Bio | V Card

DOCUMENT NUMBER DATE
 00688 JAN 29 09
 FPSC-COMMISSION CLERK

CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential information, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

Dallas
Denver
Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Suite 1200
106 East College Avenue
Tallahassee, FL 32301
www.akerman.com
850 224 9634 tel 850 222 0103 fax

January 29, 2010

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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 connection with the provision of intrastate switched access services in alleged of Sections 364.08 and 364.10, F.S.

Dear Ms. Cole:

Attached for electronic filing, please find the Answer of Cox Florida Telcom, L.P. to the Complaint of Qwest Communications Company, LLC. If you have any questions whatsoever, please do not hesitate to contact me. Thank you for your assistance with this filing.



Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
Fax: (850) 222-0103
Attorneys for Cox Florida Telcom

Enclosures

cc: Parties of Record
Theresa Tan (Staff Counsel)

DOCUMENT NUMBER-DATE

00688 JAN 29 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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)
connection with the provision of intrastate)
switched access services in alleged of)
Sections 364.08 and 364.10, F.S.)
_____)

Docket No. 090538-TP

Filed: January 29, 2010

**ANSWER OF COX FLORIDA TELCOM, L.P.
TO THE COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

Cox Florida Telcom, L.P. ("Cox"), through its undersigned counsel and pursuant to Rule 28-106.203, Florida Administrative Code, hereby files this Answer to the Complaint of Qwest Communications Company, LLC ("Qwest") and states as follows:

INTRODUCTION

1. The allegations in the opening two paragraphs of Qwest's complaint are legal conclusions or arguments to which no response is required. To the extent the arguments therein necessitate a response, Cox denies the allegations and specifically denies that Rule 25-4.114, Florida Administrative Code, is in any way applicable to this proceeding. Moreover, Cox specifically denies that it has engaged in

unreasonable rate discrimination in connection with the provision of intrastate switched access services.

PARTIES AND JURISDICTION

2. Paragraph 1 of the Complaint simply contains identifying information for Qwest and need not be admitted or denied by Cox. To the extent Qwest alleges it provides interexchange (long-distance) telecommunications services throughout the State of Florida, Cox is without sufficient knowledge or information to form the basis for a belief as to the veracity of the allegation.

3. To the extent paragraph 2 (e) identifies the correct contact information for Cox, paragraph 2(e) is admitted, with the exception that Cox denies that it is a limited liability company in Florida. Otherwise, Cox is without knowledge regarding the remaining information contained in paragraph 2 and its subparts, and to this extent, paragraph 2 is denied.

4. The allegations of paragraph 3 contain legal conclusions or arguments to which no response is required, but to the extent a response is required, Cox denies the allegations set forth in paragraph 3.

COMPLAINT BACKGROUND

5. The allegations of paragraph 4 are legal conclusions or arguments to which no response is required, but to the extent a response is required, Cox denies the allegations set forth in paragraph 4, as, among other things, Qwest assumes, incorrectly, that Section 364.337(5), Florida Statutes, provides the Commission with any independent authority to address complaints arising in the context of switched

access service provided by a competitive local exchange company (CLEC) to another telecommunications provider on a wholesale basis.

6. The allegations of paragraph 5 are legal conclusions or arguments to which no response is required, but to the extent a response is required, Cox denies the allegations set forth in paragraph 5, with the exception that Cox agrees Florida law allows a carrier, in appropriate circumstances, to enter into contracts that are separate and apart from said carrier's tariff or price list on file with the Commission.

7. As it pertains specifically to Cox, Cox admits the allegations of paragraph 6; otherwise, Cox lacks sufficient knowledge to form the basis for a belief as to the veracity of the allegations, and on this basis, the allegations are denied.

8. To the extent that the allegations of paragraph 7 pertain to Qwest's use of "large quantities" of intrastate switched access services provided by Cox in Florida, the allegations of paragraph 7 are denied. Otherwise, Cox is without any knowledge of Qwest's use of switched access services provided by other CLECs in Florida, and on this basis, the remainder of allegations in this paragraph are likewise denied.

9. With regard to paragraphs 8 and 9, the allegations therein are in the nature of legal arguments and conclusions to which no response is required. Moreover, to the extent that Cox acknowledges the existence of the proceedings in Minnesota referenced in these paragraphs, Cox is without direct knowledge of the statements, comments, filings, parties, and findings, if any, in those proceedings, as Cox does not provide service in Minnesota and was not a party to the referenced proceedings.

10. With regard to the allegations of paragraph 10(e)(i), Cox admits that its Florida Price List No. 2 is on file with the Florida Public Service Commission. To

the extent that Cox bills Qwest for intrastate switched access service in Florida, Cox also admits it has billed Qwest in accordance with the appropriate Cox tariff on file with the Commission. As for the remaining allegations in 10(e)(i), Cox's Florida Price List No. 2 speaks for itself.

11. Cox can neither confirm nor deny the allegations in paragraph 10(e)(ii) as they relate to the existence of "off-tariff" agreements between Cox and other telecommunications providers. Cox acknowledges the existence of a March 7, 2008, letter from Cox's counsel to Qwest; the letter, otherwise, speaks for itself. Moreover, said letter was provided to Qwest in the context of ongoing negotiations and would, therefore, be deemed confidential and proprietary by Cox. To the extent that Cox can neither confirm nor deny the existence of "off-tariff" arrangements, Cox is likewise unable to confirm or deny: 1) what it has or has not provided to Qwest in this regard; and 2) that Qwest is an IXC "under like circumstances," i.e., similarly situated, to any other IXC that may or may not be party to an "off-tariff" agreement with Cox. Cox denies the remaining allegations in paragraph 10(e)(ii).

COMPLAINT FIRST CLAIM FOR RELIEF

12. To the extent paragraph 11 restates and incorporates the allegations to which Cox has provided a response in the foregoing paragraphs, Cox hereby restates its responses as if fully set forth herein.

13. The allegations of paragraph 12 are legal conclusions or arguments to which no response is required, but to the extent a response is required, Cox denies the allegations set forth in paragraph 12, with the exception that Cox acknowledges a

carrier may, in appropriate circumstances, enter into contracts that are separate and apart from said carrier's tariff or price list on file with the Commission.

14. Cox denies the allegations of paragraph 13.

COMPLAINT SECOND CLAIM FOR RELIEF

15. To the extent paragraph 14 restates and incorporates the allegations to which Cox has provided a response in the foregoing paragraphs, Cox hereby restates its responses as if fully set forth herein.

16. To the extent that the allegations of paragraph 15 are legal conclusions or arguments, no response is required. Moreover, the statutes and rule referenced therein speak for themselves. Cox admits that its Florida Price List No. 2 is on file with the Florida Public Service Commission, but it is without sufficient knowledge to form a belief or opinion as to the existence or content of price lists on file with the Florida Public Service Commission for other CLEC respondents to this Complaint.

17. To the extent paragraph 16 calls into question the existence of "off-tariff" agreements between Cox and other telecommunications providers, Cox can neither confirm nor deny these allegations. As to the existence of such agreements between other carriers, Cox is without knowledge, and on this basis, the allegations are denied. Cox denies the remaining allegations in paragraph 16.

COMPLAINT THIRD CLAIM FOR RELIEF

18. To the extent paragraph 17 restates and incorporates the allegations to which Cox has provided a response in the foregoing paragraphs, Cox hereby restates its responses as if fully set forth herein.

19. To the extent that the allegations of paragraph 18 are legal conclusions or arguments, no response is required. Moreover, the statutes and rule referenced therein speak for themselves.

20. To the extent paragraph 19 references Cox's Price List No. 2 on file with the Commission, Cox's price list speaks for itself. Likewise, to the extent the allegations therein assume the existence of "off-tariff" arrangements between Cox and other telecommunications providers, Cox can neither confirm nor deny the existence of such agreements. To the extent that Cox can neither confirm nor deny the existence of "off-tariff" arrangements, Cox is likewise unable to confirm or deny: 1) what it has or has not provided to Qwest in this regard; and 2) that Qwest is an IXC "under like circumstances," i.e. similarly situated and in substantially similar circumstances, to any other IXC that may or may not be a party to an "off-tariff" agreement with Cox. As they pertain to Cox, Cox emphatically denies the remaining allegations in paragraph 19. Moreover, to the extent the allegations in this paragraph pertain to other CLEC respondents to Qwest's Complaint, Cox is without sufficient information to determine the veracity of the allegations therein, and on this basis these allegations are likewise denied.

RELIEF SOUGHT

The allegations of these paragraphs are legal conclusions or arguments to which no response is required, and to the extent a response is required, Cox denies such allegations. With regard to Qwest's request for "reparations," or damages, Cox specifically references and incorporates the arguments and request for relief set forth

in the Joint CLECs' Partial Motion to Dismiss, which is being filed contemporaneously in this Docket.

AFFIRMATIVE DEFENSES

1. Any allegation not expressly admitted herein is denied.
2. Qwest cannot recover on its claim for "reparations," or damages, or any other equitable relief because the Commission does not have authority to award monetary damages.¹
3. Cox maintains a valid price list, or tariff, on file with the Commission in accordance with Rule 25-24.825, Florida Administrative Code. Cox is in full compliance with all rates, terms, and conditions of that price list, or tariff.² Qwest was billed, and paid, in accordance with said tariff and is therefore barred from seeking recovery for such lawfully billed amounts.³
4. The claims against Cox set forth in Qwest's Complaint are barred or diminished by Qwest's failure to mitigate and to avoid its damages, if any.
5. The Commission is without authority to issue an injunction or otherwise styled blanket order terminating all current "off-tariff" contracts for switched access services and prohibiting any future such contracts. Any such action, if taken, would be subject to myriad objections on constitutional grounds, in addition to the jurisdictional arguments raised in the referenced Motion to

¹ Southern Bell Telephone and Telegraph Co. v. Mobile America Corp., Inc., 291 So. 2d 199 (Fla. 1974).

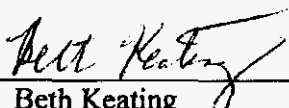
² Hill v. BellSouth Telecommunications, Inc., 364 F. 3d 1308 (11th Cir. 2004)(finding that challenges to the rates *and terms* of a valid tariff are barred by the filed rate doctrine).

³ BellSouth Telecommunications, Inc. v. Jacobs, 834 So. 2d 855, 859 (Fla. 2002), *citing Bella Boutique Corp. v. Venezolana Internacional de Aviacion, S.A.*, 459 So. 2d 440,441 (Fla. 3rd DCA 1984)(finding a validly filed tariff "has the force and effect of law" and "constitutes the contract of carriage between the parties.") See also Pfeil v. Sprint Nextel Corp., 504 F.Supp.2d 1273, 1276 n. 2 (N.D. Fla. 2007) (finding no damages because the filed rate was paid and also finding that the filed rate doctrine applies to both state and federal tariffs).

Dismiss. Moreover, Qwest lacks sufficient standing to seek the broad relief requested.⁴

WHEREFORE, Cox respectfully requests that the Commission deny Qwest's Complaint as it pertains to Cox.

Respectfully submitted this 29th day of January, 2010.

By: 
Beth Keating
AKERMAN SENTERFITT
106 East College Avenue,
Suite 1200
Tallahassee, FL 32301
(850) 425-1614
(850) 222-0103
beth.keating@akerman.com

*Attorneys for Cox Florida
Telcom*

⁴ *Agrico Chem. Co. v. Dept. of Env'tl. Reg.*, 406 So. 2d 478 (Fla. 2nd DCA 1981)(petitioner must establish an injury in fact of sufficient immediacy and one which the proceeding was designed to address).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing has been furnished by U.S. Mail and email^(*) to the following this 29th day of January, 2010:

<p><i>Florida Public Service Commission:</i> Theresa Tan, Esq. Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 Email: ltan@psc.state.fl.us</p>	<p><i>Qwest Communications Company, LLC:</i> Steven H. Denman, Esq. Davis Graham & Stubbs LLP 9040 Town Center Parkway, Suite 213 Lakewood Ranch, FL 34202 Email: steve.denman@dgslaw.com</p>
<p><i>Qwest Communications Company, LLC:</i> Alex M. Duarte, Esq. Qwest Communications Company, LLC 421 SW Oak Street, Rm. 810 Portland, OR 97204 Email: alex.duarte@qwest.com</p>	<p><i>Qwest Communications Company, LLC:</i> Adam L. Scherr Qwest Communications Company, LLC 1600 7th Ave. Rm 1506 Seattle, WA 98191 Email: adam.sherr@qwest.com</p>
<p><i>Broadwing Communications, LLC:</i> Marsha E. Rule, Esq. * Rutledge, Ecenia & Purnell P.O. Box 551 Tallahassee, FL 32302-0551 (850) 681-6788 Fax: (850) 681-6515 marsha@reuphlaw.com</p>	<p><i>tw telecom of florida l.p.:</i> Gene Adams, Esq. * Pennington, Moore, Wilkinson, Bell & Dunbar 215 South Monroe Street, 2nd Floor Tallahassee, FL 32301 Email: gene@Penningtonlawfirm.com</p>
<p><i>Granite Telecommunications, LLC:</i> Andrew M. Klein, Esq. * Allen C. Zoracki, Esq. * Klein Law Group PLLC 1250 Connecticut Ave., N.W., Suite 200 Washington DC 20036 Email: AKlein@KleinLawPLLC.com Email: AZoracki@KleinLawPLLC.com</p>	<p><i>MCImetro Access Transmission Services d/b/a Verizon Access Transmission Services:</i> Dulaney O'Roarke, Esq. * Verizon Six Concourse Parkway, NE Suite 800 Atlanta, GA 30328 Email: de.oroark@verizon.com</p>

^(*) Email only

<p><i>XO Communications Services Inc.:</i> Matthew Feil, Esq. * Akerman Senterfitt Highpoint Center, 12th Floor 106 East College Avenue Tallahassee, FL 32301 Email: matthew.feil@akerman.com</p> <p>Gregory J. Kopta * Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101 (206) 757-8079 Fax: (206) 757-7079 Email: gregkopta@dwt.com</p>	
--	--

By: 
Beth Keating, Esq.
Akerman Senterfitt
(850) 521-8002
beth.keating@akerman.com