

**Diamond Williams**

090538-TP

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**Sent:** Wednesday, September 29, 2010 4:04 PM  
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**Subject:** Docket No. 090538-TP  
**Attachments:** PSC Docket 090538TP Qwest - Motion for Leave to Amend and Amended Complaint 09.29.10.pdf

Please find attached - Qwest Communications Company, LLC's Motion for Leave to File Amended Complaint and Qwest's Amended Complaint.

**Leslie McLaughlin**

Legal Assistant to Bill Williams, Amy Schrader &amp; Michael Riley

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ATTORNEYS AT LAW

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DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLEAR

9/29/2010

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

Amended Complaint of QWEST  
COMMUNICATIONS COMPANY, LLC, Against  
MCIMETRO ACCESS. TRANSMISSION  
SERVICES, LLC (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, 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

Filed: September 29, 2010

**MOTION FOR LEAVE TO FILE**  
**AMENDED COMPLAINT**

Qwest Communications Company, LLC ("QCC") respectfully requests leave to file its Amended Complaint, pursuant to rule 28-106.202, F.A.C. In support of this Motion, QCC states as follows:

1. The Amended Complaint of QCC is being filed for the purposes of adding additional respondents. QCC also has deleted its Prayer for Relief D in its original complaint which asked the Commission to issue a "cease and desist" order with respect to the Respondents' behavior.

2. QCC's instant motion is consistent with the discussions of this matter during the May 4, 2010, Agenda Conference hearing at which the Joint CLECs' Partial Motion to Dismiss and Verizon Access' Motion to Dismiss and for Summary Judgment was considered. Specifically, during the May 4<sup>th</sup> hearing, QCC stated that it intended to amend its complaint to add additional respondents and that, when it did, it would delete Prayer for Relief "D." See, May 4, 2010, Hearing Transcript at p. 20, lines 14 to 20.

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FPSC-COMMISSION CLERK

3. The potential to add new Respondents, following QCC's obtaining additional information from interexchange carriers ("IXCs"), has been contemplated since the original complaint was filed.

4. Over the past several weeks, QCC has entered into confidentiality agreements with IXCs and has obtained and reviewed off price list agreements entered between IXCs and numerous CLECs that were not named as Respondents in QCC's original complaint. As a result of its review and analysis of this additional information, QCC seeks to add thirteen additional Respondents to this proceeding, as listed in the Amended Complaint filed concurrently with this motion.

5. The issues identification process, discovery and testimony deadlines, and other related procedural steps have been postponed by the parties and staff pending QCC's review of this information. Therefore, granting this motion will not cause delay or prejudice in the above-captioned docket.

6. Counsel for QCC contacted counsel for the parties of record to advise them that QCC intended to file an Amended Complaint at this time and to ask if they had any objection. Counsel for the parties of record did not take a position on the motion other than to reserve their right to respond.

WHEREFORE, QCC respectfully requests that this motion be granted, permitting it to file its Amended Complaint, which is submitted herewith.

Respectfully submitted this 29th day of September, 2010.

Respectfully submitted,

By: s/ Mary F. Smallwood

Mary F. Smallwood

(Fla. Bar No. 242616)

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Attorneys for Qwest Communications

Company, LLC fka Qwest Communications

Corporation

**CERTIFICATE OF SERVICE  
DOCKET NO. 090538-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by regular U.S. Mail and/or electronic mail on this 29th day of September, 2010, to parties on the attached lists.

s/ Mary F. Smallwood

**By email:**

*Florida Public Service Commission*  
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*Qwest Communications Co., LLC.*  
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Qwest Communications Co., LLC  
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**Delivery via U. S. Mail**

General Counsel Access Point, Inc. 1100 Crescent Green, Suite 109 Cary, NC 27518-8105	General Counsel Lightyear Network Solutions, LLC 1901 Eastpoint Parkway Louisville, KY 40223-4145
General Counsel Birch Communications, Inc. 2300 Main Street, Suite 600 Kansas City, MO 64108-2415	General Counsel Navigator Telecommunications, LLC P. O. Box 13860 North Little Rock, AR 72113-0860
General Counsel Budget PrePay, Inc. 1325 Barksdale Blvd., Suite 200 Bossier City, LA 71111-4600	General Counsel PaeTec Communications, Inc. One PaeTec Plaza 600 Willowbrook Office Park Fairport, NY 14450-4233
General Counsel BullsEye Telecom, Inc. 25900 Greenfield Road, Suite 330 Oak Park, MI 48237-1267	General Counsel STS Telecom, LLC P. O. Box 822270 Pembroke Pines, FL 33082-2270
General Counsel DeltaCom, Inc. 7037 Old Madison Pike Huntsville, AL 35806-2107	General Counsel US LEC of Florida, LLC d/b/a PaeTec Business Services 6801 Morrison Blvd. Charlotte, NC 28211-3599
General Counsel Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511	General Counsel Windstream Nuvox, Inc. Two North Main Street Greenville, SC 29601-2719
General Counsel Flatel, Inc. Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307	

### **Delivery by Certified Mail**

Access Point, Inc.  
c/o Corporation Service Company  
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Tallahassee, Florida 32301-2525

Birch Communications, Inc.  
c/o Corporation Service Company  
1201 Hays Street  
Tallahassee, Florida 32301-2525

Budget Prepay, Inc.  
c/o NRAI Services, Inc.  
2731 Executive Park Drive, Suite 4  
Weston, Florida 33331

Bullseye Telecom, Inc.  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

DeltaCom, Inc.  
c/o Corporation Service Company  
1201 Hays Street  
Tallahassee, Florida 32301-2525

Ernest Communications, Inc.  
c/o Corporation Service Company  
1201 Hays Street  
Tallahassee, Florida 32301-2525

Flatel, Inc.  
c/o Adriana Solar  
2300 Palm Beach Lakes Blvd.  
Executive Center, Suite 100  
West Palm Beach, Florida 33409

Lightyear Network Solutions, LLC  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

Navigator Telecommunications, LLC  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

Paetec Communications, Inc.  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

STS Telecom, LLC  
c/o Alan Gold, CPA  
1320 South Dixie Highway, Suite 870  
Coral Gables, Florida 33146

US LEC of Florida, LLC  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

Windstream Nuvox, Inc.  
c/o CT Corporation System  
1200 S. Pine Island Road  
Plantation, Florida 33324

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

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS. TRANSMISSION SERVICES, LLC (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, 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

Filed: September 29, 2010

**AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC (fka QWEST COMMUNICATIONS CORPORATION)**

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**DOCUMENT NO.      DATE**

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**AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC (fka QWEST  
COMMUNICATIONS CORPORATION)**

Pursuant to §§ 364.04, 364.08 and 364.10, Fla. Stat., and Rule 25-22.036 and 25-4.114, Fla. Admin. Code, Qwest Communications Company, LLC (“QCC”) respectfully submits this complaint against the following Florida competitive local exchange carriers (“CLECs”): 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; 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 (CLECs whose true names are currently unknown) (collectively, the “Respondent CLECs”).

In brief, the Respondent CLECs have subjected QCC to unjust and unreasonable rate discrimination in connection with the provision of intrastate switched access services in violation of §§ 364.08 and 364.10, Fla. Stat. The Respondent CLECs entered into undisclosed contract service agreements outside of tariffs or price lists (also known as individual case basis agreements, or “ICBs”) with select interexchange carriers and failed to make those same rates, terms and conditions available to QCC as otherwise required by statute, the Respondent CLECs’ tariffs or price lists, and Commission rules.

In support of the Complaint, QCC alleges as follows:

**PARTIES AND JURISDICTION**

1. Complainant QCC is a corporation organized under the laws of the state of Delaware with its principal place of business at 1801 California Street, Denver, Colorado. QCC is qualified to do business in Florida, and is a telecommunications company authorized by this Commission to provide telecommunications services in Florida, pursuant to Certificates of Public Convenience and Necessity issued by this Commission; specifically, Competitive Local Exchange Carrier Certificate No. 5801 and Interexchange Carrier Registration No. TI215 (formerly Certificate No. 3534, which is now a grandfathered interexchange carrier registration pursuant to § 364.02(14), Fla. Stat.). As relevant to this Complaint, QCC provides interexchange (long-distance) telecommunications services throughout the State of Florida.

a. Correspondence and communications, including all notices and pleadings, concerning this Complaint should be addressed to the following individuals:

Mary F. Smallwood, Florida Bar No.  
301 S. Bronough St., Suite 600  
P.O. Box 11189  
Tallahassee Florida 32301  
(850) 577-6960  
[mary.smallwood@gray-robinson.com](mailto:mary.smallwood@gray-robinson.com)

Adam L. Sherr (not admitted in Florida)  
Associate General Counsel  
Qwest  
1600 7th Avenue, Room 1506  
Seattle, WA 98191  
[Adam.Sherr@qwest.com](mailto:Adam.Sherr@qwest.com)

b. QCC will cooperate in the prosecution of this Complaint and will appear at any hearing or hearings the Commission may conduct.

2. Respondent CLECs are:

a. On information and belief, Respondent MCImetro Access Transmission Services, LLC, d/b/a Verizon Access transmission Services ("MCP"), is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Basking Ridge, New Jersey, and is certified to provide telecommunications services in Florida. According to the Commission's website, MCI's Certificate No. is 2986, and its regulatory contact address is 106 East College Avenue, Tallahassee, Florida 32301-7721.

b. On information and belief, Respondent XO Communications Services, Inc. ("XO") is a corporation organized under the laws of the state of Delaware with its principal place of business in Herndon, Virginia, and is certified to provide telecommunications services in Florida. On information and belief, XO acquired, and is the successor in interest to, Allegiance Telecom ("Allegiance"). According to the Commission's website, XO's Certificate No. is 5648 and its regulatory contact address is 10940 Parallel Parkway, Suite K-#353, Kansas City, Kansas 66109-4515.

c. On information and belief, Respondent tw telecom of florida, l.p., f/k/a, a/k/a Time Warner Telecom ("tw telecom") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Littleton, Colorado, and is certified to provide telecommunications services in Florida. On information and belief, tw telecom is a subsidiary of Time Warner Telecom Holdings Inc. ("Time Warner Holdings") and an affiliate of Time Warner Telecom of Minnesota, L.L.C. ("Time Warner Minnesota"). According to the Commission's website, tw telecom's

Certificate No. is 3167<sup>1</sup> and its regulatory contact address is 555 Church Street, Suite 2300, Nashville, Tennessee 37219-2330.

d. On information and belief, Respondent Granite Telecommunications, L.L.C. ("Granite") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Quincy, Massachusetts, and is certified to provide telecommunications services in Florida. According to the Commission's website, Granite's Certificate No. is 8222 and its regulatory contact address is 100 Newport Avenue Extension, Quincy, Massachusetts 02171-1734.

e. On information and belief, Respondent Cox Florida Telecom, L.P., d/b/a Cox Communications, d/b/a Cox Business, d/b/a Cox ("Cox"), is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Atlanta, Georgia and is certified to provide telecommunications services in Florida. According to the Commission's website, Cox's Certificate No. is 4036 and its regulatory contact address is 7401 Florida Blvd., Baton Rouge, Louisiana 70806-4639.

f. On information and belief, Respondent Broadwing Communications, LLC ("Broadwing") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Austin, Texas and is certified to provide telecommunications services in Florida. On information and belief, Broadwing was acquired by Level 3 Communications, LLC ("Level 3") pursuant to an October 2006 merger agreement. On information and belief, Broadwing earlier acquired and was the successor-in-interest to Focal Communications Corporation ("Focal"). On information and belief, Focal was the corporate parent or affiliate of Focal Communications Corporation of Minnesota. According to the Commission's website, Broadwing's Certificate No. is 5618 and its regulatory contact address is c/o Level 3 Communications, 1025 Eldorado Boulevard, Broomfield, Colorado 80021-8869.

g. On information and belief, Respondent Access Point, Inc. ("Access Point") is a corporation organized under the laws of the State of North Carolina with its principal place of business in Cary, North Carolina, and is certified to provide telecommunications services in Florida. According to the Commission's website, Access Point's Certificate No. is 5622 and its regulatory contact address is 1100 Crescent Green Street, Suite 109, Cary, North Carolina 27518-8105.

h. On information and belief, Respondent Birch Communications, Inc. ("Birch Communications") is a corporation organized under the laws of the State of Georgia with its principal place of business in Kansas City, Missouri, and is certified to provide telecommunications services in

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<sup>1</sup> tw telecom holds Alternative Access Vendor Certificate No. 3167. On information and belief, in addition to alternative access vendor service, tw telecom has elected to provide intrastate switched access service in Florida as a CLEC. See § 364.337(6), Fla. Stats., and Rule 25.24.710, Fla. Admin. Code.

Florida. On information and belief, Birch Communications is the successor in interest to Access Integrated Networks, Inc. (“Access Integrated”)<sup>2</sup> and IDS Telcom, formerly d/b/a Cleartel Communications (“IDS”).<sup>3</sup> According to the Commission’s website, Birch Communication’s Certificate No. is 7130 and its regulatory contact address is 2300 Main Street, Suite 600, Kansas City, Missouri 64108-2415.

i. On information and belief, Respondent Budget PrePay, Inc. d/b/a Budget Phone (“Budget”) is a corporation organized under the laws of the State of Louisiana with its principal place of business in Bossier City, Louisiana, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Budget’s Certificate No. is 7031 and its regulatory contact address is 1325 Barksdale Blvd., Suite 200, Bossier, Louisiana 71111-4600.

j. On information and belief, Respondent BullsEye Telecom, Inc. (“BullsEye Telecom”) is a corporation organized under the laws of the State of Michigan with its principal place of business in Oak Park, Michigan, and is certified to provide telecommunications services in Florida. According to the Commission’s website, BullsEye Telecom’s Certificate No. is 8179 and its regulatory contact address is 25900 Greenfield Road, Suite 330, Oak Park, Michigan 48237-1267.

k. On information and belief, Respondent DeltaCom, Inc., f/k/a ITC^DeltaCom Communications, Inc. (“DeltaCom”) is a corporation organized under the laws of the State of Alabama with its principal place of business in Huntsville, Alabama, and is certified to provide telecommunications services in Florida. According to the Commission’s website, DeltaCom’s Certificate No. is 4764 and its regulatory contact address is 7037 Old Madison Pike, Huntsville, Alabama 35806-2107.

l. On information and belief, Respondent Ernest Communications, Inc. (“Ernest Communications”) is a corporation organized under the laws of the State of Georgia with its principal place of business in Norcross, Georgia, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Ernest Communication’s Certificate No. is 5722 and its regulatory contact address is 5275 Triangle Parkway, Suite 150, Norcross, Georgia 30092-6511.

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<sup>2</sup> On or about February 20, 2008, Access Integrated Networks, Inc., announced that it had completed acquisition of Birch Telecom, Inc. Later in 2008, Access Integrated Networks, Inc., changed its name to Birch Communications, Inc. Access Integrated Network’s name change to Birch Communications, Inc., was confirmed by Commission Order on May 29, 2008. See Order No. PSC-08-0354-FOF-TP, Docket No. 080191-TP.

<sup>3</sup> On or about May, 8, 2009, Birch Communications filed with the Commission a petition for waiver of rule 25-4.118, F.A.C. (which addresses customer authorization required prior to changes in carrier selection). See *Petition of Birch Telecom of the South, Inc. dba Birch Communications a wholly owned subsidiary of Birch Communications, Inc. For Waiver of Rule 25-4.118, F.A.C.*, Docket No. 090307-TP. In the petition, Birch Communications noted that it was in the process of acquiring substantially all of the assets and customers of Cleartel and that, as “Assignee” of Cleartel, it would assume Cleartel’s operations and adopt Cleartel’s existing tariffs. See Order No. PSC-09-0496-PAA-TP, Docket No. 090307-TP, issued July 13, 2009, authorizing the waiver based upon the petition.

m. On information and belief, Respondent Flatel, Inc. ("Flatel") is a corporation organized under the laws of the State of Florida with its principal place of business in West Palm Beach, Florida, and is certified to provide telecommunications services in Florida. According to the Commission's website, Flatel's Certificate No. is 5315 and its regulatory contact address is Executive Center, Suite 100, 2300 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409-3307.

n. On information and belief, Respondent Lightyear Network Solutions, LLC ("Lightyear") is a limited liability company organized under the laws of the State of Kentucky with its principal place of business in Louisville, Kentucky, and is certified to provide telecommunications services in Florida. According to the Commission's website, Lightyear's Certificate No. is 8472 and its regulatory contact address is 1901 Eastpoint Parkway, Louisville, Kentucky 40223-4145.

o. On information and belief, Respondent Navigator Telecommunications, LLC ("Navigator") is a limited liability company organized under the laws of the State of Arkansas with its principal place of business in North Little Rock, Arkansas, and is certified to provide telecommunications services in Florida. According to the Commission's website, Navigator's Certificate No. is 5777 and its regulatory contact address is P.O. Box 13860, North Little Rock, Arkansas 72113-0860.

p. On information and belief, Respondent PaeTec Communications, Inc. ("PaeTec") is a corporation organized under the laws of the State of Delaware with its principal executive office in Fairport, New York, and is certified to provide telecommunications services in Florida. According to the Commission's website, PaeTec's Certificate No. is 5756 and its regulatory contact address is One PaeTec Plaza, 600 Willowbrook Office Park, Fairport, New York 14450-4233.

q. On information and belief, Respondent STS Telecom, LLC ("STS") is a limited liability company organized under the laws of the State of Florida with its principal place of business in Cooper City, Florida, and is certified to provide telecommunications services in Florida. According to the Commission's website, STS's Certificate No. is 8416 and its regulatory contact address is P.O. Box 822270, Pembroke Pines, Florida 33082-2270.

r. On information and belief, Respondent US LEC of Florida, LLC d/b/a PaeTec Business Services ("US LEC") is a limited liability company organized under the laws of the State of North Carolina with its principal place of business in Fairport, New York, and is certified to provide telecommunications services in Florida. According to the Commission's website, US LEC's Certificate No. is 5311 and its regulatory contact address is 6801 Morrison Blvd., Charlotte, North Carolina 28211-3599.

s. On information and belief, Respondent Windstream Nuvox, Inc. ("Windstream Nuvox") is a corporation organized under the laws of the State of Delaware with its principal place of business in Little Rock, Arkansas, and is certified to provide telecommunications services in Florida.

According to the Commission's website, Windstream Nuvox's Certificate No. is 5638 and its regulatory contact address is Two North Main Street, Greenville, South Carolina 29601-2719. On information and belief, Nuvox previously acquired Florida Digital Network d/b/a FDN Communications ("Florida Digital") and Windstream Nuvox is the successor in interest to Florida Digital.

t. On information and belief, Respondents John Does 1-50 are telecommunications companies operating in Florida, other than the CLECs specifically named herein, that provide intrastate switched access services pursuant to off-tariff agreements, but whose identities are, as of the date of filing this Complaint, unknown to QCC. As a result of its ongoing investigation, QCC may seek to amend this Complaint, or to file an amended complaint, accordingly.

3. The Commission has jurisdiction over this Complaint pursuant to §§ 364.01, 364.02, 364.04, 364.07, 364.08, 364.10 364.337, and Chapter 120, Fla. Stat., and Rules 25.22.036 and 25-4.002, Fla. Admin. Code.

#### **BACKGROUND**

4. This Commission has jurisdiction over telecommunications companies regarding all matters set forth in Chapter 364, unless specifically exempted, including complaints against CLECs for unreasonably prejudicial, anti-competitive or discriminatory conduct. See §§ 364.01 and 364.337(2), Fla. Stat. This includes exercising exclusive jurisdiction to ensure that all telecommunications providers are treated fairly by preventing unreasonable preferential, discriminatory or anti-competitive behavior. See §§ 364.01 (4)(g), 364.08 and 364.10(1), Fla. Stat. The Commission requires that any telecommunications companies, including CLECs, that file tariffs or price lists for their intrastate switched access services provide those services in a non-discriminatory manner. See e.g. §§ 364.08(1) and 364.10(1), Fla. Stat. Moreover, the Commission has continuing regulatory oversight over the provision of basic local exchange telecommunications service by certificated CLECs and AAVs for purposes of "ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace." See § 364.337(5), Fla. Stat.

5. A carrier may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from its tariffs or price lists ("off-tariff agreements" or arrangements). However, pursuant to § 364.080(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement "not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service. Telecommunications companies are also prohibited, pursuant to § 364.10(1), Fla. Stat., from extending an undue or unreasonable preference or advantage to any person, or in subjecting any person to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever" As such, a telecommunications companies must otherwise make the terms of contracts available to other similarly-situated telecommunications companies on a non-discriminatory basis.

6. Each of the named Respondent CLECs has filed tariffs or price lists with the Commission for their intrastate switched access service and rates in Florida.

7. In its capacity as an interexchange carrier ("IXC"), QCC necessarily uses and is billed for large quantities of intrastate switched access services by local exchange carriers in Florida, including the Respondent CLECs.

8. Beginning in June 2004, the Minnesota Public Utilities Commission ("MN PUC") conducted a series of investigations focused on the fact that certain CLECS, including many of the named Respondent CLECs, had entered into off-tariff agreements in connection with their provision of intrastate switched access services to selected IXCs, including AT&T, Inc. (or its IXC subsidiaries), MCI, Sprint Communications Company, L.P., and Global Crossing Telecommunications, Inc., which had not been filed with the Commission, as required by Minnesota law, and which gave discriminatory-preferences or discounts to these selected IXCs.

9. Those investigations were initiated by a series of complaints filed by the Minnesota Department of Commerce ("MN DOC"). In its complaint initiating Docket C-04-235, the MN DOC identified off-tariff agreements involving, among other CLECs, Allegiance, Focal (now Broadwing), and MCI and IXCs AT&T, MCI, Sprint and Global Crossing. In its complaint initiating Docket C-05-1282, the MN DOC identified discriminatory off-tariff agreements involving, among other CLECs, Granite and Time Warner. In its complaint initiating Docket C-06-498, the MN DOC identified an off-tariff agreement involving MCI. Among the three dockets, the-MN DOC identified a total of twenty-seven (27) CLECs that had entered discriminatory off-tariff agreements with IXCs other than QCC. In public comments, IXC AT&T clarified that many more CLECs engaged in this practice. As AT&T explained, "[i]n the past four years or so, AT&T has entered into *hundreds* of agreements based on the same form with CLEC providers of switched access services *throughout the United States.*"<sup>4</sup>

10. The specific factual allegations as to each Respondent CLEC are as follows:

a. Respondent MCI

i. Respondent MCI has on file with this Commission a tariff or price list ("MCI price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services; F.P.S.C. Price List No- 1.* Respondent MCI bills QCC the rates set out in the Section 7.4 of said price list for intrastate switched access services in Florida.

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<sup>4</sup> *AT&T Comments, Motion to Dismiss and Motion for Summary Judgment*, Docket C-04-235 (MN PUC, Aug. 19, 2004). (Emphasis added.)

ii. On information and belief, Respondent MCI, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent MCI's effective Florida price list. These agreements include, but are not necessarily limited to, an agreement between MCImetro Access Transmission Services and AT&T, as identified in the MN DOC's complaint in Docket C-04-235. They also include an agreement between MCI WorldCom Network Services and IXC AT&T, as identified in the MN DOC's complaint in Docket C-06-498. On information and belief, Respondent MCI has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that MCI provides in Florida, and has not provided QCC the rates, terms or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent MCI's off-tariff arrangements. QCC has made demand on MCI to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. MCI has not honored QCC's requests.

b. Respondent XO

i. Respondent XO has on file with this Commission a tariff or price list ("XO price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See XO Communications Services, Inc. Access Services, Florida Price List No 7.* On information and belief, Respondent XO also has on file with this Commission a second price list ("Allegiance price list") specifying rates, terms and conditions for the provision of intrastate switched access services in Florida. *See XO Communications Services, Inc., Florida Price List No 8.* On information and belief, Respondent XO bills QCC the rates set out in Section 6 of the XO price list for intrastate switched access services in Florida. On information and belief, Respondent XO bills QCC the rates set out in Section 3.9 of the Allegiance price list for intrastate switched access services in Florida. On information and belief, Section 6.4 of the XO price list indicates that XO may enter into individual case basis contracts for switched access services, and provides that such contract offerings will be made available to similarly-situated customers in substantially similar circumstances. On information and belief, Section 5.2 of the Allegiance price list indicates that XO (Allegiance) may enter into individual case basis contracts for switched access services, and provides such contract offerings will be made available to similarly-situated customers in substantially similar circumstances. On information and belief, Allegiance formerly billed QCC the rates set out in its Florida price list for intrastate switched access services.



ii. On information and belief, Respondent XO, either itself or via its affiliates, subsidiaries or predecessors (including Allegiance), had or have off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent XO's effective Florida price lists. These agreements include (but are not necessarily limited to) an agreement between Allegiance and AT&T, as identified in the MN DOC's complaint in Docket C-04-235. They also include a November 1, 2001 agreement between XO Communications, Inc. and AT&T Corp., a copy of which was made public in MN PUC Docket C-05-1282. On information and belief, neither Allegiance nor Respondent XO has disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Allegiance and XO provide in Florida, or provided QCC the rates, terms, and/or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent XO's and Allegiance's off-tariff arrangements. QCC has made demand on XO and Allegiance to disclose copies of their off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Neither XO nor Allegiance has honored QCC's requests.

c. Respondent tw telecom

i. Respondent tw telecom (f/k/a, a/k/a Time Warner) has on file with this Commission a tariff or price list (tw telecom price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Time Warner Telecom of Florida, L.P., Florida Price List No. 4*. On information and belief, Respondent tw telecom bills QCC the rates set out in section 3.6 of said price list for intrastate switched access services in Florida. On information and belief, Section 8.1 of said price list indicates that tw telecom may enter into customer-specific contracts, and provides that the terms of such contracts will be made available to similarly-situated customers in substantially the same circumstances.

ii. On information and belief, Respondent tw telecom (f/k/a, a/k/a Time Warner), either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent tw telecom's effective Florida price list. These agreements include, but are not necessarily limited to, a July 1, 2001 agreement between Time Warner Telecom of Minnesota, LLC and AT&T and a February 20, 2004 agreement between Time Warner Telecom of Minnesota, LLC and AT&T, both of which were identified in the MN DOC's complaint in Docket C-05-1282. They also include a "general services

agreement” between Time Warner and AT&T. On information and belief, Respondent tw telecom has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that tw telecom provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an TIC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent tw telecom’s off-tariff arrangements. QCC made demand on tw telecom to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. tw telecom has not honored QCC’s requests.

d. Respondent Granite Telecommunications

i. Respondent Granite has on file with this Commission a tariff or price list (“Granite price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida See Granite Telecommunications, LLC, Florida P.S.C. Price List No. 1. On information and belief, Respondent Granite bills QCC the rates set out in Section 51 of said price list for terminating, intrastate switched access services in Florida.

ii. On information and belief, Respondent Granite, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Granite’s effective Florida price list. These agreements include, but are not necessarily limited to, an April 1,2003 agreement between Granite and AT&T, as identified in the MN DOC’s complaint in Docket C-05-1282. On information and belief, Respondent Granite has not disclosed to QCC (in a mariner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Granite provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Granite’s off-tariff arrangements. QCC made demand on Granite to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Granite has not honored QCC’s requests.

e. Respondent Cox

i. Respondent Cox has on file with this Commission a tariff or price list (“Cox price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. See *Cox Florida Telcom, L.P. d/b/a Cox Communications, Florida Price List No. 2*. On information and belief, Respondent Cox bills QCC the rates set out in Sections 3,10 of said price list

for intrastate switched access services in Florida. On information and belief, Section 6.1 of the Cox price list indicates that Cox may enter into individual contracts for switched access services, and provides that such contract offerings will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Cox, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Cox's effective Florida price list. These agreements include, but are not necessarily limited to, one or more arrangements described by Cox's counsel in a March 7, 2008 letter to QCC. Without disclosing the agreements themselves, Cox acknowledged it provides "discounts on Intrastate switched access services based on volume purchases of special access services." On information and belief, Respondent Cox has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Cox provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Cox's off-tariff arrangements. QCC made demand on Cox to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Cox has not honored QCC's requests.

f. Respondent Broadwing

i. Respondent Broadwing has on file with this Commission a tariff or price list ("Broadwing price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Broadwing Communications LLC, Florida Price List No. 3*. On information and belief, Respondent Broadwing bills QCC the rates set out in Section 5.1 of said price list for intrastate switched access services in Florida.

ii. On information and belief, Respondent Broadwing, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in. Respondent Broadwing's effective Florida price list. These agreements include, but are not necessarily limited to, a December 25, 2001 agreement between Focal Communications Corporation and AT&T Communications of the Midwest, Inc. and a December 21, 2000 agreement between Focal Communications Corporation and Sprint Communications Company, LP. Both agreements were identified in the MN DOC's complaint in Docket C-04-235. On

information and belief, Respondent Broadwing has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Broadwing provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to the off-tariff arrangements. QCC is an IXC for intrastate switched access service under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Broadwing's off-tariff arrangements. QCC made demand on Broadwing, via Level 3, its corporate parent, to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Broadwing/Level 3 have not honored QCC's requests.

g. Respondent Access Point

i. Respondent Access Point has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Access Point, Inc., Florida Price List No. 2.* On information and belief, Respondent Access Point bills QCC the rates set out in Section 3 of said price list for intrastate switched access services. On information and belief, Section 6.1 of the Access Point price list indicates that Access Point may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Access Point, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Access Point has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Access Point to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Access Point has not honored QCC's requests.

h. Respondent Birch Communications

i. Respondent Birch Communications has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Birch Telecom of the South, Inc./Birch Telecom d/b/a Birch, FL Price List No.3; Birch Communications Florida Price List No. 2.* On information and belief, Respondent Birch Communications bills QCC the rates set out in Sections 5 of said price lists for intrastate switched access

services. On information and belief, Section 8 of Birch Communication's<sup>5</sup> Florida Price List No. 2 indicates that Birch Communications may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Birch Communications, either itself or via its affiliates, subsidiaries or predecessors (including Access Integrated and IDS), had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Birch Communications and its predecessors-in-interest have not submitted these off-price list arrangements to this Commission, have not disclosed copies of all past and current off-price list arrangements to QCC, and have not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Birch Communications to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Birch Communications has not honored QCC's requests.

i. Respondent Budget

i. Respondent Budget has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Budget PrePay, Inc. d/b/a Budget Phone, FL Price List No. 3.* On information and belief, Respondent Budget bills QCC the rates set out in Section 5 of said price list for intrastate switched access services. On information and belief, Section 7.1 of the Budget price list indicates that Budget may enter into individual contracts for switched access services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Budget, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Budget has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Budget to disclose copies of its

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<sup>5</sup> See also Section 8 of Access Integrated's Florida Price List No. 2, which, on information and belief, previously was on file with this Commission.

off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Budget has not honored QCC's requests.<sup>6</sup>

j. Respondent BullsEye Telecom

i. Respondent BullsEye Telecom has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. See *BullsEye Telecom, Inc., FL Price List No. 2*. On information and belief, Respondent BullsEye Telecom bills QCC the rates set out in Section 3 of said price list for intrastate switched access services. On information and belief, Section 5.1 of the BullsEye price list indicates that BullsEye Telecom may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers.

ii. On information and belief, Respondent BullsEye Telecom, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent BullsEye Telecom has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on BullsEye Telecom to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. BullsEye Telecom has not honored QCC's requests.

k. Respondent DeltaCom

i. Respondent DeltaCom has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. See *DeltaCom, Inc., FL Switched Access Price List*. On information and belief, ITC^DeltaCom had on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. See *ITC^DeltaCom Switched Access Tariff*. On information and belief, Respondent ITC^DeltaCom billed QCC the rates set out in Sections 3 of said price list for intrastate switched access services.

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<sup>6</sup>In December 2008, QCC filed a formal complaint against Budget with the Federal Communications Commission ("FCC"), asserting claims under the Communications Act of 1934, as amended (the "Act"). In that matter, QCC alleges that Budget violated the Act by overcharging Qwest for switched access on certain interstate traffic (originating in a variety of states, including Florida). In that proceeding, Budget contends that it properly charged Qwest higher intrastate access rates on the traffic at issue. *In the Matter of Qwest Communications Corporation v. Budget Prepay, Inc. d/b/a Budget Phone and Budget Phone, Inc.*, File No. EB-08-MD-012 (Formal Complaint of Qwest Communications Corporation filed Dec. 30, 2008). The matter is still pending before the FCC.

ii. On information and belief, Respondent DeltaCom, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent DeltaCom has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on DeltaCom to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. DeltaCom has not honored QCC's requests.

i. Respondent Ernest Communications

i. Respondent Ernest Communications has not filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. On information and belief, Respondent Ernest Communications bills QCC rates for intrastate switched access services that exceed the rates at charges for other IXCs for such services.

ii. On information and belief, Respondent Ernest Communications, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates charged to QCC. On information and belief, Respondent Ernest Communications has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Ernest Communications to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Ernest Communications has not honored QCC's requests.

m. Respondent Flatel

i. On information and belief, Respondent Flatel has not filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. On information and belief, Respondent Flatel bills QCC rates for intrastate switched access services that exceed the rates it charges other IXCs for such services.

ii. On information and belief, Respondent Flatel, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the charged to QCC. On information and belief, Respondent Flatel has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the

rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Flatel to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Flatel has not honored QCC's requests.

n. Respondent Lightyear

i. Respondent Lightyear has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Lightyear Network Solutions, LLC, Florida Price List No. 3.* On information and belief, Respondent Lightyear bills QCC the rates set out in Section 5 of said price list for intrastate switched access services. On information and belief, Section 8 of the Lightyear price list indicates that that Lightyear may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Lightyear, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Lightyear has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Lightyear to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Lightyear has not honored QCC's requests.

o. Respondent Navigator

i. Respondent Navigator has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Navigator Telecommunications, LLC, Florida P.S.C. Price List No. 2.* On information and belief, Respondent Navigator bills QCC the rates set out in Section 5 of said price list for intrastate switched access services. On information and belief, Section 7 of the Navigator price list indicates that that Navigator may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Navigator, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Navigator has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list



arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Navigator to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Navigator has not honored QCC's requests.

p. Respondent PaeTec

i. Respondent PaeTec has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See PaeTec Communications, Inc., FL P.S.C. Price List No. 3.* On information and belief, Respondent PaeTec bills QCC the rates set out in Section 10 of said price list for intrastate switched access services. On information and belief, Section 6.3 of the PaeTec price list indicates that that PaeTec may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers.

ii. On information and belief, Respondent PaeTec, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent PaeTec has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on PaeTec to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. PaeTec has not honored QCC's requests.

q. Respondent STS

i. On information and belief, Respondent STS has not filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. On information and belief, Respondent STS bills QCC rates for intrastate switched access services that exceed the rates it charges other IXCs for such services.

ii. On information and belief, Respondent STS, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent STS has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on STS to disclose copies of its off-price list arrangements

and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. STS has not honored QCC's requests.

r. Respondent US LEC

i. Respondent US LEC has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See US LEC of Florida, Inc. d/b/a PAETEC Business Services, Florida Switched Access Services Price List, Florida Price List No. 2.* On information and belief, Respondent US LEC bills QCC the rates set out in Section 3 of said price list for intrastate switched access services.

ii. On information and belief, Respondent US LEC, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent US LEC has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on US LEC to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. US LEC has not honored QCC's requests.

s. Respondent Windstream Nuvox

i. Respondent Windstream Nuvox and Florida Digital have on file with this Commission price lists specifying the rates, terms and conditions for provision of intrastate switched access services. *See NuVox Communications, Inc. Florida Tariff No. 3.; Florida Digital Network, Inc. d/b/a FDN Communications, Florida Price List No. 2.* On information and belief, Respondent Windstream Nuvox bills QCC the rates set out in Sections 4 and 5, respectively, of said price lists for intrastate switched access services. On information and belief, Section 2.7 of the NuVox Florida Price List No. 3 and Section 8.1 of Florida Digital's Florida Price List No. 2, indicate, respectively, that that NuVox and Florida Digital may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Windstream Nuvox, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Windstream Nuvox has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by

the IXCs that are parties to the off-price list arrangements. QCC made demand on Windstream Nuvox to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Windstream Nuvox has not honored QCC's requests.

t. Respondent John Does 1-50

In its public comments in Minnesota, AT&T acknowledged that it had entered into hundreds of off-tariff, switched access agreements with CLECs nationwide. QCC has contacted many CLECs to identify other such agreements, but nearly every CLEC contacted refused to disclose such agreements. On information and belief, CLECs other than those identified above have entered into off-tariff intrastate switched access agreements with AT&T and other IXCs. On information and belief, these CLECs have not disclosed to QCC copies of all past and current off-tariff arrangements for intrastate switched access services these CLECs provide in Florida, and have not provided QCC as the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to these CLECs' off-tariff arrangements. Hence, other Florida CLECs may be named as Respondents to this Complaint, but, as of yet, the identities of these CLECs are unknown to QCC, QCC will continue its investigation, including by requesting use of the subpoena power of this commission as appropriate and necessary, in an effort to identify such CLECs.<sup>7</sup> If any such additional CLECs are identified, QCC will seek to amend this Complaint, or file an amended complaint, accordingly.

**FIRST CLAIM FOR RELIEF - RATE DISCRIMINATION**

11. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

12. Although a telecommunications company may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from the telecommunications company's tariffs or price lists ("off-tariff agreements" or arrangements), pursuant to § 364.08(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement "not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service," Pursuant to § 364.10(1), Fla. Stat., telecommunications companies are also prohibited from engaging in undue or unreasonable preference or advantage to any person, or in subjecting any person to "any undue or unreasonable prejudice or disadvantage in any respect

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<sup>7</sup> In parallel proceedings pending before the Colorado Public Utilities Commission (Docket 08F-259T) and the California Public Utilities Commission (Case C.08-08-006), subpoenas have been issued (at QCC's request) to multiple IXCs. Based on the documents produced in response to the subpoenas, QCC amended its complaint to name additional Respondents.

whatsoever.” As such, a telecommunications company must otherwise make the terms of those contracts available to other similarly-situated carriers on a non-discriminatory basis.

13. On information and belief, the Respondent CLECs have subjected QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for intrastate switched access services provided to similarly-situated IXCs by not making those off-tariff arrangement rates available to QCC, and by charging QCC more for switched access services in Florida than they charged other IXCs that are parties to those off-tariff arrangements. Therefore, Respondent CLECs have violated Florida law to the detriment of QCC.

#### **SECOND CLAIM FOR RELIEF - FAILURE TO ABIDE BY PRICE LISTS**

14. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

15. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, § 64.04, Fla. Stat.; Rule 25-24-825(2), Fla. Admin. Code. All of the Respondent CLECs have filed price lists for their intrastate switched access services in Florida.

16. On information and belief, the Respondents CLECs have entered into undisclosed contract service agreements or ICB contracts with some IXCs, but not with QCC, with terms, conditions and rates that deviate from their published rates in tariffs or price lists for intrastate switched access services in Florida. Therefore, Respondent CLECs have violated Florida law by failing to abide by their published price lists to the detriment of QCC, by subjecting QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for intrastate switched access services provided to similarly-situated IXCs, and by charging QCC more for switched access services than they charged other IXCs in Florida.

**THIRD CLAIM FOR RELIEF –**  
**FAILURE TO PROVIDE CUSTOMER-SPECIFIC CONTRACT TERMS TO**  
**SIMILARLY-SITUATED CUSTOMERS**  
**(XO, COX, ACCESS POINT, BIRCH, BUDGET, BULLSEYE TELECOM, LIGHTYEAR,**  
**NAVIGATOR, WINDSTREAM NUVOX, PAETEC)**

17. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

18. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, Rule 25-24-825(2), Fla. Admin. Code.

19. The tariffs or price lists of Respondents XO (both the XO and the Allegiance price lists), Cox, Access Point, Birch, Budget, BullsEye Telecom, Lightyear, Navigator, Windstream NuVox, and PaeTec provide that, if said company enters into a customer-specific, individual- case-basis agreement, it will make such contract offerings available to similarly-situated customers in substantially similar circumstances, and thus on a non-prejudicial and nondiscriminatory basis. As detailed above, XO, Cox, Access Point, Budget, Birch, BullsEye Telecom, Lightyear, Navigator, Windstream NuVox, and PaeTec have, on information and belief, entered into undisclosed contract service agreements or ICB agreements with IXC AT&T, and possibly other IXCs. QCC is an IXC, similarly situated and in substantially similar circumstances to the IXCs that are parties to these contract service agreements or ICB agreements of Respondents XO (and Allegiance) and Cox. However, Respondents XO (and Allegiance), Cox, Access Point, Birch, Budget, BullsEye Telecom, Lightyear, Navigator, Windstream NuVox, and PaeTec have not made the discounts set forth in those undisclosed agreements available to QCC. As such, Respondents XO (and Allegiance), Cox, Access Point, Birch, Budget, BullsEye Telecom, Lightyear, Navigator, Windstream NuVox, and PaeTec have not abided by their Florida price lists. Therefore, Respondents XO (and Allegiance), Cox, Access Point, Birch, Budget, BullsEye Telecom, Lightyear, Navigator, Windstream NuVox, and PaeTec have violated Florida law to QCC’s detriment.

**PRAYER FOR RELIEF**

WHEREFORE, QCC respectfully requests that the Commission promptly initiate appropriate proceedings to adjudicate the issues set forth in this complaint, rule in favor of QCC and grant the following relief:

A. That the Commission find that the Respondent CLECs have violated Florida law by engaging in unlawful rate discrimination to the detriment of QCC, by extending to other IXCs advantages of contract or agreement not extended to QCC to the detriment of QCC, by failing to abide by their price lists and by charging QCC more for switched access than they charged other IXCs under like circumstances for like or substantially similar service.

B. That the Commission order the Respondent CLECs to pay QCC reparations, with applicable interest, in an amount to be proven at hearing.

C. That the Commission order the Respondent CLECs to lower their intrastate switched access rates to QCC prospectively consistent with the most favorable rate offered to other IXCs in Florida.

D. (Intentionally omitted.)

E. That the Commission order the Respondent CLECs to file with the Commission any contract service agreements the Respondent CLECs may have with other interexchange carriers in Florida which agreements charge rates for intrastate switched access services to IXCs that are inconsistent with the rates in their published tariffs or price lists.

F. That the Commission grant any other relief it deems appropriate under the circumstances.

DATED this 29th day of September, 2010.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 090538-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by regular U.S. Mail and/or electronic mail on this 29th day of September, 2010, to parties on the attached lists.

s/ Mary F. Smallwood

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