

Marguerite McLean

090538-TP

From: Lacey, Kimberly A. [kimberly.lacey@bingham.com]
Sent: Tuesday, November 16, 2010 12:40 PM
To: Filings@psc.state.fl.us
Cc: Macres, Philip J.; Branfman, Eric J.
Subject: FL PSC Docket No. 090538-TP - Answer of Navigator Telecommunications, LLC to the Amended Complaint of Qwest Communications Company, Inc.
Attachments: FL PSC Docket No 090538-TP Answer of Navigator Telecommunications LLC to Amended Complaint of Qwest Communications Company, LLC.pdf

Attached for electronic filing in the above-referenced docket, please find the attached Answer of Navigator Telecommunications, LLC to the Amended Complaint of Qwest Communications Company, Inc. If you have any questions, please do not hesitate to contact us.

a. Persons responsible for this filing:

Eric J. Branfman
Philip J. Macres
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
Email: eric.branfman@bingham.com
philip.macres@bingham.com

b. Docket No. 090538-TP

c. Filed on behalf of: Navigator Telecommunications, LLC

d. Total pages: 12

e. Brief Description: Answer of Navigator Telecommunications, LLC to the Amended Complaint of Qwest Communications Company, Inc.

Print Less —> Go Green

Kimberly A. Lacey
Associate
T 202.373.6288
F 202.373.6001
kimberly.lacey@bingham.com
B I N G H A M
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806

09418 NOV 16 2010
FISC-COMMISSION CLERK

Confidentiality Notice: The information in this e-mail (including attachments, if any) is considered confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this e-mail is prohibited except by or on behalf of the intended recipient. If you have received this email in error, please notify me immediately by reply email, delete this email, and do not disclose its contents to anyone.

Bingham McCutchen LLP Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

11/16/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: November 16, 2010

ANSWER OF NAVIGATOR TELECOMMUNICATIONS, LLC TO THE AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC

Michael McAlister, Esq.
General Counsel (not admitted in Florida)
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P.O. Box 13860
North Little Rock, AR 72113
Tel: (501) 945-4051
Fax: (501) 945-4002
E-mail: mike@navtel.com

Eric J. Branfman, Esq. (not admitted in Florida) (*)
Philip J. Macres, Esq., Fla. Bar No. 137900
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806
Tel.: (202) 373-6000
Fax: (202) 373-6001
E-mail: eric.branfman@bingham.com
E-mail: philip.macres@bingham.com

Outside Counsel for Respondent Navigator Telecommunications, LLC

(*) Request for being named a qualified representative has been separately filed in Docket No. 100008-OT.

DOCUMENT NUMBER DATE

09418 NOV 16 2010

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: November 16, 2010

**ANSWER OF NAVIGATOR TELECOMMUNICATIONS, LLC TO THE
AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

Navigator Telecommunications, LLC (“Navigator”), by and through its undersigned counsel, hereby files its Answer to the Amended Complaint filed by Qwest Communications Company, LLC (“Qwest”), and states as follows:

ANSWER

1. As to the allegations in the first and unnumbered paragraph of Qwest’s Amended Complaint that assert that Qwest has submitted its Amended Complaint against various named parties (“Respondent CLECs”), Navigator admits that Qwest has filed its Amended Complaint, but denies the charges against Navigator. Moreover, Navigator denies Qwest’s allegation that Rule 25-4.114, Florida Administrative Code, applies to Navigator or is applicable in this proceeding. As to the allegations in the second unnumbered paragraph preceding the paragraph that Qwest numbered Paragraph 1 of its Amended Complaint that assert that Navigator violated

Florida law, Navigator denies those allegations. Moreover, the paragraph preceding Paragraph 1 of Qwest's Amended Complaint state conclusions of law to which no response is required. To the extent the legal conclusions can be deemed factual allegations, Navigator answers those allegations in the discussion associated with Paragraph 10 below. As for allegations in these unnumbered paragraphs that pertain to other Respondent CLECs, Navigator lacks sufficient knowledge or information to respond to them and, accordingly, neither admits nor denies those allegations. To the extent further answer is required for the paragraphs that precede Paragraph 1 of Qwest's Amended Complaint, Navigator denies those allegations. As to the allegations in Paragraph 1 of Qwest's Amended Complaint, Navigator lacks knowledge or information sufficient to form a belief as to whether the allegations are accurate or complete and therefore, neither admits nor denies those allegations.

2. As to the allegations in subparagraph 2(o), Navigator admits that it is a limited liability company organized under the laws of the State of Arkansas and is certified to provide telecommunications services in Florida. Navigator admits that its regulatory contact address is P.O. Box 13860, North Little Rock, Arkansas 72113-0860. Navigator lacks specific knowledge of the facts alleged in the other subparagraphs of Paragraph 2 as to the status of other Respondent CLECs and therefore, neither admits nor denies those allegations.

3. The allegations in Paragraph 3 of Qwest's Amended Complaint state a conclusion of law to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

4. The allegations in Paragraph 4 of Qwest's Amended Complaint state conclusions of law to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

5. The allegations in Paragraph 5 of Qwest's Amended Complaint state a conclusion of law to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

6. Navigator admits that it has a price list containing intrastate switched access rates on file with the Commission but lacks sufficient knowledge concerning the other Respondent CLECs, and accordingly Navigator neither admits nor denies the allegations in Paragraph 6 with respect to other Respondent CLECs.

7. Navigator admits that it bills Qwest for intrastate switched access services that Qwest uses, but lacks sufficient knowledge of Qwest's intended meaning and use of the term "large" in Paragraph 7 and therefore, denies this characterization. Navigator lacks sufficient knowledge of the other facts alleged in Paragraph 7 and, therefore, neither admits nor denies those allegations.

8. Navigator states that the allegations in Paragraph 8 of Qwest's Amended Complaint are a matter of public record and respectfully refers the Commission to the documents referenced as they speak for themselves and Navigator denies any and all factual allegations that are inconsistent with that record. Navigator denies that it was one of the subjects of the MN PUC's investigations. To the extent any further answer is required, Navigator denies the allegations in Paragraph 8.

9. Navigator states that the allegations in Paragraph 9 of Qwest's Amended Complaint are a matter of public record and seek to characterize and interpret certain documents, and respectfully refers the Commission to the documents referenced as they speak for themselves and Navigator denies any and all factual allegations that are inconsistent with that record. To the extent any further answer is required, Navigator denies the allegations in Paragraph 9.

10. As for the allegations in subparagraphs 10(a)-(n), 10(p)-(t) of Qwest's Amended Complaint, they pertain to other Respondent CLECs and, therefore, Navigator lacks sufficient knowledge or information to respond to them and, accordingly, neither admits nor denies those allegations. As to the allegations in the first and second full sentences in subparagraph 10(o)(i) of the Amended Complaint, Navigator admits that it has a price list on file with the Commission specifying rates, terms and conditions for its provision of intrastate switched access services and admits that the intrastate switched access rates that it bills Qwest are set out in Section 5 of the price list that Qwest references, i.e., *Florida P.S.C Price List No. 2* ("Price List"). As to the allegations in the third full sentence of subparagraph 10(o)(i) (which is the last sentence of subparagraph 10(o)(i)), Navigator states this Price List speaks for itself and denies any allegations that are inconsistent with this Price List.

As for the allegations contained in the first sentence of subparagraph 10(g)(ii) of Qwest's Amended Complaint, Navigator admits it entered into one confidential settlement agreement that resolved a bona fide dispute concerning previously billed amounts with an IXC, that was national in scope and included terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that Navigator did not file with Florida Public Service Commission ("Commission"). Under the confidential settlement agreement and as partial consideration for the settlement of past disputed amounts the IXC had outstanding to Navigator for switched access services, the IXC obtains, among other things, intrastate switched access rates different from and lower than the rates sets forth in Navigator's Florida Price List. Because this was a confidential settlement agreement, it was a unique situation and, therefore, the agreement along with the intrastate rates in it is not available to other carriers. As for the allegations contained in the second sentence of subparagraph 10(o)(ii) of Qwest's Amended

Complaint, Navigator admits that it has not submitted the confidential settlement agreement to this Commission, and has not provided Qwest the identical provisions received by the IXC that is a party to the confidential settlement agreement.

As for the allegations contained in the third sentence of subparagraph 10(o)(ii) of Qwest's Amended Complaint, Navigator is unaware of any communication from Qwest asking Navigator to disclose a copy of its off-price list arrangement and to provide Qwest intrastate switched access services at the most favorable rates, terms and conditions provided to the IXC. Navigator denies all remaining allegations in all sentences of Paragraphs 10(o)(i) and 10(o)(ii) of Qwest's Amended Complaint.

11. In response to Paragraph 11 of Qwest's Amended Complaint, Navigator restates and incorporates its answers to the allegations above as if fully set forth here.

12. The allegations in Paragraph 12 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

13. Navigator denies the allegations in Paragraph 13 of Qwest's Amended Complaint as they relate to Navigator. Navigator lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations.

14. In response to Paragraph 14 of Qwest's Amended Complaint, Navigator restates and incorporates its answers to the allegations above as if fully set forth here.

15. The allegations in the first, second, third and fourth full sentences of Paragraph 15 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that

are inconsistent with applicable law. As for the fifth full sentence of Paragraph 15 (which is the last sentence of Paragraph 15), Navigator (1) admits that it filed its Price List for its intrastate switched access services in Florida with the Commission and (2) lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations.

16. As to the allegations in Paragraph 16 of Qwest's Amended Complaint, Navigator lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations. With respect to Navigator, and as explained in Paragraph 10 above, Navigator admits it entered into one confidential settlement agreement that resolved a bona fide dispute concerning previously billed amounts with an IXC, that was national in scope and included terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that Navigator did not file with Commission. Under the confidential settlement agreement and as partial consideration for the settlement of past disputed amounts the IXC had outstanding to Navigator for switched access services, the IXC obtains, among other things, intrastate switched access rates different from and lower than the rates sets forth in Navigator's Florida Price List. Because this was a confidential settlement agreement, it was a unique situation and, therefore, the agreement along with the intrastate rates in it is not available to other carriers. Navigator denies all remaining allegations in all sentences of Paragraph 17 of Qwest's Amended Complaint.

17. In response to Paragraph 17 of Qwest's Amended Complaint, Navigator restates and incorporates its answers to the allegations above as if fully set forth here.

18. The allegations in Paragraph 18 of Qwest's Amended Complaint state legal conclusions to which no response is required and, therefore, Navigator neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

19. Navigator lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs referenced in Paragraph 19 of Qwest's Amended Complaint and therefore, neither admits nor denies those allegations. With respect to the first sentence of Paragraph 19, Navigator states that the terms of its Price List speak for themselves and denies any allegations in Paragraph 19 that are inconsistent with its Price List. As to the allegations in the second and fourth sentences of Paragraph 19, Navigator admits, as noted in Paragraph 10, that it entered into one confidential settlement agreement that resolved a bona fide dispute concerning previously billed amounts with an IXC, that was national in scope and included terms relating to intrastate switched access charges in Florida and other states, as well as interstate switched access services, that Navigator did not file with Commission. Under the confidential settlement agreement and as partial consideration for the settlement of past disputed amounts the IXC had outstanding to Navigator for switched access services, the IXC obtains, among other things, intrastate switched access rates different from and lower than the rates sets forth in Navigator's Florida Price List. Because this was a confidential settlement agreement, it was a unique situation and, therefore, the agreement along with the intrastate rates in it is not available to other carriers. Navigator denies the remaining allegations in all sentences of Paragraph 19.

RESPONSE TO QWEST'S PRAYER FOR RELIEF

Navigator denies Qwest is due any of the relief it requests.

AFFIRMATIVE DEFENSES AND OTHER DEFENSES

1. Qwest's Amended Complaint fails to state a claim upon which relief may be granted.
2. Qwest's Amended Complaint is barred, in whole or in part, by the applicable statute of limitations.
3. Qwest's Amended Complaint is barred, in whole or in part, by the filed rate doctrine.
4. Qwest's Amended Complaint is barred, in whole or in part, by doctrines of laches, waiver, estoppel, and/or unclean hands.
5. Qwest's Amended Complaint is barred, in whole or in part, because the Commission may lack jurisdiction over Navigator's confidential settlement agreement with a certain IXC that is referenced herein but not identified, or portions thereof.
6. Qwest's Amended Complaint is barred, in whole or in part, because Navigator's confidential settlement agreement with certain IXC that is referenced but not identified herein must be read as a whole in determining whether a carrier is being unlawfully discriminated against.
7. Qwest's Amended Complaint is barred, in whole or in part, because Qwest is not similarly situated to the IXC with respect to certain important terms and conditions in the confidential settlement agreement referenced herein between this IXC and Navigator.
8. Qwest's Amended Complaint is barred, in whole or in part, because the Commission lacks jurisdiction over the subject matter and/or to order the relief requested.

9. Qwest's Amended Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.

10. Qwest's Amended Complaint is barred, in whole or in part, by virtue of the confidentiality provisions precluding Navigator from filing its confidential settlement agreements referenced herein between a certain IXC and Navigator with this Commission.

11. Qwest's Amended Complaint is barred, in whole or in part, to the extent it seeks to make any claims against affiliates, subsidiaries, predecessors or any other separately certified entity associated with Navigator that is or are not specifically named in Qwest's Amended Complaint. Qwest is barred from bringing such non-particularized claims.

12. Qwest's Amended Complaint is barred, in whole or in part, from seeking reparations for the alleged unlawful discrimination because Qwest failed to allege facts or specifically show how it has been harmed by such alleged unlawful discrimination.

13. Qwest is not entitled to any reparations because, assuming arguendo, that the confidential agreement referenced herein that Navigator has with the IXC referenced herein but not identified violates Florida law, the remedy is to require that this IXC pay Navigator its Price List access rates, to the extent it did not already do so, not to award Qwest any reparations based upon an agreement that violates Florida law.

14. Qwest's Amended Complaint is barred, in whole or in part, because Qwest did not make a timely bona fide request for contract rates.

15. Qwest's Amended Complaint is barred because the rates for intrastate switched access services set forth in Navigator Price List on file with the Commission are just, reasonable, nondiscriminatory, and otherwise lawful.

16. Qwest's Amended Complaint is barred in part because Qwest has no standing to assert a claim that Navigator violated § 364.04, Fla. Stat.

17. Qwest's Amended Complaint is barred, in whole or in part, because the reparations in the form of refunds that Qwest seeks for discrimination is, by law, unavailable to it.

18. Qwest's Amended Complaint is barred, in whole or in part, because the confidential settlement agreement that Navigator has with a certain IXC that is at issue herein is not available to Qwest because it is invalid and unenforceable since it was the result of economic duress and/or lack a valid form of consideration.

Navigator reserves the right to assert additional affirmative defenses and other defenses.

WHEREFORE, for the reasons discussed above, Respondent Navigator respectfully requests that Qwest's Amended Complaint be dismissed with prejudice as it relates to Navigator, or in the alternative deny all the relief requested therein, and grant such other and further relief.¹

¹ Any correspondence concerning this matter that pertains to Navigator and/or filings made in this proceeding should be addressed and sent to the individuals referenced at the end of this Answer.

Dated this 16th day of November 2010.

Michael McAlister. Esq.
General Counsel (not admitted in Florida)
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
P.O. Box 13860
North Little Rock, AR 72113
Tel: (501) 945-4051
Fax: (501) 945-4002
E-mail: mike@navtel.com

Respectfully Submitted,

Navigator Telecommunications, LLC

/s/ Philip J. Macres

Eric J. Branfman, Esq. (not admitted in
Florida) (*)
Philip J. Macres, Esq., Fla. Bar No. 137900
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806
Tel.: (202) 373-6000
Fax: (202) 373-6001
E-mail: eric.branfman@bingham.com
E-mail: philip.macres@bingham.com

*Counsel for Respondent Navigator
Telecommunications, LLC*

(*) Request for being named a qualified
representative has been separately filed in
Docket No. 100008-OT.