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090538-TP

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Subject: FL PSC Docket No. 090538-TP - Answer of US LEC of Florida, LLC d/b/a PaeTec Business Services to the Amended Complaint of Qwest Communications Company, Inc.
Attachments: FL PSC Docket No 090538-TP Answer of US LEC of Florida, 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 US LEC of Florida, LLC d/b/a PaeTec Business Services to the Amended Complaint of Qwest Communications Company, Inc. If you have any questions, please do not hesitate to contact us.

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b. Docket No. 090538-TP

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e. Brief Description: Answer of US LEC of Florida, LLC d/b/a PaeTec Business Services to the Amended Complaint of Qwest Communications Company, Inc.

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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 US LEC OF FLORIDA, LLC D/B/A PAETEC BUSINESS SERVICES TO
THE AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

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

DOCUMENT NUMBER DATE

09420 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 US LEC OF FLORIDA, LLC D/B/A PAETEC BUSINESS SERVICES TO THE AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC

US LEC of Florida, LLC d/b/a PaeTec Business Services (“US LEC”), 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 this its Amended Complaint against various named parties (“Respondent CLECs”), US LEC admits that Qwest has filed its Amended Complaint, but denies the charges against US LEC. Moreover, US LEC denies Qwest’s allegation that Rule 25-4.114, Florida Administrative Code, applies to US LEC or is applicable in this proceeding. As to the allegations in the second unnumbered paragraph preceding the paragraph that Qwest numbered Paragraph 1 of Qwest’s Amended Complaint that assert that US

LEC violated Florida law, US LEC 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, US LEC answers those allegations in the discussion associated with Paragraph 10 below. As for allegations in these unnumbered paragraphs that pertain to PAETEC Communications, Inc. ("PAETEC"), US LEC's affiliate, the answers to these allegations are set forth in the answer provided by US LEC. As for allegations in these unnumbered paragraphs that pertain to other Respondent CLECs, PAETEC 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, PAETEC denies those allegations. As to the allegations in Paragraph 1 of Qwest's Amended Complaint, US LEC 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(r), US LEC admits that it is a limited liability company organized under the laws of North Carolina and is certified to provide telecommunications services in Florida. US LEC admits that its regulatory contact address is 6801 Morrison Blvd., Charlotte, North Carolina 28211-3599. As to the allegations in subparagraph 2(p) of Qwest's Amended Complaint that pertain to US LEC's affiliate PAETEC, the answers to these allegations are set forth in the specific answer provided by PAETEC. US LEC lacks sufficient knowledge of the facts alleged in the other subparagraphs in 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, US LEC 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, US LEC 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, US LEC neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

6. US LEC admits that it, along with its affiliate PAETEC, 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 US LEC neither admits nor denies the allegations in Paragraph 6 with respect to other Respondent CLECs.

7. US LEC admits that it, along with its affiliate US LEC, 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. US LEC lacks sufficient knowledge of the other facts alleged in Paragraph 7 and, therefore, neither admits nor denies those allegations.

8. US LEC 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 US LEC denies any and all factual allegations that are inconsistent with that record. US LEC denies that it was one of the subjects of the MN PUC's

investigations. To the extent any further answer is required, US LEC denies the allegations in Paragraph 8.

9. US LEC 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 US LEC denies any and all factual allegations that are inconsistent with the record. To the extent any further answer is required, US LEC denies the allegations in Paragraph 9.

10. As for the allegations in subparagraphs 10(p) of Qwest's Amended Complaint, they pertain to PAETEC and the answers to these allegations are set forth in the answer provided by PAETEC. As for the allegations in subparagraphs 10(a)-(o), 10(q), 10(s)-(t) of Qwest's Amended Complaint, they pertain to other Respondent CLECs and, therefore, US LEC 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(r)(i) of the Amended Complaint, US LEC 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 3 of the price list that Qwest references, i.e., *Florida Switched Access Services Price List, Florida Price List No. 2* ("Price List"). US LEC 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(r)(ii) of Qwest's Amended Complaint, US LEC admits it entered into certain confidential agreements which settled bona fide disputes concerning previously billed amounts with certain IXCs, that were 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 it did not file with the Florida Public Service Commission (“Commission”). Under these confidential settlement agreements and as partial consideration for the settlement of past disputed amounts these IXCs had outstanding to US LEC for switched access services, these IXCs obtained or obtain, to the extent provided in those agreements, intrastate switched access rates different from and lower than the rates set forth in US LEC’s Florida Price List. Because these were confidential settlement agreements, they were unique situations and, therefore, these agreements along with the intrastate rates in them were or are not available to other carriers. As for the allegations contained in the second sentence of subparagraph 10(r)(ii) of Qwest’s Amended Complaint, US LEC admits that it has not submitted these confidential settlement agreements to this Commission and has not provided Qwest certain provisions received by the IXCs that are parties to these confidential settlement agreements.

In response to the third sentence Paragraph 10(r)(ii) of Qwest’s Amended Complaint, US LEC admits that Qwest made a demand dated February 25, 2008 on US LEC’s affiliate PAETEC to disclose copies of its off-price list arrangements and to provide Qwest intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. US LEC denies that it did not honor Qwest’s request. On March 19, 2008, Tami Spocogee from US LEC sent an email to Candace A. Mowers acknowledging receipt of the letter from Qwest. US LEC stated in that email that although it did not have an agreement with AT&T, McLeodUSA, which is also an affiliate of US LEC, did. US LEC informed Qwest that it would share the general terms of the McLeodUSA/AT&T agreement with Qwest and was willing to offer a comparable deal to any company that could meet the requirements. US LEC further informed Qwest that if Qwest required an agreement for the entire PAETEC enterprise, the discount and

commitment amount contained in the McLeodUSA/AT&T agreement would need to be renegotiated as the current agreement is only applicable in the McLeodUSA territory. While US LEC in September of 2008 entered into an Agreement with AT&T effective as of April 30, 2008, US LEC has already offered the terms of the 2008 Agreement to Qwest retroactive to the effective date and as noted, in March of 2008, before US LEC even entered into the 2008 Agreement with AT&T, US LEC offered to negotiate with Qwest a similar agreement, an offer which Qwest did not accept.

US LEC denies all remaining allegations in all sentences of Paragraphs 10(r)(i) and 10(r)(ii) of Qwest's Amended Complaint, including, without limitation, any allegation relating to off-price-list, unfiled agreements for intrastate switched access services US LEC had or has via its "affiliates, subsidiaries or predecessors" that are not named as parties to this suit. As to the allegation relating to US LEC's affiliate PAETEC, the answers to these allegations are set forth in the answer provided by PAETEC.

11. In response to Paragraph 11 of Qwest's Amended Complaint, US LEC 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, US LEC neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

13. US LEC denies the allegations in Paragraph 13 of Qwest's Amended Complaint as they relate to US LEC. As to the allegation relating to US LEC's affiliate PAETEC, the answers to these allegations are set forth in the answer provided by PAETEC. US LEC 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, US LEC 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, US LEC 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), US LEC (1) admits that it and PAETEC filed their Price Lists for their 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 allegation Paragraph 16 of Qwest's Amended Complaint relating to US LEC's affiliate PAETEC, the answers to these allegations are set forth in the answer provided by PAETEC. As to the allegations in Paragraph 16 of Qwest's Amended Complaint relating to other Respondent CLECs, US LEC 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 US LEC, and as explained in Paragraph 10 above, US LEC admits it entered into certain confidential agreements which settled bona fide disputes concerning previously billed amounts with certain IXCs, that were 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 it did not file with the Commission. Under these confidential settlement agreements and as partial consideration for the settlement of past disputed amounts these IXCs had outstanding to US LEC for switched access services, these IXCs obtained or obtain, to the extent provided in those agreements, intrastate switched access rates different from

and lower than the rates set forth in US LEC's Florida Price List. Because these were confidential settlement agreements, they were unique situations and, therefore, these agreements along with the intrastate rates in them were or are not available to other carriers. US LEC denies all remaining allegations of Paragraph 16 of Qwest's Amended Complaint.

17. In response to Paragraphs 17-19 of Qwest's First Amended Complaint, Complainant's Third Claim of Relief does not name US LEC and therefore, no response is required. As to the allegations Paragraphs 17-19 of Qwest's Amended Complaint relating to US LEC's affiliate PAETEC, the answers to these allegations are set forth in the answer provided by PAETEC. As to the allegations in Paragraph 17-19 of Qwest's Amended Complaint relating to other Respondent CLECs, US LEC lacks sufficient knowledge or information to provide an answer pertaining to the other Respondent CLECs and therefore, neither admits nor denies those allegations.

18. No response is required for US LEC, otherwise see paragraph 17, above.

19. No response is required for US LEC, otherwise see paragraph 17, above.

RESPONSE TO QWEST'S PRAYER FOR RELIEF

US LEC 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 US LEC's confidential settlement agreements with certain IXCs that are referenced herein but not identified, or portions thereof.

6. Qwest's Amended Complaint is barred, in whole or in part, because US LEC's confidential settlement agreements with certain IXCs that are 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 IXCs with respect to certain important terms and conditions in the confidential settlement agreements referenced herein between these IXCs and US LEC.

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 US LEC from filing one or more of its confidential settlement agreements referenced herein between certain IXCs and US LEC 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 US LEC 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 settlement agreements referenced herein that US LEC entered into with the IXCs referenced herein but not identified violate Florida law, the remedy is to require that these IXCs pay US LEC its Price List access rates, to the extent they 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 US LEC 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 US LEC 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 against US LEC is barred, in whole or in part, by the Release and Settlement Agreement between Qwest and US LEC dated August 4, 2006.

19. Qwest's Amended Complaint is barred, in whole or in part, because the confidential settlement agreements that US LEC entered into with certain IXCs that are at issue herein are not available to Qwest because they are invalid and unenforceable since they were the result of economic duress and/or lack a valid form of consideration.

US LEC reserves the right to assert additional affirmative defenses and other defenses.

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

Dated this 16th day of November 2010.

Respectfully Submitted,

US LEC of Florida, LLC d/b/a PaeTec Business Services

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*Outside Counsel for Respondent US LEC of Florida,
LLC d/b/a PaeTec Business Services*

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

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