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090538-TP

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Subject: FL PSC Docket No. 090538-TP - Answer of PAETEC Communications, Inc. to the Amended Complaint of Qwest Communications Company, Inc.
Attachments: FL PSC Docket No 090538-TP Answer of PAETEC Communications, Inc to Amended Complaint of Qwest Communications Company, LLC.pdf

Attached for electronic filing in the above-referenced docket, please find the attached Answer of PAETEC Communications, Inc. 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:

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b. Docket No. 090538-TP

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e. Brief Description: Answer of PAETEC Communications, Inc. 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 PAETEC COMMUNICATIONS, INC. 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.

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**ANSWER OF PAETEC COMMUNICATIONS, INC. TO THE
AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC**

PAETEC Communications, Inc. ("PAETEC"), 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"), PAETEC admits that Qwest has filed its Amended Complaint, but denies the charges against PAETEC. Moreover, PAETEC denies Qwest's allegation that Rule 25-4.114, Florida Administrative Code, applies to PAETEC 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 PAETEC violated

Florida law, PAETEC 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, PAETEC answers those allegations in the discussion associated with Paragraph 10 below. As for allegations in these unnumbered paragraphs that pertain to US LEC of Florida, LLC d/b/a PAETEC Business Services ("US LEC"), PAETEC'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, PAETEC 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(p), PAETEC admits that it is a corporation organized under the laws of the State of Delaware and is certified to provide telecommunications services in Florida. PAETEC admits that its regulatory contact address is 600 Willowbrook, 1 PaeTec Plaza, Fairpoint, NY, 14450-4233. As to the allegations in subparagraph 2(r) of Qwest's Amended Complaint that pertain to PAETEC's affiliate US LEC, the answers to these allegations are set forth in the specific answer provided by US LEC. PAETEC 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, PAETEC 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, PAETEC 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, PAETEC neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

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

7. PAETEC 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. PAETEC lacks sufficient knowledge of the other facts alleged in Paragraph 7 and, therefore, neither admits nor denies those allegations.

8. PAETEC 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 PAETEC denies any and all factual allegations that are inconsistent with that record. PAETEC denies that it was one of the subjects of the MN

PUC's investigations. To the extent any further answer is required, PAETEC denies the allegations in Paragraph 8.

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

10. As for the allegations in subparagraphs 10(r) of Qwest's Amended Complaint, they pertain to US LEC and the answers to these allegations are set forth in the answer provided by US LEC. 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, PAETEC 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(p)(i) of the Amended Complaint, PAETEC 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 10 of the price list that Qwest references, i.e., *FL P.S.C. Price List No. 3* ("Price List"). As to the allegations in the third full sentence of subparagraph 10(p)(i) (which is the last sentence of subparagraph 10(p)(i)), PAETEC 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(p)(ii) of Qwest's Amended Complaint, PAETEC 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”). PAETEC denies that these confidential settlement agreement(s) offered or offer intrastate switched access services at rates different from and lower than the rates set forth in its filed Florida Price List. Rather, the rates for intrastate switched access services contained in these confidential settlement agreements were or are the same rates that PAETEC charged or charges under its filed Florida Price List for intrastate switched access services.

As for the allegations contained in the second sentence of subparagraph 10(p)(ii) of Qwest’s Amended Complaint, PAETEC 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 of Paragraph 10(p)(ii) of Qwest’s Amended Complaint, PAETEC admits that Qwest made a demand dated February 25, 2008 on 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. PAETEC denies that it did not honor Qwest’s request.

On March 19, 2008, Tami Spocogee from PAETEC sent an email to Candace A. Mowers acknowledging receipt of the letter from Qwest. PAETEC stated in that email that although it did not have an agreement with AT&T, McLeodUSA, which is an affiliate of PAETEC did. PAETEC 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. PAETEC further informed Qwest that if Qwest required an agreement

for the entire PAETEC Company, 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 PAETEC in September of 2008 entered into an Agreement with AT&T effective as of April 30, 2008, PAETEC has already offered the terms of the 2008 Agreement to Qwest retroactive to the effective date and as noted, in March of 2008, before PAETEC even entered into the 2008 Agreement with AT&T, PAETEC offered to negotiate with Qwest a similar agreement, an offer which Qwest did not accept. Finally, to the best of PAETEC's knowledge at this time, prior to 2008, Qwest never requested an Individual Case Basis arrangement from PAETEC pursuant to Section 6.3 of PAETEC's Price List.

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

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

13. PAETEC denies the allegations in Paragraph 13 of Qwest's Amended Complaint as they relate to PAETEC. The only rates PAETEC bills IXCs for intrastate switched access services in Florida are the rates that are in PAETEC's Florida Price List. As to the allegation

relating to PAETEC's affiliate US LEC, the answers to these allegations are set forth in the answer provided by US LEC. PAETEC 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, PAETEC 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, PAETEC 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), PAETEC (1) admits that it and US LEC 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 PAETEC's affiliate US LEC, the answers to these allegations are set forth in the answer provided by US LEC. As to the allegations in Paragraph 16 of Qwest's Amended Complaint relating to other Respondent CLECs, PAETEC 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 PAETEC, and as explained in Paragraph 10 above, PAETEC 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 this Commission, but denies that these confidential settlement agreements offered or offer Florida intrastate switched access services at rates that deviate(d) from PAETEC's Florida Price List for intrastate switched access services because the only rates PAETEC bills IXCs for intrastate switched access services in Florida are the rates that are in PAETEC's Florida Price List. PAETEC denies all remaining allegations of Paragraph 16 of Qwest's Amended Complaint.

17. In response to Paragraph 17 of Qwest's Amended Complaint, PAETEC 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, PAETEC neither admits nor denies those allegations and denies any allegations that are inconsistent with applicable law.

19. PAETEC 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, PAETEC 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. In response to the second and fourth sentences of Paragraph 19, PAETEC admits, as noted in Paragraph 10, 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 this Commission, but denies that these confidential settlement agreements offered or offer Florida intrastate switched access services at rates that deviated from PAETEC's Florida Price List for intrastate switched access services

because the only rates PAETEC bills IXCs for intrastate switched access services in Florida are the rates that are in PAETEC's Florida Price List. PAETEC denies the remaining allegations in all sentences of Paragraph 19.

RESPONSE TO QWEST'S PRAYER FOR RELIEF

PAETEC 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 PAETEC'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 PAETEC'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 PAETEC.

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, because for Florida intrastate switched access services, PAETEC is already charging Qwest the rates contained in the certain confidential settlement agreements referenced herein between certain IXCs and PAETEC since the rates in these agreements are the same as those contained in PAETEC's Florida Price List for intrastate switched access services.

11. Qwest's Amended Complaint is barred, in whole or in part, because for Florida intrastate switched access services, PAETEC's confidential settlement agreements referenced herein between certain IXCs and PAETEC did or do not contain rates that were or are different from the rates contained in PAETEC's Florida Price List for intrastate switched access services.

12. Qwest's Amended Complaint is barred, in whole or in part, by virtue of the confidentiality provisions precluding PAETEC from filing one or more of its confidential settlement agreements referenced herein between certain IXCs and PAETEC with this Commission.

13. 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 PAETEC that is or are not specifically named in Qwest's Amended Complaint. Qwest is barred from bringing such non-particularized claims.

14. 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.

15. Qwest is not entitled to any reparations because, assuming arguendo, that the confidential settlement agreements referenced herein that PAETEC entered into with the IXCs referenced herein but not identified violate Florida law, the remedy is to require that these IXCs pay PAETEC 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.

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

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

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

19. 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.

20. Qwest's Amended Complaint is barred, in whole or in part, because the confidential settlement agreements that PAETEC 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.

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

WHEREFORE, for the reasons discussed above, Respondent PAETEC respectfully requests that Qwest's Amended Complaint be dismissed with prejudice as it relates to PAETEC, 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,

PAETEC Communications, Inc.

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Outside Counsel for Respondent PAETEC Communications, Inc.

(*) 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 PAETEC and/or filings made in this proceeding should be addressed and sent to the individuals referenced at the end of this Answer.