

**Marguerite McLean**

090538-TP

**From:** Nicki Garcia [NGarcia@gunster.com]  
**Sent:** Tuesday, November 16, 2010 3:42 PM  
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**Subject:** Electronic Filing - Docket No. 090538-TP  
**Attachments:** 20101116152318166.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact Matt Feil at the number below. Thank you.

**Person Responsible for Filing:**

Matthew Feil  
 Gunster Law Firm  
 215 South Monroe Street, Suite 618  
 Tallahassee, FL 32301  
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**Docket Name and Number:** Docket No. 090538-TP – Complaint of Qwest Communications Company, LLC against MCI metro 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; and John Does 1 through 50 (CLEC's whose true names are currently unknown) for rate discrimination connection with the provision of intrastate switched access services in alleged of Sections 364.08 and 364.10, F.S.

**Filed on Behalf of:** Windstream Nuvox, Inc.

**Total Number of Pages:** 11

**Description of Documents:** Answer and affirmative defenses

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DOCUMENT NUMBER DATE

09451 NOV 16 2

11/16/2010

FPSC-COMMISSION CLERK



# GUNSTER

ATTORNEYS AT LAW

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November 16, 2010

## ELECTRONIC FILING

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

Re: Docket No. 090538-TP – Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telecom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLEC's whose true names are currently unknown) for rate discrimination connection with the provision of intrastate switched access services in alleged of Sections 364.08 and 364.10, F.S.

Dear Ms. Cole:

Attached for filing in the above referenced Docket, please find enclosed the Answer and Affirmative Defenses of Windstream NuVox, Inc.

If you have any questions, please contact me at 850-521-1708.

Sincerely,



Matthew J. Feil

MJF  
Attachment

cc: Parties of Record

DOCUMENT NUMBER-DATE

215 South Monroe Street, Suite 618 | Tallahassee, FL 32301-1804 | 850.521.1980 | Fax: 850.576.0902 | [www.gunster.com](http://www.gunster.com) 0945 | NOV 16 2

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FPSC-COMMISSION CLERK

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

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telecom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLEC's whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S.

Docket No. 090538-TP

Filed: November 16, 2010

**ANSWER AND AFFIRMATIVE DEFENSES OF WINDSTREAM NUVOX, INC.**

Windstream NuVox, Inc. ("Windstream NuVox") by and through its undersigned counsel, and pursuant to Rule 28-106.203, Florida Administrative Code, and Commission Order No. PSC-10-0629-PCO-TP, issued October 22, 2010,<sup>1</sup> hereby files its Answer, Affirmative Defenses and Counterclaims to the Complaint of Qwest Communications Company, LLC ("QCC"),<sup>2</sup> and states as follows:

**ANSWER**

1. Windstream NuVox lacks personal knowledge of the facts alleged in Paragraph 1, both subparagraphs of such paragraph, and accordingly neither admits nor denies those allegations.

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<sup>1</sup> The Commission's Order Granting Leave to File Amended Complaint permitted Qwest to amend its original complaint and gave respondents until November 16 to file any responses to the amended complaint.

<sup>2</sup> Windstream NuVox also reserves its right to join and/or adopt any motions filed by other competitive local exchange carrier respondents.

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09451 NOV 16 09

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2. Windstream NuVox admits Paragraph 2(s). Windstream NuVox neither admits nor denies the remainder of Paragraph 2, based on lack of personal knowledge of the facts alleged.

3. Paragraph 3 states a legal conclusion, rather than an allegation of fact, and accordingly Windstream NuVox neither admits nor denies that conclusion.

4. Paragraph 4 states a series of legal conclusions, rather than allegations of fact, and accordingly Windstream NuVox *neither admits nor denies those conclusions and denies any statements that are inconsistent with applicable law.*

5. Paragraph 5 states a series of legal conclusions, rather than allegations of fact, and accordingly Windstream NuVox neither admits nor denies those conclusions and denies any statements that are inconsistent with *applicable law.*

6. Windstream NuVox admits Paragraph 6 with respect to itself. Windstream NuVox neither admits nor denies Paragraph 6 in all other respects because it lacks personal knowledge of the facts alleged as to the other companies and accordingly neither admits nor denies those allegations.

7. Windstream NuVox admits Paragraph 7 to the extent that such Paragraph asserts that Windstream NuVox provides and bills QCC for intrastate switched access services in Florida. Windstream NuVox neither admits nor denies Paragraph 7 in all other respects because it lacks personal knowledge of the facts *alleged as to the other companies, including QCC.*

8. The public record in the Minnesota Public Utilities Commission proceeding referenced in Paragraph 8 speaks for itself, and Windstream NuVox denies any and all factual allegations that are inconsistent with that record.

9. The public record in the Minnesota Public Utilities Commission proceeding referenced in Paragraph 9 speaks for itself, and Windstream NuVox denies any and all factual allegations that are inconsistent with that record.

10. Windstream NuVox lacks personal knowledge of the allegations in subparagraphs a through r and t of Paragraph 10 and accordingly neither admits nor denies those allegations. With respect to the allegations in subparagraph s, Windstream NuVox denies that Florida Digital Network, Inc. ("FDN") has a price list on file with the Florida Public Service Commission ("Commission") designated "Florida Price List No. 2" and that Windstream NuVox has an effective document on file under its prior corporate name of NuVox Communications, Inc. designated "Florida Tariff No. 3," but admits that Windstream NuVox, Inc. has a filed and legally effective document of equivalent applicability designated "Florida Price List No. 5" With respect to the pertinent provision of Florida Price List No. 5 (Section 2.7), Windstream NuVox admits that such provision states: "Service shall be available to all similarly situated Customers for a fixed period of time following the initial offering for the first contract Customer as specified in each individual contract." Windstream denies Paragraph 10(s)(i) in all other respects. Windstream NuVox denies the mischaracterizations of Paragraph 10(s)(ii).

11. In response to Paragraph 11, Windstream NuVox restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

12. Paragraph 12 states legal conclusions, rather than allegations of fact, and accordingly Windstream NuVox neither admits nor denies those conclusions. Florida statutes speak for themselves, and Windstream NuVox denies any characterization of those statutes that is not consistent with applicable law.

13. Windstream NuVox denies the allegations in Paragraph 13 as they relate to Windstream NuVox. Windstream NuVox lacks personal knowledge regarding the allegations concerning other Respondent competitive local exchange carriers (“CLECs”) and accordingly neither admits nor denies those allegations.

14. Windstream NuVox restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

15. Windstream NuVox admits that it has filed price lists for its intrastate switched access services in Florida (Florida Price List No. 5 (“Price List”)), but Windstream NuVox lacks personal knowledge regarding the allegations in the last sentence of Paragraph 15 concerning other CLECs and accordingly neither admits nor denies those allegations. The remainder of Paragraph 15 states legal conclusions, rather than allegations of fact, and accordingly Windstream NuVox neither admits nor denies those conclusions. Florida Statutes and Commission rules speak for themselves, and Windstream NuVox denies any characterization of those statutes and rules that is not consistent with applicable law.

16. Windstream denies the mischaracterizations in Paragraph 16. Further, Windstream neither admits nor denies Paragraph 16 to the extent that it states legal conclusions. In addition, because Windstream NuVox lacks personal knowledge regarding the allegations concerning other Respondent CLECs, it neither admits nor denies such allegations.

17. Windstream NuVox restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

18. Paragraph 18 states legal conclusions, rather than allegations of fact, and accordingly Windstream NuVox neither admits nor denies those conclusions. Florida statutes

and Commission rules speak for themselves, and Windstream NuVox denies any characterization of those statutes and rules that is not consistent with applicable law.

19. Windstream NuVox's Price List speaks for itself, and Windstream NuVox denies all characterizations and allegations concerning those price lists that are not consistent with the price list language. Windstream NuVox denies the allegations in the second sentence of Paragraph 19 as applied to Windstream NuVox in Florida within applicable law and the limitations period in the price lists and relevant statute of limitations; as applied to states other than Florida and the time period outside the relevant limitations period(s), any such allegations are beyond the Commission's jurisdiction and accordingly Windstream NuVox neither admits nor denies those allegations. Windstream NuVox admits that QCC is, or operates as, an IXC in Florida, but Windstream NuVox denies the remainder of the third sentence in Paragraph 19. Windstream NuVox denies that it has not abided by its price lists when providing switched access services to QCC, and therefore Windstream NuVox denies the remainder of Paragraph 19 with respect to the allegations concerning Windstream NuVox. Windstream NuVox lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those allegations.

#### **QWEST'S PRAYER FOR RELIEF**

Windstream NuVox denies that QCC is entitled to the relief it requests in its Prayer for Relief or any other relief, and Windstream NuVox otherwise denies all allegations in QCC's complaint that Windstream NuVox has not expressly addressed above. Windstream NuVox, therefore, requests that the Commission deny QCC's complaint and dismiss it with prejudice.

**WINDSTREAM NUVOX'S AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint is barred, in whole or in part, by the limitations period(s) established by applicable law, Windstream NuVox's Price List, and by the doctrine of laches.
3. The Complaint is barred, in whole or in part, by the doctrines of waiver and/or estoppel.
4. The Complaint is barred, in whole or in part, because the Commission lacks jurisdiction over the subject matter and lacks the authority to order the relief requested.
5. The Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.
6. Windstream NuVox reserves the right to plead and designate additional defenses as they become apparent throughout the course of discovery, investigation, and otherwise.

Dated this 16<sup>th</sup> day of November, 2010



Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Matthew J. Feil", written over a horizontal line.

Matthew J. Feil  
Gunster Yoakley & Stewart, PA  
215 S. Monroe St., Suite 618  
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(850) 521-1705

And

Edward B. Krachmer  
Director & Regulatory Counsel  
Windstream Communications, Inc.  
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Attorneys for Windstream NuVox, Inc.

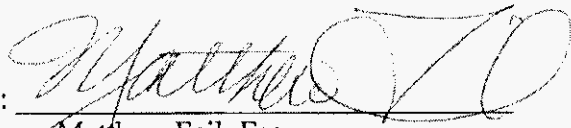
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 16<sup>th</sup> day of November, 2010.

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By:   
Matthew Feil, Esq.