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090538-TP

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Subject: PSC Docket 090538-TP
Attachments: Qwest-Motion for Extension of Time to Respond to Joint Motion to Dismiss.pdf

Attached please find
 Qwest Communications Company, LLC's Motion for Extension of Time to Respond to Joint Motion to Dismiss for file in the referenced docket

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DOCUMENT NUMBER: 090538-TP
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11/17/2010

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: November 17, 2010

**MOTION FOR EXTENSION OF TIME TO RESPOND TO JOINT MOTION TO
DISMISS**

Pursuant to Rule 28-106.204, Fla. Admin. Code, Qwest Communications Company, LLC ("QCC"), by and through its counsel, hereby respectfully requests that the Florida Public Service Commission grant an extension of time to and including December 16, 2010 to respond to a Joint Motion to Dismiss filed by Access Point, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; and US LEC of Florida, LLC (collectively, the "Movant CLECs"). In support of this Motion, QCC states as follows:

1. QCC filed the above complaint on December 11, 2009. The complaint was duly served by the Clerk of Commission on the Respondent CLECs on December 15, 2009. On September 29, 2010, QCC filed a motion for leave to file an amended complaint which named thirteen additional CLECs as Respondents. On October 11, 2010, QCC filed a motion to substitute a corrected copy of the amended complaint. On October 22, 2010, the Presiding Officer issued an order granting QCC's motions to amend the complaint and to substitute a corrected copy of the amended complaint.

2. The amended complaint alleges that the Respondents have subjected QCC to, among other things, unjust and unreasonable rate discrimination in connection with

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the provision of intrastate switched access services, in violation of §§ 364.08 and 364.10, Fla. Stat.

3. On November 16, 2010, the Movant CLECs filed a Motion to Dismiss Qwest's First and Second Claims for Relief and Request for Reparations in the Form of Refunds (hereinafter, "Motion to Dismiss"). The Motion to Dismiss raises numerous arguments to dismiss various claims alleged and remedies sought in the amended complaint, and cites numerous appellate decisions and decisions of this Commission and of other regulatory Commissions which must be researched and analyzed before QCC can respond. Therefore, the usual seven (7) day response time pursuant to Rule 28-106.204(1), Fla. Admin. Code, is inadequate for QCC to prepare and file its responses to the Motion to Dismiss. This time frame is especially short in light of the impending Thanksgiving holiday, and family travel plans that will limit counsel's availability to prepare a response.

4. Pursuant to Rule 28-106.204(3), Fla. Admin. Code, counsel for QCC contacted counsel for all Respondents in this proceeding. In response to QCC's request, the Movant CLECs offered to consent to an extension to December 13, 2010, *provided* that Qwest agreed not to oppose Movant CLECs' request for the right to file a reply brief. The Movant CLECs indicated that they are not willing to agree to the requested extension absent such agreement from Qwest. The Florida Uniform Rules of Administrative Procedure do not contemplate a reply and the PSC does not typically permit reply briefs.¹ QCC does not believe it appropriate or reasonable to be required to consent to an extraordinary procedural mechanism in order to obtain a brief extension of time, especially when that extension will cause no harm to the Movant CLECs.

5. Counsel for MCI and Cox, indicated that they do not object to QCC's request. QCC did not receive a response from counsel representing the remaining Respondents.

6. This Motion for Extension of Time is made in good faith, and the short extension of time requested will not delay this proceeding. No hearing date or other procedural dates or events have been scheduled in the docket and no party will suffer any prejudice by granting the requested extension of time.

WHEREFORE, QCC respectfully requests that the Commission grant an extension of time to and including December 16, 2010 for QCC to file its response to the pending Motion to Dismiss. If QCC's motion is denied, QCC requests that the order denying the motion direct QCC to file its response within seven days of issuance of the order.

¹ See *In re: Petition for increase in rates by Florida Power & Light Company*, Docket No. 090130, Order No. PSC-09-0602-PCO-EI, issued September 4, 2009 (Rule 28-106.204, F.A.C. does not authorize the movant to reply to a response and the Commission has disallowed such replies in its proceedings in many instances).

DATED this 17th day of November 2010.

By: s/ Mary F. Smallwood

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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 electronic delivery and/or U.S. Mail this 17th day of November, 2010, to the following:

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