

**Diamond Williams**

090538-TP

**From:** Lacey, Kimberly A. [kimberly.lacey@bingham.com]  
**Sent:** Thursday, November 18, 2010 2:24 PM  
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**Cc:** Macres, Philip J.; Branfman, Eric J.  
**Subject:** FL PSC Docket No. 090538-TP - Joint Response to Qwest's Motion for Extension of Time to Respond to Joint Motion to Dismiss  
**Attachments:** FL PSC Docket No 090538-TP Joint Response to Qwest's Motion for Extension of Time to Respond to Joint Motion to Dismiss.pdf

Attached for electronic filing in the above-referenced docket, please find the attached Joint Response to Qwest's Motion for Extension of Time to Respond to Joint Motion to Dismiss. 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: Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc., and US LEC of Florida, LLC

d. Total pages: 7

e. Brief Description: Joint Response to Qwest's Motion for Extension of Time to Respond to Joint Motion to Dismiss

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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

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**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 18, 2010

**ACCESS POINT, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., AND US LEC OF FLORIDA, LLC'S JOINT RESPONSE TO QWEST'S MOTION FOR EXTENSION OF TIME TO RESPOND TO JOINT MOTION TO DISMISS**

Access Point, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; and US LEC of Florida, LLC (collectively "Movants"), by and through undersigned counsel, hereby respond to Qwest Communications Company, LLC's ("Qwest") Motion for Extension of Time to Respond to Joint Motion to Dismiss ("Motion").

On October 22, 2010, the Presiding Officer issued an order specifying that respondents named in Qwest's Amended Complaint shall have 25 days to file a response to Qwest's Amended Complaint, if any ("October 22 Order"). Complying with this deadline, Movants timely filed their respective Answers to Qwest's Amended Complaint and a Joint Motion to

Dismiss Qwest's First and Second Claims for Relief and Request for Refunds in the Form of Reparations ("Motion to Dismiss").

In its Motion, Qwest asserts that the usual seven (7) day response time pursuant to Rule 28-106.204(1), Fla. Admin. Code, is inadequate for it to prepare and file its responses to the Motion to Dismiss. Qwest requests: (1) it be given until December 16, 2010 to file its response to the Motion to Dismiss; or (2) if its motion is denied, that the order denying the motion direct Qwest to file its response within seven days of issuance of the order.

For the reasons discussed below, the Commission should deny both of Qwest's requests or, in the alternative, give Qwest until December 13, 2010 to file its response to the Motion to Dismiss with the *proviso* that Movants have a right to submit a reply on or before December 30, 2010 to Qwest's response.

First, Qwest's request is overreaching. Rule 28-106.204(1) specifies that parties "may, within 7 days of service of a written motion, file a response in opposition." Qwest's request for extension, which Qwest refers to as "brief," would increase the length of time permitted under the Rules more than four-fold. Indeed Qwest requests more time to respond to the Motion than the 25 days that Movants had to draft the Motion.

More importantly, however, Qwest's request for a massive extension of time will seriously prejudice Movants. As explained, the rule requires that responses to motions be filed within 7 days and given the expedited response date, does not contemplate a reply. Qwest states, however, that it needs more than 7 days because "[t]he 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." Qwest plainly

wants a more than four-fold increase in time so that it can make multiple complex argument to which it seeks to deny Movants an opportunity to reply.

As a reasonable compromise, Movants offered to consent to an extension to December 13, 2010 for Qwest to respond to the Motion to Dismiss, *provided* that Qwest agreed not to oppose Movants' request for the right to file a reply brief. Movants believe this offer was abundantly reasonable because such a schedule would provide Qwest 26 days from the date the Motion to Dismiss was filed, which is nearly four times as much time as the rule permits. Moreover, because the issues are complicated, as Qwest asserts, and to avoid prejudice, it is only fair that if an exception to the rule is granted to Qwest by giving it more time to respond to the Motion to Dismiss, then an exception to the rule should likewise be provided to Joint Movants in the form of an opportunity to reply.

While Qwest asserts that Florida Uniform Rules of Administrative Procedure do not contemplate a reply, those rules are premised on oppositions being filed in 7 days. Qwest wants the procedural advantage of more time. To litigate this case fully as Qwest wishes, tremendous resources of the Commission and the parties will be consumed. The undersigned counsel have first hand experience in knowing the significant costs of defending CLECs in similar cases filed by Qwest before the California and Colorado Commissions. The Commission should fully vet whether the claims raised in Qwest's Complaint warrant exhausting Commission and party resources. Allowing Movants an opportunity to reply would provide the Commission a balanced perspective of the legal issues that may help it avoid unnecessary and costly litigation. Judges in many state and federal courts either procedurally, or with leave, permit the filing of replies to do just that. In circumstances presented here, the Commission should follow suit.

WHEREFORE, Movants respectfully request that Qwest's request be denied<sup>1</sup> or, in the alternative, give Qwest until December 13, 2010 to file its response to the Motion to Dismiss with the *proviso* that Movants have a right to submit a reply on or before December 30, 2010 to Qwest's response.

Respectfully submitted,

/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 Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc., and US LEC of Florida, LLC*

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

Dated: November 18, 2010

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<sup>1</sup> If Qwest cannot receive the relief it requests directly, the Commission should not allow Qwest to reap the benefits of the relief Qwest requests indirectly, by granting it seven days from the date the Commission issues an order denying Qwest's request. The alternative approach Movants propose provides a fair and non-prejudicial approach to address this concern.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc., and US LEC of Florida, LLC's Joint Response to Qwest's Motion for Extension of Time to Respond to Joint Motion to Dismiss has been furnished by email or by U.S. Mail to the following on this 18th day of November, 2010.

/s/ Kimberly A. Lacey

Kimberly A. Lacey

**By Email:**

*Florida Public Service Commission*  
Theresa Tan  
Florida Public Service Commission  
Office of General Counsel  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
ltan@psc.state.fl.us

*Qwest Communications Company, LLC*  
Adam Sherr  
Associate General Counsel  
Qwest Communications Co., LLC  
1600 7th Avenue, Room 1506  
Seattle, WA 98191  
adam.sherr@qwest.com

*Qwest Communications Company, LLC*  
Mary Smallwood  
GrayRobinson, P.A.  
301 S. Bronough Street, Suite 600  
P.O. Box 11189  
Tallahassee, FL 32302-3189  
mary.smallwood@gray-robinson.com

*Qwest Communications Company, LLC*  
Alex M. Duarte  
Qwest Communications Company, LLC  
421 SW Oak Street, Suite 810  
Portland, OR 97204  
alex.duarte@qwest.com

*Qwest Communications Company, LLC*  
Jason D. Topp  
Corporate Counsel  
Qwest Communications Company, LLC  
200 South Fifth Street, Room 2200  
Minneapolis, MN 55402  
jason.topp@qwest.com

*Qwest Communications Company, LLC*  
Jeff Wirtzfeld  
Qwest Communications Company, LLC  
1801 California Street, 10th Floor  
Denver, CO 80202-2632  
jeff.wirtzfeld@qwest.com

*Broadwing Communications, LLC*  
Greg Diamond  
c/o Level 3 Communications  
1025 Eldorado Blvd.  
Broomfield, CO 80021-8869  
greg.diamond@level3.com

*Cox Florida Telecom, LLC*  
Ken Culpepper  
Cox Communications  
7401 Florida Blvd.  
Baton Rouge, LA 70806-4639  
kenneth.culpepper@cox.com

Beth Keating  
Akerman Law Firm  
106 E. College Avenue, Suite 1200  
Tallahassee, FL 32301  
beth.keating@akerman.com

Matt Feil  
Gunster Yoakley & Stewart, PA  
215 South Monroe Street, Suite 618  
Tallahassee, FL 32301  
mfeil@gunster.com

*Deltacom, Inc.*  
D. Anthony Mastando  
Deltacom, Inc.  
7037 Old Madison Pike  
Huntsville, AL 35806  
tony.mastando@deltacom.com  
*Granite Telecommunications, LLC*  
100 Newport Avenue Extension  
Quincy, MA 02171-1734  
rcurrier@granitenet.com

*Granite Telecommunications, LLC*  
Andrew M. Klein  
Allen C. Zoracki  
Klein Law Group  
1250 Connecticut Ave., N.W., Suite 200  
Washington, DC 20036  
aklein@kleinlawpllc.com

Howard Adams  
Pennington Law Firm  
P.O. Box 10095  
Tallahassee, FL 32302  
gene@penningtonlaw.com

Marsha E. Rule  
Rutledge Law Firm  
P.O. Box 551  
Tallahassee, FL 32302-0551  
marsha@reuphlaw.com

*tw telecom of florida l.p.*  
Carolyn Ridley  
555 Church Street, Suite 2300  
Nashville, TN 37219-2330  
Carolyn.ridley@twtelecom.com

*Verizon Access Transmission Services*  
David Christian  
106 East College Avenue, Suite 710  
Tallahassee, FL 32301-7721  
david.christian@verizon.com

*Verizon Florida LLC*  
Dulaney L. O'Roark III  
Six Concourse Parkway, NE, Suite 800  
Atlanta, GA 30328  
de.oroark@verizon.com

*Windstream NuVox, Inc.*  
Susan J. Berlin  
Two North Main Street  
Greenville, SC 29601-2153  
sberlin@nuvox.com

*XO Communications Services, Inc.*  
John Ivanuska  
10940 Parallel Parkway, Suite K, #353  
Kansas City, KS 66109-1479  
john.ivanuska@xo.com

*PAETEC Communications, Inc. and US  
LEC of Florida, LLC*  
John B. Messenger  
Vice President and Associate General  
Counsel  
PAETEC Communications, Inc.  
One PaeTec Plaza  
600 Willowbrook Office Park  
Fairport, New York 14450  
john.messenger@paetec.com



*Access Point, Inc.*  
Richard Brown  
Chairman - Chief Executive Officer  
Access Point, Inc.  
1100 Crescent Green  
Suite 109  
Cary, NC 27518-8105  
Richard.Brown@AccessPointInc.Com

Flatel, Inc.  
Executive Center, Suite 100  
2300 Palm Beach Lakes Blvd.  
West Palm Beach, FL 33409-3307

STS Telecom, LLC  
P.O. Box 822270  
Pembroke Pines, FL 33082-2270

*Navigator Telecommunications, LLC*  
Michael McAlister, Esq.  
General Counsel  
Navigator Telecommunications, LLC  
8525 Riverwood Park Drive  
P.O. Box 13860  
North Little Rock, AR 72113  
mike@navtel.com

*Lightyear Network Solutions, LLC*  
John Greive  
Vice President of Regulatory Affairs and  
General Counsel  
Lightyear Network Solutions, LLC  
1901 Eastpoint Parkway  
Louisville, Kentucky 40223  
john.greive@lightyear.net

**By Mail:**

Birch Communications, Inc.  
2300 Main Street, Suite 600  
Kansas City, MO 64108-2415

Budget PrePay, Inc.  
1325 Barksdale Blvd., Suite 200  
Bossier City, LA 71111-4600

BullsEye Telecom, Inc.  
25900 Greenfield Road, Suite 330  
Oak Park, MI 48237-1267

Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, GA 30092-6511