

Dorothy Menasco

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Sent: Friday, July 08, 2011 3:45 PM
To: Filings@psc.state.fl.us
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Subject: PSC Filing - Docket No. 090538-TP
Attachments: 090538 - OralArgDismiss.pdf

The 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:

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Docket Name and Number: Docket No. 090538-TP – Amended 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; 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.

Filed on Behalf of: Joint CLECs (see signature page of pleading)

Total Number of Pages: 8

Description of Documents: Joint CLEC's Request for Oral Argument on Joint Motion to Dismiss Qwest's Complaint for Lack of Subject Matter Jurisdiction.

DOCUMENT NUMBER-DATE

04708 JUL -8 =

FPSC-COMMISSION CLERK

7/8/2011



GUNSTER

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July 8, 2011

VIA ELECTRONIC FILING

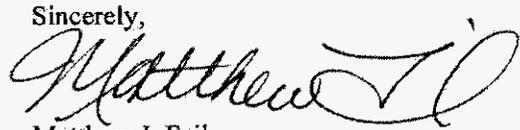
Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 090538-TP - Amended 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; 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.

Dear Ms. Cole:

Please find attached the Joint Movants' Request for Oral Argument on Joint Motion to Dismiss Qwest's Complaint for Lack of Subject Matter Jurisdiction for filing in the above-referenced docket. (The Joint Movants are named on the first page of the pleading.)

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to call.

Sincerely,

Matthew J. Feil

MJF/ccg

cc: Certificate of Service

DOCUMENT NUMBER - DATE
04708 JUL -8 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended 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 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: July 8, 2011

**REQUEST FOR ORAL ARGUMENT
ON JOINT MOTION TO DISMISS QWEST'S AMENDED COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Rule 25-22.022, Florida Administrative Code, the undersigned carriers¹ (collectively, "Joint Movants") hereby request the Florida Public Service Commission to grant oral argument on their Joint Motion to Dismiss Qwest's Amended Complaint for Lack of Subject Matter Jurisdiction, filed contemporaneously with this request.

Chapter 2011-36, Laws of Florida, officially known as the Regulatory Reform Act, became effective on July 1, 2011, thereby repealing nearly 60% and amending over

¹ Access Point, Inc.; Birch Communications, Inc.; Broadwing Communications, LLC; BullsEye Telecom, Inc.; DeltaCom, Inc.; Granite Telecommunications, LLC; Lightyear Network Solutions, LLC; MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; STS Telecom, LLC; tw telecom of florida, l.p.; US LEC of Florida, LLC d/b/a PaeTec Business Services; XO Communications Services, Inc.; and Windstream NuVox, Inc.

DOCUMENT NO. DATE
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25% of the sections in Chapter 364, Florida Statutes.² The Legislature clearly intended the Regulatory Reform Act to effect a sweeping revision to Chapter 364 and a dramatic curtailment of the Commission's telecommunications jurisdiction.

In this case, as detailed in the Motion to Dismiss, the Regulatory Reform Act (a) repeals Sections 364.08(1) and 364.10(1), removing the Commission's jurisdiction over claims of rate discrimination raised in Qwest's Amended Complaint ("Complaint"), (b) revises Section 364.04 to expressly permit carriers to enter into contracts with rates that differ from those in their published schedules (Qwest's central allegation), and (c) includes no savings clause that would permit the Commission to consider any pending claims. Consequently, the Commission's jurisdiction to entertain and authority over Qwest's Complaint has been divested and, therefore, Qwest's Complaint "fall[s] with the law."

Oral argument would aid the Commissioners in understanding the effect of the Regulatory Reform Act on the claims presented in Qwest's Complaint and its lack of jurisdiction and authority to hear and address such claims. Accordingly, oral argument would assist the Commission's deliberations. The Joint Movants request 15 minutes per side for oral argument with time permitted for rebuttal by Joint Movants.

WHEREFORE, Joint Movants respectfully request the Commission to grant oral argument on the Joint Motion to Dismiss Qwest's Amended Complaint for Lack of Subject Matter Jurisdiction.

² Of the 65 sections in Chapter 364, Florida Statutes, 37 were repealed and 17 were amended. Only 11 sections were neither amended nor repealed.

Dated this 8th day of July, 2011.

Respectfully submitted,



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* Designated as qualified representatives in Docket No. 100008-OT.

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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 8th day of July, 2011.

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By: 
Matthew Feil, Esq.