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Sent: Monday, July 11, 2011 3:52 PM
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Subject: Docket No. 090538-TP - Qwest Communication Company, LLC's Motion for Extension of Time to Respond to Joint Motion to Dismiss

Attachments: Qwest - Motion for Extension of Time to Respond to Motion to Dismiss (7_11).pdf

Docket No.:

Docket No. 090538-TP – Amended 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; 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.

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Qwest Communication Company, LLC's Motion for Extension of Time to Respond to Joint Motion to Dismiss

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7/11/2011

DOCUMENT NUMBER-DATE
 04757 JUL 11 =
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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,
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 11, 2011

**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 August 1, 2011 to respond to a Joint Motion to Dismiss filed by 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. (collectively, the "Joint Movants"). In support of this Motion, QCC states as follows:

1. QCC filed its initial Complaint in this proceeding 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

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

3. On May 19, 2011, the Joint Movants filed a Motion for Abeyance to Address Changes in Law (“Motion to Abate”) seeking a suspension of the case during which the parties would simultaneously brief the Commission on the effect, if any, of changes made to Chapter 364 by the Florida Legislature during its 2011 term. QCC opposed the Motion to Abate, arguing that the appropriate procedure would be for the Joint Movants to file a motion to dismiss if they believed the legislative changes affect the Commission’s jurisdiction. The Motion to Abate was denied by the prehearing officer in Order No. PSC-110282-PCO-TP on June 30, 2011.

3. On Friday afternoon, July 8, 2011, the Joint Movants filed a Motion to Dismiss Qwest’s Amended Complaint alleging that the Commission lacks subject matter jurisdiction over the Amended Complaint. The Motion to Dismiss raises numerous arguments based upon changes made during to Chapter 364, Florida Statutes, during the 2011 session of the Florida Legislature. It cites numerous appellate decisions and decisions of this Commission and of the Federal Communications Commission which must be researched and analyzed before QCC can respond.

The issues raised by the Joint Movants are obviously critically important to the development of this proceeding, and 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 response to the Motion to Dismiss.¹

4. At the time of filing their motion to dismiss, the Joint Movants also filed a Joint Motion to Stay Proceeding (“Motion to Stay”) arguing that no further action should be taken in this proceeding until a decision has been made by the Commission on the Joint Movants motion to dismiss. Although QCC verbally advised the Joint Movants that it would oppose the Motion for Stay, upon further consideration, QCC will not oppose staying this proceeding until the Commission makes a decision on the Motion to Dismiss. QCC will file a pleading to that effect later this week.²

¹ In-house counsel for QCC will be away from the office and unavailable from July 17 through July 21.

² QCC disputes the substantive arguments regarding the Commission’s jurisdiction made by the Joint Movants in the July 8, 2011 Motion to Stay and will address them further in its response to the Motion to Dismiss.

5. Pursuant to Rule 28-106.204(3), Fla. Admin. Code, counsel for QCC contacted counsel of record for all Respondents in this proceeding. In response to QCC's request, the Joint Movants have stated the following:

Counsel for MCI, Broadwing, Access Point, Lightyear, Navigator, PAETEC, US LEC, Birch, DeltaCom, STS Telecom, TWTC and XO have indicated that their clients do not object to QCC's request. NuVox Windstream takes no position. BullsEye and Granite oppose the extension,³ but have suggested their willingness to agree to a one week extension. A one week extension is insufficient because, as noted above, in-house counsel for QCC will be unavailable from July 17-21. The two week extension sought by QCC is the same length of extension earlier granted to QCC in connection with its contested request for extension to respond to the Bingham Joint CLECs' November 16, 2010 motion to dismiss.⁴ QCC did not receive feedback from any other Defendants, although it notes that several (Budget, Flatel and Ernest) have made no appearance in this proceeding.

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. QCC will not oppose a stay of this proceeding while the Motion to Dismiss is considered by the Commission.

WHEREFORE, QCC respectfully requests that the Commission grant an extension of time to and including August 1, 2011 for QCC to file its response to the pending Motion to Dismiss. If QCC's motion is denied, QCC requests that the order

³ In opposing QCC's request, BullsEye and Granite do not identify any prejudice they will suffer or any impropriety in QCC's request. Instead, they merely claim that QCC's request is unjustified. BullsEye's and Granite's opposition, which is reproduced below, does not raise any issue justifying denial of QCC's request extension. While QCC has obviously been aware that a motion to dismiss might be coming, it had no specific knowledge of the contents, the specific arguments or the Defendants' analysis until July 8. For BullsEye and Granite to suggest that QCC should have already prepared a response to a motion it had not yet received is plainly ridiculous. Further, until the motion to dismiss was filed on July 8, the Defendants had been asking the Commission to require QCC to make an affirmative filing concerning the Commission's jurisdiction. The arguments posed by BullsEye and Granite are without any merit.

"BullsEye and Granite cannot consent to a tripling of the Qwest response time concerning a motion about which Qwest has been aware for nearly two months.

Qwest opposed the Joint Motion for Abeyance, arguing that the abeyance would delay the proceeding and suggesting that movants should instead file the Motion to Dismiss – to which Qwest would respond. As a result, additional work was required [and expense incurred] to draft and file a Motion to Stay.

Despite there being no justification for the Qwest request, we can as a professional courtesy consent to a one week extension of time."

⁴ Order Granting Extension of Time to Respond to Motion to Dismiss, Order No. PSC-10-0696-PCO-TP (issued Nov. 22, 2010).

denying the motion direct QCC to file its response within seven days of issuance of the order.

DATED this 11th day of July 2011.

By: s/ Michael G. Cooke

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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 11th day of July, 2011, to the following:

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CERTIFICATE OF SERVICE

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