

Diamond Williams

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Sent: Tuesday, August 23, 2011 4:26 PM
To: Filings@psc.state.fl.us
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Subject: PSC Filing - Docket No. 090538-TP
Attachments: Dkt 090538-TP Aug 23 filing.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:

Matthew Feil
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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 (BCI; DeltaCom; STS; tw telecom; XO; Windstream NuVox; Verizon Access; BullsEye; Granite; Access Point; Lightyear; Navigator; PAETEC; US LEC; Broadwing)

Total Number of Pages: 4

Description of Documents: Joint CLECs' Letter

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK



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Our File Number: 33027.1
Writer's E-Mail Address: MFeil@gunster.com

August 23, 2011

VIA ELECTRONIC FILING

Ms. Ann Cole
Office of 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:

I write to clarify the Joint CLECs'¹ position on the Notice of Supplemental Authority filed by Qwest in the captioned docket on August 18.

The Joint CLECs maintain that it is inappropriate for a party to file a notice of supplemental authority to call the Commission's attention to a case which was *not recently decided or published after briefing closed* (*Hamden v. Rumsfeld* was decided over four years ago) and which could have been discovered earlier with the exercise of reasonable diligence. Qwest's August 18 filing, therefore, could be viewed as an attempt at additional argument after the close of briefing; and a motion to strike would ordinarily be in order. However, Joint CLECs do not wish to initiate another round of pleadings and therefore state only that they have reviewed *Hamden* and believe that its holding is consistent with and does not contradict Joint CLECs' position. Assuming oral argument is entertained by the Commission, Joint CLECs will be prepared to address *Hamden* if and when called upon to do so.

Sincerely,



Matthew J. Feil

C: See Certificate of Service

¹ Joint CLECs are those carriers identified in the Joint CLEC filings of July 8, 2011

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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 23th day of August, 2011.

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By: 
Matthew Feil, Esq.