

State of Florida



# Public Service Commission

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**DATE:** March 29, 2012

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Tan) *Tan*  
Division of Regulatory Analysis (King, Miller) *King Miller*

**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.

**AGENDA:** 04/10/12 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\090538.RCM.DOC

### Case Background

On March 7, 2012, Qwest Communications Company, LLC d/b/a CenturyLink (QCC) filed a Voluntary Dismissal of Lightyear Network Solutions, LLC (Lightyear) in the above referenced docket. QCC asserts that it has entered into a settlement agreement resolving the

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issues raised in its Amended Complaint<sup>1</sup> as they relate to Lightyear. The remaining Respondents include 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.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream NuVox.<sup>2</sup>

This recommendation addresses QCC's Voluntary Dismissal With Prejudice of Lightyear. The Commission is vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes, (F.S.).

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<sup>1</sup>QCC filed a complaint on December 11, 2009, alleging rate discrimination in connection with the provision of intrastate switched access services. QCC was granted leave to file an Amended Complaint on October 22, 2010, adding additional Respondents.

<sup>2</sup> Staff notes that on April 6, 2011, Qwest filed a Notice of Voluntary Dismissal without Prejudice of Cox Florida Telecom, L.P., releasing Cox Florida Telecom, L.P. as a party to the complaint.

### **Discussion of Issues**

**Issue 1:** Should the Commission acknowledge QCC's Voluntary Dismissal with Prejudice of Lightyear Network Solutions, LLC?

**Recommendation:** Yes, the Commission should acknowledge QCC's Voluntary Dismissal with Prejudice of Lightyear Network Solutions, LLC. (Tan)

**Staff Analysis:** The law is clear that a plaintiff's right to take a voluntary dismissal is absolute<sup>3</sup> and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>4</sup> Both of these legal principles have been recognized in administrative proceedings<sup>5</sup> and are consistent with past Commission decisions.<sup>6</sup> Staff recommends that the Commission acknowledge QCC's voluntary dismissal with prejudice of its Complaint against Lightyear as a matter of right.

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<sup>3</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

<sup>4</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

<sup>5</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

<sup>6</sup> See Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In Re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; Order No. PSC-08-0493-FOF-TP, In Docket 070408-TP, In re: Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.

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**Issue 2:** Should this docket be closed?

**Recommendation:** No. If Issue 1 is approved, Lightyear should be dismissed from the instant complaint. There are additional Respondents, therefore, staff recommends that Docket No. 090538-TP remain open. (Tan)

**Staff Analysis:** If Issue 1 is approved, Lightyear should be dismissed from the instant complaint. There are additional Respondents, therefore, staff recommends that Docket No. 090538-TP remain open.