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Sent: Friday, April 20, 2012 2:42 PM
To: Filings@psc.state.fl.us
Cc: Masterton, Susan S; Sherr, Adam
Subject: 090538-QCC Motion Leave to File 2nd Amended Complaint
Attachments: 090538 Motion for Leave and 2nd Amended Complaint.pdf

Filed on Behalf of: Susan S. Masterton
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 CenturyLink QCC
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Docket No. 090538

Title of filing: Motion for Leave to File Second Amended Complaint and Second Amended Complaint

Filed on behalf of: CenturyLink QCC

No of pages: 39

Description: Motion for Leave to File Second Amended Complaint and Second Amended Complaint

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DOCUMENT NUMBER-DATE

02466 APR 20 09

FPSC-COMMISSION CLERK



April 20, 2012

VIA ELECTRONIC FILING

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 090538-TP - 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

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket please find Qwest Communications Company, LLC, d/b/a CenturyLink QCC's Motion for Leave to File Second Amended Complaint and Second Amended Complaint.

Copies are being served upon the parties in this docket pursuant to the attached certificate of service.

Sincerely,

/s/ Susan S. Masterton
Susan S. Masterton

Enclosures

DOCUMENT NUMBER-DATE

02466 APR 20 12

FPSC-COMMISSION CLERK

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CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP

I hereby certify that a true and correct copy of the foregoing has been served upon the following by electronic mail delivery and/or U.S. Mail this 20th day of April, 2012.

<p>Florida Public Service Commission Theresa Tan Office of General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ltan@psc.state.fl.us</p>	<p>Division of Regulatory Analysis Brenda Merritt Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 bmerritt@psc.state.fl.us</p>
<p>Birch Communications, Inc. Chris Bunce 2300 Main Street, Suite 340 Kansas City, MO 64108-2415 chris.bunce@birch.com</p>	<p>Bingham Law Firm Eric J. Branfman/Philip J. Macres 2020 K Street, N.W. Washington, DC 20006 eric.branfman@bingham.com philip.macres@bingham.com</p>
<p>Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com</p>	<p>Broadwing Communications, LLC Greg Diamond c/o Level 3 Communications 1025 Eldorado Blvd. Broomfield, CO 80021-8869 Greg.Diamond@level3.com</p>
<p>BullsEye Telecom, Inc. David Bailey 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com</p>	<p>Broadwing Communications, LLC Rutledge Law Firm Marsha E. Rule P.O. Box 551 Tallahassee, FL 32302-0551 marsha@reuphlaw.com</p>
<p>Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com</p>	<p>Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net</p>
<p>Lightyear Network Solutions, LLC John Greive, Vice President 1901 Eastpoint Parkway Louisville, KY 40223-4145 john.greive@lightyear.net</p>	<p>Paula W. Foley One Communication--Earthlink 5 Wall Street Burlington, MA 01803 pfoley@corp.earthlink.com</p>
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<p>Access Point, Inc. Richard Brown 1100 Crescent Green, Suite 109 Cary, NC 27518-8105 Richard.Brown@AccessPointInc.com</p>	<p>Budget Prepay, Inc. Alan G. Gold 1501 Sunset Drive 2nd Floor Coral Gables, FL 33143 agold@acgoldlaw.com</p>
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<p>XO Communications, LLC Ms. Kristin U. Shulman 810 Jorie Blvd., Suite 200 Oak Brook, IL 60523 kris.shulman@xo.com</p>	<p>Windstream NuVox, Inc. Ed Krachmer 4001 Rodney Parham Road MS: 1170-BIFO3-53A Little Rock, AR 7221 2 Edward.Krachmer@windstream.com</p>
<p>XO Communications Services, Inc. Jane Whang Davis Wright Tremaine, LLP 505 Montgomery Street, Suite 800 San Francisco, CA 94111 janeWhang@dwt.com</p>	<p>Ms. Bettye Willis Windstream 13560 Morris Rd., Suite 2500 Milton, GA 30004 bettye.j.willis@windstream.com</p>
	<p>Navigator Telecommunications, LLC Michael McAlister 8525 Riverwood Park Drive North Little Rock, AR 72113 mike@navtel.com</p>

/s/ Susan S. Masterton
Susan S. Masterton

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

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; 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

DATED: April 20, 2012

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT TO WITHDRAW THE COMPLAINT AS TO STS TELECOM, LLC AND ADD SATURN TELECOMMUNICATIONS SERVICES, INC. D/B/A EARTHLINK BUSINESS

Qwest Communications Company, LLC d/b/a CenturyLink QCC (“QCC”) respectfully requests leave to file its Second Amended Complaint, in accordance with Rule 28-106.202, F.A.C. The primary purpose of the Amendment is to withdraw the complaint against STS Telecom, LLC and add Saturn Telecommunications Services, Inc. d/b/a EarthLink Business as a Respondent to the Complaint. The Second Amended Complaint also makes “housekeeping” changes to reflect the current parties. In support of this Motion QCC states as follows:

1. This Second Amended Complaint is being filed primarily for the purpose of including the correct STS affiliate as a Respondent. Specifically, the Amended Complaint is amended to replace STS Telecom, LLC (“STS”) with Saturn Telecommunications Services, Inc. d/b/a EarthLink Business (“Saturn”) in the caption and to replace STS with Saturn in paragraphs 2q. and 4q and add Saturn in paragraph 19. In addition, Cox Florida Telecom, L.P. and Lightyear Network Solutions, LLC are deleted from the caption and from paragraphs 2e., 4e. and

19 (Cox) and 2n., 4n. and 19 (Lightyear). Finally, paragraph 1 a. is revised to correctly reflect QCC's current counsel. (A copy of the Second Amended Complaint is included as an Attachment to this Motion.)

2. The potential to amend the complaint to add Respondents based on information obtained by QCC from the subpoenas it issued to IXCs and from the discovery responses received from CLECs has been contemplated since the original complaint was filed. QCC has already amended its complaint once for that purpose.¹

3. When AT&T, Sprint and MCI provided QCC with copies of the off-price list agreements they had entered into with various CLECs, QCC identified "STS Telecom" as one of the companies that had entered into such agreements and failed to provide nondiscriminatory rates to QCC. In reviewing the CLECs certificated with the Commission under the STS name, QCC identified STS Telecom, LLC as the Florida-certificated party to these agreements. On that basis, QCC included STS Telecom, LLC as a Respondent in its Amended Complaint.

4. STS submitted an Answer to QCC's Amended Complaint in which it did not specifically deny that it was a party to any off-price list access agreements, as alleged by QCC.² In addition, in its initial responses to QCC's First Set of Interrogatories STS did not specifically deny that it was a party to such agreements. However, in its First Supplemental Answers to QCC's First Set of Interrogatories, STS augmented its initial response to specifically assert that "STS is not the contracting party" in the agreement provided to QCC by AT&T in response to QCC's subpoena.³

5. In conducting further research to ascertain the basis of STS's supplemental

¹ See paragraph 10 t. of QCC's Amended Complaint.

² See, Respondent STS Telecom, LLC's Answer to Amended Complaint of Qwest Communications Company, LLC (fka Qwest Communications Corporation), filed with the Commission on November 16, 2010.

³ STS Telecom, LLC's *First Supplement* to Objections and Responses to Qwest Communications Company, LLC's First Set of Interrogatories and Document Requests, Response to Interrogatory No. 1, dated December 16, 2011.

answers, QCC determined that Saturn, an apparent sister company of STS, is the entity that should have been named in QCC's complaint. Therefore, QCC is submitting this Motion to include Saturn as the proper Respondent.

6. The Florida Division of Corporation records, available from the division's website, show that Saturn and STS share officers, mailing addresses and registered agents. (This information is publicly available from the Florida Division of Corporations website at <http://www.sunbiz.org/search.html>.) The information available on the Commission's website indicates that Saturn and STS hold separate certificates to operate as CLECs in Florida; however, prior to October 2011 both companies used the STS Telecom name. Effective November 16, 2011, the Commission approved an amendment to Saturn's certificate to change its name to replace the STS Telecom d/b/a with the EarthLink Business d/b/a.⁴

7. The Florida Rules of Civil Procedure and Florida courts recognize a complainant's right to amend a complaint to include appropriate parties, as long as no party is prejudiced as a result. See, *Darden v. Beverly Health & Rehabilitation*, 763 So. 2d 542 (Fla 5th DCA 2000). In that case, the plaintiff in a wrongful death action sought to replace the original parent company defendant with its subsidiary affiliate. The District Court upheld the plaintiff's right to amend the complaint and also held that the amended complaint related back to the date of the original filing, reversing the lower court's dismissal on statute of limitations grounds. The court based its ruling on factors similar to those in the instant case, including that the original defending party actively defended the lawsuit for several months and that printouts from the Secretary of State's office indicated that the corporate entities shared the same corporate address, had several common corporate directors and the same registered agent. See, *Darden*, 763 So. 2d at 543. See, also, *Schwartz v. Wilt Chamberlain's of Boca Raton*, 725 So. 2d 451 (Fla. 4th DCA

⁴ Although STS has not amended its FPSC Certificate to include the EarthLink d/b/a, it appears to have registered the d/b/a with the Florida Division of Corporations.

1997) (where the District Court found that “substantial identities of interest have been shown to exist between the original defendant and the new defendants” and allowed the original complaint in that action to be amended to include the proper entity which was a limited partner of the original named party).

8. QCC recognizes that Saturn has a right (although not an obligation) to answer this complaint in accordance with Rule 28-106.203, F.A.C. The rule does not specify a time frame for providing an Answer.⁵ QCC believes that in the interest of the efficient processing of this case, should this Motion be granted, the Commission should specify a date for Saturn’s Answer.⁶ Since Direct Testimony in this docket is not due until June 14, 2012, Saturn should have sufficient opportunity to conduct discovery and otherwise prepare its testimony without changing the schedule as it is currently proposed in the Order Establishing Procedure, Order No. PSC-12-0048-PCO-TP.

9. No parties will be harmed or suffer undue prejudice if QCC’s Motion is granted. Saturn clearly has been aware of the litigation served on its sister entity at least since December 2011 when STS provided its supplemental response to QCC’s discovery stating that it was not the contracting party to the referenced agreements. Because the substance of the Complaint remains unchanged as to the other the other Respondents, QCC does not believe that there is any need to provide additional opportunities for any other parties to respond to the Second Amended Complaint or otherwise re-open procedural or substantive matters that have already been resolved as to these parties.

⁵ Rule 1.190 of the Florida Rules of Civil Procedure provides 10 days or such time as is ordered by the court to respond to an amended pleading.

⁶ The presiding officer has the authority to issue such orders under Rule 28-106.211, F.A.C., which provides that “[t]he presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.”

10. In accordance with Rule 28-106.204(3), F.A.C., QCC has contacted counsel for STS regarding this Motion and Amended Complaint and he has indicated that STS intends to file a response to the Motion. In addition, QCC provided all other parties notice of its intent to file this Motion and Amended Complaint via e-mail. Broadwing has indicated that it generally objects to the Motion and reserves the right to file a response.

WHEREFORE, QCC respectfully requests that this Motion be granted and that the Commission:

- Permit QCC to file its Second Amended Complaint to add Saturn Telecommunications, Inc. d/b/a EarthLink Business as a Respondent as well as to make other housekeeping changes as described in this Motion;
- Establish a specific time frame for Saturn to provide its Answer to the Complaint, if any; and
- Acknowledge QCC's withdrawal of STS Telecom, LLC as a Party to this Complaint.

Respectfully submitted this 20th day of April, 2012.

/s/ Susan S. Masterton
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ATTORNEYS FOR QWEST COMMUNICATIONS
COMPANY, LLC D/B/A CENTURYLINK QCC

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

Second 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., NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., SATURN TELECOMMUNICATIONS SERVICES, INC., US LEC OF FLORIDA, LLC, WINDSTREAM NUVOX, INC., AND JOHN DOES 1 THROUGH 50, For unlawful discrimination.

Docket No. 090538-TP

Filed: April 20, 2012

SECOND AMENDED COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC (fka QWEST COMMUNICATIONS CORPORATION)

Pursuant to §§ 364.04, 364.08 and 364.10, Fla. Stat., and Rule 25-22.036 and 25-4.114, Fla. Admin. Code, Qwest Communications Company, LLC (“QCC”) respectfully submits this complaint against the following Florida competitive local exchange carriers (“CLECs”): 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.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications Services, Inc.; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50 (CLECs whose true names are currently unknown) (collectively, the

“Respondent CLECs”). In brief, the Respondent CLECs have subjected QCC to 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. The Respondent CLECs entered into undisclosed contract service agreements outside of tariffs or price lists (also known as individual case basis agreements, or “ICBs”) with select interexchange carriers and failed to make those same rates, terms and conditions available to QCC as otherwise required by statute, the Respondent CLECs’ tariffs or price lists, and Commission rules.

In support of the Complaint, QCC alleges as follows:

PARTIES AND JURISDICTION

1. Complainant QCC is a corporation organized under the laws of the state of Delaware with its principal place of business at 1801 California Street, Denver, Colorado. QCC is qualified to do business in Florida, and is a telecommunications company authorized by this Commission to provide telecommunications services in Florida, pursuant to Certificates of Public Convenience and Necessity issued by this Commission; specifically, Competitive Local Exchange Carrier Certificate No. 5801 and Interexchange Carrier Registration No. TI215 (formerly Certificate No. 3534, which is now a grandfathered interexchange carrier registration pursuant to § 364.02(14), Fla. Stat.). As relevant to this Complaint, QCC provides interexchange (long-distance) telecommunications services throughout the State of Florida.

a. Correspondence and communications, including all notices and pleadings, concerning this Complaint should be addressed to the following individuals:

Susan S. Masterton
Senior Corporate Counsel
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Tallahassee, FL 32301
Susan.Masterton@centurylink.com

Adam L. Sherr (not admitted in Florida)
Associate General Counsel
CenturyLink QCC
1600 7th Avenue, Room 1506
Seattle, WA 98191
Adam.Sherr@centurylink.com

b. QCC will cooperate in the prosecution of this Complaint and will appear at any hearing or hearings the Commission may conduct.

2. Respondent CLECs are:

a. On information and belief, Respondent MCImetro Access Transmission Services, LLC, d/b/a Verizon Access transmission Services (“MCI”), is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Basking Ridge, New Jersey, and is certified to provide telecommunications services in Florida. According to the Commission’s website, MCI’s Certificate No. is 2986, and its regulatory contact address is 106 East College Avenue, Tallahassee, Florida 32301-7721.

b. On information and belief, Respondent XO Communications Services, Inc. (“XO”) is a corporation organized under the laws of the state of Delaware with its principal place of business in Herndon, Virginia, and is certified to provide telecommunications services in Florida. On information and belief, XO acquired, and is the successor in interest to, Allegiance Telecom (“Allegiance”). According to the Commission’s website, XO’s Certificate No. is 5648 and its regulatory contact address is 10940 Parallel Parkway, Suite K- #353, Kansas City, Kansas 66109-4515.

c. On information and belief, Respondent tw telecom of florida, l.p., f/k/a, a/k/a Time Warner Telecom (“tw telecom”) is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Littleton, Colorado, and is certified to provide telecommunications services in Florida. On information and belief, tw

telecom is a subsidiary of Time Warner Telecom Holdings Inc. (“Time Warner Holdings”) and an affiliate of Time Warner Telecom of Minnesota, L.L.C. (“Time Warner Minnesota”). According to the Commission’s website, tw telecom’s Certificate No. is 3167¹ and its regulatory contact address is 555 Church Street, Suite 2300, Nashville, Tennessee 37219-2330.

d. On information and belief, Respondent Granite Telecommunications, L.L.C. (“Granite”) is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Quincy, Massachusetts, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Granite’s Certificate No. is 8222 and its regulatory contact address is 100 Newport Avenue Extension, Quincy, Massachusetts 02171-1734.

e. Intentionally omitted.

f. On information and belief, Respondent Broadwing Communications, LLC (“Broadwing”) is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Austin, Texas and is certified to provide telecommunications services in Florida. On information and belief, Broadwing was acquired by Level 3 Communications, LLC (“Level 3”) pursuant to an October 2006 merger agreement. On information and belief, Broadwing earlier acquired and was the successor-in-interest to Focal Communications Corporation (“Focal”). On information and belief, Focal was the corporate parent or affiliate of Focal Communications Corporation of Minnesota. According to the Commission’s website, Broadwing’s Certificate No. is 5618 and its regulatory contact address is c/o Level 3 Communications, 1025 Eldorado Boulevard, Broomfield, Colorado 80021-8869.

¹ tw telecom holds Alternative Access Vendor Certificate No. 3167. On information and belief, in addition to alternative access vendor service, tw telecom has elected to provide intrastate switched access services in Florida as a CLEC. See § 364.337(6), Fla. Stats., and Rule 25.24.710, Fla. Admin. Code.

g. On information and belief, Respondent Access Point, Inc. (“Access Point”) is a corporation organized under the laws of the State of North Carolina with its principal place of business in Cary, North Carolina, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Access Point’s Certificate No. is 5622 and its regulatory contact address is 1100 Crescent Green Street, Suite 109, Cary, North Carolina 27518-8105.

h. On information and belief, Respondent Birch Communications, Inc. (“Birch Communications”) is a corporation organized under the laws of the State of Georgia with its principal place of business in Kansas City, Missouri, and is certified to provide telecommunications services in Florida. On information and belief, Birch Communications is the successor in interest to Access Integrated Networks, Inc. (“Access Integrated”)² and IDS Telecom, formerly d/b/a Cleartel Communications (“IDS”).³ According to the Commission’s website, Birch Communication’s Certificate No. is 7130 and its regulatory contact address is 2300 Main Street, Suite 600, Kansas City, Missouri 64108-2415.

i. On information and belief, Respondent Budget PrePay, Inc. d/b/a Budget Phone (“Budget”) is a corporation organized under the laws of the State of Louisiana with its principal place of business in Bossier City, Louisiana, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Budget’s

² On or about February 20, 2008, Access Integrated Networks, Inc., announced that it had completed acquisition of Birch Telecom, Inc. Later in 2008, Access Integrated Networks, Inc., changed its name to Birch Communications, Inc. Access Integrated Network’s name change to Birch Communications, Inc., was confirmed by Commission Order on May 29, 2008. See Order No. PSC-08-0354-FOF-TP, Docket No. 080191-TP.

³ On or about May, 8, 2009, Birch Communications filed with the Commission a petition for waiver of rule 25-4.118, F.A.C. (which addresses customer authorization required prior to changes in carrier selection). See *Petition of Birch Telecom of the South, Inc. dba Birch Communications a wholly owned subsidiary of Birch Communications, Inc. For Waiver of Rule 25-4.118, F.A.C.*, Docket No. 090307-TP. In the petition, Birch Communications noted that it was in the process of acquiring substantially all of the assets and customers of Cleartel and that, as “Assignee” of Cleartel, it would assume Cleartel’s operations and adopt Cleartel’s existing tariffs. See Order No. PSC-09-0496-PAA-TP, Docket No. 090307-TP, issued July 13, 2009, authorizing the waiver based upon the petition.

Certificate No. is 7031 and its regulatory contact address is 1325 Barksdale Blvd., Suite 200, Bossier, Louisiana 71111-4600.

j. On information and belief, Respondent BullsEye Telecom, Inc. (“BullsEye Telecom”) is a corporation organized under the laws of the State of Michigan with its principal place of business in Oak Park, Michigan, and is certified to provide telecommunications services in Florida. According to the Commission’s website, BullsEye Telecom’s Certificate No. is 8179 and its regulatory contact address is 25900 Greenfield Road, Suite 330, Oak Park, Michigan 48237-1267.

k. On information and belief, Respondent DeltaCom, Inc., f/k/a ITC^DeltaCom Communications, Inc. (“DeltaCom”) is a corporation organized under the laws of the State of Alabama with its principal place of business in Huntsville, Alabama, and is certified to provide telecommunications services in Florida. According to the Commission’s website, DeltaCom’s Certificate No. is 4764 and its regulatory contact address is 7037 Old Madison Pike, Huntsville, Alabama 35806-2107.

l. On information and belief, Respondent Ernest Communications, Inc. (“Ernest Communications”) is a corporation organized under the laws of the State of Georgia with its principal place of business in Norcross, Georgia, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Ernest Communication’s Certificate No. is 5722 and its regulatory contact address is 5275 Triangle Parkway, Suite 150, Norcross, Georgia 30092-6511.

m. On information and belief, Respondent Flatel, Inc. (“Flatel”) is a corporation organized under the laws of the State of Florida with its principal place of business in West Palm Beach, Florida, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Flatel’s Certificate No. is 5315 and its regulatory

contact address is Executive Center, Suite 100, 2300 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409-3307.

n. Intentionally omitted.

o. On information and belief, Respondent Navigator Telecommunications, LLC (“Navigator”) is a limited liability company organized under the laws of the State of Arkansas with its principal place of business in North Little Rock, Arkansas, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Navigator’s Certificate No. is 5777 and its regulatory contact address is P.O. Box 13860, North Little Rock, Arkansas 72113-0860.

p. On information and belief, Respondent PaeTec Communications, Inc. (“PaeTec”) is a corporation organized under the laws of the State of Delaware with its principal executive office in Fairport, New York, and is certified to provide telecommunications services in Florida. According to the Commission’s website, PaeTec’s Certificate No. is 5756 and its regulatory contact address is One PaeTec Plaza, 600 Willowbrook Office Park, Fairport, New York 14450-4233.

q. On information and belief, Respondent Saturn Telecommunications Services, Inc. (“Saturn”) is a corporation organized under the laws of the State of Florida with its principal place of business in Cooper City, Florida, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Saturn’s Certificate No. is 8251 and its regulatory contact address is 2610 Horizon Drive, S.E., Suite B, Grand Rapids, MI 49546-7561. On information and belief, Saturn is a corporate affiliate of STS Telecom, LLC, which was formerly named as a Respondent herein.

r. On information and belief, Respondent US LEC of Florida, LLC d/b/a PaeTec Business Services (“US LEC”) is a limited liability company organized under the laws of the State of North Carolina with its principal place of business in Fairport, New York, and is certified to provide telecommunications services in Florida. According to the Commission’s website, US LEC’s Certificate No. is 5311 and its regulatory contact address is 6801 Morrison Blvd., Charlotte, North Carolina 28211-3599.

s. On information and belief, Respondent Windstream Nuvox, Inc. (“Windstream Nuvox”) is a corporation organized under the laws of the State of Delaware with its principal place of business in Little Rock, Arkansas, and is certified to provide telecommunications services in Florida. According to the Commission’s website, Windstream Nuvox’s Certificate No. is 5638 and its regulatory contact address is Two North Main Street, Greenville, South Carolina 29601-2719.

t. On information and belief, Nuvox previously acquired Florida Digital Network d/b/a FDN Communications (“Florida Digital”) and Windstream Nuvox is the successor in interest to Florida Digital.

u. On information and belief, Respondents John Does 1-50 are telecommunications companies operating in Florida, other than the CLECs specifically named herein, that provide intrastate switched access services pursuant to off-tariff agreements, but whose identities are, as of the date of filing this Complaint, unknown to QCC. As a result of its ongoing investigation, QCC may seek to amend this Complaint, or to file an amended complaint, accordingly.

3. The Commission has jurisdiction over this Complaint pursuant to §§ 364.01, 364.02, 364.04, 364.07, 364.08, 364.10 364.337, and Chapter 120, Fla. Stat., and Rules 25.22.036 and 25-4.002, Fla. Admin. Code.

BACKGROUND

4. This Commission has jurisdiction over telecommunications companies regarding all matters set forth in Chapter 364, unless specifically exempted, including complaints against CLECs for unreasonably prejudicial, anti-competitive or discriminatory conduct. See §§ 364.01 and 364.337(2), Fla. Stat. This includes exercising exclusive jurisdiction to ensure that all telecommunications providers are treated fairly by preventing unreasonable preferential, discriminatory or anti-competitive behavior. See §§ 364.01 (4)(g), 364.08 and 364.10(1), Fla. Stat. The Commission requires that any telecommunications companies, including CLECs, that file tariffs or price lists for their intrastate switched access services provide those services in a non-discriminatory manner. See e.g., §§ 364.08(1) and 364.10(1), Fla. Stat. Moreover, the Commission has continuing regulatory oversight over the provision of basic local exchange telecommunications service by certificated CLECs and AAVs for purposes of “ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.” See § 364.337(5), Fla. Stat.

5. A carrier may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from its tariffs or price lists (“off-tariff agreements” or arrangements). However, pursuant to § 364.08(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement “not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.” Telecommunications companies are also prohibited, pursuant to § 364.10(1), Fla. Stat., from extending an undue or unreasonable preference or advantage to any person, or in subjecting any person to “any undue or unreasonable prejudice or disadvantage in any respect whatsoever.” As such, a telecommunications companies must otherwise make the terms of contracts available to other similarly-situated telecommunications companies on a non-discriminatory basis.

6. Each of the named Respondent CLECs has filed tariffs or price lists with the Commission for their intrastate switched access service and rates in Florida.

7. In its capacity as an interexchange carrier (“IXC”), QCC necessarily uses and is billed for large quantities of intrastate switched access services by local exchange carriers in Florida, including the Respondent CLECs.

8. Beginning in June 2004, the Minnesota Public Utilities Commission (“MN PUC”) conducted a series of investigations focused on the fact that certain CLECs, including many of the named Respondent CLECs, had entered into off-tariff agreements in connection with their provision of intrastate switched access services to selected IXCs, including AT&T, Inc. (or its IXC subsidiaries), MCI, Sprint Communications Company, L.P., and Global Crossing Telecommunications, Inc., which had not been filed with the Commission, as required by Minnesota law, and which gave discriminatory preferences or discounts to these selected IXCs.

9. Those investigations were initiated by a series of complaints filed by the Minnesota Department of Commerce (“MN DOC”). In its complaint initiating Docket C-04-235, the MN DOC identified off-tariff agreements involving, among other CLECs, Allegiance, Focal (now Broadwing), and MCI and IXCs AT&T, MCI, Sprint and Global Crossing. In its complaint initiating Docket C-05-1282, the MN DOC identified discriminatory off-tariff agreements involving, among other CLECs, Granite and Time Warner. In its complaint initiating Docket C-06-498, the MN DOC identified an off-tariff agreement involving MCI. Among the three dockets, the MN DOC identified a total of twenty-seven (27) CLECs that had entered discriminatory off-tariff agreements with IXCs other than QCC. In public comments, IXC AT&T clarified that many more CLECs engaged in this practice. As AT&T explained,

“[i]n the past four years or so, AT&T has entered into *hundreds* of agreements based on the same form with CLEC providers of switched access services *throughout the United States.*”⁴

10. The specific factual allegations as to each Respondent CLEC are as follows:

a. Respondent MCI

i. Respondent MCI has on file with this Commission a tariff or price list (“MCI price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, F.P.S.C. Price List No. 1.* Respondent MCI bills QCC the rates set out in the Section 7.4 of said price list for intrastate switched access services in Florida.

ii. On information and belief, Respondent MCI, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent MCI’s effective Florida price list. These agreements include, but are not necessarily limited to, an agreement between MCImetro Access Transmission Services and AT&T, as identified in the MN DOC’s complaint in Docket C-04-235. They also include an agreement between MCI WorldCom Network Services and IXC AT&T, as identified in the MN DOC’s complaint in Docket C-06-498. On information and belief, Respondent MCI has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that MCI provides in Florida, and has not provided QCC the rates, terms or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and

⁴ *AT&T Comments, Motion to Dismiss and Motion for Summary Judgment*, Docket C-04-235 (MN PUC, Aug. 19, 2004). (Emphasis added.)

receiving like or substantially similar service as, the IXCs that are parties to Respondent MCI's off-tariff arrangements. QCC has made demand on MCI to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. MCI has not honored QCC's requests.

b. Respondent XO

i. Respondent XO has on file with this Commission a tariff or price list ("XO price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See XO Communications Services, Inc. Access Services, Florida Price List No 7.* On information and belief, Respondent XO also has on file with this Commission a second price list ("Allegiance price list") specifying rates, terms and conditions for the provision of intrastate switched access services in Florida. *See XO Communications Services, Inc., Florida Price List No 8.* On information and belief, Respondent XO bills QCC the rates set out in Section 6 of the XO price list for intrastate switched access services in Florida. On information and belief, Respondent XO bills QCC the rates set out in Section 3.9 of the Allegiance price list for intrastate switched access services in Florida. On information and belief, Section 6.4 of the XO price list indicates that XO may enter into individual case basis contracts for switched access services, and provides that such contract offerings will be made available to similarly-situated customers in substantially similar circumstances. On information and belief, Section 5.2 of the Allegiance price list indicates that XO (Allegiance) may enter into individual case basis contracts for switched access services, and provides such contract offerings will be made available to similarly-situated customers in substantially similar circumstances. On information and belief, Allegiance formerly billed QCC the rates set out in its Florida price list for intrastate switched access services.

ii. On information and belief, Respondent XO, either itself or via its affiliates, subsidiaries or predecessors (including Allegiance), had or have off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent XO's effective Florida price lists. These agreements include (but are not necessarily limited to) an agreement between Allegiance and AT&T, as identified in the MN DOC's complaint in Docket C-04-235. They also include a November 1, 2001 agreement between XO Communications, Inc. and AT&T Corp., a copy of which was made public in MN PUC Docket C-05-1282. On information and belief, neither Allegiance nor Respondent XO has disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Allegiance and XO provide in Florida, or provided QCC the rates, terms, and/or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent XO's and Allegiance's off-tariff arrangements. QCC has made demand on XO and Allegiance to disclose copies of their off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Neither XO nor Allegiance has honored QCC's requests.

c. Respondent tw telecom

i. Respondent tw telecom (f/k/a, a/k/a Time Warner) has on file with this Commission a tariff or price list ("tw telecom price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Time Warner Telecom of Florida, L.P., Florida Price List No. 4.* On information and belief, Respondent tw telecom bills QCC the rates set out in section 3.6 of said price list for intrastate switched access

services in Florida. On information and belief, Section 8.1 of said price list indicates that tw telecom may enter into customer-specific contracts, and provides that the terms of such contracts will be made available to similarly-situated customers in substantially the same circumstances.

ii. On information and belief, Respondent tw telecom (f/k/a, a/k/a Time Warner), either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent tw telecom's effective Florida price list. These agreements include, but are not necessarily limited to, a July 1, 2001 agreement between Time Warner Telecom of Minnesota, LLC and AT&T and a February 20, 2004 agreement between Time Warner Telecom of Minnesota, LLC and AT&T, both of which were identified in the MN DOC's complaint in Docket C-05-1282. They also include a "general services agreement" between Time Warner and AT&T. On information and belief, Respondent tw telecom has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that tw telecom provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent tw telecom's off-tariff arrangements. QCC made demand on tw telecom to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. tw telecom has not honored QCC's requests.

d. Respondent Granite Telecommunications

i. Respondent Granite has on file with this Commission a tariff or price list (“Granite price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. See Granite Telecommunications, LLC, Florida P.S.C. Price List No. 1. On information and belief, Respondent Granite bills QCC the rates set out in Section 5.1 of said price list for terminating intrastate switched access services in Florida.

ii. On information and belief, Respondent Granite, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Granite’s effective Florida price list. These agreements include, but are not necessarily limited to, an April 1, 2003 agreement between Granite and AT&T, as identified in the MN DOC’s complaint in Docket C-05-1282. On information and belief, Respondent Granite has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Granite provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Granite’s off-tariff arrangements. QCC made demand on Granite to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Granite has not honored QCC’s requests.

e. Intentionally omitted.

f. Respondent Broadwing

i. Respondent Broadwing has on file with this Commission a tariff or price list (“Broadwing price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Broadwing Communications LLC, Florida Price List No. 3.* On information and belief, Respondent Broadwing bills QCC the rates set out in Section 5.1 of said price list for intrastate switched access services in Florida.

ii. On information and belief, Respondent Broadwing, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Broadwing’s effective Florida price list. These agreements include, but are not necessarily limited to, a December 25, 2001 agreement between Focal Communications Corporation and AT&T Communications of the Midwest, Inc. and a December 21, 2000 agreement between Focal Communications Corporation and Sprint Communications Company, L.P. Both agreements were identified in the MN DOC’s complaint in Docket C-04-235. On information and belief, Respondent Broadwing has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Broadwing provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to the off-tariff arrangements. QCC is an IXC for intrastate switched access service under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Broadwing’s off-tariff arrangements. QCC made demand on Broadwing, via Level 3, its corporate parent, to disclose copies of its off-tariff arrangements and to provide QCC

intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Broadwing/Level 3 have not honored QCC's requests.

g. Respondent Access Point

i. Respondent Access Point has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Access Point, Inc., Florida Price List No. 2.* On information and belief, Respondent Access Point bills QCC the rates set out in Section 3 of said price list for intrastate switched access services. On information and belief, Section 6.1 of the Access Point price list indicates that Access Point may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Access Point, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Access Point has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Access Point to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Access Point has not honored QCC's requests.

h. Respondent Birch Communications

i. Respondent Birch Communications has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate

switched access services. See *Birch Telecom of the South, Inc./Birch Telecom d/b/a Birch, FL Price List No.3; Birch Communications Florida Price List No. 2*. On information and belief, Respondent Birch Communications bills QCC the rates set out in Sections 5 of said price lists for intrastate switched access services. On information and belief, Section 8 of Birch Communication's⁵ Florida Price List No. 2 indicates that Birch Communications may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Birch Communications, either itself or via its affiliates, subsidiaries or predecessors (including Access Integrated and IDS), had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Birch Communications and its predecessors-in-interest have not submitted these off-price list arrangements to this Commission, have not disclosed copies of all past and current off-price list arrangements to QCC, and have not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Birch Communications to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Birch Communications has not honored QCC's requests.

i. Respondent Budget

i. Respondent Budget has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services.

⁵ See also Section 8 of Access Integrated's Florida Price List No. 2, which, on information and belief, previously was on file with this Commission.

See Budget PrePay, Inc. d/b/a Budget Phone, FL Price List No. 3. On information and belief, Respondent Budget bills QCC the rates set out in Section 5 of said price list for intrastate switched access services. On information and belief, Section 7.1 of the Budget price list indicates that Budget may enter into individual contracts for switched access services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Budget, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Budget has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Budget to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Budget has not honored QCC's requests.⁶

j. Respondent BullsEye Telecom

i. Respondent BullsEye Telecom has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See BullsEye Telecom, Inc., FL Price List No. 2.* On information and belief,

⁶ In December 2008, QCC filed a formal complaint against Budget with the Federal Communications Commission ("FCC"), asserting claims under the Communications Act of 1934, as amended (the "Act"). In that matter, QCC alleges that Budget violated the Act by overcharging Qwest for switched access on certain interstate traffic (originating in a variety of states, including Florida). In that proceeding, Budget contends that it properly charged Qwest higher intrastate access rates on the traffic at issue. *In the Matter of Qwest Communications Corporation v. Budget Prepay, Inc. d/b/a Budget Phone and Budget Phone, Inc.*, File No. EB-08-MD-012 (Formal Complaint of Qwest Communications Corporation filed Dec. 30, 2008). The matter is still pending before the FCC.

Respondent BullsEye Telecom bills QCC the rates set out in Section 3 of said price list for intrastate switched access services. On information and belief, Section 5.1 of the BullsEye price list indicates that BullsEye Telecom may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers.

ii. On information and belief, Respondent BullsEye Telecom, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent BullsEye Telecom has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on BullsEye Telecom to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. BullsEye Telecom has not honored QCC's requests.

k. Respondent DeltaCom

i. Respondent DeltaCom has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See DeltaCom, Inc., FL Switched Access Price List.* On information and belief, ITC^DeltaCom had on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See ITC^DeltaCom Switched Access Tariff.* On information and belief, Respondent ITC^DeltaCom billed QCC the rates set out in Sections 3 of said price list for intrastate switched access services.

ii. On information and belief, Respondent DeltaCom, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent DeltaCom has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on DeltaCom to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. DeltaCom has not honored QCC's requests.

i. Respondent Ernest Communications

i. Respondent Ernest Communications has not filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. On information and belief, Respondent Ernest Communications bills QCC rates for intrastate switched access services that exceed the rates at charges for other IXCs for such services.

ii. On information and belief, Respondent Ernest Communications, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates charged to QCC. On information and belief, Respondent Ernest Communications has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Ernest Communications to disclose copies of its off-price list arrangements and

to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Ernest Communications has not honored QCC's requests.

m. Respondent Flatel

i. On information and belief, Respondent Flatel has not filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. On information and belief, Respondent Flatel bills QCC rates for intrastate switched access services that exceed the rates it charges other IXCs for such services.

ii. On information and belief, Respondent Flatel, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the charged to QCC. On information and belief, Respondent Flatel has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Flatel to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Flatel has not honored QCC's requests.

n. Intentionally omitted.

o. Respondent Navigator

i. Respondent Navigator has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See Navigator Telecommunications, LLC, Florida P.S.C. Price List No. 2.* On information and belief, Respondent Navigator bills QCC the rates set out in Section 5 of said price list for

intrastate switched access services. On information and belief, Section 7 of the Navigator price list indicates that that Navigator may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Navigator, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Navigator has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Navigator to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Navigator has not honored QCC's requests.

p. Respondent PaeTec

i. Respondent PaeTec has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See PaeTec Communications, Inc., FL P.S.C. Price List No. 3.* On information and belief, Respondent PaeTec bills QCC the rates set out in Section 10 of said price list for intrastate switched access services. On information and belief, Section 6.3 of the PaeTec price list indicates that that PaeTec may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers.

ii. On information and belief, Respondent PaeTec, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for

intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent PaeTec has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on PaeTec to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. PaeTec has not honored QCC's requests.

q. Respondent Saturn

i. On information and belief, Respondent Saturn has filed with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services. *See, Saturn Telecommunications, Inc. d/b/a EarthLink Business Price List No. 2.* On information and belief, Section 3.9 of Respondent Saturn's rates for intrastate switched access services. On information and belief, Section 6.1. of the Saturn price list indicates that Saturn may enter into individual contracts for switched access services and provides that such contracts will be made available to similarly-situated customers. On information and belief, Respondent Saturn bills QCC rates for intrastate switched access services that exceed the rates it charges other IXCs for such services.

ii. On information and belief, Respondent Saturn, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services *at rates different from and lower than the rates set forth in the Respondent's effective state price list.* On information and belief, Respondent Saturn has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all

past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements.

r. Respondent US LEC

i. Respondent US LEC has on file with this Commission a price list specifying the rates, terms and conditions for its provision of intrastate switched access services.

See US LEC of Florida, Inc. d/b/a PAETEC Business Services, Florida Switched Access Services Price List, Florida Price List No. 2. On information and belief, Respondent US LEC bills QCC the rates set out in Section 3 of said price list for intrastate switched access services.

ii. On information and belief, Respondent US LEC, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent US LEC has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on US LEC to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. US LEC has not honored QCC's requests.

s. Respondent Windstream Nuvox

i. Respondent Windstream Nuvox and Florida Digital have on file with this Commission price lists specifying the rates, terms and conditions for provision of intrastate switched access services. *See NuVox Communications, Inc. Florida Tariff No. 3.; Florida Digital Network, Inc. d/b/a FDN Communications, Florida Price List No. 2.* On information and belief, Respondent Windstream Nuvox bills QCC the rates set out in Sections 4

and 5, respectively, of said price lists for intrastate switched access services. On information and belief, Section 2.7 of the NuVox Florida Price List No. 3 and Section 8.1 of Florida Digital's Florida Price List No. 2, indicate, respectively, that that NuVox and Florida Digital may enter into individual contracts for switched services, and provides that such contracts will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Windstream Nuvox, either itself or via its affiliates, subsidiaries or predecessors, had or has off-price list, unfiled agreements for intrastate switched access services at rates different from and lower than the rates set forth in the Respondent's effective state price list. On information and belief, Respondent Windstream Nuvox has not submitted these off-price list arrangements to this Commission, has not disclosed copies of all past and current off-price list arrangements to QCC, and has not provided QCC the rates, terms, and conditions received by the IXCs that are parties to the off-price list arrangements. QCC made demand on Windstream Nuvox to disclose copies of its off-price list arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Windstream Nuvox has not honored QCC's requests.

t. Respondent John Does 1-50

In its public comments in Minnesota, AT&T acknowledged that it had entered into hundreds of off-tariff, switched access agreements with CLECs nationwide. QCC has contacted many CLECs to identify other such agreements, but nearly every CLEC contacted refused to disclose such agreements. On information and belief, CLECs other than those identified above have entered into off-tariff intrastate switched access agreements with AT&T and other IXCs. On information and belief, these CLECs have not disclosed to QCC copies of all past and current off-tariff arrangements for intrastate switched access services these CLECs provide in Florida,

and have not provided QCC as the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to these CLECs' off-tariff arrangements. Hence, other Florida CLECs may be named as Respondents to this Complaint, but, as of yet, the identities of these CLECs are unknown to QCC. QCC will continue its investigation, including by requesting use of the subpoena power of this Commission as appropriate and necessary, in an effort to identify such CLECs.⁷ If any such additional CLECs are identified, QCC will seek to amend this Complaint, or file an amended complaint, accordingly.

FIRST CLAIM FOR RELIEF - RATE DISCRIMINATION

11. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

12. Although a telecommunications company may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from the telecommunications company's tariffs or price lists ("off-tariff agreements" or arrangements), pursuant to § 364.08(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement "not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service." Pursuant to § 364.10(1), Fla. Stat., telecommunications companies are also prohibited from engaging in undue or unreasonable preference or advantage to any person, or in subjecting any person to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever." As such, a

⁷ In parallel proceedings pending before the Colorado Public Utilities Commission (Docket 08F-259T) and the California Public Utilities Commission (Case C.08-08-006), subpoenas have been issued (at QCC's request) to multiple IXCs. Based on the documents produced in response to the subpoenas, QCC amended its complaint to name additional Respondents.

telecommunications company must otherwise make the terms of those contracts available to other similarly-situated carriers on a non-discriminatory basis.

13. On information and belief, the Respondent CLECs have subjected QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for intrastate switched access services provided to similarly-situated IXCs by not making those off-tariff arrangement rates available to QCC, and by charging QCC more for switched access services in Florida than they charged other IXCs that are parties to those off-tariff arrangements. Therefore, Respondent CLECs have violated Florida law to the detriment of QCC.

SECOND CLAIM FOR RELIEF - FAILURE TO ABIDE BY PRICE LISTS

14. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

15. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, § 64.04, Fla. Stat.; Rule 25-24-825(2), Fla. Admin. Code. All of the Respondent CLECs have filed price lists for their intrastate switched access services in Florida.

16. On information and belief, the Respondents CLECs have entered into undisclosed contract service agreements or ICB contracts with some IXCs, but not with QCC, with terms, conditions and rates that deviate from their published rates in tariffs or price lists for intrastate

switched access services in Florida. Therefore, Respondent CLECs have violated Florida law by failing to abide by their published price lists to the detriment of QCC, by subjecting QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for intrastate switched access services provided to similarly-situated IXCs, and by charging QCC more for switched access services than they charged other IXCs in Florida.

**THIRD CLAIM FOR RELIEF – FAILURE TO PROVIDE CUSTOMER-SPECIFIC
CONTRACT TERMS TO SIMILARLY-SITUATED CUSTOMERS (XO, ACCESS
POINT, BIRCH, BUDGET, BULLSEYE TELECOM, NAVIGATOR, SATURN,
WINDSTREAM NUVOX, PAETEC)**

17. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

18. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, Rule 25-24-825(2), Fla. Admin. Code.

19. The tariffs or price lists of Respondents XO (both the XO and the Allegiance price lists), Access Point, Birch, Budget, BullsEye Telecom, Navigator, Saturn, Windstream NuVox, and PaeTec provide that, if said company enters into a customer-specific, individual-case-basis agreement, it will make such contract offerings available to similarly-situated customers in substantially similar circumstances, and thus on a non-prejudicial and non-discriminatory basis. As detailed above, XO, Access Point, Budget, Birch, BullsEye Telecom,

Navigator, Saturn, Windstream NuVox, and PaeTec have, on information and belief, entered into undisclosed contract service agreements or ICB agreements with IXC AT&T, and possibly other IXCs. QCC is an IXC, similarly situated and in substantially similar circumstances to the IXCs that are parties to these contract service agreements or ICB agreements. However, Respondents XO (and Allegiance), Access Point, Birch, Budget, BullsEye Telecom, Navigator, Saturn, Windstream NuVox, and PaeTec have not made the discounts set forth in those undisclosed agreements available to QCC. As such, Respondents XO (and Allegiance), Access Point, Birch, Budget, BullsEye Telecom, Navigator, Saturn, Windstream NuVox, and PaeTec have not abided by their Florida price lists. Therefore, Respondents XO (and Allegiance), Access Point, Birch, Budget, BullsEye Telecom, Navigator, Saturn, Windstream NuVox, and PaeTec have violated Florida law to QCC's detriment.

PRAYER FOR RELIEF

WHEREFORE, QCC respectfully requests that the Commission promptly initiate appropriate proceedings to adjudicate the issues set forth in this complaint, rule in favor of QCC and grant the following relief:

A. That the Commission find that the Respondent CLECs have violated Florida law by engaging in unlawful rate discrimination to the detriment of QCC, by extending to other IXCs advantages of contract or agreement not extended to QCC to the detriment of QCC, by failing to abide by their price lists and by charging QCC more for switched access than they charged other IXCs under like circumstances for like or substantially similar service.

B. That the Commission order the Respondent CLECs to pay QCC reparations, with applicable interest, in an amount to be proven at hearing.

C. That the Commission order the Respondent CLECs to lower their intrastate switched access rates to QCC prospectively consistent with the most favorable rate offered to other IXCs in Florida.

D. (Intentionally omitted.)

E. That the Commission order the Respondent CLECs to file with the Commission any contract service agreements the Respondent CLECs may have with other interexchange carriers in Florida which agreements charge rates for intrastate switched access services to IXCs that are inconsistent with the rates in their published tariffs or price lists.

F. That the Commission grant any other relief it deems appropriate under the circumstances.

DATED this 20th day of April, 2012.

/s/ Susan S. Masterton
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