

August 9, 2012

VIA HAND DELIVERY

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

RECEIVED-FPSC
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COMMISSION
CLERK

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:

Enclosed for filing on behalf of Broadwing Communications, LLC; Saturn Telecommunications Services, Inc. d/b/a EarthLink Business and DeltaCom, Inc. d/b/a EarthLink Business.; MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; and tw telecom of florida, l.p., are an original and 15 copies of the prefiled rebuttal testimony and exhibit (Exhibit TD-1) of Mr. Terry Deason. Also enclosed is a diskette containing a PDF version of Mr. Deason's rebuttal testimony and exhibit.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,



Matthew Feil

COM 5 (testimony only)
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1 **Q. Please state your name and business address.**

2 A. My name is Terry Deason. My business address is 301 S. Bronough Street, Suite
3 200, Tallahassee, Florida 32301.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by the law firm Radey Thomas Yon and Clark as a Special
6 Consultant specializing in the fields of energy, telecommunications, water and
7 wastewater and public utilities generally.

8 **Q. Please describe your educational background and professional experience.**

9 A. I have thirty-five years of experience in the field of public utility regulation spanning
10 a wide range of responsibilities and roles. I served a total of seven years as a
11 consumer advocate in the Florida Office of Public Counsel (OPC) on two separate
12 occasions. In that role, I testified as an expert witness in numerous rate proceedings
13 before the Florida Public Service Commission (Commission). My tenure of service
14 at the Florida Office of Public Counsel was interrupted by six years as Chief Advisor
15 to Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its Chief
16 Regulatory Analyst when I was first appointed to the Commission in 1991. I served
17 as Commissioner on the Commission for sixteen years, serving as its chairman on
18 two separate occasions. Since retiring from the Commission at the end of 2006, I
19 have been providing consulting services and expert testimony on behalf of various
20 clients, including public service commission advocacy staff and regulated utility
21 companies, before commissions in Arkansas, Florida, Montana, New York and
22 North Dakota. I have also testified before various legislative committees on

1 regulatory policy matters. I hold a Bachelor of Science Degree in Accounting,
2 summa cum laude, and a Master of Accounting, both from Florida State University.

3 **Q. Are you sponsoring an exhibit?**

4 A. Yes. I am sponsoring the following rebuttal exhibit:

- 5 • Exhibit ___ (TD-1), Biographical Information for Terry Deason

6 **Q. For whom are you appearing as a rebuttal witness?**

7 A. I am appearing as a rebuttal witness for Broadwing Communications, LLC; Saturn
8 Telecommunications Services, Inc. d/b/a EarthLink Business and DeltaCom, Inc.
9 d/b/a EarthLink Business.; MCImetro Access Transmission Services LLC d/b/a
10 Verizon Access Transmission Services; and tw telecom of florida, l.p. (CLEC Group
11 or CLECs).

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. The purpose of my rebuttal testimony is to respond to assertions by Qwest
14 Communications Company, LLC (Qwest) that there has been rate discrimination in
15 connection with the provisioning of intrastate switched access service by the CLEC
16 Group in Florida.

17 **Q. Did you serve on the Florida Public Service Commission at the time of Qwest's
18 complaint?**

19 A. Qwest's complaint was filed on December 11, 2009, and asserts discrimination as far
20 back as ten years ago. Thus, I was not serving as a Commissioner when the Qwest
21 complaint was filed. I did serve on the Commission for much of the time that the
22 complaint covers. In fact, I was serving on the Commission when Florida enacted

1 the 1995 Telecommunications Act, which first allowed competition in the
2 provisioning of local exchange telephone service in Florida.

3 **Q. How was local exchange service provided in Florida prior to Florida's 1995**
4 **Telecommunications Act?**

5 A. Local exchange service was provided by a number of local exchange companies that
6 each had an exclusive certificated service territory. The Public Service Commission
7 closely regulated the quality and terms of service. The Commission also set the rates
8 that each company could charge and required them to be filed at the Commission as
9 tariffed rates. After the introduction of competition, these companies became known
10 as Incumbent Local Exchange Companies or ILECs.

11 **Q. Were the rates set by the Commission uniform throughout Florida before July**
12 **1, 1995?**

13 A. No. Each ILEC's rates were set on its overall cost to provide service. Each
14 company had a regulated rate base, was allowed to recover needed and prudently
15 incurred expenses, and was permitted an opportunity to earn a Commission set rate
16 of return, much like the Commission currently sets rates for investor owned electric
17 utilities.

18 **Q. Did the setting of telephone rates back then deviate in any significant way from**
19 **the setting of rates for investor-owned electric utilities?**

20 A. Yes. The Commission exercised discretion to price specific types of services at
21 levels that deviated from strict cost considerations and considered the value of the
22 service provided. For example, business rates were higher than residential rates and
23 rates for long distance and ancillary services generally provided a higher contribution

1 to earnings than basic “dial tone” service. With changes in technology and the
2 emergence of competition, these inherent subsidies were not sustainable.

3 **Q. Did the Commission ever address concern over these differentials between**
4 **specific rates and costs?**

5 A. Yes, the Commission was concerned that requiring a strict adherence to tariffed rates
6 could put the ILECs at a competitive disadvantage. The Commission feared that an
7 inability to adjust prices could result in lost customers, lost revenues, and higher
8 rates for the ILECs’ remaining customers. This concept was known as “uneconomic
9 bypass.” As early as 1983, the Commission authorized ILECs to offer contractual
10 rates or bulk discounts, instead of strict tariff pricing. These became known as
11 Contract Service Arrangements or CSAs.

12 **Q. So the purpose of CSAs was to protect end use telephone customers from**
13 **incurring potentially higher telephone rates?**

14 A. Yes, that is correct. The ILECs were required to file information monthly (later
15 changed to quarterly) with the Commission which justified the CSAs and identified
16 the applicable rates and contract periods. This information was used to monitor the
17 CSAs and ascertain whether they were indeed protecting end use customers from
18 potential rate increases.

19 **Q. Was the CSA information filed with the Commission afforded confidential**
20 **treatment?**

21 A. The ILECs had the option of requesting confidentiality. Many exercised this option
22 and the Commission routinely agreed that it constituted confidential business
23 information and granted confidential status.

1 **Q. Did the Commission require CSA information to be filed as a means of**
2 **providing public notice of the types, amounts, and duration of negotiated rates?**

3 A. No. As I stated earlier, this information was required to ascertain whether the CSAs
4 were combating uneconomic bypass and protecting end use customers, not to put
5 customers or competitors on notice of what negotiated rates might be available.

6 **Q. After the elimination of exclusive local service territories and the introduction**
7 **of local service competition in 1995, what became of CSAs?**

8 A. The Commission eliminated the requirements that CSAs be reported and that certain
9 information about an ILEC's service arrangements be filed with the Commission. In
10 Docket No. 010634-TL, Order No. PSC-01-1588-PAA-TL, the Commission stated:

11 We find that a systemic shift from a rate base, rate-of-return
12 regulatory environment to a competitive market paradigm obviates
13 the threat of "bypass" for rate payers. Congress and the Florida
14 Legislature have fashioned laws to simultaneously stimulate
15 competition, and protect ratepayers from excessive rate increases for
16 basic services.

17 **Q. What was the Commission's primary concern with respect to CSAs?**

18 A. The Commission's primary concern was the protection of end use customers,
19 particularly those with a lesser ability to avail themselves of alternatives. With the
20 advent and growth of competition, competition became the means to best provide
21 this protection, and previously imposed regulatory requirements were lifted.

1 **Q. Did the Commission consider whether the regulatory requirement for ILECs to**
2 **file CSA information was needed to protect similarly situated end-use**
3 **customers from being treated in a discriminatory manner?**

4 A. Yes, the Commission determined that the requirement to file CSAs was not needed
5 for this purpose. The Commission also had doubts whether “similarly situated”
6 could be truly ascertained and whether alleged discrimination was, in fact,
7 discrimination or constituted a failure on the part of one entity to successfully
8 negotiate. In Order No. PSC-01-1588-PAA-TL, dated July 31, 2001, the
9 Commission stated:

10 CSA reports as filed do not provide the level of detail that would be
11 needed to determine whether clients are “similarly situated” or
12 victims of discrimination. Assuming an all-encompassing definition
13 of “similarly situated” could be reached, an examination of whether
14 similarly situated clients received discriminatory contracts would
15 require staff to identify recipients of such contracts and submit a
16 request for production of documents for the contracts in question, and
17 a justification from the ILEC offering the contracts. Such an
18 assessment would also require staff to determine whether
19 discrimination occurred in the offering of contracts or whether one
20 party was more adept than another in its negotiations with the ILEC.

21 **Q. How does this determination by the Commission relate to Qwest’s contention**
22 **that there has been rate discrimination in the provisioning of switched access**
23 **service by certain CLECs?**

1 A. It goes to the heart of Qwest's contention. The Commission determined that the
2 mere existence of a rate negotiated by a local exchange carrier does not mean there
3 has been any undue discrimination. To find undue discrimination, there has to be a
4 determination that different entities are "similarly situated", which is a fact-intensive
5 endeavor, and that actual discrimination occurred and was not simply the result of a
6 failure or inability of one customer to successfully negotiate.

7 **Q. Is there any similar language in a Commission order specifically addressing**
8 **switched access service provided by CLECs?**

9 A. No, not to my knowledge.

10 **Q. Why is that?**

11 A. The Commission never considered switched access service provided by CLECs to be
12 a regulated service that necessitated regulatory requirements in order to protect end
13 use telephone customers. Nor did the Commission consider switched access service
14 provided by CLECs to be a service for which information needed to be filed at the
15 Commission. For example, unlike in the prior era of rate of return regulation,
16 CLECs were not required to provide cost information or otherwise justify the prices
17 they charged for switched access service. However, the Commission did speak
18 generally to the fact that what may have been considered rate discrimination under
19 the standards of monopoly (rate of return) regulation would not be applicable under
20 deregulation (competition). In Docket No. 951354-TL, Order No. PSC-97-0488-
21 FOF-TL, the Commission stated:

22 We believe that price differences caused by the implementation of
23 price caps for basic and protected non-basic services under the

1 provisions of section 364.051, Florida Statutes, do not constitute
2 undue discrimination pursuant to sections 364.08, 364.09, or 364.10,
3 Florida Statutes. Circumstances that would have amounted to undue
4 discrimination in rate setting under monopoly regulation do not
5 amount to undue discrimination under deregulation.

6 ***

7 The answer is the development of an effective competitive
8 marketplace.

9 **Q. Did the Commission address the issue of requiring price lists for switched**
10 **access?**

11 A. Yes, the Commission addressed this immediately after the 1995 Telecommunications
12 Act was enacted. At its November 21, 1995 Agenda Conference, the Commission
13 approved its staff's recommendation to adopt rules governing telephone service by
14 Alternative Local Exchange Companies (ALECs). It should be noted that the term
15 "ALEC" has now been replaced with the more generally accepted term "CLEC".

16 **Q. What did the Commission's staff recommendation say in this regard?**

17 A. In its recommendation in Docket No. 950918-TX dated November 8, 1995, the staff
18 recommended that the Commission not adopt changes suggested by LDDS
19 Worldcom that switched access rates be included in ALEC (CLEC) price lists:

20 Staff does not totally agree with LDDS Worldcom's statement that
21 switched access service will continue to be a monopoly service.

22 While it is true that IXCs will pay switched access rates to LECs and
23 ALECs, there may be alternatives for end users. An ALEC may

1 determine that a way to differentiate itself from the dominant LEC is
2 to provide switched access at lower rates; thus IXCs that provide
3 service to that ALEC's customers may charge lower toll rates to end
4 users.

5
6 Consideration of LDDS's request should be given in light of the
7 statute which calls for a lesser level of regulatory oversight than local
8 exchange companies for ALECs. The staff considered whether to
9 require the filing of price lists at all and limited its proposal to basic
10 services only because of the desire to be able to quickly respond to
11 consumers' complaints or questions. If there is a need to obtain
12 information for either large business customers or IXCs, that can be
13 requested on an as needed basis rather than requiring the ALECs to
14 keep that information up to date with the Commission. Therefore, we
15 recommend that the price list be limited to basic services.

16 **Q. Do you draw any conclusions from this language as it pertains to Qwest's**
17 **complaint?**

18 A. Yes, there are several. First, the Commission did not find that switched access
19 provided by CLECs is a monopoly service. As I read Dr. Weisman's direct
20 testimony on behalf of Qwest, his positions and ultimate opinion that discrimination
21 against Qwest took place are premised on his contention that switched access is a
22 monopoly "bottle neck" service. If this premise is invalid or otherwise removed, his
23 conclusion fails. It is not the purpose of my testimony to debate whether switched

1 access should be considered a monopoly service. Rather the purpose of my
2 testimony is to state that the Commission has not ever considered CLEC switched
3 access to be a monopoly service. It would be bad regulatory policy to redefine the
4 fundamental nature of a service in order to provide one company a financial benefit
5 now based on a retroactive application of that re-definition. The time for the debate
6 and Dr. Weisman's arguments was 1995, not 2012.

7
8 Second, CLECs were under no obligation to file or otherwise post their switched
9 access rates. Likewise, they were under no obligation to file, post or make public
10 any negotiated changes in those rates. And, even if such an obligation could be
11 implied, consistent with the treatment previously afforded CSAs, the Commission
12 most likely would have afforded any negotiated rates confidential protection, if
13 requested. So, Qwest's allegation that the negotiated switched access rates were
14 "secret" is unfounded and of no consequence based on the Commission's long-
15 standing policies.

16
17 Third, the Commission limited CLEC price lists to containing information about
18 basic services offered to end users. The Commission further stated that, if there is a
19 need to obtain pricing information for either large business customers or
20 interexchange carriers (IXCs), there could be a request for such information. So, if
21 the Commission and its staff did not need this information to be routinely filed, it is
22 presumptuous for Qwest to assert that this information should have been routinely
23 provided to it.

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And fourth, the Commission readily acknowledged that its decision to limit the filing of price list information to a CLEC's basic service was driven by the Florida statute that calls for a lesser level of regulatory oversight for CLECs. Specifically, Section 5 of the 1995 Act amended Section 364.01 (in part) to require the Commission to exercise its exclusive jurisdiction to:

Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local exchange telecommunications companies; [and]

Eliminate any rules and/or regulations which will delay or impair the transition to competition.

So, beginning in 1995, the Commission was required to encourage new entrants and to regulate them to a lesser degree than the ILECs.

Q. Why was this requirement in section 364.01 enacted?

A. Absent such a requirement, it was believed that new entrants would be hesitant to enter a market and compete against larger existing ILECs. Lessening the new entrants' regulatory burdens was seen as one way of encouraging them to do so. It was also believed that the new entrants needed pricing flexibility to effectively compete and add value to their new customers. To have declared the new entrants' switched access services a regulated monopoly service would not have been

1 consistent with these goals. Moreover, the Commission understood that the new
2 entrants would have the ability to negotiate rates without the regulatory burdens
3 associated with CSAs that the Commission had previously imposed on the ILECs.

4 **Q. How does Qwest's complaint of alleged discrimination mesh with these**
5 **statutory goals?**

6 A. It does not mesh at all. It would be bad regulatory policy and perhaps even
7 disingenuous to have encouraged new entrants to enter the Florida market with the
8 promise of lesser regulation in 1995, and then impose new regulatory requirements
9 (such as a duty to file contract rates and to provide cost justification) in 2012
10 retroactively to 1995.

11 **Q. You previously responded that to encourage new entrants into the Florida**
12 **market, the Commission allowed CLECs pricing flexibility and granted them**
13 **the ability to negotiate rates. Why did the Commission believe this was needed**
14 **and appropriate?**

15 A. First, this was consistent with the 1995 Act and the requirement to encourage
16 competition. In addition, the Commission generally encouraged negotiations and
17 flexibility in prices as the best means of meeting customer needs. Traditional
18 regulation was ill-suited to provide these benefits in a manner as fair and as prompt
19 as negotiations between carriers and their customers often could.

20 **Q. Did the Commission encourage negotiations between telecommunications**
21 **companies?**

22 A. Yes.

1 **Q. What is Dr. Weisman's position on the price that Qwest should pay the CLECs**
2 **for switched access service?**

3 A. He states that there should be a default (uniform) price that all long-distance carriers
4 should pay the CLEC, unless a CLEC can demonstrate that its cost of providing
5 switched access varies between the various long-distance carriers.

6 **Q. Does Dr. Weisman quantify what that uniform price should be?**

7 A. No, he does not specifically quantify a uniform price. He implies that the uniform
8 price should be the prices that the CLECs negotiated with other IXCs. However,
9 there are many different negotiated prices in Florida, not a single uniform one.
10 Arguably the only uniform prices are the voluntarily published prices by the CLECs
11 in their price lists, which are the rates I understand that Qwest was charged. In
12 essence, Qwest's basic premise is inherently flawed. Under the guise of preventing
13 alleged discriminatory prices via uniform prices, Qwest wants to obtain the financial
14 benefit of lower negotiated prices that are not uniform. In addition, Qwest is seeking
15 the lower prices that it had no hand in negotiating. Then, to top it off, the give-and-
16 take of those negotiations is not known to the Commission and likely encompassed a
17 number of considerations, including matters other than switched access prices.
18 Qwest's request that the Commission now award it the lower prices that were
19 obtained through negotiations and compromises and concessions by others is unfair
20 to both the Commission and the other IXCs that availed themselves of the
21 negotiating process and likely made concessions on other matters.

22 **Q. You stated that Qwest is seeking the benefit of negotiated prices that it had no**
23 **hand in negotiating. If the Commission had required negotiated switched**

1 **access prices to be published, would there have been any negotiated prices at**
2 **all?**

3 A. Since the Commission did not require the negotiated switched access prices to be
4 published, I cannot say with certainty. However, as a general rule, requiring
5 negotiated prices to be published has a dampening effect on negotiations and efforts
6 to resolve various issues. This is one of the reasons the Commission routinely
7 granted confidential status to CSAs, which I earlier described. So, as a theoretical
8 matter, requiring the prices and terms of negotiated agreements to be published so
9 that other companies (perhaps dissimilarly situated companies) could request the
10 same prices, terms and conditions may have resulted in no or fewer negotiated
11 prices.

12 **Q. Why did the CLECs in this proceeding agree to negotiated switched access**
13 **prices?**

14 A. That would be for each CLEC to explain. However, as a matter of general policy, I
15 would assume there were compromises or concessions made by the negotiating
16 entities to reach an agreeable outcome. It defies logic to assume the CLECs were not
17 acting in their own interests, or that they agreed to lower switched access rates
18 without obtaining concessions or other benefits in return.

19 **Q. What would have been the result had Qwest negotiated its own switched access**
20 **agreements with the CLECs?**

21 A. We simply do not know. Nor do we know what Qwest would have been able to
22 offer in return for lower switched access prices. I have not evaluated whether Qwest
23 was similarly situated to other IXCs that did successfully negotiate switched access

1 agreements. What we do know is that Qwest is asking the Commission to grant it
2 now the economic equivalent of lower prices, without it being required to make any
3 concessions, provide any other forms of consideration included in those agreements
4 or undertake any obligations that those agreements might have required. Qwest
5 argues only that it has an entitlement to these prices because it believes the prices
6 should be uniform. As I have explained, that view is not in line with the regulatory
7 policy in this state, nor is it consistent with commercial norms in a competitive
8 environment.

9 **Q. Dr. Weisman states a caveat that there could be a deviation from uniform prices
10 if the provider's cost of providing service varies between customers. Do you
11 agree?**

12 A. If you were to assume that the service in question is truly a monopoly one, I do not
13 disagree from a purely theoretical standpoint. However, from a practical standpoint,
14 it should have no bearing in this case. First, as I earlier explained, the Commission
15 has never considered CLEC switched access to be a monopoly service. And second,
16 there is no cost information available to demonstrate that costs may vary. Because
17 CLECs have never been cost regulated by the Commission, as the ILECs were at an
18 earlier time, there are no CLEC cost studies or other experience on which the
19 Commission could rely to conduct such an examination. Today, even the ILECs are
20 no longer cost regulated. Thus, creating new cost justification requirements for
21 competitive carriers at this stage in the evolution of regulatory policy would be a
22 huge step backwards and would be contrary to the express provisions of the 1995

1 Act designed to encourage new entrants by subjecting them to a lesser level of
2 regulation.

3 **Q. Did the 1995 Act address the appropriate cost standard to be used in order to**
4 **detect cross-subsidization or other similar anti-competitive pricing?**

5 A. Yes, it did. In the context of detecting cross-subsidization between basic and non-
6 basic service, the Act specified that total long-run incremental cost was the
7 appropriate standard for the ILECs. CLECs were specifically exempted from this
8 standard and no other cost standard or requirement was imposed upon the CLECs.
9 Therefore, there is no cost-based standard applicable to the provisioning of switched
10 access service by CLECs. In any event, there has been no allegation that the CLECs
11 negotiated switched access prices that were below total long-run incremental costs.

12 **Q. Did the 1995 Act address nondiscriminatory pricing?**

13 A. Yes, to a limited extent. The term “nondiscriminatory” appears in only three
14 sections of the 1995 Act, but none of these references are applicable to CLEC
15 switched access service.

16
17 The first reference to “nondiscriminatory” is in Section 5 amending Section 364.01,
18 setting forth the powers of the Commission and legislative intent. In this section,
19 flexible regulatory treatment is premised on monopoly services being available to
20 competitors on a nondiscriminatory basis. This section further clarifies that the
21 applicable monopoly services are those provided by ILECs. Nowhere in this section
22 and nowhere in the entire Act is it envisioned that CLECs would be providing
23 monopoly services.

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The second reference to “nondiscriminatory” is in Section 14, amending Section 364.16 concerning local interconnection and number portability. This section of the Act requires CLECs to provide nondiscriminatory access to and interconnection with other providers of local exchange telecommunications service. However, it contains no such requirement for access to and interconnection with interexchange carriers, such as Qwest. In addition, this section specifies that the first attempt to obtain such nondiscriminatory access and interconnection should be through negotiation. Only if the negotiations fail could the carriers ask the Commission to make a determination about the terms of interconnection. This is in stark contrast to Qwest’s criticisms of the negotiations that took place between the CLECs and other IXCs. Qwest is asking the Commission to become involved because others successfully negotiated and it did not.

The third and final reference to “nondiscriminatory” is found in Section 16, creating Section 364.162 regarding negotiated prices for interconnection and for the resale of ILEC services and facilities. This section is applicable to CLECs, but only when CLECs are seeking interconnection with an ILEC. It has no bearing on CLEC switched access service provided to IXCs. Nevertheless, as with Section 14, the Act makes clear that negotiations are the first step to obtaining nondiscriminatory interconnection arrangements. The Act makes it abundantly clear that negotiating rates, terms and conditions is essential and congruent with obtaining access on a nondiscriminatory basis. Qwest’s claim in this case is based on exactly the opposite,

1 i.e., that the mere existence of a negotiated rate shows the existence of
2 discrimination, even though the Act does not require that switched access be
3 provided on a nondiscriminatory basis in the first place.

4 **Q. So there is nothing in the 1995 Act requiring CLEC switched access to be**
5 **provided on a nondiscriminatory basis?**

6 A. Yes, that is correct. In addition, negotiations to set prices and terms between
7 carriers, which Qwest finds objectionable for switched access, was generally allowed
8 for competitive carriers and was actually required for many types of services by the
9 1995 Act.

10 **Q. Was there any preexisting relevant language in the Florida Statutes at the time**
11 **the 1995 amendments were enacted that addressed potential discriminatory**
12 **practices?**

13 A. Sections 364.08, 364.09 and 364.10 generally prohibited the giving of undue or
14 unreasonable preferences to persons under like circumstances. But, these sections
15 were not relevant to the question of discrimination in the provisioning of switched
16 access services by CLECs.

17 **Q. Why were these sections not relevant to the provisioning of switched access**
18 **services by CLECs?**

19 A. These sections had their genesis when there were no CLECs, only rate base regulated
20 monopoly telephone companies. These sections were designed to protect end use
21 customers from discrimination and to protect the general body of end use customers
22 from higher rates.

1 **Q. Why was this protection needed for customers of a rate base regulated**
2 **monopoly?**

3 A. Similar to the situation with CSAs that I earlier described, any unjustified reduction
4 in revenues could lead to rate increases for all other customers. This is a function of
5 a regulated monopoly having a “revenue requirement” determined by the
6 Commission to provide a reasonable opportunity for the regulated monopoly to earn
7 its authorized rate of return. Any unjustified reductions in rates charged or any
8 reduction in the number of customers paying the tariffed rates, would mean that the
9 resulting revenue deficiency would have to be made up by all other customers
10 through higher rates.

11 **Q. If these sections had no relevancy to CLECs, why did they remain in Chapter**
12 **364, Florida Statutes?**

13 A. These sections were necessary to enable the Commission to protect customers of the
14 ILECs. While the 1995 Act introduced competition, the ILECs were not initially
15 subject to the level of competition which now exists. So these provisions were
16 applied to ILECs during the transition to a more competitive market. In recognition
17 of the transition to a more competitive market, Section 364.09 was repealed in 2009
18 and Sections 364.08 and 364.10 were repealed in 2011.

19 **Q. How did the Commission apply these sections to ILECs during the transition**
20 **period to greater competition?**

21 A. The Commission applied these sections on a case-by-case basis to protect ILEC end
22 use customers. As competition increased and statutory provisions changed, so did
23 the Commission’s need for regulation. In Order No. PSC-97-0488-FOF-TL, which I

1 earlier cited, the Commission expressly noted that circumstances that would amount
2 to undue discrimination in a monopoly environment do not necessarily constitute
3 discrimination in a competitive one.

4 **Q. Did the Commission ever apply these sections to CLECs?**

5 A. No, not to my knowledge. CLECs were subject to a lesser level of regulation by
6 statute. In addition, the protections afforded ILEC end use customers were not
7 necessary for CLEC end use customers. CLEC customers were exercising their
8 option to shop for the best prices and service offerings and to negotiate with CLECs
9 to maximize these benefits.

10 **Q. Does the nonexistence of a nondiscrimination standard in the Act for switched
11 access service mean that the Commission should be unconcerned with switched
12 access rate levels?**

13 A. No, that is not my position. The Commission does have a continuing obligation to
14 see that competition in the telecommunications market continues to serve customers
15 with quality service at reasonable prices. Just as the Commission was concerned
16 with protecting end use customers prior to passage of the 1995 Act, the Commission
17 has a continuing responsibility to see that customers are treated fairly. The means
18 available to accomplish that now is by assuring a competitive market. However,
19 assuring a competitive market does not mean that one or more competitors are
20 assured success. A competitor's success should be based on its own efforts.

21 Qwest's complaint loses sight of this. Qwest is seeking the protection of
22 historical regulation that no longer exists for its own benefit. Qwest has not shown
23 that there has been a failure of the competitive market or that end use customers have

1 been harmed as a result. Qwest is asking the Commission to intervene in an
2 otherwise competitive market to protect itself from either its unwillingness or failure
3 to negotiate within the established confine of Florida's competitive market.

4 **Q. Does this conclude your testimony?**

5 A. Yes, it does.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; 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

Exhibit ____ (TD-1)

Biographical Information for Terry Deason

Rebuttal Exhibit of Terry Deason
Filed August 9, 2012

Terry Deason*



Special Consultant (Non-Lawyer)*

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Practice Areas:

- Energy, Telecommunications, Water and Wastewater and Public Utilities

Education:

- United States Military Academy at West Point, 1972
- Florida State University, B.S., 1975, Accounting, summa cum laude
- Florida State University, Master of Accounting, 1989

Professional Experiences:

- Radey Thomas Yon & Clark, P.A., Special Consultant, 2007 - Present
- Florida Public Service Commission, Commissioner, 1991 - 2007
- Florida Public Service Commission, Chairman, 1993 - 1995, 2000 - 2001
- Office of the Public Counsel, Chief Regulatory Analyst, 1987 - 1991
- Florida Public Service Commission, Executive Assistant to the Commissioner, 1981 - 1987
- Office of the Public Counsel, Legislative Analyst II and III, 1979 - 1981
- Ben Johnson Associates, Inc., Research Analyst, 1978 - 1979
- Office of the Public Counsel, Legislative Analyst I, 1977 - 1978
- Quincy State Bank Trust Department, Staff Accountant and Trust Assistant, 1976 - 1977

Professional Associations and Memberships:

- National Association of Regulatory Utility Commissioners (NARUC), 1993 - 1998,
Member, Executive Committee
- National Association of Regulatory Utility Commissioners (NARUC), 1999 - 2006,
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- National Association of Regulatory Utility Commissioners (NARUC), 2004 - 2005,
Member, Committee on Telecommunications
- National Association of Regulatory Utility Commissioners (NARUC), 1991 - 2004,
Member, Committee on Finance and Technology
- National Association of Regulatory Utility Commissioners (NARUC), 1995 - 1998,
Member, Committee on Utility Association Oversight
- National Association of Regulatory Utility Commissioners (NARUC) 2002 *Member, Rights-of-Way Study*
- Nuclear Waste Strategy Coalition, 2000 - 2006, *Board Member*
- Federal Energy Regulatory Commission (FERC) South Joint Board on Security
Constrained Economic Dispatch, 2005 - 2006, *Member*
- Southeastern Association of Regulatory Utility Commissioners, 1991 - 2006, *Member*
- Florida Energy 20/20 Study Commission, 2000 - 2001, *Member*
- FCC Federal/State Joint Conference on Accounting, 2003 - 2005, *Member*
- Joint NARUC/Department of Energy Study Commission on Tax and Rate
Treatment of Renewable Energy Projects, 1993, *Member*
- Bonbright Utilities Center at the University of Georgia, 2001, *Bonbright Distinguished Service Award Recipient*
- Eastern NARUC Utility Rate School - Faculty Member

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 9th day of August, 2012.

| | |
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| Granite Telecommunications, LLC 100 Newport Avenue Extension Quincy, MA 02171-1734 rcurrier@granitenet.com | Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com |
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|---|--|
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By: 
Matthew Feil, Esq.