

Eric Fryson

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Sent: Friday, September 14, 2012 4:05 PM
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Subject: Electronic Filing - Docket No. 090538-TP

Attachments: 090538-TP-Windstream Companies Prehearing Statement.pdf

Attached is an electronic filing for the above-referenced docket. If you have any questions, please contact Matt Feil at the number below. Thank you.

Person Responsible for Filing:

Matthew Feil
 Gunster Law Firm
 215 South Monroe Street, Suite 601
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Docket Name and Number: Docket No. 090538-TP – Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, I.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.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Filed on Behalf of: Paetec Communications, Inc, US LEC of Florida, LLC d/b/a Paetec Business Services and Windstream NuVox, Inc.

Total Number of Pages: 12

Description of Documents: Joint Prehearing Statement



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

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DOCUMENT NUMBER-DATE

06198 SEP 14 09

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9/14/2012

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September 14, 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 (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.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Dear Ms. Cole:

Enclosed is the Joint Prehearing Statement of Paetec Communications, Inc, US LEC of Florida, LLC d/b/a Paetec Business Services and Windstream Nuvox, Inc., submitted by electronic mail in the above-referenced docket.

Sincerely,



Matthew J. Feil

Enclosures

DOCUMENT NUMBER-DATE

06198 SEP 14 2012

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); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Docket No. 090538-TP

Filed: September 14, 2012

JOINT PREHEARING STATEMENT OF

PAETEC COMMUNICATIONS, INC.;
US LEC OF FLORIDA, LLC D/B/A PAETEC BUSINESS SERVICES; AND
WINDSTREAM NUVOX, INC.

Pursuant to Order No. PSC-12-0048-PCO-TP, issued February 28, 2011, as amended, (the "Order Establishing Procedure") PaeTec Communications, Inc. ("PAETEC"); US LEC of Florida, LLC d/b/a PAETEC Business Services ("US LEC"); and Windstream NuVox, Inc. ("Windstream NuVox") (collectively the "Windstream Companies") hereby submit this Joint Prehearing Statement.

The Windstream Companies note that by letter filed in the docket August 9, 2011, they announced that they had reached an agreement in principle with Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") to settle QCC's claims and a motion for voluntary dismissal of the Windstream Companies should be forthcoming. However, a formal

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settlement document has not yet been executed and a motion to voluntarily dismiss the Windstream Companies has therefore not yet been filed with the Commission. While the Windstream Companies and QCC still expect those events to occur in the near future, the Windstream Companies file this Prehearing Statement as behooves all parties not yet dismissed from the proceeding.

All Known Witnesses

DIRECT:

Witness	Subject	Issues	Sponsor(s)
Don J. Wood	Qwest Counts I, II and III	5, 6, 7, 8(a), (c), (d), (f), (g), 8(a), (c), (d), (f), (g), 9(b)	Broadwing, DeltaCom, Saturn, TWTC and Windstream Companies
Stephen B. Weeks	Qwest Counts I, II and III	5, 6, 7	Windstream Companies

The Windstream Companies did not sponsor any rebuttal witnesses.

All Prefiled Exhibits

* = Contains confidential information

Witness	Proffered By	Exhibit	Title
Don J. Wood	Broadwing, DeltaCom, Saturn, TWTC and Windstream Companies	DJW-1	CV of Don J. Wood
		* DJW-2	Qwest Agreement No. 1 – Excerpt
		* DJW-3	Qwest Agreement No. 2 – Excerpt
		DJW-4	MN PUC Agenda Notice: 7-20-04
		DJW-5	AT&T Comments, August 19, 2004

Statement of Basic Position

WINDSTREAM COMPANIES: After extensive negotiations, the Windstream Companies entered into comprehensive settlement agreements with IXCs to resolve significant billing disputes for unregulated switched access services. The settlement agreements contained, among other things, a retrospective and a prospective element. The settlements were necessary and beneficial to the Windstream Companies at the time, and both the retrospective and prospective components are inextricably tied to the overall consideration for the settlement and not severable. Even if the Commission had jurisdiction over Qwest's claims, which it does not, Qwest is not in "like circumstances" to the ICXs who were parties to settlements nor the victim of "undue or unreasonable" treatment vis-à-vis those IXCs because the settlements contain terms, and were premised upon conditions, that do not and cannot fit Qwest. This Commission has a practice of encouraging settlement; but granting Qwest's requested relief would deter the cause for more private negotiation and settlement. Qwest also asks the Commission to retroactively legislate an entirely new regulatory regime for switched access service, which is and has always been an unregulated CLEC service. This the Commission should not and cannot do. Qwest's claims must therefore be rejected.

Position on Issues Identified in the Order Establishing Procedure

The Windstream Companies adopt by reference the positions on the below-stated issues included as part of the anticipated CLEC group filing in this case.

Issue No. 1: For conduct occurring prior to July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:

- (a) Qwest's First Claim for Relief alleging violation of 364.08(1) and 364.10(1), Florida Statutes (F.S.) (2010);
- (b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010);
- (c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010)?

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

Issue No. 2: For conduct occurring on or after July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:

- (a) Qwest's First Claim for Relief alleging violation of 364.08(1) and 364.10(1), F.S. (2010);
- (b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010);
- (c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2) F.S. (2010)?

WINDSTREAM

COMPANIES: Agree with CLEC Group.

Issue No. 3: Which party has (a) the burden to establish the Commission's subject matter jurisdiction, if any, over Qwest's First, Second, and Third Claims for Relief, as pled in Qwest's Amended Complaint, and (b) the burden to establish the factual and legal basis for each of these three claims?

WINDSTREAM

COMPANIES: Agree with CLEC Group.

Issue No. 4: Does Qwest have standing to bring a complaint based on the claims made and remedies sought in (a) Qwest's First Claim for Relief; (b) Qwest's Second Claim for Relief; (c) Qwest's Third Claim for relief?

WINDSTREAM

COMPANIES: Agree with CLEC Group.

Issue No. 5: Has the CLEC engaged in unreasonable rate discrimination, as alleged in Qwest's First Claim for Relief, with regard to its provision of intrastate switched access?

WINDSTREAM

COMPANIES: Agree with CLEC Group.

Issue No. 6: Did the CLEC abide by its Price List in connection with its pricing of intrastate switched access service? If not, was such conduct unlawful as alleged in Qwest's Second Claim for Relief?

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

Issue No. 7: Did the CLEC abide by its Price List by offering the terms of off-Price List agreements to other similarly-situated customers? If not, was such conduct unlawful, as alleged in Qwest's Third Claim for Relief?

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

Issue No. 8: Are Qwest's claims barred or limited, in whole or in part, by:

(a) the statute of limitations;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(b) Ch. 2011-36, Laws of Florida;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(c) terms of a CLEC's price list;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(d) waiver, laches, or estoppel;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(e) the filed rate doctrine;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(f) the prohibition against retroactive ratemaking;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(g) the intent, pricing, terms or circumstances of any separate service agreements between Qwest and any CLEC;

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

(h) any other affirmative defenses pled or any other reasons?

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

Issue No. 9 (a): If the Commission finds in favor of Qwest on (a) Qwest's first Claim for Relief alleging violation 01'364.08(1) and 364.10 (1), F.S. (2010); (b) Qwest's Second Claim [or Relief alleging violation of 364.04(1)and (2), F.S. (2010); and/or (c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2) F.S. (2010), what remedies, if any, does the Commission have the authority to award Qwest'?

**WINDSTREAM
COMPANIES:** Agree with CLEC Group.

Issue No. 9(b): If the Commission finds a violation or violations of law as alleged by Qwest and has authority to award remedies to Qwest per the preceding issue, for each claim:

- (i) If applicable, how should the amount of any relief be calculated and when and how should it be paid?**
- (ii) Should the Commission award any other remedies?**

**WINDSTREAM
COMPANIES:**

Agree with CLEC Group.

Even if the agreement(s) at issue were found to violate repealed sections 364.08(1) or 364.10(1), F.S. (2010), the fair and reasonable method the Commission and courts have employed for eliminating alleged undue or unreasonable advantage is to reverse that advantage specifically for the customer(s) to whom it was given, rather than retroactively perpetuate that advantage to other customers, or, much worse, to just one customer like Qwest.

Stipulated Issues

There are no stipulated issues at this time.

Pending Motions

The Windstream Companies have no pending motions as of the date of this Prehearing Statement but reserves their rights to file any necessary motions in accordance with the Commissions rules and Order on Procedure.

Pending Confidentiality Claims or Requests

The Windstream Companies have the following pending claims for confidential treatment and, if a motion for voluntarily dismissal of the Windstream Companies is not filed before the hearing, the Windstream Companies intend to submit a formal request for confidential treatment for these materials so that may be ruled on in advance of the hearing:

Claim/Request	Date Filed	Document No.	Description	Party Claiming Confidentiality
Claim	6-25-2012	04215-12	CONFIDENTIAL Appendix Qwest DR-11, in response to Qwest Document	PAETEC

			Request No. 11 to PAETEC	
Claim	6-25-2012	04213-12	CONFIDENTIAL Appendix Qwest DR-12, in response to Qwest Document Request No. 12 to US LEC	US LEC
Claim	6-14-2012	03884-12	Pages 56-59 of direct Testimony of Don J. Wood and Exhibits DJW-2 and DJW-3	Qwest
Claim	5-2-2012	02826-12	CONFIDENTIAL Appendix Qwest DR-2 from Windstream NuVox in Response to Qwest Document Request No. 2	Windstream NuVox
Claim	3-23-2012	01737-12	CONFIDENTIAL Attachment A supplementing US LEC Response to Qwest Document Request No. 2(a)	US LEC
Claim	3-23-2012	01753-12	CONFIDENTIAL Attachment A supplementing PAETEC Response to Qwest Document Request No. 2(a)	PAETEC

In addition, Qwest may have filed documents belonging to or obtained from a Respondent that are not included in any of Qwest's Requests for Confidential Classification filed to date. The Windstream Companies request that Qwest provide a list of such documents so the parties may determine who should file a Request for Confidential Classification for same.

Docket No. 090538-TP
September 14, 2012

Objections to Witness Qualifications as an Expert

The Windstream Companies have no objections to any witnesses' expert qualifications at this time.

Compliance with the Order Establishing Procedure

The Windstream Companies have complied with all requirements of the Order Establishing Procedure entered in this docket.

RESPECTFULLY SUBMITTED this 14th day of September, 2012.



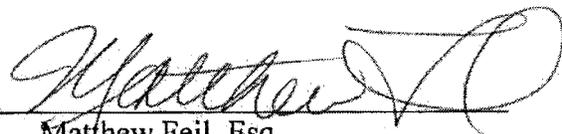
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 14th day of September, 2012.

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<p>Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 <u>JEMiller@psc.state.fl.us</u> <u>BSalak@psc.state.fl.us</u></p>	<p>Ms. Rebecca A. Edmonston Verizon Access Transmission Services 106 East College Avenue, Suite 710 Tallahassee, FL 32301-7721 <u>rebecca.edmonston@verizon.com</u></p>
<p>Dulaney L. O'Roark III Verizon Florida, LLC 5055 North Point Parkway Alpharetta, GA 30022 678-259-1657 (phone) 678-259-5326 (fax) <u>de.oroark@verizon.com</u> <u>richard.b.severy@verizon.com</u></p>	<p>Ed Krachmer Windstream NuVox, Inc. 4001 Rodney Parham Road MS: 1170-B1F03-53A Little Rock, AR 72212 <u>Edward.Krachmer@windstream.com</u></p>

By: 
Matthew Feil, Esq.