

VOTE SHEET

April 9, 2013

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.

Issue 1: 1) For conduct occurring prior to July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:

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

Recommendation: No. Staff recommends that the Commission no longer retains jurisdiction to make a finding of specific violations of Sections 364.08(1) or 364.10(1), F.S., however, QCC’s claims for relief are grounded in allegations of anticompetitive behavior by the Respondent CLECs, over which the Commission has continuously maintained jurisdiction, pursuant to Chapter 364, F.S.

APPROVED


RECEIVED-FPSC
13 APR -9 AM 11:30
COMMISSION
CLERK

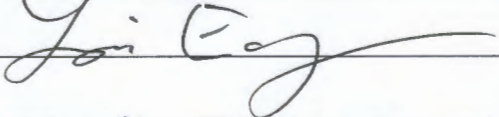
COMMISSIONERS ASSIGNED: Brisé, Edgar, Balbis

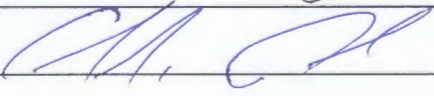
COMMISSIONERS’ SIGNATURES

MAJORITY

DISSENTING







REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

01808 APR-9 2013

Vote Sheet

April 9, 2013

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.

(Continued from previous page)

Issue 2: For conduct occurring on or after July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:

(a) QCC's First Claim for Relief alleging violation of 364.08(1) and 364.10(1), F.S. (2010);

(b) QCC's Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010);

(c) QCC's Third Claim for Relief alleging violation of 364.04(1) and (2) F.S. (2010)?

Recommendation: No. Staff recommends that the Commission no longer retains jurisdiction to make a finding of specific violations of Sections 364.08(1) or 364.10(1), F.S., however, QCC's claims for relief are grounded in allegations of anticompetitive behavior by the Respondent CLECs, over which the Commission has continuously maintained jurisdiction, pursuant to Chapter 364, F.S.

APPROVED

Issue 3: Which party has (a) the burden to establish the Commission's subject matter jurisdiction, if any, over QCC's First, Second, and Third Claims for Relief, as pled in QCC's Amended Complaint, and (b) the burden to establish the factual and legal basis for each of these three claims?

Recommendation: Staff recommends that the issues before the Commission must be proven by a preponderance of the evidence provided. QCC has the burden to prove subject matter jurisdiction and to establish the factual and legal basis to provide the relief sought by a preponderance of the evidence.

APPROVED

Vote Sheet

April 9, 2013

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.

(Continued from previous page)

Issue 4: Does QCC have standing to bring a complaint based on the claims made and remedies sought in (a) QCC's First Claim for Relief; (b) QCC's Second Claim for Relief; (c) QCC's Third Claim for relief?

Recommendation: Yes. Staff believes QCC has standing because its substantial interests fall within the zone of interests to be protected under Sections 364.16(1) and (2), F.S. Accordingly, staff recommends that QCC has standing to seek a determination from the Commission to determine if anticompetitive behavior has occurred.

APPROVED

Issue 5: Has the CLEC engaged in unreasonable rate discrimination, as alleged in QCC's First Claim for Relief, with regard to its provision of intrastate switched access?

Recommendation: No. The CLECs have not engaged in unreasonable rate discrimination, as alleged in QCC's First Claim for Relief.

APPROVED

Issue 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 QCC's Second Claim for Relief?

Recommendation: Yes. The CLECs abided by their price lists in connection with the pricing of intrastate switched access service.

APPROVED

Vote Sheet

April 9, 2013

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.

(Continued from previous page)

Issue 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 QCC's Third Claim for Relief?

Recommendation: Yes. QCC is not a similarly situated customer. Therefore, the CLECs did not fail to abide by their Price Lists.

APPROVED

Vote Sheet

April 9, 2013

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.

(Continued from previous page)

Issue 8: Are QCC's claims barred or limited, in whole or in part, by:

- a) the statute of limitations;
- b) Ch. 2011-36, Laws of Florida;
- c) terms of a CLEC's price list;
- d) waiver, laches, or estoppel;
- e) the filed rate doctrine;
- f) the prohibition against retroactive ratemaking;
- g) the intent, pricing, terms or circumstances of any separate service agreements between QCC and any CLEC;
- h) any other affirmative defenses pled or any other reasons?

8(a) **Recommendation:** No. Staff believes this proceeding is an administrative proceeding that is before the Commission and for which the Commission is the appropriate court of jurisdiction, and therefore recommends that the statute of limitations does not bar or limit, in whole or in part, QCC's claims for relief in this proceeding.

8(b) **Recommendation:** No. The Commission continues to have exclusive jurisdiction over wholesale carrier-to-carrier disputes and maintains its obligation to ensure fair and effective competition among telecommunications service providers. Staff recommends that QCC's claims are not barred or limited as it pertains to the issue of anticompetitive behavior.

8(c) **Recommendation:** No. QCC's claims are not barred or limited, in whole or in part, by terms of the CLECs' price lists.

8(d) **Recommendation:** No. Staff believes that it is not appropriate for the Commission to make a finding that the adoption is barred by the doctrines of equitable relief.

8(e) **Recommendation:** No. Staff recommends that the filed rate doctrine does not apply to this proceeding and therefore QCC's claims are not barred or limited, in whole or in part.

8(f) **Recommendation:** No. In order for retroactive ratemaking to be at issue in this case, the Commission would have to set new rates for past service or change the price list schedule.

8(g) **Recommendation:** No. QCC's claims are not barred or limited, in whole or in part, by the intent, pricing, terms or circumstances of separate agreements between QCC and any CLEC.

8(h) **Recommendation:** No. Staff believes that there are no other affirmative defenses pled or any other reason that bar or limit, in whole or in part, QCC's claims.

APPROVED

Vote Sheet

April 9, 2013

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.

(Continued from previous page)

Issue 9:

a) If the Commission finds in favor of QCC on (a) QCC’s First Claim for Relief alleging violation of 364.08(1) and 364.10 (1), F.S. (2010); (b) QCC’s Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010); and/or (c) QCC’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 QCC?

b) If the Commission finds a violation or violations of law as alleged by QCC and has authority to award remedies to QCC 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?

9(a) Recommendation If the Commission finds in favor of Qwest on any of its Claims for Relief, the Commission has the authority to order the CLECs to cure any and all anticompetitive behavior, pursuant to Section 364.16(2), F.S.

9(b) Recommendation: If the Commission finds a violation or violations of law as alleged by QCC and has authority to award remedies to QCC per the preceding issue, the CLECs should be ordered to cure any anticompetitive behavior and negotiate a mutually-acceptable agreement with QCC in good faith.

APPROVED

Issue 10: Should this docket be closed?

Recommendation: If the Commission approves staff’s recommendations in Issues 1-9, this docket should be closed after the Order becomes final and the time for filing an appeal has passed.

APPROVED