

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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
ORDER NO. PSC-11-0282-PCO-TP
ISSUED: June 28, 2011

ORDER DENYING ABEYANCE

On December 11, 2009, Qwest Communications Company, LLC (Qwest) filed a complaint alleging rate discrimination in connection with the provision of intrastate switched access services 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; and John Does 1 through 50 (CLECs whose true names are currently unknown).

On October 22, 2010, Qwest was granted leave to file an Amended Complaint, adding additional Respondents and removing its Part D Prayer for Relief in which Qwest asked for a "cease and desist" order from the Respondents' actions. The additional Respondents are Access Point, Inc., Birch Communications, 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, and Windstream NuVox.

Qwest's complaint seeks relief from all parties for engaging in unlawful rate discrimination. Specifically, Qwest alleges that by extending to other IXCs switched access contracts, advantages were withheld from Qwest. Qwest further alleges that all parties have failed to abide by their pricelists, and charged Qwest more for switched access than other similarly situated IXCs.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On May 19, 2011, Access Point, Inc.; Birch Communications, Inc.; Broadwing Communications, LLC; Bullseye Telecom, Inc.; DeltaCom, Inc.; Granite Telecommunications, LLC; Lightyear Network Solutions, LLC; MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; tw telecom of florida, l.p.; US LEC of Florida, LLC d/b/a PaeTec Business Services; XO Communications Services, Inc.; and Windstream NuVox, Inc. (Joint CLECs), filed a Motion for Abeyance to Address Changes in Law (Motion).¹ In their Motion, the Joint CLECs request general suspension of all case activity, thirty days to file briefs to address changes in law contained in Chapter 2011-36, Laws of Florida, and fourteen days to respond to all filings. The Joint CLECs assert that the recent change in law alters the Commission's jurisdiction. The Joint CLECs assert that no party is prejudiced because issue identification has not occurred, no case schedule has been established and there is no statutory deadline.

On May 24, 2011, Qwest filed its Response to the Joint CLECs' Motion for Abeyance to Address Changes in Law, stating that the Joint CLECs Motion is contrary to the Uniform Rules of Procedure, 28-106.204, F.A.C., and is unwarranted and prejudicial to Qwest.

Under the circumstances, I find that holding these proceedings in abeyance will result in unnecessary delay. The purpose of an issue identification is to identify a preliminary list of issues, and determine areas of agreement, disagreement, and consolidation regarding Qwest's complaint. Through this process, all parties should have a clearer understanding of the specific issues to be litigated in this proceeding and will be better situated to identify any issues affected by the change in law. Therefore, I do not find it appropriate to hold this docket in abeyance at this time and shall deny the Joint CLECs' motion.

Once the issues are identified, I will review and make a determination whether a Section 120.57(2), Florida Statutes, hearing is appropriate. The parties shall work with staff to set up a full Issue Identification conference at the earliest feasible date. Once issues have been identified, a procedural order will be issued setting forth a hearing schedule. As always, the parties are encouraged to negotiate resolution of disputed issues as well as procedural disagreements.

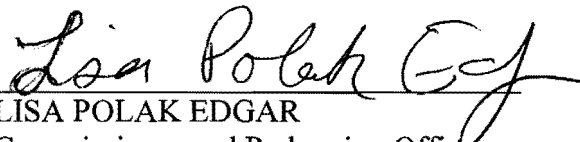
Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that Access Point, Inc.; Birch Communications, Inc.; Broadwing Communications, LLC; Bullseye Telecom, Inc.; DeltaCom, Inc.; Granite Telecommunications, LLC; Lightyear Network Solutions, LLC; MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; tw telecom of florida, l.p.; US LEC of Florida, LLC d/b/a PaeTec Business Services; XO Communications Services, Inc.; and Windstream NuVox, Inc.'s Motion for Abeyance to Address Changes in Law is hereby denied. It is further

¹ Budget PrePay, Inc., Ernest Communications, Inc. Flatel, Inc. and STS Telecom, LLC did not participate in the Joint Motion for Abeyance.

ORDERED that following the issue identification, a procedural order will be issued setting forth a hearing schedule.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 28th day of June, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code.

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Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.