

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.; 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-12-0564-PCO-TP
ISSUED: October 23, 2012

ORDER GRANTING IN PART AND DENYING IN PART
REQUESTS FOR OFFICIAL RECOGNITION

On October 18, 2012, Qwest Communications Company, LLC d/b/a CenturyLink (QCC) filed a Motion for Official Recognition. tw telecom of florida, l.p. (TWTC) concurrently filed its Request for Official Notice. On October 19, 2012, QCC Filed an Addendum to its Motion for Official Recognition. On the same day, BullsEye Telecom, Inc. (BullsEye) requested official notice. On October 22, 2012, QCC filed its Response in Opposition to Requests for Official Notice to oppose certain documents identified by TWTC and BullsEye.

QCC requests Official Recognition pursuant to Rule 18-106.213, Florida Administrative Code, and Sections 90.202 and 90.203, Florida Statutes. TWTC requests Official Notice pursuant to the Order Establishing Procedure and the Administrative Procedures Act. TWTC and BullsEye state that all of their requested documents are official records of a branch of the state or federal government and as such, are publicly available.

Judicial Notice (Official Recognition) is governed by Sections 90.201, 90.202 and 90.203, Florida Statutes.

FEDERAL COMMUNICATIONS COMMISSION ORDERS (QCC and TWTC)

- *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing*

DOCUMENT NUMBER-DATE

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the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 00-256, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, *Fifteenth Report and Order*, CC Docket Nos. 98-77 and 98-166, Report and Order, 16 FCC Rcd 19613 (2001).

- *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 16 FCC Rcd 9923 (2001).
- See, e.g., *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262 and 94-1, *Sixth Report and Order*, CC Docket No. 99-249, *Report and Order*, CC Docket No. 96-45, *Eleventh Report and Order*, 15 FCC Rcd 12962 (2000).
- *In the Matter of Transport Rate Structure and Pricing; Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, CC Docket No. 91-213, *Report and Order and Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7006 (1992).
- *In the Matter of Exchange Network Facilities for Interstate Access*, CC Docket No. 78-371, *Memorandum Opinion and Order* 1 FCC Rcd 618 (1986).
- *In the Matter of Offshore Telephone Company v. South Central Bell Telephone Company and AT&T*, Memorandum Opinion and Order, 2 FCC Rcd 4546 (Aug. 7, 1987).
- *Seventh Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-146, released April 27, 2001 (“FCC CLEC Access Order”).
- *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011, (“FCC Intercarrier Compensation Reform Order”).

STATE COMMISSION ORDERS (QCC)

- *In the Matter of the Department of Commerce’s Formal Complaint and Request for Commission Action Regarding TCG Minnesota, Inc.*, Docket No. P-5496/C-06-498, Order Finding Violations and Referring Matter for Further Development (Minn. PUC Feb. 26, 2008).
- *In the Matter of the Complaint of the Minnesota Department of Commerce for Commission Action Against AT&T Regarding Negotiated Contracts for Switched Access Services*, Docket No. P-442, 5798, 5340, 5826, 5025, 5643, 443, 5323, 5668, 4661/C-04-235, Order Finding Violations, Assessing Penalties, and Requiring Disclosure, (Minn. PUC October 26, 2007).

- *In the Matter of the Complaint of Prairie Wave Telecommunications, Inc. Against AT&T Communications of the Midwest, Inc.* Order Finding Failure to Pay Tariffed Rate, Requiring Filing and Notice and Order for Hearing, Docket No. P-442/C-05-1842 (Minn. PUC Feb. 8, 2006).
- *Qwest Communications Corporation and Qwest Interprise America, Inc. v. Pacific Bell Telephone Company dba SBC California*, D. 06-08-006, 2006 Cal. PUC LEXIS 302 (Aug. 24, 2006).

Section 90.202(5), Florida Statutes, permits official recognition of “Official actions of the legislative, executive and judicial departments of the United States and of any state, territory, and jurisdiction of the United States.” Upon consideration, I hereby find that the FCC Orders and the Orders of the Minnesota and California Public Utilities Commissions are documents for which this Commission may take official recognition pursuant to Section 90.202(5), Florida Statutes. Furthermore, I find that the Orders are relevant to this proceeding, and therefore QCC and TWTC’s Requests for Official Recognition are GRANTED.

DOCKET NO. 950918-TP (TWTC)

- all documents in the above referenced docket, including Comments filed with the FCC.

QCC objects, in part, to recognition of “[a]ll documents in Commission rulemaking Docket No. 950918” and states that the number of documents is “fairly extensive” and is comprised of many items that have not been previously identified or discussed by any witnesses in this proceeding.” QCC further argues that many of the items do not appear to be appropriate for official recognition under any of the categories set forth in Section 90.202, Florida Statutes.

An Order of the Commission is certainly an “Official Action” of an executive department of the State of Florida. However, not all the documents contained within this docket can meet that statutory requirement. Therefore, I find that Official Recognition for only the Orders that are contained within Docket No. 950918-TP is GRANTED.

COMMENTS AND BRIEFS (QCC, TWTC, and BullsEye)

- Brief for Amicus Curiae Federal Communications Commission. *In the United States Court of Appeals for the Third Circuit. Nos. 11-2268 (consolidated with 11-2568) & 11-1204 (consolidated with 11-2569) PAETEC Communications, Inc., et al., v. MCI Communications Services, Inc. D/B/A Verizon Business Services; Verizon Global Networks Inc.* Case: 11-2268, Filed 3/14/2012.
- Comments filed on behalf of Century Link on July 16, 2012, in Federal Communications Commission Docket No. 12-105.

- Comments filed on behalf of QCC on February 20, 2001, in Federal Communications Commission Docket No. 01-02.

QCC does not object to items that have been previously referenced in TWTC's witness testimony, which includes comments filed by WorldCom, Inc. d/b/a LDDA WorldCom on October 20, 1995.

The materials at issue are not final and official actions, such that would qualify under Section 90.202, Florida Statutes. Therefore, the requests for official recognition for the aforementioned comments and brief are DENIED.

ADMINISTRATIVE PROCEDURES MANUAL (A.P.M.) (TWTC)

- Section 2.07(C)5(16)

PRICE LISTS (TWTC and BullsEye)

- TWTC (all price lists) and BullsEye (Florida Price List No. 2) requested their Access Services Price Lists on file with the Commission, including both the front and back of all pages.

QCC does not object to recognition of the "access price lists on file with the Commission", but does not believe that these documents are readily available from the Commission and requests that TWTC and BullsEye provide copies to QCC if the Commission grants the requests for official recognition.

Section 90.202(12), Florida Statutes, provides that the following may be administratively noticed: "Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned."

Due to the publicly available nature of the price lists for both TWTC and BullsEye and Section 2.07(C)5(16) of the Administrative Procedures Manual, they are not subject to dispute because they are capable of accurate and ready determination. Therefore, the requests for Official Recognition of Section 2.07(C)5(16), Administrative Procedures Manual, and the aforementioned Access Service Price Lists are GRANTED.

BILL ANALYSIS (QCC)

- The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 1524, dated March 29, 2011, prepared by the Professional Staff of the Commerce and Tourism Committee.
- The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 1524, dated April 11, 2011, prepared by the Professional Staff of the Budget Committee

- House of Representatives Staff Analysis for CS/CS/HB 1231, dated 4/15/2011, prepared by staff of the House of Representatives.
- Final Bill Analysis for CS/CS/HB 1231, prepared by staff of the House of Representatives.

Bill Analyses by the staff of the House of Representatives and the staff of the Commerce and Tourism Committee are simply commentary and recommendations to be considered during the bill review process. The material at issue is not a final and official action, such that would qualify under Section 90.202, Florida Statutes. Therefore, QCC's request for official recognition for the aforementioned analyses is DENIED.

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, Qwest Communications Company, LLC d/b/a CenturyLink's Motion for Official Recognition and Addendum is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that tw telecom of florida, l.p.'s Request for Official Notice is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that that BullsEye Telecom, Inc.'s Request for Official Notice is granted, as set forth in the body of this Order.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 23rd day of
October, 2012.



LISA POLAK EDGAR
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

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. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review

ORDER NO. PSC-12-0564-PCO-TP

DOCKET NO. 090538-TP

PAGE 7

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.