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090538-TP

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Sent: Wednesday, December 15, 2010 3:03 PM
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Subject: FL PSC Docket No. 090538-TP - Joint Response to Qwest Communications Company, LLC's Motion to Strike
Attachments: FL PSC Docket No 090538-TP - Joint Response to Qwest Communications Company LLC Motion to Strike.pdf

Attached for electronic filing in the above-referenced docket, please find the attached Joint Response to Qwest Communications Company, LLC's Motion to Strike . If you have any questions, please do not hesitate to contact us.

a. Persons responsible for this filing:

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b. Docket No. 090538-TP

c. Filed on behalf of: Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc., and US LEC of Florida, LLC

d. Total pages: 6

e. Brief Description: Docket No. 090538-TP - Joint Response to Qwest Communications Company, LLC's Motion to Strike

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against MCIMETRO ACCESS TRANSMISSION SERVICES, LLC (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., 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

Filed: December 15, 2010

ACCESS POINT, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, NAVIGATOR TELECOMMUNICATIONS, LLC, PAETEC COMMUNICATIONS, INC., AND US LEC OF FLORIDA, LLC D/B/A PAETEC BUSINESS SERVICE'S JOINT RESPONSE TO QWEST COMMUNICATIONS COMPANY, LLC'S MOTION TO STRIKE

Access Point, Inc.; Lightyear Network Solutions, LLC; Navigator Telecommunications, LLC; PAETEC Communications, Inc.; and US LEC of Florida, LLC d/b/a PAETEC Business Services (collectively "Moving Parties"), by and through undersigned counsel, hereby respond to Qwest Communications Company, LLC's ("Qwest") Motion to Strike ("Motion") that was filed on December 14, 2010.

The Commission should deny the Motion on procedural and substantive grounds. *First*, while arguing that the Moving Parties' Motion for Leave to Reply should be stricken as not compliant with the Rules, Qwest's Motion itself failed to comply with the Rules, specifically Rule 28-106.204(3), Fla. Admin. Code. Qwest did not include a statement in its Motion that it "conferred with all other parties of record" and did not "state as to each party whether the party

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has any objection to the [M]otion.” Nor could Qwest make such a statement because it failed to confer with the undersigned.

Second, Qwest asserts that Moving Parties have not “demonstrated any meaningful basis” for permitting a reply and that “[t]hey have not established that they will suffer any prejudice from the briefing cycle” by not being permitted to file one; however, at the same time Qwest asserts that Moving Parties “improperly argue the merits” in their Motion. Qwest’s claims are illogical. In order for Moving Parties to “demonstrate a meaningful basis” for submitting a reply and the prejudice Moving Parties would suffer if the Commission believed the invalid arguments in Qwest’s 12/8/10 response, Moving Parties needed to provide illustrative examples of the manifestly incorrect arguments Qwest made in its 12/8/10 filing that cry out for and warrant a reply. Moving Parties did just that. Without providing these examples, Moving Parties would not be able to make the showing that Qwest admits is required to justify a reply.

WHEREFORE, Moving Parties respectfully request that Qwest’s Motion be denied.

Respectfully submitted,

s/ Eric J. Branfman

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(*) Pursuant to Order No. PSC-10-0691-FOF-OT in Docket No. 100008-OT issued on November 18, 2010, Eric J. Branfman has been designated as a qualified representative for the above-referenced parties in this proceeding.

Dated: December 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Access Point, Inc., Lightyear Network Solutions, LLC, Navigator Telecommunications, LLC, PAETEC Communications, Inc., and US LEC of Florida, LLC's Docket No. 090538-TP - Joint Response to Qwest Communications Company, LLC's Motion to Strike has been furnished by email or by U.S. Mail to the following on this 15th day of December 2010.

/s/ Kimberly A. Lacey

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