

**Diamond Williams**

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**From:** Bryson, Arlene [Arlene.Bryson@ruden.com] on behalf of Cooke, Michael [Michael.Cooke@ruden.com]  
**Sent:** Wednesday, July 13, 2011 2:17 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Adam L. Scherr; Alan Gold; Allen Zorachi, Esq.; Andrew M. Klein, Esq.; Dulaney O'Roarke, Esq.; Eric Branfman; Jane Whang; Jason Topp; John Greive; Margie Herlth; Marsha E. Rule, Esq.; Matthew Feil; Michael McAlister; Philip Macres; Richard Brown; Lee Eng Tan; john.messenger@paetec.com  
**Subject:** Docket No. 090538-TP- Qwest Communications Company, LLC - Response to Joint Movants' Motion to Stay Proceeding  
**Attachments:** 2543\_001.pdf

**Docket No.:**  
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.; 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.

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**Filed on behalf of:**  
Qwest Communications Company, LLC

**Total number of pages:**  
Six (6)

**Description:**  
Qwest Communication Company, LLC's Response to Joint Movant's Motion to Stay Proceeding

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**Arlene Bryson**  
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7/13/2011

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July 13, 2011

Ms. Ann Cole, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 090538-TP, Qwest Communication Company, LLC's Response to Joint Motion to Stay Proceeding

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is Qwest Communication Company, LLC's Response to Joint Motion to Stay Proceeding.

Thank you for your assistance with this filing and please do not hesitate to contact me if you have any questions.

Sincerely,

Michael G. Cooke

MGC:amb  
Enclosure

RM:8027849:1

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA

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,  
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: July 13, 2011

**RESPONSE TO JOINT MOTION TO STAY PROCEEDING**

Qwest Communications Company, LLC ("QCC"), by and through its counsel, hereby responds to the Joint Motion to Stay Proceeding filed by 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.; STS Telecom, LLC; 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. (collectively, the "Joint Movants"). As more fully explained below, QCC agrees that a temporary stay of this proceeding is appropriate.

1. QCC filed its initial Complaint in this proceeding on December 11, 2009. The Complaint was duly served by the Clerk of Commission on the Respondent CLECs on December 15, 2009. On September 29, 2010, QCC filed a motion for leave to file an Amended Complaint which named thirteen additional CLECs as Respondents. On October 11, 2010, QCC filed a motion to substitute a corrected copy of the Amended Complaint. On October 22, 2010, the Presiding Officer issued an order granting QCC's motions to amend the complaint and to substitute a corrected copy of the Amended Complaint.

RM:8027473:1

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2. The Amended Complaint alleges that the Respondents have subjected QCC to, among other things, unjust and unreasonable rate discrimination in connection with the provision of intrastate switched access services, in violation of §§ 364.08 and 364.10, Fla. Stat.

3. On May 19, 2011, the Joint Movants filed a Motion for Abeyance to Address Changes in Law ("Motion to Abate") seeking a suspension of the case during which the parties would simultaneously brief the Commission on the effect, if any, of changes made to Chapter 364 by the Florida Legislature during its 2011 term. QCC opposed the Motion to Abate, arguing that the appropriate procedure would be for the Joint Movants to file a motion to dismiss if they believed the legislative changes affect the Commission's jurisdiction. The Motion to Abate was denied by the prehearing officer in Order No. PSC-110282-PCO-TP on June 30, 2011.

4. On July 8, 2011, the Joint Movants filed a Motion to Dismiss Qwest's Amended Complaint alleging that the Commission lacks subject matter jurisdiction over the Amended Complaint. The Motion to Dismiss raises numerous arguments based upon changes made during to Chapter 364, Florida Statutes, during the 2011 session of the Florida Legislature. It cites numerous appellate decisions and decisions of this Commission and of the Federal Communications Commission which must be researched and analyzed before QCC can respond. QCC has requested an extension of time to August 1, 2011 to respond to the motion to dismiss and will file its response to that motion separately.

5. The Joint Movants also filed a Joint Motion to Stay Proceeding ("Motion to Stay") arguing that no further action should be taken in this proceeding until a decision has been made by the Commission on the Joint Movants motion to dismiss. When contacted just prior to the Joint Movants filing the motion, QCC verbally advised the Joint Movants that it would oppose the Motion for Stay. Upon further consideration, QCC does not oppose staying this proceeding until the Commission makes a decision on the Motion to Dismiss.<sup>1</sup> As QCC asserted previously in its Response to the Motion to Abate, under the circumstances of this proceeding, filing a motion to dismiss pursuant to Rule 28-106.204 is the appropriate procedure for the Joint Movants to use to raise their concerns stemming from Ch. 2011-36. This allows QCC to address the issues and arguments in the pending motion rather than speculate about and rebut arguments that have not been made. Under the circumstances, QCC does not oppose a stay in the proceedings pending the Commission's decision on the Motion to Dismiss.

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<sup>1</sup> QCC disputes the substantive arguments regarding the Commission's jurisdiction made by the Joint Movants in the July 8, 2011 Motion to Stay and will address them further in its response to the Motion to Dismiss.

DATED this 13th day of July 2011.

By: s/ Michael G. Cooke

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**CERTIFICATE OF SERVICE**

**DOCKET NO. 090538-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery and/or U.S. Mail this 13<sup>th</sup> day of July, 2011, to the following:

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**CERTIFICATE OF SERVICE  
DOCKET NO. 090538-TP**

**Page 2**

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