

Dorothy Menasco

From: Galloway, Cecilia (Cissy) [CGalloway@gunster.com]
Sent: Wednesday, June 20, 2012 2:04 PM
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Subject: RE: PSC Filing Dkt 090538-TP - Saturn Telecommunications Services, Inc.'s Answer and Affirmative Defenses to Qwest

Attachments: Saturn - PSC filing - Answer & Aff Def to Q2nd .pdf

The attached is an electronic filing for the docket referenced below. If you have any questions, please contact Matt Feil at the number below. Thank you.

Person Responsible for Filing:

Matthew Feil
 Gunster Law Firm
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Docket Name and Number: 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.

Filed on Behalf of: Saturn Telecommunications Services, Inc. d/b/a Earthlink Business

Total Number of Pages: 12

Description of Documents: Saturn Telecommunications Services, Inc.'s d/b/a Earthlink Business, Answer and Affirmative Defenses to the 2nd Amended Qwest Complaint

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FLORIDA'S LAW FIRM FOR BUSINESS

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Writer's E-Mail Address: MFeil@gunster.com

June 20, 2012

BY ELECTRONIC FILING

Ms. Ann Cole, Director
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 090538-TP - Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; 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.

Dear Ms. Cole:

Please find attached for filing in the above-referenced docket, Saturn Telecommunications Services, Inc.'s d/b/a Earthlink Business, Answer and Affirmative Defenses to the Second Amended Complaint of Qwest Communications Company, LLC.

Thank you for your assistance in this matter, and, as always, if you have any questions, please advise.

Sincerely,

Matthew J. Feil

MJF

Enclosure

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; Saturn, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; Saturn Telecommunications Services, Inc.; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Docket No. 090538-TP

Dated: June 20, 2012

ANSWER AND AFFIRMATIVE DEFENSES OF SATURN TELECOMMUNICATIONS SERVICES, INC. d/b/a EARTHLINK BUSINESS

Saturn Telecommunications Services, Inc. d/b/a Earthlink Business. ("Saturn"), by and through its undersigned counsel, and pursuant to Rule 28-106.203, Florida Administrative Code, and Commission Order No. PSC-12-0305-PCO-TP, issued June 14, 2012,¹ hereby files its Answer, Affirmative Defenses to the Second Amended Complaint ("Complaint") of Qwest Communications Company, LLC ("QCC"),² and states as follows:

¹ This Order granted Qwest Communications Company, LLC's request to amend its complaint to add Saturn as a party and dismiss STS Telecom, LLC as a party, as well as reflect changes due to other parties being dismissed from the case. The Order gave respondent Saturn until June 20, 2012, to file any responses to the second amended complaint. By filing its Answer and Affirmative Defenses, Saturn does not waive its right to seek review of all or part of the subject order.

² Saturn also reserves the right to join/adopt pleadings filed by other CLEC respondents.

ANSWER

1. Saturn lacks personal knowledge of the facts alleged in Paragraph 1 and accordingly neither admits nor denies those allegations. Further, under current law, IXCs are no longer Commission-registered entities.

2. Saturn lacks personal knowledge of the allegations in subparagraphs (a) – (p) and (r) - (t) in paragraph 2 concerning other carriers and accordingly neither admits nor denies those allegations. QCC has had over two years to conduct its so-called “ongoing investigation.” Saturn admits the allegations in subparagraph (k) of paragraph 2 but specifies that the last sentence thereof is irrelevant to the Complaint and the certificate number referenced, No. 8251, is Saturn’s CLEC certificate

3. Paragraph 3 states a legal conclusion, rather than an allegation of fact, and accordingly Saturn is not obligated to either admit or deny that conclusion. All of the statutory sections QCC relies on for its claims for relief do not apply to the case at bar and, even if they did apply, Saturn denies any violation of these sections, which have, furthermore, been repealed or significantly changed so as to remove this Commission’s authority to hear the QCC Complaint.

4. Paragraph 4 states a series of legal conclusions, rather than allegations of fact, and accordingly Saturn is not obligated to either admit or deny those conclusions and denies any statements that are inconsistent with applicable law. All of the statutory sections QCC relies on for its claims for relief do not apply to the case at bar and, even if they did apply, Saturn denies any violation of these sections, which have, furthermore, been repealed or significantly changed so as to remove this Commission’s authority to hear the QCC Complaint.

5. Paragraph 5 states a series of legal conclusions, rather than allegations of fact, and accordingly Saturn is not obligated to either admit or deny those conclusions and denies any statements that are inconsistent with applicable law. All of the statutory sections QCC relies on for its claims for relief do not apply to the case at bar and, even if they did apply, Saturn denies any violation of these sections, which have, furthermore, been repealed or significantly changed so as to remove this Commission's authority to hear the QCC Complaint.

6. Saturn admits that it has filed a price list (hereafter "Price List") with the Commission for intrastate access services and rates in Florida. Saturn lacks personal knowledge of the facts alleged as to the other companies and accordingly neither admits nor denies those allegations.

7. Saturn admits that it provides and bills QCC for intrastate switched access services in Florida. Saturn lacks personal knowledge of the extent of QCC's operations in Florida, including but not limited to the quantity of intrastate switched access services that QCC purchases from other local exchange carriers, and therefore, Saturn neither admits nor denies the remainder of the allegations in paragraph 7.

8. The public record in the Minnesota Public Utilities Commission proceeding referenced in paragraph 8 speaks for itself, and Saturn denies any and all factual allegations that are inconsistent with that record.

9. The public record in the Minnesota Public Utilities Commission proceeding referenced in paragraph 9 speaks for itself, and Saturn denies any and all factual allegations that are inconsistent with that record.

10. Saturn lacks personal knowledge of the allegations in subparagraphs (a) – (p) and (r) - (t) in paragraph 10 concerning other carriers and accordingly neither admits nor denies those allegations. With respect to the allegations in subparagraph (q), Saturn states as follows:

i. Saturn admits that it has billed QCC for switched access (“SWA”) services out of the Saturn SWA Price List approved by and on file with the Commission but otherwise denies the allegations in subparagraph 10.q.i.

ii. Saturn denies any allegations in the first sentence insofar as those allegations pertain to any entities which are not named respondents in this case and insofar as those allegations pertain to Saturn as a successor in interest to any entity. Further, as to the first and second sentences, for Florida, QCC has not attached any such agreements to its Amended Complaint and therefore, Saturn can neither admit nor deny QCC’s over-broad allegations but denies that any such agreements triggered any obligation vis-vis QCC within applicable law or limitations periods. Saturn denies the remainder of the allegations in 10.q.ii, but Saturn admits that it provides and has provided QCC with intrastate switched access services in Florida under the rates, terms, and conditions of Saturn’s applicable Price Lists.

11. Saturn restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

12. Paragraph 12 states legal conclusions, rather than allegations of fact, and accordingly Saturn is obliged to neither admit nor deny those conclusions. Florida statutes speak for themselves, and Saturn denies any characterization of those statutes that is not consistent with applicable law. All of the statutory sections QCC relies on for

this claim for relief do not apply to the case at bar and, even if they did apply, Saturn denies any violation of these sections, which have, furthermore, been repealed so as to remove this Commission's authority to hear the QCC Complaint.

13. Saturn denies the allegations in Paragraph 13 as they relate to Saturn. Saturn lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those allegations. All of the statutory sections QCC relies on for this claim for relief do not apply to the case at bar and, even if they did apply, Saturn denies any violation of these sections, which have, furthermore, been repealed so as to remove this Commission's authority to hear the QCC Complaint.

14. Saturn restates and incorporates its answers in the foregoing paragraphs as if fully set forth here.

15. Saturn admits that it has filed Price Lists for its intrastate switched access services in Florida, but Saturn lacks personal knowledge regarding the allegations in the last sentence of paragraph 15 concerning other Respondent CLECs and accordingly neither admits nor denies those allegations. The remainder of paragraph 15 states legal conclusions, rather than allegations of fact, and accordingly Saturn is neither obliged to admit or deny those conclusions. Florida Statutes and Commission rules speak for themselves, and Saturn denies any characterization of those statutes and rules that is not consistent with applicable law. The statutory sections QCC relies on for this claim for relief do not apply to the case at bar as QCC proposes, and, even if they did so apply, Saturn denies any violation of these sections, which have, furthermore, been significantly changed so as to remove this Commission's authority to hear the QCC Complaint.

16. Saturn denies the allegations in paragraph 16 as they relate to Saturn within the applicable law and limitations periods. Saturn lacks personal knowledge regarding the allegations concerning other Respondent CLECs and accordingly neither admits nor denies those or the other allegations of fact in paragraph 16 that are outside the Commission's jurisdiction. The statutory sections QCC relies on for this claim for relief do not apply to the case at bar as QCC proposes, and, even if they did so apply, Saturn denies any violation of these sections, which have, furthermore, been significantly changed so as to remove this Commission's authority to hear the QCC Complaint.

17. Saturn restates and incorporates its responses to the foregoing paragraphs as if fully set forth in paragraph 17.

18. Saturn denies the allegations in paragraph 18 as they relate to Saturn within the applicable law and limitations periods. The statutory sections QCC relies on for this claim for relief do not apply to the case at bar as QCC proposes, and, even if they did so apply, Saturn denies any violation of these sections, which have, furthermore, been significantly changed so as to remove this Commission's authority to hear the QCC Complaint.

19. Saturn denies the allegations in paragraph 19 as they relate to Saturn within the applicable law and limitations periods. The statutory sections QCC relies on for this claim for relief do not apply to the case at bar as QCC proposes, and, even if they did so apply, Saturn denies any violation of these sections, which have, furthermore, been significantly changed so as to remove this Commission's authority to hear the QCC Complaint.

QWEST'S PRAYER FOR RELIEF

QCC's Prayer for Relief fails to specify which of its requested remedies applies to which counts of the Complaint. The Commission cannot impose conflicting or redundant remedies, so the Commission cannot grant QCC's requested relief as stated, absent sufficient clarity and lawful justification. This notwithstanding, Saturn denies that QCC is entitled to the relief it requests in its Prayer for Relief or any other relief, and Saturn otherwise denies all allegations in QCC's complaint not expressly addressed above. Saturn therefore, requests that the Commission deny QCC's complaint and dismiss it with prejudice.

SATURN'S AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. The Complaint is barred, in whole or in part, by the limitations period(s) established by applicable law and by the doctrine of laches.
3. The Complaint is barred, in whole or in part, by the filed rate doctrine.
4. The Complaint is barred, in whole or in part, by the doctrines of waiver and estoppel.
5. The Complaint is barred, in whole or in part, because the Commission lacks jurisdiction over the subject matter and lacks the authority to order the relief requested.
6. The Complaint is barred, in whole or in part, by the doctrine of unclean hands.
7. The Complaint is barred, in whole or in part, because the relief requested would violate the prohibitions against retroactive ratemaking.

8. QCC lacks standing to seek the relief it has requested in its Complaint.

9. QCC failed to properly dispute Saturn's SWA bills. For all billing periods covered by a negotiated settlement between Saturn and another IXC concerning disputed SWA bills, there is not, as a matter of law, any undue privilege or advantage in favor of that IXC against QCC.

10. Saturn's Florida SWA Price List provides requires that all claims must be submitted to the company within a specific period of billing for those services. If the customer does not submit a claim within that period, the customer waives all rights to filing a claim thereafter. QCC failed to dispute invoices within the time specified; therefore, QCC's claims inconsistent with the required dispute date are barred.

11. The Commission does not set or limit CLECs' SWA rates, does not require CLECs to file SWA price lists, and does not require CLECs to file or even post notice of individual case based ("ICB") agreements for SWA services. Further, SWA services are not consumer services, but rather are inter-carrier services purchased by very sophisticated, and often very large, companies like QCC. QCC's requested remedies would create a regulatory paradox: the Commission setting rates (through reparations/damages and prospective rate adjustments) for CLEC inter-carrier services when the Commission does not have regulatory authority to set such rates. Exacerbating that paradox is that QCC's requested relief goes well beyond the Commission's rate-making powers for rates the Commission actually does have express statutory authorization to set because QCC asks the Commission to set rates retrospectively, and for an undefined prior period, as well as prospectively. QCC's claims are thus

inconsistent with “light touch” regulation of CLECs intended by former versions of Chapter 367 and the Commission’s rules and therefore must be denied.

12. QCC is not now and has not been discriminated against as a similarly situated carrier for several reasons, including but not limited to, traffic volume or payment or dispute history. Because QCC is not “similarly situated,” QCC’s claims against Saturn must fail.

13. Saturn reserves the right to designate additional defenses as they become apparent throughout the course of discovery, investigation and otherwise.

Dated this 20th day of June, 2012

Respectfully submitted,

Saturn Telecommunications Services, Inc.
d/b/a Earthlink Business

By: 

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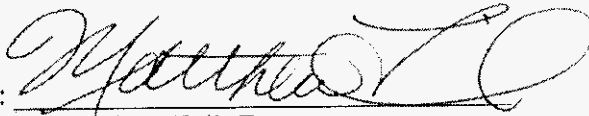
Attorneys for Saturn Telecommunications
Services, Inc. d/b/a Earthlink Business

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 20th day of June, 2012.

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By: 
Matthew Feil, Esq.