

**Ruth Nettles**

090538-TP

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**Sent:** Friday, December 11, 2009 1:08 PM  
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**Attachments:** QCC - Complaint.pdf

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**Docket No.:** New docket, to be assigned

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

**Total number of pages:** 22

**Brief description:**

Qwest Communications Company, LLC's Complaint 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; and John Does 1 Through 50, for unlawful discrimination

**BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF FLORIDA**

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, AND JOHN DOES 1 THROUGH 50,  
For unlawful discrimination.

Docket No.

090538-TP

Filed: December 11, 2009

**COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC (fka QWEST COMMUNICATIONS CORPORATION)**

**COMPLAINT OF QWEST COMMUNICATIONS COMPANY, LLC (fka QWEST COMMUNICATIONS CORPORATION)**

Pursuant to §§ 364.04, 364.08 and 364.10, Fla. Stat., and Rule 25-22.036 and 25-4.114, Fla. Admin. Code, Qwest Communications Company, LLC (“QCC”) respectfully submits this complaint against the following Florida competitive local exchange carriers (“CLECs”): 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) (collectively, the “Respondent CLECs”).

In brief, the Respondent CLECs have subjected QCC to 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. The Respondent CLECs entered into undisclosed contract service agreements outside of tariffs or price lists (also known as individual case basis agreements, or “ICBs”) with select interexchange carriers and failed to make those same rates, terms and conditions available to QCC as otherwise required by statute, the Respondent CLECs’ tariffs or price lists, and Commission rules.

In support of the Complaint, QCC alleges as follows:

**PARTIES AND JURISDICTION**

1. Complainant QCC is a corporation organized under the laws of the state of Delaware with its principal place of business at 1801 California Street, Denver, Colorado. QCC is qualified to do business in Florida, and is a telecommunications company authorized by this Commission to provide telecommunications services in Florida, pursuant to Certificates of Public Convenience and Necessity issued by this Commission; specifically, Competitive Local Exchange Carrier Certificate No. 5801 and Interexchange Carrier Registration No. TI215

(formerly Certificate No. 3534, which is now a grandfathered interexchange carrier registration pursuant to § 364.02(14), Fla. Stat.). As relevant to this Complaint, QCC provides interexchange (long-distance) telecommunications services throughout the State of Florida.

a. Correspondence and communications, including all notices and pleadings, concerning this Complaint should be addressed to the following individuals:

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b. QCC will cooperate in the prosecution of this Complaint and will appear at any hearing or hearings the Commission may conduct.

2. Respondent CLECs are:

a. On information and belief, Respondent MCImetro Access Transmission Services, LLC, d/b/a Verizon Access transmission Services (“MCI”), is a limited liability company organized under the laws of the state of Delaware with its principal place of business in

Basking Ridge, New Jersey, and is certified to provide telecommunications services in Florida. According to the Commission's website, MCI's Certificate No. is 2986, and its regulatory contact address is 106 East College Avenue, Tallahassee, Florida 32301-7721.

b. On information and belief, Respondent XO Communications Services, Inc. ("XO") is a corporation organized under the laws of the state of Delaware with its principal place of business in Herndon, Virginia, and is certified to provide telecommunications services in Florida. On information and belief, XO acquired, and is the successor in interest to, Allegiance Telecom ("Allegiance"). According to the Commission's website, XO's Certificate No. is 5648 and its regulatory contact address is 10940 Parallel Parkway, Suite K- #353, Kansas City, Kansas 66109-4515.

c. On information and belief, Respondent tw telecom of florida, l.p., f/k/a, a/k/a Time Warner Telecom ("tw telecom") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Littleton, Colorado, and is certified to provide telecommunications services in Florida. On information and belief, tw telecom is a subsidiary of Time Warner Telecom Holdings Inc. ("Time Warner Holdings") and an affiliate of Time Warner Telecom of Minnesota, L.L.C. ("Time Warner Minnesota"). According to the Commission's website, tw telecom's Certificate No. is 3167<sup>1</sup> and its regulatory contact address is 555 Church Street, Suite 2300, Nashville, Tennessee 37219-2330.

d. On information and belief, Respondent Granite Telecommunications, L.L.C. ("Granite") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Quincy, Massachusetts, and is certified to provide telecommunications services in Florida. According to the Commission's website,

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<sup>1</sup> tw telecom holds Alternative Access Vendor Certificate No. 3167. On information and belief, in addition to alternative access vendor service, tw telecom has elected to provide intrastate switched access services in Florida as a CLEC. See § 364.337(6), Fla. Stats., and Rule 25.24.710, Fla. Admin. Code.

Granite's Certificate No. is 8222 and its regulatory contact address is 100 Newport Avenue Extension, Quincy, Massachusetts 02171-1734.

e. On information and belief, Respondent Cox Florida Telcom, L.P., d/b/a Cox Communications, d/b/a Cox Business, d/b/a Cox ("Cox"), is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Atlanta, Georgia and is certified to provide telecommunications services in Florida. According to the Commission's website, Cox's Certificate No. is 4036 and its regulatory contact address is 7401 Florida Blvd., Baton Rouge, Louisiana 70806-4639.

f. On information and belief, Respondent Broadwing Communications, LLC ("Broadwing") is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Austin, Texas and is certified to provide telecommunications services in Florida. On information and belief, Broadwing was acquired by Level 3 Communications, LLC ("Level 3") pursuant to an October 2006 merger agreement. On information and belief, Broadwing earlier acquired and was the successor-in-interest to Focal Communications Corporation ("Focal"). On information and belief, Focal was the corporate parent or affiliate of Focal Communications Corporation of Minnesota. According to the Commission's website, Broadwing's Certificate No. is 5618 and its regulatory contact address is c/o Level 3 Communications, 1025 Eldorado Boulevard, Broomfield, Colorado 80021-8869.

g. On information and belief, Respondents John Does 1-50 are telecommunications companies operating in Florida, other than the CLECs specifically named herein, that provide intrastate switched access services pursuant to off-tariff agreements, but whose identities are, as of the date of filing this Complaint, unknown to QCC. As a result of its

ongoing investigation, QCC will attempt to identify these CLECs with specificity and, upon so doing, will seek to amend this Complaint, or to file an amended complaint, accordingly.

3. The Commission has jurisdiction over this Complaint pursuant to §§ 364.01, 364.02, 364.04, 364.07, 364.08, 364.10 364.337, and Chapter 120, Fla. Stat., and Rules 25.22.036 and 25-4.002, Fla. Admin. Code.

### **BACKGROUND**

4. This Commission has jurisdiction over telecommunications companies regarding all matters set forth in Chapter 364, unless specifically exempted, including complaints against CLECs for unreasonably prejudicial, anti-competitive or discriminatory conduct. See §§ 364.01 and 364.337(2), Fla. Stat. This includes exercising exclusive jurisdiction to ensure that all telecommunications providers are treated fairly by preventing unreasonable preferential, discriminatory or anti-competitive behavior. See §§ 364.01(4)(g), 364.08 and 364.10(1), Fla. Stat. The Commission requires that any telecommunications companies, including CLECs, that file tariffs or price lists for their intrastate switched access services provide those services in a non-discriminatory manner. See *e.g.*, §§ 364.08(1) and 364.10(1), Fla. Stat. Moreover, the Commission has continuing regulatory oversight over the provision of basic local exchange telecommunications service by certificated CLECs and AAVs for purposes of “ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.” See § 364.337(5), Fla. Stat.

5. A carrier may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from its tariffs or price lists (“off-tariff agreements” or arrangements). However, pursuant to § 364.08(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement “not regularly and

uniformly extended to all persons under like circumstances for like or substantially similar service.” Telecommunications companies are also prohibited, pursuant to § 364.10(1), Fla. Stat., from extending an undue or unreasonable preference or advantage to any person, or in subjecting any person to “any undue or unreasonable prejudice or disadvantage in any respect whatsoever.” As such, a telecommunications companies must otherwise make the terms of contracts available to other similarly-situated telecommunications companies on a non-discriminatory basis.

6. Each of the named Respondent CLECs has filed tariffs or price lists with the Commission for their intrastate switched access service and rates in Florida.

7. In its capacity as an interexchange carrier (“IXC”), QCC necessarily uses and is billed for large quantities of intrastate switched access services by local exchange carriers in Florida, including the Respondent CLECs.

8. Beginning in June 2004, the Minnesota Public Utilities Commission (“MN PUC”) conducted a series of investigations focused on the fact that certain CLECs, including many of the named Respondent CLECs, had entered into off-tariff agreements in connection with their provision of intrastate switched access services to selected IXCs, including AT&T, Inc. (or its IXC subsidiaries), MCI, Sprint Communications Company, L.P., and Global Crossing Telecommunications, Inc., which had not been filed with the Commission, as required by Minnesota law, and which gave discriminatory preferences or discounts to these selected IXCs.

9. Those investigations were initiated by a series of complaints filed by the Minnesota Department of Commerce (“MN DOC”). In its complaint initiating Docket C-04-235, the MN DOC identified off-tariff agreements involving, among other CLECs, Allegiance, Focal (now Broadwing), and MCI and IXCs AT&T, MCI, Sprint and Global Crossing. In its complaint initiating Docket C-05-1282, the MN DOC identified discriminatory off-tariff



agreements involving, among other CLECs, Granite and Time Warner. In its complaint initiating Docket C-06-498, the MN DOC identified an off-tariff agreement involving MCI. Among the three dockets, the MN DOC identified a total of twenty-seven (27) CLECs that had entered discriminatory off-tariff agreements with IXCs other than QCC. In public comments, IXC AT&T clarified that many more CLECs engaged in this practice. As AT&T explained, “[i]n the past four years or so, AT&T has entered into *hundreds* of agreements based on the same form with CLEC providers of switched access services *throughout the United States*.”<sup>2</sup>

10. The specific factual allegations as to each Respondent CLEC are as follows:

a. Respondent MCI

i. Respondent MCI has on file with this Commission a tariff or price list (“MCI price list”) specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, F.P.S.C. Price List No. 1*. Respondent MCI bills QCC the rates set out in the Section 7.4 of said price list for intrastate switched access services in Florida.

ii. On information and belief, Respondent MCI, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent MCI’s effective Florida price list. These agreements include, but are not necessarily limited to, an agreement between MCImetro Access Transmission Services and AT&T, as identified in the MN DOC’s complaint in Docket C-04-235. They also include an agreement between MCI

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<sup>2</sup> *AT&T Comments, Motion to Dismiss and Motion for Summary Judgment*, Docket C-04-235 (MN PUC, Aug. 19, 2004). (Emphasis added.)

WorldCom Network Services and IXC AT&T, as identified in the MN DOC's complaint in Docket C-06-498. On information and belief, Respondent MCI has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that MCI provides in Florida, and has not provided QCC the rates, terms or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent MCI's off-tariff arrangements. QCC has made demand on MCI to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. MCI has not honored QCC's requests.

b. Respondent XO

i. Respondent XO has on file with this Commission a tariff or price list ("XO price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See XO Communications Services, Inc. Access Services, Florida Price List No 7*. On information and belief, Respondent XO also has on file with this Commission a second price list ("Allegiance price list") specifying rates, terms and conditions for the provision of intrastate switched access services in Florida. *See XO Communications Services, Inc., Florida Price List No 8*. On information and belief, Respondent XO bills QCC the rates set out in Section 6 of the XO price list for intrastate switched access services in Florida. On information and belief, Respondent XO bills QCC the rates set out in Section 3.9 of the Allegiance price list for intrastate switched access services in Florida. On information and belief, Section 6.4 of the XO price list indicates that XO may enter into individual case basis contracts for switched access services, and provides that such contract offerings will be made

available to similarly-situated customers in substantially similar circumstances. On information and belief, Section 5.2 of the Allegiance price list indicates that XO (Allegiance) may enter into individual case basis contracts for switched access services, and provides such contract offerings will be made available to similarly-situated customers in substantially similar circumstances. On information and belief, Allegiance formerly billed QCC the rates set out in its Florida price list for intrastate switched access services.

ii. On information and belief, Respondent XO, either itself or via its affiliates, subsidiaries or predecessors (including Allegiance), had or have off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent XO's effective Florida price lists. These agreements include (but are not necessarily limited to) an agreement between Allegiance and AT&T, as identified in the MN DOC's complaint in Docket C-04-235. They also include a November 1, 2001 agreement between XO Communications, Inc. and AT&T Corp., a copy of which was made public in MN PUC Docket C-05-1282. On information and belief, neither Allegiance nor Respondent XO has disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Allegiance and XO provide in Florida, or provided QCC the rates, terms, and/or conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent XO's and Allegiance's off-tariff arrangements. QCC has made demand on XO and Allegiance to disclose copies of their off-tariff arrangements and to provide

QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Neither XO nor Allegiance has honored QCC's requests.

c. Respondent tw telecom

i. Respondent tw telecom (f/k/a, a/k/a Time Warner) has on file with this Commission a tariff or price list ("tw telecom price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Time Warner Telecom of Florida, L.P., Florida Price List No. 4.* On information and belief, Respondent tw telecom bills QCC the rates set out in section 3.6 of said price list for intrastate switched access services in Florida. On information and belief, Section 8.1 of said price list indicates that tw telecom may enter into customer-specific contracts, and provides that the terms of such contracts will be made available to similarly-situated customers in substantially the same circumstances.

ii. On information and belief, Respondent tw telecom (f/k/a, a/k/a Time Warner), either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent tw telecom's effective Florida price list. These agreements include, but are not necessarily limited to, a July 1, 2001 agreement between Time Warner Telecom of Minnesota, LLC and AT&T and a February 20, 2004 agreement between Time Warner Telecom of Minnesota, LLC and AT&T, both of which were identified in the MN DOC's complaint in Docket C-05-1282. They also include a "general services agreement" between Time Warner and AT&T. On information and belief, Respondent tw telecom has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that tw telecom provides in Florida, and has not provided

QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent tw telecom's off-tariff arrangements. QCC made demand on tw telecom to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. tw telecom has not honored QCC's requests.

d. Respondent Granite Telecommunications

i. Respondent Granite has on file with this Commission a tariff or price list ("Granite price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. See Granite Telecommunications, LLC, Florida P.S.C. Price List No. 1. On information and belief, Respondent Granite bills QCC the rates set out in Section 5.1 of said price list for terminating intrastate switched access services in Florida.

ii. On information and belief, Respondent Granite, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Granite's effective Florida price list. These agreements include, but are not necessarily limited to, an April 1, 2003 agreement between Granite and AT&T, as identified in the MN DOC's complaint in Docket C-05-1282. On information and belief, Respondent Granite has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Granite provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs

that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Granite's off-tariff arrangements. QCC made demand on Granite to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Granite has not honored QCC's requests.

e. Respondent Cox

i. Respondent Cox has on file with this Commission a tariff or price list ("Cox price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Cox Florida Telecom, L.P. d/b/a Cox Communications, Florida Price List No. 2.* On information and belief, Respondent Cox bills QCC the rates set out in Sections 3.10 of said price list for intrastate switched access services in Florida. On information and belief, Section 6.1 of the Cox price list indicates that Cox may enter into individual contracts for switched access services, and provides that such contract offerings will be made available to similarly-situated customers in substantially similar circumstances.

ii. On information and belief, Respondent Cox, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Cox's effective Florida price list. These agreements include, but are not necessarily limited to, one or more arrangements described by Cox's counsel in a March 7, 2008 letter to QCC. Without disclosing the agreements themselves, Cox acknowledged it provides "discounts on Intrastate switched access services based on volume purchases of special access services." On information and belief, Respondent Cox has not disclosed to QCC (in a manner allowing use in this

proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Cox provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Cox's off-tariff arrangements. QCC made demand on Cox to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Cox has not honored QCC's requests.

f. Respondent Broadwing

i. Respondent Broadwing has on file with this Commission a tariff or price list ("Broadwing price list") specifying rates, terms and conditions for its provision of intrastate switched access services in Florida. *See Broadwing Communications LLC, Florida Price List No. 3*. On information and belief, Respondent Broadwing bills QCC the rates set out in Section 5.1 of said price list for intrastate switched access services in Florida.

ii. On information and belief, Respondent Broadwing, either itself or via its affiliates, subsidiaries or predecessors, had or has off-tariff agreements for intrastate switched access services with select IXCs, not including QCC. These agreements offer intrastate switched access services at rates different from and lower than the rates set forth in Respondent Broadwing's effective Florida price list. These agreements include, but are not necessarily limited to, a December 25, 2001 agreement between Focal Communications Corporation and AT&T Communications of the Midwest, Inc. and a December 21, 2000 agreement between Focal Communications Corporation and Sprint Communications Company, L.P. Both agreements were identified in the MN DOC's complaint in Docket C-04-235. On information

and belief, Respondent Broadwing has not disclosed to QCC (in a manner allowing use in this proceeding) copies of all past and current off-tariff arrangements for intrastate switched access services that Broadwing provides in Florida, and has not provided QCC the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to the off-tariff arrangements. QCC is an IXC for intrastate switched access service under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to Respondent Broadwing's off-tariff arrangements. QCC made demand on Broadwing, via Level 3, its corporate parent, to disclose copies of its off-tariff arrangements and to provide QCC intrastate switched access services at the most favorable rates, terms and conditions provided to other IXCs. Broadwing/Level 3 have not honored QCC's requests.

g. Respondent John Does 1-50

In its public comments in Minnesota, AT&T acknowledged that it had entered into hundreds of off-tariff, switched access agreements with CLECs nationwide. QCC has contacted many CLECs to identify other such agreements, but nearly every CLEC contacted refused to disclose such agreements. On information and belief, CLECs other than those identified above have entered into off-tariff intrastate switched access agreements with AT&T and other IXCs. On information and belief, these CLECs have not disclosed to QCC copies of all past and current off-tariff arrangements for intrastate switched access services these CLECs provide in Florida, and have not provided QCC as the rates, terms and conditions for intrastate switched access service received by the IXCs that are parties to those off-tariff arrangements. QCC is an IXC under like circumstances to, and receiving like or substantially similar service as, the IXCs that are parties to these CLECs' off-tariff arrangements. Hence, other Florida CLECs should be named as Respondents to this Complaint, but, as of yet, the identities of these CLECs are



unknown to QCC. QCC will continue its investigation, including by requesting use of the subpoena power of this Commission as appropriate and necessary, in an effort to identify such CLECs.<sup>3</sup> If any such additional CLECs are identified, QCC will seek to amend this Complaint, or file an amended complaint, accordingly.

#### **FIRST CLAIM FOR RELIEF – RATE DISCRIMINATION**

11. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

12. Although a telecommunications company may, in appropriate circumstances, enter into separate contracts with switched access customers which deviate from the telecommunications company's tariffs or price lists ("off-tariff agreements" or arrangements), pursuant to § 364.08(1), Fla. Stat., telecommunications companies are prohibited from extending to another any advantage of contract or agreement "not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service." Pursuant to § 364.10(1), Fla. Stat., telecommunications companies are also prohibited from engaging in undue or unreasonable preference or advantage to any person, or in subjecting any person to "any undue or unreasonable prejudice or disadvantage in any respect whatsoever." As such, a telecommunications company must otherwise make the terms of those contracts available to other similarly-situated carriers on a non-discriminatory basis.

13. On information and belief, the Respondent CLECs have subjected QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for intrastate switched access services provided to similarly-situated IXCs by not making those off-

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<sup>3</sup> In parallel proceedings pending before the Colorado Public Utilities Commission (Docket 08F-259T) and the California Public Utilities Commission (Case C.08-08-006), subpoenas have been issued (at QCC's request) to multiple IXCs. Based on the documents produced in response to the subpoenas, QCC amended its complaint to name additional Respondents.

tariff arrangement rates available to QCC, and by charging QCC more for switched access services in Florida than they charged other IXCs that are parties to those off-tariff arrangements. Therefore, Respondent CLECs have violated Florida law to the detriment of QCC.

**SECOND CLAIM FOR RELIEF –  
FAILURE TO ABIDE BY PRICE LISTS**

14. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

15. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, § 64.04, Fla. Stat.; Rule 25-24-825(2), Fla. Admin. Code. All of the Respondent CLECs have filed price lists for their intrastate switched access services in Florida.

16. On information and belief, the Respondents CLECs have entered into undisclosed contract service agreements or ICB contracts with some IXCs, but not with QCC, with terms, conditions and rates that deviate from their published rates in tariffs or price lists for intrastate switched access services in Florida. Therefore, Respondent CLECs have violated Florida law by failing to abide by their published price lists to the detriment of QCC, by subjecting QCC to unreasonable prejudice and disadvantage and to discriminatory treatment with respect to rates for

intrastate switched access services provided to similarly-situated IXCs, and by charging QCC more for switched access services than they charged other IXCs in Florida.

**THIRD CLAIM FOR RELIEF –  
FAILURE TO PROVIDE CUSTOMER-SPECIFIC CONTRACT TERMS TO  
SIMILARLY-SITUATED CUSTOMERS  
(XO, COX)**

17. QCC restates and incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

18. Telecommunications companies are required to publish, through electronic or physical media, schedules showing the rates and charges of that company for services to be performed within the State of Florida. *See* § 364.04(1), Fla. Stat. Such services include intrastate switched access services provided to QCC within Florida. Those published schedules “shall state separately all charges and all privileges . . . granted or allowed and any . . . forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.” *See* § 364.04(2), Fla. Stat. The Commission also allows CLECs to file price lists for their intrastate switched access services. *See e.g.*, Rule 25-24-825(2), Fla. Admin. Code.

19. The tariffs or price lists of Respondents XO (both the XO and the Allegiance price lists) and Cox provide that, if said company enters into a customer-specific, individual-case-basis agreement, it will make such contract offerings available to similarly-situated customers in substantially similar circumstances, and thus on a non-prejudicial and non-discriminatory basis. As detailed above, XO and Cox have, on information and belief, entered into undisclosed contract service agreements or ICB agreements with IXC AT&T, and possibly other IXCs. QCC is an IXC, similarly situated and in substantially similar circumstances to the IXCs that are parties to these contract service agreements or ICB agreements of Respondents XO

(and Allegiance) and Cox. However, Respondents XO (and Allegiance) and Cox have not made the discounts set forth in those undisclosed agreements available to QCC. As such, XO and Cox have not abided by their Florida price lists. Therefore, XO and Cox have violated Florida law to QCC's detriment.

#### **PRAYER FOR RELIEF**

WHEREFORE, QCC respectfully requests that the Commission promptly initiate appropriate proceedings to adjudicate the issues set forth in this complaint, rule in favor of QCC and grant the following relief:

A. That the Commission find that the Respondent CLECs have violated Florida law by engaging in unlawful rate discrimination to the detriment of QCC, by extending to other IXCs advantages of contract or agreement not extended to QCC to the detriment of QCC, by failing to abide by their price lists and by charging QCC more for switched access than they charged other IXCs under like circumstances for like or substantially similar service.

B. That the Commission order the Respondent CLECs to pay QCC reparations, with applicable interest, in an amount to be proven at hearing.

C. That the Commission order the Respondent CLECs to lower their intrastate switched access rates to QCC prospectively consistent with the most favorable rate offered to other IXCs in Florida.

D. That the Commission order the Respondent CLECs to cease and desist from offering intrastate switched access services to IXCs via undisclosed contract service agreements outside of, and at rates lower than published in, their tariffs or price lists.

E. That the Commission order the Respondent CLECs to file with the Commission any contract service agreements the Respondent CLECs may have with other interexchange

carriers in Florida which agreements charge rates for intrastate switched access services to IXCs that are inconsistent with the rates in their published tariffs or price lists.

F. That the Commission grant any other relief it deems appropriate under the circumstances.

DATED this 11th day of December, 2009

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. \_\_\_\_\_**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by regular U.S. Mail and electronic mail on this 11th day of December 2009, to the following:

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s/ Geraldine H. Kelley