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-12-0553-PHO-TP ISSUED: October 17, 2012

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 3, 2012, in Tallahassee, Florida, before Commissioner Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

Susan S. Masterton, ESQUIRE, 315 S. Calhoun Street, Suite 500, Tallahassee, FL 32301, and Adam L. Sherr, ESQUIRE, 1600 7th Avenue, Room 1506, Seattle, Washington, 98191
On behalf of Qwest Communications Company (QCC or Qwest).

Marsha E. Rule, ESQUIRE, 119 S. Monroe Street, Suite 202, Tallahassee, FL, 32301, and Michael Shortley, III, ESQUIRE, 225 Kenneth Drive, Rochester, New York, 14623.
On behalf of Broadwing Communications, LLC. (Broadwing).

Andrew M. Klein, ESQUIRE, 1250 Connecticut Ave. NW, Suite 200, Washington, DC, 20036
On behalf of Bullseye Telecom, Inc., (Bullseye).

Matthew Feil, ESQUIRE, 215 S. Monroe St., Suite 601, Tallahassee, FL, 32301
On behalf DeltaCom, Inc. d/b/a EarthLink Business (DeltaCom); Saturn Telecommunications Services d/b/a EarthLink Business (Saturn); PaeTec Communications, Inc. (PaeTec); US LEC of Florida LLC d/b/a PAETEC

Business Services (US LEC); tw telecom of florida, l.p. (TWTC) and Windstream Nuvox, Inc.(Windstream).

Dulaney L. O'Roark III, ESQUIRE, 610 E. Zack Street, 5th Floor, Tampa, FL 33602
On behalf of MCImetro Access Transmission Service LLC d/b/a Verizon Access Transmission Services (Verizon Access).

Lee Eng Tan, and Larry Harris, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

Mary Anne Helton, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

Qwest Communications Company, LLC (QCC) filed a complaint on December 11, 2009, alleging rate discrimination in connection with the provision of intrastate switched access services. Order No. PSC-10-0629-PCO-TP, issued October 22, 2010, granted QCC leave to file an Amended Complaint, which added additional parties and clarified the original complaint. Order No. PSC-12-0305-PCO-TP, issued June 14, 2012, granted QCC leave to file a Second Amended Complaint.

Fifteen parties have been voluntarily dismissed during the course of this proceeding. Parties voluntarily dismissed without prejudice are Cox Florida Telecom l.p.,[1] and XO Communication Services, Inc.[2] Parties voluntarily dismissed with prejudice are Lightyear Network Solutions, LLC;[3] Access Point, Inc.; STS Telecom;[4] Birch Communications, Inc;[5] Budget Prepay, Inc.; DeltaCom, Inc. d/b/a/ EarthLink Business; Saturn Telecommunications Services d/b/a EarthLink Business;[6] PaeTec Communications, Inc.; US LEC of Florida LLC d/b/a PAETEC Business Services; Windstream Nuvox, Inc.;[7] and Granite Telecommunications,

[1] On April 7, 2011.
[2] By Order No. PSC-12-0305-PCO-TP (Order Granting Second Amended Complaint), issued June 14, 2012.
[3] By Order No. PSC-12-0210-FOF-TP, issued April 23, 2012.
[4] Order Granting Second Amended Complaint.
[5] By Order No. PSC-12-0395-PCO-TP, issued August 1, 2012.
[6] The Order Granting Second Amended Complaint also allowed QCC to substitute Saturn Telecommunications Services d/b/a/ EarthLink Business for STS Telecom.
[7] The Notices of Dismissal With Prejudice for Budget Prepay, Inc., DeltaCom, Inc. d/b/a/ EarthLink Business, Saturn Telecommunications Services d/b/a EarthLink Business; PaeTec Communications, Inc., US LEC of Florida LLC d/b/a PAETEC Business Services, and Windstream Nuvox, Inc. were acknowledged at the October 3, 2012, Prehearing Conference.

LLC;[8] Broadwing Communications, LLC; and, MCImetro Access Transmission Service LLC d/b/a Verizon Access Transmission Services.[9]

Although named in the Amended Complaint, both Ernest Communications, Inc., and Flatel, Inc. have failed to participate. Additionally, Navigator Telecommunications, LLC, initially participated but has since ceased participation. All three companies did not file a prehearing statement in the docket file. Accordingly, these parties are not included in the Prehearing Order, but they are not excused from this docket.

On February 2, 2012 Order No. PSC-12-0048-PCO-TP, Order Establishing Procedure, was issued. The hearing dates were modified by Order No. PSC-12-0304-PCO-TP, issued June 13, 2012. The hearing is scheduled for October 23-25, 2012.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission's jurisdiction over the claims raised in QCC's complaint is raised in Issues Nos. 1 and 2. This hearing will be governed by Chapter 364, Florida Statutes, F.S. and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 364.183(3), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183(3), F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183(3), F.S., to protect proprietary confidential business information from disclosure outside the proceeding.

[8] By Order No. PSC-12-0536-PCO-TP, issued October 9, 2012.
[9] By Order No. PSC-12-0546-PCO-TP, issued October 16, 2012.

Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Witness	Testimony	Proffered By	Issues #
William R. Easton	Direct & Rebuttal	QCC	5, 6, 7, and 8(e)
Lisa Hensley Eckert	Direct	QCC	8(a) and (d)
Derek Canfield	Direct & Rebuttal	QCC	9(b)(i)
Dennis L. Weisman	Direct & Rebuttal	QCC	5
Don J. Wood	Direct & Rebuttal	TWTC	5, 6, 7, 8(a – g), 9(b)
J. Terry Deason	Rebuttal	TWTC	5, 6, 7
Peter K. LaRose	Rebuttal	BullsEye	5, 6, 7, 8(a), 8(c), 8(e), 8(f), 8(h), 9(b)
Rochelle D. Jones	Rebuttal	TWTC	5, 6, 7, 8(a), (c), (d), (g), 9(b)

VII. BASIC POSITIONS

QCC: 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 sections 364.08 and 364.10, F.S. The Respondent CLECs entered into 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. The Respondent CLECs' conduct likewise constitutes

anticompetitive conduct, requiring remedial action by the Commission pursuant to chapter 364, F.S.

Switched access is a critical, costly and bottleneck wholesale service provided by local providers to interexchange carriers (long distance providers). For most long distance calls, QCC, as an interexchange carrier ("IXC"), must obtain and pay for switched access provided by CLECs when the calling or called party has chosen a CLEC as its local provider. It is beyond dispute that each of the Respondent CLECs charged QCC its higher price list rates for intrastate switched access, while at the same time charging other IXCs lower rates based on undisclosed, off-price list switched access agreements.

The CLECs' differential pricing for the identical wholesale service is unjustified and inconsistent with Florida statutes that explicitly prohibited discriminatory rate treatment and that still prohibit anticompetitive conduct and direct the Commission to ensure that all telecommunications providers are treated fairly. QCC is similarly situated to the IXCs that the CLECs preferred in the context of switched access. In that regard, there has been no showing that the CLECs' cost of providing switched access differed in any way among different IXCs. The CLECs have demonstrated no other legitimate basis for charging QCC far higher rates than they charged QCC.

As a result of the CLECs' unlawful conduct, QCC vastly overpaid the CLECs for intrastate switched access in Florida, and is entitled to refunds for such overcharges, plus applicable interest.

BULLSEYE: BullsEye's position is that the Commission is without jurisdiction to entertain Qwest's claims and, even if it had such jurisdiction, Qwest would not be entitled to any relief given that the conduct complained of does not violate Florida law and, in any event, the relief Qwest seeks is barred as a matter of law and policy.

This proceeding concerns Qwest's unfounded claim that BullsEye somehow violated Florida law by entering a settlement agreement with another interexchange carrier ("IXC") and not with Qwest. Qwest failed to truly consider the law in Florida when Qwest filed its boilerplate Complaint here. The agreement at issue – a nationwide settlement agreement with AT&T – is an agreement that BullsEye was compelled to enter in 2004 to collect payments from AT&T, which had been withholding all switched access payments on a nationwide basis from BullsEye for multiple years. Qwest knew of the existence of AT&T's agreements for several years and even sued AT&T in 2007 for harm allegedly resulting from AT&T's agreements. In its complaint against

AT&T, Qwest represented that AT&T "coerced" nascent CLECs to enter the agreements through unlawful self-help and that the agreements themselves should be void and unenforceable. After settling its claims against AT&T, Qwest now seeks in this proceeding to retroactively opt-in to and benefit from that same AT&T agreement. Qwest's claims and requests for relief against BullsEye are without merit, and should not be granted, for a host of independent legal, factual and policy reasons described in the specific position statements.

TWTC: Between 2001 and 2008, TWTC had an agreement with AT&T in which AT&T made a multi-million dollar take-or-pay revenue commitment to TWTC for several unregulated services purchased on a nation-wide basis. Intrastate switched access represented but a small fraction of these unregulated services. During this same period, 2001 to 2008, and continuing to the present day, Qwest also has had an agreement with TWTC for unregulated services. However, the Qwest agreement does not include a revenue commitment (in other words purchases are made 'as needed'), nor does it include switched access. Qwest has not sought an agreement covering switched access and, more importantly, Qwest is not willing to agree to a take-or-pay revenue commitment on the magnitude of AT&T's. Rather, in this case, Qwest asks the Commission to forge an entirely new agreement in Qwest's favor, and apply it on a retroactive basis. Per Qwest, this new, imputed agreement should give Qwest the ability to opt-into the AT&T's agreement's switched access pricing, but must exclude the multi-million dollar revenue commitment in the remainder of the agreement, even though that was the very basis for the bargain with AT&T. Even if the Commission had jurisdiction over Qwest's claims, which TWTC maintains it does not, Qwest's claims must be rejected, first because Qwest is not by any stretch of the imagination in "like circumstances" to AT&T. Nor is Qwest the victim of "undue or unreasonable" treatment vis-à-vis AT&T, considering AT&T agreed to a multi-million dollar take-or-pay obligation. In addition, Qwest asks the Commission to retroactively legislate an entirely new regulatory regime for cost-based switched access rates though these CLEC services are and have always been unregulated. In short, Qwest is not seeking fair treatment; it is seeking selective treatment. The Commission should reject Qwest's claims.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: For conduct occurring prior to July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:
(a) Qwest's First Claim for Relief alleging violation of 364.08(1) and 364.10(1), Florida Statutes (F.S.) (2010);
(b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010);
(c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010)?

POSITIONS

QCC: Yes. The majority of the conduct complained of by QCC occurred prior to the repeal of Sections 364.08(1) and 364.10(1) effective July 1, 2011. Sections 364.08(1) and 364.10(1) applied to all telecommunications companies, including CLECs. While section 364.337 specified that CLECs are not subject to specific statutory provisions and afforded CLECs the opportunity to request a waiver from other sections, including sections 364.08 and 364.10, the Respondent CLECs never requested or received such wavier. Further, under the statutes as existed prior to July 1, 2011, section 364.01(4) required the Commission to exercise its jurisdiction over the provisions of chapter 364, including section 364.08 and 364.10, among other things, to ensure all telecommunications companies are treated fairly and prevent anticompetitive behavior. Finally, as the Commission noted in its Order denying dismissal of the Complaint, Order No. PSC-11-0420-PCO-TP (pp. 7-8), the legislation did not modify the Commission's exclusive jurisdiction over wholesale carrier-to-carrier disputes or its obligation to ensure fair and effective competition among telecommunications service providers.

CLEC GROUP: No, as to all subparts. Even if sections 364.08(1), 364.10(1) and 364.04, F.S. (2010) did apply as Qwest alleges (which CLECs dispute), Chapter 2011-36, Laws of Florida ("the Regulatory Reform Act"), repealed and did not replace 364.08(1) and 364.10(1), which are the basis for Qwest's First Claim. The Regulatory Reform Act also modified 364.04 to clarify the conduct at issue in Qwest's Second and Third Claims (*i.e.*, providing service by contract) is entirely permissible. The Regulatory Reform Act did not include a savings clause to preserve Commission jurisdiction over pending cases, as had been done for prior legislative changes to chapter 364. The Commission only has the powers granted to it by the Legislature. Thus, Florida courts have long held for administrative cases that "[w]hen a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law." Reliance on a "vested right" theory cannot be used to avoid this rule. Regulatory

statutes do not create absolute obligations or rights, and a litigant to an administrative proceeding has no constitutionally protected right in pursuing a non-final (pending) administrative hearing claim. Therefore, the Commission has no jurisdiction to hear Qwest's claims made for conduct prior to July 1, 2011 under statutes repealed by the Regulatory Reform Act.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

STAFF: Staff has no position at this time.

ISSUE 2: For conduct occurring on or after July 1, 2011, does the Florida Public Service Commission retain jurisdiction over:
(a) Qwest's First Claim for Relief alleging violation of 364.08(1) and 364.10(1), F.S. (2010);
(b) Qwest's Second Claim for Relief alleging violation of 364.04(1) and (2), F.S. (2010);
(c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2) F.S. (2010)?

POSITIONS

QCC: Yes. While sections 364.08(1) and 364.10(1) were repealed effective July 1, 2011, the Florida Commission continues to have jurisdiction under 364.16(1) and (2) to resolve carrier-to-carrier disputes and, in doing so, to ensure fair treatment of all telecommunications providers and to prevent anticompetitive behavior. See Order No. PSC-11-0420-PCO-TP, pp.7-8.

CLEC GROUP: No, as to all subparts. The Regulatory Reform Act repealed and did not replace 364.08(1) and 364.10(1), on which the First Claim is based, and modified 364.04 to clarify that the conduct at issue in Qwest's Second and Third Claims (*i.e.*, providing service by contract) is entirely permissible. Therefore, the Commission has no jurisdiction to address any portion of Qwest's Claims for conduct occurring on or after July 1, 2011.

There are no other Claims for Relief in the Qwest Amended Complaint, and no other provisions of the statute are encompassed within this issue or properly before the Commission for adjudication. Qwest has not alleged a violation of any other statute, either before or after July 2011, and has never attempted to amend its Complaint to allege any such violation.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

Further, since the TWTC agreement with AT&T discontinued inclusion of access services under a take-or-pay revenue commitment in August 2008, Qwest would have no claim against TWTC for conduct after that date.

STAFF: Staff has no position at this time.

ISSUE 3: Which party has (a) the burden to establish the Commission's subject matter jurisdiction, if any, over Qwest's First, Second, and Third Claims for Relief, as pled in Qwest's Amended Complaint, and (b) the burden to establish the factual and legal basis for each of these three claims?

POSITIONS

QCC: As the Complainant, QCC has the initial burden to establish the legal and factual elements of its Complaint. However, in the context of rate discrimination cases, once the complainant establishes that a respondent failed to provide equivalent rate treatment for the same or similar service, the *burden of going forward* shifts to the respondent to establish that the price differentiation was reasonable and lawful. Further, Respondent CLECs have the burden to establish the legal and factual elements of their affirmative defenses.

CLEC GROUP: The burden of proof to demonstrate subject matter jurisdiction is placed on the party asserting jurisdiction, and remains on that party throughout the entire proceeding. Qwest thus bears the burden of proof on this issue because it is the party invoking the Commission's jurisdiction by the filing of its complaint. This burden requires Qwest to demonstrate the existence of jurisdiction "beyond a reasonable doubt." As the Florida Supreme Court has held, "[a]ny reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof, and the further exercise of the power should be arrested."

Further, in the absence of statutory authority to the contrary, the party asserting the affirmative of an issue before an administrative tribunal bears the burden of proving both the factual and legal basis for its claims. The burden remains with that party in the absence of a burden-shifting legal presumption. The Legislature has not created any such presumption that applies here, and administrative agencies have no authority to create or apply legal presumptions in the absence of specific statutory or

constitutional authority. Accordingly, the burden of establishing the factual and legal basis for its claims remains with Qwest throughout the proceeding.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

STAFF: Staff has no position at this time.

ISSUE 4: Does Qwest have standing to bring a complaint based on the claims made and remedies sought in (a) Qwest's First Claim for Relief; (b) Qwest's Second Claim for Relief; (c) Qwest's Third Claim for relief?

POSITIONS

QCC: Yes. As the Commission held in Order No. PSC-11-0145-FOF-TP, "Qwest meets the two-prong standing test of Agrico [*Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478,* 482]. Qwest has shown that being subjected to unreasonable rate discrimination, resulting in paying an amount higher for switched access service than was provided to other similarly situated companies causes Qwest to suffer and immediate and ongoing injury in fact which is quantifiable and actual."

CLEC GROUP: No. In order to have standing, Qwest must demonstrate that it suffered an injury in fact of a type which the proceeding is designed to protect. Qwest has not shown, and cannot show, that its alleged injuries were within the "zone of interest" that the now-repealed statutes upon which it relies (sections 364.08(1), 364.10 (1) and 364.04(1) and (2), F.S. (2010)) were designed to protect. Further, even if Qwest, in the past, would have had standing to bring a complaint based on the claims in its First, Second and Third Claims for Relief under §§ 364.08(1), 364.10(1) and 364.04(1) and (2), F.S. (2010), which CLECs dispute, it certainly lacks standing to raise or maintain such claims after the Legislature enacted The Regulatory Reform Act, which repealed and did not replace 364.08(1) and 364.10(1), on which the First Claim is based, and modified 364.04 to clarify that the conduct at issue in Qwest's Second and Third Claims (*i.e.*, providing service by contract) is entirely permissible. Qwest has not alleged a violation of any current statute, and has never attempted to amend its Complaint to allege any such violation.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

STAFF: Staff has no position at this time.

ISSUE 5: Has the CLEC engaged in unreasonable rate discrimination, as alleged in Qwest's First Claim for Relief, with regard to its provision of intrastate switched access?

POSITIONS

QCC: Yes. By charging QCC the higher price list rates for switched access, while charging other IXCs lower contract rates without reasonable justification for the differential rate treatment, the CLECs engaged in unreasonable rate discrimination in violation of Florida law. QCC's Witnesses: Easton and Weisman

CLEC GROUP: No. Qwest's First Claim alleges that each Respondent CLEC independently violated former Sections 364.08(1) and 364.10(1), Florida Statutes (2010). Even if the Commission were to apply these repealed statutes to the CLECs, Qwest cannot demonstrate that any Respondent CLEC violated the repealed statutes by failing to "extend to any person any advantage of contract or agreement . . . to persons **under like circumstances** for like or substantially similar service" or by giving "**undue or unreasonable** preference or advantage" to any person for the following independent reasons:

1. The Commission never applied the repealed statutes to CLECs. CLECs have always been subject to a lesser level of regulation and have been allowed to operate as other businesses in a free market that negotiate prices with their customers. As with any business negotiation, rates may vary based on the particular circumstances of the provider and the customer. Such deals are reasonable and permitted under Florida law and Commission rules.

2. Qwest mistakenly asserts that variations in switched access prices negotiated with customers must be based on cost differences. No Florida statute or Commission rule imposes such a requirement. To the contrary, the Commission has never (1) required CLECs to charge cost-based switched access rates or (2) required CLECs to justify price differences based on cost. The circumstances of each transaction may vary for any number of reasons, such as the volume and type of services being provided, the expected volume of switched access traffic, the term length, pending disputes between the parties, and the parties' respective bargaining skills. Because Qwest ignores such factors, it fails to demonstrate any "unreasonable discrimination."

3. The Commission has never required CLECs to charge only a uniform switched access rate to all IXCs and has never required CLECs to disclose, file and offer any non-uniform contract prices for switched access to all IXCs.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

Qwest is not in "like circumstances" to AT&T nor the victim of "undue or unreasonable" treatment vis-à-vis AT&T because AT&T made a multi-million dollar take-or-pay commitment as part of its agreement with TWTC. Qwest has not made such a commitment and is unwilling and incapable of making such a commitment.

STAFF: Staff has no position at this time.

ISSUE 6: Did the CLEC abide by its Price List in connection with its pricing of intrastate switched access service? If not, was such conduct unlawful as alleged in Qwest's Second Claim for Relief?

POSITIONS

QWEST: By charging QCC the higher price list rates for switched access, while charging other IXCs lower contract rates, the Respondent CLECs failed to abide by their price lists. While CLECs were not required to file price lists for switched access services, they were permitted to under the Commission's rules and chose to do so. Once filed, the CLECs were bound to apply their price list rates in a nondiscriminatory manner in accordance with Florida law.

CLEC GROUP: Each CLEC ***did*** abide by its Price List in connection with its pricing of intrastate switched access service to Qwest, because each CLEC charged Qwest the switched access rates in their respective Price Lists.

Moreover, a CLEC's entry into an agreement for switched access service with one IXC, but not another, does not constitute a violation of law or a failure to abide by a Price List. In fact, Qwest's complaint admits that Florida law permits – and has always permitted – CLECs to enter customer-specific agreements for switched access service.

BULLSEYE: In addition to the positions stated by the CLEC Group, BullsEye's Price List provides that agreements for switched access are available on a

customer-specific basis. Thus, BullsEye did abide by its Price List in executing a customer-specific settlement agreement.

TWTC: Agree with CLEC Group Position.

STAFF: Staff has no position at this time.

ISSUE 7: Did the CLEC abide by its Price List by offering the terms of off-Price List agreements to other similarly-situated customers? If not, was such conduct unlawful, as alleged in Qwest's Third Claim for Relief?

POSITIONS

QCC: Several of the Respondent CLECs had general tariff provisions authorizing them to enter into contracts for switched access, but which expressly obliged the CLEC to provide identical rate treatment to similarly situated customers. These CLECs never provided notice to QCC that they had entered into contracts with other IXCs for lower rates or provided QCC a similar opportunity to obtain these rates, in violation of their price lists and statutory mandates. QCC's Witness: Easton

CLEC GROUP: This claim only applies to BullsEye. Each of these CLECs ***did*** abide by its Price List. While Qwest's Third Claim alleges that certain CLECs did not abide by Price List provisions specifying that agreements will be made available to "similarly situated customers in substantially similar circumstances," this claim obviously hinges on a demonstration by Qwest that Qwest is in fact an IXC "similarly situated and in substantially similar circumstances" to each IXC that has an agreement for switched access.

Qwest has failed to make the requisite demonstration. Instead, Qwest relies solely on an assertion that all IXCs are presumptively "similarly situated" unless there is a cost-based reason as to why they are not. However, such assertion is untenable under Florida law, because the Commission has never (1) required CLECs to charge cost-based switched access rates, (2) required CLECs to justify price differences based on cost, (3) required CLECs to charge only a uniform switched access rate to all IXCs or (4) required CLECs to disclose, file and offer any non-uniform contract prices for switched access to all IXCs contemporaneous to the effective date of such contracts. Qwest's case thus fails to account for the variety of legitimate reasons reflecting why Qwest is not "similarly situated and in substantially similar circumstances" to the contracting IXCs, and consequently fails to demonstrate that the Price List provisions somehow obligated any CLEC to extend an IXC's customer-specific agreement to Qwest.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.
TWTC is not a respondent for Count III in Qwest's Complaint or Amended Complaint.

STAFF: Staff has no position at this time.

ISSUE 8: Are Qwest's claims barred or limited, in whole or in part, by:

a) the statute of limitations;
b) Ch. 2011-36, Laws of Florida;
c) terms of a CLEC's price list;
d) waiver, laches, or estoppel;
e) the filed rate doctrine;
f) the prohibition against retroactive ratemaking;
g) the intent, pricing, terms or circumstances of any separate service agreements between Qwest and any CLEC;
h) any other affirmative defenses pled or any other reasons?

POSITIONS

QCC: No. There is no legal or factual support that any of the affirmative defenses the Respondent CLECs raise are applicable to this case. Specifically:

a) Under Florida case law and prior Commission decisions, the Florida statutes of limitations applicable to civil actions do not apply to an administrative action based on statutory violations, which is the subject of QCC's Complaint.
b) Ch. 2011-36, Laws of Florida is not retroactive and does not bar QCC's Complaint for discriminatory pricing prior to the effective date of the law. Further, the Commission had and continues to have exclusive jurisdiction over wholesale carrier-to-carrier disputes and maintains its obligation to ensure fair and effective competition among telecommunications service providers.
c) The Respondent CLECs have failed to demonstrate that the terms of their price lists justify their discriminatory treatment of QCC or serve to bar QCC's Complaint or the relief it seeks.
d) Even if any statutory limitations period were deemed to apply, the Respondent CLECs' actions in failing to disclose their preferential agreements or to provide QCC the opportunity to obtain

nondiscriminatory rates support the timeliness of QCC's Complaint. Further, QCC acted reasonably in pursuing and protecting its right to non-discriminatory treatment.

e) and f) Neither the filed-rate doctrine nor the prohibition against retroactive ratemaking apply in this case or preclude the Commission from granting QCC the relief it seeks.

g) The Respondent CLECs have failed to demonstrate that the terms of the CLECs' service agreements justify their discriminatory treatment of QCC or serve to bar QCC's Complaint or the relief it seeks.

h) The Respondent CLECs have presented no other facts or principles of law that serve in any respect to bar QCC's Complaint or the relief it seeks.

QCC's Witnesses: As to Issue 8 (a) and (d) Hensley Eckert; as to Issue 8(e) Easton

CLEC GROUP:

a) The Statute of Limitations; Yes. The Florida Statute of Limitations, in Chapter 95, Florida Statutes, applies because Qwest has filed and pursued, and the Commission has processed, this case as a private right of action in the manner of a civil lawsuit. Specifically, either §§ 95.11(3)(f) or (3)(p) pose an absolute bar to any portion of Qwest claims which pre-date by more than four years Qwest's naming a CLEC as a respondent. Specifically, the statute of limitations bars claims before December 11, 2005 for Respondents named in Qwest's original complaint and October 22, 2006 for Respondents first named in Qwest's Amended Complaint. In addition, under Florida law the delayed discovery doctrine does not apply, no conditions exist which would toll the limitation period, and filing a "John Doe" complaint does not toll the limitations period. Even if, contrary to Florida law, the delayed discovery doctrine were considered, Qwest has failed to meet its burden to prove any fact that would support its application here. In fact, Qwest knew of the alleged violation of its legal rights no later than June 2005, more than 4 years before Qwest chose to file its original complaint in Florida in late December 2009. Qwest inexcusably took more than 4 years to file a complaint and has neither pled nor proven any other basis for the Statute of Limitations to not apply.

(b) Ch. 2011-36, Laws of Florida; Yes. Qwest's claims are completely barred by the Regulatory Reform Act. See CLEC Group positions on Issues Nos. 1 and 2 (jurisdiction) and 4 (standing).

(c) terms of a CLEC's price list; Yes. Qwest's claims are barred for two reasons.

(i) The CLECs' price lists require that any disputes be submitted within a set time period. For years prior to filing its complaint in this case, Qwest

knew it had a dispute with CLECs, but failed to submit disputes based on its claims in this case and continued to pay the price list rates.

(ii) The price lists of BullsEye and TWTC also provide that contract rates are available to all IXCs. While Qwest acknowledges both the right of CLECs to provide services by contract and its own right to negotiate such contacts with the CLECs, Qwest simply failed to negotiate a contract pursuant to the price lists, but claims entitlement to benefits of negotiations it consciously chose not to pursue. Qwest is not entitled to any benefit of what amounts to an imputed contract, and, in particular, is not entitled to imputation, on a retroactive basis, of one finite aspect (Florida intrastate access rates) of a contract between a CLEC and another IXC.

(d) waiver, laches, or estoppel; Yes, Qwest's claims should be barred in whole. Qwest knowingly waived its rights and should not otherwise be allowed to assert those rights because Qwest: (i) knew of the alleged violation of its legal rights, yet inexcusably took more than 4 years to assert them; and (ii) knew that it had the duty to submit billing disputes to, and seek contract negotiations with, the CLECs but refused to do so, even though, all the while, Qwest sought and received contract rates for switched access from CLECs with whom Qwest had other dealings. Therefore, Qwest cannot be heard to complain now when Qwest failed to timely pursue rights it knew it had.

(e) the filed rate doctrine; Yes. The CLECs in this case filed price lists with the Commission that were approved by the staff pursuant to authority delegated to the staff by the Commission in accordance with section 2.07 C.5.a(16) of the Administrative Procedures Manual. Those price lists provide a rate or rates that apply in the absence of a negotiated rate, require that billing disputes be timely submitted, and in some cases prescribe negotiation for contract rates. Unless an IXC negotiates a different rate, it is obligated to pay the rates in the CLEC's switched access price list when it originates or terminates interexchange traffic from or to the CLEC. Qwest may not "cherry pick" parts of the filed price lists that CLECs are required to honor and at the same time ignore other portions of the price list that impose obligations on Qwest, as a customer who obtained service pursuant to the price list. Qwest has asserted in other venues that the filed rate doctrine applies to CLEC switched access service in Florida. Qwest therefore should not be heard to take a conflicting position in this case.

(f) the prohibition against retroactive ratemaking; Yes. Qwest's claims for monetary relief should be barred entirely. Qwest seeks to have the Commission establish a rate different than that in a CLEC's price list and different than the rate Qwest paid, and to apply that rate retroactively

to the date when Qwest alleges its claim began. More specifically, Qwest asks the Commission to permit it to retroactively dispute CLEC bills (going back many years) and pay a different amount based on a contract rate that Qwest never negotiated. Because Qwest did not negotiate switched access rates with any of the CLECs, it was obligated to pay the "default" rates in the CLECs' price lists. Establishing a new rate and applying it to Qwest's bills in this proceeding would violate the well-established principle against retroactive ratemaking. Qwest's complaint is also designed to have the Commission assert cost-based ratemaking authority over CLEC switched access charges on a retroactive basis when the Commission does not have rate-setting authority over any CLEC services. This, too, would constitute prohibited retroactive ratemaking.

(g) the intent, pricing, terms or circumstances of any separate service agreements between Qwest and any CLEC; Yes. Qwest's claims should be barred in whole. Throughout the alleged damages period, Qwest sought and received contract rates for switched access from CLECs with whom Qwest had other dealings. Qwest cannot have it both ways: Qwest cannot be both a beneficiary of contract rates and an opponent of contract rates. Additionally, Qwest's Complaint in this case asks the Commission to reverse Qwest's own choice not to pursue contract rates with Respondent CLECs. This the Commission cannot and should not do.

(h) any other affirmative defenses pled or any other reasons? Yes. Qwest's claims should be barred in whole. Contrary to the Legislature's direction and the Commission's own history of minimal regulation for CLECs, Qwest asks the Commission, for the first time in this case, to comprehensively regulate CLEC access rates, and to do so in a manner inconsistent with and more restrictive than utility rates the Commission actually does have authority to regulate and set. Further, most if not all of the positions Qwest asks the Commission to adopt would constitute agency rules. For the Commission to adopt such positions in this case outside a proper rulemaking proceeding and then to apply such rules retroactively would be unlawful under Chapter 120 and violate the CLECs' rights.

Additionally, any relief to Qwest should be barred as a matter of policy given that (a) Qwest filed a civil complaint in 2007 against AT&T, claiming that AT&T's agreements with CLECs were "illegal" and should be canceled in several States (including Florida) and seeking damages for harm allegedly resulting from such agreements; (b) Qwest obtained a settlement from AT&T under those claims; and (c) Qwest now seeks to benefit from the very agreements Qwest previously claimed were void and unenforceable. The Commission should thus deny any relief to Qwest to

prevent Qwest from obtaining double recovery by asserting diametrically opposite positions in different forums.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

As to TWTC, any portion of Qwest's claims between December 11, 2005 (four years prior to Qwest filing its December 11, 2009, complaint) until August 24, 2008 (when the AT&T contract rate expired) is barred by the Statute of Limitations.

STAFF: Staff has no position at this time.

ISSUE 9a: If the Commission finds in favor of Qwest on (a) Qwest's First Claim for Relief alleging violation of 364.08(1) and 364.10 (1), F.S. (2010); (b) Qwest's Second Claim for Relief alleging violation of 364.04(1)and (2), F.S. (2010); and/or (c) Qwest's Third Claim for Relief alleging violation of 364.04(1) and (2) F.S. (2010), what remedies, if any, does the Commission have the authority to award Qwest?

POSITIONS

QCC: If the Commission finds that the Respondent CLECs unreasonably discriminated against QCC by charging it the higher switched access rates in its price lists, while charging other IXCs lower contract rates, then the Commission has the authority to award QCC refunds of the difference between the lowest rate a CLEC charged another IXC during the contract period and the rate charged QCC. The appropriate amount of refunds for each CLEC is set forth in the Direct Testimony and Exhibits of QCC's witness Derek Canfield. QCC's Witness: As to Issue 9(b)(i) Canfield.

CLEC GROUP: The Commission has no current authority to award a remedy for violation of statutes that have been repealed. Qwest has not alleged a violation of any other statute, either before or after July 2011, and has never attempted to amend its Complaint to allege any such violation.

Qwest's claim for "reparations" is, in fact, a request for compensation due to alleged discrimination. In other words, this claim is for damages, which are beyond the Commission's authority to award. Further, the

Commission lacks specific statutory authority to award or calculate prejudgment interest.

In addition to monetary damages, Qwest asks the Commission to order Respondents to lower their intrastate switched access rates to Qwest prospectively to reflect any contract rate offered to any IXC and to file their contract service agreements with the Commission. Even if the Commission had such authority before July 1, 2011, it clearly lacks authority to do so thereafter.

BULLSEYE: Agree with CLEC Group Position.

TWTC: Agree with CLEC Group Position.

In addition, the Commission should not penalize CLECs by awarding Qwest the damages award Qwest seeks because doing so will discourage existing CLECs and entrants from investing in Florida, to the detriment of end use customers.

Even if the agreement(s) at issue were found to violate repealed sections 364.08(1) or 364.10(1), F.S. (2010), the fair and reasonable method the Commission and courts have employed for eliminating alleged undue or unreasonable advantage is to reverse that advantage specifically for the customer(s) to whom it was given, rather than retroactively perpetuate that advantage to other customers, or, much worse, to just one customer like Qwest.

STAFF: Staff has no position at this time.

ISSUE 9b: If the Commission finds a violation or violations of law as alleged by Qwest and has authority to award remedies to Qwest per the preceding issue, for each claim:
(i) If applicable, how should the amount of any relief be calculated and when and how should it be paid?
(ii) Should the Commission award any other remedies?

POSITIONS

QCC: If the Commission finds that the Respondent CLECs unreasonably discriminated against QCC by charging it the higher switched access rates in its price lists, while charging other IXCs lower contract rates, then the Commission has the authority to award QCC refunds of the difference between the lowest rate a CLEC charged another IXC during the contract period and the rate charged QCC. The appropriate amount of refunds for

each CLEC is set forth in the Direct Testimony and Exhibits of QCC's witness Derek Canfield.
QCC's Witness: As to Issue 9(b)(i) Canfield.

CLEC GROUP: Qwest is not entitled to any relief, even if the Commission were to find a violation of law within the four-year statute of limitations period (beginning December 11, 2005 for Respondents named in Qwest's original complaint and October 22, 2006 for Respondents first named in Qwest's Amended Complaint), and even if Respondents' Affirmative Defenses are denied.

According to Qwest's witness, Dr. Weisman, the only arguable harm occurred, if at all, in the "downstream" retail market, but Qwest provided no evidence that any such harm actually occurred, nor has it attempted to quantify any such harm. Qwest provided no evidence that it was unable to recover intrastate switched access charges from its customers or that it lost customers or market share. Instead, Qwest claims as the measure of its damages the estimated difference between Respondents' price list rates and the amounts Respondents charged certain other IXCs. The monetary relief Qwest seeks is therefore entirely improper.

(ii) Should the Commission award any other remedies?

No. See CLEC Group position on Issue No. 9(a). No other remedies are appropriate.

BULLSEYE: In addition to the positions stated by the CLEC Group, even if the Commission could somehow find that BullsEye's settlement agreement with AT&T violated repealed sections 364.08(1) or 364.10(1), F.S. (2010), the fair and reasonable method the Commission and courts have employed for eliminating alleged undue or unreasonable advantage is to reverse that advantage specifically for the customer to whom it was given (*i.e.*, AT&T), rather than retroactively perpetuate that advantage to other customers, or to just one customer like Qwest.

Further, given that BullsEye was compelled to enter the AT&T settlement agreement due to AT&T's withholding of access charge payments on a nationwide basis, it would be wholly unfair to permit Qwest to benefit from that agreement, rather than reversing the gains improperly obtained by AT&T.

TWTC: Agree with CLEC Group Position.

In addition, the Commission should not penalize CLECs by awarding Qwest the damages award Qwest seeks because doing so will discourage

existing CLECs and entrants from investing in Florida, to the detriment of end use customers.

Even if the agreement(s) at issue were found to violate repealed sections 364.08(1) or 364.10(1), F.S. (2010), the fair and reasonable method the Commission and courts have employed for eliminating alleged undue or unreasonable advantage is to reverse that advantage specifically for the customer(s) to whom it was given, rather than retroactively perpetuate that advantage to other customers, or, much worse, to just one customer like Qwest.

STAFF: Staff has no position at this time.

IX. EXHIBIT LIST

Witness	Testimony	Proffered By		Description
William R. Easton	Direct	QCC	WRE-1A	*CLEC Agreement Rates
William R. Easton	Direct	QCC	WRE-1B	*CLEC Agreement Rates
William R. Easton	Direct	QCC	WRE-2	Bell South Tariff
William R. Easton	Direct	QCC	WRE-3	Verizon Tariff
William R. Easton	Direct	QCC	WRE-4	Embarq Tariff
William R. Easton	Direct	QCC	WRE-11	*BullsEye-AT&T Agreement
William R. Easton	Direct	QCC	WRE-12	BullsEye Discovery Responses
William R. Easton	Direct	QCC	WRE-13	BullsEye Price List
William R. Easton	Direct	QCC	WRE-17A	*2001 Ernest Agreement
William R. Easton	Direct	QCC	WRE-17B	*2007 Ernest Agreement
William R. Easton	Direct	QCC	WRE-18	QCC Discovery to Ernest
William R. Easton	Direct	QCC	WRE-19	Ernest Price List
William R. Easton	Direct	QCC	WRE-20	*Flatel Agreement
William R. Easton	Direct	QCC	WRE-21	QCC Discovery to Flatel
William R. Easton	Direct	QCC	WRE-22	Flatel Price List
William R. Easton	Direct	QCC	WRE-30	*Navigator-AT&T Agreement
William R. Easton	Direct	QCC	WRE-31	Navigator Discovery Responses
* = Contains confidential information				

William R. Easton	Direct	QCC	WRE-32	Navigator Price List
William R. Easton	Direct	QCC	WRE-36	*TWT-AT&T Agreement
William R. Easton	Direct	QCC	WRE-37	TWT Discovery Responses
William R. Easton	Direct	QCC	WRE-38	TWT Price List
Lisa Hensley Eckert	Direct	QCC	LHE-1	QCC Demand Letters to CLECs
Derek Canfield	Direct	QCC	DAC-5	*BullsEye Overcharge Analysis Summary
Derek Canfield	Direct	QCC	DAC-6	*BullsEye Overcharge Analysis Detail
Derek Canfield	Direct	QCC	DAC- 9	*Ernest Overcharge Analysis Summary
Derek Canfield	Direct	QCC	DAC-10	*Ernest Overcharge Analysis Detail
Derek Canfield	Direct	QCC	DAC-11	*Flatel Overcharge Analysis Summary
Derek Canfield	Direct	QCC	DAC-12	*Flatel Overcharge Analysis Detail
Derek Canfield	Direct	QCC	DAC-20	*Navigator Overcharge Analysis Summary
Derek Canfield	Direct	QCC	DAC-21	*Navigator Overcharge Analysis Detail
Derek Canfield	Direct	QCC	DAC-25	*TW Telecom Overcharge Analysis Summary
Derek Canfield	Direct	QCC	DAC-26	*TW Telecom Overcharge Analysis Detail
Dennis L. Weisman	Direct	QCC	DLW-1	Dennis L. Weisman Curriculum Vitae
Don J. Wood	Direct	TWTC	DJW-1	CV of Don J. Wood
Don J. Wood	Direct	TWTC	DJW-2	*Qwest Agreement No. 1 – Excerpt
Don J. Wood	Direct	TWTC	DJW-3	*Qwest Agreement No. 2 – Excerpt
Don J. Wood	Rebuttal	TWTC	DJW-4	MN PUC Agenda Notice: 7-20-04
Don J. Wood	Rebuttal	TWTC	DJW-5	AT&T Comments, August 19, 2004
J. Terry Deason	Rebuttal	TWTC	TD-1	Biographical Information for Terry Deason
* = Contains confidential information				

Peter K. LaRose	Rebuttal	BullsEye	PKL-1	Qwest Complaint Against AT&T (1-29-07)
Peter K. LaRose	Rebuttal	BullsEye	PKL-2	FCC Statistics of Carriers (2004/2005)
Peter K. LaRose	Rebuttal	BullsEye	PKL-3	Qwest Announcement to BullsEye (2-25-08)
Peter K. LaRose	Rebuttal	BullsEye	PKL-4	Minnesota DOC Comments (3-13-06)
Peter K. LaRose	Rebuttal	BullsEye	PKL-5	AT&T Public Comments (8-19-04)
Rochelle D. Jones	Rebuttal	TWTC	RDJ-1	*Comparison of AT&T and Qwest Purchases
Rochelle D. Jones	Rebuttal	TWTC	RDJ-2	EDGAR version of TWTC/AT&T Agreement
* = Contains confidential information				

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

QCC's Motion for Leave to File Surrebuttal Testimony and Exhibits, filed on September 24, 2012, was withdrawn during the prehearing conference. There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed fifteen minutes for each side. Time will be shared for the CLECs.

The Notices of Voluntary Dismissal with Prejudice for Windstream Nuvox, US LEC of Florida, LLC, PAETEC Communications, Inc. (Windstream Companies), Budget Prepay, Inc., DeltaCom, Inc. and Saturn Telecommunication Services, Inc. d/b/a Earthlink Business (EarthLink Companies) are acknowledged.

Official Recognition is granted for the following documents:

- Order Dismissing Complaint in Part, Initiating Further Investigation and Addressing Pending Discovery Requests, issued March 20, 2012. Case No. 09-C-0555, New York Public Service Commission.

- Decision No. C12-1077, Order Addressing Exceptions to the Second Recommended Decision, issued August 29, 2012. Docket No. 08F-259T, Colorado Public Utilities Commission.

- Decision No. R12-0685, Recommended Decision of Administrative Law Judge G. Harris Adams On Remand, issued June 21, 2012, Docket No. 08F-259T, Colorado Public Utilities Commission.

- Decision No. C12-0276, Order (1) Addressing Applications For Rehearing, Reargument, or Reconsideration; and (2) Remanding the Matter to the Administrative Law Judge with Directions, issued February 15, 2012, Docket No. 08F-259T, Colorado Public Utilities Commission.

- Decision No. C11-1216, Order Addressing Exceptions and Motion to Reopen the Record, issued October 17, 2011, Docket No. 08F-259T, Colorado Public Utilities Commission.

- Decision No. R11-0175, Recommended Decision of Administrative Law Judge G. Harris Adams Partially Dismissing and Partially Granting Complaint, issued February 23, 2011, Docket No. 08F-259T, Colorado Public Utilities Commission.

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 17th day of October, 2012.

LISA POLAK EDGAR
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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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 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.