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100274-TP

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Sent: Monday, May 10, 2010 3:56 PM
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Subject: New Complaint and Petition for Relief
Attachments: Qwest Complaint and Petition for Relief.pdf

Attached is Qwest Communication Company's Complaint and Petition for Relief for filing.

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FPSC-COMMISSION CLEAR

5/10/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Qwest Communications
Company, LLC, Against Cox Florida
Telecom, Inc.

Docket No.: 100274-TP
Filed:

QWEST COMMUNICATION COMPANY'S COMPLAINT AND PETITION FOR RELIEF

Qwest Communications Company, LLC ("QCC"), by and through its undersigned attorneys, files this Complaint regarding a revised price list filing ("Revised Price List") submitted by Cox Florida Telecom, L.L.C., ("Cox") to the Florida Public Service Commission ("Commission") on or about March 29, 2010. The Cox Revised Price List filing adds a "Switched Access Services Contract" to the prior Price List. QCC became aware of this filing on or about April 22, 2010. By this Complaint and Petition for Relief, QCC respectfully requests the Commission to conduct an evidentiary hearing and to cancel the Revised Price List. In support of its Complaint, QCC states:

I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION

In order to provide long distance services to their customers interchange carriers ("IXCs") typically must purchase switched access service from the carrier that provides local exchange service. A residential customer, for example, will subscribe to local telephone service from a local exchange carrier (a "LEC"), which may be an incumbent local exchange carrier ("ILEC") or a competitive local exchange carrier ("CLEC"). Under long-standing laws that established competition in the long distance telephone market, the LEC must provide access to the customer's selected IXC, so that long distance calls that are made by the originating customer on the local telephone network are routed to the IXC's network. In reverse, calls that are sent from long distance carriers to the customer must be terminated on the local network. It would be prohibitively expensive for every IXC to have its own wire to each customer. Local access, both originating and terminating, is most commonly accomplished by switching connections made by the LEC. The service is called switched access.

Intrastate switched access services (i.e., services relating to calls originating and terminating in Florida) are subject to the jurisdiction of the Commission, and the rates often are embodied in price lists filed by CLECs. Switched access charges represent a significant expense

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to IXCs. Although generally the telecommunications services CLECs provide to end users are competitive, this is not the case in the context of switched access given that IXCs must access their customers by going through the CLECs' switched access services. Cox is a CLEC which provides switched access services to IXCs in the State of Florida. If QCC (or any IXC) wishes to provide long distance services to an end user for a call that originates or terminates on the Cox network, QCC is required to use Cox's switched access service and to pay Cox's Price List rates. The Revised Price List filed recently by Cox amends its switched access service price list in a manner that will provide select IXCs (certainly not all IXCs) significantly lower rates for switched access services in Florida based on the purchase of wholly unrelated competitive services, which may have been provided in other states or as an interstate service. Disparities in switched access costs among IXCs will directly affect QCC's bottom line and its ability to compete in the long distance market. As discussed below, significant factual and legal issues are presented by Cox's Revised Price List. Disparities based on unreasonable distinctions (in this case, the purchase of unrelated services) are unjust, unreasonable, and unlawfully discriminatory.

The filing of the Cox Revised Price List also appears to be little more than an attempted end run around the currently pending proceeding initiated by a Complaint QCC filed in December 2009 at the Commission (Docket No. 090538-TP). In that proceeding, QCC has alleged that certain CLECs—including Cox—have entered into secret arrangements with particular IXCs which provide those IXCs with discounted rates for intrastate switched access services resulting in QCC being charged discriminatory and unjust rates. One of the issues that will likely need to be addressed in Commission Docket No. 090538-TP is whether the respondent CLECs were, and are, prohibited from discounting switched access rates based upon purchase of unrelated competitive services or services that are not subject to the jurisdiction of the Commission (i.e., whether those distinctions constitute a legitimate basis for the discriminatory treatment of QCC).

II. STANDING

Cox's Revised Price List will affect the rates charged to QCC and to QCC's IXC competitors by providing select IXCs with lower rates for switched access services. QCC has a direct and substantial interest in Cox's Revised Price List, and QCC will be adversely affected in

that it will not be eligible for lower rates. QCC, therefore, respectfully requests that a hearing be held to determine whether the price list revisions are just, reasonable, and non-discriminatory.

III. PARTIES

1. QCC is 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 carrier certified to provide telecommunications services in Florida, pursuant to orders of the Commission.¹ Specifically relevant to this proceeding, QCC is an IXC, providing long distance telecommunications services throughout the State of Florida.
2. The full names and addresses of the authorized representative(s) for QCC in this proceeding are:

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3. Cox Florida Telcom, L.L.C. ("Cox") is a CLEC which provides switched access services to IXCs in the State of Florida.

IV. STATEMENT OF FACTS AND APPLICABLE LAW

The Revised Price List filed by Cox amends its price-listed intrastate switched access rates by providing a graduated scale of discounts that range as high as 65%. The level of discount depends on the amount of "Dedicated and Ethernet Services that the [IXC] purchases"

¹ See specifically, Interexchange Carrier Registration No. T1215 (formerly Certificate No. 3534); Competitive Local Exchange Carrier Certificate No. 5801.

on a monthly basis.² The Revised Price List does not define or provide an explanation of the terms, "dedicated" or "ethernet" services; however, upon information and belief, "dedicated service" likely is synonymous with special access. Special access is a private line that directly connects the IXC network to its customer, bypassing the LEC's switching service. The provision of *special* access has no bearing on Cox's provision of *switched* access service. QCC is aware of no study or analysis supporting a conclusion that a CLEC's cost of providing tandem-routed switched access to a particular IXC is in any way reduced by the LEC providing special access circuits to such IXC. Further, while switched access is undeniably a non-competitive, bottleneck service,³ special access is considered to be a competitive service.

Special access is provided on both an intrastate and interstate basis. Cox's Revised Price List does not distinguish between interstate and intrastate jurisdiction special access. Thus, the Revised Price List would appear to discount the rate for its non-competitive intrastate switched access based upon the IXC customer's purchases of wholly-unrelated, competitive, non-jurisdictional services. QCC disputes the appropriateness or lawfulness of this practice, and urges the Commission to investigate the matter. Section 364.10(1), F.S., prohibits undue or unjust rate discrimination. Moreover, Section 364.14, F.S., prohibits rates that are unjust, unreasonable, unjustly discriminatory, unduly preferential or otherwise in violation of law. Cox's Revised Price List violates these provisions.

It also is unclear what Cox means by "ethernet service." QCC believes that Cox provides ethernet technology to customers through metro optical ethernet networks, enabling internet access and wide area networking to customers. These types of services are generally considered competitive, and are jurisdictionally interstate. This proposal would again discount non-

² Cox revised Florida Price List No. 2, 1st Revised Page 99, Section 7.2.1.

³ See e.g., *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146, *Seventh Report and Order and Further Notice of Proposed Rulemaking* (April 27, 2001), at ¶¶ 30 ("Sprint and AT&T persuasively characterize both the terminating and the originating access markets as consisting of a series of bottleneck monopolies over access to each individual end user. [citation omitted] Thus, once an end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls, and it becomes the bottleneck for IXCs wishing to complete calls to, or carry calls from, that end user.").

competitive intrastate switched access rates, based upon the amount of purchases by the customer of competitive, interstate services.

Furthermore, it is not clear whether the purchases of “dedicated and ethernet services” that qualify the purchaser to receive a discount for switched access services in Florida must have been based on Florida transactions. Thus, purchase of ethernet services from Cox in California, for example, may result in a discount in the Florida switched access rates.

Cox’s proposal is not clear about the nature of the services that qualify for the discount, and how those discounts are calculated. A hearing on those factual questions would benefit the Commission in its evaluation of the Revised Price List.

Significant factual, legal, and policy questions are raised by Cox’s price list revisions. These include, but are not limited to, the following:

- 1) *Is it lawful to condition a discount to the rate for a bottleneck service on the purchase of large quantities of an unrelated, competitive, non-jurisdictional service?***

Cox proposes to lower the price of its noncompetitive services (those that IXCs have no choice to forgo) in exchange for the purchase of competitive services (those that IXCs can obtain from other vendors). Such arrangements are of doubtful lawfulness under the “just and reasonable” and non-discriminatory requirements of Florida law. Under Florida law, all providers of switched access (including Cox and other CLECs) are required to provide switched access on a nondiscriminatory basis.⁴ It is unlawful for Cox to favor one class of switched access customers over another, absent demonstration of a sound economic basis for such distinctions. As discussed above, Cox’s cost of providing switched access to an IXC (e.g., AT&T) does not vary depending upon whether AT&T purchases one special access circuit from Cox or whether it purchases ten thousand special access circuits. Cox should not be able to discriminate in favor of AT&T when there is no difference in cost to provide the same intrastate switched access to AT&T as it provides to QCC, or any IXC. As this matter proceeds to hearing, Cox should be required to identify and support its cost or other economic basis for conditioning this potentially-massive (up

⁴ See sections 364.10(1) and 364.14, F.S.

to 65%) rate distinction on the purchase of unrelated special access services. In the absence of such a showing, the Revised Price List should be cancelled.

Further, it is unclear whether a national IXC such as AT&T might qualify for the switched access discount in Florida based on its purchases of interstate special access circuits provisioned in some other state. Discounts based on such purchases are unjust, unreasonable, and unduly discriminatory, and the price list revisions featuring such discounts should be cancelled.

2) *Is this tariff discount plan designed to favor a single IXC?*

To qualify for *any* discount off of Cox's tariff switched access rates, an IXC must purchase at least \$575,000 worth of "Dedicated and Ethernet" services *each month*. Significantly larger discounts are provided, culminating in a potential discount of 65%, as the IXC purchases more and more special access from Cox each month. It should be obvious from the face of the proposed tariff that very few IXCs are large enough to require the purchase of so many special access circuits from Cox on a monthly basis. In evaluating Cox's proposed discount program, the Commission should fully investigate current purchase levels from Florida IXCs to determine whether this program will benefit only a single IXC, a small subset of IXCs or numerous IXCs. On information and belief, QCC assumes that it is possible that only one IXC will benefit from the purported discount program, in which case the Commission should be particularly concerned about Cox's motivation and good faith in presenting this program as a ubiquitously available alternative.

3) *The Revised Price List filing appears to be an end run around the issues pending in Commission Docket 090538-TP*

The Commission also should scrutinize how the Revised Price List relates to unfiled, off-tariff agreements, if any, that Cox may have entered with Florida IXCs. In Commission Docket No. 090538-TP, QCC has alleged that certain CLECs--including Cox--have entered into secret arrangements with particular IXCs which provide those IXCs with discounted rates for intrastate switched access services resulting in QCC being charged discriminatory and unjust rates. One of the issues that will likely need to be addressed in Commission Docket No. 090538-TP is whether the respondent CLECs were, and are, prohibited from discounting switched access rates based upon purchase of unrelated competitive services or services that are not subject to the jurisdiction

of the Commission (i.e., whether those distinctions constitute a legitimate basis for the discriminatory treatment of QCC).

IV. JURISDICTION

The Commission has jurisdiction to interpret and enforce the provisions of Chapter 364, Florida Statutes, and the rules implemented thereunder.

V. STATUTES AND RULES ENTITLING QCC TO RELIEF.

QCC is entitled to relief under Chapters 120 and 364.01, 364.08, 364.10(1), 364.14, 364.337(5), F.S., and Chapters 25-22 and 28-106, Florida Administrative Code.

VI. REQUEST FOR RELIEF

For the foregoing reasons, QCC respectfully requests the Commission to establish a procedural schedule leading to a hearing pursuant to Sections 120.569 and 120.57, F.S., for determination of whether the Price List is just, reasonable, and non-discriminatory and whether it should be cancelled. QCC further asks the Commission to evaluate whether this matter should be consolidated with Docket No. 090538-TP.

DATED this 10th day of May, 2010.

QWEST COMMUNICATIONS COMPANY, LLC

s/ Mary F. Smallwood

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