

Eric Fryson

From: Keating, Beth <BKeating@gunster.com>
Sent: Thursday, May 23, 2013 10:41 AM
To: Filings@psc.state.fl.us
Cc: Lee Eng Tan; 'jemiller@psc.state.fl.us'; Beth Salak; 'asolar@flatel.net';
'dbailey@bullseyetelecom.com'; 'Masterton, Susan S'; 'Ridley, Carolyn';
'lhaag@ernestgroup.com'; 'david@navtel.com'; 'Sherr, Adam'; 'Andrew M. Klein';
'azoracki@kleinlawpllc.com'
Subject: Docket No. 090538-TP
Attachments: MyScan.pdf

Attached for electronic filing, please find tw telecom of florida, l.p.'s Response in Opposition to QCC's Motion for Reconsideration in the referenced docket.

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
Direct Line: (850) 521-1706

a. Person responsible for this electronic filing:

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 601
Tallahassee, FL 32301
bkeating@gunster.com
Direct Line: (850) 521-1706

b. **Docket 090538 -- 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.**

c. On behalf of: tw telecom of florida, l.p.

d. There are a total of pages: 14

e. Description: Response in Opposition



GUNSTER

FLORIDA'S LAW FIRM FOR BUSINESS

Beth Keating | Attorney
Governmental Affairs
215 S. Monroe Street, Suite 601
Tallahassee, FL 32301

DOCUMENT NUMBER-DATE

02849 MAY 23 2013

FPSC-COMMISSION CLERK

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein. Click the following hyperlink to view the complete Gunster IRS Disclosure & Confidentiality note.

<http://www.gunster.com/terms-of-use/>



GUNSTER
FLORIDA'S LAW FIRM FOR BUSINESS

Writer's Direct Dial Number: (850) 521-1706
Writer's E-Mail Address: bkeating@gunster.com

May 23, 2013

ELECTRONIC FILING - *filings@psc.state.fl.us*

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

Re: Docket No. 090538-TP - Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); 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; PacTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream Nuvox, Inc.; and John Does 1 through 50, for unlawful discrimination.

Dear Ms Cole:

Attached for electronic filing in the referenced docket, please find tw telecom of florida, l.p.'s Response in Opposition to the Motion for Reconsideration filed by Qwest Communications Company, LLC d/b/a CenturyLink QCC.

As always, thank you for your kind assistance with this filing.

Sincerely,

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

DOCUMENT NUMBER-DATE

02849 MAY 23 2013

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Filed: May 23, 2013

TW TELECOM OF FLORIDA, L.P.'S RESPONSE IN OPPOSITION TO QWEST COMMUNICATIONS COMPANY, LLC'S MOTION FOR RECONSIDERATION

tw telecom of florida, l.p. ("TWTC," or "the Company"), by and through its undersigned counsel, hereby submits its Response in Opposition to the Motion for Reconsideration of Commission Order No. PSC-13-0185-FOF-TP ("Final Order") filed by Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC") on May 16, 2013. By this Response, TWTC asks that QCC's Motion be denied.

As the Commission has recognized time and again, the appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Final Order. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in

DOCUMENT NUMBER-DATE

02849 MAY 23 2013

FPSC-COMMISSION CLERK

the record and susceptible to review."¹ Applying the foregoing standard, QCC's Motion must be denied, because it fails to identify any mistake of fact or law in the Commission's decision, or anything that the Commission overlooked in rendering its decision. Instead, QCC's Motion largely constitutes re-argument, which should not be entertained in the context of a Motion for Reconsideration.²

I. Commission's Decision on Subject Matter Jurisdiction

QCC begins by introducing a novel, if somewhat convoluted, argument that the Commission erred in ruling that it no longer has the authority to enforce former Sections 364.08 and 364.10, Florida Statutes, which were repealed effective June 1, 2011. QCC contends that the Commission erred in reaching this conclusion in the Final Order, because, according to QCC, the Commission's decision constitutes "impermissible" reversal of its conclusions in Order No. PSC-11-0420-PCO-TP (consistent with QCC's Motion, this Order is referred to herein as "September 2011 Order"), wherein the Commission denied the Joint Movants' Motion to Dismiss. This assertion does not, however, constitute a basis for reconsideration for one simple reason – QCC misconstrues the Commission's decision in the September 2011 Order to insert conflict between that decision and the Final Order where none exists.

There is no need to dissect QCC's arguments regarding the Commission's ability (or lack thereof) to reverse a prior decision on subject matter jurisdiction, because the Commission has done no such thing in this case.³ Rather, QCC misinterprets the Commission's decision in the

¹ Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d at 317. See, e.g. Order No. PSC-13-0180-CO-EI, issued April 29, 2013, in Docket No. 120192-EI; citing Order No. PSC-11-0222-FOF-TP, issued May 16, 2011, in Docket No. 090538-TP.

² In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958).

³ Notwithstanding, TWTC notes that QCC's arguments that the Commission cannot revisit and reverse a decision, on its own motion, overextends the decision in Florida Power Corp. v. Garcia, 780 So. 2d 34 (Fla. 2001), wherein the Court applied the doctrine of "decisional finality" regarding a Commission decision made in a separate

September 2011 Order to include a determination that the Commission retained jurisdiction in order to make findings of, and remedy, violations of repealed Sections 364.08 and 364.10, Florida Statutes. The Commission did not, however, reach that conclusion. To the contrary, the Commission was quite clear that it retained jurisdiction because it perceived that the allegations in QCC's Amended Complaint also constituted allegations of anti-competitive behavior. The Commission determined, therefore, that it retained authority to address the allegations in accordance with Section 364.16, Florida Statutes.⁴ As further set forth in that September 2011 Order, the Commission agreed QCC had a vested right to the causes of action that arose under the repealed provisions Sections 364.08 and 364.10, and that repeal of those statutes did not extinguish the causes of action in their entirety. Rather, the Commission retained jurisdiction over QCC's Amended Complaint, but solely for the purpose of determining whether the allegations therein did, in fact, constitute anti-competitive conduct for which the Commission could grant relief in accordance with the newly revised Section 364.16, Florida Statutes.⁵ The Commission specifically concluded that "This Commission is vested with the subject matter jurisdiction to ensure a fair and effective wholesale market, including oversight of anti-

proceeding some three years prior to the petition that was the basis of the matter before the Court. Conversely, the Commission orders with which QCC takes issue here have been issued within the confines of one case. Similarly, QCC's reliance on Order No. PSC-05-0165-FOF-TP is misplaced. As noted by QCC in Footnote 6 of its Motion, the Commission specifically stated in Order No. PSC-05-1065-FOF-TP, that the decision therein would "serve as *res judicata* to a significant extent. . ." for Issue 1 in that case. [Emphasis added] The phrase "to a significant extent" should not be overlooked, because it reflected the Commission's decision to nonetheless receive – and consider – further argument on the jurisdictional question posed therein. Consistent with that indication, the Commission did receive from the parties, and consider, additional arguments regarding its jurisdiction in that matter, although it ultimately reached the same conclusion it had reached in Order No. PSC-05-0165-FOF-TP. See Order No. PSC-05-1234-FOF-TP, issued in Docket No. 041144-TP – In Re: Complaint Against KMC III for Failure to Pay Intrastate Access Charges, at pages 5 – 10. The procedural circumstances and history of this case are, in many regards, quite similar. Moreover, as noted in TWTC's Brief, the analysis of these issues based upon the record, as opposed to the standard applied for a Motion to Dismiss, is different in that ". . . jurisdiction is viewed not in the context of allegations once assumed to be true but in the context of claims proven to be true, if any." Brief of tw telecom, p. 7.

⁴ See e.g. Order No. PSC-11-0420-PCO-TP, (September 2011 Order) at pages 7 ("retain jurisdiction over anticompetitive behavior"), and 8 ("retain jurisdiction to oversee fair and effective competition") and ("vested interest. . . as a result of the alleged anti-competitive behavior.")

⁵ September 2011 Order at p. 7.

competitive practices such as predatory pricing among telecommunications service providers.”⁶ Notably, in reaching this conclusion, the Commission mirrored language consistent with Section 364.16(1) and (2), Florida Statutes, but did not employ language reflecting any reliance upon the repealed provisions.

The Final Order is entirely consistent with the Commission’s decision in the September 2011 Order. As set forth at page 6 of the Final Order, the Commission determined that “[W]e cannot apply Sections 364.08(1) and 364.10(1), F.S., to determine if violations have occurred before July 21, 2011; however, as discussed below, we still retain jurisdiction to oversee fair and effective competition.” The Commission then elaborated, “Consistent with our decision in Order No. PSC-11-0420-PCO-TP, issued September 28, 2011, in the instant docket, we retain subject matter jurisdiction in this proceeding to determine whether alleged anticompetitive behaviors occurred.”⁷ Again, nowhere in the September 2011 Order did the Commission state that it retained jurisdiction to make findings and grant relief under the repealed provisions of Sections 364.08 and 364.10, Florida Statutes, nor has QCC cited to any such statement in the September 2011 Order. The Commission only retained jurisdiction for purposes of considering the merits of QCC’s allegations under the law as it now exists. There simply is no conflict between the Final Order and the September 2011 Order on this point; thus, there is no basis for QCC’s assertions that the Commission erred in “overturning its prior ruling.”⁸ As such, QCC’s request for reconsideration of the Commission’s Final Order on this issue should be denied.

⁶ Id., p. 9.

⁷ Id.

⁸ QCC Motion for Reconsideration, p. 7.

II. Rate Discrimination Question/ Record Supports QCC Not Similarly Situated to AT&T⁹

QCC argues that the Commission's decision to deny QCC's First Claim for Relief, which alleged unreasonable rate discrimination, is in error, because the Commission overlooked substantial evidence in the record regarding the anticompetitive effects of rate discrimination, as well as support for QCC's proposition that it is "similarly situated" to AT&T.¹⁰ The entirety of QCC's argument on this point must, however, be rejected as re-argument, which should not be entertained when considering a Motion for Reconsideration. Contrary to QCC's strident assertions, the Commission gave a substantial amount of consideration to this issue, as reflected at pages 12 – 18 of the Final Order. The Commission simply disagreed with QCC's arguments.

QCC argues extensively that the Commission failed to consider evidence, particularly testimony put forth by its witness Dr. Weisman, regarding the anticompetitive effects of rate discrimination and discriminatory pricing.¹¹ QCC contends that this testimony was un-rebutted and that the Commission would have reached a different conclusion had it properly considered that testimony.¹² QCC is, however, most certainly wrong.

QCC overlooks the fact that the Commission specifically noted that it considered the testimonies of both witnesses Weisman and Easton.¹³ The Commission, however, reached the conclusion that there was no rate discrimination due to the fact that QCC is not "similarly situated" to AT&T.¹⁴ Thus, the fact that the Commission's Order does not dwell on QCC's arguments regarding the anticompetitive effects of rate discrimination is entirely consistent with

⁹ While QCC has addressed these arguments separately in its Motion for Reconsideration, they are addressed together herein consistent with the manner in which the Commission approached these arguments in the Final Order.

¹⁰ QCC's Motion for Reconsideration, pgs. 8, and 12-16.

¹¹ QCC Motion at pgs. 8 – 9.

¹² Id.

¹³ Final Order at p. 16, and footnotes 22 and 23.

¹⁴ Id.

its finding in the Final Order that there was no rate discrimination. Clearly, there was no need to address the anticompetitive effects of rate discrimination since such discrimination did not exist in the first place.

Moreover, there was substantial testimony in the record of this proceeding that contradicted Dr. Weisman's testimony. Among other things, CLEC witness Don Wood noted that QCC had never claimed that the rates in CLEC price lists were unlawful or excessive. (Tr 226). He further testified that the FCC has recognized that CLECs can negotiate separate agreements for switched access. (Tr 234).¹⁵ He also emphasized that mere differences in rates do not constitute "rate discrimination." (TR 243-244). Mr. Wood also addressed, through extensive testimony, the "bottleneck facility" assertions of Mr. Weisman, in particular explaining the errors in Dr. Weisman's interpretation of statements in the FCC's 2001 CLEC Access Order.¹⁶ (Tr 318-321). In addition, he addressed the disparity between Dr. Weisman's public policy argument and QCC's actual position in this case. (Tr 331-332). Thus, QCC's assertion that Dr. Weisman's testimony was "uncontested" is not at all accurate.¹⁷

With regard to the Commission's decision that QCC is not similarly situated to AT&T, QCC's arguments here must also fail, because they constitute re-argument of matters already considered and addressed by the Commission. The Commission thoroughly analyzed the various arguments and factors that were relevant to a determination as to whether QCC was, or was not, similarly situated to AT&T, as set forth at pages 16 – 18 of the Final Order. The Commission considered all evidence regarding call volumes, traffic and total spend amounts associated with the AT&T contracts and ultimately agreed with the CLECs that QCC is simply not similarly

¹⁵ Witness Wood also noted, correctly, that most of Mr. Weisman's testimony would be more appropriately made before a legislative committee, as he appeared to address what he believed the law should be, as opposed to the law as it exists today. (Tr 316).

¹⁶ *Seventh Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-146, released April 27, 2001 ("FCC CLEC Access Order").

¹⁷ Motion at p. 14.

situated to AT&T.¹⁸ The Commission also considered QCC's arguments that CLECs should be required to demonstrate that their cost to serve AT&T differed from their cost to provide service to QCC. Beyond the fact that QCC's argument here would have had the Commission improperly shift the burden of proof to the CLECs in this matter, the Commission did consider QCC's cost-based arguments, but concluded that Florida law does not support the use of a cost-based standard to determine whether differential rates constitute discriminatory rates.¹⁹

The Commission did fully consider the evidence in the record on all these points. QCC has not identified a single error, oversight, mistake of fact or of law made by the Commission in rendering its decision on these points. QCC simply wants the Commission to reweigh the evidence presented and reach a different conclusion in QCC's favor. As the Commission is well-aware, this is not a basis for reconsideration. Therefore, QCC's Motion on this point should be denied.

III. Decision Interpreting Price Lists

QCC also contests the Commission's decision regarding QCC's Third Claim for Relief and whether the CLECs abided by their price lists. QCC contends that the CLECs did not properly abide by their price lists, arguing that the Commission failed to consider that the CLECs should have notified other CLECs regarding the rates and terms of contract offerings in order to avoid discriminatory treatment.²⁰ Thus, once again, QCC asks the Commission to reweigh the evidence and reach a different conclusion than was reached in the Final Order. Also, notably, TWTC was not named by QCC as a respondent to QCC's Third Claim for Relief, which addresses this notification question. Nonetheless, QCC argues in its Motion that TWTC was

¹⁸ Final Order at pgs. 17-18.

¹⁹ *Id.* at pgs. 16 and 18.

²⁰ Motion at p. 11.

“obligated” to affirmatively offer contract terms to other IXCs.²¹ In addition to not providing a basis for reconsideration, this argument is procedurally improper.

Consistent with the Prehearing Order in this case, the Final Order addresses the question of whether the CLECs acted in accordance with their individual prices lists separately from the question of whether the CLECs were required to notify other CLECs of rates and terms offered through contracts to IXCs. As noted in the Final Order, the parties to this proceeding agreed that QCC had been charged the standard price list rates by each of the respondent CLECs.²² Consequently, based on the Commission’s conclusions earlier in the Final Order that: 1) QCC and AT&T are not similarly situated; and 2) the CLECs did not engage in anticompetitive behavior, the Commission further concluded that the CLECs, including TWTC, did abide by their price lists.²³ QCC has identified no error or oversight in the Commission’s decision on this point.

QCC instead focuses on arguments that would arise under its Third Claim for Relief, which - again - did not name TWTC. This procedural fact was clearly noted in the Final Order.²⁴ Apparently, QCC now seeks to shanghai TWTC into its Third Claim for Relief through its Motion for Reconsideration, which would clearly be procedurally improper, a violation of TWTC’s due process rights, and certainly not a matter to be entertained on reconsideration. QCC’s omission of TWTC from its Third Claim for Relief does not translate to an error or omission in the Commission’s Final Order. As such, QCC’s Motion on this point as it relates to TWTC should be rejected outright.

²¹ Id.

²² Final Order at p. 19.

²³ Id.

²⁴ Id. at p. 20.

Moreover, even if TWTC had been included in QCC's Third Claim for Relief, the Commission's ultimate finding on this point as it applied to BullsEye and to Navigator would have been equally appropriate for TWTC. The Commission determined that QCC and AT&T were not similarly situated; therefore, BullsEye and Navigator were not obligated to offer QCC contract terms offered to AT&T. Applying that same rationale, consistent with TWTC's price list, TWTC was also not obligated to disclose or make available contract offerings to QCC, because QCC was not a "similarly situated customer[] in substantially similar circumstances."²⁵

QCC has not identified a mistake of fact or law, or any oversight, made by the Commission in rendering its decision on this aspect of the case. Furthermore, QCC should not be allowed to insert TWTC into its Third Claim for Relief contrary to the Commission's determination that TWTC was not a named respondent to QCC's Third Claim in the first instance. For these reasons, the Commission should deny QCC's Motion for Reconsideration regarding these aspects of the Commission's Final Order.

IV. Decision on Remedies and Relief

With regard to the question of ultimate relief and damages, QCC misapplies the Commission's prior Orders in this proceeding in another tortuous effort to identify a legal error where none exists. Somewhat akin to the argument addressed in Section I of this Response, QCC argues that the Commission has improperly reversed its prior decisions in reaching the conclusion that QCC's ultimate request for relief constitutes a request for damages, which the Commission is without authority to award.²⁶ Contrary to QCC's assertions, however, there is no conflict between the prior Orders referenced by QCC and the Commission's conclusion in its Final Order.

²⁵ TWTC Price List Section 8.1, Hearing Exhibit 57, p. 2; also as noted by QCC in its Motion at p. 11.

²⁶ Motion at p. 17; Final Order at p. 31.

Specifically, Order No. PSC-11-0145-FOF-TP clearly states that the Commission can award refunds of overcharges if the Commission deems it “necessary and appropriate in keeping with statutory obligations.”²⁷ Similarly, in Order No. PSC-10-0296-FOF-TP, the Commission stated that it has the authority to award refunds should it be “deemed necessary and appropriate in keeping with statutory obligations.”²⁸ The Commission did not conclude in either referenced Order that QCC’s request for relief was appropriate, nor did it affirmatively conclude that the relief requested by QCC did, in fact, constitute a request for a refund, as opposed to an award of damages. The Commission simply concluded that it has “broad discretion to take remedial actions, such as refunds,” but that it does not have authority to award damages.²⁹ To the extent QCC was seeking “damages,” the Commission dismissed that request for relief. The Commission then retained jurisdiction to further investigate and determine whether there were, in fact, any “regulatory overcharges” for which “refunds and applicable interest, if any” might be due.³⁰

Consistent with both referenced prior Orders, the Commission concluded in the Final Order that it could not award refunds under the repealed statutes, but could provide a similar such remedy under Section 364.16(2), Florida Statutes, if the Commission deemed such a remedy was appropriate.³¹ The Commission determined, however, that relief in the form of a refund was not appropriate in this case, because QCC was not overcharged. The Commission determined that QCC was charged the rates reflected in the CLECs’ price lists, and those same price lists authorized the CLECs to enter into contracts with other carriers at different rates.³²

²⁷ Order No. PSC-11-0145-FOF-TP at p. 5.

²⁸ Order No. PSC-10-0296-FOF-TP at p.6.

²⁹ Id.

³⁰ Id.

³¹ Final Order at p. 31.

³² Id.

Thus, awarding the difference in amounts charged to QCC and the amount charged to AT&T would not constitute a refund. Instead, it would be an award of financial damages.³³

QCC has identified no error in the Commission's Final Order on this point, legal or otherwise. Therefore, applying the recognized standard for consideration of a Motion for Reconsideration, QCC's Motion should be denied.

V. Conclusion

QCC has failed on all points to identify a mistake of fact or law made by the Commission in rendering its Final Order in this proceeding. Instead, QCC reargues matters already addressed and considered by the Commission, asking the Commission to reweigh the evidence and reach new conclusions more to QCC's liking. There is not one argument or assertion in QCC's Motion that would serve as a legitimate basis for reconsideration of the Commission's decision. TWTC therefore respectfully asks that the Motion be denied in its entirety.

RESPONSE TO QCC'S REQUEST FOR ORAL ARGUMENT

While TWTC does not specifically oppose QCC's Request for Oral Argument, TWTC suggests that QCC's Request does not appear to properly meet the requirement that the Request demonstrate why oral argument would aid the Commissioners in their understanding and evaluation of the issues to be decided.³⁴ Instead, QCC's Request focuses on allowing counsel to "further discuss the factual grounds and legal standards" for reconsideration and address questions the Commission may have about points raised in QCC's Motion. The legal standards for reconsideration are, however, well-established and recognized by the Commission. The issues presented in QCC's Motion are also not as complex as QCC suggests. Furthermore, it is

³³ Id., citing Order No. PSC-10-0296-FOF-TP.

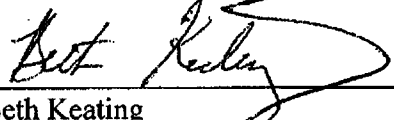
³⁴ Rule 25-22.0022, F.A.C.

Docket No. 090538-TP

within the Commission's discretion to ask questions of counsel at the Agenda Conference without granting full oral argument. As such, TWTC believes that Oral Argument is likely not necessary. Nonetheless, should the Commission decide to grant QCC's Request, TWTC would ask that the Commission grant it an equal allotment of time to respond to QCC's arguments.

WHEREFORE, for all the above reasons, tw telecom of florida, l.p. requests that the Commission deny Qwest Communications Company, LLC d/b/a CenturyLink QCC's Motion for Reconsideration of Order No. PSC-13-0185-FOF-TP.

RESPECTFULLY SUBMITTED this 23rd day of May, 2013.

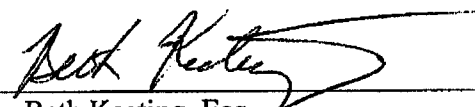


Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
(850) 521-1706

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 23rd day of May, 2013.

Lee Eng Tan Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us BSalak@psc.state.fl.us
Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net	Mr. David Bailey BullsEye Telecom, Inc. 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com
Susan S. Masterton, Esq. CenturyLink QCC 315 S. Calhoun Street, Suite 500 Tallahassee, FL 32301 susan.masterton@centurylink.com	Ms. Carolyn Ridley tw telecom of florida l.p. 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com
Ernest Communications, Inc. 5275 Triangle Parkway Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	David Stotemyer Navigator Telecommunications, LLC. P.O. Box 13860 North Little Rock, AR 72113 david@navtel.com
Adam L. Sherr Qwest Communications Company, LLC 1600 7th Avenue, Room 1506 Seattle, WA 98191 Adam.Sherr@centurylink.com	Andrew M. Klein/Allen C. Zoracki Klein Law Group 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com

By: 
Beth Keating, Esq.