BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request for emergency relief against Verizon Florida, LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC.	DOCKET NO. 070691-TP
In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.	DOCKET NO. 080036-TP ORDER NO. PSC-08-0450-FOF-TP ISSUED: July 16, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER GRANTING ORAL ARGUMENT AND
DENYING VERIZON'S MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. Background

On November 16, 2007, Bright House Networks Information Services (Florida) LLC and Bright House Networks, LLC (together, "Bright House") filed their Complaint and Request for Emergency Relief ("Complaint"). Bright House alleges that Verizon Florida, LLC ("Verizon") is engaging in anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, Florida Statutes, and is failing to facilitate the transfer of customers' numbers to Bright House upon request, contrary to Rule 25-4.082, Florida Administrative Code. Docket No. 070691-TP was opened to consider Bright House's complaint.

On December 6, 2007, Verizon filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings ("Motion to Dismiss Bright House Complaint") and requested oral argument. Verizon alleged that Bright House failed to state a claim for which relief can be granted. Verizon also sought dismissal, or in the alternative, a stay on the independent ground that Bright House had already put the same issues before the Federal Communications Commission ("FCC"), giving rise to the potential for conflicting decisions and wasteful and duplicative proceedings.

On December 13, 2007, Bright House filed its Opposition to the Motion to Dismiss Bright House Complaint. Bright House argued that it has stated a claim for which relief can be granted.

On February 11, 2008, Bright House filed its formal Accelerated Docket complaint with the FCC. This federal complaint was filed with the FCC's Enforcement Bureau, pursuant to Section 208 of the Communications Act of 1934, as amended ("Act") and claimed that Verizon is violating Sections 222(a) and (b), and 201(b) of the Act.

At our regularly-scheduled Agenda Conference on March 4, 2008, we denied Verizon's Motion to Dismiss Bright House Complaint. On March 24, 2008, Order No. PSC-08-0180-FOF-TP was entered, reflecting our decision.

On January 10, 2008, Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") filed its Complaint and Request for Emergency Relief ("Complaint"). Comcast alleges the same violations by Verizon as does Bright House. Docket No. 080036-TP was opened to consider Comcast's Complaint.

On February 4, 2008, Verizon filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings ("Motion to Dismiss Comcast Complaint"). Verizon alleged that Comcast failed to state a claim for which relief can be granted. Verizon also sought dismissal, or in the alternative a stay, on the same independent ground as it did against Bright House.

On February 11, 2008, Comcast joined with Bright House in filing its federal complaint pursuant to Section 208 of the Act. On February 13, 2008, Comcast filed its Amended Opposition to Verizon's Motion to Dismiss Comcast Complaint, arguing that it did state a claim for which relief can be granted.

At our regularly-scheduled Agenda Conference on March 18, 2008, we denied Verizon's Motion to Dismiss Comcast Complaint and ordered that Dockets No. 070691-TP and 080036-TP be consolidated. On April 2, 2008, Order No. PSC-08-0213-FOF-TP, was issued reflecting our decision ("Order No. PSC-08-0213-FOF-TP" or "Comcast Order").

On April 10, 2008, the Prehearing Officer issued Order No. PSC-08-0235-PCO-TP, Order Establishing Procedure, setting controlling dates for the consolidated Dockets No. 070691-TP and 080036-TP, including dates for filing testimony.

On April 17, Verizon filed its Motion for Reconsideration of Commission Orders No. PSC-08-0180-FOF-TP, No. PSC-08-0213-FOF-TP, and No. PSC-08-0235-PCO-TP, Order Establishing Procedure ("Motion for Reconsideration"). Verizon also requested oral argument. On April 24, 2008, Bright House and Comcast filed separately their respective responses to Verizon's Motion for Reconsideration ("Bright House Response" and Comcast Response," respectively).

We have jurisdiction over this matter for purposes of addressing Motions for Reconsideration pursuant to Rule 25-22.060 and Rule 25-22.0376, Florida Administrative Code.

II. Motion for Reconsideration

At our regularly scheduled Agenda Conference on June 17, 2008, we heard oral argument from the parties.

Verizon's Argument

Verizon asserts that its Motion for Reconsideration is based on the FCC Enforcement Bureau's Recommended Decision issued April 11, 2008, which concluded that the FCC should deny the cable companies' claims concerning Verizon's retention marketing program. The Bureau found that Verizon's retention marketing program does not violate Section 222 of the Act, which addresses the use of carrier proprietary information. Verizon asserts that the FCC bases its retention marketing rulings on Section 222, and that we, in turn, have relied exclusively on those rulings when determining what retention marketing prohibitions apply under Florida Law. Thus, "[a]ssuming the Recommended Decision is approved by the FCC," that ruling would bear directly on our prior retention marketing rulings, as well as on our reasoning employed in our Bright House and Comcast Orders."

Verizon also asserts that the Bureau recommended that the FCC issue a Notice of Proposed Rulemaking (NPRM) "regarding consumer and competitive benefits of customer retention marketing practices." The Bureau stated that "[g]iven the prevalence of intermodal and bundled service competition, we recommend that such an NPRM conclude that customer retention marketing practices be made consistent across all platforms." Verizon asserts that if the FCC issues the recommended NPRM, it would be expressing its intention to adopt unified rules that would apply not only to telecommunications carriers, but also to cable companies. Thus, a decision by us here imposing retention marketing restrictions on Verizon would "work at cross-purposes with the rule uniformity that would be the objective of the NPRM recommended by the Bureau." [Verizon Motion, p. 3]

Verizon asserts that it seeks reconsideration in this case because:

(1) the reasoning of the Bright House and Comcast Orders conflicts with the Recommended Decision;

(2) a ruling by the Commission in this case that restricted Verizon's retention marketing program would conflict with the recommended NPRM; and

(3) Commission precedent establishes that Florida law concerning retention marketing is based on the FCC's rulings interpreting Section 222, which the Recommended Decision concludes Verizon has not violated.

[Verizon Motion, p. 4]

Verizon states that in its Motions to Dismiss Bright House and Comcast Complaints, it noted that we have consistently interpreted Florida law as conforming to applicable federal law when we have resolved retention marketing issues. "Indeed, the Commission has looked exclusively to FCC decisions interpreting Section 222 to determine the retention marketing rules it should apply." [Verizon Motion, p.4] Verizon asserts that it argued in its two motions to dismiss that the complaints should be dismissed because Verizon's retention marketing program complies with Section 222. Further, Verizon asserts that it alternatively requested a stay in its motions to dismiss, arguing that a stay would provide the FCC with an opportunity to clarify federal law on Verizon's marketing practices before we proceed further.

Verizon states that the FCC Enforcement Bureau's "Recommended Decision, which was issued after the Bright House and Comcast Orders denying Verizon's motions to dismiss and the Order Establishing Procedure, is a point of law that bears directly on the Commission's rulings in question." [Motion, p. 8] Verizon acknowledges that its Motion for Reconsideration is filed outside the 15-day period for requesting reconsideration provided by Order No. PSC-08-0180-FOF-TP, regarding Bright House; however, Verizon requests that we either accept its Motion for Reconsideration out of time, or reconsider Order No. PSC-08-0180-FOF-TP on our own motion. Verizon notes that in any event, we may provide the relief it requested as to Bright House through our reconsideration of the Order Establishing Procedure.

Verizon argues that the Bureau's "Recommended Decision warrants reconsideration" of Orders No. PSC-08-0180-FOF-TP, No. PSC-08-0213-FOF-TP, and No. PSC-08-0235-PCO-TP for at least three reasons:

> First, retention marketing by telecommunications carriers is governed by an extensive body of federal law comprised primarily of Section 222 and FCC rules and orders. If adopted by the FCC, the Recommended Decision would substantially clarify this body of law by determining that Section 222(b) does not apply to carriers like Verizon when they are competing against facilities-based providers like Bright House and Comcast . . . . The Bright House and Comcast Orders do not take these clarifications into account and instead rely on the principle developed under Section 222(b) that information about a customer's plans to switch to another carrier only may be used for marketing purposes when legitimately obtained by the retail operations of the carrier seeking to retain the customer. Because the Bureau has concluded that Verizon has not violated Section 222 under the circumstances at issue in this case, the information

> triggering Verizon's retention marketing efforts was obtained legitimately and the Commission's reasoning therefore conflicts with the Recommended Decision.
>
> Second, the Bureau's recommended NPRM would call for consistent retention marketing rules across platforms. If the Commission proceeds to make retention marketing rulings in this case that only apply to Verizon, its approach would be at odds with the uniform federal rules called for by such an NPRM.
>
> Third, the Florida statutory provisions on which Bright House and Comcast rely are of general application and (unlike Section 222) do not specifically address the use of information provided by another carrier. The Commission has consistently interpreted Florida law, including 364.01(4)(g), Florida Statutes, as tracking the FCC's rules and orders interpreting Section 222. Assuming the FCC agrees with the Bureau that Section 222(b) does not apply to the retention marketing at issue here and that Verizon has not violated Sections 222(a) or (b), the Commission should, consistent with this prior interpretation of Florida law, dismiss the Complaints. Were the Commission to interpret Section 222, on which it has relied as the sole determinant of Florida law in this area, differently than the FCC, it would set up a clear conflict with the FCC's interpretation of its own statute.

[Verizon Motion, pp. 9, 10]

Bright House Response

Bright House responds that there has been no mistake of fact or law in our Orders; rather, Verizon simply points out matters that we previously considered. Bright House asserts that the FCC staff recommendation comprises information that was thoroughly and completely discussed at oral argument before this Commission at our March 4, 2008, Agenda Conference. Bright House states that it specifically pointed out that the federal law at issue before the FCC contained some "specific, 'technical' requirements that [do] not exist in Florida law." Consequently, even if the FCC determined that Sections 222(a) and (b), were not violated, Verizon's retention marketing practices would still violate the Florida law upon which Bright House's case before this Commission is based. Bright House asserts that we considered Verizon's arguments "suggesting that the FCC's rulings somehow control how this Commission exercises its powers under Florida law" to determine what is anticompetitive or discriminatory in Florida, and we nevertheless rejected Verizon's motion to dismiss or stay the proceedings. [Bright House Response, p. 3] Bright House emphasizes that the possibility of the action by the FCC Enforcement Bureau, in its recommendation to the FCC, does not constitute any new or unanticipated development that would warrant reconsideration.

Bright House points out that Verizon's Motion for Reconsideration, with respect to Bright House, is not timely, since Commission Order No. PSC-08-0180-FOF-TP was issued March 24, 2008, and Verizon's Motion for Reconsideration was filed on April 17, 2008. The 24-day lapse does not comply with the 15-day requirement of Rule 25-22.060, F.A.C.

Comcast Response

Comcast responds that Verizon's Motion is also untimely as to Comcast, because it was filed 15 days after the issuance of Commission Order No. PSC-08-0213-FOF-TP. Then, in a footnote, Comcast addresses that portion of Verizon's Motion seeking reconsideration of our Order No. PSC-08-0235-PCO-TP, Order Establishing Procedure:

> Verizon's attempt to seek reconsideration of the Commission's Order Establishing Procedure, Order No. PSC-08-0235-PCO-TP, raises no issue that would form the basis for reconsideration. Rather, Verizon objects to the establishment of a procedural schedule, which includes the filing of testimony and the scheduling of a hearing in August, that would move this Commission's proceeding forward without staying it pending a resolution of the FCC proceeding. The Verizon Motion with respect to reconsideration of the Order Establishing Procedure is thus entirely derivative of the denial of its previous motions to dismiss the two Complaints and raises no independent substantive basis for reconsideration.

[Comcast Response, p. 3, fn. 3]

Comcast argues out that our jurisdiction pursuant to Chapter 364, F.S., is not concurrent, but exclusive. §364.01(2), F.S. Comcast cites to the Florida Supreme Court, which has recognized the grant of exclusive jurisdiction. See, e.g., Sprint-Florida, Inc. v. Jaber, 885 So. 2d 286, 291-292 (Fla. 2004); Florida Interexchange Carriers Ass'n v. Beard, 624 So. 2d 248, 251 (Fla. 1993). Comcast asserts that we are the sole entity with jurisdiction and authority, as well as the duty, to determine whether Verizon's actions complained of in the Comcast and Bright House Complaints are anticompetitive in violation of Florida law.

Comcast emphasizes that the basis for Verizon's Motion for Reconsideration is a Recommended Decision of the FCC's Enforcement Bureau. It is not even final agency action of the FCC under 47 C.F.R. section 1.730(h)-(i), and cannot be the basis for action by this Commission. An FCC order may reflect an entirely different outcome.

Comcast distinguishes the cases Verizon relies on in its argument that our construction of Florida law is linked to the FCC's construction of its statutes. Comcast indicates that two of the cases dealt with win-back marketing, rather than retention marketing, which is at issue in the Comcast and Bright House Complaints, and that one of those cases expressly alleged violations of Section 222 of the federal Act. Comcast suggests that "the orders relied on by Verizon are irrelevant" to the issues in this proceeding. [Comcast Response, p. 6, fns. 4-6]

Comcast further argues that Verizon is wrong to argue that "the FCC has preempted the area of law [at issue here], and that this Commission may take no action that would conflict with the FCC's position, currently in the form of a Recommended Decision that may or may not be adopted." [Comcast Response, p. 7] Comcast points out that the "FCC's disposition of the federal retention marketing complaint currently before it will not preempt this Commission from finding whether Verizon's current and ongoing activity is 'anticompetitive activity' under Florida law." [Comcast Response, p. 8] Comcast cites to case law regarding federal preemption of state law, both from the Florida Supreme Court, as well as from the FCC. From these cases,

Comcast concludes that "[a]s it relates to the regulation of telecommunications . . . Congress has not expressly preempted state law in this matter;" and that "there has been no action by the Congress or the FCC to completely occupy the questions raised by the complainants, nor is there any basis for concluding that this Commission's jurisdiction has even been implicitly preempted." [Comcast Response, pp. 8-10] Comcast asserts that the complainants here seek "no finding and no remedy . . . that would constitute a direct conflict with any Federal statute or decision of the FCC." [Comcast Response, p. 10]

Comcast reiterates that the Bureau's Recommended Decision "has no more effect than any other non-final agency action that can undergo change before it becomes final. The Recommended Decision has no final or precedential weight whatsoever, and should not form the basis for a rehearing in this matter even if adopted by the FCC." [Comcast Response, p. 11] Comcast further asserts that,

> [I]f the FCC fails to order Verizon to stop its marketing practices under the standards established in Section 222, such a decision would not preclude this Commission from finding Verizon's conduct unlawful under Chapter 364 and ordering Verizon to cease such practice. Likewise, an FCC decision to proceed to rulemaking on the Section 201(b) question does not constitute a sufficient basis for staying these proceedings since the statute has different language than the Florida statutes at issue here.

[Comcast Response, p. 12]

Analysis

Standard of Review

The standard of review for a motion for reconsideration, often cited by this Commission in considering motions 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 order. See, 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). 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).[1]

[1] Order No. PSC-07-0783-FOF-EI, issued September 26. 2007, in Docket No. 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU, In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven; Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU, In re: Petition for determination of need for electrical power plant in Taylor County By Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

Verizon cites Diamond Cab, where the Court stated:

> The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance . . . . It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order . . . .

Id. at 891.

In Jaytex Realty, the court sets forth the limited nature of motions for reconsideration, stating:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.

Jaytex Realty, 105 So. 2d at 818.

Furthermore, the court explained that it is not necessary to respond to every argument and fact raised by each party, stating:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.
>
> It is not the purpose of these remarks to discourage the filing of petitions for rehearing in those cases in which they are justified. If we have, in fact, inadvertently overlooked something that is controlling in a case we welcome an opportunity to correct the mistake. But before filing a petition for rehearing a member of the bar should, as objectively as his position as an advocate will permit, carefully analyze the law as it appears in his and his opponent's brief and the opinion of the court, if one is filed. It is only in those instances in which this analysis leads to an honest conviction that the court did in fact fail to consider (as distinguished from agreeing with) a question of law or fact which, had it been considered, would require a different decision, that a petition for rehearing should be filed.

Id. at 819.

We have before us a consolidated docket. We dismiss as untimely filed Verizon's Motion for Reconsideration of Order No PSC-08-0180-FOF-TP, regarding Bright House. Verizon does not establish a sound basis to either accept its Motion for Reconsideration out of time or to reconsider it on our own motion. However, the same analysis that we apply to the Comcast Order, would also pertain to Order No PSC-08-0180-FOF-TP, as would the conclusions we reach. Also, as Verizon states in its Motion for Reconsideration, our analysis of and conclusions drawn regarding Order No. PSC-08-0235-PCO-TP, Order Establishing Procedure, impacts Bright House, as well as Comcast.

Order No. PSC-08-0213-FOF-TP, regarding Comcast, specifically provided 15 days to file for reconsideration, and Verizon filed its Motion for Reconsideration within that 15 days. Accordingly, we find it to be timely filed.

The FCC Enforcement Bureau's recommended decision does not constitute a sound basis for this Commission to reconsider our Orders. Verizon's Motion for Reconsideration of the Comcast Order does not meet the standard for reconsideration. Verizon does not identify a point of law or fact which this Commission overlooked or failed to consider in reaching our decision. The Bureau's recommendation to the FCC advocating that the FCC take the particular actions of interpreting Verizon's retention marketing practices as lawful, and of issuing an NPRM with the Bureau's desired outcome, is not "a point of law that bears directly" on our rulings. Verizon is incorrect in asserting that it is. The Recommended Decision is not final agency action pursuant to 47 C.F.R., section 1.730(h)-(i). It is simply a non-final staff recommendation for the FCC to issue final agency action.

Nor does any one of the three reasons which Verizon asserts form the basis for its request for reconsideration amount to a material fact or point of law that has been overlooked or not considered by us in rendering our decisions. Not one constitutes "a question of law or fact which, had it been considered, would require a different decision." Jaytex Realty, 105 So. 2d at 819.

Verizon's arguments are predicated on its speculation that the FCC will adopt its Bureau's recommendation, rather than modify that recommendation, or even reject it outright. The FCC staff recommendation carries no precedential or final weight. Verizon must ask that we speculate along with it: "Assuming the Recommended Decision is approved by the FCC, that ruling would bear directly on the Commission's previous retention marketing rulings and on the reasoning employed by the Commission in the Bright House and Comcast Orders." Irrespective of whether we agree that such an FCC ruling "would bear directly" on our prior rulings and the reasoning employed in our Orders here, it is of no significance if our actions or reasoning conflicts with the Bureau's non-final recommendation to the FCC.

Even Verizon's argument that the Bureau's "Recommended Decision warrants reconsideration of the Bright House and Comcast Orders and the Order Establishing Procedure for at least three reasons" presupposes that the recommendation itself has no precedential or legal weight. Verizon posits that first, "[i]f adopted by the FCC," the recommendation would clarify

the body of federal law pertaining to retention marketing; second, that a Commission ruling on Verizon's retention marketing may conflict "with the uniform federal rules called for by [the Bureau's recommended] NPRM;" and third, that "[a]ssuming the FCC agrees with the Bureau" that Section 222(b) does not apply to Verizon's retention marketing, we should dismiss the complaints. All three parts of Verizon's argument are based on its speculation about future occurrences.

Furthermore, as Bright House points out, the Bureau's recommendation to the FCC "comprises information that was thoroughly and completely discussed at oral argument" at our March 4, 2008, Agenda Conference. We considered Verizon's arguments at that time and we then rejected Verizon's Motion to Dismiss or stay the proceedings.

Regarding Commission Order No. PSC-08-0235-PCO-TP, Verizon has not raised an issue which would form a basis for our reconsideration of the Order Establishing Procedure. Verizon's objection is to the procedural schedule which was ordered by the Prehearing Officer to move the proceeding forward after the dockets were assigned. Verizon, in its Motions to Dismiss, requested a stay of the procedural schedule pending resolution of the FCC proceeding. Verizon's motion for reconsideration of the Order Establishing Procedure is entirely derivative of our denial of Verizon's Motions to Dismiss or stay the proceedings, and raises no independent, substantive basis for reconsideration of that order.

Conclusion

Accordingly, we dismiss as untimely Verizon's Motion for Reconsideration of Commission Order No. PSC-08-0180-FOF-TP, denying Verizon's Motion to Dismiss Bright House Complaint, as explained in our analysis above.

We deny Verizon's Motion for Reconsideration of Order No. PSC-08-0213-FOF-TP, denying Verizon's Motion to Dismiss Comcast Complaint, because Verizon does not identify a point of fact or law which was overlooked or which we failed to consider in rendering our decision.

Finally, we deny Verizon's Motion for Reconsideration of Order No. PSC-08-0235-PCO-TP, Order Establishing Procedure, because it is entirely derivative of our denial of Verizon's motions to dismiss, Verizon has not raised any independent, substantive basis for reconsideration, and Verizon has not identified a point of fact or law which was overlooked or which we failed to consider in rendering this order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon's Request for Oral Argument is hereby granted. It is further

ORDERED that Verizon's Motion for Reconsideration is hereby denied. It is further

ORDERED that these dockets shall remain open.

By ORDER of the Florida Public Service Commission this 16th day of July, 2008.

ANN COLE
Commission Clerk

(SEAL)

HFM

CONCURRING OPINION

Commissioner Katrina J. McMurrian concurs with the Commission's decision to deny Verizon's Motion for Reconsideration (Issue 2) with the following opinion:

Based on the legal standard with respect to motions for reconsideration, I agree with the Commission's decision to deny Verizon's Motion for Reconsideration of Commission Order Nos. PSC-08-0180-FOF-TP and PSC-08-0213-FOF-TP, Orders Denying Verizon's Motion to Dismiss Bright House and Comcast's Complaints, respectively, and Order No. PSC-08-0235-PCO-TP, Order Establishing Procedure. While denying reconsideration, however, the Commission should have abated the proceedings in Docket Nos. 070691-TP and 080036-TP on our own motion, given the totality of the circumstances. Indeed, at the time of our June 17, 2008, vote on Verizon's motion, the FCC was expected to issue its ruling the following week on the merits of the related matter pending before that federal agency. Regardless of the outcome, the FCC's decision likely will have some bearing on the cases before this Commission. Therefore, it seems most constructive and efficient to abate our cases for some reasonable period, at least until such time as the FCC has ruled on the FCC Enforcement Bureau's Recommended Decision.

NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.