

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-08-0552-PCO-TP

ISSUED: August 20, 2008

**FOURTH ORDER MODIFYING PROCEDURE**

**I. CASE BACKGROUND**

By Order No. PSC-08-0235-PCO-TP (Order Establishing Procedure), issued April 10, 2008, certain controlling dates for filing testimony for this consolidated Docket were established, as was an issues list guiding the scope of this proceeding. By Order No. PSC-08-0325-PCO-TP (Order Modifying Procedure), the dates set for filing Direct and Rebuttal Testimony were extended, and the Issues List was modified.

Verizon subsequently filed a motion to add issues to the Issues List and Bright House and Comcast filed responses in opposition to the additions. By Order No. PSC-08-0344-PCO-TP (Second Order Modifying Procedure), the date set for filing Direct Testimony was further extended and the Issues List was further modified.

On July 1, 2008, the parties filed a Joint Motion for Extension of Time, seeking extensions of the time for filing Rebuttal Testimony and Prehearing Statements, and extension of the date to cutoff discovery. Additionally, all parties agreed to shorten the response time to discovery requests to ten days. By Order PSC-08-0437-PCO-TP, I extended the dates for Rebuttal Testimony, Prehearing Statements and the cutoff of discovery.

On August 7, 2008, Verizon filed a Motion for Continuance, requesting that the hearing in this matter be continued until November 2008, or as soon thereafter as possible. Bright House and Comcast both filed responses opposing Verizon's motion.

DOCUMENT NUMBER-DATE

07465 AUG 20 08

FPSC-COMMISSION CLERK

## II. ANALYSIS

When our decisions denying Verizon's requests to stay these proceedings were issued in March 2008, the complaint before the FCC was in its beginning stages with no certainty as to the scope or timeframe for an FCC order. Three months later, at the time of our denial of reconsideration of these orders, the only advance in the federal proceeding was a staff recommendation to the FCC.

On June 23, 2008, the FCC issued FCC 08-159 Memorandum Opinion and Order, which directed Verizon to cease its retention marketing program. Verizon subsequently petitioned for review of that order by the circuit court of appeals. The federal court has since ordered expedited briefing to be completed by September 22, 2008.

I have reviewed Verizon's motion and the responses. It is my finding that the issuance of the FCC order causes changed circumstances such that it is appropriate at this time to grant the requested continuance. This decision is also based on the finding that a continuance will not prejudice the parties and will cause no harm to consumers. I further find that a continuance would not serve as an abdication of this Commission's jurisdiction or its obligations in any manner.

Accordingly, if the circuit court ruling creates ambiguity as to the status of the contested issues, or if harm or prejudice is further alleged, the parties may petition this Commission to resume proceedings. Should this occur, our staff is directed to work diligently to expedite rescheduling of the earliest possible new Hearing and Prehearing dates, allowing for the remainder of the discovery period. Any written discovery responses currently outstanding are to be completed and served.

Additionally, all parties are directed to file a status report by Friday, November 7, 2008, regarding the federal action and issue status.

Based upon the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, Prehearing Officer, that Order No. PSC-08-0235-PCO-TP is modified as set forth in the body of this Order. It is further

ORDERED that the Hearing is continued and the current dates for Hearing and Prehearing are cancelled. It is further


ORDERED that the parties shall file a status report on the federal proceedings by November 7, 2008. It is further

ORDERED that written discovery responses currently outstanding are to be completed and served. It is further

ORDERED that all outstanding motions shall be held in abeyance pending a Commission ruling granting a party's petition to resume proceedings. It is further

ORDERED that Order No. PSC-08-0235-PCO-TP is reaffirmed in all other aspects.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 20th day of August, 2008.

  
LISA POLAK EDGAR  
Commissioner and Prehearing Officer

(SEAL)

HFM

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 25-22.060, 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.