

Matilda Sanders

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From: terry.scobie@verizon.com  
Sent: Friday, November 05, 2004 3:24 PM  
To: Filings@psc.state.fl.us  
Cc: Richard Chapkis; David Christian; demetria.c.watts@verizon.com; frank.app@verizon.com; randal.s.milch@verizon.com; tom.parker@verizon.com  
Subject: Docket 041170-TP - Answer of Verizon Florida Inc. and Response to Request for Oral Argument



041170 VZ  
Answer to Brig

The attached filing is submitted in Docket 041170-TP on behalf of Verizon Florida Inc. by

Richard A. Chapkis  
201 N. Franklin Street, FLTC0007  
Tampa, Florida 33602  
(813) 483-1256  
richard.chapkis@verizon.com

The attached .pdf document contains 22 pages - transmittal letter (1 page), certificate of service (1 page), service list (1 page), Answer of Verizon Florida Inc. (18 pages) and Response to Request for Oral Argument (1 page).

(See attached file: 041170 VZ FL Answer to Bright House Complaint.pdf)

Terry Scobie  
Executive Adm. Assistant  
Verizon Legal Department  
813-483-2610 (tel)  
813-204-8870 (fax)  
terry.scobie@verizon.com

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Richard A. Chapkis  
Vice President & General Counsel –  
Southeast Region



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201 North Franklin St., FLTC0717  
P.O. Box 110  
Tampa, FL 33601

Phone: 813-483-1256  
Fax: 813-204-8870  
[richard.chapkis@verizon.com](mailto:richard.chapkis@verizon.com)

November 5, 2004 – *VIA ELECTRONIC MAIL*

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 041170-TP  
Complaint Against Verizon Florida Inc. and Request for Declaratory Ruling  
By Bright House Networks Information Services, LLC (Florida)

Dear Ms. Bayó:

Enclosed are (1) the Answer of Verizon Florida Inc. and (2) Response of Verizon Florida Inc. to Request for Oral Argument for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

/s Richard A. Chapkis

Richard A. Chapkis

RAC:tas  
Enclosures

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Answer of Verizon Florida Inc. and Response of Verizon Florida Inc. to Request for Oral Argument in Docket No. 041170-TP were sent via U.S. mail on November 5, 2004 to the parties on the attached list.

/s Richard A. Chapkis

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Richard A. Chapkis

Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Beth Salak  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Christopher W. Savage  
Danielle Frappier  
Cole Raywid & Braverman  
1919 Pennsylvania Ave. NW  
Suite 200  
Washington, DC 20006

Bright House Networks  
Information Services LLC  
301 East Pine Street  
Suite 600  
Orlando, FL 32801

Bright House Networks  
Information Services LLC  
Arthur Orduna  
5000 Campuswood Drive  
East Syracuse, NY 13057

FDN Communications  
Matthew Feil  
2301 Lucien Way  
Suite 200  
Maitland, FL 32751

Florida Cable Telecomm. Assn.  
Michael A. Gross  
246 E. 6<sup>th</sup> Avenue, Suite 100  
Tallahassee, FL 32303

AT&T  
Tracy Hatch  
101 N. Monroe Street, Suite 700  
Tallahassee, FL 32301

AT&T  
Lisa A. Sapper  
1230 Peachtree Street, NE  
4<sup>th</sup> Floor  
Atlanta, GA 30309

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint Against Verizon Florida Inc. and )  
Request for Declaratory Ruling by Bright House )  
Networks Information Services, LLC (Florida) )  
\_\_\_\_\_ )

Docket No. 041170-TP  
Filed: November 5, 2004

**ANSWER OF VERIZON FLORIDA INC.**

Verizon Florida Inc. ("Verizon") hereby responds to the Complaint and Request for Declaratory Ruling filed by Bright House Networks Information Services, LLC ("Bright House").

As an initial matter, the Florida Public Service Commission ("Commission") should not address this Complaint until the Federal Communications Commission ("FCC") resolves closely related issues regarding state commission jurisdiction to regulate DSL-based Internet access services such as those at issue here. It is particularly appropriate for the Commission to await the FCC's ruling because, as Verizon and BellSouth have argued before the federal agency and as summarized below, this Commission does not have jurisdiction to decide these issues. This Commission, accordingly, should not devote scarce resources to this matter until the FCC has clarified the law.

Even if the Commission does conclude (incorrectly) that it has jurisdiction, Bright House's Complaint fails as a factual matter. Bright House claims that consumers may be deterred from switching voice service providers if, after doing so, they cannot retain their Verizon DSL-based Internet access service. That claim is unfounded, however, because consumers have significant competitive choices in broadband (including obtaining broadband service from a cable company such as Bright House).

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Accordingly, as will be shown through expert testimony, Verizon's policy of offering DSL service only in conjunction with voice service provided over the same line does not obstruct consumer choice.

Moreover, there are significant technical obstacles to providing the arrangement that Bright House seeks, particularly in circumstances where DSL is provided by a CLEC through a line-sharing arrangement with Verizon. In testimony and at hearings, Verizon will explain in detail the extent of those issues, and, in addition, will identify possible solutions.

Finally, Bright House's contention that Verizon has on occasion failed to promptly port numbers is unsubstantiated. It will be necessary to probe this claim through discovery and cross-examination. Consequently, if the Commission does not hold this matter in abeyance, the parties should undertake discovery and an evidentiary hearing should then be held.

**I. THE COMMISSION SHOULD AWAIT THE FCC'S RESOLUTION OF CLOSELY RELATED ISSUES BEFORE PROCEEDING WITH THIS MATTER.**

Bright House complains that Verizon is acting unlawfully by refusing to provide DSL/Internet access to customers that do not receive voice service from Verizon. See Complaint ¶ 2. The issue of whether states have jurisdiction to require ILECs to provide DSL service on particular terms and conditions is currently before the FCC. The Commission should await guidance from the FCC on that issue because the FCC's decision is likely to be dispositive here.

As Bright House notes, see Complaint ¶ 35 n.33, BellSouth filed an Emergency Petition<sup>1</sup> last December requesting that the FCC clarify that state commissions do *not* have the authority to regulate the terms or conditions under which ILECs provide DSL transmission or DSL-based Internet access. BellSouth explained there that (1) the FCC has exclusive authority to regulate interstate special-access services such as DSL transmission and (2) the FCC has preempted state commissions from applying public-utility or common-carrier regulation to information services, including DSL-based Internet access.<sup>2</sup>

The FCC's decision on BellSouth's Emergency Petition will bear directly on the issues presented here. If, as BellSouth and Verizon correctly assert before the FCC, this Commission does not have authority to regulate interstate access services provided under federal tariff, and it cannot order Verizon to provide DSL transmission under particular terms and conditions, which is precisely what Bright House is seeking here. Similarly, if as BellSouth also asserts before the FCC, the *Computer Inquiry* orders preempt public-utility and common-carrier regulation of information services, then this Commission likewise cannot require Verizon to provide its DSL-based Internet access service to particular customers or on specific terms and conditions. That result would preclude the relief that Bright House seeks here, which would require the Commission to dictate that Verizon provide DSL-based Internet access to a set of consumers (those

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<sup>1</sup> See Emergency Request for Declaratory Ruling, Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth To Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers, WC Docket No. 03-251 (filed Dec. 9, 2003) ("Emergency Petition").

<sup>2</sup> Verizon has filed comments and reply comments in support of BellSouth's petition.

that do not receive Verizon voice service) that Verizon currently does not freely choose to serve.

Bright House contends that BellSouth's Emergency Petition has "no direct relationship" to the matters before the FCC, Complaint ¶ 35, because BellSouth's petition turns exclusively on issues relating to UNEs. That contention, however, is flatly wrong. Although BellSouth's petition also raises UNE-based issues, the two issues identified above (relating to exclusive federal authority over interstate special access services such as DSL and preemption of state regulation of information services) are separate and distinct from any UNE-related claims. The FCC's resolution of these two independent issues will be directly relevant to the Commission's authority in this proceeding, and it makes little sense for the Commission or the parties to devote scarce resources to these issues until the FCC has an opportunity to address them.

Significantly, after BellSouth filed its petition with the FCC, federal courts reviewing state commission decisions on these issues unanimously decided to stay their proceedings to give the FCC an opportunity to resolve these issues. In particular, the federal district courts reviewing this Commission's determinations in the FDN and Supra matters, as well as the United States Court of Appeals for the Sixth Circuit and district courts in Georgia and Louisiana, have all agreed to hold proceedings in abeyance so that the FCC could provide guidance on these jurisdictional issues.<sup>3</sup> This Commission should follow the same path here.

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<sup>3</sup> Order Staying Proceedings and Requiring Status Reports, *BellSouth Telecomm. Inc. v. Florida Digital Network, Inc.*, Case No. 4:03cv212-RH (N.D. Fla. Feb. 24, 2004); Order Granting Motion to Stay, *BellSouth Telecomm. Inc. v. Supra Telecomm. and Info. Sys., Inc.*, Case No. 4:02cv325-SPM (N.D. Fla. Mar. 16, 2004); Letter Order, *BellSouth Telecomm. Inc. v. Cinergy*, Docket No. 04-5128 (6th Cir. Mar. 1, 2004); Order, *BellSouth Telecomm. Inc. v. MCImetro Access Transmission Servs. LLC*, CA No. 1:03-CV-



Awaiting the FCC's ruling is particularly appropriate given that BellSouth's position before the FCC is quite strong. Although Verizon will develop these arguments more completely, if necessary, in later filings, Verizon summarizes them here to demonstrate that there is a very substantial likelihood that the FCC will grant BellSouth's petition – a fact that militates strongly in favor of awaiting the FCC's decision before devoting further resources to this matter.

There are two independent aspects of BellSouth's argument.

*First*, it is settled law that state commissions cannot regulate interstate special access services offered under a federal tariff because allowing states to exercise jurisdiction in this area would undermine the uniformity that a federal tariff is intended to create.<sup>4</sup> As the Second Circuit has explained, “[t]he published tariff rate will not be uniform if the service for which a given rate is charged varies from state to state

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3946-RLV (N.D. Ga. Mar. 8, 2004); Order, *BellSouth Telecomm. Inc. v. Louisiana Pub. Servs. Comm'n*, CA No. 03-CV-372-D-M2 (M.D. La. Feb 2, 2004).

<sup>4</sup> See *Public Serv. Co. v. Patch*, 167 F.3d 29, 35 (1st Cir. 1998) (“[T]he Supreme Court has ruled that where the FERC has lawfully determined a rate, allocation, or other matter, a state commission cannot take action that contradicts that federal determination. And even without explicit federal approval of a rate, the Court has treated a rate reflected in a FERC tariff as setting a rate level binding on a state commission in regulating the costs of the purchasing utility.”) (citing *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 373-74 (1988)); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 962-66 (1986); see also *Ivy Broad. Co. v. AT&T Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (“The published tariff rate will not be uniform if the service for which a given rate is charged varies from state to state according to differing state requirements.”); *Appalachian Power Co. v. Public Serv. Comm’n*, 812 F.2d 898, 904 (4th Cir. 1987) (“states are powerless to exert authority that potentially conflicts with FERC determinations regarding rates or agreements affecting rates”); *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1056 (9th Cir. 2001) (terms and conditions in federally approved rate schedules and tariffs “preempt conflicting regulations adopted by the States”), *cert. denied*, 535 U.S. 1112 (2002); *Entergy La., Inc. v. Louisiana Pub. Serv. Comm’n*, 539 U.S. 39, 41, 47 (2003).

according to differing state requirements.”<sup>5</sup> Accordingly, “[f]ederal law does not merely create a right; it occupies the whole field, displacing state law.”<sup>6</sup>

This analysis applies directly here because the FCC has held that DSL transmission, when used for Internet access, is a form of *interstate* special access service subject to federal tariffing and “federal regulation.”<sup>7</sup> The Communications Act grants the FCC exclusive authority over such services, and state commissions have no authority here.<sup>8</sup>

Any Commission assertion of authority here would be particularly offensive to exclusive federal authority because Verizon’s federally filed tariff specifically provides that Verizon will offer DSL service only so long as the underlying dial tone for voice service is provided by Verizon. See FCC Tariff No. 20, Part III, §5.1.2(F) (“Verizon Infospeed DSL Solutions will be provided subject to the availability and limitations of Company facilities, including the availability of line sharing.”). Any attempt to change that tariff should be raised at the FCC, not before this Commission.

As Bright House notes, see Complaint ¶¶ 9, this Commission has sought to avoid this issue in the past by claiming that it is not regulating DSL transmission, but rather

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<sup>5</sup> *Ivy Broad. Co.*, 391 F.2d at 491.

<sup>6</sup> *Cahnmann v. Sprint Corp.*, 133 F.3d 484, 488-89 (7th Cir. 1998); see *AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214 (1998) (filed tariff determines terms and conditions as well as rates, and neither may be altered by state law).

<sup>7</sup> Memorandum Opinion and Order, *GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148*, 13 FCC Rcd 22466, 22480, ¶ 25 (1998) (emphasis added).

<sup>8</sup> See Memorandum Opinion and Order on Reconsideration, *Chesapeake and Potomac Tel. Co.*, 2 FCC Rcd 3528, 3530, ¶ 21 (1987) (“The Communications Act occupies the field of interstate communications rate regulation.”), *vacated as moot on other grounds*, 3 FCC Rcd 748 (1988); Memorandum Opinion and Order, *Petitions of MCI Telecomms. & GTE Sprint*, 1 FCC Rcd 270, 275, ¶ 23 (1986) (noting the FCC’s “exclusive jurisdiction over interstate communications”); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 306 (1988) (state regulation of issuance of securities by natural gas companies “is a regulation of the rates and facilities . . . used in transportation and sale for resale of natural gas in interstate commerce” and therefore preempted).

local voice service. That argument ignores the substance of what the Commission would be doing – telling Verizon to whom it must provide DSL service (voice customers of Bright House) and in what circumstances (whether or not Verizon offers them voice service). As the United States Court of Appeals for the Fifth Circuit has explained in an analogous circumstance, prescribing to whom a party must offer service plainly constitute regulation of the relevant service (here, Verizon’s DSL service), regardless of the Commission’s choice of terminology or its motivation.<sup>9</sup>

*Second*, the Commission cannot grant the relief that Bright House seeks as to Verizon’s “DSL/Internet access service,” Complaint ¶ 1, because Internet access service is an information service that, as a matter of federal law, must remain unregulated. In *Computer II*, the FCC deregulated the provision of *all* computer-enhanced services (now known as information services).<sup>10</sup> It explained that “the absence of traditional public utility regulation of enhanced services offers the greatest potential for efficient utilization and full exploitation of the interstate telecommunications network.”<sup>11</sup> The FCC explained further that “[e]xperience gained from the competitive evolution of varied market applications of computer technology offered since the *First Computer Inquiry* compels us to conclude that the *regulation of enhanced services is simply unwarranted.*”<sup>12</sup> This was so because, among other things, the enhanced

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<sup>9</sup> See *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 421-22 (5th Cir. 1999) (preventing the disconnection of service was necessarily a “regulation,” because it dictates the circumstances under which the service must be maintained); see also *Webster’s II New College Dictionary* 934 (1999) (defining “regulate” in relevant part as “[t]o control or direct in agreement with a rule”); *Black’s Law Dictionary* 1286 (6th ed. 1990) (defining “regulate” as “[t]o fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction”).

<sup>10</sup> See Final Decision, Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 428, ¶ 114, 447, ¶ 160 (1980) (“Computer II”).

<sup>11</sup> *Id.* at 387, ¶ 7.

<sup>12</sup> *Id.* at 433, ¶ 128 (emphasis added).

services market was already “truly competitive.”<sup>13</sup> Moreover, “[i]nherent in the offering of enhanced services is the ability of service providers to custom tailor their offerings to the particularized needs of their individual customers,” so that “to subject enhanced services to a common carrier scheme of regulation . . . would negate the dynamics of computer technology in this area.”<sup>14</sup>

Under *Computer II*, this Commission may not impose the requirements requested by Bright House on Verizon’s Internet access service because that service is an information service under federal law. The FCC has explained that “Internet access services” are generally “appropriately classed as information, rather than telecommunications, services.”<sup>15</sup> Bright House thus concedes that “Internet access service is an information service, *subject primarily if not exclusively to the jurisdiction of the FCC, and essentially unregulated.*” Complaint ¶ 13 (emphasis added). Indeed, granting the relief Bright House seeks would be contrary to the FCC’s policy that the free market, not regulation, “offers the greatest potential for efficient utilization and full exploitation of the interstate telecommunications network.” *Computer II*, 77 F.C.C.2d. at 387, ¶ 7.<sup>16</sup>

This Commission has notably not disputed that it lacks authority to regulate information services. In *FDN*, the Commission, citing the *Computer II* decision,

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<sup>13</sup> *Id.*; see also *id.* at 428, ¶¶ 113-114, 430, ¶ 119.

<sup>14</sup> *Id.* at 431-32, ¶ 123.

<sup>15</sup> Report to Congress, Federal-State Joint Board on Universal Service, 13 FCC Rcd 11501, 11536, ¶ 73 (1998); see Notice of Proposed Rulemaking, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 17 FCC Rcd 3019, 3030, ¶ 20 (2002).

<sup>16</sup> See also *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (“[IP telephony] services necessarily are information services, and state regulation over [such] services is not permissible because of the recognizable congressional intent to leave the Internet and information services largely unregulated.”).

expressly "agree[d]" with BellSouth that Internet access is an "enhanced, *nonregulated*, nontelecommunications Internet access service."<sup>17</sup> The Commission thus tried to justify its decision on the ground that it was *not* in fact regulating FastAccess. As discussed above, however, any attempt to tell Verizon to whom it must provide Internet access is *necessarily* a regulation of that information service – regardless of how the Commission attempts to characterize that decision.

If the Commission decides to proceed with this matter, Verizon will brief these issues in more detail in subsequent filings to demonstrate that the Commission lacks authority to impose the requirements that Bright House seeks. For present purposes, however, it is sufficient that these authorities demonstrate that BellSouth's Emergency Petition raises very cogent arguments on these points, so that it would be prudent to give the FCC a chance to address them before devoting resources to this proceeding.

## **II. VERIZON'S POLICY IS NOT ANTICOMPETITIVE AND THERE ARE SIGNIFICANT FACTUAL ISSUES THAT NEED DEVELOPMENT.**

Verizon responds to the numbered paragraphs of Bright House's Complaint below. Before doing so, however, there are several overarching points that the Commission should keep in mind and that Verizon intends to develop through the course of discovery and hearings.

*First*, Verizon's current policy is pro-competitive. Consumers have abundant choices for broadband Internet access, including market-leading cable-modem service. Indeed, according to the FCC's latest report, a majority of Florida consumers (52%)

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<sup>17</sup> Final Order On Arbitration, *Petition by Florida Digital Network Inc. for Arbitration*, Docket No. 010098-TP, at 8 & n.3 (Fla. PSC June 5, 2002) (emphases added; internal quotation marks omitted).

receive broadband service from cable modem providers, as compared to 39% for DSL.<sup>18</sup>

In such a competitive environment, if Verizon chooses not to provide its broadband Internet access to competitors' voice customers, consumers can simply select another broadband option. Verizon thus expects to provide expert testimony that in the competitive broadband market, Verizon's decision as to how to offer its broadband Internet access service cannot hurt consumers.

This point is particularly important in the context of Bright House's Complaint. Bright House is affiliated with a cable company, see Complaint ¶¶ 3 & 16 n.11, and thus could offer competing cable-modem service to consumers that obtain its voice service. It is not clear to what extent Bright House voice consumers generally also receive broadband service from Bright House or its affiliate. Factual discovery on this issue, among others, will be necessary to determine whether there is any evidence that this policy has harmed Bright House, much less (and distinctly) whether it harms consumers.

*Second*, Verizon does not refuse to port any numbers to Bright House. Rather, consistent with its tariffs, Verizon will port the number after the DSL service is terminated. Verizon's current process ensures that the customer (wholesale or retail) understands that the DSL service will be terminated with the port. A competitor can then re-establish broadband service for the customer using its own service or other options, such as line-splitting. Although Bright House asserts that there have been delays caused by the processes through which Verizon ports numbers, it has not

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<sup>18</sup> See Ind. Anal. & Tech. Div., WCB, FCC, High-Speed Services for Internet Access: Status as of December 31, 2003 at Table 7 (June 2004).

documented these claims. Further information and discovery are thus necessary to probe this unsubstantiated claim. In any case, Verizon will demonstrate that any individual issues are atypical and do not show that Verizon has failed to perform adequately in porting numbers in the aggregate.

*Third*, there are significant technical difficulties associated with providing DSL without underlying voice service. At hearings, Verizon will (1) demonstrate that there are currently various operational and administrative issues preventing compliance with Bright House's demand and (2) identify possible solutions to those issues (including any revisions to wholesale systems, revisions to retail systems of customer accounts and billing systems, as well as development of new configurations to ensure parity of service for Data LECs). Verizon will also provide evidence of the operational inadequacies of Verizon's trial of stand-alone DSL service, and the administrative and operational issues raised by that trial.

*Fourth*, granting the relief Bright House seeks would negatively impact competitive DSL providers ("DLECs"). In circumstances where a DLEC offers DSL using a line-sharing arrangement with Verizon, termination of Verizon's voice service would likewise put an end to the DLEC's line-sharing arrangement, and the DLEC would be required either to terminate service or to purchase access to an unbundled loop. The process for ensuring that all parties are treated appropriately in those circumstances is complicated. Accordingly, Verizon will show that these issues are most appropriately raised through CLEC User Forum (CUF), so that all affected parties can be heard and appropriate resolutions worked out.

With those overarching points in mind, Verizon hereby responds to the numbered paragraphs of the Complaint. Any allegation not expressly admitted shall be deemed denied:

1. Verizon denies the first sentence of paragraph 1. As discussed above, there are factual disputes as to the issues raised by the Complaint. Verizon acknowledges, however, that it requires a customer to disconnect its DSL service before porting a number. The rest of this paragraph contains legal assertions that do not require a response. To the extent any response is necessary, Verizon denies these assertions.

2. Verizon admits the first sentence of paragraph 2. The second sentence of this paragraph contains legal assertions that do not require a response. To the extent any response is necessary, Verizon denies these assertions. Verizon denies the remainder of paragraph 2.

3. Verizon is without sufficient information to respond to the allegations in paragraph 3, except that Verizon admits that Bright House does not buy UNEs from Verizon, resell Verizon services, or have collocation arrangements with Verizon in Florida.

4. Verizon admits the first sentence of paragraph 4 and denies the remainder of the paragraph.

5. Verizon does not dispute that Bright House seeks an order of the type discussed in paragraph 5, but denies that it has any entitlement to such relief, that such relief would be consistent with the public interest, or that this Commission has the authority to grant such relief.



6. Verizon does not dispute that Bright House seeks a declaratory ruling of the type discussed in paragraph 6, but denies that it has any entitlement to such relief, that such relief would be consistent with the public interest, or that this Commission has the authority to grant such relief.

7. Verizon is without sufficient information to respond to paragraph 7.

8. Verizon admits paragraph 8 except that it denies that the address in Tallahassee is Verizon's principal place of business in Florida. Verizon's principal place of business in Florida is 201 North Franklin Street, Tampa, FL 33602.

9. Paragraph 9 contains legal argument as to which no response is necessary. To the extent a response is necessary, Verizon denies these claims. Additionally, the second-to-last sentence of this paragraph quotes an order of this Commission. Verizon respectfully refers the Commission to that decision for its meaning and denies all inconsistent allegations.

10. Verizon is without sufficient information to respond to the allegations regarding Bright House's practices and "need[s]" in the first six sentences of paragraph 10. The last sentence of this paragraph quotes a statement of FCC Chairman Powell. Verizon respectfully refers the Commission to that statement for its meaning and denies all inconsistent allegations.

11. In response to paragraph 11, Verizon admits that, to the extent Bright House does not use UNEs or resale, industry disputes regarding those issues are not relevant to it. Verizon is without sufficient information to determine what Bright House requires "to fully serve its customers' needs," but denies that it fails to provide adequate number portability.

12. Verizon denies the first two sentences of paragraph 12. In particular, Verizon notes that, as discussed above, there are significant operational, administrative, and technical issues raised by providing DSL without voice service. Verizon admits that DSL and voice service use different frequencies. Because of the technical and operational issues, discussed above, Verizon denies the fourth sentence of this paragraph. Verizon is without sufficient information to respond to the fifth sentence of this paragraph, which addresses the practices of another ILEC. In response to the last two sentences of this paragraph, Verizon notes that, as discussed above, the trials it has done of stand-alone DSL raised operational and administrative issues.

13. Paragraph 13 contains legal assertions and conclusions as to which no response is necessary. To the extent a response is deemed necessary, Verizon denies these assertions.

14. Verizon denies paragraph 14.

15. Verizon is without sufficient information to respond to the first sentence of paragraph 15. In response to the second sentence, Verizon admits that it does not provide DSL-based Internet access to residential consumers that do not receive Verizon voice service, and that it requires a customer to cancel his or her DSL service before porting a number so that the customer does not inadvertently lose that service, but denies Bright House's characterizations of Verizon's policy.

16. In response to paragraph 16, Verizon states that it is without sufficient information to address Bright House's assertions about its experiences and those of its own customers.

17. In response to paragraph 17, Verizon repeats and realleges its answers to paragraphs 1 through 16 above.

18. Paragraph 18 quotes and characterizes an order of this Commission. Verizon respectfully refers the Commission to that order and denies all inconsistent allegations.

19. Paragraph 19 contains legal assertions characterizing the actions, strategy, and vision of the Florida Legislature. To the extent those assertions are based on statutes passed by the Legislature, Verizon respectfully refers the Commission to those statutes and denies all inconsistent allegations. To the extent the paragraph contains legal argument, no response is necessary. To the extent a response is necessary, Verizon denies that these statutes support Bright House's argument here.

20. In response to the first sentence of paragraph 20, Verizon is without sufficient information to know what is "central" to competition in Bright House's view, but denies that it has not provided timely porting of telephone numbers. The second sentence of paragraph 20 refers to a document issued by this Commission. Verizon respectfully refers the Commission to that document and denies all inconsistent allegations.

21. The first sentence of paragraph 21 contains legal argument as to which no response is necessary. The remainder of paragraph 21 refers to orders of the FCC. Verizon respectfully refers the Commission to those documents and denies all inconsistent allegations.

22. Paragraph 22 characterizes an order of the FCC. Verizon respectfully refers the Commission to that order and denies all inconsistent allegations. Verizon denies that it has violated the FCC's order.

23. Verizon denies the first sentence of paragraph 23 because, among other things, there are operational and administrative difficulties with providing DSL without voice service, as Verizon has noted above. No response is necessary as to the second sentence of paragraph 23, which details Bright House's alleged "objection[s]" to Verizon's policies.

24. In response to paragraph 24, Verizon repeats and realleges its answers to paragraphs 1 through 23 above.

25. Paragraph 25 contains legal argument as to which no response is necessary. To the extent a response is deemed necessary, Verizon denies paragraph 25.

26. Paragraph 26 contains legal argument as to which no response is necessary. To the extent a response is deemed necessary, Verizon denies paragraph 26 and in particular denies that this Commission has jurisdiction over Bright House's Complaint. Moreover, as to the decision of the Commission and the Florida statutes that Bright House cites, Verizon respectfully refers the Commission to those documents and denies all inconsistent allegations.

27. Verizon denies the first and third sentences of paragraph 27. Verizon is without sufficient information to respond to the second sentence of paragraph 27.

28. Verizon denies that its practices create a barrier to competition. The remainder of paragraph 28 contains characterizations of this Commission's decisions.

Verizon respectfully refers the Commission to those decisions and denies all inconsistent allegations.

29. Paragraph 29 attempts to characterize prior decisions of this Commission. Verizon respectfully refers the Commission to those decisions and denies all inconsistent allegations. Verizon admits that, to the extent that Bright House does not seek access to UNE loops, issues relating to the use and deployment of those loops are not implicated here.

30. Paragraph 30 attempts to characterize a prior decision of this Commission. Verizon respectfully refers the Commission to that decision and denies all inconsistent allegations. Bright House's attempt to characterize what is "relevant" about that decision is legal argument to which no response is necessary. Moreover, to the extent that paragraph 30 quotes from a statute, Verizon respectfully refers the Commission to that statute and denies all inconsistent allegations. To the extent a response is deemed necessary, Verizon denies this claim.

31. The first five sentences of paragraph 31 contain legal argument as to which no response is necessary. To the extent that a response is deemed necessary, Verizon denies these claims. Verizon denies the remainder of this paragraph, and in particular denies that it does not properly port numbers or that its practices are anticompetitive.

32. Verizon is without sufficient information to respond to the specific anecdote contained in paragraph 32. Verizon denies that its actions are unlawful.

33. Paragraph 33 contains legal argument as to which no response is necessary. To the extent a response is deemed necessary, Verizon denies these

arguments. Moreover, to the extent that paragraph 33 quotes from agency orders and statutes, Verizon respectfully refers the Commission to those documents and denies all inconsistent allegations.

34. Verizon denies the first sentence of paragraph 34. The remainder of paragraph 34 characterizes agency orders, and Verizon respectfully refers the Commission to those documents and denies all inconsistent allegations.

35. Paragraph 35 contains legal argument that, among other things, attempts to characterize this Commission's prior orders. No response is necessary as to such argument. In the event a response is deemed necessary, Verizon denies these legal claims. In particular, Verizon denies that the "federal law issues" implicated by prior cases are absent here and that Verizon has imposed an unjust or unreasonable condition. Verizon is without sufficient information to respond to Bright House's allegations regarding its own business.

36. Verizon denies paragraph 36.

Verizon denies that Bright House is entitled to, or should be granted, any relief.

Respectfully submitted this 5<sup>th</sup> day of November, 2004.

s/ Richard A. Chapkis

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Richard A. Chapkis  
201 North Franklin Street, FLTC0717  
P. O. Box 110 (33601)  
Tampa, FL 33602  
(813) 483-1256  
(813) 204-8870 (fax)

Attorney for Verizon Florida Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint Against Verizon Florida Inc. and ) Docket No. 041170-TP  
Request for Declaratory Ruling by Bright House ) Filed: November 5, 2004  
Networks Information Services, LLC (Florida) )  
\_\_\_\_\_ )

**RESPONSE OF VERIZON FLORIDA INC. TO REQUEST FOR ORAL ARGUMENT**

The Commission should deny the request of Bright House Networks Information Services, LLC ("Bright House") to hear oral argument in this matter *before* the parties develop the facts or law related to Bright House's Complaint. As discussed in more detail in the Answer that Verizon Florida is filing today, if the Commission decides to proceed with this matter at this time, there are not only significant legal issues to resolve, but also important factual disputes that the parties should be able to develop through discovery and hearing before any oral argument is held. Those factual issues involve, among other things, the basis for Bright House's claims of competitive harm -- an issue on which Verizon Florida is entitled to discovery -- as well as the operational and administrative problems raised by the relief Bright House requests -- an issue on which Verizon anticipates providing substantial testimony. The Commission would benefit by following ordinary procedures and allowing discovery and hearing on these factual issues before hearing oral argument.

Respectfully submitted this 5<sup>th</sup> day of November, 2004.

s/ Richard A. Chapkis

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201 North Franklin Street, FLTC0717  
P. O. Box 110 (33601)  
Tampa, FL 33602  
(813) 483-1256  
(813) 204-8870 (fax)

Attorney for Verizon Florida Inc.