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 Sent: Tuesday, February 22, 2005 2:20 PM
 To: Filings@psc.state.fl.us
 Cc: Beth Salak; Beth Keating; Richard Chapkis; Michael Gross; Blanca Bayo
 Subject: RE: Filing in Docket 041170-TP

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Proceeding:

Docket No. 041170-TP

In re: Complaint against Verizon Florida Inc. and request for declaratory ruling by Bright House Networks Information Systems, LLC (Florida)

Filed on Behalf of:

Bright House Networks Information Systems, LLC (Florida)

Total Number of pages:

Brief: 6 (including certificate of service)

Description:

The attached brief, in response to Issue Nos. 1 and 2 in this matter, explains why the issues raised in this matter are different from those raised in certain federal cases identified in Issue Nos. 1 and 2, so that there is no need to delay a decision on the merits of this matter while those federal cases are decided.

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD.
TALLAHASSEE, FL 32399-0850

In re: Complaint against Verizon Florida Inc. and
request for declaratory ruling by Bright House
Networks Information Systems, LLC (Florida)

Docket No. 041170-TP

BRIEF OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC (FLORIDA)

Bright House Networks Information Services, LLC (Florida) ("BHN") respectfully files this brief on Issue Nos. 1 & 2 in this matter, in response to the Prehearing Officer's ruling dated February 1, 2005. Those issues ask whether this case should be delayed while the Federal Communications Commission ("FCC") and/or the federal courts resolve certain matters pending before them.¹ As described below, there is no reason to delay this case. Although there are some similarities between this case and the federal matters referred to in Issue Nos. 1 & 2, at bottom, both the relevant factual setting and the governing law in those federal matters are quite different, so waiting to resolve those cases will not contribute to resolving this one.

I. BHN'S CASE ADDRESSES THE TERMS AND CONDITIONS OF VERIZON'S INTRASTATE BASIC TELEPHONE SERVICES, NOT UNES OR DSL.

BHN provides voice services that compete with the traditional circuit-switched telephone services of Verizon Florida, Inc. ("Verizon"). BHN is a facilities-based competitor. It connects to its customers by means of the facilities of its cable affiliates, using Voice-over-Internet Protocol ("VoIP") technology. At present BHN obtains its circuit-switched interconnections to the public switched network, including Verizon, by contracting with third parties. BHN does not

¹ Issue No. 1 asks whether the Commission should delay decision in this case until the FCC resolves BellSouth's petition seeking to preempt states (such as Florida) from requiring BellSouth to provide digital subscriber line ("DSL") service to customers, either on a shared loop or separate loop, when a competing carrier uses unbundled network elements ("UNEs") to provide voice service to those same customers. Issue No. 2 asks whether this case should be delayed until federal courts resolve appeals filed by BellSouth against this Commission's rulings that, in effect, require such actions by BellSouth.

use any UNEs to provide its services. BHN does not resell any Verizon services. To the contrary: BHN offers direct, head-to-head, facilities-based competition for Verizon's core, traditional monopoly service: voice communications offered to Florida's residential consumers.

The fact that BHN has its own network does not mean it cannot be harmed by anticompetitive Verizon conduct. BHN is vulnerable if Verizon fails to provide, principally, two things: (1) seamless and efficient network interconnection to exchange traffic; and (2) seamless and efficient arrangements for transferring customers from Verizon when BHN signs up a customer. This case involves Verizon's failure to deliver the second item.

The way things are supposed to work, when a customer decides to take voice service from a competitor, the competitor sends Verizon an electronic "local service request," or LSR. The LSR is (among other things) a representation that the customer has authorized the transfer of his or her voice service to the new provider. When it gets the LSR, Verizon is supposed to "port" the customer's telephone number to the competitor within a few days. Calls to the customer's number will then be routed to the new provider's network.²

BHN began offering service in mid-2004, and soon encountered a problem: Verizon rejected certain BHN LSRs. There was nothing wrong with the LSRs. The problem was that Verizon's records showed that DSL service was present on the line. For reasons that were and are mysterious, Verizon had set up its system so that customers with DSL on their line could not have their service (including their telephone number) automatically transferred to a competitor.³

² With number portability, a customer can change voice service providers while retaining his or her original telephone number. Number portability was mandated as part of the Telecommunications Act of 1996. 47 U.S.C. § 251(b)(2). See 47 C.F.R. Part 52 (FCC regulations regarding number portability).

³ If a customer is *not* a DSL user, the LSR will normally sail through. But if the customer *is* a DSL user, he or she can't just ask the new provider to handle it. Instead, Verizon imposes an elaborate process: the new provider gives Verizon the request, which is rejected because of the DSL; then the new provider calls the customer back and asks him or her to cancel the third-party service that uses DSL. (note continued)...

It became clear that Verizon would not fix this problem. Sometimes Verizon said that it wanted to solve the problem, or was running a trial, or was talking to lots of competitors about it. But nothing ever actually *happened*. Verizon was holding a substantial fraction of its basic telephone service customers hostage. Given the amount of DSL in the market, if telephone service customers who also use DSL cannot easily switch providers, this is untenable for BHN.

Aside from its anticompetitive impact on BHN, Verizon's practice plainly and directly harms Florida basic telephone service customers. Their ability to get service from the provider of their choice is plainly impaired. Moreover, when those customers signed up for their service — and to this day — nothing in Verizon's Florida tariffs said that if the customer *also* signs up for unregulated Internet access service using DSL, the customer forfeits his or her right to easily change voice service providers — a right any other basic service customer has.

BHN's complaint is addressed to this unjust, unfair, and unreasonable restriction on a customer's right to terminate intrastate, basic voice telephone service. Verizon has unlawfully linked that right to whether the customer buys, or does not buy, third-party Internet access services (jurisdictionally interstate and unregulated) by means of DSL (jurisdictionally interstate and regulated by the FCC). BHN believes that this linkage is contrary to Florida law, which is the key issue it seeks to have resolved as the case moves forward.⁴

Verizon undoubtedly disagrees with BHN's view of the correct *answer* to the question of whether Verizon's practices violate Florida law. But it has no sound basis to claim that this is not, in fact, the *question* at hand. And this question of Florida law is completely distinct from

...(note continued)

Then the customer (and the new provider) wait for *that* cancellation to go through, and also wait for the third party to tell Verizon that the customer has cancelled the third party's service. Then, the new voice provider submits the LSR *again*, and this time — hopefully — it should go through.

⁴ BHN alleges that Verizon is violating FL. STAT. 364.10(1), which forbids, *inter alia*, subjecting any person "to any undue or unreasonable ... disadvantage."

the issues regarding authority over UNEs and DSL that are at the heart of the federal cases on which Verizon relies to try to stop this case in its tracks.

II. THE FEDERAL CASES ADDRESS UNES AND DSL, NOT THE TERMS AND CONDITIONS OF VERIZON'S INTRASTATE BASIC TELEPHONE SERVICE.

Providers other than BHN have encountered Verizon's refusal to allow customers with DSL on the line to leave Verizon. But, because those other providers have very different networks and operations, their disputes with Verizon are quite different from BHN's. Other competing providers resell Verizon's services or buy UNE loops (the wires connecting Verizon's switches with end users) from Verizon. So, a UNE-based competitor does not just ask Verizon to port the customer's number to the competitor's network; the UNE-based competitor also needs Verizon to provide a UNE loop so the competitor can *provide* voice service in the first place. Normally, that will be the *same* loop on which the customer is already receiving service. Problems then arise when the customer has DSL service on that loop. But the problems are legally and factually quite different than those facing BHN.

It is not easy to figure out what to do when a UNE-based competitor wants to provide voice service to a Verizon customer that is already receiving DSL service:

- Does federal law permit a state to require Verizon — which previously provided both basic voice service and DSL-related services on the same loop — to share that loop with a competitor, so that the competitor provides voice service and Verizon provides DSL?
- If this is permissible under federal law, but not literally required, should a state exercise its discretion (under its state and federal authority to impose additional procompetitive interconnection and access obligations) to require it?⁵
- If so, should the normal price for the UNE loop apply, or should it be lower to reflect that Verizon will continue to use “part” of the loop?

⁵ See 47 U.S.C. § 251(d)(3) (FCC may not “preclude ... enforcement of” state access and interconnection obligations); 47 U.S.C. § 261(c) (nothing in §§ 251 through 260 “precludes a state” from imposing requirements to facilitate competition for intrastate services). In both cases the relevant state action must be consistent with federal law and FCC requirements.

- If federal law does not permit or require Verizon to *share* a loop, does federal law permit or require Verizon to deploy a new, separate loop for the competitor to provide voice services, even though normally deployment of new UNE loops is not required?
- How are the answers affected by the fact that the FCC used to require provision of the DSL portion of a loop as a separate UNE, but has now reversed that determination, while leaving certain existing DSL-only UNE installations “grandfathered?”

These are the kinds of questions raised in the federal cases identified in Issue Nos. 1 & 2. They are interesting, and complicated — and have nothing at all to do with BHN’s complaint, which asks, simply, whether Florida law permits Verizon to interfere with the ability of its customers to terminate their intrastate basic voice service, depending on whether they are also using interstate DSL service to buy unregulated Internet access. The resolution of the federal questions about the rights of UNE-based competitors has literally no bearing on whether Florida law permits Verizon to refuse to transfer a customer’s voice service to a competing provider that does not use UNEs. And *vice versa*: resolving the state law questions at the heart of this case will not advance resolution of the federal law issues in the cases identified in Issue Nos. 1 & 2.

For these reasons, BHN respectfully requests that the Prehearing Officer rule in BHN’s favor on Issue Nos. 1 & 2 and permit this case to proceed to the merits, irrespective of the pendency of the federal cases Verizon wants to throw up as a shield to its unlawful practices.

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February 22, 2005

CERTIFICATE OF SERVICE

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