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Federal Communications Commission
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January 23, 2007

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By E-Mail and US Mail

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
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445 12th Street, SW
Washington, DC 20554

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**Re: Bright House Networks, LLC v. Tampa Electric Co.,
File No. EB-06-MD-003**

Dear Mr. Starr:

On behalf of Bright House Networks, LLC ("BHN"), this letter responds to the December 15 letter from Raymond Kowalski on behalf of Tampa Electric Company ("TECO"). Pursuant to Section 1.1407(a) of the Commission's Rules, we request leave to submit this brief response.

Mr. Kowalski refers to two recent cases that he maintains support TECO's position that BHN carries "telecommunications" on its attachments to TECO's poles. BHN believes that (1) Mr. Kowalski's letter is an unauthorized pleading in the above-referenced matter, and (2) the cases he describes have no relevance here.

First, the Commission's Rules are straightforward: unless specifically approved by the Commission, pole attachment proceedings consist solely of a complaint, a response and a reply. 47 C.F.R. § 1.1407(a). Over the years, the Commission has held steadfast both to this rule and its desire that pole attachment matters be kept simple and uncluttered. *In re. Adoption of Rules for the Regulation of Cable Television Pole Attachments*, 68 F.C.C.2d 3, 5 (1978) ("Pleadings are limited to a

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complaint, a response, and a reply."); *RCN Telecom Services of Philadelphia, inc. v. PECO Energy Co.*, 16 F.C.C. Rcd 11,857, 11,858 (2001) (Commission's rules provide for filing of a complaint, a response and a reply: "Filings that do not comply with Commission process will be returned or dismissed.") Mr. Kowalski's letter is unauthorized and should not be considered.

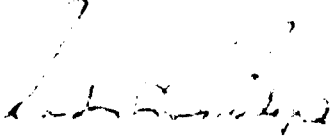
In any case, his letter does not provide any relevant information to the Commission. The first case – the Commission's decision in WC Docket No. 06-10, *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, 39 CR 1092 (Nov. 7, 2006) – does not address in any way whether the BHN's attachments "are used by telecommunications carriers to provide telecommunications services" within the meaning of Section 224(e)(1) of the Communications Act. We are baffled how Mr. Kowalski can consider the Commission's statement that "the transmission underlying BPL-enabled Internet access is 'telecommunications' . . ." to address whether BHN is a telecommunications carrier providing telecommunications service – the key issues here, none of which are even indirectly implicated by the *BPL* decision.

The second case that Mr. Kowalski desires to bring to the Commission's attention is no more helpful to his client. In *Berkshire Telephone Co. v. Sprint Communications Co.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006), the District Court for the Western District of New York upheld Sprint's interconnection rights under Section 251 of the Act on the ground that Sprint was acting as a telecommunications carrier, even when it did not itself provide service all the way to the ultimate customer. The court did not purport to deal with whether Time Warner was itself a telecommunications carrier, and certainly did not address whether Time Warner's attachments were subject to the higher pole attachment rate under Section 224(e). Indeed, in New York State, pole attachments are regulated by the New York Public Service Commission, and that Commission does not permit a higher rate for telecommunications attachments. In any case, the questions presented by BHN and TECO to the FCC in the instant case are questions that must be answered by this Commission, see *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545

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U.S. 967 (2005). The views of a district court in New York, in a case dealing with entirely different issues and different parties, are not germane here.

Respectfully submitted,



Gardner F. Gillespie
J. D. Thomas
Paul A. Werner, III

GFG/gs

cc: Lisa Griffin
Marsha Gransee
Raymond A. Kowalski
Florida Public Service Commission ✓

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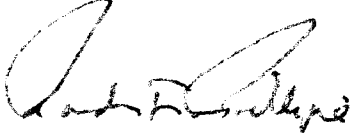
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gardner F. Gillespie". The signature is fluid and cursive, with a large initial "G".

Gardner F. Gillespie
J. D. Thomas
Paul A. Werner, III

GFG/gs

cc: Lisa Griffin
Marsha Gransee
Raymond A. Kowalski
Florida Public Service Commission ✓