

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070691-TP

In the Matter of:

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.



PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 3

BEFORE:                         CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER KATRINA J. McMURRIAN  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE:                            Tuesday, March 4, 2008

PLACE:                          Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY:                   JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

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1 PARTICIPATING:

2                   BETH KEATING, ESQUIRE, and CHRISTOPHER W. SAVAGE,  
3 ESQUIRE, representing Bright House Networks, LLC.  
4 Networks Information Services (Florida), LLC.

5                   DULANEY L. O'ROARK, III, ESQUIRE, representing  
6 Verizon Florida LLC.

7                   RICK MANN, ESQUIRE, representing the Florida Public  
8 Service Commission Staff.

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## P R O C E E D I N G S

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2 CHAIRMAN CARTER: Do we have everybody in place?  
3 Okay. Staff, you are recognized for Item 3.

4 MR. MANN: Good morning, Commissioners. Rick Mann  
5 for Commission staff on Item 3.

6 Commissioners, Item 3 addresses Verizon's motion to  
7 dismiss Bright House's complaint against Verizon for  
8 anticompetitive behavior in violation of Florida Statutes and  
9 Commission rules.

10 There are several issues for the Commission's  
11 consideration; however, Issue 1 is Verizon's request for oral  
12 argument on its motion to dismiss Bright House's complaint.  
13 And at your preference, Mr. Chairman, I can present Issue 1 for  
14 the Commission's decision first, and then present the rest of  
15 the issues to you, or I can proceed through all four issues  
16 now.

17 CHAIRMAN CARTER: Let's take it separate and apart.  
18 Commissioners, we have a recommendation for oral argument with  
19 five minutes of each party. Any objections?

20 COMMISSIONER EDGAR: No objection.

21 CHAIRMAN CARTER: Show it done.

22 We will go with oral arguments, five minutes each  
23 side. Please identify yourself and your party.

24 MR. O'ROARK: Good morning, Commissioners. My name  
25 is De O'Roark, and I represent Verizon.

1           This case concerns Verizon's retention marketing  
2 program. As you know, facilities-based competition is booming  
3 in Florida, and nowhere is that more true than in the Tampa  
4 area where Verizon now competes for telephone, broadband, and  
5 video services.

6           Verizon is investing heavily in its rollout of its  
7 FiOS network in the Tampa area so it can provide consumers a  
8 meaningful alternative at video service, a service that  
9 Consumer Reports has rated best in the country. Competitors  
10 like Bright House are not taking FiOS laying down. They are  
11 offering consumers triple play bundles of voice, data, and  
12 video services, and are aggressively seeking to retain  
13 customers in response to Verizon's FiOS service offerings.

14           Verizon, too, is seeking to retain its customers by  
15 providing accurate and timely information about its services  
16 and its prices. Bright House is requesting that Verizon be  
17 required to stop its retention marketing program in two  
18 parallel cases, one at the FCC and the other here at the  
19 Commission. Verizon has filed a motion to dismiss the Bright  
20 House complaint here in Florida, or in the alternative to stay  
21 the proceedings.

22           This morning I would like to focus on the alternative  
23 motion to stay because of recent and fast moving developments  
24 at the FCC that have not been briefed by the parties.  
25 Specifically, the FCC case between Verizon and three cable

1 companies, including Bright House, has been put on the  
2 accelerated docket which for good reason is commonly known as  
3 the rocket docket.

4           That development is important for two reasons.  
5 First, there is every reason to be confident that the FCC is  
6 going to decide that case quickly. Second, the FCC's ruling  
7 will substantially affect this case because any ruling the  
8 Commission makes here must be consistent with the FCC's ruling.  
9 I'd like to touch on both of those points briefly.

10           The first point is that the FCC is going to decide  
11 quickly. The case is proceeding on a fast-track. It is on a  
12 60-day schedule. The cable companies filed a complaint on  
13 February 11th. Verizon filed its answer on February 21st. The  
14 cable companies filed their reply on February 29th. There is  
15 going to be a status conference in the case later today. If my  
16 math is correct, the enforcement bureau is scheduled to issue  
17 its decision by on or about April 11th, a little more than a  
18 month from today. It's a month from next week.

19           The effectiveness of the decision can follow one of  
20 two tracks. Either the enforcement bureau's decision will be  
21 effective immediately, or, depending on how things shake out at  
22 the FCC, it is possible that the enforcement bureau's decision  
23 will be considered a recommended decision in which case the  
24 case will continue on a fast-track moving toward FCC final  
25 order a little more than a couple of months after the

1 enforcement bureau decision. That means we would be pointing  
2 toward late June in that second possible scenario.

3 Now, staff in this case has recommended against a  
4 stay because of the theoretical possibility that the FCC might  
5 take the case off the rocket docket. Now, while that may be  
6 theoretically possible, as a practical matter that is highly  
7 unlikely. Putting a case on the rocket docket is rare. The  
8 enforcement bureau's addition to put the case on the rocket  
9 docket was made with full knowledge and it was not made  
10 lightly. Before the case was put on the rocket docket, the  
11 parties described in detail the dispute in written filings and  
12 the enforcement bureau heard mediation, so it was fully briefed  
13 on the issues, or at least the nature of the issues before it  
14 decided to put the case on the rocket docket. The case is  
15 moving ahead according to plan.

16 Verizon respectfully submits that the best way to  
17 deal with staff's concern is not simply to plow ahead with this  
18 case and completely ignore what's going on at the FCC. The  
19 better course, the more sensible course is to stay this case,  
20 and then if in the highly unlikely chance or event that  
21 circumstances change, the Commission can always revisit the  
22 decision and reassess the situation.

23 The second point. Not only is the FCC going to --  
24 yes, sir. I'm at five minutes?

25 CHAIRMAN CARTER: No, you're over your five minutes.

1 I was giving you ten seconds.

2 MR. O'ROARK: Okay. The second point is that the  
3 FCC's decision will substantially affect this case because the  
4 Commission's ruling must be consistent with the FCC's ruling.  
5 Because the FCC is going to move quickly, because it's going to  
6 effect the outcome of this case, the sensible approach is to  
7 stay the proceedings here.

8 CHAIRMAN CARTER: You're recognized.

9 MR. SAVAGE: I'm Chris Savage with the firm of Davis  
10 Wright Tremaine for Bright House, with me is Beth Keating. I  
11 agree with an awful lot of what De said, that there is  
12 facilities-based competition in Tampa, Verizon is investing  
13 heavily in FiOS and other interesting things to try to make  
14 that, and we are going at it in the marketplace. And that's a  
15 good thing. That makes it especially important, however, that  
16 the rules that apply to facilities-based competition -- and  
17 there are rules -- be followed and be followed correctly.

18 The reason we are here today, and the reason we filed  
19 our matter as an emergency matter, and the reason why staying  
20 this matter would be, in our view, completely inappropriate is  
21 that Verizon today, right now, at least as we have alleged, is  
22 breaking the rules. Of course they want you to take your time.  
23 Of course they want you to wait and see what happens in  
24 Washington. Of course they want you to have it all as long and  
25 slow and careful as possible because every day that you don't

1 tell them to stop they are breaking the rules is our view. And  
2 every day this case doesn't move forward is a day that, at  
3 least on the record, you don't really know whether they are  
4 breaking the rules or not.

5 Now, addressing his particular points. Yes, I have a  
6 fair amount of confidence that the FCC staff, who are starting  
7 a meeting in 25 minutes, is going to try to move this case as  
8 quickly as they can. And, indeed, it wouldn't shock me to say  
9 that I bet the staff will get their recommendation, their  
10 decision out in the middle of April, more or less when they say  
11 they should.

12 The problem is that doesn't end the case. If the  
13 staff issues a recommended decision, that just moves things on  
14 until time in June if the FCC decides to stick with its  
15 schedule. Now, I don't know if you follow the FCC, but their  
16 situation is they have a statutory directive from Congress to  
17 get stuff done in nine months, or a year, or whatever and they  
18 can't do it.

19 The accelerated docket is entirely a product of FCC  
20 rules. And if the FCC doesn't follow its own rules and decides  
21 to let things slide, they can do that and they do that a lot.  
22 So I have great confidence in the FCC staff, I frankly have  
23 less confidence in the speed with which the FCC itself will  
24 resolve either the appeal or the decision on the recommended --  
25 you know, a decision on a recommended decision by their staff.



1           So I think putting faith in the FCC, you know,  
2 working and solving this problem really quick is kind of like I  
3 am from Washington, I'm here to help you. You know, you don't  
4 want to go there.

5           With respect to the issue of the law, I would just  
6 submit that the legal grounds for our complaint in Florida are  
7 vastly different than the legal grounds for our complaint at  
8 the FCC. You know, you've got all the papers in front of you,  
9 but fundamentally Verizon's defenses at the FCC are largely  
10 very technical. Oh, yes, okay, we are doing this. But, you  
11 know, Section 222(b) says it has to be this kind of a service  
12 that we might be providing you on a wholesale basis. And so we  
13 are not technically doing that kind of a service, so don't hold  
14 us liable.

15           Now, I don't think those are good arguments, but  
16 suppose they are. Suppose the FCC says, yes, well, it doesn't  
17 technically violate Section 222(b), so we are not going to hold  
18 you liable. What does that have to do with Florida Statute  
19 364.01, which says they can't act in an anticompetitive manner,  
20 period? What does that have to do with your general regulatory  
21 authority over the way these intrastate services are handled  
22 when a customer is moving from one to another? Nothing. And  
23 so, it is certainly true that if eventually the FCC gets around  
24 to telling them you can't do this because it violates federal  
25 law, we presume they will stop in Florida and everywhere else.

1           But if the FCC decides that it doesn't actually  
2 violate the technicalities of federal law because of the way  
3 that law is written, that says nothing about the effect on  
4 Florida consumers under Florida law. So I just don't see any  
5 reason to stay this case on the hope that maybe the FCC will  
6 meet its schedule this time and maybe resolve it. I won't go  
7 into infinite detail, and obviously I will answer any questions  
8 you have.

9           CHAIRMAN CARTER: Three minutes. That's pretty good.  
10 Staff, you're recognized --

11           Commissioners, I think what we will do is hear from  
12 staff, and then if you have any questions from either of the  
13 parties, we can do it that way. But let's hear from staff to  
14 present the issues to us.

15           Staff, you're recognized.

16           MR. MANN: Commissioners, Issue 2, should the  
17 Commission grant Verizon's motion to dismiss.

18           Staff recommends that the Commission deny both  
19 Verizon's primary motion to dismiss as well as its alternative  
20 and independent reason to dismiss.

21           Issue 3, staff recommends that the Commission deny  
22 Verizon's alternative motion to stay these proceedings pending  
23 resolution of the matter with the FCC.

24           And, Issue 4 regards the closing of the docket. If  
25 the Commission approves staff's recommendation in Issue 2, the

1 docket should remain open pending further proceedings.

2 CHAIRMAN CARTER: Thank you.

3 Commissioners? Commissioner McMurrian, you're  
4 recognized.

5 COMMISSIONER McMURRIAN: Thank you, Mr. Chairman.

6 This is for the parties. I agree with what Mr.  
7 Savage said about that we have some general regulatory  
8 authority under some of the statutes that you have referenced  
9 in your petition. I guess I think you said you don't see the  
10 reason to stay it now, and I guess my question is sort of the  
11 converse. I don't really see the reason not to stay it now  
12 because of what is going on at the FCC having had that  
13 explained about what's going on now. And I guess I wanted to  
14 ask each of you the question of essentially what's the rush.  
15 And I guess Part B would be how are customers impacted in this  
16 time period while we are waiting to see what the FCC does?

17 And I don't care who goes first, Mr. Chairman.

18 MR. SAVAGE: If I may. You know, we are the one  
19 griping, so I guess we can explain what's the rush. At a very  
20 high level what is going on is this, telephone service is kind  
21 of unique in that you can't just go from one supplier to  
22 another. You can't just, you know, shift from going from  
23 Safeway to Kroger or whatever.

24 If you want to shift services from one telephone  
25 provider to another telephone provider, those two providers

1 have to coordinate with each other, otherwise there are some  
2 technical things that have to happen and the customer service  
3 can get messed up where the first one turns off before the  
4 second one started.

5           That's kind of unusual, and that forces competitors  
6 who should be competitors to play nice with each other during  
7 that period when the customer is changing from one to another.  
8 And there is an obvious and strong conflict of interest on the  
9 part of the competitor who is losing the customer to not play  
10 nice, and instead to do everything they can during that period  
11 of shift imposed on us by means of technical problems,  
12 essentially, to tell the customer to stay. That's not fair.  
13 That's anticompetitive. What that does is it means that you  
14 can't have a smooth transition.

15           Now, in the short run, if I am an individual customer  
16 and, you know, I say I'll shift to Bright House, and they say,  
17 no, wait, I'll give you \$200. Well, you know, one individual  
18 customer or another might benefit in the short run, but in the  
19 long run the process of competition between the two players  
20 becomes a little bit corrupted because it isn't fighting on a  
21 level playing field for a customer.

22           You know, I'll confess in my dark past, you know,  
23 when I was in college I was a door-to-door salesman, right? It  
24 is really hard to get a customer to change their mind and say I  
25 want to do something different. It's really easy to say to a

1 customer, oh, things aren't so bad. You know, what's the  
2 problem? You know, I'll give you some money to stay. Win-back  
3 marketing, or winning a customer for the first time is hard,  
4 it's difficult, it's procompetitive, it's what should happen.  
5 Retention marketing is easier, it doesn't happen on the same  
6 kind of playing field and terms, and the only reason they can  
7 do it is because we have to tell them we are taking their  
8 customer.

9           And so there are some individual customers who may be  
10 benefitting from this, but the entire competitive process, you  
11 know, it's like playing cards when one guy can see the other's  
12 cards. It just isn't right. And so it's a broader issue  
13 there.

14           Now in terms of the impact on us, you know, I mean,  
15 the specific numbers we treat as confidential, but I think as  
16 we allege in our complaint, over a substantial period of time  
17 it has been -- I think I can say this -- it has been thousands  
18 of customers if you allow this to go forward. And that  
19 obviously impacts our business. It interferes with our ability  
20 to get capital and roll out new services. I mean, we do  
21 this -- well, with the money we get from customers is how we  
22 pay for improvements to our own services.

23           So, sure, any one individual customer can say I'm  
24 happy because Verizon gave me \$200, but the process of  
25 competition is being subverted, and that's why it is of broader

1 public interest concern and of immediate concern to us because  
2 the longer we have to put up with this just the more it costs  
3 us.

4 COMMISSIONER McMURRIAN: Mr. O'Roark.

5 MR. O'ROARK: Commissioner McMurrian, speaking of  
6 cost. The reason that you should not move forward in this case  
7 is because doing so ultimately would be wasteful not just for  
8 the parties, but also for the Commission. The Commission's  
9 prior rulings on marketing and win-back programs is clear. The  
10 Commission has said we have got jurisdiction to decide these  
11 kinds of disputes under Florida law, but when we do so we must  
12 act consistently with federal law.

13 If you look back at the 2003 orders of this  
14 Commission dealing with BellSouth's marketing programs, the  
15 Commission quoted the FCC's orders at length, and then it  
16 applied the FCC rulings to the facts at hand. In other words,  
17 where the FCC has spoken in this area, this Commission has  
18 interpreted Florida law as conforming to federal law. So you  
19 are running a great risk here if you tried to get out in front  
20 of the FCC, even assuming you could do that, of issuing a  
21 ruling that's ultimately going to be inconsistent with what the  
22 FCC says.

23 In this connection, I've got to point out that Bright  
24 House and the other cable companies sought accelerated  
25 treatment at the FCC. Bright House has not sought expedited

1 treatment here, meaning it didn't follow the Commission's rules  
2 seeking expedited treatment, where you file your testimony with  
3 your complaint and so on. They did not even attempt to do  
4 that. They sought to be on a fast-track at the FCC. They  
5 didn't seek that here.

6 Bright House in its pleadings and just now has talked  
7 about Verizon's practices being like a, you know, card player  
8 that's looking at the other player's hand. I would be remiss  
9 if I didn't point out that when the shoe is on the other foot,  
10 when Verizon is trying to win a Bright House cable customer,  
11 we, Verizon, don't have the ability to request that Bright  
12 House disconnect the customer's service. Bright House makes  
13 the customer call to disconnect its service, and that obviously  
14 gives Bright House an opportunity to retain the customer.

15 COMMISSIONER McMURRIAN: Mr. O'Roark, I appreciate  
16 that. I think we are getting a little bit, though, into the  
17 merits. And as you might imagine, I am interested, but I guess  
18 I really want an answer to the question are customers impacted,  
19 or what is the impact if there is delay?

20 MR. O'ROARK: The impact is that in the meantime  
21 customers will continue to get information from Verizon about  
22 its prices and services, and customers will continue to have  
23 the option of taking the offer, not taking the offer, Bright  
24 House will continue to have the opportunity to sweeten its  
25 offer, and these two intense competitors will continue to

1 compete over customers business and customers will benefit.  
2 That will be the impact.

3 MR. SAVAGE: Your Honor, if I could have just a  
4 second.

5 CHAIRMAN CARTER: No, no. Wait, wait.

6 COMMISSIONER McMURRIAN: Mr. Chairman, I was just  
7 going to say in response to some of what I have heard, I think  
8 each of them make some good points. I guess I don't see a need  
9 to move ahead at this point when there is something going on at  
10 the FCC.

11 Staff in its recommendation had a footnote on Page  
12 11, and they had a sentence talking about there was this other  
13 proceeding where in the interest of judicial economy and  
14 avoiding the possibility of inconsistent federal and state  
15 rulings, the Commission decided to hold a matter at abeyance.  
16 Now, I realize that that proceeding is not exactly the same as  
17 the one we have before us here, but I pulled that order and  
18 looked at it, and I thought the language was still fairly  
19 relevant.

20 And, again, it may not the facts are exactly the same  
21 in the two cases, but it seems like to me that customers aren't  
22 being harmed in the meantime. In fact, I think that the  
23 competition we have going between these two entities is  
24 beneficial for the customer. That's not to say, Mr. Savage,  
25 that if Verizon is inappropriately marketing to these customers



1 outside of what our rules and the statutes say that they should  
2 be allowed to do that. That is absolutely not what I'm saying.

3 I guess what I'm saying is if the FCC is looking into  
4 this, that perhaps there is no harm in waiting to see what  
5 input they might give to us on that issue before we move ahead  
6 and begin our proceedings. And it may be that we pick those  
7 proceedings up no matter which way the FCC decides the matter,  
8 but it seems like it may give us some additional guidance. It  
9 may help short-circuit some things that we might not have to do  
10 ourselves. I just don't see what the harm is.

11 But some of the language in that footnoted order,  
12 "The Commission would in no event abdicate its jurisdiction or  
13 responsibilities in any manner wherein we have an interest."  
14 And I think that would be the same if we did agree with the  
15 stay. "We are, however, ever aware of the need for judicial  
16 economies and the efficient use of government's limited  
17 resources. At this point, therefore, it would appear prudent  
18 to hold in abeyance our consideration of this matter until the  
19 federal court" -- in that case it was a federal court --  
20 "renders a decision on the motion to dismiss now pending before  
21 it."

22 And there were some other distinguishing factors. I  
23 will admit that in that case the decision might have been -- it  
24 looked like it would be binding on all the parties and that we  
25 may not have that same situation here. The FCC decision,

1 depending on what the FCC's rules are, would be different than  
2 maybe some of the things we are looking at in this case. But I  
3 still think that it may help shed some light on the facts  
4 before we proceed with our case.

5 But that's my opinion on it. So, in my opinion, I  
6 think that on Issue 3, I would deny staff. But I'm not making  
7 a motion at this point, I just wanted to throw that out for  
8 discussion.

9 CHAIRMAN CARTER: Thank you.

10 Commissioner Edgar and then Commissioner Argenziano.

11 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

12 Just to follow up on that. I would like to hear from  
13 staff and then from Mr. Savage, I think. I'm comfortable, in  
14 my own mind, that the requirement for a dismissal is not met by  
15 the information I have before. Issue 3 I'm still trying to  
16 think through. And so I would like the staff to elaborate on  
17 their recommendation to not grant the stay a little bit more.

18 And then as part of a follow-up, Mr. Savage, I think  
19 in your opening comments you made some statement along the  
20 lines of that the legal foundation of the matter pending before  
21 the FCC is significantly -- my words -- different than the  
22 legal foundation for the claim that is before us. And I would  
23 like you to elaborate on that a little bit, again, just trying  
24 to think through Issue 3 a little bit more in my own mind.

25 Mr. Mann.

1 MR. MANN: Yes, Commissioner.

2 As has already been discussed to some extent, the  
3 bottom line is that there is no certainty in the FCC's  
4 decision. There is no certainty as to when it will make its  
5 ruling. As Mr. O'Roark mentioned, you are into mid-June,  
6 possibly even late June. If the ruling by the bureau is on  
7 time within the 60 days, then there are several also additional  
8 periods for challenge, for commentary, et cetera, that takes it  
9 on through June. That is if the bureau resolves it in 60 days,  
10 and if the FCC itself rules 30 days after those commentary and  
11 challenge periods.

12 There is also in our minds, the staff's mind, that  
13 there is no guarantee that the FCC will either resolve the  
14 dispute before this Commission or even provide good  
15 clarification of what we have. Keep in mind that the cable  
16 company, Bright House, is here under state law. That is how  
17 they filed their complaint. State law only, not federal law.  
18 And what is being dealt with obviously at the FCC is federal  
19 law. And as Mr. Savage has pointed out, there are differences  
20 in those two, the breadth of what is encompassed in those laws  
21 regarding anticompetitive marketing.

22 There is not a certainty that any conflict or any  
23 inconsistency would arise from the FCC decision. I think  
24 Mr. Savage has articulated well what the impact will be to its  
25 company and then the consequent impact on its customers, as

1 well.

2 CHAIRMAN CARTER: Commissioner Edgar, you asked a  
3 question of staff and Mr. Savage. You're recognized.

4 MR. SAVAGE: Thank you, Your Honor.

5 One of the things, I guess, I would point out is it  
6 is hard for me to imagine any combination of results at this  
7 Commission and the FCC where this Commission could be said to  
8 be inconsistent with what the FCC does. There aren't that many  
9 possibilities. Possibility number one is this Commission moves  
10 forward, decides that what Verizon is doing is violating  
11 Florida law, tells them to stop. The FCC says, you know, it's  
12 also violating federal law and tells them to stop. No  
13 inconsistency.

14 The other possibly, obviously one I don't like, is  
15 you say, hey, this is fine under state law. The FCC says it is  
16 fine under state law, no inconsistency. The inconsistency  
17 that, I guess, people are worried about is the FCC saying, you  
18 know, this doesn't violate federal law, but you folks saying,  
19 you know, it does violate Florida law. There's nothing  
20 inconsistent about that. There is all kinds of things that are  
21 okay as far as the federal law is concerned, but not okay as  
22 far as the state is concerned. Those are, I think, the only  
23 possibility. I mean, the other would be, gee, you think it is  
24 okay under Florida law and they say it violates federal law.  
25 But, again, there is no inconsistency there. They are just

1 different bodies of law that address different things.

2           Now, let me get into that in a little bit more  
3 detail. You can cut me off if you don't want the detail, but  
4 to be real specific, the federal law complaint is being brought  
5 under Section 222(b) and (a) principally of the Federal  
6 Communications Act. Section 222(b) is addressed to a very  
7 specific situation where one carrier goes to another carrier  
8 and says I've got to give you information in connection with  
9 providing a telecommunications service. And, if the carrier  
10 does that, then the carrier who's, you know, getting the data  
11 isn't allowed to use it in connection with marketing and so on.

12           222(a) says if one carrier gets another carrier's  
13 information, they have to protect its confidentiality. And we,  
14 the complainants at the FCC, contend that protecting  
15 confidentiality of information includes not misusing it for  
16 your own competitive purposes. Verizon is saying, no, no, that  
17 just means don't give it to the paper so they can publish it.

18           Those are interesting questions of federal law. I  
19 spend a lot of time on federal law. But neither of those  
20 questions raises the fundamental question that is implicated  
21 here, which frankly is properly before this Commission, is is  
22 what they are doing fair competition? I mean, I wish I could  
23 say solve this and there will never be a problem again. I  
24 think, in fact, as the facilities-based carriers compete with  
25 each other more and more, you are going to be called on more

1 and more to decide the rules of the road and how they get  
2 interpreted. You know, for the last ten years, or whatever it  
3 has been since the '96 Act or whatever, frankly, most of the  
4 competition has not been the kind of full facilities-based  
5 competition that we are providing to Verizon and they are  
6 providing to us. So it is kind of a new set of issues. And  
7 the FCC is not really -- I mean, that's not -- I mean, yes,  
8 they care about it, but this is home for you. This is the  
9 service that your consumers get. And sooner or later this  
10 Commission is going to have to decide the rules of that kind of  
11 competition as it relates to Florida consumers.

12           Now, the issue of, well, you know, in these earlier  
13 cases you said, well, we will follow the federal rule. Well,  
14 sure. The earlier cases involved the nonfacilities-based  
15 carriers, the people who rely on the unbundled network  
16 elements, the UNEs, and all that. There is absolutely no  
17 question that the federal rules apply to them. So, of course,  
18 it made sense to say, well, let's apply those rules. That is  
19 great, but that is not the question that we are presenting to  
20 you.

21           We think we are consistent with that precedent, but  
22 that doesn't limit you, and it can't because the factual  
23 situation is different. So, I just don't see any  
24 inconsistency. We are making -- yes, the same bad stuff they  
25 are doing we are saying violates federal law and state law, but

1 the actual claim, the actual logic of our argument is quite  
2 different under the two statutes.

3 CHAIRMAN CARTER: Thank you.

4 Commissioner Edgar, did that answer your question?

5 COMMISSIONER EDGAR: Well, it helps.

6 I guess in fairness, I would ask if Mr. O'Roark wants  
7 to respond briefly, and then I look forward to other questions.

8 CHAIRMAN CARTER: And then Commissioner Argenziano.

9 MR. O'ROARK: Thank you, Commissioners.

10 The first thing to point out is that at the FCC  
11 Bright House and Verizon are both parties. Bright House is  
12 challenging the same retention marketing program that is at  
13 issue here. And Bright House is seeking to make Verizon stop  
14 that program, just as it is asking the Commission to do here.

15 It is clear based on -- it is clear that Bright House  
16 is asking you to make a radical departure from your precedent,  
17 because the way you have approached these issues before is to  
18 look at the FCC rules and apply them. For example, in the  
19 BellSouth case, the Commission upheld BellSouth's marketing  
20 programs based on the FCC rules. It didn't then come and make  
21 a second swipe, as Bright House suggest you should, and say,  
22 well, it's okay under the FCC rules, let's take a look under  
23 state law. It looked at the FCC rules and that decided the  
24 matter.

25 I am a bit puzzled by Mr. Savage's attempt to

1 distinction by saying, well, you know, that was based on UNE  
2 competition, because, after all, Bright House is challenging  
3 our program at the FCC under the FCC's rules. So the  
4 suggestion that Bright House may not think the FCC's rules  
5 apply, and that may not be what they are suggesting, but, in  
6 any event, that would be inconsistent with what they are saying  
7 at the FCC today. You asked me to be brief, and I'll cut it  
8 off there.

9 CHAIRMAN CARTER: Brevity is always appreciated.  
10 Commissioner Argenziano.

11 COMMISSIONER ARGENZIANO: Thank you.

12 You know, I'm hearing a lot of different arguments,  
13 and some good and some not so good and some great, I guess.  
14 But I'm going to go back to Commissioner McMurrian and her  
15 comments before about, you know, what's the harm in waiting.  
16 And I'm not sure, but what comes to my mind first is that if  
17 Verizon were in violation of state law, then the harm would be  
18 to Bright House by loss of customers. And then not knowing  
19 what the FCC is going to do, I don't know which way they are  
20 going to go, and this is before us as a state commission.

21 My concern is, and it can go the other way, it can  
22 harm Verizon if they are not. So what I pinpoint then is  
23 exactly what is the state law, and to me the answer I have to  
24 come up with is is Verizon violating the state law. Because I  
25 don't care about the FCC right now, what is before me now is



1 the determination of -- and that's the sole issue to me right  
2 now. If they are in violation of the state law, then obviously  
3 the harm would be, Commissioner McMurrin, to Bright House.  
4 And just the opposite if they were not.

5 So, to me, I would like more clarification of the  
6 current statutes, which I'm trying to read also to find out if  
7 there is a twist on words or what's going on here. Maybe staff  
8 could hone in on that, because to me that is the main question  
9 at this point, not what the FCC does down the road.

10 CHAIRMAN CARTER: Staff, can you assist us in this  
11 legal question?

12 MR. MANN: Commissioner, Bright House has filed under  
13 several sections of Chapter 364; 364.01, the powers of the  
14 Commission, Subsection G provides that the Commission shall  
15 ensure that all providers of telecommunications services are  
16 treated fairly by preventing anticompetitive behavior and  
17 eliminating unnecessary regulatory restraint. They have  
18 referenced I, as well, Subsection I, the Commission continuing  
19 its historical role as a surrogate for competition for monopoly  
20 services provided by local exchange telecommunications  
21 companies.

22 364.10 they are also filing under, and that concerns  
23 undue advantage to a person or locality. And it says in  
24 Subsection 1, "A telecom company may not make or give any undue  
25 or unreasonable preference, or advantage to any person or

1 locality, or subject any particular person or locality to any  
2 undue or unreasonable prejudice or disadvantage in any respect  
3 whatsoever."

4 COMMISSIONER ARGENZIANO: I'm sorry, which statute?  
5 Did you say 364.0?

6 MR. MANN: 364.10.

7 COMMISSIONER ARGENZIANO: .10, okay.

8 MR. MANN: Subsection 1, yes, ma'am.

9 CHAIRMAN CARTER: Commissioner, do you want to take a  
10 moment to look?

11 COMMISSIONER SKOP: Mr. Chair, just a point of  
12 information.

13 CHAIRMAN CARTER: Just one second.

14 Commissioner Argenziano, do you want to take a moment  
15 to look at that, and I will go to Commissioner Skop?

16 COMMISSIONER ARGENZIANO: Sure. Thank you.

17 CHAIRMAN CARTER: Commissioner Skop, you are  
18 recognized.

19 COMMISSIONER SKOP: Actually, Mr. Chair, as a point  
20 of information, it's Section 364.01(4)(g), I think, would also  
21 help.

22 CHAIRMAN CARTER: Commissioner Skop, did you have a  
23 question?

24 COMMISSIONER SKOP: No, it was just a point of  
25 clarification to Commissioner Argenziano's question.

1 CHAIRMAN CARTER: Commissioner McMurrian, and then we  
2 will come back to you, Commissioner Argenziano.

3 COMMISSIONER SKOP: Actually, Mr. Chair, I do.

4 CHAIRMAN CARTER: Oh, you did have a question?

5 COMMISSIONER SKOP: Yes, I did.

6 CHAIRMAN CARTER: Okay. Commissioner Skop, you are  
7 recognized.

8 COMMISSIONER SKOP: Thank you.

9 With respect to some of the comments, I just kind of  
10 wanted to throw in my two cents. I guess first and foremost,  
11 it surprises me why the FCC doesn't have the accelerated docket  
12 procedure for referring to the Universal Service Fund.

13 COMMISSIONER ARGENZIANO: Hear! Hear!

14 COMMISSIONER SKOP: Wishful thinking on my part. But  
15 I guess the way I'm looking at it is on Issue, I believe, 2,  
16 with respect to -- I am having trouble finding it -- with  
17 respect to Issue 2, at least in my mind, Bright House has  
18 alleged a genuine issue of material fact which is sufficient to  
19 deny Verizon's motion to dismiss. So that brings us to Issue  
20 3 where I guess various arguments have been heard and raised  
21 with respect to judicial economy, and the Commission to  
22 exercise concurrent jurisdiction, or stay that jurisdiction  
23 during the pendency of the federal law.

24 I guess my view is consistent with the position I  
25 think Commissioner Argenziano is trying to raise is that

1 clearly we do have concurrent jurisdiction under state law, and  
2 state law gives us the obligation to uphold the statutes which  
3 protect or prevent anticompetitive behavior. So, again, there  
4 may be arguments with respect to judicial economy by hanging on  
5 the wayside, but I think you can make stronger arguments for  
6 why this Commission should take a look at the statutory  
7 allegations that -- or the statutes that have been implicated  
8 in terms of the allegations that have been raised. So I just  
9 wanted to throw that out there.

10 CHAIRMAN CARTER: Thank you, Commissioner.

11 Commissioner McMurrian.

12 COMMISSIONER McMURRIAN: Thank you, Chairman. I  
13 appreciate all the comments from everyone and the staff.

14 I guess first, let me say, I don't want to seem  
15 flippant about the harm to Bright House. And I realize that if  
16 Verizon is engaging in any kind of misconduct that is not  
17 allowed under our statutes that that could be definitely a harm  
18 to your company. I guess the point I was making is with  
19 respect to any delay, I'm not sure that that has a harm on  
20 customers. And let me go forward a little bit.

21 Your point about the inconsistencies, I guess that's  
22 not my worry. That may be Verizon's worry in Verizon's  
23 documents -- excuse me, I should have chewed up this cough drop  
24 sooner. I guess my thinking is what if Verizon is told to stop  
25 by the FCC? What if the FCC says, Verizon, we don't think you

1 are abiding by federal law, and we want you to stop this. Then  
2 I think we are all done. I don't think that you would find a  
3 need to go forward with this proceeding here because I think  
4 that the FCC would sort of handle that on a several state  
5 basis. And I think that the stay doesn't close our docket and  
6 doesn't in any way keep us from enforcing state law. It's more  
7 about a timing issue, that at some point we might go forward  
8 with the docket, depending on what the FCC does, or it may be  
9 that you all decide some way to negotiate that based on the  
10 input that the FCC gave you.

11 I just don't see, necessarily, the rush. And the  
12 point I was making is that customers wouldn't be harmed in the  
13 meantime. But I do agree that to the extent that you are being  
14 harmed by the activities of Verizon that you are concerned  
15 about that, and that we are concerned about that, too. And  
16 definitely we are concerned about people abiding by state law  
17 and our rules. But I just wanted to be clear, I don't think --  
18 to me it almost seems like we are saying that if we don't do it  
19 right now that we wouldn't be enforcing state law, and I guess  
20 I'm saying I think we still would have the ability to come back  
21 and look at that after the FCC takes some action.

22 And at some point maybe it's appropriate, too, to put  
23 some kind of end point on it. If the FCC didn't act within  
24 some certain period of time, then we do start up our docket  
25 proceedings. Maybe that's a good way to handle that, some kind

1 of 90 days or something that would be reasonable. But anyway,  
2 I just wanted to clear about what my thinking was.

3 Thank you.

4 CHAIRMAN CARTER: Commissioner Argenziano.

5 COMMISSIONER ARGENZIANO: I think what I'm reading,  
6 and what I go back to is what is state law right now. And  
7 under anticompetitive behavior which, of course, we do not  
8 allow that, what would be anticompetitive. Is it at the point  
9 that the customer calls Bright House and says that I, you know,  
10 want to switch to your product? At what point would it be  
11 anticompetitive for Verizon to step in? And now I'm down to  
12 that kind of thing where, you know, at what point. Is it when  
13 it's already -- the switch is in place, or is it before the  
14 customer goes to Bright House? Which I don't think that would  
15 be anticompetitive before, but possibly if I were the customer  
16 I would call Bright House and say switch me. I want to switch  
17 from Verizon to Bright House, and then Verizon calls me. And  
18 correct me, somebody, if I'm wrong. I'm just trying to get  
19 this out there for both parties. And I call Bright House and  
20 say I want to switch, and then Verizon calls me and says, okay,  
21 here's a deal. We will given you this great package if you  
22 stay with us. At what point would it be anticompetitive? And  
23 I would like --

24 CHAIRMAN CARTER: Hang on. Before we answer your  
25 question, Commissioner, let me go to Mr. Cooke, because I think

1 we want to stay clear of the merits. And, procedurally, Mr.  
2 Cooke, help us out here, because I see we've got a motion on  
3 Issue 2. We have already dealt with Issue 1. Issue 2 deals  
4 with the motion to dismiss. And I think, Commissioner  
5 Argenziano, what we are dealing with primarily is procedural.  
6 If I'm wrong, straighten me out, Mr. Cooke. Procedural matters  
7 that don't allow us to go into the merits of the case. Is that  
8 correct?

9 MR. COOKE: Well, I think it is starting to get into  
10 the merits, but I think it asks the question -- I think the  
11 real question that Commissioner Argenziano is asking, if I  
12 understand it, is is there a question of state law that needs  
13 to be addressed. And I think that is really what --

14 COMMISSIONER ARGENZIANO: Absolutely.

15 MR. COOKE: -- is trying to be articulated. I don't  
16 know that we have to answer specifically yes, it occurs at this  
17 point, or yes, it occurs at that point. That's the issue. And  
18 I don't think any of us sitting here necessarily knows what  
19 that answer is. That is what the process here before this  
20 Commission would be designed to determine. So I think what you  
21 are asking is is there a question of state law.

22 COMMISSIONER ARGENZIANO: Mr. Chairman.

23 CHAIRMAN CARTER: Commissioner Argenziano.

24 COMMISSIONER ARGENZIANO: Exactly. How do you get to  
25 that point if you can't discuss it? And I understand, and that

1 is what I'm trying to say right now, is that the issue? And  
2 then later I guess at some time you get into --

3 MR. COOKE: And I don't have concerns if that  
4 question were answered by the parties here, but it is starting  
5 to get into the merits. But I don't think it is so far into it  
6 that I think --

7 CHAIRMAN CARTER: Okay. I just want to make sure --

8 MR. COOKE: Because I think the intent of the  
9 question was to try to figure out is there really a question of  
10 anticompetitive behavior under state law, and we are not going  
11 to take these answers as definitively answering those  
12 questions.

13 COMMISSIONER ARGENZIANO: Can I ask a question at  
14 this point?

15 CHAIRMAN CARTER: You're recognized.

16 COMMISSIONER ARGENZIANO: How would you ever come to  
17 a determination in this matter? You can do all the procedural  
18 things that you need to, but at some point you have to discuss  
19 the heart of the matter, and that is the heart of the matter.  
20 Is there anticompetitive behavior or is there not? And at what  
21 point is there and is there not, and what do the statutes back  
22 up or the rules back up. So at what point would that be  
23 determined, because as a Commissioner and as just a human  
24 being, how do you make that determination without discussing  
25 that information, or finding it?



1 MR. COOKE: Well, at some point we may have a hearing  
2 in which all of these interrelated facts would be developed,  
3 and based on all of that there would be policy questions  
4 probably addressed.

5 COMMISSIONER ARGENZIANO: Then it is correct for me  
6 to want to know if there is -- if that is a statutory violation  
7 at this point without getting into the merits of --

8 MR. COOKE: I'm not tremendously troubled by asking  
9 the parties' opinion to that question. I think it is starting  
10 to go down that road, but --

11 COMMISSIONER ARGENZIANO: I don't want to go down  
12 that road, I just want to be able to find out. To me that is  
13 the crux of everything that we are dealing with today.

14 MR. COOKE: I'm comfortable with it.

15 CHAIRMAN CARTER: You're recognized. Hang on a  
16 second, Commissioner. Based upon -- I think, Mr. Cooke said  
17 that you could ask -- did you say that she could ask the  
18 question?

19 MR. COOKE: I would never tell a Commissioner that  
20 they can't ask a question.

21 CHAIRMAN CARTER: I know that, but I'm saying we want  
22 to preserve the integrity of the process, because that would  
23 be --

24 MR. COOKE: The question is not designed, in my  
25 opinion, to answer definitively what anticompetitive behavior

1 is, what the merits are. The question is designed to elicit  
2 whether there is an issue of state law here.

3 CHAIRMAN CARTER: Okay. Good.

4 MR. COOKE: That is how I am interpreting the  
5 question.

6 CHAIRMAN CARTER: Great interpretation.

7 MR. SAVAGE: Your Honor, may I answer the question?

8 CHAIRMAN CARTER: Commissioner, then you can ask your  
9 question. Let's get a response for you.

10 MR. SAVAGE: Yes. Hearing all of this --

11 CHAIRMAN CARTER: From both of the parties.

12 MR. SAVAGE: To be very clear, obviously we think  
13 they are violating the law, but I'm not trying to argue that  
14 now. I just want to try to identify for you what I think the  
15 problem is that needs to be decided under state law.

16 The way we see the world is fairly simple. At any  
17 time either party can market all they want to everybody. You  
18 know, radio ads, TV ads, you know, even hang fliers on doors.  
19 All of the stuff that we actually do to try to get people to  
20 come to our service. So that is sort of forever.

21 After a customer has actually moved from Bright House  
22 to Verizon, and, yes, I am sad to say some go the other way, or  
23 come from Verizon to Bright House, once they have moved you can  
24 market to them all you want. You can send them targeted direct  
25 things saying, hey, you just left me, I wish you hadn't.

1 Please come back. Here is \$200. Here is a new TV. You know,  
2 whatever it is they are doing.

3 CHAIRMAN CARTER: Is that a high definition TV?  
4 (Laughter.)

5 MR. SAVAGE: What we are saying is what becomes  
6 anticompetitive, and obviously we disagree about that, our  
7 contention is of what becomes anticompetitive is, as I said  
8 earlier, there is this unique feature of phone service where we  
9 can't just take the customer. We have got to work with them.  
10 We have got to say, okay, we need to take your customer in  
11 three days. And during that three-day period you have got to  
12 do this complicated stuff on your switch, and we have got to do  
13 all of this stuff with the number portability data base so that  
14 at noon on Friday, or whenever it is, their service gets cut  
15 off and our service gets turned on.

16 And that unique period, that little three-day period  
17 when we have to work together, our contention is that it  
18 violates the state laws we have cited and the Commission rules  
19 we have cited for them to take advantage of the fact that we  
20 had to tell them we want to take their customer. To use that  
21 information to try to market to their customer. Our view is  
22 that is anticompetitive under state law. Now, of course, I  
23 could --

24 CHAIRMAN CARTER: No, don't make his argument for  
25 him. Allow him.

1 MR. SAVAGE: He will have his argument, but that is  
2 our contention of what the state law problem is. Marketing to  
3 a customer targeted during that period when we had to tell them  
4 they were leaving.

5 CHAIRMAN CARTER: Mr. O'Roark.

6 MR. O'ROARK: Commissioner Argenziano, Verizon's  
7 program is procompetitive. Now, if you think about it, as a  
8 consumer, I mean, in today's world particularly as you know in  
9 Tampa, more and more the competition we are talking about is  
10 not just about phone service. It's competition on triple play,  
11 voice, data, video, the whole nine yards. And if you are a  
12 consumer, I mean, you think about it, you go to the other  
13 brand, you have the cable guy, or the FiOS guy come out and you  
14 go home, wait for him to show up, make all the transitions,  
15 learn how to use all the services, and then a couple of weeks  
16 later you realize, oh, I could have gotten a better deal. That  
17 is not procompetitive. What is procompetitive is getting the  
18 information at the time you make a decision.

19 CHAIRMAN CARTER: Commissioner Skop.

20 COMMISSIONER SKOP: Thank you, Chairman Carter. And  
21 I just wanted to go back to our General Counsel. Mr. Cooke, I  
22 think the current procedural posture is basically not to get  
23 into the merits, but to determine whether a stay should be  
24 granted or whether we should exercise our concurrent  
25 jurisdiction to address issues under state law. And I think

1 that that probably turns on some of the discussion that was  
2 raised before us.

3 But, I think that is the only question. And I just  
4 wanted to make sure that if we decide to deny the stay, then  
5 the proper posture on a forward-going basis, I think, as you  
6 previously stated, would be to have a hearing where we would  
7 get into the specific merits regarding any allegations of  
8 anticompetitive behavior. Is that correct?

9 MR. COOKE: I think I agree with what you said,  
10 Commissioner, that we are here to decide on a motion to dismiss  
11 and whether a stay is proper. I think the thing we are  
12 struggling with is making sure that there is an issue of state  
13 law, not trying to get into the merits of it. And I will admit  
14 that some of this is starting to get in that direction. But  
15 there is a point at which you need to clearly understand what  
16 is the issue of state law, and I think that this was designed  
17 to identify that. I don't really want to see us go farther on  
18 the merits, because I don't think it's relevant at this point,  
19 and I agree with that.

20 COMMISSIONER SKOP: Thank you.

21 CHAIRMAN CARTER: Commissioners, I think we are on  
22 that dead horse again. From a procedural standpoint, we  
23 probably need to take the issue separately. Wouldn't you  
24 agree, Mr. Cooke?

25 MR. COOKE: I think that's a better approach,

1 Mr. Chairman.

2 CHAIRMAN CARTER: Okay. Commissioners, let's back up  
3 to Issue Number -- we have already dealt with Issue 1. That  
4 was to allow the parties oral argument. We are now on Issue 2,  
5 and that issue is should the Commission grant Verizon's motion  
6 to dismiss Bright House's petition for failing to state a claim  
7 for which relief can be granted.

8 Commissioner McMurrin, you're recognized.

9 COMMISSIONER McMURRIAN: I can move staff on Issue 2.

10 COMMISSIONER SKOP: Second.

11 CHAIRMAN CARTER: Commissioners, any questions? It  
12 has been moved and properly seconded on Issue 2. All those in  
13 favor let it be known by the sign of aye.

14 (Unanimous affirmative vote.)

15 CHAIRMAN CARTER: Those opposed, like sign? Thank  
16 you, Commissioners. Let's move forward now to Issue 3.

17 Commissioner McMurrin, you're recognized.

18 COMMISSIONER McMURRIAN: Chairman, I'm not sure if  
19 this motion will carry, but my motion on Issue 3 would be to  
20 deny staff on Issue 3. And I think I have probably explained  
21 it enough at this point. I do think that there is an issue  
22 proposed of state law. I do think that is before us. I just  
23 think that it would be appropriate to stay these proceedings  
24 until the FCC -- at least for some period of time, perhaps 90  
25 days, and let them take it up and then see where we are at that

1 point, because I think that could benefit us, judicial economy  
2 and some of the things that I mentioned earlier. But if that  
3 is not the will of the majority, then -- but that would be my  
4 motion on Issue 3.

5 CHAIRMAN CARTER: Hearing no second, Commissioner  
6 Edgar, you're recognized.

7 COMMISSIONER EDGAR: I tend to think this is one of  
8 those that there is no right or wrong answer.

9 CHAIRMAN CARTER: I think we are well beyond that.

10 COMMISSIONER EDGAR: And I guess, noting that I am  
11 prehearing officer, I have a tendency to therefore want to go  
12 along with Commissioner McMurrian's well-intended motion, but  
13 yet I think my judicial philosophy is just generally if  
14 something is brought before us, I have a tendency to want to  
15 carry it through.

16 And realizing the discussion that Commissioner  
17 Argenziano has had and others, it does appear to me that there  
18 is an issue of state law. To what extent and to what degree, I  
19 don't know yet, obviously. And I could truly go either way.  
20 But realizing where we are, I will throw this out and see where  
21 it leaves us, and that would to be make a motion in support of  
22 the staff recommendation on Issues 3 and 4.

23 COMMISSIONER ARGENZIANO: Second.

24 COMMISSIONER SKOP: Yes, second.

25 CHAIRMAN CARTER: It has been moved and properly

1 seconded that we move forward on Issues 3 and 4.

2 Commissioners, any questions? All those in favor, let it be  
3 known by the sign of aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN CARTER: Those opposed, like sign.

6 COMMISSIONER McMURRIAN: Aye.

7 Chairman, if I might clarify, though. I'm not sure  
8 about Issue 4. Since you included Issue 3 and 4, but I'm not  
9 sure what the outcome is on Issue 4. But on Issue 3 --

10 CHAIRMAN CARTER: On Issue 3 you are voting in the  
11 negative as opposed to the affirmative, is that correct?

12 COMMISSIONER McMURRIAN: Right.

13 CHAIRMAN CARTER: And on Issue 4?

14 COMMISSIONER EDGAR: I did include Issue 4 in my  
15 motion, and that was with the understanding that if Issue 3,  
16 the staff recommendation carried, that clearly the docket would  
17 need to remain open to move through to the OEP, et cetera, but  
18 I will look to Mr. Cooke to see if I read that correctly.

19 CHAIRMAN CARTER: You are voting in the affirmative  
20 on that?

21 MR. COOKE: I think the docket needs to stay open if  
22 Issue 2 was approved, which it was. So it is kind of a fallout  
23 from Issue 2 itself, which was approved.

24 COMMISSIONER McMURRIAN: Mr. Chairman, that's how I  
25 see it as a fallout issue. I'm not taking issue with how the



1 fallout issue results from the majority's decision on Issue 3,  
2 so I don't really see myself dissenting on Issue 4.

3 MR. COOKE: Commissioner McMurrin, just clarifying,  
4 you are in favor of Issue 4.

5 CHAIRMAN CARTER: Okay. That is as clear as mud.

6 COMMISSIONER McMURRIAN: Thank you.

7 CHAIRMAN CARTER: Thank you, Commissioners, on Issue  
8 3.

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services  
5 Section, FPSC Division of Commission Clerk, do hereby certify  
6 that the foregoing proceeding was heard at the time and place  
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IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
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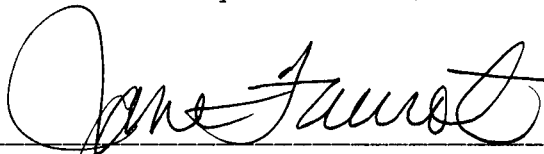
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DATED THIS 10th day of March, 2008.

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Official FPSC Hearings Reporter  
(850) 413-6732

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