

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

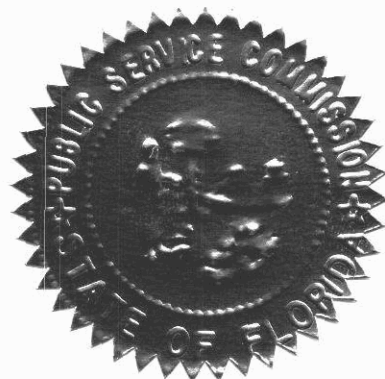
In the Matter of:

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.

DOCKET NO. 070691-TP

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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 COMCAST PHONE  
OF FLORIDA, L.L.C. D/B/A COMCAST  
DIGITAL PHONE.

DOCKET NO. 080036-TP



PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 2

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

DATE:                            Tuesday, June 17, 2008

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

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

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FLORIDA PUBLIC SERVICE COMMISSION

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1 PARTICIPATING:

2                   BETH KEATING, ESQUIRE, representing Bright House  
3 Networks Information Services (Florida), LLC.

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

6                   FLOYD R. SELF, ESQUIRE, representing Comcast Phone of  
7 Florida, LLC d/b/a Comcast Digital Phone.

8                   RICK MANN, ESQUIRE, representing the Florida Public  
9 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:** And with that, Commissioners, we  
3 move to Item 2.

4           Staff, you're recognized.

5           **MR. MANN:** Thank you, Mr. Chairman. This is Rick  
6 Mann on behalf of staff for Item Number 2, which addresses  
7 Verizon's motion for reconsideration of the Commission's orders  
8 denying Verizon's motion to dismiss the complaints of Bright  
9 House and Comcast, or to stay the proceedings pending the FCC  
10 action as well as the order establishing procedure in this  
11 matter.

12           Item 2 presents a few issues for the Commission's  
13 consideration; however, Issue 1 is Verizon's request for oral  
14 argument. At your preference, Mr. Chairman, I can present  
15 Issue 1 for the Commission's decision first and then present  
16 the rest of the issues to you, or I can proceed through all  
17 three issues now. Either way, the Commission staff is  
18 available for any questions you may have.

19           **CHAIRMAN CARTER:** Let's do this. Commissioners,  
20 they've asked for oral arguments, and I think staff's  
21 recommendation is that if we were to do that to allow five  
22 minutes per side. I'm inclined to do that, if that is okay  
23 with everybody? Okay. Let's recognize the parties for five  
24 minutes each side beginning with the moving party.

25           **MR. O'ROARK:** Good morning, Mr. Chairman,

1 Commissioners. I'm De O'Roark and I represent Verizon.

2           The motion for reconsideration that is before you  
3 this morning concerns Commission orders on our motions to  
4 dismiss, and, in the alternative, to stay the case pending the  
5 FCC's decision on the federal retention marketing case.

6           The Commission denied our motion to dismiss for two  
7 reasons. First, the Commission said there was at least one  
8 factual issue that needed to be resolved, essentially whether  
9 Verizon's retail operations legitimately obtained notice that  
10 its customer plans to switch to another provider. The second  
11 reason was that the Commission was concerned that there might  
12 be factual issues arising out of our policy questions. The  
13 Commission also denied the motion for stay in part out of  
14 concern that the FCC case might not stay on a fast-track.  
15 Commissioner McMurrian dissented and would have been willing to  
16 grant a reasonable stay.

17           Shortly after the Commission issued its orders, the  
18 FCC's enforcement bureau issued its recommended decision in a  
19 federal case concluding that the claim submitted for expedited  
20 treatment should be resolved in Verizon's favor. As you'll  
21 recall, Florida has laws on general application that concern  
22 anticompetitive behavior in discriminatory practices. The  
23 Florida law does not specifically address retention marketing.  
24 Under federal law, however, there are statutes and FCC rules  
25 and orders that address this area much more specifically. This

1 Commission consistently in the past has interpreted state law  
2 as conforming to the federal law in this area. In fact, the  
3 one factual issue that the Commission identified in its orders  
4 is one that arises out of the FCC's interpretation of federal  
5 law.

6 We filed our motion for reconsideration on April 17th  
7 requesting that the Commission stay the case until the FCC  
8 issues its final decision. It has been two months since we  
9 filed our motion. The FCC's decision is now due next week on  
10 June 23rd. At this stage with the FCC's decision less than a  
11 week away, we respectfully submit that the best course is to  
12 stay the case. Let's see what the FCC has to say about this,  
13 defer a decision on the motion before you this morning, and  
14 then require a supplemental briefing once the FCC issues its  
15 order.

16 Based on the recommended decision, there appears to  
17 be a reasonably good chance that the FCC will clear up the one  
18 specific factual issue that you raised in your orders. The FCC  
19 also will have a chance to address policy issues. Mr.  
20 Chairman, with your permission I would like to hand out a press  
21 piece that illustrates the policy issue, a policy issue which  
22 the enforcement bureau raised in its recommended decision.

23 **CHAIRMAN CARTER:** You may do so.

24 **MR. O'ROARK:** Mr. Chairman, very briefly. This is an  
25 article entitled, "Cable show: Comcast to try to win --"

1           **CHAIRMAN CARTER:** Hang on a second. Did you get one  
2 to the court reporter?

3           (Pause.)

4           **CHAIRMAN CARTER:** Okay. Mr. O'Roark, you may  
5 proceed.

6           **MR. O'ROARK:** Thank you, Mr. Chairman.

7           As you can see, the title of the article is "Cable  
8 show: Comcast to try win-at-any-cost retention program." It  
9 was run in CedMagazine, which is an electronic magazine, as I  
10 understand it, May 20th, 2008. You'll see that based on  
11 comments that Comcast made at this trade show, Comcast is  
12 preparing to institute what the article says seems to be the  
13 single-most aggressive customer retention marketing program in  
14 the industry starting June 1. If you look at the next  
15 highlighted paragraph, you will see that Comcast extols the  
16 benefits of retention marketing. It says that customers can be  
17 unaware of the cost savings inherent in bundles, they just  
18 don't know the deals they can get.

19           If you go down to the next highlighted piece, Comcast  
20 explains why it believes that it could do retention marketing  
21 while Verizon cannot. And then the last highlighted quote or  
22 section says that the Comcast representative said that it will  
23 be a retain-at-any-cost situation. The enforcement bureau has  
24 recommended against having different rules for different  
25 platforms. We certainly hope that the FCC will agree.

1           In summary, Commissioners, we request that the case  
2 be stayed, that a supplemental briefing be ordered. This  
3 approach may save us from an unnecessary hearing and, at a  
4 minimum, would greatly assist the Commission in shaping the  
5 issues to be considered in this case.

6           Thank you.

7           **CHAIRMAN CARTER:** Thank you, Mr. O'Roark.

8           Mr. Self, you're recognized.

9           **MR. SELF:** Thank you, Mr. Chairman. Floyd Self on  
10 behalf of Comcast. Just a couple of quick points,  
11 Commissioners. First and foremost, the arguments that Verizon  
12 is raising with us today have all been heard and said before.  
13 The purpose of a motion for reconsideration as the staff  
14 recommendation points out is to point out some fact or law that  
15 was omitted or not considered the prior time when the  
16 Commission considered the issue. You have not heard anything  
17 new, different with respect to Verizon's arguments. In fact,  
18 this is basically a retread of what you have already heard in  
19 the past.

20           Second, this is a recommended order, and clearly in  
21 and of itself it has no dispositive value of any kind at all.  
22 Third, even it did, or even if the FCC does, in fact, issue an  
23 order next week adopting this matter in its entirety, the fact  
24 of the matter is the complaints that are before you in these  
25 two dockets arise out of state law over which you have

1 exclusive jurisdiction. It is not concurrent jurisdiction, but  
2 rather it's exclusive jurisdiction. You have the duty under  
3 Florida law to resolve the claims that are being made as a  
4 matter of state law and to not defer or wait for somebody else  
5 to deal with it. There clearly has been no preemption in this  
6 case by the FCC, there is no direct, indirect, hint,  
7 suggestion, hope, dream, or anything with respect to preemption  
8 of this matter by the FCC. And so your duty and obligation is  
9 very clear, you have to resolve this matter as a matter of  
10 state law.

11 Verizon's final point that somehow the FCC's  
12 interpretations of federal law is relevant or dispositive of  
13 what you have to do under state law, assuming that Mr. O'Roark  
14 is correct, that that is somehow relevant over dispositive, the  
15 fact of the matter is that is not a basis for reconsideration  
16 which is being sought here, nor is it a basis for a stay. In  
17 fact, if things are as he purports they are going to be and the  
18 FCC is going to rule on this next week, or sometime immediately  
19 thereafter, there is absolutely no reason for this Commission  
20 to stay its proceedings. Rather they can continue if, in fact,  
21 when the FCC issues its order, if there is something relevant  
22 that happens, the parties can get with the prehearing officer  
23 and deal with that issue at that time.

24 In the meantime, every day that this case continues,  
25 Verizon is continuing to interfere with the business



1 relationships that Comcast and Bright House have with their  
2 customers and benefits from delay. And I think it's critical  
3 to understand that seeking of a stay, or any kind of delay in  
4 this proceeding benefits Verizon to the detriment of Comcast  
5 and Bright House. And it's imperative, given the allegations  
6 that have been raised by Comcast and Bright House that this  
7 Commission move as expeditiously as possible to resolve those  
8 complaints.

9           As we stand now with the calendar that we have, we  
10 are going to hearing at the end of August, which means there  
11 will be a decision probably in October, November, or  
12 thereabouts, which means it will have been over a year since  
13 the Bright House complaint had been filed and nearly a year  
14 since the Comcast complaint had been filed.

15           I'm urging you to go with the staff recommendation,  
16 deny the motion for reconsideration, deny the motion to stay,  
17 and proceed with your exclusive jurisdiction and let us resolve  
18 this case as it should be. Thank you very much.

19           **CHAIRMAN CARTER:** Thank you, Mr. Self.  
20 Commissioners, I kind of got ahead of myself. I don't this --  
21 we probably don't want to put this in the court reporter's  
22 record. It was just a matter of information for the oral  
23 arguments for the bench. So let's not mark it, just put it  
24 aside. It was just a way for us to get that. I got ahead of  
25 myself on that.

1           Besides, Mr. Self and the parties haven't had an  
2 opportunity to authenticate it or anything, or cross-examine  
3 it, so it will just be taken for what it is worth during oral  
4 arguments.

5           With that, Staff, we are ready to proceed with the  
6 case.

7           **MS. KEATING:** Mr. Chairman.

8           **CHAIRMAN CARTER:** Yes, ma'am. Oh, Ms. Keating.

9           **MS. KEATING:** If I may, just to add one additional  
10 point on behalf of Bright House.

11           **CHAIRMAN CARTER:** Of course. You're recognized.

12           **MS. KEATING:** Thank you, Mr. Chairman, Commissioners.  
13 Beth Keating, Akerman Senterfitt here today on behalf of Bright  
14 House Networks.

15           Bright House obviously echoes the comments that  
16 Comcast has made here today. Verizon has not identified any  
17 mistake of fact or law in any of the orders before you today.

18           Particularly, though, with regard to the motion for  
19 reconsideration of the order on the motion to dismiss Bright  
20 House's complaint, that motion for reconsideration was late,  
21 pure and simple. That in and of itself is a basis for denying  
22 the motion for reconsideration. The Commission has time and  
23 again said that the time for filing a motion for  
24 reconsideration is jurisdictional and that extensions cannot be  
25 granted, and it's a position that is so strongly held by this

1 Commission that it is, in fact, on your Commission website in  
2 the directions for electronic filings as well as in your  
3 statement of agency organization. Therefore, particularly with  
4 regard to Order 080180, Bright House would ask that the motion  
5 for reconsideration be denied.

6           **CHAIRMAN CARTER:** Thank you, Ms. Keating.  
7           Staff, you're recognized.

8           **MR. MANN:** Thank you, Commissioner.

9           On to Issue 2, then; that is, should the Commission  
10 grant Verizon's motion for reconsideration of the Commission  
11 orders denying Verizon's motion to dismiss the complaints of  
12 Bright House and Comcast or stay the proceedings as well as the  
13 order establishing procedure. Staff recommends that the  
14 Commission deny the reconsideration of the Commission's orders.  
15 Verizon's motion was untimely filed as the order regarding  
16 Bright House, and Verizon's motion does not meet the standard  
17 of review for reconsideration of the Commission's orders  
18 regarding Comcast and the order establishing procedure. The  
19 final issue, of course, is should the docket be closed.

20           **CHAIRMAN CARTER:** Thank you. Commissioners,  
21 questions.

22           Commissioner McMurrian, you're recognized.

23           **COMMISSIONER McMURRIAN:** Thank you. I have a  
24 question for Mr. O'Roark. I just wanted to clear on what it  
25 was that you are asking of us today. I think I heard you say

1 that you wanted us to stay the case, but also defer the  
2 decision on the matter before us today. Is it really just  
3 deferring the decision on the matter before us today to give  
4 time for the FCC, or is it staying -- is it both? I want to  
5 make sure I understand.

6 **MR. O'ROARK:** Let me try to be more clear. As you  
7 asked your question, I think I maybe was not as clear as I  
8 should have been. We are requesting that you stay the case,  
9 but then otherwise that you defer consideration, have  
10 supplemental briefs on the FCC's order, and then review the  
11 motion for reconsideration on the motion to dismiss after you  
12 have reviewed the supplemental briefs. Does that clear it up,  
13 Commissioner McMurrrian?

14 **COMMISSIONER McMURRIAN:** I think so. I was just  
15 making sure. I didn't know if you were asking us to just put  
16 off deferral -- just to defer the decision on Issue 2 until  
17 after we had more clarity about what the FCC would do, given  
18 that this is a recommended decision and the FCC would  
19 presumably act next week. I think it is June 23rd, and then  
20 you would want the opportunity to file briefs on that order,  
21 and then take the issue back up about the motion for  
22 reconsideration is what you are saying. But stay the case in  
23 that time frame.

24 **MR. O'ROARK:** Yes, Commissioner.

25 **COMMISSIONER McMURRIAN:** Okay. Thank you.

1           And I have one question, also, for Mr. Self. Mr.  
2 Self, you had said some things about the Commission not waiting  
3 for someone else to deal with the issue, and I guess what  
4 struck me about that was we have FCC decisions and federal  
5 rules and all that apply in a lot of our cases, and when we  
6 take those into account you are not saying that we are allowing  
7 someone else to deal with our cases, are you?

8           **MR. SELF:** I'm not saying that, no, because that  
9 would only be true if the FCC was actually going to preempt  
10 you, and that is clearly not the case here. They don't have  
11 the authority to do that. And this may not be a great analogy,  
12 but it is kind of like the choice between, you know, a firing  
13 squad and hanging. In either situation, you know, you end up  
14 dead.

15           The FCC may well determine that Verizon's conduct is  
16 inappropriate, in which case they would have to stop. But, if  
17 the FCC determines that their conduct is okay as a matter of  
18 federal law, and, you know, as we discussed in the pleadings,  
19 you know, we believe that the basis for the recommended order  
20 is really based upon a technicality that really doesn't go to  
21 the merits of the issue. That still means that the Florida  
22 Commission under Florida law can decide that the conduct is  
23 inappropriate in which case they would have to stop. So it may  
24 be okay for federal law purposes, but not okay for state law  
25 purposes.

1           **COMMISSIONER McMURRIAN:** Mr. Self, I think I agree  
2 with you that we still might very likely have state law  
3 decisions to deal with. You know, Verizon may not agree with  
4 me on that point, they probably don't, but you have raised --  
5 the two parties have raised issues under state law, and I think  
6 that my -- and I tried to make this clear the last time. I  
7 think that my thinking is that it's not that we wouldn't be  
8 deciding on matters of state law, it is just we may not be  
9 deciding as soon as you would like.

10           Your point about that we are letting someone else  
11 deal with it, I just don't see that as what is being requested  
12 at this time. I see it being requested, let's wait and see  
13 what they do to see if it might have some impact on what we do.  
14 And clearly we have tons of cases in the telecom arena where  
15 the FCC plays into what our decisions are. And it seems like  
16 in this case it could have some overlap, as well, so I'll just  
17 let you speak to that.

18           **MR. SELF:** Well, I think the easy way to deal with  
19 that is you deal with it in the post-hearing briefs. In your  
20 post-hearing brief you argue the relevant law, state law,  
21 federal law, whatever. Whatever law you think is relevant you  
22 argue that in your post-hearing brief. You have already said  
23 in your order previously denying the reconsideration that there  
24 are, in fact, factual issues under Florida law that need to be  
25 resolved. So let's go ahead and have the evidentiary hearing

1 in August as is it is currently scheduled, and then in the  
2 post-hearing briefs that the parties are going to file, they  
3 can address the state law that has been raised, the federal law  
4 and explain to you how it's relevant, how it interacts and  
5 relates to your determination as a matter of state law.

6           You know, they can certainly argue that in the  
7 post-hearing brief. There is no reason to wait now. What  
8 happens if you stay the case today and the FCC next week issues  
9 this order that, let's say, it is word-for-word the same as  
10 what you see in the recommended order right now. Now, our  
11 argument is it has no impact on the Florida proceedings, but to  
12 the extent -- and it clearly doesn't preempt you from doing  
13 anything. There's nothing in the adoption of that recommended  
14 order that would stop you from proceeding under your law to  
15 resolve the cases. It's only something that the parties would  
16 argue in their post-hearing briefs. So let's do that.

17           **COMMISSIONER McMURRIAN:** Mr. Chairman, I guess that  
18 is all for now. I guess I am not in complete agreement. I  
19 understand what Mr. Self is saying, but I'm not in agreement  
20 that it won't have some impact on the case. I don't think I  
21 have enough information at this point to tell whether or not,  
22 if the FCC adopted wholesale what the recommended decision was,  
23 that it wouldn't have some impact.

24           In fact, I have had a lot of discussions with staff  
25 about that, and I don't think it is clear whether it would or

1 it wouldn't. It seems like it probably would have some. And,  
2 I guess, you know, where I was the last time I felt like if  
3 they were getting ready to make some kind of decision soon that  
4 it would be cleaner before parties filed testimony. Now they  
5 have filed direct testimony, but definitely before they file  
6 rebuttal testimony that we have that clarity of the FCC  
7 decision and then have some kind of way of determining whether  
8 or not that does have an impact on the case. And you clean up  
9 any issues. There might be issues that need to be tweaked  
10 somehow based on it. There may need to be testimony that  
11 needed to be tweaked. And definitely before you filed more  
12 testimony you at least have that decision, because it is next  
13 Monday. But that's just my thinking on it, but I will defer.  
14 I know that other Commissioners have questions.

15 **CHAIRMAN CARTER:** Let me do this. I will come back  
16 to you, Commissioner. Let me get with other the Commissioners,  
17 and I will come back to you.

18 Commissioner Argenziano.

19 **COMMISSIONER ARGENZIANO:** I have a question I would  
20 like to ask staff. I guess what it comes down to for me is  
21 that does Verizon's motion for reconsideration meet the  
22 standard of review for reconsideration. And from what I am  
23 reading from your recommendation, it does not. Can you  
24 elaborate a lit bit on that, because to me that is what it  
25 comes down to. And it is not a final -- this is not final to



1 this. I mean, we go to hearing and it is not a final decision,  
2 is that correct?

3 **MR. MANN:** Correct. We would go on to hearing from  
4 here. This is simply -- this is to reconsider those motions to  
5 dismiss that were denied.

6 **COMMISSIONER ARGENZIANO:** So under the standard of  
7 review for motion to reconsider, staff feels that Verizon did  
8 not meet that standard?

9 **MR. MANN:** Correct, Commissioner.

10 **COMMISSIONER ARGENZIANO:** So that's really what we  
11 are here about today. I'm trying to get it really clear. That  
12 is really what we are trying to figure out, whether we missed  
13 some kind of fact of law or something that we should have  
14 reconsidered, which staff is saying we didn't.

15 So my decision today, then, Mr. Chairman, as I seen  
16 it, and if Commissioner McMurrian thinks of some valid  
17 concerns -- I'm trying to narrow down what I'm really doing  
18 here today, and I think that it is looking to see whether  
19 Verizon has met that standard for review of reconsideration.  
20 And maybe more elaboration on why they have not met it, and  
21 maybe it is just as simple as what I just stated, but that's my  
22 decision is trying to figure out whether they have met that  
23 standard of review for reconsideration, not the facts and  
24 everything else that may go along with it.

25 **MR. MANN:** As I say in the recommendation,

1 Commissioner, Verizon simply has not pointed out any fact or  
2 law that would meet the standard for reconsidering the orders  
3 in review here.

4 **COMMISSIONER ARGENZIANO:** Okay. Thank you.

5 **CHAIRMAN CARTER:** Commissioner Skop, you're  
6 recognized.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chair.

8 I guess I would concur with Commissioner Argenziano,  
9 to the extent that the staff recommendation addresses the  
10 standard for motions for reconsideration. But also, too, I  
11 think the point has been fleshed out is that both Comcast and  
12 Bright House have alleged certain things that affect consumers,  
13 and ultimately, you know, I see no real harm in going down the  
14 track that the Commission has already put itself on to go to  
15 hearing. If something changes dramatically, certainly that can  
16 be dealt with in the course prior to hearing, and we could  
17 always address that in a timely manner if need be. But I think  
18 that pretty much I support the staff recommendation.

19 **CHAIRMAN CARTER:** Commissioner McMurrin.

20 **COMMISSIONER McMURRIAN:** This is probably where I  
21 should clarify. I wasn't very clear earlier, either. If --  
22 and I know that Mr. O'Roark has brought up the notion of  
23 deferring this decision until after the FCC. I guess where I  
24 was going, what I was thinking after considering this, was that  
25 if I were voting on the motions for reconsideration today, I

1 don't think Verizon has met the standard. So I do agree with  
2 the Staff rec on Issue 2 that they haven't met the standard  
3 after giving that a lot of thought.

4           Where I was going was entertaining -- doing something  
5 on the Commission's own motion because of what is happening at  
6 the FCC. Not relying on the recommended decision, because I do  
7 see that as a staff recommendation similar to what we have  
8 here, and that's not dispositive of the issues that are before  
9 us. But since the FCC is getting to ready to act in the next  
10 week, it seems -- although we might not find that the standard  
11 has been met for a motion for reconsideration, I agree with  
12 Commissioner Argenziano, there may be a reason to do something  
13 on our own. And so I wanted to throw that out to perhaps do  
14 something on our own motion to give it some time for the FCC to  
15 rule.

16           Perhaps get through the initial appeal period, see  
17 if -- because I think it's likely that no matter how the FCC  
18 decides that one of the parties would probably appeal it  
19 somehow. See what those issues on appeal are, then have those  
20 parties file something here with us that explains what they see  
21 the import of the FCC decision is, what the points on appeal  
22 are, and we can take that into consideration and see if that  
23 somehow has some impact on our case. So I would say that on  
24 our own motion that we would grant a period of stay for that  
25 reasonable length of time.

1           **CHAIRMAN CARTER:** Commissioners? Mr. Cooke.

2           **MR. COOKE:** Well, theoretically the Commission can  
3 change its mind. We have had cases where that has occurred,  
4 but I think there has to be a very firm basis or sound reason  
5 for doing that because we get into questions of administrative  
6 finality, et cetera. I think the way that the staff has  
7 analyzed this is it doesn't meet the standard for a motion for  
8 consideration by the party. It is something that was discussed  
9 when this decision was originally made. It's not something new  
10 that has come up. So, theoretically, I think on your own  
11 motion you could do this. I think you would have to have a  
12 very firm reason for doing it, and I guess I'm not sure exactly  
13 what that might be, but theoretically it's possible, if that  
14 helps.

15           **CHAIRMAN CARTER:** We would have to conclude this  
16 matter based upon the case before us, and then if we did  
17 something on our own motion, it would be something separate and  
18 apart?

19           **MR. COOKE:** Well, I think it probably, to be clear,  
20 would be a good idea to decide and take a vote on the request  
21 for reconsideration by the party. If somebody wants to make a  
22 motion for reconsideration on their own initiative, then you  
23 can take that up, as well.

24           **CHAIRMAN CARTER:** Commissioner Argenziano, you're  
25 recognized.

1                   **COMMISSIONER ARGENZIANO:** Perhaps staff could go into  
2 detail more about the FCC's decision, whether us moving on to  
3 hearing would affect anything they decide or how that decision,  
4 you know, according to Commissioner McMurrian's concerns,  
5 either way, whether we voted for them to make a decision or  
6 whether we just went on to hearing and whatever they decided  
7 then could be somehow incorporated into our discussion at  
8 hearing. Or could you kind of elaborate more on Commissioner  
9 McMurrian's concerns about waiting for the FCC and what that  
10 means and what it doesn't mean, I would appreciate that.

11                   **MR. MANN:** I will take a stab at it, Commissioner.

12                   I do not believe that the FCC's decision whether it  
13 adopts the bureau's recommended decision, or totally ignores  
14 it, or denies it and goes the other way is going to be  
15 dispositive of what you do here. I don't know that it will  
16 have a tremendous impact, but I don't know that it won't have  
17 an impact. I do believe there is a good chance that it may  
18 offer some clarification.

19                   While this Commission does not walk lockstep in  
20 whatever the FCC rules, certainly it pays heed to what those  
21 rulings are and uses those as guidance. So either way the FCC  
22 rules there is a possibility of providing clarification, and I  
23 guess, I don't have any -- I don't have the answer as to what  
24 degree that would be.

25                   **COMMISSIONER ARGENZIANO:** Let me ask you this way.

1 If we went ahead and went to hearing and the FCC, in the  
2 meantime, came up with some type of decision, is there any  
3 prohibition on us looking at that at hearing as a Commission?

4 MR. MANN: I think supplemental authority -- leave to  
5 file supplemental authority could be filed, and I think we  
6 would have the opportunity to look at that at hearing.

7 COMMISSIONER ARGENZIANO: Okay. Thank you.

8 CHAIRMAN CARTER: Commissioner McMurrian.

9 COMMISSIONER McMURRIAN: Thank you. I probably  
10 muddled this before, but I wasn't asking for -- like I said, I  
11 agree with Issue 2 of staff recommendation to deny the motion  
12 for reconsideration. Mr. O'Roark was bringing up deferring  
13 that decision until after we got the FCC decision; I hadn't  
14 thought about that, and I think that is something we can  
15 consider, too.

16 I guess what I was talking about doing was denying  
17 the motion for reconsideration, so voting with the staff rec on  
18 Issue 2, but then in a separate motion, not asking for the  
19 Commission to reconsider its prior vote, because I don't think  
20 that that would be of any use to us to say we deny Verizon's  
21 motion for reconsideration and then we talk about  
22 reconsidering.

23 It would be a motion to abate the proceedings on our  
24 own motion to give the FCC time to make its decision and see if  
25 there is any import from that decision on our case. Because I

1 believe, and I don't disagree with anything Mr. Mann said, it  
2 wouldn't be dispositive of the case, I don't believe, no matter  
3 how they rule, because I think we would still have issues of  
4 state law before us as we talked about the last time and today.  
5 But I do think it might have an impact on what kinds of issues  
6 are before us, how they are framed, how the testimony would be  
7 addressed. Perhaps not, I just don't know.

8 I don't have enough information yet about the case.  
9 I haven't read the testimony. I'm not sure what impact it  
10 might have, but it seems like it might have some. Generally,  
11 those FCC decisions on the same topic have some interplay in  
12 our cases, and they definitely get worked into the discussion  
13 and the decisions. And as has been noted in some of the  
14 filings in some of the previous retention marketing cases, we  
15 definitely have looked to what the FCC has done in that area.

16 So I think it could have some impact. I can't swear  
17 to you that it will, but it just seems like that it is cleaner  
18 to abate our proceedings for a limited period of time, give the  
19 parties a chance to tell us what they think the impact of that  
20 would be, and then decide to pick up and resume with the  
21 schedule that the prehearing officer already has set out. Is  
22 that clear?

23 **CHAIRMAN CARTER:** Commissioners, is that clear as  
24 mud?

25 Commissioner Edgar.

1                   **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

2                   And I'm still kind of thinking through the timing  
3 aspect, and it sounds to me like what I'm hearing from both  
4 sides of not the issue, but both sides of the discussion up  
5 here is a desire to figure out the best way procedurally to get  
6 a full and complete information that we have before us.

7                   I agree with the comments that I have heard, but I  
8 don't think that what is necessary to grant a motion for  
9 reconsideration is before us. So I am also comfortable with  
10 the staff recommendation on Issue 2, and I guess it's just how  
11 we -- if, indeed, that is the majority feeling, then how we  
12 proceed, and whether that is to go ahead and move along into  
13 hearing, or whether we stay, or abate, or have a time period in  
14 there to wait to see what happens, I think is what I'm hearing  
15 the discussion point to be. And so with that, I would just  
16 like to ask both parties, if it is okay, to speak to that point  
17 specifically as to the suggestion to move on into hearing with  
18 the possibility of supplemental authority at some point versus  
19 an additional time period to wait to see what happens.

20                   **CHAIRMAN CARTER:** Mr. O'Roark, you're recognized, and  
21 then Mr. Self.

22                   **MR. O'ROARK:** Thank you, Mr. Chairman.

23                   A couple of point. As I mentioned before, the  
24 factual issue that the Commission identified in its orders is  
25 one that arises out of the FCC's analysis, and so what the FCC



1 now does may resolve that issue, and may well have changed what  
2 is at issue in the case. It may resolve the case.

3 We have a general point, as Commissioner McMurrian  
4 was mentioning, is that in the Commission's previous analysis,  
5 we looked exclusively to federal law to help determine what the  
6 state law should be. The state law here is broad. It is not  
7 well defined. And so in the past we looked to see what the FCC  
8 has said about this and tried to be consistent.

9 If the FCC rules in our favor, but the Commission  
10 decides, well, we're going to depart from our previous  
11 principle of following or staying consistent with the FCC, I  
12 think it's going to be extremely important to parties to  
13 understand what the new rules of the road are.

14 As to the question of whether you should stay now or  
15 just plod ahead to hearing, my concern with going ahead to  
16 hearing would be that we have got some issues that have been  
17 identified. We have got rebuttal testimony coming up on  
18 July 3rd. If the rules of the road are going to change, it's  
19 certainly important to Verizon and I would think to all the  
20 parties to know exactly what those rules of the road are before  
21 we proceed. Because even if we got this all kind of  
22 straightened out before the hearing, you have got discovery  
23 issues, you have got issue definition issues, you have got the  
24 testimony you are going to file. All of that is going to  
25 depend on how this case is framed.

1           And, by the way, if you decide, you know what, we  
2 want to continue to have state law track federal law, and the  
3 FCC rules our way, this case could go away and save everybody  
4 the trouble of having the hearing with tremendous savings all  
5 the way around. So we would support initially the stay rather  
6 than plodding straight ahead to hearing.

7           **CHAIRMAN CARTER:** Mr. Self.

8           **MR. SELF:** Thank you, Mr. Chairman.

9           A couple of things. First, everything that we have  
10 discussed about this, or that you all have discussed, it is  
11 highly speculative at this juncture what may or may not happen.  
12 So making a decision today to stay, or abate, or whatever based  
13 upon speculation about what the FCC may do at some future point  
14 in time, I don't think rises to the level of a basis for you to  
15 make a decision to stay or abate the case.

16           The second point is we have got rebuttal testimony  
17 due on July 3rd. If, in fact, the FCC issues an order next  
18 week, there certainly is sufficient time for that decision to  
19 be incorporated into whatever the parties want to do with  
20 respect to their rebuttal testimony.

21           Third, if by some chance the FCC does something that  
22 is, in fact, dispositive of some issue here, or otherwise, I'm  
23 sure -- I'm willing to bet the farm that Mr. O'Roark will file  
24 some kind of motion with the Commission to say the FCC has now  
25 resolved this and taken care of this. I'm sure they will file

1 some kind of motion, and I think it is up to the parties to  
2 bring those kinds of things to you if and when they happen.

3           The final thing that I want to make is the final  
4 determination of the issues in this case is going to be on the  
5 basis of the application of all the applicable law to the facts  
6 that are raised in the evidentiary hearing and that will then  
7 be analyzed and discussed by the parties in their post-hearing  
8 briefs. In order to get to that point, you have got to have  
9 both the facts and the law before you.

10           If the FCC rules next week, then you have got that  
11 piece of the puzzle resolved. You're right, Commissioner,  
12 there probably will be appeals of that no matter how that comes  
13 out, in which case that's going to go on, I would imagine for a  
14 considerable period of time. And so you won't know what the  
15 final resolution of that is for, I don't know, six months, a  
16 year, two years. Who knows how far and how long that goes on.

17           But to the extent that that FCC decision is at least  
18 the FCC's statement about what they believe federal law is at  
19 that point in time, you'll have that next week, assuming what  
20 we have heard is correct, and you will be able to take that  
21 into account in the rebuttal testimony that's filed, in any  
22 supplemental pleadings that Verizon may file, and certainly it  
23 can be discussed at the hearing and certainly will be a part of  
24 the post-hearing briefs that we'll try to apply all of the  
25 state law, all of the federal law to the facts that are adduced

1 at the hearing.

2 So the bottom line is I don't think there is any  
3 basis for staying or abating the proceedings at this time. We  
4 need to charge on so that we can, in fact, fill in that  
5 evidentiary record, and, indeed, bring in all of the relevant  
6 law and, you know, conclude this matter.

7 **CHAIRMAN CARTER:** Thank you.

8 Commissioner Edgar, any further questions?

9 **COMMISSIONER EDGAR:** No. Thank you very much.

10 **CHAIRMAN CARTER:** Commissioners? No questions.

11 Okay.

12 Did I come back to you, Commissioner McMurrin?

13 **COMMISSIONER McMURRIAN:** I believe you did, but I  
14 don't have any questions.

15 **CHAIRMAN CARTER:** Okay. Well, then, no further  
16 questions, Commissioners. We are ready to move forward.

17 So, Commissioner Argenziano, you're recognized.

18 **COMMISSIONER ARGENZIANO:** I move staff  
19 recommendations as they are.

20 **COMMISSIONER SKOP:** Second.

21 **CHAIRMAN CARTER:** I have a motion and second on  
22 staff's recommendation. Is there any debate?

23 Commissioner McMurrin, you're recognized on debate.

24 **COMMISSIONER McMURRIAN:** I'm not sure if procedurally  
25 this is where I bring it up or not. If I were to make a motion

1 to do something on our own motion, would we do it after we  
2 complete this vote, or should it be tied up as part of this  
3 vote? Looking to our General Counsel. We could finish this  
4 vote on Issue 2 and take up --

5 (Simultaneous conversation.)

6 **MR. COOKE:** -- because there has been a motion and a  
7 second.

8 **COMMISSIONER McMURRIAN:** Okay.

9 **MR. COOKE:** So then the question is can you  
10 immediately reconsider that, and I think somebody who voted  
11 against it could not do that. It would have to be somebody who  
12 voted in favor of it.

13 **CHAIRMAN CARTER:** On the prevailing side.

14 **COMMISSIONER SKOP:** Mr. Chairman.

15 **CHAIRMAN CARTER:** Commissioner Skop -- wait one  
16 second. Had you completed your --

17 **COMMISSIONER McMURRIAN:** I had a question for  
18 Mr. Cooke about that, but I wasn't -- and that is what I tried  
19 to clarify earlier, I wasn't trying to reconsider. I wasn't  
20 suggesting reconsideration of the Commission's vote. I was  
21 talking about doing something on our own motion. I just need  
22 help here. I am not an attorney.

23 **MR. COOKE:** I don't want to stretch (phonetic) the  
24 procedural rules, but I think this is fairly clear. There has  
25 been a motion made, and there has been a second, and there

1 needs to be a vote on that. And if that vote is to accept  
2 staff's position on this issue, then somebody who is in the  
3 prevailing side could move to reconsider that immediately  
4 preceding vote, but that would be a reconsideration of that  
5 vote.

6 **COMMISSIONER McMURRIAN:** Okay.

7 **MR. COOKE:** In other words, you would have to vote in  
8 favor of this and then turn around and ask to reconsider.

9 **COMMISSIONER McMURRIAN:** I do plan to vote in favor  
10 of this. I guess my question was whether or not.

11 **MR. COOKE:** Well, I'm going to point out one other  
12 thing in terms of this whole question of reconsideration of the  
13 abatement. Technically, even abatement would be a  
14 reconsideration at this point, because I think Verizon's  
15 original motion was to dismiss or in the alternative to stay  
16 the proceedings. Now, you may conclude that there are changed  
17 circumstances here that merit some different course of action,  
18 but I think technically at least the argument could be made  
19 that even abating at this point is a reconsideration of the  
20 initial vote.

21 **CHAIRMAN CARTER:** Commissioner Skop.

22 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

23 Just as a courtesy to my colleague, Commissioner  
24 McMurrian, I would be happy, as long as Commissioner Argenziano  
25 would, to withdraw my second if we wanted to, you know,

1 entertain that motion that Commissioner McMurrin, I think,  
2 would like to bring. But I'm not sure I would support it, but  
3 I would be willing to do that as a courtesy.

4           **COMMISSIONER ARGENZIANO:** Mr. Chair, there are two  
5 ways to do that. Either we now vote -- actually there are  
6 three ways. We vote on the motion that is seconded, or we take  
7 it back and have Commissioner McMurrin move her thought, and  
8 if that doesn't prevail then we would have to go back to the  
9 original motion. Or Commissioner McMurrin can vote for this  
10 motion and the one that is seconded and then move to  
11 reconsider. And if she doesn't have the votes to reconsider,  
12 it doesn't get reconsidered, or it does, one or the other. So  
13 those are the three options that are before us.

14           Now, if Commissioner McMurrin wants to go ahead and  
15 would prefer to have the second removed or reconsidered at this  
16 time, I have no problem with that. I can't say I would support  
17 her motion, but I have no problem with that.

18           **CHAIRMAN CARTER:** We are in debate. We are in  
19 debate, and I think the cleaner thing to do would be to go  
20 forward with the motion because it has been made, it has been  
21 seconded. We are in debate, and I think pretty much everyone  
22 knows what we are thinking about in terms of whether or not  
23 there would be any abatement or reconsideration. That's  
24 probably a secondary issue.

25           And so I wouldn't dare jump on one of Mr. Self's

1 analogies, because I'm not here to steamroll things, but to  
2 pretty much bring to a conclusion the motion before us, and  
3 then if there is further then we will go order from there, if  
4 that is appropriate, Commissioners.

5           So any further debate on the motion? There has been  
6 a motion properly seconded. All those in favor let it be known  
7 by the sign of aye.

8           (Unanimous affirmative vote.)

9           **CHAIRMAN CARTER:** All those opposed? Okay.

10           Commissioner McMurrin, you're recognized.

11           **COMMISSIONER McMURRIAN:** Based on the General  
12 Counsel's advice that making -- I didn't see it as a  
13 reconsideration of the prior vote, because I said from the  
14 beginning that I supported Issue 2, staff's recommendation on  
15 Issue 2. So I saw it as making a motion to abate the  
16 proceedings. If that is interpreted as reconsideration of the  
17 Commission's vote, and I wouldn't be -- well, I am in the  
18 majority, but I see where we are going. I don't think that it  
19 would get us anywhere, but my intention was to make the motion  
20 to approve staff's recommendation on Issue 2, but also make a  
21 motion on the Commission's own notion to do that. So basically  
22 it was just not well thought out by me, Chairman.

23           **MR. COOKE:** Commissioner, you could make a motion to  
24 stay if you think there are changed circumstances, but I do  
25 think technically that decision was made previously. I don't



1 think it precludes you from making that motion if that is what  
2 you would like to do.

3           **CHAIRMAN CARTER:** Do you want to think about it? Why  
4 don't we take a break, Commissioners. We'll come back when the  
5 long hand is on the six.

6           (Recess.)

7           **CHAIRMAN CARTER:** Before we proceed, let me just  
8 offer an apology to Ms. Keating. I know that you are here  
9 representing Bright House, and I have been saying Mr. Self.  
10 And I know that both of you have different parties, so I offer  
11 you an apology from the bench and let you know you are always  
12 welcome here. You do a fantastic job. One of the best  
13 attorneys that appear before us.

14           **MS. KEATING:** Thank you, Mr. Chairman. No offense  
15 taken. Mr. Self has done a fantastic job and Bright House  
16 appreciates his efforts.

17           **CHAIRMAN CARTER:** Thank you so kindly; thank you so  
18 kindly.

19           Commissioners, in our last episode before we left we  
20 took a quick break because Commissioner McMurrrian was getting  
21 her notes together. And at this point in time, Commissioner,  
22 you're recognized.

23           **COMMISSIONER McMURRIAN:** Thank you, Chairman.

24           And to answer your question, I think where we were  
25 when you left, you wanted to know if I wanted to make a motion,

1 and I will pass. I don't think that that motion would carry.  
2 I would say I think it has been clear, I think there was  
3 confusion about sort of the way I raised it. I was in  
4 agreement and voted in agreement with the Commission's decision  
5 on Issue 2. I don't think Verizon has met the standard for a  
6 motion for reconsideration and it wasn't my intent to try to  
7 reopen that. General Counsel and I have discussed that, and I  
8 understand where he is coming from now.

9 I think it is probably best at this point if I just  
10 let you all know I will probably write a concurring opinion on  
11 this. Again, I'm not dissenting from the Commission's  
12 decision, but I will explain sort of where I'm coming from.  
13 And personally I do think it would be best at this point to  
14 abate the proceedings, but, again, I think we have moved past  
15 that, so, thank you.

16 **CHAIRMAN CARTER:** Thank you, Commissioner.

17 Staff, we are ready for Item 6, and we have a call --  
18 I'm looking to Chris.

19 **MR. SELF:** Thank you, Commissioners.

20 **CHAIRMAN CARTER:** Thank you.

21 **MR. MANN:** Commissioner, I'm sorry, may I also point  
22 out, remind you that we do have Issue 3, should the docket be  
23 closed.

24 **COMMISSIONER McMURRIAN:** Move staff.

25 **COMMISSIONER SKOP:** Second.

1                   **CHAIRMAN CARTER:** Moved and properly seconded. All  
2 in favor let it be known by the sign of aye.

3                   (Unanimous affirmative vote.)

4                   **CHAIRMAN CARTER:** Those opposed like sign.  
5 Show it done. Thank you.

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1 STATE OF FLORIDA )

2 :

CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services  
6 Section, FPSC Division of Commission Clerk, do hereby certify  
7 that the foregoing proceeding was heard at the time and place  
8 herein stated.

7

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

10

11 I FURTHER CERTIFY that I am not a relative, employee,  
12 attorney or counsel of any of the parties, nor am I a relative  
13 or employee of any of the parties' attorney or counsel  
14 connected with the action, nor am I financially interested in  
15 the action.


13

DATED THIS 24th day of June, 2008.

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JANE FAUROT, RPR  
Official FPSC Hearings Reporter  
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Cable Show: Comcast to try win-at-any-cost retention program

By Brian Santo

CedMagazine.com - May 20, 2008

Comcast is preparing to institute what seems to be the single-most aggressive customer retention program in the industry, starting June 1.

The company has been building a new call center in Newark, Del., capable of housing 700 call center agents. Comcast will have up to 200 agents devoted specifically to retaining customers "no matter what it takes," said Mike Doyle, president of Comcast's eastern division. Doyle was speaking in New Orleans on a Cable Show panel.

As competition increases, the more important retention becomes, Doyle said. He said that in a high percentage of instances, Comcast agents will not only be able to save a customer, they will be able to upgrade them by offering a bundle.

Many customers that ask to unsubscribe are calling to cancel a single service (frequently video) and are unaware of the cost savings inherent in bundles. That makes it easy to upgrade those customers, Doyle said. "They just don't know the deals they can get."

Doyle doesn't anticipate problems of the sort that Verizon recently got in trouble for. When Verizon phone customers disconnect, they tell the new service provider, and the new service provider negotiates the disconnect with Verizon. Verizon would call those customers to try to retain them, but the telco was accused of violating the privacy of their former calling customers because they were relying on records that arguably should not have been available to them to use for that particular purpose.

Doyle said that since Comcast callers call Comcast directly to disconnect, the MSO will not have the same problem that Verizon had. Further, there is no customer demand for the ability to switch to another video provider and have that video provider negotiate a disconnect with Comcast, similar to the situation Verizon is in.

Despite all that, the new retention program looks to be a high-pressure sales situation. Doyle said it will be a retain-at-any-cost situation. Further, agent compensation will be based on retention rates and the extent of the incentives the agent offers a customer to remain with Comcast, Doyle explained.