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From: Ann Bassett [abassett@lawfla.com]
Sent: Thursday, August 07, 2008 4:19 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 070691-TP and 080036-TP
Attachments: 2008-08-07, 070691 and 080036, Comcast's Motion to Strike Portions of VZ Testimony.pdf

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The Docket Nos are:

070691-TP - 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

080036-TP - Complaint and request for emergency relief against Verizon Florida, L.L.C. 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.

This is being filed on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone

Total Number of Pages is 7.

Comcast Phone of Florida, L.L.C.'s Motion to Strike Portions of the Verizon Florida LLC Testimony

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06967 AUG-7 8



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August 7, 2008

VIA ELECTRONIC FILING

Ms. Ann Cole, Director
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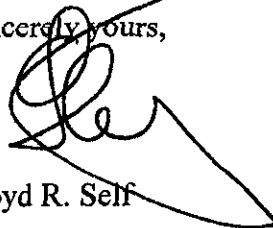
Re: Docket Nos. 070691-TP and 080036-TP

Dear Ms. Cole:

Enclosed for filing on behalf of Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone is an electronic version of Comcast Phone of Florida, L.L.C.'s Motion to Strike Portions of the Verizon Florida LLC Testimony in the above referenced dockets.

Thank you for your assistance with this filing.

Sincerely yours,



Floyd R. Self

FRS/amb
Enclosure
cc: Parties of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served by Electronic Mail (*) and/or U. S. Mail this 7th day of August, 2008 upon the following:

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FLOYD R. SELF

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. 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

In re: 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

Dated: August 7, 2008

COMCAST PHONE OF FLORIDA, L.L.C.'S MOTION TO STRIKE PORTIONS OF THE VERIZON FLORIDA LLC TESTIMONY

Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast"), pursuant to Rule 28-106.204, Florida Administrative Code, and Order No. PSC-08-0344-PCO-TP (affirmed on July 29, 2008 by the full Commission), hereby files this Motion to Strike Portions of the Verizon Florida LLC ("Verizon") prefiled direct and rebuttal testimonies as outside the scope of the issues set forth for hearing in this matter. In support of this opposition, Comcast states as follows:

BACKGROUND

1. The two complaints that initiated these now consolidated proceedings allege that the retention marketing activities engaged in by Verizon violate Sections 364.01(4), 364.3381, and 364.10, Florida Statutes, which relate to this Commission's role in preventing anticompetitive behavior and ensuring that customers, as well as providers of telecommunications services, are treated fairly.

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FPSC-COMMISSION CLERK

2. On April 25, 2008, Verizon filed its Motion to Add Issues, seeking to add three issues to this docket related to all three parties' marketing practices of the unregulated services of broadband internet service and cable television, and to allow discovery regarding those services.

3. On May 2, 2008, Bright House and Comcast separately filed responses opposing Verizon's Motion to Add Issues. These responses were based upon the fact that the issues in question are not relevant to Bright House or Comcast's complaints against Verizon as those complaints are based solely on the anticompetitive nature of Verizon's retention marketing program in Florida and that this Commission has no jurisdiction over matters relating to cable television and broadband internet service. Sections 364.011, 364.013, 364.02(14), Florida Statutes.

4. On May 28, 2008, the Prehearing Officer issued Order No. PSC-08-0344-PCO-TP, Second Order Modifying Procedure, which denied the addition of Verizon's proposed issues, as well as discovery on those issues. In entering that Order, the Prehearing Officer made clear that this decision would serve as a limit on the scope of discovery. To wit, "I have reviewed Verizon's motion and the responses in opposition. At this time, I am unconvinced of the need to broaden the scope of the Issues List beyond the four modified issues attached. This decision should also serve as guidance for discovery." Thus, the issues and discovery in this matter were to be limited exclusively to those issues relevant to the proceeding and over which the Commission does have has jurisdiction – regulated telecommunications services.

5. On June 9, 2008, Verizon filed its Motion for Reconsideration or Clarification of the Second Order Modifying Procedure ("Motion for Reconsideration or Clarification"). Verizon also requested oral argument.

6. Comcast filed its Response to the Motion for Reconsideration or Clarification and a separate opposition to Verizon's request for oral argument. Bright House joined in Comcast's responses.

7. On July 2, 2008, the Commission Staff filed its recommendation on the Verizon Motion for Reconsideration or Clarification. The Commission Staff agreed with the substantive response of Comcast to Verizon's Motion for Reconsideration that there was no lawful basis for a reconsideration of the Prehearing Officer's Second Order Modifying Procedure. The Staff recommended that the Commission deny Verizon's Motion for Reconsideration or Clarification and the accompanying Motion for Oral Argument.

8. On July 29, 2008, the Commission adopted the July 2, 2008, Staff Recommendation in its entirety without discussion. An order reflecting this decision has not yet been issued by the Commission, but such order, when issued, will certainly reflect the content of the Staff's recommendation that was approved.

9. As established by the Second Order Modifying Procedure and now this Commission's July 29th decision, the scope of the issues in this case is limited to Verizon's regulated telecommunications service retention marketing practices and does not extend to video or broadband service issues. As such, this matter expressly excludes any testimony or discovery regarding the video or broadband services provided by any of the parties.

10. In reviewing the prefiled testimony of Verizon's four witnesses, there are portions of the direct testimony of Alan F. Ciamporcero being adopted by Michelle Robinson as well as part of the rebuttal testimony filed by Ms. Robinson that goes well beyond the appropriate scope of the issues set for hearing in this matter and which should, therefore, be stricken.

11. Specifically, the Direct Testimony of Alan F. Ciamporcero being adopted by Michelle Robinson at page 10, line 7 through page 13, line 5 is a discussion regarding the bundling of video, data and voice services and the market position of the cable companies in regard to those bundled services. In addition, page 14, line 17 through page 17, line 9 is a discussion by the witness limited exclusively to the video/cable and broadband services marketing programs of Comcast and Bright House. That subject matter was expressly excluded from the docket by the prehearing officer's order of May 28, 2008 that was unanimously upheld by the full Commission at its July 29th Agenda Conference decision.

12. In addition, the Rebuttal Testimony of Michelle Robinson at page 6, line 14 through page 7, line 9 also discusses video and broadband services in violations of the Commission's holdings.

13. In addition to being outside the scope of the issues set forth for hearing in this matter, the witness has no personal knowledge of the video/cable and broadband marketing practices of either Bright House or Comcast that is the subject of the testimony to be stricken.

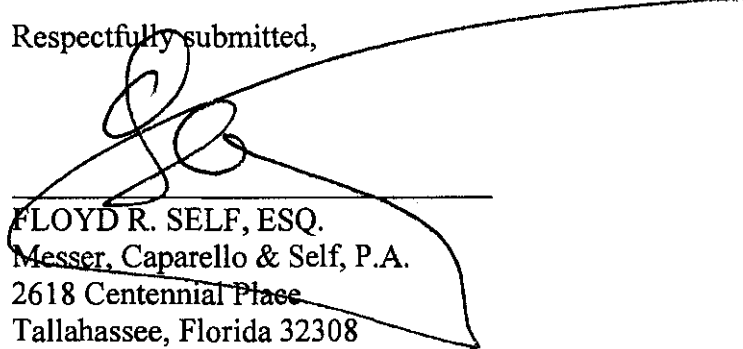
14. As a further basis for exclusion from these proceedings, the testimony that is the subject of this Motion consists of unsubstantiated hearsay that does not fall within any exception to the hearsay rule. While the Florida Administrative Procedures Act in Section 120.57(1)(c), Florida Statutes, provides that hearsay evidence has limited admissibility "for the purpose of supplementing or explaining other evidence" such evidence "shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." Since the scope of this proceeding does not include issues relating to video/cable and broadband marketing practices, there can be no relevant findings as to those issues. Therefore, the unsubstantiated hearsay evidence is of no relevance, and should be stricken as inadmissible.

15. Pursuant to Rule 28-106.204(3), Florida Administrative Code, Verizon opposes this motion.

CONCLUSION

For the reasons set forth herein, the Direct Testimony of Alan F. Ciamporcero being adopted by Michelle Robinson at page 10, line 7 through page 13, line 5 , and page 14, line 17 through page 17, line 9 should be stricken and the Rebuttal Testimony of Michelle Robinson at page 6, line 14 through page 7, line 9 consisting of the sentence that starts on line 14 with “As explained” and concludes on line 19 with the word “opportunities” should also be stricken from the record of this proceeding as this testimony is beyond the scope of this proceeding established in the Second Order Modifying Procedure, the witness lacks personal knowledge of the subject of such testimony, and it also constitutes inadmissible hearsay pursuant to Section 120.57(1)(c), Florida Statutes.

Respectfully submitted,



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