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Subject: Docket No. 041170-TP - Verizon Florida's Reply Brief
Attachments: 041170-VZ FL Reply Brief-3-8-05.pdf



041170-VZ
eplly Brief-3-8

The attached filing is submitted in Docket No. 041170-TP on behalf of Verizon Florida Inc. by

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The attached .pdf document contains 8 pages - transmittal letter (1 page), certificate of service (1 page), service list (1 page), and Reply Brief (5 pages including cover).

(See attached file: 041170-VZ FL Reply Brief-3-8-05.pdf)

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March 8, 2005 – *VIA ELECTRONIC MAIL*

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 041170-TP
Complaint Against Verizon Florida Inc. and Request for Declaratory Ruling
By Bright House Networks Information Services, LLC (Florida)

Dear Ms. Bayó:

Enclosed is Verizon Florida Inc.'s Reply Brief In Support of Abeyance for filing in the above matter. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at 813-483-1256.

Sincerely,

/s Richard A. Chapkis

Richard A. Chapkis

RAC:tas
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Reply Brief In Support of Abeyance in Docket No. 041170-TP were sent via electronic mail and/or U.S. mail on March 8, 2005 to the parties on the attached list.

/s Richard A. Chapkis

Richard A. Chapkis

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint Against Verizon Florida Inc. and)
Request for Declaratory Ruling by Bright House)
Networks Information Services, LLC (Florida))
_____)

Docket No. 041170-TP
Filed: March 8, 2005

VERIZON FLORIDA INC.'S REPLY BRIEF IN SUPPORT OF ABEYANCE

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Verizon Florida Inc. (“Verizon”) demonstrated in its initial brief that the Florida Public Service Commission (“Commission”) should abate this case to give the Federal Communications Commission (“FCC”) an opportunity to resolve a pending proceeding. That FCC proceeding involves a threshold issue in this case – whether the Commission has authority to establish the terms and conditions under which Verizon or its affiliate provides DSL-based services – and the FCC’s decision in that case will avoid a needless waste of public and private resources. And, as explained below, the issues pending before the FCC are directly relevant to the instant complaint.

As Verizon explained in its initial brief, abating the case to allow the FCC to act is particularly appropriate because Verizon has been working, and will continue to work during any abeyance, toward implementing the functionalities necessary to provide DSL-based Internet access without voice service. Indeed, Verizon has been meeting regularly with industry representatives through the CLEC User Forum – a body in which Bright House Networks Information Services, LLC (“Bright House”) could participate but has chosen not to – because resolving those issues involves the interests of many parties.

In addition, Verizon made clear in its initial brief that, even under its current policy, it does not refuse to port any number; instead, Verizon reasonably seeks to ensure that end-user customers do not lose DSL-based services unexpectedly and without notice, as would occur under Bright House’s proposal.

Significantly, Bright House does not contest that, if the issues in this case *are* related to the ones before the FCC, it would be appropriate to abate the matter to obtain dispositive guidance from that federal agency. Bright House claims, however, that the

issue here is “completely distinct” from the question before the FCC. Bright House Opening Brief at 3 (filed Feb. 22, 2005). In particular, Bright House asserts – erroneously – that the issues before the FCC are limited to those involved when a “UNE-based competitor” seeks to require an ILEC to continue providing DSL-based service. *Id.* at 4 (emphasis added).

That contention – on which Bright House’s entire argument rests – is demonstrably wrong. In fact, the issues before the FCC are *not* limited to those relating to UNE-based competitors. BellSouth Telecommunications, Inc.’s petition before the FCC argues that state commissions cannot regulate the terms and conditions of DSL-based services (including whether and how they can be disconnected) because: (1) DSL transmission is an interstate and federally tariffed service that is subject to the FCC’s exclusive jurisdiction;¹ and (2) DSL-based Internet access is an information service that, as a matter of federal law, must remain unregulated.² Plainly, neither of those issues have anything to do with whether the customer wants to switch to a “UNE-based” voice provider or one that, like Bright House, chooses to provide voice service over cable facilities. Bright House’s repeatedly asserted claim that the issues before the

¹ See Emergency Request for Decl. Ruling, *BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth To Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, CC Docket 03-251, at 4 (FCC filed Dec. 9, 2003) (“[F]ederal law is clear that state agencies generally lack authority to regulate interstate telecommunications services; that is particularly the case as to services offered under a federal tariff filed with this Commission. BellSouth’s wholesale DSL service is provided under such an interstate tariff, and thus it is subject to the exclusive jurisdiction of this Commission.”) (footnote omitted).

² See *id.* (“[I]ndependent of this Commission’s holding in the *Triennial Review Order*, for decades this Commission’s *Computer Inquiry* decisions have established that interstate information services should remain free of public-utility regulation. State commission decisions that purport to regulate BellSouth’s FastAccess service – that is, its retail DSL-based Internet access service – crash head-on into that federal policy. FastAccess is an unregulated interstate ‘information service’ over which the Commission has previously preempted regulation.”).

FCC “have nothing at all to do with [its] complaint” and have “literally no bearing on . . . this case,” *id.* at 5, is thus incorrect.

Once that incorrect assertion has been swept aside, moreover, it is evident that the issues before this Commission *are* closely related to the ones before the FCC. In particular, Bright House’s allegations necessarily implicate the question of whether this Commission has authority to regulate either the terms and conditions under which Verizon provides DSL transmission (the same interstate, federally tariffed telecommunications service at issue in the FCC proceeding), or DSL-based Internet access service (the same interstate information service at issue in the FCC proceeding). Bright House clearly seeks regulation of such services. It has alleged that “as a condition of *terminating* [Verizon voice] service, a . . . customer [*must*] *give up the technically and regulatorily distinct DSL/Internet access service,*” so that customers “*hav[e] to seek alternative providers of high speed Internet access,*” Bright House Complaint ¶ 2 (filed Sept. 29, 2004) (emphases added), and Bright House expressly asks the Commission to require Verizon to “immediately cease its practice.” *Id.* ¶ 5.³ Bright House’s brief likewise complains about Verizon’s policies regarding the disconnection of DSL-based Internet access and how that allegedly “impairs” the ability of consumers to get voice service from the provider of their choice. Bright House Opening Brief at 3. Again, Bright House wants the Commission to change the terms

³ Although Bright House suggests that Verizon’s *Florida* tariffs do not reflect its current policies regarding the provision of DSL service, see Bright House Opening Brief at 3, the relevant tariff here is Verizon’s *federal* tariff. That tariff makes clear that Verizon will provide DSL transmission service only when “line-sharing,” and thus Verizon voice service, is available. See FCC Tariff No. 20, Part III, §5.1.2(F) (“Verizon Infospeed DSL Solutions will be provided subject to the availability and limitations of Company facilities, including the availability of line sharing.”).

and conditions under which Verizon disconnects that service, and thus to engage the Commission in regulating it. *See id.*

For all these reasons, Bright House is seeking a decision from this Commission regarding the terms and conditions under which Verizon offers DSL-based services, including DSL-based Internet access. Whether or not a state commission like this one can regulate the terms and conditions of DSL-based services, including Internet access, is squarely presented in the current FCC proceeding. Because Bright House does not even argue that abeyance would be inappropriate if the issues here are related to the ones before the FCC, the Commission should hold this case (at least temporarily) to give the FCC an opportunity to decide the matter before it.

Respectfully submitted,

/s/ Richard A. Chapkis

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March 8, 2005