

Matilda Sanders

From: Chris Savage [chris.savage@crblaw.com]
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To: Filings@psc.state.fl.us
Cc: Beth Salak; Beth Keating; Richard Chapkis; Michael Gross
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Attachments: Final BHN Reply Brief.pdf



Final BHN Reply Brief.pdf (1)

Filed by:

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue NW Suite 200
Washington, DC 20006
202-659-9750
Chris.savage@crblaw.com

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Filed on Behalf of:

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Description:

The attached reply brief, relating to Issue Nos. 1 and 2 in this matter, responds to the initial brief of Verizon Florida, Inc., and generally explains that Verizon has failed to establish that the issues raised in this matter in any material respect similar to those raised in certain federal cases identified in Issue Nos. 1 and 2, and therefore failed to show that a decision on the merits of this matter should be delayed while those federal cases are decided.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD.
TALLAHASSEE, FL 32399-0850

In re: Complaint against Verizon Florida Inc. and
request for declaratory ruling by Bright House
Networks Information Systems, LLC (Florida)

Docket No. 041170-TP

REPLY BRIEF OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC (FLORIDA)

Bright House Networks Information Services, LLC (Florida) ("BHN") respectfully files this reply brief in response to the "Initial Brief in Support of Abeyance" filed by Verizon Florida, Inc. ("Verizon") on February 22, 2005.

The current round of briefing is addressed to Issue Nos. 1 & 2. Those issues ask whether the Commission should "delay a decision" here while we wait for the FCC and/or the federal courts to decide certain other cases. The only logical way to answer that question is by comparing and contrasting the issues involved in the federal cases, on the one hand, with the issues in this case, on the other. Verizon, however, completely fails to identify the issues in play in either situation. Instead, it focused on certain matters relevant (if at all) to Issue Nos. 3 and 4.¹

¹ For ease of reference, here are the stipulated issues in this case:

1. To the extent there are like issues, should the Commission delay a decision in this docket until the FCC resolves the BellSouth request for a Declaratory Ruling regarding Internet access?
2. To the extent there are like issues, should the Commission delay a decision in this case in light of the appeal processes *In Re: Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. and/or In Re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*?
3. Is the Commission authorized under state or federal law to resolve this complaint?
4. Do Verizon's practices regarding the porting of local telephone numbers of DSL customers who choose another local voice provider violate state law? If so, what are the appropriate remedies?

Issue Nos. 3 & 4 define *what the Commission will be deciding*, assuming the case is not delayed as a result of Issue Nos. 1 & 2. The meat of the case is embodied in Issue No. 4: Do Verizon's practices violate *state* law, and, if so, what should be done about it?

BHN looks forward to addressing Issue Nos. 3 & 4 as this case proceeds. BHN submits, however, that Verizon's failure to actually address Issue Nos. 1 & 2, and to (in effect) jump to the merits, confirms that, indeed, there is no reason to delay proceeding with this case.

With respect to Issue Nos. 1 & 2, BHN showed (BHN Brief at 4-5) that the factual and legal questions in the federal cases are quite different from the factual and legal questions here. The federal cases focus on what a state can do to order an incumbent to accommodate competing providers *who do not have their own networks, and who need unbundled network elements to offer voice service*, where there is digital subscriber line ("DSL") service on the customer's loop. The key issues are (a) whether the incumbent has to "share" a loop (competitor provides voice; incumbent provides DSL); and (b) if not, whether the incumbent has to provide a new loop for the competitor while leaving the DSL service "live" on the existing loop.

By contrast, *this* case involves the scope of Verizon's obligations under state law to permit customers with DSL on their lines to easily terminate service and receive voice service from a competitor like BHN, *which has a completely separate network and has no need for Verizon network elements*. The key issues here are (a) whether Verizon's practices for porting a voice number where there is DSL on this line violate FL. STAT. 364.10(1); and if so, (b) what remedy is appropriate to deal with that violation of state law.²

Verizon's entire argument for delaying this proceeding boils down to its assertion that *one* possible remedy here — a requirement that Verizon offer so-called "naked" DSL, *i.e.*, DSL

² See BHN Brief at 1-3. Verizon does not deny that it treats customers with DSL on their lines very differently from customers without DSL. See Verizon Initial Brief at 2-3. Verizon (not surprisingly) thinks that it has good reasons for doing what it does; but those considerations go straight to the heart of Issue No. 4, *i.e.*, whether Verizon's practices are unjust and unreasonable under state law, in violation of FL. STAT. 364.10(1). At this stage, BHN simply notes that Verizon's claim that it "merely seeks to ensure that the [customer] understands that DSL service will be terminated with the port" (Verizon Initial Brief at 2) is a red herring. BHN has repeatedly stated that it will accept full responsibility for informing customers that they will lose access to DSL upon porting their number to BHN.

without any voice service on the loop — is, allegedly, beyond the scope of this Commission’s power. Fully half of Verizon’s filing (from page 3, through to the end) is devoted to supporting the claim that “there is substantial reason to believe that the FCC will agree with Verizon and BellSouth that state commissions do not have jurisdiction to determine when and on what terms and conditions ILECs and their affiliates must offer DSL-based special access.” Verizon Initial Brief at 3. To which BHN’s response is: This has nothing to do with Issue Nos. 1 & 2. If Verizon is right, then that puts a constraint on the *remedy* that the Commission can order to correct Verizon’s violation of state law. The question of appropriate remedy is embraced by Issue No. 4; the question of the Commission’s authority to act is embraced by Issue No. 3. (See footnote 1, *supra*, laying out all four issues in this case.) The point of the current round of briefing is to decide whether the Commission will even *proceed to* Issue Nos. 3 & 4.

In fact, Verizon itself would benefit from a prompt decision on the merits in this case. Verizon acknowledges that it has a problem with how to handle transferring a voice customer to another provider when there is DSL on the customer’s line, promising a naked DSL offering “in the not-too-distant future.”³ But Verizon chides BHN for asking this Commission to resolve BHN’s claims that Verizon has violated Florida law, rather than raising those questions in an endless, Verizon-led carrier discussion group. *Id.*

Here’s the problem: Verizon’s state law obligations directly affect what Verizon *has to do* when BHN wins a Verizon customer with DSL on his or her loop. Verizon should *welcome* a ruling on the merits in this case. With such a ruling in hand, Verizon will know the requirements

³ Verizon Initial Brief at 2. BHN noted in its initial brief that Verizon periodically says that a solution to the problem of porting numbers of customers with DSL is just around the corner. BHN Brief at 3 (“Sometimes Verizon said that it wanted to solve the problem, or was running a trial, or was talking to lots of competitors about it. But nothing ever actually *happened*.”). Verizon’s current claims about what will happen “in the not-too-distant future” fall into this category.

to which any permanent solution must conform. It will avoid the predicament of working out its own preferred solution in a vacuum (or, more likely, in denial about its state-law obligations), and then having to re-do its work to accommodate those obligations when this case concludes.⁴

And, make no mistake: Verizon does not agree that state law requires it to allow voice customers to promptly shift to BHN for voice service, whether or not there is DSL on the line. Verizon thinks that it is perfectly okay to delay transferring a customer's voice service to BHN during the extended period that it takes for Verizon (or its Internet affiliate) to inform the customer that DSL will be terminated, and then to delay some more while the DSL service is actually disconnected, and then delay some more while the porting request is re-submitted and re-processed. In Verizon's view of the world, it is perfectly alright to require a customer that plainly wants to terminate his or her local service to keep buying that service until *after* those delays have been endured. If this Commission does not tell Verizon that it has to do what is necessary to allow voice service customers to terminate their service without delay — such as porting the customers' numbers without delay — Verizon will not do so. On the other hand, if this Commission *does* tell Verizon it has to port numbers promptly, then — irrespective of whatever immediate, short-run relief might also be ordered — Verizon will know to build compliance with that obligation into its long-term process improvements regarding this issue.

This brings us to a final note on naked DSL. BHN believes that the best long-run solution to the problem is a regime in which Verizon indeed offers naked DSL, so that a customer with DSL on the line will automatically convert to a naked DSL arrangement when he or she signs up for voice service with another provider. Verizon seizes on this aspect of BHN's argument to

⁴ Verizon is setting itself up for the situation addressed by the old adage, "There's never time to do something right the first time, but always time to do it over."

urge that this entire case should grind to a screeching halt while the federal cases identified in Issue Nos. 1 & 2 are resolved. But this Verizon argument ignores the work the parties (and the staff) did in crafting not just Issue Nos. 1 & 2, but also Issue Nos. 3 & 4. When we get to Issue Nos. 3 & 4, we will address whether BHN's preferred remedy is the best, and whether the Commission may order it under state law.

Verizon, however, wants to *entirely avoid* getting to Issue Nos. 3 & 4 because the Commission supposedly can't order that one remedy. To be completely clear: even if this Commission may not order Verizon to offer naked DSL, Florida consumers (and BHN) would *still* benefit directly and materially from a ruling that Verizon's current practices violate state law and that Verizon may not delay transferring voice service to BHN when BHN wins a customer. This would both affirm that competition for voice services can continue unimpaired, and force Verizon (economically, if not legally) to fish or cut bait: either turn off the customer's DSL service — and lose those revenues — or figure out a way — perhaps manually at first, but eventually, fully automated — to keep that service “live” and continue to earn revenues from it.

Whether this or some other remedy is best, however, is precisely what BHN is asking the Commission to resolve, in Issues 3 & 4. We should move on to those issues without delay.

/s/ Christopher W. Savage

Christopher W. Savage
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave. NW, Suite 200
Washington, DC 20006
(tel) 202-659-9750 (fax) 202-452-0067

Counsel for: Bright House Networks Information
Services, LLC (Florida)

March 8, 2005

CERTIFICATE OF SERVICE

I, Christopher W. Savage, certify that true and correct copies of the Reply Brief of Bright House Networks Information Services LLC (Florida) were delivered to the following parties, as indicated, on March 8, 2005:

David Christian*
Verizon Florida, Inc.
106 East College Avenue
Tallahassee, FL 32301-7748

Richard Chapkis* & **
Verizon Florida, Inc.
P.O. Box 110
Tampa, FL 33601

201 N. Franklin Street, FLTC0717
Tampa, FL 33601

Beth Salak**
Dir. Div. of Competitive Mkts & Enforcement
Florida Public Service Commission
bsalak@psc.state.fl.us

Beth Keating**
Florida Public Service Commission
bkeating@psc.state.fl.us

Michael A. Gross**
Florida Cable Telecom. Ass'n
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303
Email: mgross@fcta.com

Charles E. Watkins*
Covad Communications Company
1230 Peachtree Street, NE, Suite 900
Atlanta, GA 30309
Email: gwatkins@covad.com

Vicki Gordon Kaufman*
McWhirter Law Firm
117 South Gadsden Street
Tallahassee, FL 32301
Email: vkaufman@mac-law.com

Matthew Feil*
FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751
Email: mfeil@mail.fdn.com

Tracy W. Hatch*
Senior Attorney, AT&T
101 North Monroe Street
Tallahassee, FL 32301

Charles Crist, Jr./Christopher Kise*
Office of the Attorney General
The Capitol-PL01
Tallahassee, FL 32399-1050

Felix L. Boccucci, Jr.*
Knology of Florida, Inc., c/o Knology, Inc.
1241 O. G. Skinner Drive
West Point, GA 31833
Email: felix.boccucci@knology.com

George N. Meros, Jr. Esq.*
Gray Robinson Law Firm
P.O. Box 11189
Tallahassee, FL 32302-1189
Email: GMeros@gray-robinson.com

* By U.S. Mail

** By Electronic Mail

/s/ Christopher W. Savage