Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

070000-OT

In the Matter of	)	
	)	
BRIGHT HOUSE NETWORKS, LLC,	)	
	)	
Complainant.	)	
	)	
v.	)	File No. EB-06-MD-003
	)	
TAMPA ELECTRIC COMPANY,	)	
	)	
Respondent,	)	

To: Enforcement Bureau
Market Disputes Resolution Division

MOTION FOR LEAVE TO FILE RESPONSE OF TAMPA ELECTRIC COMPANY TO SUPPLEMENT TO POLE ATTACHMENT COMPLAINT

Tampa Electric Company hereby moves for leave to file the accompanying RESPONSE OF TAMPA ELECTRIC COMPANY TO SUPPLEMENT TO POLE ATTACHMENT COMPLAINT. The Response answers arguments made by Bright House Networks, LLC, in its Supplement filed August 7, 2007 and, as such, will maintain the completeness and accuracy of the record. Accordingly, good cause exists to grant this motion.

Respectfully submitted,

TROUTMAN SANDERS LLP

Robert P. Williams
Raymond A. Kowalski

Attorneys for Respondent Tampa Electric Company

Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3438

Date: September 6, 2007

1075237_1.DOC

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Bright House Networks, LLC	)	
Complainant	)	
v.	)	File No. EB-06-MD-003
Tampa Electric Company,	)	
Respondent.	)	

To: Enforcement Bureau
Market Disputes Resolution Division

RESPONSE OF TAMPA ELECTRIC COMPANY TO SUPPLEMENT TO POLE ATTACHMENTI COMPLAINT

Respectfully submitted,

TROUTMAN SANDERS LLP

Robert P. Williams
Raymond A. Kowalski
Attorneys for Respondent Tampa Electric Company

Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3438

Date: September 6, 2007

EXECUTIVE SUMMARY

Tampa Electric Company ("Tampa Electric") does not object to Bright House Networks, LLC's ("BHN's") supplementation of the record to the extent evidence exists that will assist the Commission in resolving this dispute.[1] However, Tampa Electric calls the Commission's attention to two important points about BHN's submission. First, BHN is now admitting what it previously denied: that telecommunications services were in fact provided over its attachments by its affiliate, Bright House Networks Information Services, LLC. Second, documents obtained by Tampa Electric from public sources show that BHN's statements in this proceeding contradict its own prior statements to this Commission, to the Florida Public Service Commission, and to others. Those documents show that not only BHN's past statements in this proceeding, but also its latest statements, are inaccurate and misleading.

This proceeding arose when Tampa Electric filed a lawsuit to collect back rent following its discovery that BHN's pole attachments were being used for telecommunications. BHN initially denied such use, and since then has slowly retreated from that position, meanwhile fighting all discovery and pursuing this retroactive rate complaint before the Commission as a means of delaying the civil action.

In the meantime, Tampa Electric has pursued alternative lines of inquiry into public documents in lieu of the discovery that BHN has refused to provide. Although all of the documents in the exhibits to this Response are believed to be in BHN's possession and all are within the scope of Tampa Electric's discovery requests in the state court collections action, BHN has refused to produce any of them. Instead, BHN has repeatedly urged the court to stay discovery until the Commission has ruled, and at the same time urged the Commission not to

[1] Obviously, however, Tampa Electric would object if BHN's supplemental submissions were permitted but Tampa Electric's were not. Particularly in light of the contradictions between BHN's statements to this Commission and others over time, it would be grossly unfair to permit BHN's supplemental submissions alone.

permit any discovery or hold an evidentiary hearing.

BHN's vigorous efforts to suppress evidence, together with the documents submitted herewith, tell quite a story. These documents confirm that all of BHN's attachments have in fact been used by telecommunications carriers for the provision of telecommunications services, regardless of the regulatory classification of VoIP. In addition, these documents strongly indicate that BHN has not dealt with Tampa Electric or regulators in good faith.

Tampa Electric respectfully urges the Commission to hold BHN accountable for its conduct, including both its bad faith business dealings with Tampa Electric and its abuse of the pole attachment regulatory process administered by the Commission. Tampa Electric believes the evidence and law require dismissal of BHN's complaint with prejudice and the imposition of appropriate sanctions.

TABLE OF CONTENTS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

Bright House Networks, LLC	)	
Complainant	)	
	)	File No. EB-06-MD-003
v.	)	
Tampa Electric Company,	)	
Respondent.	)	

To: Enforcement Bureau
Market Disputes Resolution Division

RESPONSE OF TAMPA ELECTRIC COMPANY TO SUPPLEMENT TO POLE ATTACHMENT COMPLAINT

Tampa Electric Company ("Tampa Electric"), by its attorneys, submits this response to the "Supplement to Pole Attachment Complaint," filed August 7, 2007 by Bright House Networks, LLC ("BHN").

This proceeding arose when Tampa Electric filed a lawsuit to collect back rent following its discovery that BHN's pole attachments were being used for telecommunications. BHN initially denied such use and has fought all discovery, pursuing this retroactive rate complaint before the Commission as a means of delaying the civil action. Nonetheless, as will be developed below, publicly available documents in other proceedings and forums confirm that all of BHN's pole attachments have, in fact, been used by telecommunications carriers for the provision of telecommunications services, regardless of the regulatory classification of VoIP. BHN's use of the Commission's pole attachment complaint procedures in this way constitutes a sanctionable abuse of process and warrants dismissal of BHN's complaint.

A. Summary of the Facts Uncovered to Date

1. Facts Regarding Use of Attachments by Time Warner Telecom

On February 18, 2003, BHN represented and warranted in writing to Tampa Electric that its attachments were not being used for telecommunications and would not be so used without a new agreement. That statement was signed by Mr. Eugene White, BHN's Vice-President, Engineering. (*See* Exhibit 1 to Tampa Electric's Response.) On December 8, 2005, BHN again denied any telecommunications use of its attachments in a letter from Dick Rose, BHN's Vice-President, Finance. (*See* Exhibit 3 to Tampa Electric's Response.) However, when sued in state court and faced with evidence that Time Warner Telecom had independently admitted using BHN's attachments, BHN admitted on February 17, 2006 that Time Warner Telecom had in fact been using the attachments to provide telecommunications services since 1998. (*See* Ex. 7 to Tampa Electric's Response.)

BHN has also asserted in this proceeding and before the Florida trial court that Time Warner Telecom uses only 7,375 attachments. BHN has failed to identify those attachments or provide any corroborating evidence, notwithstanding discovery requests specifically asking for this information. Since the source of this alleged number is the oft-misspoken Mr. White[2], and since the location of one's own facilities is necessarily known to any company in the telecom business, Tampa Electric believes the 7,375 number cannot be taken at face value. In the absence of supporting records and an opportunity to confirm their accuracy in the field and through cross-examination of relevant witnesses, the only firm conclusion that can realistically be drawn about Time Warner Telecom is that Time Warner Telecom has used BHN's attachments to provide telecommunications service since 1998 and BHN has failed to produce

[2] As discussed *infra* and in prior submissions in this proceeding, Mr. White's confirmed misstatements include the existence of telecommunications usage of BHN's attachments, the nature and scope of BHNIS's activities, the dates associated with BHNIS's activities and with the launch of Digital Phone, the relationship between BHN and BHNIS, the relationship between BHN, BHNIS and Digital Phone subscribers, and the nature of Tampa Electric's dark fiber lease with Time Warner Telecom.

credible evidence that Time Warner has been using less than all of BHN's attachments.

2. Facts Regarding Use of Attachments by Bright House Networks Information Services, LLC

BHN has now admitted that Bright House Networks Information Services LLC ("BHNIS") is an affiliated Florida CLEC. (*See* BHN's Supp. To Pole Attachment Complaint at pp. i-ii.) On September 29, 2004, BHNIS filed a porting complaint against Verizon at the Florida Public Service Commission in which BHNIS stated unequivocally that:

> [BHNIS] provides its [Digital Phone] service as a facilities-based [CLEC], primarily to residential customers in Florida. [BHNIS] services its customers using transmission capability obtained from its affiliated cable entity, and switching and routing functionality obtained from [MCI]. MCI in turn is interconnected with Verizon and provides a venue through which [BHNIS] can exchange traffic with the [PSTN].

(*See* Exhibit 1 hereto at 3.)

In other words, BHNIS specifically represented that it was using BHN's cable network, which includes all of BHN's pole attachments, to deliver voice services. On August 1, 2005, BHNIS prevailed in that proceeding based on these representations. The stipulated order concluding the docket specifically referenced Verizon's obligation to port to BHNIS "for use in connection with [BHNIS's] facilities-based voice service." (*See* Exhibit 2 hereto.)

BHNIS's statements in the Verizon porting proceeding appear to be consistent with BHN's contemporaneous 2005 version of its Digital Voice customer contract, as posted on its website. That contract specified that the provider, "Bright House Networks," was defined to be "Bright House Networks Information Services, LLC." (*See* Exhibit 18 to Tampa Electric's Response at 15.)[3]

---

[3] We note that BHN appears now to be using a less explicit version of the contract. The current website contract is silent about exactly who is the provider, referring only to "Bright House Networks" without specifying which corporate entity is meant. Bright House Networks Residential Digital Phone Agreement, available at http://tampabay.mybrighthouse.com/uploadedFiles/Divisions/Tampa_Content/SubscriptionAgreement.pdf (last visited September 5, 2007).

In seeming contradiction, a contemporaneous 2005 CLEC Data Request also filed with the Florida Public Service Commission by BHNIS states:

> [T]he intent of [BHNIS] is the transport of its affiliate, [BHN's] VoIP service. [BHNIS] does not have any retail services. Given the regulatory status of VoIP in Florida, our Digital Phone Service is offered through our cable affiliate, [BHN].

(*See* Exhibit 20 to Tampa Electric's Response at 1.)[4]

In still other filings with the Florida Public Service Commission dated January 14, 2005, July 26, 2005, and January 17, 2006, BHNIS claimed revenues of more than $50 million from providing "Basic Local Services." (*See* Exhibit 22 to Tampa Electric's Response *and* Exhibit 3 hereto.) These filings appear to have been made by BHN's and BHNIS's parent, Advance-Newhouse Communications. (*Id.*) These revenue numbers make very clear that BHNIS was actively engaged in a substantial business.

Finally, the testimony of Arthur C. Orduna, BHN's Vice-President, Strategic Initiatives, in the Verizon/MCI merger proceeding on May 24, 2005, is strangely silent regarding BHNIS, but seems to imbue BHN with BHNIS's regulatory and contractual attributes:

> BHN is a facilities-based local exchange carrier currently offering local, long distance, and international long distance service to customers in the Tampa Bay and Central Florida markets. BHN launched Digital Phone in the Tampa Bay area on or around July 2004. We launched the service in Central Florida in October 2004. BHN will complete the roll out Digital Phone service to the Birmingham, Detroit, Bakersfield, and Indianapolis markets by the end of 2005.
>
> In addition to basic local and long distance service, our Digital Phone product also includes features such as call waiting, call forwarding, and free voicemail. We also offer directory assistance (411), operator assistance, 611 services, and the necessary subscriber information for a printed telephone directory. Our public safety features include E911 and 711 support, and out network is "CALEA" compliant. BHN also contributes to the

[4] As discussed below, reading these various statements together suggests a wholesale/retail relationship in which BHN had the relationship with the customer and BHNIS carried voice traffic to and from the customer on behalf of either BHN or a partnership consisting of BHN, BHNIS and MCI.

> Universal Service Fund and other FCC-controlled funds supported by traditional telecom providers. In sum, BHN's Digital Phone acts as a replacement to the traditional voice service offered by the incumbent LECs.

(*See* Exhibit 4 hereto at Orduna Affid. ¶ 3.)

Notwithstanding Mr. Orduna's references to BHN instead of BHNIS, there is no evidence in the records of the Florida Public Service Commission that BHN, as opposed to BHNIS, was ever certificated as a local exchange carrier. Tampa Electric has of course sought such evidence through discovery, but BHN has refused to respond. BHNIS's December 1, 2005, interconnection agreement with Verizon does show Mr. Orduna as the BHNIS signatory, indicating that he was well aware that it was BHNIS who was the actual carrier. (*See* Exhibit 21 to Tampa Electric's Response at 5, 10.) Given these facts, it appears that Mr. Orduna's testimony was in fact referring to BHNIS or to an undifferentiated combination of BHNIS and BHN.

These statements, while not entirely consistent with each other, are completely consistent in the way they pointedly contradict BHN's testimony in this proceeding. On April 25, 2006, BHN filed a declaration from Mr. Eugene White stating that BHNIS "sits empty and unused" and that "all retail voice services that BHN is offering and providing in Tampa are being offered by BHN – the cable operator." (*See* BHN Reply, White April 25, 2006 Decl. at ¶ ¶ 10, 11.) Given the extensive contrary testimony and other filings by BHNIS, BHN and Advance Newhouse, these statements are simply not a credible description of BHNIS's activities during the 2001-2005 timeframe that is at issue. A careful reading of Mr. White's declaration and BHN's accompanying brief suggests that Mr. White's curious use of the present tense in 2006 to discuss allegations relating to the 2001-2005 timeframe is most likely an attempt to obfuscate the past by talking about the present. In any event, BHNIS's on-going pursuit of new interconnection agreements from 2005 through present with Verizon, Sprint, and Smart City

Telecom show Mr. White's statements about BHNIS's "dormancy," whether past or present, to be a fiction. (*See* Exhibit 5 hereto.)

Under any reasonable analysis, all of the evidence, except Mr. White's discredited efforts, shows that BHNIS was at all times relevant to this proceeding a certificated local exchange carrier providing a variety of services, which it termed "telecommunications services," as to which it claimed all of the legal protections available to a provider of telecommunications services.[5] BHN's effort in its Supplement to draw what it calls a "bright line" between BHN and BHNIS simply does not reflect the overwhelming evidence of the BHN-BHNIS relationship during the years in question. Whether one looks at BHN's testimony in the Verizon-MCI merger docket, at BHNIS's extensive, detailed representations to the Florida Public Service Commission, at BHNIS's 2005 customer contract, or at the various USF and other informational filings made by both entities, one simply cannot find *any* consistent "bright line" between BHNIS and BHN.

If one tries to read all of those statements together and avoid contradictions as much as possible, the only reasonable conclusion is that BHNIS was used to provide a variety of traditional telecommunications services over BHN's pole attachments to facilitate BHN's efforts to market a voice service. There is no indication that BHN and BHNIS maintained any actual "bright line" point of demarcation between themselves. In fact, all indications (other than Mr. White) are that BHNIS carried voice traffic over BHN's cable network directly to BHN customers. For example, BHNIS explicitly stated in 2004 that: "Using its cable affiliate's hybrid fiber-coax transmission plant, [BHNIS] connects to its residential customers..." (*See* Exhibit 1

---

[5] In fact, BHN's parent, Advance Newhouse, filed extensive briefs in the recent *Time Warner Cable* proceeding specifically for the purpose of proving that BHNIS was a "telecommunications carrier" providing "telecommunications service," "telephone exchange service," and "exchange access service." (*See* Exhibit 6 hereto, *Adv. Newhouse Comments* at 4-8 *and* Exhibit 7, *Adv. Newhouse Reply Comments* at 4-12.)

hereto at ¶ 10.)[6]

Based on this evidence, BHNIS was either a wholesale provider to BHN or a participant in a partnership with BHN and MCI. If BHNIS was a wholesale provider, its services were clearly provided to the customer's door. (*See* Exhibits 1 and 4 hereto; Exhibit 18 to Tampa Electric's Response at 15.) Such a wholesale service is unquestionably telecommunications service. *In re: Time Warner Cable Petition for Decl. Ruling,* 22 FCC Rcd 3513 (March 1, 2007) (transport of VoIP service is telecommunications service). Alternatively, it appears equally correct to say BHN and BHNIS, in concert with MCI, acted jointly as a partnership providing local exchange service, similar to the situation in *Berkshire Tel. Corp. v. Sprint Comm. Co.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 30, 2006).

In *Berkshire Telephone*, BHN's affiliate, Time Warner Cable, entered into a business arrangement with Sprint through which the parties combined their resources to provide local telephone service to Time Warner's cable customers. *Id.* at *21-*22. The district court held that the ILEC was required to interconnect with Sprint even though Sprint did not have a direct relationship with end-users. *Id.* at *24-*25. The court based this ruling on its conclusion that Sprint and Time Warner were together providing local exchange service, even if neither was doing so individually. *Id.*; a*ccord, Consol. Comm. of Fort Bend v. Pub. Util. Comm'n of Texas*, 2007 U.S. Dist. LEXIS 54287 (W.D.Tex. Jul. 24, 2007). In this instance, BHN, BHNIS and MCI appear to have combined to produce a similar type of joint telecommunications service, except that the precise role of each company was blurred, perhaps intentionally. If anything, however, such blurring only emphasizes the absence of "bright lines" between BHN and BHNIS and makes it impossible for BHN to credibly deny that the admitted telecommunications services

[6] In light of this and other explicit representations that BHNIS was in fact connecting to subscribers directly, Mr. White's statement that BHNIS's service "will at no time extend all the way to BHN's VoIP customers" is simply not credible. (*See* White April 19, 2007 Decl. at ¶ 6.)

of BHNIS (and for that matter, MCI) were provided over BHN's entire network of pole attachments, not just an isolated handful.

In summary, BHN and BHNIS appear to have told regulators a variety of stories. The story told in each instance was the story that was most likely to capture for them, collectively, the benefits of being a provider of telecommunications services: interconnection, porting, state certification, and the like. These varying stories were not merely policy positions or statements of opinion; they were statements of fact, often under oath, made to achieve specific economic benefits. And when BHN now tells the opposite story that its attachments were not implicated in telecommunications at all, the motive for this story is again economic gain: avoiding the higher pole attachment rate that is one of the obligations of having attachments used for telecommunications services. But BHN cannot lawfully make representations of fact to governmental agencies to achieve economic benefits and then deny these same facts to avoid the obligations that derive from those benefits. Having previously represented that BHNIS was providing telecommunications services during the relevant period directly to subscribers as a facilities-based telecommunications carrier, BHN and BHNIS are estopped from denying it. *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001); *Reynolds v. IRS,* 861 F.2d 469, 472-74 (6th Cir. 1988).

3. Facts Regarding Use of Attachments by MCI

Although BHN had never mentioned MCI by name in this proceeding until its Supplement and has refused to produce any discovery relating to MCI in the trial court, it has made occasional oblique references to a relationship with an unnamed "unaffiliated third party carrier." (*See* BHN Reply, White April 25, 2006 Decl. at ¶ 11; White April 19, 2007 Decl. at ¶5.) Based on a reference to MCI on page 4 of BHN's Supplement and BHN testimony in other proceedings, it appears that this carrier is, or at least was during the period at issue, MCI, Inc. Mr. Arthur C. Orduna, BHN's Vice-President, Strategic Initiatives, testified in the Verizon-MCI

merger docket on May 24, 2004, regarding the relationship as follows:

> BHN competes head-to-head in the local Florida voice telephony market and the high speed data market with Verizon Communications, Inc. ("Verizon"). In the Tampa area, Verizon has announced plans to compete in the video programming market as well. As a facilities-based carrier, BHN does not resell the services of the incumbent LEC, nor do we rely on or purchase unbundled network elements. However, we rely heavily on the services offered by MCI, Inc. ("MCI"). In order to effectively and aggressively enter the Florida voice services market, BHN elected to partner with MCI to provide a variety of voice-related capabilities. Specifically, MCI provides the following services in support of our voice services product:
>
> a. **Local network connectivity** – MCI provides connectivity to the ILEC tandems, PSAP tandems and other local traffic terminating points. MCI is responsible for securing the necessary interconnection agreements with each incumbent LEC within BHN's footprint.
>
> b. **Long distance network connectivity** – MCI provides connectivity to their long distance transport network for delivery of intra- and inter-LATA calling traffic.
>
> c. **Traffic backhaul** – Through its UUNET affiliate, MCI provides network connectivity of signaling, voicemail and other associated traffic between our main network operating center and the other BHN divisions located in Birmingham, Detroit, Bakersfield, and Indianapolis.
>
> d. **SS7 support** – MCI provides support for signaling protocol and other messaging related to call set-up, tear-down, and in-call feature manipulation.
>
> e. **Telephone number management** – MCI provides BHN subscribers with telephone numbers acquired from the North American Numbering Plan Administrator (NANPA).
>
> f. **Service order processing** – MCI provides BHN with the systems, personnel, and processes to support voice services order processing. This activity is further detailed below:
>
> i. New Service Orders- MCI processes all BHN orders for both native telephone numbers as well as customers who wish to port their number from their current provider. MCI's unique expertise in handling number porting requests was an important selling point for BHN and remains an essential aspect of the service.
>
> ii. Moves, Adds, and Change Orders – MCI processes all move, add, and change orders that require either changes in their network or LEC changes (such as directory listing changes)

iii. Disconnect Orders – MCI processes all disconnect orders for removing voice services from BHN and MCI systems, including porting out numbers for customers moving to another carrier.

g. As part of the order processing capability, MCI performs the following functions:

i. LEC CSR Access — MCI pulls the relevant customer service report from the porting carrier, to confirm order entry information necessary to process a ported order.

ii. MSAG Validation — MCI ensures that the street address provided for the customer conforms to addressing standards to support full E911 capability.

iii. Ported Number FOC — MCI coordinates with the porting carrier to establish a date for porting the number of a new customer.

iv. TN Activation — MCI activates the new telephone number, both with regard to its network as well as in our network.

v. ALI Update — MCI updates the address lookup information for the telephone number to ensure proper E911 routing and response

vi. LIDB Update — MCI updates the line information database with relevant customer information as required.

vii. CNAM Update — MCI updates caller ID information as required.

viii. CARE Update — MCI updates the long distance carrier information to reflect MCI as the long distance provider.

h. **Domestic Long Distance** — As part of the service bundle, MCI provides unlimited domestic long distance service for BHN customers.

i. **International Long Distance** — MCI offers a discounted rate plan for calls to locations around the world. REDACTED

j. **Operator and Directory Assistance Services** — MCI provides our operator support system and directory assistance/411 services.

(*See* Exhibit 4 hereto at Orduna Affid. ¶ 6.)

Although Mr. Orduna's testimony nominally refers to BHN, his references to BHN elsewhere in his testimony as a "facilities based local exchange carrier" suggest that he is actually referring to BHNIS. (*See* Exhibit 4 hereto at 3.) BHNIS, for example, stated to the Florida Public Service Commission on September 29, 2004, that BHNIS "services its customers

using transmission capability obtained from its affiliated cable entity, and switching and routing functionality obtained from MCI WorldCom Network Services, Inc. or an affiliate thereof." (*See* Exhibit 1 hereto at ¶ 3.) Either way, these statements make very clear that one or both of BHN and BHNIS had a substantial relationship with MCI under which MCI provided an array of telecommunications services.

Significantly, MCI appears to have been providing several of these services directly to Digital Phone subscribers using BHN's attachments. Among other services, Mr. Orduna particularly mentions operator service and directory assistance/411 services, both of which by definition involve direct service to subscribers by MCI over BHN's attachments. (*See* Exhibit 4 hereto at ¶ 6.)[7]

It is significant that Mr. Orduna refers to the relationship with MCI as a "partnership," as distinct from the interconnection agreements with ILECs to which he also refers. (*See* Exhibit 4 hereto at Orduna Affid. ¶ ¶ 6, 6.a.; *see also* Exhibit 7 hereto at 8.) This is consistent with *ex parte* presentations made to the Commission staff on September 28, 2005, by Mr. Orduna on behalf of Advance-Newhouse Communications stating that "BHN" (apparently intended to mean BHNIS) was "a facilities-based local exchange carrier offering a full range of voice services... in partnership with MCI." (*See* Exhibit 8 hereto at 4.) While the partnership agreement with MCI has been suppressed by BHN during discovery, circumstantial evidence indicates that it was not a simple interconnection agreement inasmuch as Florida law requires such agreements to be filed and the files of the Florida Public Service Commission appear to contain no record of an interconnection agreement between MCI and BHN or BHNIS. *See* Fla. Stat. 364.162.

---

[7] Not only do MCI's activities constitute yet another undisclosed use of BHN's attachments, but Mr. Orduna's testimony about MCI also contradicts Mr. White's statements that BHNIS's services "won't extend to BHN customers" and "don't generate signals carried to customers." (*See* While April 19, 2007 Decl. at ¶ 6.) Mr. Orduna's testimony specifically describes MCI services, including operator services and directory assistance, that are by definition provided directly to the customer. Of course, Mr. White's statement that these services will now be provided by BHNIS is yet another indication that BHNIS provides services over all of BHN's attachments.

In summary, the evidence indicates that a partnership agreement exists, or at least existed during the relevant timeframe, and established an arrangement through which BHN and/or BHNIS supplied the cables, transport, marketing and subscriber base, and MCI provided operator, directory assistance and other telecommunication services that traveled over the cables to and from subscribers. This alone would constitute use of BHN's attachments by a telecommunications carrier (both MCI and BHNIS) to provide telecommunications services. *See Berkshire Tel. Corp.*, 2006 U.S. Dist. LEXIS 78924 at *24-*25; *Consol. Comm. Of Fort Bend*, 2007 U.S. Dist. LEXIS 54287 at *28-*29; *Time Warner Cable*, 22 FCC Rcd at 3513.

4. Facts Regarding Timeframes

BHN has now admitted Time Warner Telecom's use of BHN attachments from 1998-present. Other timeframes are in dispute.

BHN's filings in this proceeding insist that roll-out of Digital Phone in Tampa Electric's service area begin in 2005. (*See* BHN Reply White April 25, 2006 Decl. at ¶ 8.) The sole evidence offered in support is the repeated declarations of Mr. Eugene White. (*Id.*) Mr. White, once again, is contradicted by every other source.

On May 24, 2005, Mr. Arthur C. Orduna, BHN's Vice-President, Strategic Initiates, filed testimony before the Commission in the Verizon-MCI merger docket stating that "BHN launched Digital Phone in the Tampa Bay area on or around July, 2004." (*See* Exhibit 4 hereto, Orduna Affid. at ¶ 2.) Similarly, BHNIS filed a porting complaint against Verizon at the Florida Public Service Commission on September 29, 2004, stating that it had "launched its Digital Phone service in the summer of 2004" and currently provided Digital Phone "in the Pinellas and Hillsborough County areas." (*See* Exhibit 1 hereto at ¶ 7.) Tampa and Hillsborough County are squarely within Tampa Electric's service area.

Even before Digital Phone, however, it appears that BHN was permitting use of its cables by a CLEC, Volo Communications. An article in the Orlando Sentinel dated September 15,

2003, states that BHN and Volo had entered into an agreement through which Volo would provide various services over BHN's attachments to approximately 1500-2000 Volo customers. (*See* Exhibit 9 hereto.) It is not clear from the article where the 1500-2000 customers were located. BHN has never disclosed or produced this agreement during discovery.

One recurring barrier to confirming exact timeframes has been BHN's habit in this proceeding of couching much of its testimony and argument in the present tense when the only issue is what happened between 2001 and 2005. For example, virtually all of the statements made by BHN in this proceeding about BHNIS refer to what BHNIS *is* doing, not what it *was* doing during 2001-2005. The independent evidence uncovered from other sources suggests that BHN is being disingenuous and is talking about the present to obfuscate the past. Proper discovery and cross-examination of witnesses appear to be the only way to uncover the truth about who was using BHN's attachments, when they were using them, and what they were using them to do. Tampa Electric is trying hard to pursue those processes before the trial court and BHN is trying just as hard to use the pendency of this Commission proceeding to avoid those processes.

5. Facts Regarding Use of Attachments for Wholesale Transport

BHN's Supplement contains no new evidence regarding the use of its attachments for wholesale transport (the April 19, 2007, Declaration of Eugene White was previously submitted). It does, however, contain new, unsubstantiated[8] assertions about BHN's current operations, and it also contains BHN's admission that wholesale transport is indeed a telecommunications

[8] Most of the statements of fact in the Supplement are not in fact supported even by the White declaration. We note that BHN's attorney, Paul Werner, did include a Verification stating that he is "familiar" with the factual matters in the Supplement. It is not clear what Mr. Werner is actually testifying about, nor is it clear how much personal knowledge he has about the physical, contractual and other aspects of, for example, BHNIS's operations. On two points at least – the date of roll-out of the Digital Voice service and the identity of the entity that rolled it out – Mr. Werner is directly contradicted by BHNIS's and BHN's prior filings, including sworn testimony of a BHN officer. (*See* Exhibits 1 and 4 hereto.) One assumes that perhaps Mr. Werner only means by his verification that someone at BHN told him the statements in the Supplement were true. Hearsay of that type, of course, carries no weight at all.

service that BHNIS provides over BHN's attachments.

Interestingly, although BHN has retreated from its earlier denials that BHNIS had used BHN's attachments for telecommunications service, BHN now asserts that it really doesn't matter because, by coincidence, BHNIS was actually using the exact same 7,375 attachments as Time Warner Telecom. Not surprisingly, BHN fails to identify those attachments (BHN has consistently refused to tell Tampa Electric which poles Time Warner Telecom is actually using), nor does BHN explain the coincidence. The witness asserting both this coincidence and the 7,375 number is, once again, Mr. Eugene White. Since Tampa Electric has been allowed no way, yet, to check either Mr. White's number or his alleged coincidence, and given Mr. White's demonstrated lack of credibility in this proceeding to date, Tampa Electric respectfully submits that these assertions cannot fairly be accorded any probative value.

B. Discovery and a Hearing Are Necessary

In its Reply, BHN strongly urged the Commission not to hold a hearing or provide any discovery rights to Tampa Electric. (*See* BHN Reply at 41-44.) Instead, BHN assured the Commission, the Commission could just rely on BHN's own representations because they were "made under penalty of perjury." (*Id.* at 41.) While BHN's representations were certainly made under penalty of perjury, the evidence uncovered from other sources removes any doubt that the Commission cannot in fact rely on BHN's representations, sworn or otherwise, in this proceeding.

BHN's representations in this proceeding are contradicted by the documented, and in many cases sworn, statements made by BHN and BHNIS and their parent companies to the Commission, to the Florida Public Service Commission, to customers, and to Tampa Electric over a period of several years. These contradictions extend to virtually every aspect of BHN's testimony in this proceeding – from the dates on which events occurred, to the nature of services provided, to the identities of the entities involved, to the nature of business, corporate and

regulatory relationships.

As a utility entitled by law to recover the telecommunications rate when a telecommunications carrier uses attachments to provide telecommunications service, Tampa Electric has a right to uncover the truth about how BHN's attachments have been used and to recover the monies it should have been paid. Tampa Electric believes the Commission and the courts have clearly stated that Tampa Electric must pursue these rights in court. (*See* Tampa Electric's Response at 16-17.) Tampa Electric therefore filed a state court collections action in which it is seeking discovery regarding the use of BHN's attachments. BHN, however, is using the pendency of this complaint proceeding before the Commission to block virtually all discovery in the civil action. If BHN continues to succeed in using this proceeding to suppress evidence in that proceeding, and if BHN convinces the Commission not to provide a hearing and discovery in this proceeding, Tampa Electric fears it will never uncover the truth or be able to enforce its rights.

In its Reply, BHN derided the idea of a hearing as "a colossal waste of time." (BHN Reply at 42.) Tampa Electric submits that the objective evidence shows the opposite: that proper discovery and an evidentiary hearing would be colossally productive and would provide the only path to the truth.

Tampa Electric believes the Commission's position is that the proper place for discovery and hearings is in the state court. To that end, Tampa Electric would urge the Commission at a minimum to issue a ruling or statement to that effect so that BHN's use of this proceeding as a roadblock to discovery in state court can be put to an end. In addition, Tampa Electric continues to believe that if the Commission intends to take any action on BHN's complaint other than rejecting it outright, the Commission must provide full discovery and an evidentiary hearing. The record is too obviously flawed to provide due process on any other basis.

C. BHN's Misconduct Merits Appropriate Sanctions

In its Response, Tampa Electric pointed out that BHN should be sanctioned for its willful violation of the notice requirement of 47 CFR § 1.1403(e), compounded by BHN's misrepresentations of fact to Tampa Electric regarding the same subject matter. (*See* Tampa Electric's Response at 33-35.) Since that time and notwithstanding BHN's efforts to suppress relevant information, Tampa Electric has uncovered evidence of numerous additional violations of the Commission's rules, including both failure to notify Tampa Electric regarding use of attachments by Time Warner Telecom, BHNIS, MCI, and possibly others in violation of 47 CFR § 1.1403(e), and material false statements to the Commission with respect to the activities of BHNIS, in violation of 47 CFR § 1.17. These violations describe a pattern of behavior that appears contemptuous of the Commission's rules and of Tampa Electric's rights. Tampa Electric respectfully urges the Commission to investigate these violations fully and to impose appropriate sanctions. Given the recurrence of these violations on a regular basis over a period of many years, Tampa Electric does not believe that anything short of vigorous enforcement action by the Commission will induce BHN to amend its conduct.

D. The Relevance of the Classification of VoIP

BHN has repeatedly asserted that both this complaint proceeding and the state court action depend on the regulatory classification of VoIP. The new evidence uncovered by Tampa Electric reconfirms, however, that this simply is not the case. The evidence instead demonstrates that regardless of whether Digital Phone involves VoIP, a combination of VoIP and other things, or something else altogether, multiple telecommunications carriers have been using BHN's attachments to provide services that are unquestionably telecommunications services.

Despite BHN's avoidance of virtually all discovery to date, the record now shows that BHNIS, MCI and Time Warner Telecom were all providing well-established forms of telecommunications services over BHN's attachments. While BHN has alleged that Time

Warner Telecom and BHNIS were using less than all of BHN's attachments, those statements are inconsistent with BHN's and BHNIS's own statements in other proceedings. (*See* Exhibits 1 and 4 herero.) Accordingly, the only reasonable conclusion to be drawn from the evidence of record is that all of BHN's attachments are subject to the telecommunications rate, regardless of how VoIP is ultimately classified.

Finally, to the extent the Commission believes the classification of VoIP is relevant to this proceeding, the numerous VoIP-related decisions issues by the Commission since this proceeding began would appear to dictate a classification of VoIP as telecommunications. While each of the Commission's VoIP-related decisions clearly provides that it is not intended as a classification ruling, each decision also treats VoIP exactly as if VoIP were a telecommunications service and not an information service.[9]

In particular, the Commission's decision to treat VoIP as a telecommunications service for purposes of assessing regulatory fees was expressly based on the Commission's findings that "VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers" and that telecommunications service providers are "the category of regulatory fee payees with which interconnected VoIP providers most closely relate." (*See 2007 Regulatory Fee Order* at ¶ ¶ 18, 19.) These findings are entirely consistent with BHN's testimony that based on BHN's

---

[9] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2007,* MD Docket No. 07-81, Report and Order, 2007 FCC LEXIS 5815 (Aug. 6, 2007) ("2007 Regulatory Fee Order"), ¶ ¶ 4-19; *Universal Service Contribution Methodology,* Report and Order, WC Docket No. 06-122, 21 FCC Rcd 7518, 7536-543, ¶ ¶ 34-49 (2006), *aff'd in relevant part, Vonage Holdings Corp. v. FCC,* 489 F.3d 1232 (D.C. Cir. 2007); *E911 Requirements for IP-Enabled Service Providers,* First Report and Order, 20 FCC Rcd 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services,* ET Docket No. 04-295, RM-10865, First Report and Order, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2002), *aff'd, American Council on Education v. FCC,* 451 F.3d 226 (D.C. Cir. 2006); *Implementation of the Telecommunications Act of 1996, Telecommunications Carrier's Use of Customer Proprietary Network Information and other Customer Information, IP-Enabled Services,* CC Docket No. 96-115, WC Docket No. 04-36, Report and Order, 22 FCC Rcd 6927 (2007); *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities,* WC Docket No. 04-36, WT Docket No. 96-198, Report and Order, 2007 FCC LEXIS 4704 (June 15, 2007).

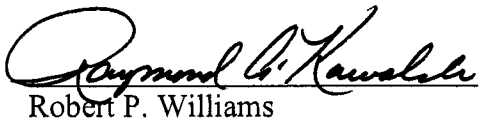
contributions "to the Universal Service Fund and other FCC controlled funds supported by traditional telecom providers... BHN's Digital Phone acts as replacement to the traditional voice service offered by the incumbent LEC's." (*See* Exhibit 4 at Orduna Affid. ¶ 3.)[10] These facts would support a finding that VoIP is indeed a telecommunications service under the standards approved by the United States Supreme Court in *National Cable and Telecommunications Association v. Brand X Internet Services*. *See* 545 U.S. 967 (2005). Indeed, any other classification would appear to be arbitrary and inconsistent.

CONCLUSION

For the foregoing reasons, Tampa Electric respectfully requests that BHN's complaint be denied and dismissed with prejudice and that BHN be sanctioned and directed to provide Tampa Electric with correct and complete information regarding the use and users of BHN's attachments.

Respectfully submitted,

TROUTMAN SANDERS LLP



Robert P. Williams
Raymond A. Kowalski
Attorneys for Respondent Tampa Electric Company

Bank of America Plaza, Suite 5200
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3438

Date: September 6, 2007

[10] In this same vein, BHNIS explicitly equated Digital Phone to POTS when it stated "Verizon's practice of conditioning a customer's ability to terminate Verizon plain old telephone service *and receive such service from [BHNIS]*... is anticompetitive..." (*See* Exhibit 1 hereto at ¶ 36) (emphasis added).

CERTIFICATE OF SERVICE

I, Raymond A. Kowalski, hereby certify that copies of the foregoing Motion for Leave to File Response of Tampa Electric Company to Supplement to Pole Attachment Complaint and Response of Tampa Electric Company to Supplement to Pole Attachment Complaint have been served upon the persons listed below by first class mail, this 6th day of September, 2007, postage prepaid or by hand delivery (*) and/or by email (**) .

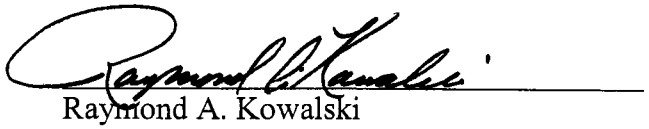
Alexander P. Starr, Esq.*
Chief
Market Disputes Resolutions Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C828
Washington, D.C. 20554

Rosemary McEnerny, Esq.* **
Suzanne M. Tetreault* **
Market Disputes Resolutions Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C828
Washington, D.C. 20554

Gardner F. Gillespie**
J.D. Thomas, Esq.**
Paul A. Werner III**
Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426



Raymond A. Kowalski

EXHIBIT 1

COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200
WASHINGTON, D.C. 20006-3458
TELEPHONE (202) 659-9750
FAX (202) 452-0067
WWW.CRBLAW.COM

CHRISTOPHER W. SAVAGE
ADMITTED IN DC AND CA
DIRECT DIAL
1 202 828 9811
CSAVAGE@CRBLAW.COM

LOS ANGELES OFFICE
2381 ROSECRANS AVENUE, SUITE 80
EL SEGUNDO, CALIFORNIA 90245-4200
TELEPHONE (310) 643-7999
FAX (310) 643-7997

September 29, 2004

VIA COURIER

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

Re: Filing of Complaint of Bright House Networks Information Services, LLC (Florida) Against Verizon Florida, Inc., Request for Oral Argument and Request to Name Christopher W. Savage a Qualified Representative, Docket No. 041170-TP

Dear Ms. Bayó:

On behalf of Bright House Networks Information Services, LLC (Florida) ("BHN"), enclosed for filing and distribution are the **original and 15 copies** of the following:

- a Complaint and Request for Declaratory Ruling
- a Request for Oral Argument regarding the matters identified in the complaint, and
- BHN's Request to name me and Ms. Danielle Frappier as qualified representatives of BHN in this proceeding.

I have also enclosed an additional copy to be stamped and returned to the courier, and thank you in advance for your assistance in this matter.

Sincerely yours,

Christopher W. Savage

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

Bright House Networks Information Services, LLC (Florida), Complainant v Verizon Florida, Inc., Defendant

No. 041170-TP

COMPLAINT AND REQUEST FOR DECLARATORY RULING OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC (FLORIDA)

Bright House Networks Information Services, LLC. (Florida) ("BHN"), through its attorneys and pursuant to Sections 25-22.036(2), 28-106.104 and 28-106.301 of the Florida Administrative Code and Section 120.57(2) of the Florida Statutes, brings the following complaint against Verizon Florida, Inc. ("Verizon").

INTRODUCTION AND SUMMARY

1. The facts giving rise to this complaint are not in dispute: when a Verizon customer who buys both intrastate telephone exchange service ("plain old telephone service," or "POTS") and digital subscriber line ("DSL")/Internet access service from Verizon, seeks to switch to BHN for voice services, Verizon refuses to port the customer's POTS number unless the customer first disconnects the DSL service and completely closes out the account.[1] What is in dispute is whether such practice is

[1] Verizon has consistently rejected porting requests submitted on behalf of BHN voice service customers, citing the presence of DSL on the customer's account as the reason for rejecting the request. As such, there is no dispute concerning the core factual basis for the present complaint, *i.e.*, that Verizon refuses to port the POTS number of a customer who also purchases

permissible under applicable law. Aside from the fact that federal number portability rules do not contemplate an incumbent local exchange carrier ("ILEC") using control over a customer's telephone number to interfere with competition for basic telephone service, this Verizon practice imposes an anticompetitive, unjust and unreasonable condition on the termination of intrastate telephone exchange service in violation of FLA. STAT. § 364.10.

2. It is not anticompetitive for Verizon to try to sell its POTS customers other services in addition to POTS, such as DSL/Internet access service. But it clearly *is* unjust and unreasonable to impose, as a condition of ***terminating*** POTS service, a requirement that the customer give up the technically and regulatorily distinct DSL/Internet access service. Such a requirement severely impedes direct, on-the-merits, facilities-based competition for voice customers, harming consumers as well as competitive providers. Customers are significantly inconvenienced by being unable to smoothly and efficiently move from one voice services supplier to another; by being prevented from freely taking their telephone numbers with them when they change voice providers; by having to seek alternative providers of high speed Internet access, which involves changing email addresses and time, effort and expense on the part of the consumer; and by having to endure the hassle and frustration that BHN customers have encountered in having to

---

Verizon DSL services, and this complaint meets the requirements to file a proceeding in which no disputed issues of material fact are involved. FLA. STAT. § 120.57(2); FLA. ADMIN. CODE § 28-106.301. Although Verizon may, in response to this complaint, attempt to argue that there are legal, technical or policy reasons why such practice may be permissible, it cannot deny that it is refusing to port such numbers. Of course, BHN argues that there are no legal, technical or policy justifications for such practice, and that indeed, Florida law and policy *require* Verizon to timely port these numbers to BHN.

make several to many calls to Verizon for it to effectively cancel their DSL service and port their numbers.

3. BHN provides its Voice over Internet Protocol ("VoIP") service ("Digital Phone") as a facilities-based competitive local exchange carrier ("CLEC"), primarily to residential customers in Florida. BHN serves its customers using transmission capability obtained from its affiliated cable entity, and switching and routing functionality obtained from MCI WorldCom Network Services, Inc. or an affiliate thereof ("MCI"). MCI, in turn, is interconnected with Verizon and provides a venue through which BHN can exchange traffic with the traditional public switched telephone network ("PSTN"). As a facilities-based provider, BHN does not rely on Verizon for any unbundled network elements ("UNEs"); BHN does not resell any Verizon services; and BHN has no collocation arrangements with Verizon. Given Verizon's status as the ILEC in the area in which BHN primarily operates, however, most of BHN's customers formerly received their voice services from Verizon. As a result, BHN depends on Verizon porting telephone numbers when BHN competes for and wins the business of an existing Verizon customer.

4. Number porting has generally not been problematic for customers switching to BHN Digital Phone when Verizon only sells its customers POTS. When Verizon also sells its customers DSL service, however, Verizon uses its provision of DSL to interfere with customers taking their telephone numbers for use with the services offered by BHN, thereby preventing Florida consumers from enjoying the full benefits of Florida's competitive voice services market.

5. In light of the foregoing, BHN seeks an order directing Verizon to immediately cease its practice and to permit the unconditional and timely porting of customers' POTS numbers when they choose BHN over Verizon for voice service, irrespective of whether the customer does or does not buy DSL service from Verizon.

6. Moreover, BHN requests that the Commission make a declaratory ruling that the type of practice described above, is anticompetitive and a violation of Florida laws and regulations.

PARTIES

7. BHN is a Delaware limited liability company that was granted CLEC authority in 2002. BHN's cable affiliate currently serves approximately 1.7 million customers in Florida. BHN launched its Digital Phone service in the summer of 2004. It currently provides Digital Phone in the Pinellas and Hillsborough County areas. It has plans to offer Digital Phone in the Tampa Bay and central Florida areas. BHN's principal place of business in Florida is 301 East Pine Street, Suite 600, Orlando, FL 32801, telephone (407) 210-3165.

8. On information and belief, Verizon is the ILEC, as that term is defined in 47 U.S.C. § 251(h), authorized to provide telecommunications services in various areas in Florida, including the Pinellas and Hillsborough County areas where BHN offers its Digital Phone service. On information and belief, Verizon's principal place of business in Florida is 106 East College Avenue, Tallahassee FL 32301-7748. On information and belief, Verizon typically does not sell the DSL service directly to its end user, but rather it sells this service to Verizon's Internet Service Provider ("ISP") affiliate or some other Verizon affiliate ("Verizon ISP Affiliate"). Upon information and belief, the Verizon ISP

Affiliate bundles the interstate DSL service with unregulated Internet access service and sells the package to the end user. Verizon itself then bills the end user for the bundled package.

JURISDICTION

9. As described more fully below, Verizon's practice of refusing to port the number of a POTS customer who also subscribes to DSL violates state law. The Commission has jurisdiction under FLA. STAT. § 364.01 to adjudicate complaints alleging violations of Florida statutes regulating telecommunications companies such as Verizon. This Commission has previously ruled that it has jurisdiction to resolve complaints regarding a BellSouth policy similar to the Verizon policy complained of here. Specifically, the Commission found that BellSouth's policy:

> raised valid concerns regarding possible barriers to competition in the local telecommunications voice market that could result from BellSouth's practice of disconnecting customers' FastAccess [DSL] Internet Service when they switch to FDN voice service. ***That is an area over which we do have regulatory authority.***[2]

The Commission, therefore, has jurisdiction to hear and resolve this dispute.

FACTUAL BACKGROUND

10. BHN has been certificated as a CLEC in Florida since 2002, and began providing Digital Phone services in Florida in June 2004. Using its cable affiliate's

---

[2] *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. under the Telecommunications Act of 1996*, Final Order on Arbitration, 2002 Fla. PUC LEXIS 401 (Fla. PSC June 5, 2002) at 8 (hereinafter "FDN Order") (emphasis added), *appeal in federal district court stayed BellSouth Telecommunications, Inc. v. Florida Digital Network, Inc.*, Case No. 4:03cv212-RH, Order Staying Proceedings and Requiring Reports (N.D. Fl. Feb. 24, 2004) (staying appeal until the FCC resolves the BellSouth request for declaratory relief).

hybrid fiber-coax transmission plant, BHN connects to its residential customers without any reliance on the loop or other facilities of the incumbent. Calls between Digital Phone customers are routed over the facilities of BHN's cable affiliate through VoIP technology, which is unregulated in Florida.[3] Like any other local telephone customers, however, BHN customers want to send calls to and receive calls from the traditional PSTN. To address this need, BHN routes those calls through its arrangement with MCI, without any use of Verizon or any other ILEC facility. By relying entirely on non-ILEC facilities to serve its customers, BHN provides facilities-based competition in Florida. As was recently recognized by the Federal Communications Commission ("FCC") Chairman Michael Powell "'[f]acilities-based competition brings the innovation and value that consumers demand . . . '"[4] and "[i]n the long run, the transition to facilities-based competition holds out the best promise of real benefit to America's telephone consumers."[5]

11. Because BHN provides its service over its own and third party facilities and does not use any Verizon UNEs, the ongoing industry disputes about which parts of ILEC networks must be unbundled, at what prices, and on what terms, are not at issue in BHN's dispute with Verizon. Similarly, BHN does not resell Verizon's services and so is

---

[3] In May 2003, Florida enacted the Tele-Competition Innovation and Infrastructure Enhancement Act. 2003 FLA. SESS. LAW SERV. Ch. 2003-32 (C.S.S.B. 654) (West) (hereinafter "Tele-Competition Innovation and Infrastructure Enhancement Act"), codified at FLA. STAT. § 364.01 *et seq*. This legislation clearly exempts VoIP from the traditional regulation applicable to telecommunications companies in Florida.

[4] FCC Chairman Michael K. Powell Announces Plans for Local Telephone Competition Rules, News, 2004 FCC LEXIS 3139 (FCC rel. June 14, 2004) (citation omitted).

[5] FCC Chairman Michael Powell's Comments on AT&T's Proposal to Transition to Facilities-Based Competition, News, 2004 FCC LEXIS 2202 (FCC rel. Apr. 29, 2004).

unconcerned about the wholesale discounts applied to such services. BHN's network and operations, therefore, function independently of Verizon's. Even so, in order to fully serve its customers' needs, BHN requires the seamless portability of telephone numbers from Verizon.

12. Verizon, however, is directly and blatantly interfering with the porting of telephone numbers when it loses voice customers to BHN. Verizon is doing so despite the fact that DSL/Internet access services are technically and regulatorily distinct from POTS. DSL is provided through equipment attached to both ends of a copper loop that sends high-speed data signals over the loop at high frequencies that are distinct from, and do not interfere with, the voice signals used for POTS (which are transmitted using very low frequencies). Because they use distinct and separate frequencies on the loop and different equipment attached to that loop, there is no technical need for POTS to be active and in-service while DSL/Internet access services are being offered. At least one other ILEC already offers so-called "naked DSL" services to end users.[6] Thus, unless Verizon's Florida network is technically backward compared to other ILECs, Verizon can certainly offer naked DSL as a technical matter. In fact, at least one Verizon affiliate apparently began offering naked DSL to certain customers last April, and has publicly announced that it intends to offer stand-alone DSL by the end of 2004.[7]

---

[6] Jim Duffy, *Naked DSL*, Network World (March 5, 2004), available at http://www.nwfusion.com/edge/columnists/2004/0301edgecol2.html (noting that Qwest provides stand-alone DSL). BHN also notes that Sprint is offering a naked DSL service.

[7] Marguerite Reardon, *Verizon to Offer 'Naked' DSL*, News.com (May 26, 2004), available at http://news.com.com/Verizon+to+offer+'naked'+DSL/2100-1034_3-5221095.html.

13. DSL and Internet access services are also distinct from POTS as a regulatory matter. POTS is essentially intrastate telephone exchange service. As such, the terms and conditions associated with Verizon's offering of this service are subject primarily if not exclusively to the jurisdiction of the Commission.[8] Internet access service is an information service, subject primarily if not exclusively to the jurisdiction of the FCC, and essentially unregulated. The transport component of an integrated DSL/Internet service is presently classified as a telecommunications service, and is also primarily interstate in nature.[9] Thus, this Commission has full authority over the conditions under which Verizon sells its intrastate POTS service to customers, including the terms and conditions under which they are allowed to terminate such service. The fact that the customer purchases or has purchased in the past an interstate DSL service from Verizon does not diminish this Commission's authority over Verizon's intrastate POTS offerings.

14. Despite the technical and regulatory distinctiveness of POTS and DSL/Internet access service, Verizon has impermissibly linked the terms and conditions of offering these two services by insisting that end users may not terminate their intrastate plain old telephone service unless they also terminate their interstate DSL/Internet access service. There is no conceivable justification for imposing this unjust and unreasonable

---

[8] FLA. STAT. § 364.01.

[9] The FCC is currently considering whether to deem the entire DSL/Internet access bundled service commonly offered by ILECs as an integrated, unregulated interstate information service as well. *In Re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (FCC rel. Feb. 15, 2002).

condition on end users choosing to terminate their POTS service with Verizon. Nor is there any justification for Verizon's policy of enforcing this unreasonable condition by refusing to port the telephone numbers of customers who initially buy both services from Verizon but who then choose to obtain Digital Phone services.

15. When a new BHN customer seeks to port his old telephone number for use with his Digital Phone service, MCI, which is directly interconnected with Verizon, submits a porting request to Verizon. Upon receiving the request, if the customer buys Verizon DSL service, Verizon rejects the request and refuses to port the number without making any attempt to develop a solution to allow its customers to obtain voice services from the provider of their choice.

16. This unjust and unreasonable Verizon practice has caused significant interference with BHN's ability to compete in the marketplace for voice services in Florida. Recent experience indicates that Verizon is rejecting an increasing number of Digital Phone-related number porting requests BHN submits, because those customers also purchase or purchased DSL/Internet access from Verizon. When that happens, BHN can either drop its plan to serve the customer (which requires an explanation to the customer that the service they want to buy from BHN will not be forthcoming) or try to convince the customer to drop his or her Verizon DSL/Internet access service as a condition of getting BHN's Digital Phone service. Not surprisingly, many customers depend on their broadband Internet access services too heavily to wait for this process to play itself out over the course of two weeks or more, and simply cancel order for BHN's service. Moreover, canceling the DSL service often takes several phone calls from the customer, due to Verizon's failure to properly remove notations on the customer account

that the customer has DSL service. In the months of June through August, approximately 24% of new customers who have attempted to port their numbers and who currently have or had Verizon DSL at some time in the past have cancelled their orders to sign up for BHN Digital Phone service due to problems with canceling their Verizon DSL, closing out their Verizon DSL accounts and porting their telephone numbers.[10] Even if the customer is patient enough to endure this process, BHN incurs additional expenses in having to reschedule installations when the DSL service is not cancelled properly and assisting customers in dealing with the DSL cancellation process.[11]

VERIZON'S REFUSAL TO PORT NUMBERS VIOLATES STATE AND FEDERAL POLICIES OF PROMOTING COMPETITION IN VOICE SERVICES

17. BHN repeats and realleges the allegations contained in paragraphs 1 through 16 above.

18. The Commission noted in its *FDN Order* that Florida Statutes direct the Commission to "encourage competition in the local exchange market and remove barriers to entry," and noted that the Commission has jurisdiction to "address behaviors and practices that erect barriers to competition."[12] It also noted that under Section 706 of the Federal Communications Act, Congress directed state commissions to encourage the

---

[10] Of course, the 24% does not include customers who initially contact BHN seeking to switch to its Digital Phone service, but then decline to sign up for the service upon learning that they would have to cancel their DSL service. Thus, the total number of lost potential Digital Phone customers is higher than this documented 24%. In the months of June through end August 2004, cancellations due to porting resulted in a decrease of 35% in new customers for BHN.

[11] BHN's cable affiliate, of course, offers a high-speed Internet access service that customers may buy, if they so chose, in addition to buying BHN's Digital Phone offering. The problem here arises because not all customers want both services from BHN. BHN offers Digital Phone to customers who do not choose to purchase high-speed Internet access from its cable affiliate.

[12] *FDN Order* at 9.

deployment of advanced telecommunications by promoting competition and removing barriers to investment in infrastructure.[13]

19. The Florida legislature recently reaffirmed its commitment to promoting competition for voice services. Specifically, in May 2003, the legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act reaffirming that:

> the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.[14]

As part of its strategy to encourage competition between legacy voice services and emerging voice technologies, the legislature also included in this Act that VoIP should remain unregulated in Florida.[15] BHN's Digital Phone service offers Florida consumers the kind of competitive choice and alternative to Verizon's POTS service envisioned by the legislature in passing this landmark, pro-competition legislation.[16]

20. Timely porting is central to the promotion of competition in voice services. The Commission recently underscored the importance of carriers cooperating to comply with their number porting responsibilities, when it added a new rule applicable to

---

[13] *Id.*; FLA. STAT. § 364.02(12) (defining the term "services," which the Commission is given the jurisdiction to regulate, as excluding VoIP services).

[14] Tele-Competition Innovation and Infrastructure Enhancement Act, at § 364.01 (codified at FLA. STAT. § 364.01(3)).

[15] *Id.*

[16] By simultaneously directing the Commission to encourage the development of competition and investment in the state's infrastructure, the legislature clearly recognized the importance of facilities-based competition to the citizens of the state.

ILECs in Florida requiring that "[t]he serving local provider shall facilitate porting of the subscriber's telephone number upon request from the acquiring company."[17]

21. The FCC has also repeatedly recognized the crucial role that timely and efficient porting plays in promoting competition in voice services. For example, in a recent order the FCC stated:

> number portability promotes competition . . . by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers.[18]

This conclusion from last fall echoes the FCC's earlier discussion of the significance of number portability in a 1998 order in which the FCC stated:

> Congress recognized that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition. ... ***'[t]he ability to change service providers is only meaningful if a customer can retain his or her local telephone number.'*** H.R. Rep. No. 104-204, at 70 (1995).[19]

22. The FCC has also specifically ruled that carriers may not use the number porting process to facilitate marketing plans or respond to other concerns not related to the actual porting process itself. In an order issued last fall the FCC stated that "carriers

---

[17] *In Re Proposed Adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and Proposed Amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated*, Notice of Adoption of Rules, Docket No. 040167-TP, Order No. PSC-04-0830-FOF-TP (Fla. PSC issued Aug. 25, 2004) at 3.

[18] *In Re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (Nov. 10, 2003) at ¶ 4 (internal quotations omitted).

[19] *In Re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (May 12, 1998) at ¶ 3 (emphasis added).

may not impose non-porting related restrictions on the porting out process."[20] Verizon's unilateral practice of refusing to port the POTS numbers of active DSL/Internet access customers is, without question, a "non-porting related restriction."

23. As far as BHN can tell, Verizon's position on this matter is, in effect, a form of support for a Verizon marketing strategy of selling customers bundled POTS/DSL/Internet access service whenever possible. BHN has no objection to selling bundles of services; but BHN objects strongly to Verizon interfering with the number porting process for customers with whom the approach does not work, *i.e.*, those who want Digital Phone from BHN but want to retain their DSL/Internet access from Verizon.

VERIZON'S REFUSAL TO PORT NUMBERS VIOLATES FLORIDA LAW

24. BHN repeats and realleges the allegations contained in paragraphs 1 through 23 above.

25. Verizon's practice violates the requirements of state law applicable to intrastate telecommunications services. Under Verizon's practice, an intrastate POTS customer cannot terminate intrastate POTS service unless the customer complies with an unrelated, onerous condition: terminate DSL/Internet access services provided over the same physical facility. This condition violates Section 364.10 of the Florida Statutes.

26. In the *FDN Order* the Commission found that "our state statutes provide that we must encourage competition in the local exchange market and remove barriers to

---

[20] *In Re Telephone Number Portability—Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971 (FCC rel. Oct. 7, 2003) at ¶ 11.

entry."[21] In order to encourage competition, Florida Statutes charge the Commission to exercise its jurisdiction to:

- "ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services"[22]
- "promote competition by encouraging new entrants into telecommunications markets"[23]
- "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior"[24]

Section 364.3381(3) provides the Commission with continuing oversight jurisdiction over anticompetitive behavior and specifically provides the Commission with the power to investigate—either in response to a complaint or on its own motion—allegations of anticompetitive practices.[25] Thus, not only does the Commission have jurisdiction over the matters alleged in this complaint, the legislature has explicitly directed the Commission to protect Florida consumers and communications providers from the type of anticompetitive behavior engaged in by Verizon that is limiting consumer choice in voice providers and services.

27. Verizon's refusal to port numbers to competitive voice providers where the customer purchases Verizon DSL service has a demonstrably harmful effect on the competitive voice market in Florida. As discussed above, nearly a third of BHN's customers decline to install its Digital Phone service when faced with the requirement of disconnecting their DSL service and the ordeal of enduring unreasonable porting delays.

---

21 *FDN Order* at 9.

22 FLA. STAT. § 364.01(4)(b).

23 FLA. STAT. § 364.01(4)(d).

24 FLA. STAT. § 364.01(4)(g).

25 FLA. STAT. § 364.3381(3).

This anticompetitive practice effectively bars Florida consumers from getting voice services from the provider of their choice and creates a barrier to entry into the voice services market.

28. In the *FDN Order,* the Commission found this type of behavior to be in violation of Florida law. In that proceeding, the Commission was considering BellSouth's requirement that its customers discontinue their DSL service if they chose to receive voice service from another provider. In the situation with BHN, not only does Verizon refuse to continue to provide DSL service, it throws up an ***additional barrier*** to competition by refusing to allow consumers to take their telephone numbers with them. In the FDN case, the Commission was "troubled" that BellSouth was using its provision of DSL "as leverage to retain voice customers" and ordered BellSouth to stop its anticompetitive practice "in the interest of promoting competition in accordance with state and federal law."[26] In a subsequent proceeding involving BellSouth and Supra, another competitive voice provider, the Commission noted that its decision in the *FDN Order* was not limited solely to the FDN arbitration, and it ordered BellSouth to stop using its control over customers' DSL service to restrict their choice of voice service providers. In the Supra proceeding, the Commission relied on its analysis in the *FDN Order* in determining that BellSouth was once again "imped[ing] competition."[27]

---

[26] *FDN Order* at 8, 10.

[27] *In Re Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Agreement with Supra Telecommunications and Information Systems, Inc.*, Order on Procedural Motions and Motions for Reconsideration, 2002 Fla. PUC LEXIS 622 (Fla. PSC July 1, 2002) at *87-88 (hereinafter "*Supra Order*") *appeal in federal district court stayed BellSouth Telecommunications, Inc. v. Supra Telecommunications and Information Systems, Inc.*, Case No. 4:02cv325-SPM, Order Granting Motion to Stay (Mar. 16, 2004) (staying appeal until the FCC

29. The proceedings noted above involved both federal and state law considerations, because the CLECs in those cases sought to provide voice service by means of UNE loops rather than their own facilities. While BHN supports the results in the FDN and Supra matters, BHN's situation here is different in a critical respect. In those matters, the ILEC was effectively required either to share a UNE loop with a CLEC or deploy a new loop to offer interstate DSL. Here, as described above, the dispute has nothing to do with sharing UNE loops, and nothing requires Verizon to deploy new loops for its interstate DSL service.

30. What is relevant to this matter was that in the *FDN Order*, the Commission found that BellSouth's practice of using its provision of DSL as a barrier to changing voice providers violated ***Florida*** law as well as federal law. Specifically, the Commission found that the practice violated Section 364.10(1), which provides that:

> A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.[28]

31. Verizon's refusal to port numbers violates this statutory provision. There is no sound reason to allow Verizon to force BHN customers to choose between giving up their DSL service or losing their telephone numbers. The practice is undue and unreasonable because there is no technical reason why Verizon is not able to port these

---

resolves the BellSouth request for declaratory relief). As the Commission is aware, a complaint filed by the Florida Competitive Carriers Association complains of similar BellSouth practices that the Commission found to be anticompetitive in the *FDN Order* and the *Supra Order*. *In Re Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. and Request for Expedited Relief*, Docket No. 020507-TL (filed June 12, 2002).

[28] FLA. STAT. § 364.10(1).

numbers, nor to the best of BHN's knowledge, has Verizon ever offered a meaningful technical explanation for its refusal to port numbers. It is also undue and unreasonable because it clearly violates federal porting rules, which provide that carriers such as Verizon not impose non-porting related restrictions on the porting out process.[29] Moreover, this obviously provides an undue and unreasonable preference and advantage to Verizon. POTS customers are significantly inconvenienced by being unable to smoothly and efficiently move to another voice provider, forcing the customer to (i) stay with Verizon's POTS service when he wants to change to BHN's Digital Phone service, or (ii) endure the inconvenience of terminating Verizon's DSL service, lose his telephone number and make alternative arrangements for high-speed Internet access—when again, this is manifestly ***not*** what the customer wants to do. Many customers will simply choose to stay with Verizon's POTS service because it is the choice that involves the least amount of effort and expense on the customer's behalf.

32. For example, a current BHN customer recently ordered Digital Phone service and wanted to port his number to use with the new service. Having been forewarned that Verizon would require him to cancel his DSL service in order to port the

---

[29] In this regard, the federal number portability requirement — since it directly affects intrastate services — can reasonably be viewed as informing the Commission's application of general state-level regulatory requirements such as those contained in Section 364.10(1). FCC regulations define the term "number portability" as ". . . the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, ***or convenience***, when switching from one telecommunications carrier to another." 47 C.F.R. § 52.21(l) (emphasis added). The FCC clearly supported the seamless porting of numbers sought by BHN in a recent order considering wireless local number portability in which it stated that "[w]e interpret . . . [the] language [of Rule 52.21(l)] to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them." *In Re Telephone Number Portability and Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971 (FCC Oct. 7, 2003) at ¶ 11.

number, the customer requested cancellation of his DSL service on the same day he ordered Digital Phone service. Nine days later, Verizon denied the port request because its system still showed that this customer had DSL service. The customer provided BHN with the Verizon DSL cancellation order number, and BHN tried once again to provide the customer with Digital Phone service. Over two weeks later, Verizon again denied a second port request due to an indication on the customer's account that he once had had Verizon DSL service, even though the customer had made repeated attempts to cancel the DSL. At BHN's suggestion, the customer called Verizon to confirm the cancellation order and Verizon has indicated that it would cancel the DSL. As of the filing of this complaint, the customer still has not been able to port his number due to Verizon's inability or refusal to effectively cancel his DSL service. The end result for this customer is that the installation of his Digital Phone service was delayed by ***over seven weeks*** due to the refusal of Verizon to timely port his number, he endured a frustrating and time-consuming process in order to cancel his DSL service and he had to reschedule several BHN installation appointments and make several phone calls to Verizon in order to cancel his DSL service. Such a practice is obviously aimed at discouraging customers from changing voice providers, thereby providing an undue and unreasonable preference and advantage to Verizon in its provision of POTS. From BHN's standpoint, Verizon's practice causes BHN to lose sales and imposes additional costs and burdens when BHN has to assist customers navigate through the frustrating process of disconnecting their DSL service and fully closing out their accounts. As such, BHN is subjected to undue and unreasonable prejudice and disadvantage in the marketplace, in violation of Section 364.10(1).

33. The Commission also found in the FDN proceeding that BellSouth's use of its DSL service to keep its POTS customers and discourage consumers from obtaining competitive voice services created a barrier to competition and unlawfully prejudiced and penalized customers and competitive voice providers, in violation of Florida and Federal law. The Commission noted that Sections 364.01(4)(g), 364.01(4)(d) and 364.01(4)(b) require the Commission to encourage competition and remove barriers to entry, and found that BellSouth's practice specifically violated Section 364.01(4) of the Florida Statutes. Section 364.01(4) requires the Commission, among other things to "ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services," "promote competition" and "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior"[30] Refusing to port numbers associated with the intrastate local telecommunications service unless consumers terminate their DSL service clearly discourages them from taking voice services from a competitive provider, and amounts to an anti-competitive barrier to entry and unfair treatment of BHN, in violation of Section 364.01(4). The Commission held that BellSouth's practice of using its DSL service to prevent customers from exercising their right to obtain voice services from the provider of their choosing, unduly prejudices or penalizes those customers who switch their voice service, as well as their new voice provider.[31]

34. Verizon's practices surrounding its POTS offering clearly constitute an anticompetitive practice that is harmful to competitive providers and Florida consumers.

---

[30] FLA. STAT. § 364.01(4)(b), (d), (g).

[31] *Id.*

Several other state commissions that have considered the issue of whether ILECs should be allowed to require customers who want to take voice service from a competitor to give up their ILEC-supplied DSL/Internet access service, have concluded that such a requirement is unjustifiable under state law. These include, for example, commissions in Georgia, Kentucky, Louisiana and California.[32] These other commissions have concluded that the ILEC practice at issue is anticompetitive and unreasonable under state law.

35. In this regard, when this issue has arisen in the past, it has been in the context of an ILEC and a CLEC that needed to rely on the ILEC for a UNE loop. As noted above, in that situation, the ILEC either has to share a UNE loop with a CLEC or deploy a new loop to offer its DSL service. This different situation has led to claims by

---

[32] *PSC Approves Proceeding to Study BellSouth's DSL Policy in Response to Consumer Concerns*, New Release (Ga. PSC Aug. 17, 2004) (opening up a general docket regarding BellSouth's refusal to offer DSL services separately from voice services, noting that "Today, the Georgia Public Service Commission (Commission) responded to numerous consumer complaints about BellSouth by initiating a generic proceeding to examine Digital Subscriber Line (DSL) policies. Residential telephone customers have complained that BellSouth disconnected their DSL service, or refused to sell them DSL service, once they chose to buy voice telephone service from one of BellSouth's competitors."); *In Re Petition of MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 11901-U, Order on Complaint (Ga. PSC Nov. 19, 2003) at 20 (order BellSouth to discontinue its policy of requiring customers to receive BellSouth voice service in order to receive BellSouth's DSL service); *In Re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996, Docket No. 16583-U*, Order (Ga. PSC Jan. 14, 2004); *BellSouth Telecommunications, Inc. v. Cinergy Communications Co.*, 297 F. Supp. 2d 946 (E.D. Ky. 2003) at (upholding a Kentucky Public Service Commission order holding that BellSouth may not refuse to provide DSL service to a customer who has chosen to receive voice service from a CLEC that provides service over a UNE-P platform.); *CLARIFICATION; Louisiana Public Service Commission, ex parte*, Opinion, 2003 La. PUC LEXIS 8 (La. PSC Apr. 4, 2003) at *18 (noting that there is no technical reason why BellSouth could not provide naked DSL); *Telscape Communications, Inc. v. Pacific Bell Telephone Company*, Opinion, 2004 Cal. PUC LEXIS 235 (Cal. PUC June 9, 2004) at *25-28 (noting that SBC-CA's refusal to provide naked DSL has a significant negative impact on consumers).

ILECs (notably BellSouth) at the FCC that requiring the ILEC to continue to offer DSL/Internet access, while a CLEC uses an ILEC UNE loop to offer POTS, violates the FCC's UNE-related rules about "line sharing" with the ILEC.[33] BHN notes this FCC matter solely to emphasize that these UNE-related issues are utterly absent from BHN's dispute with Verizon here, and the UNE-related federal law issues that complicated those other proceedings are also absent here. BHN does not use, need, or want Verizon's loops to provide BHN's Digital Phone offering. BHN is competing to take away Verizon's POTS customers, and wants to serve these customers using BHN's own facilities (either actually owned by BHN and its affiliates, or supplied by non-Verizon third parties). Verizon's imposition of its unjust and unreasonable condition on the termination of regulated intrastate POTS service is entirely a matter within the Commission's jurisdiction. The pending FCC matter, while involving, generally speaking, similar issues, has no direct relationship to the instant complaint.

36. For these reasons, Verizon's practice of conditioning a customer's ability to terminate Verizon plain old telephone service and receive such service from BHN on the customer's dropping Verizon's DSL/Internet access service is anticompetitive and violates Florida and Federal law.

---

[33] *In Re BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requesting BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, Emergency Request for Declaratory Ruling, WC Docket No. 03-251 (filed Dec. 9, 2003). Note that the FCC has concluded that the high-frequency portion of the loop, used to provide DSL service, is to be phased out as a separate UNE.

RELIEF REQUESTED

Based on the foregoing, BHN respectfully requests that the Commission:

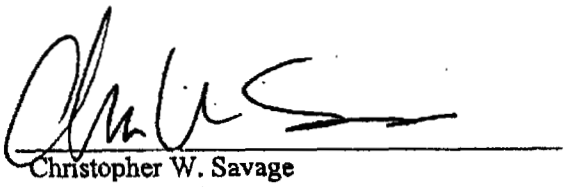
a. Declare that the refusal Verizon to terminate its intrastate telephone exchange service, and port the telephone numbers of POTS customers, who remain active DSL/Internet access customers is an undue and unreasonable preference or advantage to Verizon and an undue and unreasonable prejudice or disadvantage to Florida consumers and BHN in violation of FLA. STAT. § 364.10(1), and Florida's policy of encouraging competition in the voice services market.

b. Issue an order directing Verizon to immediately cease this practice and to immediately permit porting of telephone numbers where the customer chooses to receive BHN Digital Phone service, irrespective of whether the customer purchases, or continues to purchase, DSL/Internet access service from Verizon.

c. Issue a declaratory ruling that the practice, by any ILEC or CLEC, of refusing to terminate intrastate telephone exchange service, and port the telephone numbers of POTS customers who remain active ILEC DSL/Internet access customers, to another voice provider is an undue and unreasonable preference or advantage to the current POTS provider and an undue and unreasonable prejudice or disadvantage to Florida consumers and the potential voice provider in violation of FLA. STAT. § 364.10(1), and Florida's policy of encouraging competition in the voice services market.

d. Such additional relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted,



Christopher W. Savage
Danielle Frappier
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
Tel: 202-659-9750
Fax: 202-452-0067
chris.savage@crblaw.com
dfrappier@crblaw.com

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

September 29, 2004

CERTIFICATE OF SERVICE

I, Lena Mosley, certify that true and correct copies of the following documents were delivered to the following parties, as indicated, on September 30, 2004:

- Complaint and Request for Declaratory Ruling of Bright House Networks Information Services, LLC (Florida)
- Request for Oral Argument of Bright House Networks Information Services, LLC (Florida)
- Request to Name Christopher W. Savage and Danielle Frappier qualified representatives

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

and

201 N. Franklin Street, FLTC0717
Tampa, FL 33601

Beth Salak**
Director, Division of Competitive Markets and Enforcement
Florida Public Service Commission
bsalak@psc.state.fl.us

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

Lena Mosley

* By U.S. Mail
** By Electronic Mail

EXHIBIT 2

Leigh A. Hyer
Vice President & General Counsel –
Southeast Region

201 North Franklin St., FLTC0717
P.O. Box 110
Tampa, FL 33601

Phone: 813-483-1256
Fax: 813-204-8870
leigh.a.hyer@verizon.com

August 1, 2005

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 are an original and 15 copies of a Stipulation of Dismissal 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,

Leigh A. Hyer RW

Leigh A. Hyer

LAH:tas
Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Stipulation of Dismissal in Docket No. 041170-TP were sent via U.S. mail on August 1, 2005 to the parties on the attached list.

Leigh A. Hyer

Felicia Banks
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kira Scott
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Christopher W. Savage
Danielle Frappier
Cole Raywid & Braverman
1919 Pennsylvania Ave. NW
Suite 200
Washington, DC 20006

Bright House Networks
Information Services LLC
301 East Pine Street
Suite 600
Orlando, FL 32801

Bright House Networks
Information Services LLC
Arthur Orduna
5000 Campuswood Drive
East Syracuse, NY 13057

FDN Communications
Matthew Feil
2301 Lucien Way
Suite 200
Maitland, FL 32751

Florida Cable Telecomm. Assn.
Michael A. Gross
246 E. 6th Avenue, Suite 100
Tallahassee, FL 32303

AT&T
Tracy Hatch
Brian Musselwhite
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301

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

Gene Watkins
Covad Comm. Co.
1230 Peachtree Street N.E.
Suite 1900
Atlanta, GA 30309

Vicki Gordon Kaufman
Moyle Flanigan Law Firm
118 North Gadsden Street
Tallahassee, FL 32301

George N. Meros, Jr.
Gray Robinson Law Firm
P. O. Box 11189
Tallahassee, FL 32302-1189

Felix L. Boccucci, Jr.
Knology of Florida Inc.
1241 O. G. Skinner Drive
West Point, GA 31833

Steven H. Denman
William P. Cox
Abel Band Law Firm
P. O. Box 49948
Sarasota, FL 34230-6948

Dennis Osborn
DayStar Communications
18215 Paulson Drive
Port Charlotte, FL 33954

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Verizon Florida Inc. and request for declaratory ruling by Bright House Networks Information Systems, LLC (Florida)	Docket No. 041170-TP

STIPULATION OF DISMISSAL

Bright House Networks Information Services, LLC (Florida) ("BHN"), Verizon Florida, Inc. ("Verizon") and the Attorney General of the State of Florida (the "Attorney General") stipulate as follows:

1. In March 2005, the FCC clarified that when an incumbent LEC receives a request for number portability on a line that also provides DSL-service to a customer, "it is required to observe the same rules, including provisioning intervals, as any other LEC." In the Matter of 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 Competitive LEC UNE Voice Customers, WC Docket No. 03-251, *Memorandum Opinion And Order And Notice Of Inquiry* (released March 25, 2005) at ¶ 36. .

2. In accordance with this FCC ruling, when a Verizon customer with DSL-based services on the line seeks to port his or her telephone number to BHN for use in connection with BHN's facilities-based voice service, Verizon will do so without requiring the customer to terminate DSL service with Verizon..

3. In these circumstances, BHN, Verizon, and the Attorney General agree that BHN's complaint may be dismissed and this proceeding terminated. As a plaintiff, BHN has an absolute right to take a voluntary dismissal. *Fears v. Lundsford*, 314 So. 2d 578, 579 (Fla. 1975). This dismissal is without prejudice to any party's position on any legal and/or regulatory issue raised or potentially raised by the pleadings in this case.

For these reasons, BHN, Verizon and the Attorney General respectfully request that the Commission acknowledge this dismissal and administratively close this docket.

Leigh A. Hyer
Vice President & General Counsel -- Southeast Region
Verizon Legal Department
201 N. Franklin St. -- FLTC0717
Tampa, Florida 33602
Tel: 813-483-1256
Fax: 813-204-8870

Counsel for: Verizon Florida, Inc.

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)

Jack Shreve
Senior General Counsel
Office of the Attorney General
The Capitol – PL01
Tallahassee, Florida 32399-1050
Tel: (850) 414-3300
Fax: (850) 410-2672

Counsel for: Charles J. Crist, Jr., Attorney General, State of Florida

Dated: July 29, 2005

EXHIBIT 3

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE FIELD(2)

Competitive Local Exchange Company Regulatory Assessment Fee Return

STATUS:

✓ Actual Return
___ Estimated Return
___ Amended Return

PERIOD COVERED:
FIELD(3)
7/1/05 - 12/31/05

Florida Public Service Commission
(See Filing Instructions on Back of Form)

FIELD(1)
TR631-05-0-R
Bright House Networks Information Svc (Florida) LLC
c/o Advance/Newhouse Comm.
PO Box 4789
Syracuse, NY 13221-4789

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY
Check # 00000043O1
$ 42,664.62 06-03-001 003001
$ _____ P
$ _____ I 06-03-001 004011
Postmark Date 1-24-06
Initials of Preparer _____

(Name of Company) (Address) (City/State) (Zip)

LINE NO.	ACCOUNT CLASSIFICATION	FLORIDA GROSS OPERATING REVENUE	INTRASTATE REVENUE
1.	Basic Local Services	$ 69,286,346.83	$ 21,332,308.73
2.	Long Distance Services (IntraLATA only) (1)		
3.	Access Services		
4.	Private Line Services		
5.	Leased Facilities & Circuits Services		
6.	Miscellaneous Services		
7.	TOTAL REVENUES		$ 21,332,308.73
8.	LESS: Amounts Paid to Other Telecommunications Companies (2)		-0-
9.	NET INTRASTATE OPERATING REVENUE for Regulatory Assessment Fee Calculation (Line 7 less Line 8)		$ 21,332,308.73
10.	Regulatory Assessment Fee Due (Multiply Line 9 by 0.0020)		42,664.62
11.	Penalty for Late Payment (see "3. Failure to File by Due Date" on back)		
12.	Interest for Late Payment (see "3. Failure to File by Due Date" on back)		
13.	Extension Payment Fee (see "4. Extension" on back)		
14.	TOTAL AMOUNT DUE ($50 MINIMUM)		$ 42,664.62 (3)

(1) Other long distance revenue must be listed on the Interexchange Regulatory Assessment Fee Return.
(2) These amounts must be intrastate only and must be verifiable (see "2. Fees" on back).
(3) Regardless of the gross operating revenue of a company, a minimum annual regulatory assessment fee of $50 shall be imposed as provided in Section 364.336, Florida Statutes.

CURRENT COMPANY STATUS

( ) Facilities-Based Provider
( ) Reseller
( ) Other: _____

BILLING INFORMATION

Complete below if billing agent if other than yourself.

(Name) (Address: City/State/Zip) ( ) (Telephone)

COMPANY INFORMATION

Do you lease telecommunications' facilities? ( ) YES (✓) NO
If YES, who do you lease these facilities from? Name: _____

Address: _____

I, the undersigned owner/officer of the above-named company, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his/her duty shall be guilty of a misdemeanor of the second degree.

(Signature of Company Official)

Clifford E. Jackson
(Preparer of Form - Please Print Name)

Tax Director (Title) 1/17/06 (Date)

Telephone Number 352-438-4170 Fax Number 352-438-4643

F.E.I. No. 59-3758339

PSC/CMP 001 (Rev. 01/05)

EXHIBIT 4

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC

Boston
Washington
Reston
New York
Stamford
Los Angeles
London

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Robert G. Kidwell

Direct dial 202 661 8752

May 24, 2005

BY HAND AND VIA ECFS

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Ave., NE
Suite 110
Washington, DC 20002

Mr. Gary Remondino
Wireline Competition Bureau
Federal Communications Commission
c/o Natek, Inc.
236 Massachusetts Ave., NE
Suite 110
Washington, DC 20002

Re: WC Docket No. 05-75, DA 05-762 – In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control

Dear Secretary Dortch and Mr. Remondino:

Advance/Newhouse Communications, by its attorneys and pursuant to the Commission's *Public Notice* (DA 05-762) and *Order Adopting Protective Order* (DA 05-647) in the above-referenced proceeding, hereby submits to the Secretary two copies of its redacted, public Reply Comments, and one copy of same to Mr. Remondino. Advance/Newhouse will also submit its redacted, public Reply Comments via ECFS in this proceeding.

Each page of Advance/Newhouse's redacted public version of its Reply Comments is marked as required under the *Order Adopting Protective Order*. Inquiries regarding access to Advance Newhouse's Confidential submission should be addressed to the undersigned.

Please feel free to contact me if you have any questions regarding this filing.

Sincerely,

Robert G. Kidwell

Enclosures

cc: G. Remondino
G. Cohen
B. Dever
M. Schultz
J. Tobias
E. McGrath
D. Krech
K. Collins
J. Lucanik
J. Bird
J. Levy
N. Victory
G. Strobel

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Verizon Communications, Inc.	)	WC Docket No. 05-75
and MCI, Inc. Applications for	)	
Consent to Transfer of Control	)	DA 05-762
	)	

REPLY COMMENTS OF ADVANCE / NEWHOUSE COMMUNICATIONS

Bruce D. Sokler
Robert G. Kidwell
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7300

Attorneys for Advance/Newhouse Communications

May 24, 2005

TABLE OF CONTENTS

SUMMARY

In many communities, approval of this transaction could retard the emergence of true facilities-based voice telephony competition of the type being introduced by Bright House Networks. The combination of assets described in the Application would allow Verizon to drive up its competitors' costs for long distance access, interconnection, and other back office services as well as access to the Internet backbone. At the same time, the transaction would enable Verizon to engage in anti-competitive behavior such that true "competition" in either the voice telephony or HSD markets would be delayed or made more costly. Verizon's suggestion that competition from IP-enabled telephone providers such as Bright House Networks negates any competitive concerns arising from this merger must be viewed from a post-merger standpoint, when the only available independent, full-service providers of transport, interconnection and termination (MCI and AT&T) are gone, and three of the six remaining Tier I Internet backbone providers are ILECs. In such a world, providers such as Bright House Networks will have no choice other than to purchase long distance and access to the PSTN from their primary voice telephony and HSD competitor, who in turn would possess the power to extract monopoly rents for those services and for Internet backbone peering.

Verizon's rollout of video programming services provides an additional incentive and greater ability for Verizon to act anticompetitively toward its competitors, to raise their cost of doing business, or to undermine the quality of their offerings. Advance/Newhouse therefore urges the Commission, if it decides that approval of this transaction serves the public interest, to condition its approval upon Verizon's provision of long distance access, PSTN interconnection, and Internet backbone peering – in short,

to deal with its facilities-based competitors – on reasonable, equitable, and non-discriminatory terms and at reasonable and non-discriminatory rates.

Consumer harm arising from Verizon's post-merger ability to "price squeeze" its primary (and in many cases, sole) competitor in many of the markets served by Bright House Networks would be further aggravated if Verizon is allowed to continue tying its DSL service to its voice telephony service. Verizon's anticompetitive tying practice has already had a significant deleterious effect on competition and consumer choice in central and western Florida. Because the practice of tying voice and HSD service will have a much more pernicious effect on consumers when combined with this merger's other anti-competitive effects, the Commission should condition its approval by requiring Verizon to offer unbundled, "naked" DSL to consumers at a reasonable price.

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Verizon Communications, Inc.	)	WC Docket No. 05-75
and MCI, Inc. Applications for	)	
Consent to Transfer of Control	)	
	)	

REPLY COMMENTS OF ADVANCE / NEWHOUSE COMMUNICATIONS

Advance/Newhouse Communications ("Advance/Newhouse") respectfully submits these comments in reply to the comments submitted in the Commission's above-captioned inquiry.[1] Advance/Newhouse manages Bright House Networks, which is a full-service broadband provider for more than 2.2 million subscribers in and around Tampa Bay and central Florida, Indianapolis, IN, Birmingham, AL, Bakersfield, CA, and Detroit, MI, along with several smaller systems in Alabama and the Florida panhandle. Bright House Networks provides high-quality digital (including high-definition) television and high-speed data service ("HSD"), and is also (through its wholly-owned subsidiaries in multiple states) a facilities-based local exchange carrier offering voice telephony services to its residential customers. As such, Advance/Newhouse and Bright House Networks have a vested interest in the outcome of this proceeding.

Bright House Networks competes head-to-head with Verizon Communications, Inc. ("Verizon") in the western and central Florida voice telephony market, and Verizon

---

[1] *Commission Seeks Comment on Applications For Consent to Transfer of Control Filed By Verizon Communications Inc. and MCI Inc.*, WC Docket No. 05-75, DA 05-762 (2005).

is beginning to compete head-to-head with Bright House Networks in the western Florida video programming market.[2] As a facilities-based telephony provider, Bright House Networks does not rely upon Verizon for any unbundled network elements. Bright House Networks does not resell any Verizon services, and has no collocation arrangements with Verizon. However, Bright House Networks purchases call termination, long distance access, and other "back office" services from MCI, Inc. ("MCI") (collectively with Verizon, "Applicants").[3] Integrated with these services, Bright House Networks also purchases Internet backbone access for its IP-enabled telephone service from MCI's UUNET affiliate. Because of this heavy reliance upon MCI services for which no real substitutes will exist post-merger, the Applicants' request for consent to transfer control of MCI will have a significant effect on Bright House Networks and upon competition in the markets it serves.

In addition to the comments already received in this proceeding, Advance/Newhouse urges the Commission to examine the "situation on the ground" in Florida as a real-world case study of the competitive problems likely to arise from the unrestricted combination of Verizon and MCI. Because the transaction, if approved as proposed, would provide Verizon with an opportunity to hamstring its major facilities-based competitor in western and central Florida (and, undoubtedly, in other markets as well), and thereby drive up prices and limit consumer choice, the Commission should condition its approval of this transaction – if it finds approval to be in the public interest –

---

[2] *See* Linda Haugsted, "Fla. City OKs Verizon Franchise," *Multichannel News*, May 18, 2005.

[3] See Affidavit of Arthur C. Orduna ("Orduna Affidavit"), attached hereto, at ¶¶ 6-7.

in order to mitigate certain substantial, identifiable, and merger-specific competitive harms.

INTRODUCTION

The Applicants claim that the traditional regulatory distinction between local telephone service and long distance service has become antiquated due to the evolution of voice over Internet protocol ("VoIP") and wireless services, and that therefore "[t]he decision by Verizon and MCI to combine represents the next logical step in this industry transformation."[4] But Verizon's further accretion of market power in local markets up and down the eastern seaboard represents neither a foregone conclusion nor a healthy evolution of the communications industry.[5] In many of the communities served by Bright House Networks, this transaction could well retard the emergence of true facilities-based voice telephony competition of the type being introduced by Bright House Networks.[6]

The combination of assets described in the Application would allow Verizon to drive up its competitors' costs for long distance access, interconnection, and other back office services as well as access to the Internet backbone. At the same time, the transaction would enable Verizon to engage in further anti-competitive behavior such that

---

[4] Applicants' Public Interest Statement at 1-3.

[5] *See* Petition to Deny of Qwest Communications International, Inc. at 4 (rebutting Applicants' statement that this transaction is natural and "inevitable" consolidation).

[6] *See, e.g.*, Comments of Cox Communications, Inc., at 10-12 ("Post-merger, Verizon would have greater capabilities and incentives to increase the interconnection costs of its remaining competitors."); CompTel/ALTS Petition to Deny at 22 ("The merged company will have the ability to severely harm consumers by raising wholesale prices for essential local facilities to service providers attempting to compete with Verizon/MCI"); Comments of The Independent Alliance at 3-4 ("The proposed merger of Verizon and MCI, two very large companies that control tandem and transport facilities, raises questions as to how smaller carriers might obtain fair access to facilities that are controlled by a single vertically integrated entity.").

true "competition" in either the voice telephony or HSD markets would be delayed or made more costly.[7] Verizon's suggestion that competition from IP-enabled telephone providers such as Bright House Networks negates any competitive concerns arising from this merger must be viewed from a post-merger standpoint, when the only available independent, full-service providers of transport, interconnection and termination (MCI and AT&T) are gone, and three of the six remaining Tier I Internet backbone providers are incumbent local exchange carriers ("ILECs").[8] In such a world, providers such as Bright House Networks will have no choice other than to purchase access to the public switched telephone network ("PSTN") from their primary voice telephony and HSD competitor, who in turn would possess the power to extract monopoly rents for those services and for Internet backbone peering.

In addition, Verizon has chosen to launch its "FiOS" video programming service in certain of the communities served by Bright House Networks, thereby providing an

---

[7] *See, e.g.*, Opposition of Broadwing Communications, LLC, and SAVVIS Communications Corporation to the Merger Application Filed by Verizon Communications, Inc. and MCI, Inc. ("Broadwing Comments") at 28 ("With its ILEC footprint, Verizon will have every incentive and the ability to engineer a price squeeze that benefits the newly integrated MCI operations."); Comments of PAETEC Communications, Inc., at 5 ("Applicants can eliminate competitors by utilizing price squeeze techniques through the vertical integration of their operations."); CompTel/ALTS Petition to Deny at 22; Comments of Cox Communications, Inc., at 10-12.

[8] *See, e.g.*, Broadwing Comments at 2-3 ("the proposed merger would (1) further reduce the already limited competition in the special access market and increase prices for consumers; and (2) likely result in the collapse of the current competitive market for Internet backbone services and replace it with a market dominated by two companies.") (citations and parentheticals omitted). This statement assumes approval of SBC's acquisition of AT&T, another existing Tier I access provider. If Verizon's acquisition of MCI is indeed the industry's "next logical step," then it is only logical that one of the two remaining ILECs will propose to acquire Sprint, thereby making the count four out of six.

additional incentive and greater ability for Verizon to act anticompetitively toward Bright House Networks, to raise its costs of doing business, or to undermine the quality of Bright House Networks' offerings. This dynamic can only be bad for consumers. Advance/Newhouse therefore urges the Commission, if it decides that approval of this transaction serves the public interest, to condition its approval upon Verizon's provision of long distance access, PSTN interconnection, and Internet backbone peering – in short, to deal with its facilities-based competitors – on reasonable, equitable, and non-discriminatory terms and at reasonable and non-discriminatory rates.

Consumer harm arising from Verizon's post-merger ability to "price squeeze" its primary (and in many cases, sole) competitor in many of the markets served by Bright House Networks would be further aggravated if Verizon is allowed to continue tying its digital subscriber line ("DSL") service to its voice telephony service. Competition is thwarted when consumer choices are artificially limited, and Verizon's practice of tying DSL with its voice telephony service is a stark example of an anti-competitive, artificial constraint on consumer choice imposed solely for the purpose of leveraging its market power in the voice market into the HSD market and imposing costs on consumers' ability to choose a competitive telephone service provider. As discussed in detail below, Verizon's anticompetitive tying practice has already had a significant deleterious effect on competition and consumer choice in central and western Florida. Because the practice of tying voice and HSD service will have a much more pernicious effect on consumers when combined with this merger's other anti-competitive effects, the Commission should

condition its approval by requiring Verizon to offer "naked" DSL to consumers at a reasonable price.[9]

LEGAL STANDARD GOVERNING THIS PROCEEDING

Under 47 U.S.C. §§ 214(a) and 310(d), the burden is on the Applicants to demonstrate that the proposed transaction serves the public interest, as measured by four factors: (1) whether the transaction would result in a statutory violation, (2) whether the transaction would result in a violation of Commission rules, (3) whether the transaction would "substantially frustrate or impair" the Commission's implementation or enforcement of the Act, or would interfere with statutory objectives, and (4) whether the transaction promises to yield affirmative public interest benefits net of any public interest harms, including harms identified through antitrust analysis.[10]

To apply the fourth prong of its merger review standard here, the Commission can approve this transaction only upon reasonable conditions imposed to mitigate the merger-specific public interest harms described below.

---

[9] *See, e.g.*, Comments of Vonage Holdings Corp. at 10-11 (discussing Verizon's history of interfering with consumers' number porting rights and the related problem of DSL tying); Petition to Deny of Qwest Communications International, Inc. at 42 (urging the Commission to impose a "naked DSL" condition, as "announcements of willingness to begin to provide stand-alone DSL are meaningless if the terms are not sufficient to allow competitive service offerings by non-Verizon VoIP providers and others."); Comments of Eliot Spitzer, Attorney General of the State of New York, at 7-12 (discussing need for unbundled DSL access if intermodal competition is to provide a competitive check on Verizon).

[10] *See, e.g., Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, Application For Consent to Transfer of Control*, 14 FCC Rcd 14712, 14736-37 ¶¶ 46-49 (1999) ("*SBC/Ameritech*").

I. ABSENT REASONABLE CONDITIONS, THE MERGER HAS THE POTENTIAL TO ALLOW VERIZON TO INCREASE ITS COMPETITORS' COSTS, THEREBY DRIVING UP PRICES AND DECREASING COMPETITION IN BOTH VOICE TELEPHONY AND HSD MARKETS

If approved without condition, Verizon's acquisition of MCI has the potential to drive up the prices paid by consumers for telephone service and HSD (and potentially, for video programming service) and at the same time decrease the likelihood that other facilities-based competitors will be able to provide a competitive check on such conduct. The deal will eliminate as an independent entity and as a check upon Verizon's market power[11] Bright House Networks' primary supplier of back office service, long distance access, and interconnection – and replace that supplier with Bright House Networks' primary telephone and HSD competitor – just as Bright House Networks is establishing its telephone service as a true competitor to Verizon. In markets such as those in Florida where Bright House Networks competes head-to-head with Verizon for voice, HSD, and video programming customers, the transaction presents an even broader set of public interest harms. The Commission should take steps to mitigate these harms, and should impose reasonable and merger-specific conditions toward that end.

A. The Transaction Will Drive Up Prices

Bright House Networks offers facilities-based, digital IP-enabled telephony to all of the over 3 million homes passed by its facilities in western and central Florida. By the end of 2005, Bright House Networks is on schedule to roll out its Digital Phone service to the Birmingham, AL, Detroit, MI, Bakersfield, CA, and Indianapolis, IN markets, for a

[11] *See* Petition to Deny of Qwest Communications International, Inc. at 1 ("After the merger, MCI no longer will act as an independent source of wholesale supply, or as a restraint on Verizon's access pricing.").

total of REDACTED homes passed by Digital Phone by the end of 2005. For $49.95 a month,[12] Bright House Networks Digital Phone customers may make unlimited local and long distance calls to the continental U.S., Alaska, Hawaii, Puerto Rico, Guam and the North Marianas, and Canada. Vertical services for which Verizon imposes additional fees, such as voicemail, call waiting, and caller ID, are included with Digital Phone at no charge, as is Bright House Networks' exclusive 24-hour "611" customer care line. Bright House Networks Digital Phone is fully E-911 and CALEA compliant and offers a selection of blocking services at its customers' request.

In order to "hand off" its voice traffic to the PSTN, Bright House Networks purchases interconnection and call termination services from MCI. Under contract, MCI also provides back office and other services such as domestic long distance, international long distance, directory assistance, and operator assistance.[13] UUNET, an affiliate of MCI, connects Bright House Networks IP-enabled voice service to the Internet backbone and to the PSTN.[14] Bright House Networks' ability to partner with MCI has been essential to its timely rollout of cost-competitive telephone service due to the expense and delay associated with constructing duplicative back office facilities, and because of MCI's proven expertise in handling number porting requests quickly and efficiently.[15] MCI has been the only available "one stop" vendor for Bright House Networks, as its

[12] This price is for free-standing telephone service. Bright House offers its customers a discount for purchase of additional services such as cable television and/or HSD.

[13] *See* Orduna Affidavit at ¶¶ 6-7.

[14] *See* Declaration of Vinton G. Cerf at ¶ 11; *see also* Orduna Affidavit at ¶¶ 6-7.

[15] *See* Orduna Affidavit at ¶¶ 6-11.

experience with Verizon in the central and western Florida markets has not been a positive one.

Bright House Networks also offers cable modem-based HSD in all of the markets it serves. In order to connect its HSD customers with the Internet, Bright House Networks also purchases Internet backbone access from non-ILEC carriers. Bright House Networks' ability to purchase Internet backbone access in an unconcentrated market has been essential to its ability to compete with Verizon DSL (particularly given Verizon's bundling and tying practices).

Post-merger, Bright House Networks will be forced to rely upon its principal retail competitor for provisioning of long distance service, interconnection/call termination and back office services. Additionally, with its acquisition of MCI's Internet backbone assets, Verizon will be positioned to drive up Bright House Networks' costs directly (through its UUNET subsidiary) and through manipulation of its peering relationships with other backbone providers.[16] The Applicants gloss over these facts in their Public Interest Statement:

> MCI supports the Internet offerings of certain cable operators, including Time Warner Cable, Bright House Networks, Susquehanna

[16] *See, e.g.*, Comments of Cox Communications, Inc. at 13-14 ("the merged company would have an increased capability and incentive to raise or maintain its [Internet backbone] transit rates at supra-competitive levels or engage in other anticompetitive conduct, because such actions would have the external effect of raising the costs for Cox and other IP service providers to compete against Verizon's core retail services."); Comments of Eliot Spitzer, Attorney General of the State of New York, at 13-19 (discussing potential harm resulting from Verizon's acquisition of MCI Internet backbone assets, and recounting past divestitures ordered by FCC to avoid excessive Internet backbone concentration); Broadwing Comments at 44-55 (discussing harms presented by concentration in the Internet backbone market and its pernicious effect when combined with market power in wholesale access markets).

> Communications, and Armstrong Group of Companies. *See* Cerf Decl. ¶ 11. MCI picks up the cable operator's traffic at the softswitch or media gateway (which MCI may operate or own), and terminates the traffic over its network, as well as handling other administrative and provisioning tasks. *See id.*
>
> The transaction would not have a material effect on competition to provide these services. First, MCI provides these services pursuant to long-term contracts, which Verizon plans to honor. *See* Lew/Lataille Decl. ¶ 12. Second, MCI's contracts are nonexclusive, and a number of other providers provide comparable services, including Sprint and Level 3, many of which began offering these services around the same time as MCI. Indeed, AOL recently chose Level 3 as its wholesale provider for its new VoIP service. As the success of these other recent entrants demonstrates, MCI does not possess any unique capabilities in providing these services.[17]

In support of their claim that this transaction will have "no effect" on the competitors for whom MCI's wholesale services are essential, the Applicants cite the declaration of two Verizon officers, but that declaration states only that "we will continue to offer these services to our carrier customers."[18] The concern raised by this merger is not that Verizon will stop providing wholesale access and related services to other carriers; rather, the concern is that Verizon will drive up its competitors' costs of purchasing long distance service, interconnection, Internet backbone access, and other services needed to compete. Neither the Applicants nor their numerous declarants address this harm.

The Applicants point out that Sprint and Level 3 both provide similar services in many areas; however, neither of these firms represents a realistic long-term alternative to MCI for Bright House Networks. Sprint is the incumbent LEC in several of the markets served by Bright House Networks, and therefore cannot provide a competitive check on

[17] Applicants' Public Interest Statement at 66.

[18] *Id.*; Lew/Lataille Declaration ¶ 12.

Verizon's pricing of these services since both Verizon and Sprint will have an incentive to set the prices they charge Bright House Networks at supracompetitive levels.[19]

Level 3 Communications is as well an unattractive alternative to MCI for provision of wholesale services. Bright House Networks considered partnering with Level 3 when initially developing its telephone product, but Level 3 could not provide access to the rate centers required to serve Bright House Networks' customers. Furthermore, Level 3 has ceased providing business-class wholesale services, and is generally retreating from the provision of residential wholesale services as well. Much like Sprint, Level 3 is not an effective long-term alternative to MCI.[20]

The Applicants also claim that "[a]s the success of these other recent entrants [referring to Sprint and Level 3] demonstrates, MCI does not possess any unique capabilities in providing these services."[21] But even if true, this assertion does not change the fact that this transaction will eliminate the primary independent provider of these services from the market, leaving behind only incumbent LECs whose desire to compete with Verizon in wholesale markets is uncertain, and a single independent provider – Level 3 – whose limited ability and declining willingness to offer such services on the necessary scale renders it practically unavailable as a substitute to MCI.

The Applicants further state that "[c]ustomers now view cable and wireless as viable alternatives to wireline telephone service, and that acceptance will only grow going forward. Other services such as VoIP, e-mail, and instant messaging impose still

---

[19] *See* Orduna Affidavit at ¶ 12.

[20] *See* Orduna Affidavit at ¶ 13.

[21] Applicants' Public Interest Statement at 66.

further discipline on the market. . . . This transaction does not affect this intermodal competition in the slightest."[22] The Applicants' suggestion that VoIP/IP-enabled telephony, E-mail, and instant messaging are and would remain serious competitors to a post-merger Verizon, absent conditions, is without merit.

E-mail and Instant Messaging Competition. The Applicants suggest that E-mail and Instant Messaging ("IM") have taken ten percent of voice traffic that would have otherwise been carried over their systems, and suggest that these services therefore provide a competitive check on the merged firm's ability to raise prices.[23] The two sources cited by the Applicants and their economists may or may not support the ten percent diversion rate that they assert (it is unclear whether they do or not), but in any case this statistic alone provides no support whatsoever for the Applicants' implication that E-mail and IM provide any sort of price constraint on Verizon. Despite the Applicants' submission of multiple expert declarations with their Application, nowhere do they offer even the most rudimentary analysis of consumer product substitution or cross-elasticity of demand between voice telephony and either E-mail or IM. Such an analysis is essential if the Commission is to consider this argument in its public interest analysis,[24] and therefore the Applicants' failure to even allege such cross-elasticity renders their discussion of E-mail and IM irrelevant.

---

[22] Applicants' Public Interest Statement at 38-39.

[23] Applicants' Public Interest Statement at 45; Hassett *et. al.* Declaration at ¶¶ 88-89.

[24] The Commission's inquiry should include traditional antitrust analysis when appropriate. *SBC/Ameritech*, 14 FCC Rcd at 14737 ¶ 49. Here, the Applicants attempt to make a standard antitrust product substitutability argument; therefore, the Commission should be guided by traditional antitrust principles. In this case, even a cursory antitrust analysis requires evidence of cross-elasticity of demand based on real-world facts. *See,*

Even were the Applicants to demonstrate real cross-elasticity of demand between voice telephony and E-mail and IM, the ten percent diversion rate cited by the parties would have to be discounted substantially to account for a substantial portion of E-mail and IM traffic that will be routed, at least in part and frequently end-to-end, over Verizon's facilities post-merger. Such an analysis is pointless, however, as the suggestion of significant cross-elasticity itself is simply ridiculous.

Cable/VoIP Competition. The Applicants rely upon certain of their supporting economist declarations to describe the growth of cable firms' voice telephony service offerings, and argue that these intermodal offerings will provide a significant competitive check on the post-merger firm.[25] Bright House Networks is proud to count itself among the growing list of cable operators providing IP-enabled digital voice telephony to its subscribers as cited by the Applicants. However, neither the Applicants nor their economists address the heavy reliance placed by Bright House Networks and other cable operators on the competitive, nondiscriminatory long distance access, PSTN interconnection, and Internet backbone access made available to them by non-incumbent providers such as MCI. Without the benefit of competitively priced services delivered in a timely manner that meet the quality objectives of a reputable company like MCI, cable

---

e.g., Merit Motors, Inc. v. Chrysler Corp., 417 F. Supp. 263, 269 (D.D.C. 1976) (discussing necessity of evidence of demand cross-elasticity for product market definition). The Applicants provide no more than unfounded conjecture that consumer demand for E-mail and IM are cross-elastic with their demand for voice telephony.

[25] Applicants' Public Interest Statement at 39; Hassett *et. al.* Declaration at ¶¶ 30-56.

and VoIP competitors' ability to provide choice and a competitive check to Verizon will be severely hampered.[26]

The Applicants argue that cable and VoIP provide a competitive check on its market power because they provide a separate "pipe" into the home; it is true that cable operators are facilities-based providers, but the transaction at issue here goes well beyond last-mile pipes, as Verizon is in effect purchasing the river itself – upon completion of this transaction, if left unchecked, Verizon will be able to set the price of water regardless of whose pipes deliver it.[27]

It is tautological that two firms cannot engage in aggressive price competition in a downstream market when one of those firms holds a monopoly on upstream inputs essential for both firms; indeed, this is one of the most pernicious competitive problems in evolving telecommunications markets in the U.S. and abroad.[28] Unless its power over

---

[26] *See* Comments of ACN Communications Services *et al.* at 14-12 (describing IP-enabled providers' need for competitively priced wholesale inputs for true intermodal competition); Comments of Cox Communications, Inc. at 4 ("facilities-based competitive LECs and VoIP service providers cannot provide service without efficient collocation and interconnection with the incumbents' networks to exchange calls between their customers and those of the incumbents."); Comments of Vonage Holdings Corp. at 4 ("In order for VoIP providers like Vonage to offer competition in the retail marketplace for communication services, they must have access to the access tandem switches – the access ramps to and from the PSTN – controlled by local exchange carriers, and, to an increasing extent, the backbone facilities that represent the Internet itself."); *id.* at 9 ("The market dominance of the combined Verizon MCI also presents concerns about their ability to discriminate in the quality of the broadband connection they offer end-users" and will enable packet discrimination).

[27] *See, e.g.*, Petition to Deny of Qwest Communications International, Inc. at 27 ("Verizon also ignores the fact that intermodal competitors depend on wholesale inputs from Verizon itself in order to provide their services.").

[28] *See generally* Damien Geradin and Robert O'Donoghue, *The Concurrent Application of Competition Law and Regulation: The Case of Margin Squeeze Abuses in the Telecommunications Sector*, Global Competition Law Centre Working Paper No. 04/05;

price and terms is checked, the upstream monopolist may in effect set the downstream competitor's price. It was this dynamic that led to the breakup of AT&T over twenty years ago, when AT&T's monopoly over local exchange service allowed it to exclude competitors from complimentary markets such as long distance service by raising rivals' costs of interconnection and, therefore, gaining power over the price ultimately paid by consumers.[29] Now no less than then, Verizon's post-merger market power in the markets for long distance access, interconnection, back office services, and Internet backbone access will likely retard, if not destroy, competition, and will almost certainly result in higher costs for consumers unless conditions are placed upon its exercise of that market power. Quite simply, this merger will roll back the clock to "the bad old days" for consumers of voice telephony, and will make today the "bad old days" for consumers of HSD.

There can be no question that this transaction will consolidate the voice telephony market to pre-divestiture levels. However, the Commission has determined that the market for Internet backbone services as well is a distinct product market for purposes of

---

see also Covad Communications Co. v. BellSouth Corp, 299 F.3d1272, 1290-92 (11th Cir. 2002) (reversing dismissal of CLEC price squeeze allegation against ILEC), *cert. granted, remanded*, 540 U.S. 1147 (2004), *aff'd on reh'g*, 374 F.3d 1044 (11th Cir. 2004); *City of Kirkwood v. Union Electric Co.*, 671 F.2d 1173, 1176 n.4 (8th Cir. 1982) ("A price squeeze occurs when a vertically integrated company which has monopoly power at the wholesale level but faces competition at the retail level sets its wholesale rates so high that its wholesale customers will be unable to compete with it in the retail market.").

[29] *United States v. AT&T*, 552 F. Supp. 131, 162 (D.D.C. 1982) *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) ("it was because of its ownership and control of the local Operating Companies – whose facilities were and are needed for interconnection purposes by AT&T's competitors – that AT&T was able to prevent these competitors from offering [their] services. Similarly, AT&T was able to deter competition by manipulating prices for access to the Operating Company networks.").

competitive merger analysis.[30] With its acquisition of MCI, Verizon will instantly become one of the largest Internet backbone service providers in the world. The effect of this development cannot be overstated – with a single purchase, Verizon will essentially guarantee that its decades-old monopoly over traditional, circuit-switched local telephone service will be transplanted wholesale into the once-virgin soil of IP-enabled communication services. With this acquisition, years of speculation and hopeful anticipation about new hi-tech services dethroning incumbent telephone monopolies will be proven wrong once and for all, and consumers will see the effect in terms of higher prices and fewer choices. Because its telephony and HSD services rely on access to services that will be controlled by Verizon post-merger, Bright House Networks will be competitively disadvantaged and its subscribers will face increased costs as a result.

B. Bright House Networks' Experience in Florida is Illustrative of the Harms Presented by this Transaction

The perspective that Bright House Networks brings to this proceeding is its own, but the competitive problems that are presented by this transaction in the markets served by Bright House Networks will become more common as Verizon introduces its video programming service to other areas. Verizon's rollout of video programming in Bright House Networks service areas[31] will provide the merged entity with the increased

---

[30] *See Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025, 18107 at ¶ 148 (1998) ("*MCI/WorldCom*").

[31] *See, e.g.*, Linda Haugsted, "Fla. City OKs Verizon Franchise," *Multichannel News*, May 18, 2005; Verizon Press Release, "Verizon Poised to Deliver First Set of Services to Customers Over its Fiber-to-the-Premises Network," July 19, 2004, available at <http://newscenter.verizon.com/proactive/newsroom/ release.vtml?id=86053>.

incentive and ability to impose anti-competitive costs on Bright House Networks and other facilities-based competitors beyond that which exists today.

First, Bright House Networks relies heavily upon its relationship with MCI for provision of its voice telephony services, and there are no good substitute providers of these services in the areas Bright House Networks serves. As a consequence of this transaction, in the Florida market Verizon will be able to increase Bright House Networks' cost of acquiring necessary inputs for both its HSD and voice telephony services, thereby increasing the price of those services and making Bright House Networks a less attractive option for consumers seeking a bundle of services from a single provider. The benefits of such a strategy to Verizon are obvious. As discussed below, Verizon is already using anti-competitive tying methods (rather than competitive actions such as price cuts or service enhancements) to impose direct costs on consumers wishing to cancel their Verizon telephone service and switch to Bright House Networks Digital Phone service. Furthermore, Verizon's rollout of its video programming service in the same area has resulted in destructive behavior on the part of Verizon resulting in service outages to hundreds of Bright House Networks telephone, HSD, and video programming customers.[32] In such an environment, Verizon has everything to gain and consumers have everything to lose from the anticompetitive pricing behavior that will be enabled by this transaction.

Second, the monopoly rents extracted by the merged firm will provide Verizon with the ability and incentive to cross-subsidize its nascent video programming offering

[32] *See* Linda Haugsted, "Bright House Complains About Verizon Cut," *Multichannel News*, April 18, 2005.

with monopoly rents extracted from Bright House Networks and others, with the effect being Bright House Networks' subsidization of Verizon's video programming startup costs at the same time as Verizon imposes additional startup costs on Bright House Networks' Digital Phone service. Once again, this state of affairs can only be harmful to consumers.

Third, Bright House Networks' experience in Florida telephony markets demonstrates the degree of competitive harm that can be caused by seemingly minor (and easily hidden or denied) decreases in service levels. Between August 2004 and February 2005, MCI fell behind on its ability to process Bright House Networks service orders and meet its performance commitments, sometimes delaying number porting and similar requests by thirty days or more. During this period, Bright House Networks experienced a projected growth shortfall of REDACTED, amounting to a loss of REDACTED subscribers in addition to a spate of bad press and a ten-fold increase in the number of customer complaints.[33] This situation was remedied only because MCI became highly motivated to resolve its service issues and maintain its business relationship with Bright House Networks. Once Verizon takes control of MCI's assets, it will have no motivation to resolve such issues, and is likely to leave services and facilities sold to competitors at the bottom of the repair list when such issues arise in the future.[34] In addition, any decision by Verizon to purposefully degrade the level of service provided to wholesale

[33] See Orduna Affidavit at ¶ 8.

[34] *See, e.g.*, Comments of ACN Communications Services, Inc. *et al.* at 53-54 (describing potential harm from service quality discrimination and seeking conditional performance measures).

customers such as Bright House Networks would be more difficult to detect and more difficult to remedy than would other types of anticompetitive conduct.

In order to combat these foreseeable anti-competitive effects of the proposed merger, the Commission, if it finds approval of the transaction to be in the public interest, should impose reasonable conditions that address these merger-specific harms. The Commission should require that Verizon provide long distance, interconnection, and Internet Backbone access with reasonable, equitable, and non-discriminatory terms and rates. For any such condition to be meaningful, it is essential that Verizon's *internal cost allocation* be used as a benchmark for "reasonableness" when determining acceptable rates. Otherwise, the merged firm will simply be able to extract similarly anti-competitive rents from all buyers, all the while asserting its equitability and non-discrimination.

II. ABSENT REASONABLE CONDITIONS, THE MERGER WILL SIGNIFICANTLY AGGRAVATE THE ANTICOMPETITIVE EFFECTS OF VERIZON'S PRACTICE OF TYING DSL WITH LOCAL TELEPHONE SERVICE

It is no secret that Verizon, like other ILECs, has established a practice of tying its DSL offering to consumers' purchase of local exchange service and thereby of erecting roadblocks to consumer number portability.[35] As a result, Verizon enjoys a significant "lock-in" effect due to consumers' desire to keep their telephone number and E-mail address when changing carriers. Numerous commenters in this proceeding, including

[35] *See* Comments of Eliot Spitzer, Attorney General of the State of New York, at 10-12 (discussing Verizon's tying of its DSL service to its voice service and the impact of tying on number porting requests, and seeking a "naked DSL" condition). *See also, e.g.,* Ted Hearn, "FCC TO Bells: No Stalling," *Multichannel News*, April 4, 2004.

service providers (both incumbent and competitive) and regulators alike, have documented this effect in this proceeding.[36]

DSL tying is a weapon that Verizon has wielded against Bright House Networks as well. In the communities that Bright House Networks serves, Verizon has aggressively discouraged competition by refusing to allow its voice customers to port their number to Bright House Networks if those voice customers also subscribe to Verizon DSL. To date, Verizon's anti-competitive tactics have proven extremely effective, and have convinced a quarter or more of Bright House Networks' first-time telephone subscribers to cancel their Bright House Networks service order and stay with Verizon.[37] Competition is thwarted when consumer choices are artificially limited, and Verizon's practice of tying DSL with its voice telephony service is a stark example of an anti-competitive, artificial constraint on consumer choice imposed solely for the purpose of leveraging its market power in the voice market into the HSD market.

---

[36] *See, e.g.*, Petition to Deny of Qwest Communications International, Inc. at 42 (urging the Commission to impose a "naked DSL" condition, as "announcements of willingness to begin to provide stand-alone DSL are meaningless if the terms are not sufficient to allow competitive service offerings by non-Verizon VoIP providers and others."); Comments of Vonage Holdings Corp. at 10-11 (discussing Verizon's history of interfering with consumers' number porting rights and the related problem of DSL tying); Comments of Eliot Spitzer, Attorney General of the State of New York, at 7-12 (discussing need for unbundled DSL access if intermodal competition is to provide a competitive check on Verizon).

[37] *See Bright House Networks Information Services, LLC v. Verizon Florida, Inc.*, Complaint and Request for Declaratory Ruling of Bright House Networks Information Services, LLC, at 1 n.1, 3, and 6 (filed September 30, 2004). *See also* Linda Haugsted, "MSO: Verizon Numbers Aren't Porting Over," *Multichannel News*, October 25, 2004. *See also Cable, Phone Carriers Wage High-Speed Battle*, ST. PETERSBURG TIMES, October 4, 2004, at 3.

Under traditional antitrust analysis, Verizon's tying of DSL and voice services raises serious antitrust concerns. There are four elements to a *per se* tying violation: (1) the tying and tied goods are two separate products; (2) the defendant has market power in the tying product market; (3) the defendant affords consumers no choice but to purchase the tied product from it; and (4) the tying arrangement forecloses a substantial volume of commerce.[38] In this case, DSL and voice telephony are clearly separate products, and Verizon clearly possesses market power in the areas it serves.[39] Verizon is the sole provider of DSL services in many of the markets it serves, and its tying practice forecloses a substantial volume of commerce – in western and central Florida alone, as mentioned above, Verizon's tying practice has stifled a whopping 25 percent of consumers' attempts to switch their service to Bright House Networks. The Commission cannot ignore this behavior, particularly since it is the primary enforcer of the antitrust laws in the telecommunications industry.[40]

---

[38] *See United States v. Microsoft Corp.*, 253 F.3d 34, 85 (citing *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461-62 (1992)).

[39] In case there was any doubt that Verizon possesses market power in the voice telephony market, it is telling that, in the short time since the FCC effectively lifted its network element unbundling requirements, Verizon has raised its wholesale rates charged to competitors substantially. *See* Thomson StreetEvents VZ – Q1 2005 Verizon Earnings Conference Call, April 27, 2005, at 6 and 11 (disclosing substantial profit gains from wholesale price increases following UNE deregulation).

[40] *See Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 412 (2004) ("One factor of particular importance is the existence of a regulatory structure designed to deter and remedy anticompetitive harm. Where such a structure exists, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny.").

The Commission has recently re-affirmed that "carriers may not impose non-porting related restriction on the porting-out process."[41] Verizon's pattern and practice of refusing to port consumers' numbers, upon request, to Bright House Networks when those consumers also subscribe to Verizon DSL service violates both the Communications Act and the antitrust laws. Consumer harm arising from Verizon's post-merger ability to "price squeeze" its primary (and in many cases, sole) competitor would be further aggravated if it is allowed to continue tying its DSL service to its voice telephony service. Because the practice of tying voice and HSD service will have a much more pernicious effect on consumers when combined with this merger's other anti-competitive effects, the Commission should condition its approval by requiring Verizon to offer "naked" DSL to consumers at a reasonable price.

[41] *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 Competitive LEC UNE Voice Customers, Memorandum Opinion and Order and Notice of Inquiry*, WC Docket No. 03-251 at ¶ 36 (2005).

CONCLUSION

For the reasons stated above, should the Commission find approval of this transaction to be in the public interest, it should condition its approval of the parties' Application on Verizon's provision of long distance service, PSTN interconnection, and Internet backbone access on reasonable, equitable, and non-discriminatory terms benchmarked to Verizon's internal cost allocations, on Verizon's unbundling of its DSL product from its voice telephony product at reasonable and affordable rates for consumers, and upon such other conditions as may be necessary to ensure fair and effective competition.

Respectfully submitted,

Bruce D. Sokler
Robert G. Kidwell
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 434-7300

Attorneys for Advance/Newhouse Communications

May 24, 2005

REDACTED – FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Robert G. Kidwell, do hereby certify that, on May 24, 2005, a copy of the foregoing Reply Comments of Advance/Newhouse Communications was served upon the Secretary, counsel for Applicants, and FCC staff in the following manner:

SERVED BY HAND

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
(By Hand and Via ECFS)

Gary Remondino
Competition Policy Division
Wireline Competition Bureau
Gary.Remondino@fcc.gov

Gil M. Strobel
Lawler, Metzger, Milkman & Keeney, LLC
2001 K St. NW, Suite 802
Washington, DC 2006
Counsel for MCI, Inc.

Nancy J. Victory
Wiley, Rein & Fielding LLP
1776 K St. NW
Washington, DC 20006
Counsel for Verizon Communications, Inc.

SERVED VIA E-MAIL

Best Copy and Printing, Inc.
www.bcpiweb.com

Gail Cohen
Competition Policy Division
Wireline Competition Bureau
Gail.Cohen@fcc.gov

Bill Dever
Competition Policy Division
Wireline Competition Bureau

Bill.Dever@fcc.gov

Mary Shultz
Wireless Telecommunications Bureau
Mary.Shultz@fcc.gov

Jeff Tobias
Wireless Telecommunications Bureau
Jeff.Tobias@fcc.gov

Erin McGrath
Wireless Telecommunications Bureau
Erin.McGrath@fcc.gov

David Krech
Policy Division
International Bureau
David.Krech@fcc.gov

Kathleen Collins
Policy Division
International Bureau
Kathleen.Collins@fcc.gov

JoAnn Lucanik
International Bureau
JoAnn.Lucanik@fcc.gov

Jim Bird
Office of General Counsel
Jim.Birg@fcc.gov

Jonathan Levy
Office of Strategic Planning and Policy Analysis
Jonathan.Levy@fcc.gov

RIC

Robert G. Kidwell

Redacted – For Public Inspection

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Verizon Communications, Inc.	)	WC Docket No. 05-75
and MCI, Inc. Applications for	)	
Consent to Transfer of Control	)	
	)	

AFFIDAVIT OF ARTHUR C. ORDUNA

I, Arthur C. Orduna, hereby state:

1. I am Vice President, Strategic Initiatives, for Bright House Networks, LLC (hereinafter "BHN"). My responsibilities include, among other things, overseeing the strategic direction of BHN's Digital Phone product, which is a residential voice telephony service offering. BHN utilizes IP-enabled technology to deliver its voice traffic to the public switched telephone network.

2. BHN is a facilities-based local exchange carrier currently offering local, long-distance, and international long distance services to customers in the Tampa Bay and Central Florida markets. BHN launched Digital Phone in the Tampa Bay area on or around July 2004. We launched the service in Central Florida in October 2004. BHN will complete the roll out Digital Phone service to the Birmingham, Detroit, Bakersfield, and Indianapolis markets by the end of 2005.

3. In addition to basic local and long distance service, our Digital Phone product also includes features such as call waiting, call forwarding, and free voicemail. We also offer directory assistance (411), operator assistance, 611 services, and the necessary subscriber information for a printed telephone directory. Our public safety features include E911 and 711 support, and our network is "CALEA" compliant. BHN also contributes to the Universal Service Fund and other FCC-controlled funds supported by traditional telecom providers. In sum, BHN's Digital Phone acts as a replacement to the traditional voice service offered by the incumbent LECs.

4. Currently, BHN Digital Phone service passes REDACTED homes in central Florida and the Tampa area, with REDACTED active Digital Phone subscribers. With the addition of Birmingham, Detroit, Bakersfield, and Indianapolis this year, BHN will offer Digital Phone service to almost REDACTED of the homes passed by BHN facilities in the United States. Aside from the period of service disruption discussed below, BHN is experiencing Digital Phone subscriber growth of approximately REDACTED subscribers per week, which is expected to grow to between REDACTED subscribers per week as Digital Phone is rolled out in remaining BHN markets. BHN's Digital Phone architecture is designed to serve over REDACTED new voice customers in 2005, and we expect subscriber growth to match that projection.

5. In addition to our current offering, BHN intends to offer our customers the following value-added features: multiple telephone lines, a local-only service, seasonal rates, bulk

rates for multi-dwelling units, and a host of other calling features that will offer customers an enhanced and expanded telephony experience.

6. BHN competes head-to-head in the local Florida voice telephony market and the high-speed data market with Verizon Communications, Inc. ("Verizon"). In the Tampa area, Verizon has announced plans to compete in the video programming market as well. As a facilities-based carrier, BHN does not resell the services of the incumbent LEC, nor do we rely on or purchase unbundled network elements. However, we rely heavily on the services offered by MCI, Inc. ("MCI). In order to effectively and aggressively enter the Florida voice services market, BHN elected to partner with MCI to provide a variety of voice-related capabilities. Specifically, MCI provides the following services in support of our voice services product:

   a. **Local network connectivity** – MCI provides connectivity to the ILEC tandems, PSAP tandems and other local traffic terminating points. MCI is responsible for securing the necessary interconnection agreements with each incumbent LEC within BHN's footprint.

   b. **Long distance network connectivity** – MCI provides connectivity to their long distance transport network for delivery of intra- and inter-LATA calling traffic.

   c. **Traffic backhaul** – Through its UUNET affiliate, MCI provides network connectivity of signaling, voicemail and other associated traffic between our main network operating center and the other BHN divisions located in Birmingham, Detroit, Bakersfield, and Indianapolis.

d. **SS7 support** – MCI provides support for signaling protocol and other messaging related to call set-up, tear-down, and in-call feature manipulation.

e. **Telephone number management** – MCI provides BHN subscribers with telephone numbers acquired from the North American Numbering Plan Administrator (NANPA).

f. **Service order processing** – MCI provides BHN with the systems, personnel, and processes to support voice services order processing. This activity is further detailed below:

   i. New Service Orders- MCI processes all BHN orders for both native telephone numbers as well as customers who wish to port their number from their current provider. MCI's unique expertise in handling number porting requests was an important selling point for BHN and remains an essential aspect of the service.

   ii. Moves, Adds, and Change Orders – MCI processes all move, add, and change orders that require either changes in their network or LEC changes (such as directory listing changes)

   iii. Disconnect Orders – MCI processes all disconnect orders for removing voice services from BHN and MCI systems, including porting out numbers for customers moving to another carrier.

g. As part of the order processing capability, MCI performs the following functions:

   i. LEC CSR Access -- MCI pulls the relevant customer service report from the porting carrier, to confirm order entry information necessary to process a ported order.

ii. MSAG Validation – MCI ensures that the street address provided for the customer conforms to addressing standards to support full E911 capability.

iii. Ported Number FOC – MCI coordinates with the porting carrier to establish a date for porting the number of a new customer.

iv. TN Activation – MCI activates the new telephone number, both with regard to its network as well as in our network.

v. ALI Update – MCI updates the address lookup information for the telephone number to ensure proper E911 routing and response

vi. LIDB Update – MCI updates the line information database with relevant customer information as required.

vii. CNAM Update – MCI updates caller ID information as required.

viii. CARE Update – MCI updates the long distance carrier information to reflect MCI as the long distance provider.

h. **Domestic Long Distance** – As part of the service bundle, MCI provides unlimited domestic long distance service for BHN customers.

i. **International Long Distance** – MCI offers a discounted rate plan for calls to locations around the world. REDACTED

j. **Operator and Directory Assistance Services** – MCI provides our operator support system and directory assistance/411 services.

7. These services as provided by MCI are critical services in support of our voice product. Most notable are the network connection, network capacity and order processing services, including MCI's proven expertise in number porting.

8. We have already experienced one business slow down due to MCI's failure to meet performance commitments, so we have a painful awareness of just how essential their continued good performance is to our business overall. Between August of 2004 and February of 2005, MCI experienced difficulty meeting its service level obligations, and was unable to process BHN service orders in a timely manner. The result of this slowdown was redacted shortfall from projected Digital Phone subscriber growth during this period, which translates into a loss of nearly REDACTED potential subscribers.

9. Given our experience with service level interruptions, it is clear that a decrease in service by a Verizon-owned MCI could seriously affect our business performance in a number of dimensions. For example, if MCI does not properly size its network and telephone number capacity, we will not be able to sell or install at the rate driven by market demand. If MCI does not invest in improved or enhanced processes and systems, the amount of customer orders rejected or reworked will negatively impact our business. In addition, if MCI does not invest in the proper resources to monitor and address call and network quality and otherwise meet service levels, the perception of our product will be diminished in the eyes of our customers.

10. Moreover, if MCI loses its incentive to expand and grow its business as it has traditionally done, then our ability to rapidly acquire and install new customers, as well as respond to their service requests, would be severely diminished.

11. Finally, we are highly dependent on MCI to provide these services in a cost-effective manner. BHN's financial model for Digital Phone service is based on the competitive availability of wholesale services as MCI provides them today. If MCI begins to alter

the current financial model to favor of its parent Verizon, it could have a negative impact on the value of our product versus that of competitors.

12. There are two other known providers of the services MCI offers us today: Sprint and Level 3. Sprint is an incumbent LEC in our Central Florida market, and thus one of our primary competitors. This presents certain competitive problems similar in type to those we face with the proposed MCI/Verizon merger.

13. BHN considered Level 3 when it began development of its Digital Phone service and found Level 3 an unattractive alternative due to its poor rate center coverage in BHN markets. Since that time, Level 3 has exited the business services provisioning market and is in the process of retreating from the residential wholesale provisioning market altogether. BHN does not view Level 3 as a reliable long-term provider of wholesale services required to support Digital Phone service.

14. As neither of those providers is a workable alternative, BHN would have to construct redundant capabilities to replace those that MCI provides today independently. This option would significantly impact on our business plan in at least the following ways:

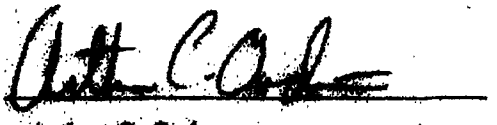
    a. Customer impact – Transitioning from one service provider to another (or a host of others) could result in our customers being impacted by service outages, improperly processed orders, and diminished service availability and performance.

    b. Slow down in product evolution – rather than evolving the product portfolio forward, business resources will be focused on re-creating existing capabilities and services.

    c. Cost – Transitioning would impose substantial costs on BHN and would amount to, at a minimum, several millions of dollars, and more likely would run into the tens of millions. Transition costs include the cost of purchasing duplicative services during the transition period, the costs of new construction and substantial

extra labor, and substantial startup costs with the new providers, in addition to significant lost revenues due to inevitable customer service problems resulting from the complete overhaul of a network relied upon by over 200,000 subscribers on a day-to-day basis. Perhaps the most substantial cost would be BHN's inability to aggressively pursue and add new Digital Phone subscribers, as the task of simply maintaining service to the installed base during the transition period would make new customer adds a lower priority. BHN estimates that such a transition would result in a redacted month delay in projected subscriber growth and a concomitant substantial decrease in revenue growth.

I affirm under penalty of perjury that, to the best of my knowledge, the foregoing paragraphs are true and correct, and that I am qualified to so affirm.



Arthur C. Orduna
Vice President, Strategic Initiatives
Bright House Networks, Inc.
5000 Campuswood Dr.
East Syracuse, NY 13057
(314) 438-4100

5/24/05

Date

EXHIBIT 5

Negotiated and Arbitrated Agreement Tracking System – Results

Your search returned 6 records.

Docket Number:	Start Date: 1/1/2001	End Date: 9/5/2007
Company Code(s): TX631	Agreement Type:	Underlying Docket:
Withdrawn:		

Docket No.: 060015 Date docketed: 1/5/2006	Company: TL710 Verizon Florida Inc. **Key Dates Deadline: 4/5/2006 Memo: 4/7/2006 Close: 4/10/2006 Withdrawal: <Not withdrawn> Effective: 12/1/2005** Docket title: Notice of adoption, with modifications, of existing terms of interconnection, resale, unbundling, and collocation agreement between MCImetro Access Transmission Services LLC and Verizon Florida Inc. by Bright House Networks Information Services (Florida), LLC. Agreement Type: NOTICE OF ADOPTION Agreement Elements: Interconnection Unbundling Resale Collocation CMRS: <none> Underlying Dockets: 040163
Docket No.: 060486 Date docketed: 6/29/2006	Company: TL727 Embarq Florida, Inc. d/b/a Sprint Florida **Key Dates Deadline: <none> Memo: 9/27/2006 Close: 9/28/2006 Withdrawal: <Not withdrawn> Effective: 6/1/2006** Docket title: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between Embarq Florida, Inc. (f/k/a Sprint-Florida, Incorporated) and Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone by Bright House Networks Information Services (Florida), LLC. Agreement Type: NOTICE OF ADOPTION Agreement Elements: Interconnection Unbundling Resale Collocation CMRS: <none> Underlying Dockets: 050116
Docket No.: 060736 Date docketed:	Company: TL720 BellSouth Telecommunications, Inc. **Key Dates Deadline: 2/6/2007 Memo: 2/8/2007 Close: 2/9/2007 Withdrawal: 2/6/2007 Effective: <none>** Docket title: Notice of adoption, with modifications, of existing interconnection,

11/8/2006	unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Comcast Phone, LLC by Bright House Networks Information Services (Florida), LLC.
	Agreement Type: NOTICE OF ADOPTION Agreement Elements: Interconnection Unbundling Resale Collocation CMRS: <none>
	Underlying Dockets: 050767
Docket No.: 070282 Date docketed: 4/26/2007	Company: TX631 Bright House Networks Information Services (Florida), LLC **Key Dates Deadline: <none> Memo: 7/27/2007 Close: 7/30/2007 Withdrawal: <Not withdrawn> Effective: 4/1/2007** Docket title: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between Embarq Florida, Inc. and Comcast Phone of Florida LLC d/b/a Comcast Digital Phone by Bright House Networks Information Services (Florida), LLC.
	Agreement Type: NOTICE OF ADOPTION Agreement Elements: Interconnection Unbundling Resale Collocation CMRS: <none>
	Underlying Dockets: 070073
Docket No.: 070332 Date docketed: 5/22/2007	Company: TL727 Embarq Florida, Inc. **Key Dates Deadline: 8/20/2007 Memo: 8/22/2007 Close: 8/23/2007 Withdrawal: <Not withdrawn> Effective: 4/20/2007** Docket title: Request for approval of Amendment No. 1 to interconnection agreement between Bright House Networks Information Services (Florida), LLC and Embarq Florida, Inc.
	Agreement Type: AMENDMENTS Agreement Elements: Interconnection Unbundling Resale Collocation CMRS: <none>
	Underlying Dockets: 070282
Docket No.: 070396 Date docketed: 7/3/2007	Company: TL731 Smart City Telecommunications LLC d/b/a Smart City Telecom **Key Dates Deadline: 10/1/2007 Memo: 10/3/2007 Close: 10/4/2007 Withdrawal: <Not withdrawn> Effective: 6/19/2007** Docket title: Request for approval of traffic exchange agreement between Smart

City Telecommunications LLC d/b/a Smart City Telecom and Bright House Networks Information Services (Florida) LLC.

Agreement Type: AGREEMENT

Agreement Elements: Interconnection
CMRS: <none>

Underlying dockets: <none>

EXHIBIT 6

COLE, RAYWID & BRAVERMAN, L.L.P.
ATTORNEYS AT LAW
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200
WASHINGTON, D.C. 20006-3458
TELEPHONE (202) 659-9750
FAX (202) 452-0067
WWW.CRBLAW.COM

LOS ANGELES OFFICE
2381 ROSECRANS AVENUE, SUITE 110
EL SEGUNDO, CALIFORNIA 90245-4290
TELEPHONE (310) 643-7999
FAX (310) 643-7997

DANIELLE FRAPPIER
ADMITTED IN DC AND MD
DIRECT DIAL
202 828 9622
DFRAPPIER@CRBLAW.COM

APRIL 10, 2006

VIA ECFS FILING SYSTEM

Secretary Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Comments of Advance-Newhouse Communications--WC Docket No. 06-55

Dear Secretary Dortch:

Please find attached the comments of Advance-Newhouse Communications in WC Docket No. 06-55. Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,

Danielle Frappier

Danielle Frappier
Legal Counsel to ***Advance-Newhouse Communications***

200227_1.DOC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers	WC Docket No. 06-55

Comments of Advance-Newhouse Communications

Advance-Newhouse Communications ("Advance-Newhouse") hereby submits its comments in this matter.[1] Advance-Newhouse manages Bright House Networks, which offers traditional cable, high-speed data, and facilities-based voice over Internet protocol ("VoIP") telephony in areas including Tampa Bay and central Florida; Birmingham, Alabama; Indianapolis, Indiana; Bakersfield, California; and Detroit, Michigan. Advance-Newhouse has a keen interest in this proceeding given that it relies on a third-party wholesale carrier, similarly to Time Warner, to provide public switched telephone network ("PSTN") connectivity for its facilities-based VoIP telephony service. Failure to grant Time Warner's request for declaratory ruling would have an immediate and negative impact on the continued development of real facilities-based competition – particularly in the residential market. Advance-Newhouse urges the Commission to grant Time Warner's request promptly.

1. The Commission Should Interpret The Act And Its Rules In A Manner That Promotes Innovative Facilities-Based Competition.

The South Carolina Public Service Commission ("South Carolina PSC") ruled that incumbent local exchange carriers ("ILECs") only have to interconnect with other

[1] Public Notice, Pleading Cycle Established for Comments on Time Warner Cable's Petition for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Services to VoIP Providers, DA 06-534 (March 6, 2005).

carriers under Sections 251(a), (b) and/or (c) of the Act for the purpose of exchanging traffic that originates or terminates with end users directly served by the interconnecting carrier.[2] This ruling is flatly inconsistent with applicable federal law, as explained below. But, equally important, this ruling reflects a profound lack of understanding of the way in which facilities-based competition will develop in the consumer market for telecommunications services.

It has been more than 10 years since the passage of the 1996 Act. Thus far the record of success has been mixed. The initial round of new entrants mainly focused on resale – either literally, under Section 251(c)(4), or via "UNE-P" arrangements under Section 251(c)(3) – or on serving niche markets, such as the connectivity needs of Internet Service Providers ("ISPs"). As regulatory and market conditions changed, these strategies have proven difficult to execute.[3]

The Commission has concluded that real, sustainable competition in communications markets depends on competitors such as Advance-Newhouse who invest in their own, separate facilities to provide their services.[4] Simply reselling all or part of

---

[2] Petition of MCIMetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996, *Order Ruling on Arbitration,* Docket No. 2005-67-C, Order No. 2005-544 (October 7, 2005) ("*South Carolina PSC Wholesale Ruling*") at 6-13.

[3] In 2003, the Commission noted that "volatility" in the industry "has already resulted in the bankruptcy of 144 carriers." Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration, *Memorandum Opinion And Order*, 18 FCC Rcd 25887 (2003) at ¶ 166.

[4] *See* In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, CC Docket Nos. 01-338 *et al.*, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,* FCC 03-36 (rel. August 21, 2003) at ¶70 ("We reaffirm the conclusion in the UNE Remand Order that facilities-based competition serves the Act's overall goals"); In the matter of Unbundled Access to Network Elements (WC Docket No. 04-313); Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), *Order on Remand,* FCC 04-290 (rel. Feb. 4, 2005) at ¶ 3 ("By adopting this approach, we spread the benefits of facilities-based competition"); *United States*

the incumbent's network might provide short-run benefits to consumers, but ultimately, under that approach, all consumers can buy is the same old ILEC service offered the same old way.

While the Commission was refining its focus on facilities-based competition, cable operators (including Advance-Newhouse) were deploying VoIP-based communications services using their own separate local service facilities. Modern cable systems carry both cable programming and high-speed data services, and the cable industry has developed specifications for the provision of reliable, high-quality VoIP services over cable networks.[5] Other than wireless services, if a residential customer has a facilities-based alternative to the ILEC, that alternative comes from the local cable operator.

This reflects the underlying economics of competing for residential customers. Cable can compete because its pre-existing cable system can be enhanced to also offer voice services. No other entity is in a similar position.[6]

This means that for the Commission to achieve its goal of facilities-based competition for residence customers, it must interpret the Act and its rules in a manner that encourages and enables such competition. The ILECs are no more interested in helping their rivals today than they were in 1996. They can therefore be expected to advocate narrow, restrictive views of their interconnection obligations relating to entities involved in making cable-based competition possible. Without clear direction from this Commission, state regulators will from time to time fall prey to this anticompetitive advocacy. Advance-Newhouse submits that this is what happened in South Carolina.

Telecom Ass'n v. FCC, 359 F.3d 554, 576 (D.C. Cir. 2004), (the purpose of the Act "is to stimulate competition – preferably genuine, facilities-based competition."), *cert. denied*, 125 S. Ct. 313, 316, 345 (2004).

[5] *See* In the matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, *Memorandum Opinion And Order*, 19 FCC Rcd 6429 (2004) ("*Vonage Order*") at ¶¶ 25, 32.

[6] Broadband-over-power-line systems would similarly make use of a pre-existing distribution network, but for whatever reason, such systems are not at all prevalent.

For this reason, Advance-Newhouse urges the Commission to grant Time Warner's requested declaratory ruling. But, in addition, Advance-Newhouse urges the Commission to state clearly and plainly that the 1996 Act will be frustrated unless cable-based VoIP services have full and complete interconnection rights as against ILECs. The Commission should also make clear that state regulators addressing these matters must interpret the Act and the Commission's rules so as to facilitate the interconnection and interoperability of cable-based VoIP services with the PSTN.

2. The South Carolina PSC Erred In Limiting MCIMetro's Interconnection Rights.

Cable operators commonly rely on third-party competitive local exchange carriers ("CLECs") as, in effect, wholesale providers of connectivity to the PSTN. Reliance on a third-party can be economically efficient, because cable operators face real challenges in configuring their systems to enable voice services, establishing the necessary installation, billing, and maintenance procedures, and handling other aspects of providing voice services. Outsourcing PSTN connectivity can speed entry, allow the cable operator to gain familiarity with the market, and allow CLECs to make efficient use of their expertise in circuit switching and interconnection arrangements.

The essence of the South Carolina PSC's ruling to which Time Warner's petition is directed is that CLECs have no right to interconnect with ILECs when the ultimate end user is not directly a customer of the CLEC but, instead, is a customer of a cable operator (or other entity) that buys wholesale PSTN connectivity from the CLEC. *South Carolina PSC Wholesale Ruling* at 6-13. This ruling creates significant uncertainty about the availability of robust interconnection for a large number of cable-based VoIP services, including those offered by Advance-Newhouse. And, in fact, the South Carolina PSC's ruling is utterly without foundation in the law, and this Commission should so declare.

First, the definition of "telecommunications service" clearly contemplates that carriers may serve the public indirectly, rather than directly. That term is defined as offering telecommunications for a fee ***either*** "directly to the public" ***or*** "to such classes of

users as to be effectively directly available to the public, regardless of the facilities used." 47 U.S.C. § 153(46). When a CLEC offers telecommunications to a cable operator for the purpose of allowing the cable operator's VoIP customers to connect to the PSTN, that is plainly making the CLEC's services "effectively directly available to the public." The fact that the public is reached through unconventional facilities – a cable system instead of a traditional local loop – clearly doesn't matter, because the definition applies "regardless of the facilities used."

Second, in this situation a CLEC is clearly offering "telephone exchange service" to the cable operator and, therefore (albeit indirectly), to the public. "Telephone exchange service" is defined in two parts. Subpart (A) of 47 U.S.C. § 153(47) has been in the Communications Act since its passage.[7] It defines "telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

This is the Act's complicated way of describing plain old local telephone service. Indeed – in another change made by the 1996 Act – the Communications Act now ***defines*** a "local exchange carrier" as an entity that provides either "telephone exchange service" or "exchange access." *See* 47 U.S.C. § 153(26).

It is clear that this functionality is, indeed, what CLECs are providing to cable operators in support of VoIP service. In plain terms, telephone exchange service is the ability to make and receive local (that is, non-toll) calls. This is exactly what the CLECs are selling.[8]

---

[7] *See* M. Paglin, Ed., A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934 (New York: 1989) at 923 (text of original definitions section of the Communications Act).

[8] At the retail level, the statutory "opposite" of "telephone exchange service," as defined in 47 U.S.C. § 153(47), is "telephone toll service," defined in 47 U.S.C. § 143(48). "Exchange

If there was any doubt on this score, however, it is removed by considering the amendment to the definition added by the 1996 Act. That amendment added a new subpart (B) to 47 U.S.C. § 153(47). Subpart (B) defines "telephone exchange service" as:

> (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

Under this provision, even if a CLEC's service is not literally, exactly the same as traditional ILEC-based, plain old telephone service, it is ***still*** "telephone exchange service" as long as it is "comparable." There is no conceivable basis to conclude that CLECs providing PSTN connectivity to cable operators are not, at a minimum, providing service that is "comparable" to traditional local service. For example, the CLEC service uses telephone numbers; it is interconnected with the PSTN; and it allows the ultimate end users to make and receive calls.[9]

Moreover, CLECs providing PSTN connectivity to cable operators are clearly providing "exchange access" as well. "Exchange access" is defined as offering access to "telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16). This is exactly the function a CLEC performs when it gets an incoming toll call and then switches it out to the cable operator for delivery to the end user. In that case, it is using its "telephone exchange facilities" – its switch – to help terminate a toll call.

---

access" is then defined as providing the use of local services or facilities to originate or terminate telephone toll service. *See* 47 U.S.C. § 153(16).

[9] *Cf.* In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") at ¶¶ 1012-15 (determining that wireless carriers offer service that is "comparable" to traditional telephone exchange service). Note that the service the CLEC is providing is a telecommunications service even if the cable operator's VoIP offering is characterized as an information service. The Commission itself has noted that in the case of interconnected VoIP services, such as those offered by cable operators, the VoIP provider obtains PSTN connectivity (and telephone numbers) by purchasing services from carriers. *Vonage Order, supra,* at ¶ 8.

This analysis proves that CLECs serving cable operators have full interconnection rights with respect to that service. Section 251(c)(2) obliges ILECs to provide interconnection "for the transmission and routing of telephone exchange service and exchange access." Since that is precisely what the CLECs are providing, there is no sound basis for any ILEC to be relieved of its full interconnection obligations with respect to those CLECs or this type of traffic.[10]

Given this, there is no basis for any claim that the rights and duties arising under Section 251(b) – such as number portability and reciprocal compensation – do not apply in the case of a CLEC providing PSTN connectivity to a cable-based VoIP provider. The South Carolina PSC seemed confused on this point, relying on a Commission rule regarding reciprocal compensation to say that "third party" traffic – referring, apparently, to traffic originating or terminating on a cable operator VoIP service – is not properly covered by these provisions. *See South Carolina PSC Wholesale Ruling* at 10.

The flaw in this analysis is in failing to recognize, as explained above, that the CLEC in this case is providing "telephone exchange service" to *its* customer – the cable operator – even though the cable operator may not be the ultimate end user. So, traffic to or from the cable operator's system should "count" as CLEC-originated or –terminated traffic for purposes of Section 251(b). Indeed, it is impossible to square the South Carolina PSC's logic with the plain requirement of Section 251(b)(1) that all LECs make

---

[10] While Advance-Newhouse presently (like Time Warner) makes use of CLECs to provide connectivity between its VoIP-enabled cable systems and the PSTN, the analysis would not change if the CLEC functions described above were provided entirely "in house," either literally by the cable operator or by an affiliate. This is so even if the cable operator's VoIP services themselves are classified as unregulated information services. The Communications Act expressly recognizes that an entity may be a carrier with respect to some of its operations, but engaged in non-carrier activities with respect to other operations. Section 153(44) of the Act defines a "telecommunications carrier" as any provider of telecommunications services, but then states that "[a] telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is providing telecommunications services... ." With this language, the Act clearly recognizes that the same entity can be engaged in both carrier and non-carrier activities. Indeed, the Commission has recognized that the very same activities can be either common carriage or an information service, depending on how the provider in question chooses to offer them. *See* Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, *et al., Report and Order and Notice of Proposed Rulemaking,* WC Docket Nos. 02-33 *et al.,* FCC 05-150 (Sept. 23, 2005) at ¶¶ 87-95.

their services available for resale. If a LEC's service is resold, then the LEC's direct customer is by definition not the ultimate actual end user. Under the South Carolina PSC's logic, if a LEC ***complies*** with its obligation under Section 251(b)(1) to permit resale of its services, it somehow automatically ***forfeits*** its right to demand that interconnected LECs comply with their obligations under Section 251(b), such as number portability, dialing parity, and reciprocal compensation. This is an absurd result, and shows that the South Carolina PSC erred.

Indeed, from this perspective, it is fair to view the CLEC as selling its telephone exchange services to the cable operator for resale, with the cable operator then combining those (resold) services with its own facilities and services to offer a "finished" VoIP service to its own end users. The fact that the CLEC's direct customer – the cable operator – resells the CLEC's services does not change the character of what the CLEC itself is providing – and that is "telephone exchange service."

3. Conclusion.

Competition from cable-based VoIP services is the only presently viable form of landline facilities-based competition in the residence market. It would frustrate the policies and purposes of the 1996 Act if narrow interpretations of the Act – whether by misguided state regulators, or by ILECs seeking to protect their markets – were to interfere with the ability of cable-based VoIP services to smoothly and efficiently interconnect with the PSTN.

Time Warner's petition shows that, at least in some cases, this is occurring. As a result, Advance-Newhouse urges the Commission to promptly grant Time Warner's petition and rule that CLECs providing PSTN connectivity to cable-based VoIP providers – including CLECs affiliated with the cable operator – are providing "telephone exchange service," and, therefore, are entitled to full interconnection rights against ILEC under all subsections of Section 251.

Respectfully submitted,

ADVANCE-NEWHOUSE COMMUNICATIONS

By: Christopher W. Savage/DF

Christopher W. Savage
Danielle Frappier
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
202-659-9750

Dated: April 10, 2006

EXHIBIT 7

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Petition of Time Warner Cable for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers	WC Docket No. 06-55

Reply Comments of Advance-Newhouse Communications

Advance-Newhouse Communications ("Advance-Newhouse") hereby submits its reply comments in this matter.[1] As noted in our initial comments, Advance-Newhouse manages Bright House Networks, which offers traditional cable, high-speed data, and facilities-based Voice over Internet Protocol ("VoIP") telephony in areas including Tampa Bay and central Florida; Birmingham, Alabama; Indianapolis, Indiana; Bakersfield, California; and Detroit, Michigan. Advance-Newhouse, therefore, will be directly affected by a decision in this matter regarding the interconnection rights of VoIP providers and the competitive local exchange carriers ("CLECs") that serve them.

1. The Parties Opposing The Declaratory Ruling Offer No Sound Policy Rationale For Doing So.

Several rural incumbent local exchange carriers ("ILECs"), their trade associations, and state regulators oppose Time Warner's request for a declaration that CLECs serving VoIP providers have full interconnection rights.[2] The legal theories that

---

[1] Public Notice, Pleading Cycle Established for Comments on Time Warner Cable's Petition for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection to Provide Wholesale Telecommunications Services to VoIP Providers, DA 06-534 (March 6, 2005).

[2] *See, e.g.,* Comments of the Independent Telephone and Telecommunications Alliance, *et al.* ("ITTA Comments") at 2; Comments of the Nebraska Public Service Commission ("Nebraska PSC Comments"); Comments of the Iowa RLEC Group ("Iowa RLEC Comments"); Comments of John Staurulakis, Inc. ("JSI Comments"); Comments of the South Carolina Telephone

these parties advance are flawed, as discussed below. But notable by its absence from these comments is any remotely sound ***policy*** rationale for denying interconnection rights to CLECs that serve VoIP providers.

Advance-Newhouse submits that this is a fatal error. As we pointed out in our opening comments, both this Commission[3] and the courts[4] have found that the key purpose of the 1996 Act is to encourage "genuine, facilities-based competition."[5] It directly frustrates this purpose for state commissions to interpret the Act in a way that either flatly blocks the ability of cable-based voice telephony to compete (as both the South Carolina and Nebraska regulators have done) or that creates uncertainty about interconnection rights – uncertainty which ILECs large and small will be quick to exploit in interconnection negotiations, arbitrations, and related matters.[6]

Coalition ("SCTC Comments"); South Dakota Telecommunications Association, *et al.,* Opposition to Petition for Declaratory Ruling ("South Dakota Telecom Comments"); Comments of Southeast Nebraska Telephone Company and the Independent Telephone Companies ("Southeast Nebraska Comments"). *See also* Comments of Qwest Communications International, Inc. ("Qwest Comments") (urging, *inter alia,* delaying a decision until other cases regarding VoIP are decided).

3 *See* In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capabilities, CC Docket Nos. 01-338 *et al., Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,* FCC 03-36 (rel. August 21, 2003) at ¶70 ("We reaffirm the conclusion in the UNE Remand Order that facilities-based competition serves the Act's overall goals"); In the matter of Unbundled Access to Network Elements (WC Docket No. 04-313); Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), *Order on Remand,* FCC 04-290 (rel. Feb. 4, 2005) at ¶ 3 ("By adopting this approach, we spread the benefits of facilities-based competition").

4 *United States Telecom Ass'n v. FCC,* 359 F.3d 554, 576 (D.C. Cir. 2004), (the purpose of the Act "is to stimulate competition – preferably genuine, facilities-based competition."), *cert. denied,* 125 S. Ct. 313, 316, 345 (2004).

5 *Id.*

6 Advance-Newhouse has had direct experience with these types of problems. During 2004 and early 2005, Advance-Newhouse's efforts to compete with Verizon in Florida were impeded by Verizon's policy of refusing to efficiently port out the telephone numbers of customers seeking to use Advance-Newhouse's VoIP service in cases where the customer had digital subscriber line ("DSL") service on the account. The dispute was eventually settled following this Commission's clear statement that the presence of DSL did not justify delays in porting out numbers. Even so, Verizon at various points raised the fact that Advance-Newhouse

In these circumstances, the purposes of the Act would be served by a swift and clear declaration that CLECs supplying cable-based VoIP providers with interconnection to the public switched telephone network ("PSTN") have full and complete interconnection rights under Section 251 of the Act – including, specifically, the rights provided for in Sections 251(b) and 251(c). Denying such rights – or simply letting the matter drag on unresolved – plays into the hands of those who would frustrate the growth of facilities-based competition, contrary to the basic objective of the Act.

This stark reality – the fact that, in the real world, denying interconnection rights to CLECs serving VoIP providers would directly impede the growth of competition – necessarily frames the Commission's ***legal*** task in this proceeding. The question before the Commission is not an abstract exercise in applying common carrier law to a novel fact situation. Getting the right answer – that is, the pro-competitive answer – goes to the core of the Commission's task in implementing the 1996 Act. As a result, the Commission should resolve this matter by asking whether anything ***precludes*** the Commission from construing Section 251 and related provisions to grant CLECs the interconnection rights they need to serve VoIP providers. Unless granting such rights is forbidden by the Act – which, plainly, it is not – then the only result consistent with the on-the-ground reality of facilities-based competition as it is actually developing – that is, by means of cable-based VoIP services – is to grant Time Warner's request for a declaratory ruling.[7]

---

obtained its PSTN connectivity by means of a third-party CLEC as a basis for denying Advance-Newhouse's standing even to complain about the problem. *See also* Sprint Nextel Corporation's Comments in Support of Petition for Declaratory Ruling ("Sprint-Nextel Comments") at 7-10 (noting delay and uncertainty caused by ILECs opposing interconnection rights of CLECs serving VoIP providers); Comments of Alpheus Communications, LP, *et al.* at 13-17.

[7] Some commenters allude to the special protections from interconnection obligations provided to rural ILECs by Section 251(f). *See, e.g.,* Comments of Home Telephone Company, Inc. and PBT, Inc. at 3; Southeast Nebraska Comments at 9 n.31; SCTC Comments at 3 n.5, 14 n.40, & 15. This matter, however, does not implicate that statutory provision. Granting Time Warner's petition is necessary for getting the interconnection process ***started.*** To the extent that an ILEC has, and chooses to assert, rights under Section 251(f), nothing in Time Warner's declaratory ruling request would affect those rights.

2. Parties Opposing Time Warner's Declaratory Ruling Rely On Flawed Legal Arguments, Which The Commission Should Reject.

Parties opposing Time Warner's declaratory ruling rely on two key legal arguments to assert that CLECs serving cable VoIP providers do not have full interconnection rights under Section 251 of the Act. First, they claim that because CLECs serving VoIP providers are not traditional "common carriers," they lack interconnection rights under Section 251. Second, Qwest in particular claims that traffic to and from information service providers is not subject to interconnection obligations under Section 251. The Commission should reject these arguments.

a. Time Warner's Petition Turns On How To Interpret The Communications Act, Not The Common Law Of Common Carriage.

Several parties oppose Time Warner's request for a declaratory ruling by arguing that CLECs serving VoIP providers are not really "common carriers" as that term has evolved at common law.[8] If such a CLEC is not acting as a "common carrier," they argue, the CLEC has no interconnection rights under Section 251, and state commissions and ILECs are justified in refusing to acknowledge such rights.

This argument is wrong for two reasons. First, CLECs serving VoIP providers are indeed "common carriers." But second – and more fundamentally – the argument is misplaced. The scope of the interconnection rights granted by Section 251 is determined by the specific language and terminology that Congress used in that provision – language that pointedly does ***not*** refer to the term "common carrier," even though that term has been in the Act since its enactment in 1934. What matters is not the scope of the common law doctrine of common carriage, but, rather, the meaning and purpose of the specific language in Section 251 (and the statutory terms that section uses). While there is some overlap between these concepts, it is not appropriate to deny CLEC

---

[8] *See, e.g.*, Nebraska PSC Comments at 10-13; Qwest Comments at 4-5 & 7 n.15; Southeast Nebraska Comments at 7 n.23, 19-25; Iowa RLEC Comments, *passim*.

interconnection rights based on a narrow or strict reading of the common law of common carriage.

As just noted, the claim that CLECs serving VoIP providers are not common carriers is wrong on its own merits, as various commenters explain. CLECs serving VoIP providers ***are*** "common carriers." Being a carrier does not require serving end users directly. Instead, a carrier may provide wholesale services to third parties, who then serve end users. As a result, CLECs serving VoIP providers count as "common carriers," even if they themselves do not serve, or even offer to serve, any end user customers. The VoIP provider(s) they serve are the only customers they need for common carrier status.[9]

The Nebraska PSC and others, however, make a slightly more subtle claim. They argue that whether a CLEC serving a VoIP provider is a common carrier is inherently a fact-specific question, based on such considerations as whether the CLEC offers the precise services it supplies to the VoIP provider indifferently to all comers, under tariff, etc.[10] Since the common law of common carriage normally requires such an indifferent "holding out," they argue, a CLEC that negotiates an individual contract with a VoIP provider loses common carrier status and therefore, according to these commenters, loses its statutory interconnection rights.

---

[9] *See, e.g.,* Joint Comments of BridgeCom International, Inc. *et al.*, *passim.* In particular, there is no merit to the claim that offering services under contract disqualifies the provider as a common carrier. *See, e.g.,* Sprint-Nextel Comments at 13-20; Comment of Alpheus Communications, LP, *et. al., passim*; Comments of Global Crossing North America, Inc. at 5. This Commission has either permissively or mandatorily detariffed a variety of interstate common carrier services, including both traditional long distance service and CLEC switched access service, without ever suggesting that the providers ceased being common carriers for that reason. Moreover, back when long distance services were tariffed, the Commission permitted "individual case basis" arrangements to be filed as tariffs even though in practical terms many such arrangements were only provided to the original party buying them. *See* Sprint-Nextel Comments at 16 (citing cases showing that common carrier status is not lost because services provided under contract, not tariff). Still another example is commercial mobile radio services. The Act directly states that CMRS providers are common carriers, *see* 47 U.S.C. § 332(c)(1), but that did not prevent the Commission from detariffing them. Similarly, the common carrier status of CMRS does not forbid individual haggling over contract terms. *See Orloff v. Vodafone Airtouch Licenses LLC,* 17 FCC Rcd. 8987 (2002). So it just doesn't matter that a CLEC serving a VoIP provider might choose to do so under an individually-negotiated contract.

[10] Nebraska PSC Comments at 6, 9, 10-12; Southeast Nebraska Comments at 10, 18-22; South Dakota Telecom Comments at 9-12.

This argument leads to the second point noted above, *viz.*, that the interconnection rights established by Section 251 do not come from the common law of common carriage at all, and are not limited by that concept. To the contrary, they exist because Congress enacted a specific statute to create them, and their scope is determined by examining the specific statutory language that Congress used to establish them – read in light of Congress's purpose in enacting the statute in the first place. So, even if the common law would not deem CLECs serving VoIP providers, in some situations, to be "common carriers," that does not matter. What matters is the statutory language.[11]

Focusing, then, on the statutory language, it is notable that in creating new interconnection rights and obligations in Section 251, Congress did not refer to or rely on the notion of common carriage – despite the fact that the Communications Act has contained a definition of "common carrier" that has remained unchanged since 1934.[12] In establishing the new interconnection rights and obligations in Section 251, Congress studiously ignored that term – and, instead, used ***new*** statutory terms with specific, ***new*** statutory definitions. Congress spoke of the rights and obligations of "incumbent local exchange carriers," "local exchange carriers," and "telecommunications carriers."[13] Moreover, in establishing those rights and obligations, Congress did not refer to "carriage" or to any "common carrier" service. Instead, Congress referred to specific, newly-defined types of service – "telecommunications service," "telephone exchange

---

[11] Put another way, the Commission's decision here will be reviewed in court for compliance with the *Chevron* standard – that is, the question on review will be whether the Commission's interpretation of its statute is reasonable. Traditional principles of common carriage may be relevant to some aspects of this issue, but the statutory language and purpose, not the common law of common carriage, controls. In this regard, Advance-Newhouse's opening comments explained that, under the relevant statutory terms – primarily the definitions of "telecommunications carrier," "telephone exchange service," and "exchange access" – CLECs providing PSTN connectivity to cable-based VoIP providers have full interconnection rights under Sections 251(b) and (c). *See* Advance-Newhouse Comments at 4-7.

[12] *See* 47 U.S.C. § 153(10) (defining "common carrier"); M. Paglin, Ed., A LEGISLATIVE HISTORY OF THE COMMUNICATIONS ACT OF 1934 (New York: 1989) at 922 (text of original definition of "common carrier").

[13] The definition of each of these terms was added to the Communications Act by the Telecommunications Act of 1996. *See* 47 U.S.C. § 251(h) (new definition of ILEC); 47 U.S.C. § 153(26) (new definition of "local exchange carrier"); 47 U.S.C. § 153(44) (new definition of "telecommunications carrier").

service," and "exchange access."[14] The only reasonable conclusion to be drawn from this drafting history is that the scope of the new Section 251 obligations must be determined by reference to the actual statutory language Congress used, not generic common law principles of "common carriage."

Of course, the new statutory terminology is not a complete break with history. To the contrary, in most situations, there is no real distinction between whether an entity is a "common carrier" under common-law principles or a "telecommunications carrier" under the statutory language of 47 U.S.C. § 153(44).[15] But when someone argues that the new, pro-competitive ***statutory*** interconnection rights do not apply to CLECs serving VoIP operators because those entities are not ***common law*** "common carriers" – exactly what some claim here – alarm bells should go off. The term "common carrier" simply does not appear in Section 251, so it makes no sense to claim that Section 251 rights and duties are delimited based on that pointedly absent term. To the contrary, Section 251 defines interconnection rights and duties using other statutorily-defined terms – "telecommunications carrier," "local exchange carrier," "telephone exchange service," etc. As a result, arguments that seek to rely on the common law notion of common carriage to circumscribe statutory rights in Section 251 are, inherently, beside the point.

In this regard, the law is clear that – despite the overlap between them – "the two terms, 'telecommunications carrier' and 'common carrier' are not necessarily identical." *Virgin Islands Telephone, supra,* 198 F.3d at 927. The court in that case said that it "need not decide today what differences, if any, exist between the two." *Id.* Fair enough, in the context of that case. But when, as here, parties seek to limit the statutory interconnection rights of "telecommunications carriers" by arguing that the affected

---

[14] The statutory definitions of "telecommunications service" and "exchange access" are entirely new in the 1996 Act. *See* 47 U.S.C. § 153(16) (new definition of "exchange access"); 47 U.S.C. § 153(46) (new definition of "telecommunications service"). The original Communications Act included a definition of "telephone exchange service," but that definition was substantially amended by the 1996 Act. *See* 47 U.S.C. § 153(47)(B) (new, expanded definition of "telephone exchange service").

[15] *See Virgin Islands Telephone Corp. v. FCC,* 198 F.3d 921, 926 (D.C. Cir. 1999).

entities are not common-law "common carriers," the differences between the two concepts becomes critical indeed.

As a result, if (as it should do) the Commission concludes that CLECs serving VoIP providers are indeed "common carriers" under traditional principles, then there is no need to explore the differences between the two terms. But if the Commission gives any credence to claims that a CLEC serving a VoIP provider is not a traditional "common carrier" that does not end the inquiry. Instead, it would just highlight the need to consider the specific statutory definitions in light of the purposes of the 1996 Act. As Advance-Newhouse explained in its opening comments, under the relevant statutory language, CLECs serving VoIP providers are plainly acting as "telecommunications carriers," irrespective of their status as common-law "common carriers."[16]

Because what matters is the statute, not common law principles of common carriage, the Nebraska PSC is wrong when it asserts that a CLEC serving a VoIP provider lacks interconnection rights if it does not offer its wholesale services on a traditional "common carrier" basis.[17] The statutory definition of "telecommunications carrier" (and, more precisely, the related definition of "telecommunications service") does not require the affected entity to offer services under tariff, or indifferently to all similarly situated customers, whether wholesale or retail. It requires that the telecommunications functionality (transmitting end user information between points designated by the user) either be literally or "effectively" available to the public. Providing PSTN connectivity to cable-based VoIP providers – even if under the terms of a unique, privately-negotiated contract – clearly makes the PSTN connectivity "effectively" available to the public. As a result, a CLEC performing that function is a "telecommunications carrier" with full interconnection rights under Section 251, irrespective of the status of its activity under the common law of common carriage.

---

16 *See* Advance-Newhouse Comments at 4-7.

17 Nebraska PSC Comments at 10-13.

Advance-Newhouse submits that the entire argument about common carrier status shows why it is essential that the Commission grant Time Warner's petition. Various commenters note that the question of whether a particular entity is a "common carrier" is highly fact-intensive.[18] If the Commission were to erroneously link Section 251 statutory interconnection rights to common law "common carriage," that would mean that every slight variation in the entity or business models used to connect facilities-based VoIP providers to the PSTN would provide yet another opportunity for opponents of competition to argue that the new variation fails the fact-specific "common carrier" test. By contrast, the Commission clearly has the authority – and the duty – to declare how its own statute – the Communications Act – is to be interpreted. It would severely frustrate the objective of a nationwide pro-competitive policy to make the scope of federal statutory interconnection rights dependent on the vagaries of individual fact-finding inquiries about whether particular business models do or do not comport with traditional common-law notions of "carriage."

For these reasons, the Commission should reject the claim that an entity's interconnection rights turn on its status as a common law common carrier. Instead, the Commission should make clear that the scope of the interconnection rights under Section 251 depends entirely on the statutory language that Congress used to define those rights, and that it would frustrate the development of facilities-based competition to limit interconnection rights based on a strict or narrow application of common law notions of common carriage.

b. The Commission Should Reject Qwest's Effort To Limit The Interconnection Rights Of CLECs Based On The Nature Of Their Customers Services.

Qwest makes a particularly pernicious argument that the Commission should expressly reject. Qwest argues that if a CLEC serves an entity that provides information services, the resulting traffic is not "telecommunications" traffic to which interconnection

---

[18] *See* note 10, *supra.*

obligations apply.[19] Under this logic, if this Commission finds that VoIP is an information service rather than a telecommunications service, that automatically means that CLECs serving VoIP providers have no right to exchange that traffic with ILECs.

The Commission should rule that Qwest's argument is without merit. Whether a CLEC is providing "telecommunications service" depends on whether the CLEC is offering a telecommunications function, such as connectivity to the PSTN – not on what its customers (in this case, VoIP providers) ***do*** with that connectivity.

The fallacy of Qwest's position is perhaps clearer by initially considering point-to-point services rather than switched services. Suppose that an information service provider has two different locations with computers that need to communicate with each other in order to make the information service work. If the information service provider buys a "pipe" to link those two locations (*i.e.*, a special access service), the pipe is plainly "telecommunications," since it entails "transmission" of "information of the user's choosing" between the locations specified by the user – in this case, the information service provider's two facilities. Now suppose that instead of linking two of its own locations, the information service provider wants the pipe to connect its computers with the location of one of its large customers. Clearly, the pipe provides telecommunications functionality – transmitting customer-provided information between points designated by the customer – so, again, the entity that sells the pipe is selling telecommunications, which makes it a telecommunications carrier.

Now suppose that the amount of data that needs to go between the information service provider and any one customer is not so great as to require a dedicated pipe. In this case the information service provider will buy dial-up lines so that it can send and receive individual calls. Going from a dedicated pipe to a circuit-switched arrangement dos not change the underlying nature of the activity – sending data between and among

---

[19] Qwest Comments at 5 ("almost all aspects of interconnection between a VoIP provider and an ILEC are dependent on whether the VoIP provider is providing a telecommunications service or an information service"); *id.* at 6-7. *See also* JSI Comments at 11 (referring to Time Warner as seeking to exchange "non-telecommunications traffic with the RLECs").

customer-specified locations. So, the information service provider is ***still*** buying "telecommunications service" when it connects to the public ***switched*** network – and the entity selling those connections is still a "telecommunications carrier."

This is exactly the result that Qwest is trying to avoid. Qwest says that when a CLEC meets the PSTN connectivity needs of information service providers, somehow that means that the CLEC is not providing telecommunications service. Therefore, under this logic, the traffic to and from the information service provider is not telecommunications traffic, and Qwest has no obligation to interconnect with respect to it. This is obviously wrong, for the reasons just discussed.

Qwest's argument is especially pernicious because under it, interconnection rights only apply to "plain old telephone service." Any CLEC that tries to meet the PSTN connectivity needs of information service providers would see its interconnection rights – and, therefore, its ability to serve its customers – evaporate. So if (as directly relevant to Time Warner's petition) the Commission were to conclude that VoIP service is an information service rather than a telecommunications service, under this argument an ILEC would have no obligation to exchange VoIP-originated or –terminated traffic with the CLEC providing PSTN connectivity.

The inevitable effect of this argument is to impede the growth of competition and new technologies. Every time a CLEC tried something new – or served a new class of provider – the issue of interconnection rights would need to be relitigated. Some ILECs may like this argument because it slows down competition and innovation. But, for that very reason, the argument is contrary to the language and purposes of the 1996 Act.[20]

---

[20] For example, as noted in Advance-Newhouse's opening comments, Congress expressly expanded the definition of "telephone exchange service" to include any service, using any "system of switches, transmission equipment, or other facilities (or combination thereof)" that is "comparable" to traditional telephone service. 47 U.S.C. § 153(47). Similarly, a telecommunications service is a telecommunications service "regardless of the facilities used." 47 U.S.C. § 153(464).

The purpose of the 1996 Act is to make it easier and more efficient for innovative technologies and service providers to obtain seamless interconnection to the PSTN – not to set up artificial barriers to such interconnection. So, the Commission should hold that the way to decide if an entity is offering telecommunications service is by assessing the functions that the entity itself performs in light of the relevant statutory definitions – not be looking at what the entity's ***customers*** do with the services they receive. The Commission should also specifically hold – following up on its observations in *Vonage*[21] and the E911 ruling[22] – that a CLEC supplying PSTN connectivity to an interconnected VoIP provider is providing a "telecommunications service," completely irrespective of whether the VoIP provider is deemed to be offering an "information service."[23]

---

[21] In the matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, *Memorandum Opinion And Order*, 19 FCC Rcd 6429 (2004) at ¶ 8.

[22] In the matter of IP-Enabled Services; E911 Requirement for IP-Enabled Service Providers, *First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36, 05-196 (rel. June 3, 2005) at ¶ 38.

[23] For this reason, among others, the Commission should not defer action on Time Warner's petition for declaratory ruling while all the regulatory details surrounding interconnected VoIP services are worked out. *See, e.g.*, ITTA Comments at 2, 12; Qwest Comments at 6-7. The right of CLECs serving VoIP providers to seamless interconnection with ILECs is simply not affected by whether VoIP providers are information services or not.

3. Conclusion.

As noted in Advance-Newhouse's opening comments, competition from cable-based VoIP services is the only presently viable form of landline facilities-based competition in the residence market. The Commission should do everything within its power to facilitate such competition. That means that the Commission should promptly grant Time Warner's request for a declaratory ruling that CLECs providing PSTN connectivity to VoIP providers are, indeed, "telecommunications carriers" under the Act, with full interconnection rights under Section 251.

Respectfully submitted,

ADVANCE-NEWHOUSE COMMUNICATIONS

By: _____

Christopher W. Savage
Danielle Frappier
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
202-659-9750

Dated: April 25, 2006

EXHIBIT 8

MINTZ LEVIN

Robert G. Kidwell | 202 661 8752 | rgkidwell@mintz.com

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-434-7300
202-434-7400 fax
www.mintz.com

September 29, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Notice of *ex parte* Presentation in Docket No. 05-75, In the Matter of Verizon Communications and MCI, Inc., Applications For Approval of Transfer of Control

Dear Secretary Dortch:

On September 28, 2005, Mr. Arthur C. Orduna, Vice President-Strategic Initiatives for Advance/Newhouse Communications, Martin F. Petraitis of Sabin, Bermant & Gould, LLP, and Bruce D. Sokler and the undersigned of Mintz Levin Cohn Ferris Glovsky & Popeo, P.C. met separately with Scott Bergmann, Legal Advisor to Commissioner Adelstein; Russell Hanser, Legal Advisor to Commissioner Abernathy; Jessica Rosenworcel, Legal Advisor, and Jamie Wolszon, Intern, of Commissioner Copps's office; and with Bill Dever, Gail Cohen, Pamela Megna, and Marcus Maher of the Wireline Competition Bureau, Joel Rabinovitz of the Office of General Counsel, and Donald Stockdale of the Office of Strategic Planning.

In each meeting, we presented the attached slides and discussed the perceived harms and potential remedies contained therein and in the Reply Comments of Advance/Newhouse Communications filed in this proceeding.

Pursuant to the Commission's rules, a copy of this letter and the slide presentation is being filed with the Secretary via ECFS; a courtesy copy of the letter alone is also being provided via E-mail to all attendees from the Commission.

Sincerely,

Robert G. Kidwell

cc: Jessica Rosenworcel
Russell Hanser
Scott Bergmann
Gail Cohen
Bill Dever
Joel Rabinovitz
Pamela Megna
Donald Stockdale
Marcus Maher

WDC 375728v.1

Competitive Concerns Related to the Merger of Verizon and MCI

Presentation of Advance/Newhouse Communications

September 28, 2005

Overview

- The Applicants make dozens of references to intermodal competition from cable VoIP providers in their Application, Opposition, and many *ex parte* submissions.
- In the areas served by Bright House Networks ("BHN"), which is managed by Advance/Newhouse Communications, the merger has the potential to stop intermodal competition in its tracks.
- The Commission must address this stark public interest harm before it can find that this transaction serves the public interest.

The Applicants Claim That Intermodal Competition Will Preserve Sufficient Competition

- "With respect to the mass market, intermodal alternatives such as cable and wireless are major factors today and will provide the most significant competition going forward. **The transaction will not affect the rapid growth of these competitive alternatives in the slightest.**" *Public Interest statement at p. 4.*
- "Merger opponents offer no reason either to discount the significance of this growing facilities-based competition from intermodal alternatives or to suggest that this transaction will somehow undermine it." *Opposition to Petitions to Deny at p. 49.*
- "[F]acilities-based intermodal alternatives such as cable, wireless, and VoIP provide extensive and increasing competition for mass-market customers, and this transaction will not affect that competition." *September 7, 2005 ex parte at p. 4.*

BHN's Provision of Facilities-Based Local Telephone Competition is Dependent Upon Its Relationship With MCI

- BHN is a facilities-based local exchange carrier currently offering a full range of voice services to customers in the Tampa Bay and Central Florida markets, which are two of the fastest growing areas in the country.
- BHN relies heavily upon its partnership with MCI. As a practical matter, BHN could not have entered the voice market as quickly as it has, nor on the scale that it has, absent its partnership with MCI.
- The services as provided by MCI are critical to our current voice product and its evolution. Most notable are network interconnection, long distance, and order processing services, including MCI's proven expertise in number porting. Indeed, MCI's expertise in service order processing fulfills a key function in BHN's Digital Phone business process.

BHN's Business Partner Will Become Its Primary Competitor

- Fundamentally, the merger changes MCI's incentives from supporting new competition to being better off, as part of Verizon, without it.
- MCI's dedication to working with BHN to make BHN Digital Phone a better and more widely available product is an essential aspect of its service; that dedication is in serious jeopardy post-merger.

Any Degradation in the Quality of the Services BHN Purchases from MCI —Whether Unintended or Purposeful—Will Have Serious Competitive Effects

- BHN Digital Phone is a new and fast-growing residential service. As a new entrant, the difference between BHN's success and failure can be profoundly affected by even marginal decreases in service quality or dedication to improvement.
- BHN has already experienced the detrimental effects of past failures by MCI to meet its performance commitments. While they lasted, these failures severely impacted our competitiveness -- and, therefore, competition.
  - Between August of 2004 and February of 2005, MCI was unable to process BHN service orders in a timely manner. The result of this slowdown was a 50% shortfall in Digital Phone subscriber growth during this period, which translates into a loss of nearly 20,000 potential subscribers. It was only due to MCI's dedicated effort to get "back on track," after being confronted by BHN, that BHN's Digital Phone product has been able to grow rapidly since then.
- BHN plans to provide new competition in commercial and business voice products and to offer an integrated wireless broadband service relying upon the same partnership elements.

MCI's Performance Has Already Shown Signs of the Merger's Effect on Service

- Since the announcement of the merger, MCI's performance, investment, and responsiveness have declined.
  - On June 20, 2005, BHN customers experienced a drastic service outage—affecting an estimated 20,000 calls per hour—due to a failure of MCI facilities. MCI failed to respond in a timely manner as it has in the past.
  - On June 27, 2005, BHN customers again experienced a nearly identical outage due to a failure of MCI facilities. In ensuing discussions, BHN management pressed MCI for an explanation and an action plan to avoid future outages. MCI blames Verizon for the outages, and has accepted Verizon's explanation that a single Verizon employee's mistake was responsible for both outages. MCI has refused to take any steps to insure that Verizon will not cause future outages, and considers the matter closed.
- MCI personnel have suggested to BHN that MCI is unwilling to expend further resources to grow with BHN's Digital Phone business and is decreasing service levels.
  - Unwilling to make any additional investment to provide a carrier-grade suite of telecommunications services.
  - No Product Development or Roadmap offerings.
  - No additional improvements to provisioning or service delivery processes since merger announcement.

There are No Realistic Alternatives to MCI for BHN that Leave Competition Unaffected

- MCI has the highest rate center coverage -- by far -- of any alternative provider in Florida.
- There are only two other "possible" providers of services at all similar to those MCI offers BHN today: Sprint and Level 3.
  - Sprint is an incumbent LEC in BHN's Central Florida market, and thus also one of its primary competitors. This presents a similar dynamic in type to that BHN faces with the proposed MCI/Verizon merger.
  - BHN considered Level 3 when it began development of its Digital Phone service and found that Level 3 had poor rate center coverage in BHN markets. Since that time, Level 3 is in the process of severely limiting its products for the residential wholesale provisioning market, has withdrawn an offer to provide commercial voice services, and has never provided the necessary services at the scale BHN requires for a competitive offering.
- MCI has continued to increase Rate Center coverage nationally because of BHN and Time Warner Cable business – disparity is now even larger versus alternatives.

Self-Provisioning is Not a Realistic Near-Term Alternative for BHN

- If BHN constructed redundant capabilities to replace those that MCI provides today independently, it would significantly impact its ability to compete with Verizon in at least the following ways:
  - Transitioning from one service provider to another (or a host of others) would likely result in service outages, improperly processed orders, and diminished service availability and performance.
  - It would hinder BHN's ability to expand and enrich its product offerings, limiting its focus to replacing and launching a simpler "single service" and leaving consumers without a robust competitive alternative.
  - Competition would wane significantly, as the task of simply maintaining service to the installed base during the transition period would preclude any substantial expansion of the customer base.
  - Substantial transition costs include the costs of purchasing duplicative services during the transition period, new construction and substantial extra labor, substantial startup costs with the new providers, and significant lost revenues due to inevitable customer service problems resulting from the complete overhaul of a network relied upon by over 120,000 subscribers on a day-to-day basis.

Reasonable Conditions are Necessary to Insure that Competition Continues to Exist in the Retail Market for Voice Telephony

Reasonable Conditions are Necessary to Insure that Competition Continues to Exist in the Retail Market for Voice Telephony

- Approval of the merger should be conditioned upon Verizon's pre-closing negotiation of thorough and comprehensive interconnection agreements with competing carriers.
- Conditions must incorporate meaningful performance standards for services provided to competing providers, with penalties paid directly to affected competitors.

The Commission Should Require Verizon to Honor Certain Terms

- Going forward, interconnection agreements with Verizon must contain certain enumerated terms that are absolutely essential to the preservation of competition post-merger. Their inclusion should be mandatory, and final approval of the merger should be conditioned on the finalization of agreements including such terms with any requesting competitor.
  - Automatic renewal upon expiration, subject to either party's ability to petition a state PSC for material changes in terms for good cause shown at the time of renewal; existing terms must be extended pending resolution of any such proceeding before a PSC;
  - Inter-carrier compensation must be "bill and keep," with no additional charges for interconnection, transport, trunking, termination, or origination;
  - Verizon must allow each competitor to interconnect at a single point of interconnection ("POI") in each LATA;
  - Network neutrality--a carrier's use of IP or circuit-switched technology must never affect the cost or terms of interconnection, and must never be considered good cause for a material change in terms.

A Start Toward a Solution in BHN Areas is Easy: Allow BHN to Opt Into and Continue the Terms of MCI's Existing Interconnection Agreement with Verizon

- In the Florida markets in which Verizon and BHN compete, Verizon should provide BHN a five-year interconnection agreement with terms identical to those found in the current agreement between Verizon and MCI.
- BHN has asked Verizon to enter into such an agreement.

Other Conditions Are Necessary to Preserve Competition

- Verizon should be required to purchase long distance and international long distance service from MCI at the same rate at which MCI sells these services to competing carriers, with competitors enjoying full "most favored nation" status to demand any discount provided to Verizon by MCI.

Other Conditions Are Necessary to Preserve Competition

- Verizon should be prohibited from entering into any exclusive contract with a third-party provider of provisioning services, so that it cannot extend by contract the harms inherent in the merger.
- MCI should continue to provide fair and non-discriminatory access to the Internet backbone to competing carriers at the same rate at which it sells such access to Verizon, with competitors enjoying full "most favored nation" status to demand any discount provided to Verizon by MCI.

Conclusion

- For the Commission to determine that approval of the merger is, on balance, in the public interest, it must first assure that these public interest harms are prevented.

EXHIBIT 9

File - TECO Research

1 of 2 DOCUMENTS

Orlando Sentinel (Florida)

September 15, 2003 Monday, FINAL

SECTION: CFB; Pg. 7

LENGTH: 782 words

HEADLINE: MAKE CALLS ON YOUR CABLE LINE;
AN ALTAMONTE SPRINGS TELECOM COMPANY IS OFFERING A 60-DAY TRAIL RUN OF VOICE-OVER-CABLE PHONE SERVICE.

BYLINE: Christopher Boyd, Sentinel Staff Writer

BODY:

Volo Communications Inc. is to begin today a trial of a voice-over-cable phone service that it hopes to sell to cable-television companies throughout Florida.

The subsidiary of Altamonte Springs-based Caerus Inc. will offer the service to Bright House Networks customers who have high-speed-cable Internet service, Caerus CEO Shawn Lewis said.

"The advantages of this service are related to cost," Lewis said.

He said the trial will last 60 days, during which the company hopes to attract 1,500 to 2,000 customers.

Lewis said the quality of Volo's service is better than standard Internet voice service, which typically places phone calls over the Internet using computers.

Volo's calls don't travel through the public Internet but are handled directly through Volo equipment.

The package offers unlimited local and long distance calling, voice mail, call waiting, caller ID, three-way calling, repeat dialing and other services for $25 a month.

Volo, a telecommunications company, wants to prove that its technology works. The company then hopes to sell it to cable providers as an additional service that they in turn can sell their customers.

"The offering will open up a whole new world of convergent services for consumers and businesses alike," Lewis said.

But Bright House Networks spokesman Brian Craven said his company's only relation with Volo is an agreement that allows Volo to use its cable.

"We are not involved in any part of this," Craven said. "We just provide the pipeline needed to establish the connections that they are trying to sell to customers. We are not involved in selling their service."

Since Bright House isn't involved, anyone interested in the service can e-mail Volo at volo-fl-trial@volocommunications .com. In December 2001, Bright House -- then called Time Warner Cable -- said it

was planning to offer phone service in mid-2002.

That didn't happen, but the company still has approval from the Florida Public Services Commission to offer telecom connections.

As Bright House and other cable providers consider offering phone service, telephone companies are trying to offer television connections.

Last month, BellSouth Corp. announced that it will offer its customers satellite television in partnership with DirecTV starting next year.

TRAINING DEAL

Lockheed Martin Corp. last week said that it had agreed to team with Rolls-Royce PLC and VT Group PLC to offer training systems integration for British military aviators.

The team expects to enter in a contract with the British government in 2006 and should begin training the following year, Lockheed Martin spokeswoman Nettie Johnson said. She said the program could be worth as much as $20 billion over 15 years.

Lockheed's Information Systems division in Orlando will represent the company in the agreement, which will provide training equipment for flight crews in the Royal Air Force, Royal Navy and Army Air Corps.

"The Lockheed Martin, VT Group and Rolls-Royce team offers the optimal combination of skills to perform as training systems integrator," said Dan Crowley, president of the Information Systems division.

JOBS HEAD TO CANADA

A New Jersey corporate location consultant released a study last week that found the cost of operating a call center in Orlando was near the middle of the 66 North American markets studied.

The study found that the annual cost of operating a call center with 200 workers was $8.69 million in Orlando.

Costs for such a center ranged from a high of $10.46 million in San Francisco to $6.77 million in New Brunswick, Canada.

John Boyd Jr., a consultant with The Boyd Co. in Princeton, N.J., said the lower cost of doing business in Canada is sapping the U.S. call center business.

"Orlando loses more call center jobs to Canada than to any off-shore site around the world," Boyd said. "Everyone in the business is losing jobs to centers in the Third World, but, surprisingly, most of the jobs are going to Canada."

Boyd said currency exchange rates, a common language, the North American Free Trade Agreement and the cost advantages employers realize from Canada's national health program all offer reasons for the migration of jobs northward.

TELECOM CONTRACT

Time Warner Telecom, a provider of broadband services to business customers, recently was awarded a contract to provide telecom services to Orange County government. The $1.5 million, three-year contract covers the installation of a high-speed Ethernet that will make county broadband connections about seven times faster. It will be used for applications such as hosting county information Web sites, the Web-casting of court arraignments and employee training.

MAKE CALLS ON YOUR CABLE LINE;AN ALTAMONTE SPRINGS TELECOM COMPANY IS OFFERING A 60-DAY TRAIL RUN OF VOICE-OVER-CABLE PHONE SERVICE. Orlando Sentinel (Florida) September 15, 2003 Monday, FINAL

GRAPHIC: PHOTO: Deal. Lockheed Martin has landed a training contract with the British military.; BOX: CALL CENTER RANKING; Five most expensive; Office Annual operating cost (in millions); San Francisco $10.46; Washington, D.C. $10.22; New York. $10.18; Jersey City, N.J. $9.9; Stamford, Conn. $9.8; Orlando $8.69; Five least expensive; Montreal $7.56; Halifax, Canada $7.48; Winnipeg, Canada $7.31; Edmonton, Canada $7.12; New Brunswick, Canada $6.77; SOURCE: The Boyd Company Inc.

COLUMN: TECHNOLOGY

LOAD-DATE: September 15, 2003