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May 30, 2008

Hand Delivery

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: DOCKET NO. 070691-TP - Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC

DOCKET NO. 080036-TP - Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

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Dear Ms. Cole:

Enclosed for filing in the above-referenced consolidated Dockets, please find an original and 15 copies of the Direct Testimony and Exhibits CDB-1 and CDB-2 of Coleman Bazelon filed on behalf of Bright House Networks, LLC.

Thank you for your assistance with this filing. If you have any questions whatsoever,

DOCUMENT NUMBER-DATE
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please do not hesitate to contact me.

Sincerely,

Beth Keating

Beth Keating
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
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Enclosures

Direct Testimony and Exhibits of Coleman D. Bazelon

Filed: May 30, 2008

Oh Behalf of Bright House Networks Information Services (Florida), LLC, and its affiliate,

Bright House Networks, LLC

INTRODUCTION AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND PROFESSIONAL AFFILIATION.

A. My name is Coleman D. Bazelon. I am a principal with The Brattle Group, an economic consulting firm. My office address is 1850 M Street NW, Suite 1200, Washington, D.C. 20036.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL BACKGROUND.

A. I have attached my *curriculum vitae* as Exhibit CDB-1. Briefly, I received a bachelor's degree from the College of Social Studies at Wesleyan University in 1986, a Diploma in Economics from the London School of Economics and Political Science in 1987, and an M.S. and Ph.D. in Agricultural and Resource Economics from the University of California at Berkeley in 1989 and 1995, respectively.

In terms of employment, I have been a principal at The Brattle Group since 2007. Prior to this appointment, I held the position of Vice President at Analysis Group, another economic consulting firm, where I expanded the firm's telecommunications practice area. Prior to my work at Analysis Group, I served as a principal analyst in the Microeconomic and Financial Studies Division of the Congressional Budget Office, where I researched reforms of radio spectrum management; estimated the budgetary and private sector impacts of spectrum-related legislative proposals; and advised on auction design and privatization issues for all research at the Congressional Budget Office. Generally speaking, I have focused my consulting work on regulation and strategy issues in the wireless, wireline, and video sectors.

Q. HAVE YOU EVER TESTIFIED AS AN EXPERT WITNESS BEFORE?

A. Yes. I have presented live testimony and/or expert filings in various court and regulatory proceedings, as outlined in my *curriculum vitae*.

I. SUMMARY OF TESTIMONY

Q. DR. BAZELON, PLEASE SUMMARIZE YOUR TESTIMONY.

A. My testimony focuses on the economic impacts of a Verizon retention marketing campaign that relies on the advance notice Verizon receives from Bright House, as part of the number porting process, that customers are about to leave Verizon for Bright House.[1] Specifically, Bright House has identified customers who wish to switch from Verizon to Bright House and Verizon acts on that information, to Bright House's detriment, by offering those specific customers inducements to stay. In economic terms, it is exploitative for Verizon to base its retention marketing on competitive intelligence that Bright House, at considerable expense and effort, has developed and, but for the peculiarities of the number porting process, would not willingly reveal to Verizon.

In my opinion, Verizon's behavior is anticompetitive, not pro-competitive. Florida law, as I understand it, bans anticompetitive actions by firms. Verizon's retention marketing campaign clearly violates the law in this regard. Simply put, the exploitative nature of Verizon's retention marketing

[1] I have been retained to testify by Bright House, and this testimony refers to Bright House as the entity being harmed by Verizon's anticompetitive conduct. That said, I understand that Verizon is using the same approach in relation to other facilities-based competitors, including other cable-based voice providers such as Comcast. The negative economic impact of Verizon's anticompetitive behavior is felt regardless of the identity of the victim whether it be Bright House, Comcast, or any other provider, or potential provider, in similar circumstances.

program makes it the economic equivalent of stealing. That is, Verizon's program is anticompetitive for the same reasons that it is anticompetitive for a firm to steal a rival's assets.

Q. IN WHAT WAY DOES VERIZON TAKE ADVANTAGE OF BRIGHT HOUSE'S COMPETITIVE INTELLIGENCE?

A. The information at issue here is the timely identification of Verizon customers who have decided to give up Verizon service in favor of Bright House service. This information is valuable to anyone competing with Verizon and, of course, to Verizon itself. In Verizon's case, the information has value if Verizon can use it to retain its departing customers. Verizon has the option to develop this information independently, although doing so would entail spending a significant amount of its own resources. Bright House, for its part, spends its own time and resources to inform potential customers about additional options available to them. This simultaneously creates competition in the market for voice services and develops extremely valuable competitive intelligence for its own benefit. However, given the technical realities of telephone service competition, if a customer wishes to retain their current telephone number, Bright House is compelled to reveal that customer's identity to Verizon a few days in advance of the actual service transfer. Were it not required for the porting process, Bright House would never share this valuable asset—that is, this information—with a competitor. Once Verizon has access to this information (the specific identities of specific departing customers) it simply uses it for its own gain.

While Bright House is a facilities-based competitor, from an economic perspective this is no different than the situation that would arise for a competitor relying on unbundled network elements ("UNEs") or pure resale. In the UNE or resale situation, the incumbent LEC receives competitively sensitive information which it is prohibited from using on the grounds that doing so would be anticompetitive.

Q. WHY IS VERIZON'S CONDUCT ANTICOMPETITIVE?

A. Verizon's retention marketing program is anticompetitive because it severely undermines the value to Bright House of the competitive information Bright House assembles—that is, it degrades the value of Bright House's competitive asset. An analogy using tangible assets will illustrate this point. A shopper who steals a pair of slacks from a clothing store, and does not get caught, is clearly better off—he has acquired a free new pair of slacks—but no one would suggest that consumers in general, or the competitive process, would be improved by endorsing the actions of shoplifters. In this case we are dealing with a firm-to-firm interaction, so consider a construction company in need of bulldozers that simply stole them from a competitor's work site. The thieving company and its own customers would certainly benefit from the free equipment and the increased productive capacity the stolen assets provide. However, this is no more pro-competitive than shoplifting.

In the case of Verizon's retention marketing program, the asset is proprietary, competitively sensitive information, rather than something tangible like clothes or bulldozers. This information is, nonetheless, a valuable asset, whose expropriation by a competitor has the same economic impact on society as stealing clothes or bulldozers. Bright House spends considerable time and money to develop this asset, and Verizon uses it against Bright House's wishes.

Q. AREN'T CUSTOMERS BENEFITING FROM VERIZON'S RETENTION MARKETING CAMPAIGN?

A. A thieving firm could truthfully state that stealing from its competitor lowered its equipment costs, giving it the opportunity to pass savings on to its own customers. While the process of healthy competition will typically lead to lower costs and lower prices for consumers, it does not follow that everything that has such an effect on any one firm or any one set of customers is pro-competitive. It is easy to focus on the immediate benefits that Verizon's retention marketing program produces for some consumers. However, it is important not to lose sight of the fact that Verizon's customers on the whole are not made better off as a result of a few of them paying lower prices for their telephone service, as they will all find themselves shopping in a less competitive marketplace in the future. Verizon's program is a blatant display of price discrimination that may be welfare increasing for those few customers that receive the deeply discounted prices but will not be directly beneficial to other Verizon customers, and will harm competition overall.

It hardly needs to be said, but just to be clear: Sanctioning the theft or exploitation of private property promotes anticompetitive, not pro-competitive, behavior. Theft and exploitation increase costs and reduce the competitive interaction between rivals. At retail stores, loss of inventory and the added security response to theft increase the costs of doing business which is usually passed on to consumers in the form of higher prices.

Higher prices, relative to competitor's offerings, make those stores less appealing to consumers. Similarly, theft of construction equipment increases the victim's costs, putting them at a competitive disadvantage in the pursuit of new business. In the same fashion, Verizon's use of rivals' proprietary information increases the rival firms' costs of competing for new customers and, consequently, will have the effect of diminishing the economic incentive for those rivals to compete vigorously in Florida. Furthermore, if theft is permitted, there would be fewer retail stores selling slacks and construction companies offering their services. Likewise, if Verizon's actions are allowed to continue, there will be less facilities-based competition for voice services in Florida. This will harm consumers, not help them.

Q. ARE THERE ANY OTHER WAYS IN WHICH VERIZON'S ACTIONS ARE ANTICOMPETITIVE?

A. Yes. Verizon's retention marketing program is also anticompetitive because it undermines the pro-competitive effects of local number portability. Local number portability enables customers to keep their telephone numbers when changing carriers. This provides direct benefits to consumers as well as indirect benefits to consumers and competitors arising from the reduction in barriers to entry in the marketplace for telephone services. Condoning Verizon's retention marketing campaign will create a strong incentive for competitors to avoid using the local number porting mechanism as designed and to instead encourage their customers to abandon their existing numbers when changing carriers—all to avoid giving advance notice to Verizon. Consumers will suffer as a result.

Q. VERIZON CLAIMS THAT THEY USE INFORMATION ABOUT RETAIL DISCONNECTS AND NOT LOCAL NUMBER PORTING AS THE BASIS FOR THEIR RETENTION MARKETING. DOESN'T THIS PROTECT THE BENEFITS ARISING FROM LOCAL NUMBER PORTING?

A. I am not an expert on the details of the number portability process, but my understanding is that the FCC, based on input from the industry, has approved a fairly detailed, step-by-step process that carriers need to follow when they are porting a customer's number from one carrier to another.[2] When a customer chooses to keep his or her existing phone number, under standard industry processes Verizon must be notified of this desire by Bright House. When Bright House contacts Verizon to transfer a customer who is keeping their existing phone number, they submit a Local Service Request ("LSR") requesting that the customer's number be ported to Bright House by means of the industry's Local Number Portability ("LNP") process. As part of its automated system, Verizon generates a retail disconnect order. In fact, Verizon's systems do not allow Bright House to submit a LNP request without generating a disconnect order at the same time.

[2] In this regard, telephone numbers are not owned by consumers, although consumers obviously have an interest in keeping their existing numbers. Instead, telephone numbers are shared network resources that all carriers use to route calls to the customer to whom the number is assigned. The use of telephone numbers, including number portability, is governed by FCC rules and regulations. Because numbers are used by carriers to route calls, number porting is necessarily a carrier-to-carrier process that does not directly involve end users. Indeed, as I understand it, there is no point in the FCC-approved number porting process where the end user is directly involved. Customers can of course request that they keep their telephone number—a request carriers will normally honor—but that does not mean that the customer directs or controls all, or even any, aspects of the process.

If Bright House could submit two separate requests, a LNP request and a disconnect notice, only the latter of which Verizon claims to use in its retention marketing campaign, it would submit the LNP request several days in advance of service transfer (as required) and a disconnect notice shortly before disconnection. If, as Verizon says, it uses the disconnection information—not the LNP requests *per se*—to initiate retention marketing, then this would prevent Verizon from expropriating Bright House's competitive information and avoid the erosion of benefits arising from the LNP process. However, as I explained above, an LNP LSR is effectively a notice of service cancellation. Verizon is using the information it was made aware of as a result of, and contained within, the LSR. Therefore, because Verizon links the LNP request with the service cancellation, it undermines the benefits of the LNP program.

Q. DOESN'T THE FACT THAT VERIZON IS GIVING PRICE BREAKS TO CONSUMERS MAKE ITS PROGRAM PROCONSUMER AND PRO-COMPETITIVE?

A. No, not at all. To be pro-competitive, competition must be increased. If allowed to continue, Verizon's selective price breaks will lead to less—potentially much less—competition. Verizon is not behaving competitively, but rather exploitatively in its use of Bright House's proprietary information. Just as the individual who steals clothing in my example above surely benefits from the negligible price of the clothing, so a Verizon customer that is offered a retention discount surely benefits from the lower price. However, that does not make either shoplifting or Verizon's retention discount pro-competitive. If the construction company in the example above stole bulldozers from a rival, sold them and passed the proceeds on to its own customers, those customers would benefit, but that would not make the practice pro-competitive. Here, Verizon obtains an asset of great value by expropriating it from Bright House. The fact that Verizon passes on some of the value arising from its use of Bright House's proprietary information in the form of price breaks to a narrow subset of its customers—the ones about to leave—makes it no more pro-competitive than stealing clothing or bulldozers. In all three cases, the competitive process is undermined.

Q. WHAT SHOULD BE DONE TO AVOID THESE ANTICOMPETITIVE RESULTS?

A. There will always be an incentive to gain access to competitors' proprietary information, so it is important to create an environment in which opportunities to engage in this kind of behavior are minimized. In this case, the very long period (three or more days) of advance notice to the incumbent provider enables the incumbent to abuse its access to the detriment of the market. Therefore, because it is anticompetitive, retention marketing based on information supplied by a competitor as part of the porting process should be banned. I am not an expert on the underlying technology, but I note that in the wireless industry, a customer is typically transferred from one carrier to another in a matter of hours. If Verizon (or any other provider) only had a few hours notice that a customer was leaving, this would greatly mitigate the problem. Again, however, until that time, retention marketing such as Verizon's is anticompetitive and should be banned.

II. BACKGROUND AND BASIS OF EXPERT ANALYSIS

Q. DR. BAZELON, FOR WHAT PURPOSES AND BY WHOM HAVE YOU BEEN RETAINED IN THIS MATTER?

A. I have been retained to provide analysis and testimony in this matter by Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC ("Bright House").

Q. BROADLY SPEAKING, WHAT ARE YOUR COMPENSATION ARRANGEMENTS WITH BRIGHT HOUSE?

A. I am charging Bright House my firm's standard hourly fees for work in this proceeding performed by me and my staff. My compensation does not depend in any way on my conclusions or the outcome of this case.

Q. WHEN WERE YOU RETAINED BY BRIGHT HOUSE?

A. I was originally approached by Bright House to consider this matter in April 2008. The formal engagement letter was finalized some time thereafter.

Q. WHAT MATERIALS HAVE YOU REVIEWED IN DEVELOPING YOUR ANALYSIS OF VERIZON'S RETENTION MARKETING PROGRAM?

A. For purposes of understanding the basic facts surrounding Verizon's retention marketing program, Bright House has provided me with what I understand to be the principal filings in two proceedings regarding Verizon's retention marketing program: (a) the case in which I am filing this testimony, before the Florida Public Service Commission; and (b) a case challenging Verizon's retention marketing program at the Federal Communications Commission ("FCC"). I have reviewed the recommended decision issued in the latter case by the FCC staff. I have also reviewed other materials pertinent to my analysis. A complete list of the materials I have reviewed is provided as Exhibit CDB-2.

Q. DR. BAZELON, ARE YOU AN ATTORNEY?

A. No, I am not.

Q. HAVE YOU, NEVERTHELESS, REVIEWED THE FLORIDA STATUTES CITED BY BRIGHT HOUSE IN ITS COMPLAINT?

A. Yes, I have.

Q. FROM YOUR PERSPECTIVE AS AN ECONOMIST, DO YOU HAVE AN UNDERSTANDING OF WHAT TYPES OF CONDUCT THE CITED FLORIDA STATUTES ARE INTENDED TO PROHIBIT AND REQUIRE?

A. Yes, I do. Bright House's legal argument refers to one rule and four different Florida statutes. The rule says that carriers are required to "facilitate" number porting requests from other carriers. While it seems obvious that Verizon's retention marketing program hinders and deters, rather than facilitates, number porting, it does not take any special economic expertise to see why that is the case, so I will not comment further on that rule. One of the statutes bans granting "undue preference or advantage." Verizon's retention marketing program provides "preference or advantage" to certain customers. Below, I will provide an economic perspective on whether that "preference or advantage" is "undue." Of the three remaining statutes, two state that the Commission is supposed to prevent "anticompetitive behavior," and one says that the Commission is supposed to act as a surrogate for "competition" when market forces fail to do so. Although I cannot provide a legal interpretation of those statutes, I assume for purposes of my testimony that, by banning "anticompetitive behavior" and directing the Commission to act as a surrogate for "competition," the law uses those terms in their normal economic sense.

III. ECONOMIC ANALYSIS OF VERIZON'S RETENTION MARKETING PROGRAM

Q. BASED ON YOUR REVIEW OF THE FACTS SURROUNDING VERIZON'S RETENTION MARKETING PROGRAM, HAVE YOU REACHED A CONCLUSION AS TO WHETHER THAT PROGRAM IS PRO-COMPETITIVE OR ANTICOMPETITIVE?

A. Yes, I have.

Q. WHAT IS THAT CONCLUSION?

A. Verizon's retention marketing program is anticompetitive.

Q. CAN YOU SUMMARIZE WHY VERIZON'S RETENTION MARKETING PROGRAM IS ANTICOMPETITIVE?

A. Verizon's retention marketing program is anticompetitive because it uses information it has access to only because of local number porting to undermine the pro-competitive effects that entrants such as Bright House have on the local voice services market. The program expropriates the fruits of Bright House's investments in recruiting customers, reducing the returns to Bright House's marketing efforts. This blunts Bright House's competitive impact on the local market, and, ultimately dulls the incentives for Bright House and other competitors to make those investments in the first place.

Q. HOW DOES VERIZON'S RETENTION MARKETING EXPROPRIATE THE FRUITS OF BRIGHT HOUSE'S MARKETING EFFORTS?

A. As explained in the Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues in the FCC proceeding, Verizon's program "makes use of a 'lead list' of customers to whom it markets. To generate the 'lead list' for its retention marketing program, Verizon begins with the universe of disconnect orders. The disconnect orders that are made use of in this process are prompted, indirectly, by the submission of an LSR"[3] by Bright House or its affiliate. Bright House only shares the information in the LSR with Verizon because it is necessary to do so in order to port the customer's telephone number. Verizon uses this information to identify this select group of customers and offers them—and only them—a significantly lower price than they and other Verizon customers are currently paying. This pricing strategy is known to economists as price discrimination.

Q. HOW DOES VERIZON USE THE INFORMATION FROM THE PORTING PROCESS TO PRICE DISCRIMINATE?

A. To price discriminate—that is, to charge different groups of customers different prices for the same service—a firm must be able to segregate its customers on the basis of their preferences. Only by segregating customers can a price discriminating firm avoid offering a lower price to customers willing to pay a higher one. As explained above, as part of the porting

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[3] Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED). (February 29, 2008), p. 15, ¶ 37.

process, Bright House has to reveal the identities of customers who have chosen Bright House's offering over their current Verizon plan. Verizon uses Bright House's highly valuable, confidential, proprietary information about customers who are in the process of initiating services with Bright House to target its own dissatisfied customers with a significantly lower price for their existing service. The key is that Verizon can restrict its offer of significantly discounted prices to this specific, narrow subset of its customers. There is nothing pro-competitive about this; to the contrary, Verizon is "free riding" on Bright House's efforts to identify the customers wishing to leave Verizon and then using this information to segregate its customers so that it can price discriminate.

Q. HOW DOES THIS BENEFIT VERIZON?

A. A firm must earn revenues in excess of its costs, including a market return on capital, to remain profitable. In the case of a telecommunications network provider such as Verizon, a large portion of total costs are fixed. Consequently, a typical customer is charged a price significantly above the firm's incremental or marginal cost. Putting aside concerns about predatory pricing (pricing below marginal cost), which I understand are not the basis of Bright House's complaint, a profitable provider may charge some customers a price that only covers the marginal costs of serving them if it charges other customers a price sufficiently above marginal costs to cover its fixed costs of doing business.

If Verizon's retention marketing price (that is, the price it offers customers to stay, taking into account discounts, rebates, gift cards, etc.) is at least minimally above marginal costs, Verizon can increase its profits if it can arrange things so that it offers the special, low price only to customers that are about to leave. If a customer leaves Verizon, Verizon will avoid only the relatively small marginal cost it will no longer incur in serving that customer, but it will lose that customer's entire contribution toward fixed costs. Consequently, for a customer about to leave, any price the customer pays above marginal cost will put Verizon in a better position than if the customer actually left, because the customer will still be making *some* contribution to the fixed costs of the network.

Verizon will only benefit from retention marketing if it can price discriminate and thereby avoid offering the heavily discounted prices to the majority of its customers, those who have not yet made a decision to leave for another carrier. Verizon can price discriminate, and so benefit, by using Bright House's proprietary information.

Q. WHOSE INFORMATION IS VERIZON USING?

A. It is Bright House's information. Bright House makes considerable financial investments to find customers that prefer the Bright House package of services to the Verizon package of services. Verizon is at liberty to market any and all offerings to its customers—including the ones about to leave, if it can identify them itself. However, by using the information gathered as part of the porting process, Verizon is expropriating Bright House's efforts to identify dissatisfied Verizon customers.

Q. DOESN'T VERIZON CLAIM THAT THE INFORMATION IS REALLY THE *CUSTOMER'S* INFORMATION, WHICH BRIGHT HOUSE IS ONLY RELAYING TO VERIZON, ON BEHALF OF THE CUSTOMER?

A. Based on the materials I have reviewed, that is Verizon's contention.

Q. DOES VERIZON'S CLAIM THAT THE INFORMATION IS REALLY THE CUSTOMER'S MAKE ECONOMIC SENSE?

A. No, not really.

Q. WHY NOT?

A. Because Verizon is ignoring the difference between Bright House, which makes extensive efforts to find a dissatisfied Verizon customer, and that customer herself. The information in question—the identity of customers presently planning to leave Verizon for Bright House—only exists because of Bright House's efforts and, therefore, from an economic perspective it is Bright House's proprietary information. At the same time, a customer is also free to inform Verizon she is leaving for another service provider and, therefore, that information is the customer's information as well. The two perspectives of who has the right to reveal the information, and in that sense whose information it is, are not mutually exclusive.

A consumer always has the right to reveal with whom she is doing business and who is soliciting her business, but that does not mean that the consumer is the only 'owner' of that information. When Bright House is compelled to reveal information about a new customer to Verizon because of the porting process, it is revealing proprietary Bright House information. Verizon also benefits from the dual ownership of information about its continuing customers. Verizon's customers may solicit offers from any firm, but Verizon also can use its customer lists to solicit its own customer, on its own behalf ("up sell").

It is particularly important for a new entrant seeking to dislodge customers from a long-established relationship with an incumbent supplier to avoid letting the incumbent know which customers are willing to consider leaving. In this situation the incumbent can appeal to the longstanding relationship—and simple inertia—to try to keep the customer by offering the customer inducements to stay. A customer who is "on the fence" may well find it in her interest to let the existing supplier know that she is considering leaving, but most customers changing carriers do not seem to do so. Unfortunately, the LSR process puts Bright House in the untenable position of having to reveal its prized information—Verizon customers it has signed up for Bright House service—to Verizon in advance of the switch.

Q. IN THIS REGARD, DO YOU HAVE A VIEW, FROM AN ECONOMIC PERSPECTIVE, OF WHETHER LOCAL NUMBER PORTABILITY IS A WHOLESALE OR RETAIL FUNCTION?

A. Yes. Clearly, LNP is a wholesale, not a retail activity, and the carrier-to-carrier actions undertaken by Bright House and Verizon to make LNP work are wholesale, not retail activities. This is true even though, obviously, it is the retail customer that benefits from the implementation of number portability.

Q. PLEASE EXPLAIN.

A. Broadly speaking, "retail" services are services provided directly to consumers, while "wholesale" services are provided further up the supply chain in order to permit a retail service to be offered. Here, the retail service is voice telephone service to a customer—the ability to send and receive telephone calls, along with a variety of ancillary functions—using a given telephone number. A wide variety of "behind-the-scenes" activities have to occur, involving many different firms, for that service to actually be delivered. But that does not make those "behind-the-scenes" activities retail services themselves.

To see this more clearly, consider what happens when a wireless customer places a long-distance call on her mobile phone. Of course the customer, by doing so, is telling the cellular phone company to take the steps needed to process the call, but those steps involve a host of wholesale, carrier-to-carrier arrangements (of which the customer is and should be unaware) such as interconnections between the cell phone company and a long distance company, and between the long distance company and the carrier directly serving the party being called. These arrangements are invoked in response to a specific customer demand to make a specific phone call, but that does not make the arrangements themselves retail rather than wholesale in nature. To the contrary, they are wholesale activities, put in place to allow the retail firm to provide the retail services that its customers demand. Number portability is similarly a wholesale process, put into place between telephone service providers, to facilitate their ability to offer their retail services.

Q. **DOES VERIZON'S RETENTION MARKETING GIVE A "PREFERENCE OR ADVANTAGE" TO THE CUSTOMERS TO WHOM VERIZON OFFERS ITS SPECIAL RETENTION DEALS?**

A. Clearly, it does. They get gift cards or price discounts that the general body of Verizon's customers are not offered.

Q. IS THAT "PREFERENCE OR ADVANTAGE" AN "UNDUE" ONE?

A. As noted above, one of the Florida statutes that Bright House relies on in its complaint bans carriers from giving an "undue" preference or advantage to any person. I am not an attorney and cannot comment on whether the preferences/advantages given to the customers who receive the retention marketing offers are "undue" in a legal sense. From an economic perspective, however, in the context of Verizon's retention marketing program, those preferences/advantages are clearly *anticompetitive.* As described in this testimony, Verizon is only able to identify the people to whom it gives these preferences by expropriating Bright House's proprietary information, and its special deals for these customers amount to sharing the benefits of behavior that is the economic equivalent of stealing.

Q. OTHER THAN ALLOWING THEM TO PRICE DISCRIMINATE, WHAT IS THE HARM IN VERIZON USING THE PORTING INFORMATION?

A. Bright House, not Verizon, makes the investment to identify customers ready to try Bright House's service. Identifying customers ready to leave Verizon is the reward for Bright House's entire marketing effort. In many instances, however, Verizon negates the benefits of that investment. This creates an obvious economic problem. Bright House today makes the effort to identify these customers only because the benefits—the net revenue from new Bright House customers—match or exceed the costs of doing so. This is the essence of rational economic decision making and the engine of competition. As the benefits of Bright House's investments are siphoned off by Verizon through the use of information contained in the LSR, Bright

House (and other providers subject to Verizon's retention marketing campaign) will face diminishing incentives to invest in its own marketing efforts. Customers, as well as society, will suffer from Verizon's anticompetitive activities as investments are driven down, competitors become less effective, and prices rise.

Q. COULD VERIZON DEVELOP THIS SAME INFORMATION ON ITS OWN?

A. Yes, but it would likely be expensive for it to do so, just as it is expensive for Bright House. Note, however, that if Verizon takes steps on its own to identify these customers, that activity would promote rather than deter competition. If Verizon could not continue its current practice of using Bright House's valuable competitive information, Verizon would face two choices when it comes to retaining customers. First, Verizon could expend its own resources to identify the relatively small group of customers on the verge of leaving Verizon at any one time. Second, it could cast a wider net by offering discounted pricing (or improved services) to a larger group of customers in an effort to minimize defection to its competitors.

Q. WHAT WOULD BE THE EFFECT OF VERIZON PURSUING THESE OPTIONS?

A. As I pointed out above, both options would enhance competition in the marketplace. The first option would entail Verizon making the effort to identify the customers who are least satisfied with its services, and address those customers' specific needs and complaints. The second option would amount to Verizon making its overall services more attractive by offering lower prices (or greater value) to everyone. Both options increase economic efficiency—offering better services and/or lower prices. But both of these options would drive down Verizon's bottom line (assuming Verizon is currently rationally maximizing its profits), the first by increasing its costs, and the second by squeezing margins. In terms of economic motivations, it is completely understandable that Verizon does not want to pursue either option if it can avoid doing so.

Q. IF VERIZON HAS NOT PURSUED EITHER OF THESE OPTIONS, DOESN'T THAT MEAN THAT THE INFORMATION IT TAKES FROM BRIGHT HOUSE IS NOT REALLY VALUABLE TO VERIZON?

A. No, just the opposite. The identities of the Verizon customers getting ready to leave constitute highly valuable information to Verizon as well as to Bright House. In fact, Verizon designed its retention marketing program around the free availability of this very information. It would be irrational for Verizon to pursue either of the pro-competitive options I noted above as long as it is allowed to exploit Bright House's information for free. In fact, it is precisely because the information is valuable to Verizon that allowing Verizon to have it for free undermines the competitive process.

Q. WHAT IS THE ECONOMIC IMPACT OF VERIZON USING BRIGHT HOUSE'S INFORMATION?

A. A previous question asked 'what is the harm in Verizon using the porting information?' My response touched upon an important economic impact: the reduction in incentives for competitors to engage in vigorous marketing efforts inevitably leads to less intense competition. I will elaborate that point here.

The 1996 Telecommunications Act sought to increase competition in all telecommunications markets. At a high level, at that time long distance and telephone equipment markets were reasonably competitive, but local voice service was still effectively monopolized by incumbent local exchange carriers. The entrance of competitors for local voice services promotes, among other things, technological and service innovation in the industry, cost reductions, and an increase in consumers' choices on a spectrum of quality, price, and features. This is good for consumers and good for the economy. But it only occurs because competitors understand that they will share the rewards of their various competitive efforts—marketing, pricing, service quality, etc—with their customers.

Verizon's use of competitors' confidential information interferes with this pro-competitive activity because it decreases the incentive for entrants such as Bright House to invest to compete with Verizon. Due to Verizon's behavior, for every dollar spent by a competitor to market to a potential customer, there is a lower probability of success and, consequently, a lower return. If this decrease in returns from investments in competitive activities arose from Verizon's ability to serve the customer at a new lower cost (perhaps due to a technological innovation), or due to the availability of new services not offered by Bright House, then this would indeed be indicative of the competition Congress sought in passing the Telecommunications Act. But this is not the case. Offering price breaks *only* to the consumers who have confirmed their willingness to switch to competitors undermines the essence of competition and is in no way pro-competitive.

Q. WHY DOES BRIGHT HOUSE HAVE LESS INCENTIVE TO INVEST BECAUSE OF VERIZON'S ACTIONS?

A. Bright House's decreased incentive to invest due to Verizon's use of its information is tied to an increase in its costs. The same or even greater marketing effort by Bright House leads to fewer customers, effectively increasing the cost of obtaining each new customer. Again, if fewer customers came to Bright House because of Verizon's improved services or lower prices in the market, the overall economic effect would be positive. Here, however, the increase in customer acquisition cost and the decline in customers switching to Bright House's services arise because Verizon is expropriating Bright House's competitive intelligence.

Q. WHY IS VERIZON ABLE TO UNDERCUT BRIGHT HOUSE'S PRICING?

A. As the incumbent provider, Verizon maintains a large base of consumers over which it can spread its fixed costs. This allows Verizon to engage in price discrimination, charging the customers in question—those wishing to switch to Bright House—a price significantly below the standard price. As non-incumbents, Bright House and other entrants do not have the same ability because they would have to offer a significantly discounted price to a greater proportion of their customers—*i.e.*, the ones that are currently Verizon customers—that they sign up. Importantly, Bright House's inability to compete for this subgroup of customers on price is not a reflection of inefficiencies on the part of Bright House, but rather anticompetitive, exploitative, price discriminating behavior on the part of Verizon.

Q. DOES THIS HAVE IMPLICATIONS BEYOND BRIGHT HOUSE?

A. Yes. Verizon's retention marketing practices undermine the entire local number porting process. In this regard, in the First Report And Order And Further Notice Of Proposed Rulemaking in its *Telephone Number Portability* proceeding, the FCC argues that "number portability is essential to meaningful competition in the provision of local exchange services:"[4]

> The ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase. Number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers. The resulting competition will benefit all users of telecommunications services. Indeed, competition should foster lower local telephone prices and, consequently, stimulate demand for telecommunications services and increase economic growth.[5]

I agree with this assessment. As noted above, it is the number porting process that gives Verizon the ability to exploit Bright House's proprietary information. As a result, if Verizon's retention marketing practices

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4 First Report and Order and Further Notice of Proposed Rulemaking (hereafter "First Report"), In the Matter of Telephone Number Portability. Before the Federal Communications Commission, CC Docket No. 95-116 RM 8535, (adopted June 27, 1996), ¶ 28.

5 First Report, ¶ 30.

continue, competitors will have a strong incentive to encourage customers to take a new phone number when they switch providers. In economic terms, therefore, Verizon's retention marketing program will, in effect, resurrect the barrier to competition that existed before local number portability came into being in the 1996 Act. Recreating this barrier to entry diminishes competition:

> To the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.[6]

Q. DO YOU CONSIDER MARKETING PRACTICES RELATING TO VIDEO OR HIGH SPEED INTERNET SERVICES TO BE RELEVANT TO THE ANTICOMPETITIVE NATURE OF VERIZON'S VOICE-SERVICE-BASED RETENTION MARKETING PROGRAM?

6 First Report, ¶ 31.

A. No, I do not, for the simple reason that LNP creates a situation in which a carrier winning a voice customer is compelled to give the losing carrier substantial advance notice that the customer is leaving. A parallel situation does not exist for video and Internet services. In this regard, I have been informed that the Prehearing Officer in this case just rejected Verizon's request to expand the issues in this case to include consideration of video and Internet marketing, so I will not discuss those matters further.

Q. HAVE YOU REVIEWED THE DECLARATION MADE IN THE FCC CASE BY VERIZON'S EXPERT, DR. EISENACH?

A. Yes, I have.

Q. AS FAR AS YOU ARE AWARE, HAS VERIZON ADVANCED THE SAME RATIONALE FOR ITS RETENTION MARKETING PROGRAM IN THIS CASE, BEFORE THE FLORIDA PSC?

A. As far as I have seen, Verizon has not formally filed Dr. Eisenach's declaration in the record of this case. However, the explanations and justifications for its retention marketing program that Verizon's lawyers have provided here are essentially the same as the policy (rather than legal) justifications that Verizon advanced at the FCC, and are consistent with Dr. Eisenach's declaration. I also understand that the non-proprietary materials from the FCC case are available and have been supplied to the parties and the Florida PSC staff in this case. For purposes of this testimony, therefore, I assume that Verizon will be advancing the same economic arguments here that it advanced at the FCC.

Q. DO YOU AGREE WITH DR. EISENACH'S ANALYSIS?

A. No, I do not. His economic discussion reflects a disregard for, or a misunderstanding of, the economic factors relevant to assessing Verizon's use of Bright House's proprietary information leading him to a completely erroneous conclusion.

Q. DR. EISENACH CLAIMS THAT VERIZON'S CUSTOMER RETENTION MARKETING IS SIMPLY PROVIDING INFORMATION TO CUSTOMERS THAT ARE "IN THE MARKET." DO YOU AGREE?

A. No.

Q. WHY NOT?

A. Dr. Eisenach claims that "Verizon's retention marketing program provides consumers with timely and accurate information about Verizon's offerings."[7] This statement, however, ignores the critical fact that, were it not for Bright House expending considerable resources to identify a particular pool of dissatisfied customers, the Verizon offering in question would not exist at all. Verizon's retention marketing program is not targeting a particular customer group with marketing materials about an existing offering. It is marketing an offering created specifically for this group of customers whose existence and membership is revealed—indeed, created—only through the efforts of Bright House.

[7] Declaration of Jeffrey A. Eisenach (hereafter "Eisenach"), In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002 (REDACTED). (February 29, 2008), p. 3, ¶ 7.

Q. BUT DON'T ECONOMISTS GENERALLY AGREE THAT ECONOMIC EFFICIENCY IS IMPROVED WHEN BUYERS AND SELLERS HAVE MORE INFORMATION?

A. Yes, but that is not the point here. If all consumers had perfect information about all suppliers' existing offerings, then consumers could indeed make superior economic choices, as Dr. Eisenach claims. But that mischaracterizes the relevant information deficits here. Verizon's customer retention pricing is not "information" out there waiting to be conveyed to a supposedly ignorant set of consumers. It is a discriminatory price that is *created* for that set of customers, only *after* the customer goes to the effort to switch carriers.

Furthermore, Dr. Eisenach's claim that Bright House wants "to forbid firms from informing customers of their best offers" and, therefore, "to deprive them of the incentive to compete,"[8] is a blatant red herring. *Verizon* is the one that does not want to "inform customers"—that is, *all* of its customers—of its best available offer. To see this, consider what Dr. Eisenach's claim really implies. If lack of information on the part of consumers is the problem that Verizon is trying to solve, what it should be doing is advertising widely that it will pay consumers $100, $200 or more to keep them, and that they should call Verizon to collect those payments before they switch to a competitor such as Bright House. Verizon, of course, does not do this, and indeed would be foolish to do so, because consumers would interpret it to mean that Verizon's existing market prices

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[8] Eisenach, p. 10, ¶ 25.

are flexible and would demand price reductions overall. Instead, Verizon wants to discriminate among its customers and offer the lower prices only to the select group of customers that *Bright House's efforts* have identified. Therefore Verizon's program only works if and to the extent that Verizon can use the fruits of Bright House's marketing efforts.

Verizon is trying to avoid having its general body of customers consciously aware that it is willing to cut its prices significantly in order to keep customers from leaving for the simple reason that if they knew, Verizon would be forced to lower its prices overall.

Q. DOESN'T DR. EISENACH RELY ON NOTED ECONOMIC AUTHORITIES, SUCH AS NOBEL LAUREATE GEORGE STIGLER, TO SUPPORT THE ECONOMIC EFFICIENCY OF RETENTION MARKETING?

A. Dr. Eisenach does cite George Stigler's seminal 1961 work, "The Economics of Information,"[9] but he misunderstands Stigler's paper if he thinks it is applicable to Verizon's retention marketing program. First, Stigler's central insight—that searching for information is costly—assumes that there is a generally available price or set of prices to be discovered. Stigler envisions a situation in which, for instance, different vendors of office furniture in different parts of a city offer the same file cabinet at different prices. In that case, there is "price information" out in the market to be found. The consumer will be better off if he knows that information, *i.e.*, if he knows the different prices for the file cabinet offered by different

[9] George J. Stigler (hereafter Stigler), "The Economics of Information," The Journal of Political Economy, 69:3. (June 1961) pp. 213-225.

vendors. However, it is costly to the consumer to actually go find the information. Stigler's analysis is focused on the economic factors that apply in that type of situation.

This contrasts sharply with the situation created by Verizon's retention marketing program. This is not a situation in which Verizon has a price plan available that consumers, with sufficient effort, can discover. To the contrary, as constructed by Verizon, the relevant price only exists for a customer that tries to switch carriers, and only at the moment of the switch. As a result, a customer who has not already tried to leave Verizon could not "find" the special deal with any amount of searching, because Verizon does not *offer* that special deal to its overall customer base. In other words, *there is no amount of search a Verizon customer could engage in to find the retention marketing price.* This means that Stigler's analysis—while certainly interesting and important to economists generally—has nothing to do with the case at hand.

Second, Stigler's paper specifically avoided dealing with a central issue pertinent to the market for phone service: quality. As Dr. Eisenach recognizes[10] the difference between Verizon's service offering and Bright House's service offering is more than just price. Quality differences between the two service offerings are an important factor in consumers' choice of a provider. Stigler's analysis, however, assumes that the goods in question (that is, the goods for which the consumer lacks information, such as the file cabinet in my earlier example) are differentiated only by price. In

[10] Eisenach, p. 8, ¶ 19 and p. 9, ¶ 25.

fact, he says, "The search for knowledge on the quality of goods, *which has been studiously avoided in this paper*, is perhaps no more important but, certainly, analytically more difficult."[11] In other words, Stigler's analysis, ground-breaking though it was back in 1961, is not sufficient to deal with the competitive markets in which quality and other non-price differences among various service offerings are relevant. As such it does not support Dr. Eisenach's views here.

Q. DO YOU HAVE ANY OTHER CRITICISMS OF DR. EISENACH'S DECLARATION?

A. Yes, several. First, according to Dr. Eisenach, "[r]etention marketing is a form of targeted advertising in which firms identify consumers who are 'in the market' on the basis of information suggesting they are considering switching to some other provider."[12] This benignly worded definition does not apply to Verizon's retention marketing program. This is not a situation in which the firm in question, Verizon, identifies a group of customers based on suggestions that the customers are considering changing providers. As noted above, Verizon does not identify the relevant consumers, Bright House does. Furthermore, the consumers in question are not *considering* switching—they have *decided* to switch. The discrepancies in wording are subtle, but mask the true intent of Verizon's actions, which is to suppress competition in the market.

Second, Dr. Eisenach argues that targeted marketing benefits an excluded consumer—that is, a consumer who does not receive the discounted pricing

[11] Stigler, p. 224, emphasis added.
[12] Eisenach, p. 5, ¶ 13.

given to customers leaving for Bright House—"by virtue of [her] not having to sort through advertising content for which she has no immediate use."[13] This is flawed for two reasons. The implication of this statement is that only a select group of customers—those presently planning to leave—would be better off as a result of a $100 or $200 price break on their existing phone service. This is laughable. Moreover, it flies in the face of the very Stiglerian analysis that Dr. Eisenach relies on, which is that markets function more effectively when consumers have more complete information. There are obviously diminishing returns at some point: most consumers would not find it cost effective to wade through lengthy advertising materials in order to learn that they could save $0.05 per month on their phone service. But to suggest that most consumers would not find it worthwhile to read a one-page letter and make a phone call to Verizon in order to save $100 or $200 is ludicrous. Verizon is not doing its overall customer base a favor by not offering everyone the same price breaks it offers to customers planning to leave. It is simply engaging in price discrimination using Bright House's proprietary information. As much as he would like us to believe that Verizon's targeted marketing is altruistically benefiting consumers, Dr. Eisenach's argument can generously be characterized as misleading.

Third, in his FCC declaration, Dr. Eisenach writes:

> ... the competitive price facing Verizon's competitors – the price they must meet or beat to win a customer away

[13] Eisenach, p. 5, ¶ 12.

> from Verizon – is Verizon's best offer. To prohibit Verizon from making that offer is, by definition, to *allow its competitors to charge prices above the competitive price*, while still winning customers. It may seem "unfair" to Verizon's competitors that they should actually have to make a better offer in order to win customers, but that requirement is precisely what is meant by "competition." And, from the perspective of consumers, it is the very essence of "fairness."[14]

There are three problems with this argument. First, the win-back price is not the "competitive price." It is simply the price Verizon is able to offer these select customers because it is using Bright House's proprietary information for free. Second, when Verizon offers a lower, "competitive" price to select customers, Dr. Eisenach's reasoning compels the conclusion that Verizon is charging its other existing customers prices *above* the competitive level. Put another way, if (a) the price Verizon offers the departing customers is "the competitive price," and (b) Verizon does not offer that "competitive price"—including recognition of the $100/$200 gift cards as effective price reductions—to its general body of customers, the inevitable conclusion is that Verizon is over-charging (as compared to "the competitive price") its overall body of customers. Third, Dr. Eisenach implies that Verizon's competitors have the option of presenting a counteroffer to the customer on equal footing with Verizon. This is not the

[14] Eisenach, p. 10, ¶ 26.

case. Unlike Verizon's knowledge of a cancellation days before it becomes effective, the new provider "learns [about the cancellation of the change order] only after the fact."[15] At that point, the Verizon customer who had decided to switch reverts to being just a Verizon customer who might, following marketing efforts, decide to switch again. Even if, in theory, Bright House could engage in Verizon-style retention marketing when a Bright House customer plans to leave for Verizon, that is not—as Dr. Eisenach claims—the same as competing for customers on an equal footing. Verizon is the incumbent and by default starts with the customer. In this regard, although competition for voice services may be increasing, clearly Verizon remains the largest player in its home territory. Any tactic that makes it harder to get customers to leave one provider to go to another will differentially benefit the largest supplier in the market. From this perspective, Verizon's retention marketing program would be most valuable mainly to an incumbent seeking to avoid the effects of competition, and not to competitors generally.

Q. IF IDENTIFICATION OF CUSTOMERS THAT ARE WILLING TO SWITCH FROM VERIZON TO BRIGHT HOUSE IS NOT SIMPLY MARKET INFORMATION, THEN WHAT IS IT?

A. Competitive intelligence. "Competitive intelligence (CI) is the formalized process of monitoring the competitive environment."[16] The identity of a

[15] Complaint, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California *et al.* Before the Federal Communications Commission (REDACTED). (February 11, 2008), p. 13, ¶ 21.

[16] Connor Vibert. Introduction to Online Competitive Intelligence Research. (Cincinnati: South-Western Educational Publishing, July 6, 2004), p. 9.

customer one firm is about to win over from another firm is quintessential competitive intelligence. Like the fruits of all successful investments, the information generated by a firm's efforts is valuable and, consequently, the firm will go to some efforts to protect it. Bright House's information in this current matter is a clear example of competitive intelligence.

Protection of information can enhance firms' incentives to make productive investments, including investments in marketing. Actions that may diminish the return to a given investment, such as revelation of information to a competitor, can reduce the incentive to make the investment. The possibility of underinvestment in productive activities that produce competitively sensitive information is one reason patents, copyrights, and trade secrets are protected by law. In those cases, exclusive legal protection is granted to the inventor, author, or business as an incentive to create valuable intellectual property.[17] Similarly, commercially sensitive information is often protected by law[18] or contract with the effect of preserving incentives to pursue productive activities.

IV. LEGAL VERSUS ECONOMIC CONSIDERATIONS

Q. DR. BAZELON, AS YOU UNDERSTAND IT, DOES FLORIDA LAW INCORPORATE SOUND ECONOMIC PRINCIPLES AS THEY RELATE TO THIS CASE?

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[17] J. Eatwell, M. Milgate, and P. Newman (eds.). The New Palgrave Dictionary of Economics. (London: Macmillan Press Ltd., 1998), Volume 3, p. 816.

[18] According to Florida Statute 364.183, "[u]pon request of the company..., any records received by the [Florida Public Service] commission which are claimed by the company ... to be proprietary confidential business information shall be kept confidential." "... The term "proprietary confidential business information" ... includes, but is not limited to: ... Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information." *Also see, e.g.,* Mississippi Public Records Act of 1983.

A. As noted above, I am not a lawyer. As I also noted above, the law forbids conduct described as "anticompetitive" and as such, it does appear that Florida law incorporates sound economic principles. Therefore, the Florida PSC should decide this case on the basis of sound economics, assuming there is no other unrelated offsetting policy or legal issue.

Q. DOES THE SAME HOLD TRUE FOR FEDERAL LAW?

A. While much of federal law and policy clearly reflects an effort to apply sound economic principles to improve competition in telephone markets, it is not at all clear to me that this is true in the specific case of federal statutes regarding retention marketing.

Q. IN THIS REGARD, HAVE YOU REVIEWED SECTIONS 222(A) AND (B) OF THE FEDERAL COMMUNICATIONS ACT, ON WHICH THE CHALLENGE TO VERIZON'S CONDUCT AT THE FCC WAS BASED?

A. Yes, I have.

Q. FROM YOUR PERSPECTIVE AS AN ECONOMIST, DO YOU HAVE AN UNDERSTANDING OF THE OPERATION OF THOSE PROVISIONS?

A. Well, they are written in English, and I certainly think I understand them, but they are quite different from the Florida statutes at issue in this case.

Q. HOW SO?

A. Most notably, neither Section 222(a) nor Section 222(b) expressly says anything about pro-competitive or anticompetitive conduct. As I understand it, Section 222(a) says that a carrier has to protect the proprietary information it receives relating to other carriers, manufacturers, and customers. Section 222(b) is more complicated. It is a specific restriction on what one carrier may do with the proprietary information it receives from another carrier for a particular purpose. I have no comment on the legal interpretation of these restrictions. However, although I have not reviewed the legislative history or Congressional intent of those sections, from an economic perspective I can understand why Congress would have included them in the Telecommunications Act. Specifically, those sections would be expected generally to have the effect of increasing competition.

Q. ARE SIMILAR PROVISIONS SEEN ELSEWHERE?

A. Yes, as alluded to above in the discussion of competitive intelligence, similar provisions are seen in exemptions to freedom of information and public records request acts.

Q. WHAT DO THOSE TYPES OF PROVISIONS ACCOMPLISH, FROM AN ECONOMIC PERSPECTIVE?

A. Many different statutory provisions recognize that competitively sensitive information must be protected from public disclosure. From an economic perspective, the point of banning public disclosure of competitively sensitive information is not that the information is embarrassing or in some way *personally* private, but rather that the information must be kept out of the hands of competitors who will exploit that information for their own benefit. Firms invest time and money to develop competitively sensitive information precisely because it allows them to compete more effectively. If that information is simply revealed to competitors, then firms will have little or no incentive to develop it in the first place. At a high level, this is why, as a society, we protect patents, copyrights, trademarks, and trade secrets. Also at a high level, these appear to be the economic considerations that underlie Sections 222(a) and (b) of the Federal Communications Act.

Q. THAT SAID, ARE YOU AWARE THAT THERE IS A SPECIFIC LEGAL DEFINITION OF THE TERM "TELECOMMUNICATIONS CARRIER" UNDER FEDERAL LAW?

A. I understand that to be the case, but I am not a lawyer and have not tried to parse what that definition might require.

Q. ARE YOU AWARE THAT THERE IS A SPECIFIC LEGAL DEFINITION OF THE TERM "TELECOMMUNICATIONS SERVICE" UNDER FEDERAL LAW?

A. Again, I understand that to be the case, but I have not tried to parse that definition in any detail.

Q. HAVE YOU READ THE FCC STAFF'S "RECOMMENDED DECISION" IN THE FCC CASE CHALLENGING VERIZON'S RETENTION MARKETING PROGRAM?

A. Yes, I have.

Q. DO YOU HAVE ANY COMMENTS ON THAT DOCUMENT?

A. Yes. First, it seems to me—as a non-lawyer—that the FCC Staff's recommended decision turns largely on legal technicalities in the language of Sections 222(a) and 222(b) rather than on the broader economic intent of the statute and on the competitive implications of Verizon's program in the marketplace. Briefly, whether Verizon's retention marketing program is anticompetitive does not depend on whether the legal entities sending Verizon LSRs are "telecommunications carriers", or whether any of the parties provide the information for the purpose of offering a "telecommunications service" as defined by federal law. To the contrary, Verizon's retention marketing program is anticompetitive because it exploits Bright House's proprietary, competitive intelligence. Yet technical, legalistic considerations appear to have driven the FCC Staff's recommendation that the FCC conclude that Verizon is not breaking federal law. The FCC Staff never seemed to address the motivation behind those provisions in the law. I have no comment on the FCC Staff's legal analysis, but I can say without hesitation that its legal analysis has no bearing on the economic ramifications of Verizon's actions. Verizon's conduct is anticompetitive—which seems to be the focus of Florida law—for the reasons laid out above.

Second, to the extent that the FCC Staff's recommended decision attempts to consider the economic consequences of Verizon's retention marketing program, its efforts to do so are very muddled. As I have explained above, the essence of Verizon's retention marketing program is to exploit a valuable competitive asset developed by Bright House. The fact that Verizon shares some of the benefits with a small number of customers does not make the conduct pro-competitive, even if those customers are indeed made better off in the short run. The FCC Staff seemingly missed this point entirely.

Q. SO, DOES THE FACT THAT THE FCC STAFF CONCLUDED THAT VERIZON'S CONDUCT DOES NOT VIOLATE FEDERAL LAW HAVE ANY BEARING ON YOUR CONCLUSION THAT VERIZON'S CONDUCT IS ANTICOMPETITIVE?

A. None whatsoever.

Q. WOULD IT AFFECT YOUR ANALYSIS IN ANY WAY IF THE FCC ITSELF WERE TO AFFIRM ITS STAFF?

A. No. My understanding is that by late June, the FCC is scheduled to rule on whether to accept, reject, or modify its staff's recommendation. So, I may well have the opportunity to comment on an FCC ruling in my rebuttal testimony. But, for the reasons noted above, a legal conclusion that Verizon's retention marketing program does not violate federal law would not affect in any way my economic conclusion that Verizon's retention marketing program is anticompetitive—which I understand to be the key test under the Florida statutes on which this case is based.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Direct Testimony and Exhibits CDB-1 and CDB-2 of Coleman Bazelon has been served via Electronic Mail, U.S. Mail First Class, or Hand Delivery this 30th day of May, 2008, to the persons listed below:

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Dr. Bazelon is a principal in the Washington, DC office of *The Brattle Group*. He is an expert in regulation and strategy in the wireless, wireline, and video sectors. He has consulted and testified on behalf of clients in numerous telecommunications matters, ranging from wireless license auctions, spectrum management, and competition policy, to patent infringement, wireless reselling, and broadband deployment.

Dr. Bazelon frequently advises regulatory and legislative bodies, including the U.S. Federal Communications Commission and the U.S. Congress. He also has expertise in the federal government's use of discount rates for policy and regulatory analysis, intellectual property valuation, and antitrust and damages analysis.

Prior to joining *Brattle*, Dr. Bazelon was a vice president with Analysis Group, an economic and strategy consulting firm. During that time, he expanded the firm's telecommunications practice area. He also served as a principal analyst in the Microeconomic and Financial Studies Division of the Congressional Budget Office where he researched reforms of radio spectrum management; estimated the budgetary and private sector impacts of spectrum-related legislative proposals; and advised on auction design and privatization issues for all research at the CBO.

Dr. Bazelon received his Ph.D. and M.S. in Agricultural and Resource Economics from the University of California at Berkeley. He also holds a Diploma in Economics from the London School of Economics and Political Science and a B.A. from Wesleyan University.

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Thomas W. Hazlett, Coleman Bazelon and Arthur Havenner, "Forecast of Toll Free Number Demand: 2002-2004," Attachment A, SMS/800 Transmittal No. 22, F.C.C. Tariff No. 1, November 15, 2002.

"Comments of Coleman D. Bazelon and T. Christopher Borek Relating to Arthur D. Little, Inc.'s Assessment of the Impact of DTV on the Cost of Consumer Television Receivers," *Ex Parte* Communication to the Federal Communications Commission in the Matter of Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MM Docket 00-39), August 1, 2002.

"Use Administrative Law Judges to Adjudicate Interference Disputes Between Licensees," Comment in the Matter of Issues Related to the Commission's Spectrum Policies (ET Docket No. 02-135), July 8, 2002.

TESTIMONY, DECLARATIONS AND AFFIDAVITS

"Declaration of Coleman Bazelon in Support of Plaintiffs' Motion for Class Certification," *Kenneth Stickrath, et al v. Globalstar, Inc.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 07-CV-01941 TEH, April 25, 2008.

"Testimony of Coleman Bazelon, Principal, The Brattle Group, before the US House of Representatives, Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet," April 15, 2008 (reviewing the 700 MHz auction).

"Concerning the Meaning of "Fair and reasonable Compensation" in Section 253(c) of the Telecommunications Act of 1996 and the Comparability of the Rights-of-Way Fees Paid by Level 3 in Massachusetts and Elsewhere," *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816, December 17, 2007.

"Concerning the Effects of the Fixed Rent Charged for Access to the Massachusetts Turnpike," *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816, November 12, 2007.

"Affidavit of Dr. Coleman Bazelon," *Gulfside Casino Partnership v. Mississippi Riverboat Council, et al.*, United States District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:07-CV-110-LG-JMR, May 4, 2007.

"Rebuttal Report of Dr. Coleman Bazelon," *Level 3 Communications, LLC, v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS, June 17, 2005.

"Affidavit of Dr. Coleman Bazelon," *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff (October 12, 2004).

SEMINARS AND PRESENTATIONS

Auction Revenues are not the Only Revenues that Should Drive Spectrum Policy, Law Seminars International: Spectrum Management, Washington, DC, September 17, 2007.

Cream Skimming, 35th Annual Telecommunications Policy Research Conference (TPRC), Arlington, VA, September 29, 2006.

Market Allocation for Radio Spectrum, International Telecommunications Union Workshop on Market Mechanisms for Spectrum Management, Geneva, Switzerland, January 2007.

Licensed vs. Unlicensed Spectrum: A New Economic Model for Determining the Trade-offs, 34th Annual Telecommunications Policy Research Conference (TPRC), Arlington, VA, September 30, 2006.

Decoding the Future of IP-TV, Northern California Chapter of the Federal Communications Bar Association, San Francisco, February 2006.

Accelerating the Digital Television Transition, COMPTEL Executive Business & Policy Summit, Washington, DC, December 2005.

Regulated Unbundling of Telecommunications Networks: A Stepping Stone to Facilities Based

Competition? Telecommunications Policy Research Conference, Arlington, VA, September 2005.

Sending the Right Signals: Promoting Competition Through Telecommunications Reform: A Report to the U.S. Chamber of Commerce, presentation of report to the US Chamber of Commerce, October 6, 2004.

Telecommunications Reform, presentation to the U.S. Chamber of Commerce's Technology Policy Committee, April 29, 2004.

Interlicense Competition, Telecommunications Policy Research Conference, Arlington, VA, September 2003.

Marketing & Legal Strategies: Hope, Hype & Crash Landings, WCAI 2003, Washington, DC, July 10, 2003.

Spectrum Policy Task Force Interference Recommendations, Manhattan Institute Conference, Washington, DC, February 13, 2002.

FCC License Auctions, Society of Government Economists Conference, Washington, DC, November 22, 2002.

Spectrum Management Panel, CTIA Wireless 2002, Orlando, FL, March 18, 2002.

A Note on Correlation, ASSA Annual Meetings, Atlanta, GA, January 6, 2002.

Regulatory Forbearance, Powerline Communications Conference, Washington, DC, December 13, 2001

Spectrum License Valuations, CTIA Wireless Agenda 2001, Dallas, TX, May 2001.

Old Spectrum in the New Economy, with David Moore, invited paper, Society of Government Economists Conference "The New 'Economy': What Has Changed and Challenges for Economic Policy," Washington, DC, November 2000.

Discounting Inside the Washington DC Beltway, Energy Information Agency Seminar Series, Washington, DC, March 2000.

Discounting Inside the Washington DC Beltway, Congressional Budget Office Seminar Series, Washington, DC, November 1999.

Completing the Transition to Digital Television, Telecommunications Policy Research Conference, Arlington, VA, September 1999.

Digital Television Transition, Congressional Budget Office Seminar Series, Washington, DC, April 1999.

The Budgetary Treatment of Asset Sales, briefing for the staff of the Senate Budget Committee, Washington, DC, February 1997.

The Value Added from Multilateral Bargaining Theory for Applied Research, with Greg Adams, Selected Paper, AAEA Annual Meeting, Baltimore, MD, August 1992.

The Importance of Political Markets in Formulating Economic Policy Recommendations, Selected Paper, AAEA Annual Meeting, Manhattan, KS, August 1991.

L.D.C. Debt and Policy Linkages in the Determination of World Commodity Prices, with Gordon Rausser, Selected Paper, AAEA Annual Meeting, Vancouver, B.C., Canada, August 1990.

REVIEWER

- *American Journal of Agricultural Economics*
- *Congressional Budget Office Reports*
- *Telecommunications Policy*

EXPERT DESIGNATIONS

- *Touch America, Inc. v. Qwest Communications International, Inc.*
    - Designated as an expert in Arbitration (June 2003)
- *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff
    - Filed affidavit (October 12, 2004)
- *Level 3 Communications, LLC v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS
    - Filed Rebuttal Report (June 17, 2005)
    - Deposition (July 14, 2005)
- *Cable Merger before the FTC*
    - Presented analysis to FTC staff (March 20, 2007)

- *Gulfside Casino Partnership v. Mississippi Riverboat Council, et al.*, United States District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:07-CV-110-LG-JMR
  - Filed affidavit (May 4, 2007)
- *Motorola, Inc. v. State of Mississippi Department of Information Technology Services and M/A-Com, Inc.*, Chancery Court of Hinds County, Mississippi, Cause No. G2006-2179 S/2
  - Testified (May 23, 2007)
- *American Towers, Inc. v. Jackson & Campbell, P.C., et al.*, DC Superior Court, No. 003277-06
- *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816
  - Filed Expert Report (November 12, 2007)
  - Filed Rebuttal Report (December 17, 2007)
  - Deposition (January 21, 2008)
- *Kenneth Stickrath, et al v. Globalstar, Inc.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 07-CV-01941 THE
  - Filed Declaration (April 25, 2008)

SELECTED CONSULTING PROJECTS

Litigation

- Assessed the capital adequacy of the U.S. branch of a foreign bank
- Assessed changes in contributions to the Cable Royalty Fund on behalf of Sports Claimants in a Copyright Arbitration Royalty Panel (CARP) proceeding
- Assessed damages associated with infringement of patents used in DNA fingerprinting applications
- Examined the business case asserted for a small wireless reseller in a breach of contract litigation
- Assessed a bankruptcy sale proposal for a national tier 1 broadband backbone provider
- Assessed the market for Competitive Local Exchange Carriers in an SEC fraud case
- Researched the basis for generally optimistic beliefs about the telecommunications sector in the late 1990s in a 10-b securities litigation

- Researched the basis for generally optimistic forecasts of broadband deployment in the later 1990s and early 2000s in an anti-trust litigation
- Estimated damages in a breach of contract case involving the sale of a fibre optic network
- Valued digital television radio spectrum in St. Louis in the pre-litigation phase of a breach of contract dispute
- Assessed basis for guidance of a large telecommunications firm in a 10-b securities litigation
- Assessed damages associated with infringement of patents used to provide Voice over Internet Protocol (VoIP)
- Provided written testimony estimating the value of a surety bond in a contract dispute involving toll free phone numbers used in an enhanced service application
- Estimated "Loss of Use" damages for a severed fibre optic cable
- Assessed commonality issues of physicians for class certification of RICO action against a set of health insurance companies
- Analyzed the economic underpinnings of an exclusivity clause of a mobile phone affiliation agreement
- Estimated cost of delay in granting local cable franchise
- Estimated recoverable data costs for two pesticides
- Assessed the damages associated with the infringement of patents related to VoIP technology and the likely impact of a permanent injunction
- Estimated damages associated with USF and other telephone taxes paid by a calling card reseller
- Provided written testimony on economic value associated with items provided in a labor neutrality agreement
- Provided oral testimony on the proprietary nature of specific information contained in a statewide public safety network bid
- Estimated damages for a broadcast tower permit revocation
- Provided written testimony on the economic value of Rights-of-Ways in Massachusetts

- Provided written testimony on the ability to estimate damages for a class of satellite phone users

Regulatory Proceedings

- Provided written testimony of a forecast of toll free number demand for the toll free number administrator, SMS/800, in a rate case proceeding
- Provided written testimony that assessed the validity of an analysis of the costs of a DTV tuner mandate
- Assessed the degree of market overlap of two food service firms for purposes of merger review
- Examined the impact of irreversible investments in the local telephone network on the TELRIC pricing methodology
- Estimated the adjustment to the TELRIC pricing formula to account for irreversible investment in the local telephone network
- Provided written testimony examining the effects of unbundling regulations on capital spending in the telecommunications sector
- Provided written testimony refuting analysis purporting to show a positive relationship between UNE-P and telecom network investment
- Assessed the impact on consumers of California's Telecommunications Consumer Bill of Rights proposal
- Examined and refuted arguments suggesting that the California Telecommunications Consumer Bill of Rights was an appropriate response to market failures
- Examined federalism issues related to mobile telephony regulation
- Examined the relative merits of licensed versus unlicensed radio spectrum and the effects of "underlay" licenses on existing commercial licensees
- Analyzed economic ramifications of à la carte cable channel pricing on consumers and the cable and television programming industries
- Developed and assessed Indian spectrum management proposals
- Analyzed impact of local franchise requirements on competition in the video marketplace
- Assessed proposed regulation of mobile phone roaming rates

- Presented analysis on pricing differentials in overlapping cable markets
- Analyzed the relationship between size of cable systems and the economics of the programming market
- Authored several reports on the 700 MHz auction rules
- Estimated economic impact of ITC Exclusion Order on cell phone handsets
- Estimated value of the PCS H-Block spectrum band
- Provided written testimony on the economics of pole attachment rates

Other

- Examined the effects of unbundling regulations on broadband penetration internationally
- Assessed the business cases for IRU swaps of a large international fibre optic network owner
- Coauthored a report to the U.S. Chamber of Commerce on the economic effects of telecommunications deregulation
- Coauthored a report on the value of a portfolio of patents used to provide Voice over Internet Protocol (VoIP)
- Analyzed proposed accelerated digital television transition impacts on society and the federal budget
- Valued proposals to re-band the Upper 700 MHz Band of radio spectrum
- Analyzed cable franchising requirements
- Analyzed Universal Service Fund expenditures
- Provided framework to estimate impact of the effect of designation of TV white spaces as unlicensed on 700 MHz auction receipts
- Advised bidder in FCC AWS spectrum license auction
- Analyzed the economics of the military's build versus buy decision for broadband satellite communications capacity
- Assessed the budgetary impacts of legislation to license the TV white spaces
- Estimated the value of a portfolio of spectrum licenses

- Assessed a business plan involving the WiMAX market
- Evaluated a business plan for proposed dam removals
- Advised bidder in FCC 700 MHz spectrum license auction

Exhibit CDB-2

Works Consulted

Answer of Verizon, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), February 21, 2008.

Bright House's Opposition to the Motion of Verizon Florida, LLC to Dismiss Complaint or, in the Alternative, Stay Proceedings, In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, December 13, 2007.

Bright House's Opposition to the Motion of Verizon Florida, LLC for Reconsideration, In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC and In re; Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone, Before the Florida Public Service Commission, Docket Nos. 070691-TP and 080036-TP, April 24, 2008.

Comments Challenging Recommended Decision, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), April 28, 2008.

Comments of Verizon in Support of Recommended Decision, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), May 13, 2008.

Complaint, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, (REDACTED), February 11, 2008.

Complaint and Request for Emergency Relief, Bright House Networks Information Services (Florida) LLC, and Bright House Networks, LLC v. Verizon Florida, LLC (TL 710). Before the Florida Public Service Commission, November 16, 2007.

Complaints Reply to Defendants' Answer and Separate Statement, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), February 29, 2008.

Declaration of Jeffrey A. Eisenach, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), February 29, 2008.

First Report and Order and Further Notice of Proposed Rulemaking. In the Matter of Telephone Number Portability, Before the Federal Communications Commission. CC Docket No. 95-116 RM 8535, Adopted: June 27, 1996; Released: July 2, 1996.

Further Supplemental Joint Statement, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002.

Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues. In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), February 29, 2008.

Recommended Decision, In the Matter of Bright House Networks, LLC, *et al.*, v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, April 11, 2008.

Responses of Bright House Networks Information Services (Florida), LLC, and its Affiliate, Bright House Networks, LLC (NOS. 1-17) To Commission Staff's First Set of Interrogatories, In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC and In re; Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone, Before the Florida Public Service Commission, Docket Nos. 070691-TP and 080036-TP, May 5, 2008.

Supplemental Joint Declaration of Patrick Stevens and Bette Smith, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, (REDACTED), March 10, 2008.

Supplemental Joint Statement, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002.

Verizon Florida LLC's Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings, In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services

(Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, December 6, 2007.

Verizon's Supplemental Submission, In the Matter of Bright House Networks, LLC, Comcast Corporation, and Time Warner Cable Inc., v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, March 10, 2008.

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Howard Beales, Richard Craswell and Steven C. Salop, "The Efficient Regulation of Consumer Information," *Journal of Law and Economics* 24:3 (December 1981).

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Kenneth C. Wilbur, *A Two-Sided, Empirical Model of Television Advertising and Viewing Markets*, Working Paper, University of Southern California (June 2007), *available at* http://ssrn.com/abstract=885465.

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