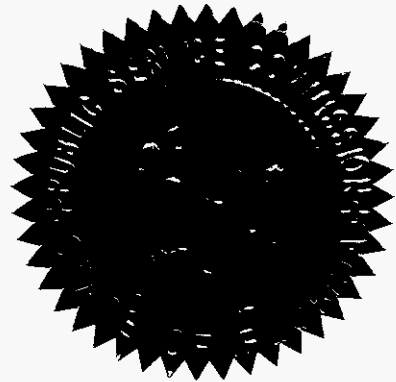


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080701-TP

In the Matter of:

EMERGENCY COMPLAINT AND PETITION
REQUESTING INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST VERIZON FLORIDA,
LLC FOR ALLEGED VIOLATION OF RULES
25-4.036 AND 25-4.038, FLORIDA
ADMINISTRATIVE CODE, BY BRIGHT HOUSE
NETWORKS INFORMATION SERVICES (FLORIDA)
LLC AND BRIGHT HOUSE NETWORKS, LLC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 5, 2009

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
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P R O C E E D I N G S

1
2 **COMMISSIONER EDGAR:** And we will begin our
3 discussions with Item 4.

4 (Pause.)

5 Okay. Let's go ahead and get started, please.

6 **MR. MURPHY:** Okay. Charlie Murphy on behalf
7 of the Commission staff. Item 4 is a complaint of
8 Bright House against Verizon. Verizon has requested
9 oral argument on its motion to dismiss and alternative
10 motion for summary final order. Staff recommends that
11 oral argument be granted with five minutes per side.

12 **COMMISSIONER EDGAR:** Thank you.

13 Commissioners, you've heard the recommendation
14 from our staff. Is there a motion for oral argument?

15 **COMMISSIONER SKOP:** So moved^{*}.

16 **COMMISSIONER McMURRIAN:** Second.

17 **COMMISSIONER EDGAR:** Okay. Item 1 approved.
18 We will grant oral argument, five minutes for each
19 party. And if you'll go ahead and introduce yourself,
20 then, both parties, and then we'll begin.

21 **MR. O'ROARK:** Good morning, Commissioners.
22 De O'Roark representing Verizon.

23 **COMMISSIONER EDGAR:** Thank you.

24 **MR. KISE:** Good morning. Christopher Kise
25 representing Verizon.

1 **COMMISSIONER EDGAR:** Thank you.

2 **MS. KEATING:** Beth Keating, Akerman,
3 Senterfitt for Bright House.

4 **COMMISSIONER EDGAR:** Are you ready?

5 **MR. O'ROARK:** I am ready, Commissioner Edgar.
6 Thank you.

7 Commissioners, Verizon supports staff's
8 recommendation in this case. We believe that staff has
9 reached the correct conclusion for the right reasons.
10 We moved for a summary final order because even if you
11 accept Bright House's allegations at face value, the
12 undisputed facts concerning jurisdiction require this
13 case to be dismissed.

14 The easiest way to explain why is to walk you
15 through the diagram on Page 5 of our motion and in our
16 affidavit. And, Commissioner Edgar, with your
17 permission, may I approach the easel?

18 **COMMISSIONER EDGAR:** Yes, sir.

19 **MR. O'ROARK:** And, Commissioners, we will be
20 passing out a paper copy of what's on the easel.

21 Commissioners, can everyone see what's on the
22 easel? What's portrayed here are three boxes on the
23 side of a customer's house. We'll start with the box on
24 the left, which has the label Cable Company Wall
25 Box/Video Demarcation Point. If you look in the upper

1 right-hand corner of the box, you will see the coaxial
2 cable that comes from the outlets in the customer's home
3 out a hole in the side of the house, converges and comes
4 into the cable wall box that covers the hole in the
5 home. The, if the customer is a Bright House customer,
6 that cable is going to go to a demarcation point inside
7 the wall box.

8 Now below this box you'll see something marked
9 Cable Company Conduit With Coaxial Cable Drop. That is
10 the cable drop that comes from the Bright House network
11 to the customer's home. It can either be aerial or
12 underground. In either case it comes into the wall box
13 and it is connected to the other side of the demarcation
14 point. This coaxial cable carries cable service, it can
15 carry broadband service, it can carry Voice over
16 Internet Protocol service. Each of those services is
17 deregulated and, therefore, this facility is
18 unregulated. Unregulated facilities are shown here in
19 blue.

20 Let's move to the middle box. That's the box
21 marked Verizon Optical Network Terminal. This is a box
22 that Verizon would install if it wins the business, the
23 customer's business and installs its FiOS service.

24 Now below that box to the left you see Verizon
25 Conduit With Fiber Optic Drop. That is the fiber that

1 comes in from Verizon's network. Again, it can be
2 aerial, it can be underground, and it is connected to
3 the optical network terminal sometimes abbreviated ONT.

4 Inside the ONT the signal that's carried over
5 the fiber is split. Inside the box in the lower
6 right-hand corner you'll see something marked ONT
7 Data/Video Port. From that port you'll see a blue line
8 which represents coaxial cable that goes from the ONT
9 and is connected to the customer's inside coaxial cable.
10 That Verizon cable can carry cable service, it can carry
11 broadband service. Again, those services are
12 unregulated and therefore this line is shown in blue.

13 The Bright House allegations here concern the
14 disconnection of facilities in the cable wall box and
15 the connection of Verizon's coax to the customer's
16 inside coaxial cable. Even if you take all of Bright
17 House's allegations as gospel truth, what remains
18 unchanged is that all of the facilities that they're
19 talking about are unregulated.

20 Now let's go back to the ONT. I said that the
21 signals were split. If you look sort of bottom middle
22 of this box, you see the ONT voice ports. From there
23 you see an orange line that's representing a separate
24 copper facility that Verizon uses to connect the ONT to
25 the box on the right marked the Verizon NID/TELCO

1 Demarcation Point. That's the network interface device.
2 At the network interface device the copper cable from
3 Verizon's network is connected to a demarcation point.
4 On the other side of that demarcation point is the
5 customer's inside copper telephone wire. Bright House
6 makes no allegations concerning the installation of this
7 separate copper facility. And as staff points out in
8 its recommendation, the fact that Verizon installs a
9 separate regulated facility has no bearing on the
10 jurisdiction with respect to the other unregulated
11 facilities.

12 A similar situation arises, commonplace --

13 **COMMISSIONER EDGAR:** Mr. O'Roark, I have you
14 at five minutes.

15 **MR. O'ROARK:** Then I will stop there,
16 Commissioner, and simply say that these facts depicted
17 in the diagram are undisputed. Because these
18 jurisdictional facts are undisputed, we are requesting
19 that the complaint be dismissed. Thank you.

20 **COMMISSIONER EDGAR:** Thank you.

21 Ms. Keating.

22 **MS. KEATING:** Thank you, Madam Chair,
23 Commissioners.

24 It won't come as any surprise to you that
25 Bright House doesn't think this issue is as narrow or in

1 fact as wire specific as Verizon would have you believe.

2 The long and the short of it is that Verizon
3 is installing its services and facilities in violation
4 of the NEC. These violations create a very real safety
5 hazard for Florida consumers. And in ruling on this
6 motion for summary final order you have to accept those
7 statements as fact. Those two facts in and of
8 themselves should give you great pause before granting
9 the extreme remedy of summary final order. And in this
10 recommendation we think that staff has given far too
11 much weight as well to the specific wires being
12 connected and disconnected and far too little weight to
13 the seriousness of the safety issues at hand. The
14 analysis overlooks the fact that the rules at issue
15 address the installation of service and facilities by
16 the ILEC. It's that process that you have jurisdiction
17 over, not the specific wires. To construe your
18 jurisdiction otherwise would severely limit your safety
19 authority over the ILECs.

20 Further compounding the reasons not to grant
21 summary final order in this instance is that there are
22 in fact disputed issues of material fact as well as
23 questions of law that aren't entirely resolved by the
24 recommendation. Specifically, does Verizon's
25 installation process meaningfully impact or otherwise

1 involve the installation of telecommunications service?
2 If the field work at issue does involve the concurrent
3 installation of a regulated service along with an
4 unregulated service, why doesn't that alter the
5 jurisdictional analysis? The recommendation really
6 doesn't explain.

7 Also, does this activity include violations of
8 NEC provisions that are applicable to the installation
9 of telecommunication services as Bright House has
10 alleged? I don't see where that's addressed. And here
11 I'd just like to emphasize the importance of the fact
12 that these questions exist by referring, if I may, to
13 the Florida 4th DCA's assessment of how critically a
14 summary final order motion should be viewed, and this is
15 from *Albelo v. Southern Bell*, which was quoted in our
16 response to the motion.

17 However, if the record reflects the existence
18 of an issue of material fact, the possibility of an
19 issue or even raises the slightest doubt that an issue
20 might exist, summary judgment is improper.
21 Commissioners, certainly there's the possibility that an
22 issue of fact exists here, and you should indeed have
23 doubts as to whether the facts and issues are
24 undisputed.

25 This brings me to the next question that you

1 may have asked yourselves. Is this a real safety issue?
2 Is this something that you really need to take a look
3 at? Absolutely. I have a copy -- and if you would like
4 copies, I have brought more -- of a report from the U.S.
5 Department of Health and Human Services and the CDC.
6 And from this report, just to give you an idea, an amp
7 is the equivalent of 1,000 milliamps. And as a frame of
8 reference, your average household circuit breaker ranges
9 from about 15 to 30 amps. From that report a mere 20
10 milliamps can be fatal. And also from the same report,
11 what segment of the industrial worker population ranks
12 second in terms of injuries from electrocution?
13 Transportation, telecommunications and public utilities
14 workers. Improper grounding was one of the most cited
15 reasons for electrocution. And we're talking about an
16 area of the state here that's known as the lightning
17 capital of the world. An ungrounded wire is not an
18 insignificant issue here.

19 **MR. O'ROARK:** Madam Chair, I've got to object
20 to this. Counsel is going on at some length about
21 matters that are not in the record, and that is not
22 appropriate to bring up at this stage of the
23 proceedings.

24 **COMMISSIONER EDGAR:** Ms. Keating.

25 **MS. KEATING:** You're addressing a motion for

1 summary final order. You have the ability to consider
2 interrogatories and any information that is available to
3 you. If you would -- if counsel would like copies, that
4 is perfectly fine. But I would also point out that
5 staff conducted a white board presentation which was not
6 part of any record pleading but was involved in the
7 drafting of the recommendation.

8 I believe that you have the ability to
9 consider this information in the context of summary
10 final order. I would agree if we were talking about a
11 motion to dismiss at this point, that it is a much more
12 limited scope of information that you could consider,
13 but I think in summary final order you have a much
14 broader range.

15 **COMMISSIONER EDGAR:** Okay. Thank you. And I
16 think our staff would like to make a comment.

17 **MR. MURPHY:** Yes, Commissioners. We, we did
18 look at that. We had it explained like this with actual
19 hardware, but our recommendation was based on purely the
20 paper documents as we said that they would be when we
21 had that white board session.

22 **MS. KEATING:** Nonetheless, Madam Chair, I do
23 believe in considering a motion for summary final order
24 you can consider everything that is available to you,
25 and this argument constitutes a part of the record that

1 you can consider.

2 **COMMISSIONER EDGAR:** Okay. I understand,
3 Mr. O'Roark. I'm going to allow. And by my
4 approximation, Ms. Keating, you have roughly a minute
5 and a half and then we will open it up to questions from
6 the bench.

7 **MS. KEATING:** Okay. Thank you, Madam Chair.

8 Bright House has tried to work with Verizon on
9 this issue and they have taken some steps, we will
10 agree. Unfortunately the steps they've taken to date
11 just really aren't enough. There is a significant
12 segment of their customer population that we believe has
13 grounding issues there and they don't, at their homes,
14 and those customers don't even know about it and Verizon
15 seems to be unwilling to do anything about it.

16 At a minimum, it would seem that Verizon ought
17 to at least go out and investigate the installations
18 that were done by the contractor that they fired and the
19 employee that they counseled when Bright House made them
20 aware of this issue.

21 Commissioners, you're given great deference in
22 construing your rules and jurisdiction, and even if you
23 think this is a close call, you can -- the courts will
24 defer to you if you have a colorable claim. It's not
25 clear what other entity could address this issue or

1 would be able to. The courts are not a good forum for
2 consumers or for Bright House. Courts take time,
3 they're expensive, and they can't grant injunctions for
4 acts that have already occurred.

5 Moreover, for customers, their first notice
6 that they will have a cause of action will be when the
7 damage has already occurred, and I'm sure that they
8 would prefer that an agency with jurisdiction act to
9 address this issue before someone is electrocuted or
10 their house is burned.

11 Thank you, Madam Chair, Commissioners. I
12 appreciate your indulgence and I just ask that you --

13 **CHAIRMAN CARTER:** Hello.

14 **COMMISSIONER EDGAR:** Excuse me. Thank you to
15 both of the parties. And I was about to say that,
16 Chairman Carter, you are with us?

17 **CHAIRMAN CARTER:** Yes, ma'am. I just wanted
18 to say for the record I've been listening to the music
19 for 32 minutes.

20 (Laughter.)

21 **COMMISSIONER EDGAR:** As I mentioned when we
22 started, we were having some technical difficulty. The
23 Chairman could hear us but we could not hear him, but
24 for the record he has been with us and will continue to
25 be. Thank you for joining us.

1 **CHAIRMAN CARTER:** Thank you, Madam Chair.

2 **COMMISSIONER EDGAR:** Okay. We are going to
3 open it up to questions from the bench. Are there
4 questions for the parties?

5 Okay. Commissioner Skop and then Commissioner
6 Argenziano.

7 **COMMISSIONER SKOP:** Thank you, Madam Chair.

8 Just a quick question for Ms. Keating. You
9 cited a case that you relied on. Can you please restate
10 that case and do you have a copy of it?

11 **MS. KEATING:** I'm afraid, Commissioner, I do
12 not have a copy of it. I do have the cite for it
13 though.

14 **COMMISSIONER SKOP:** Okay.

15 **MS. KEATING:** It's *Albelo v. Southern Bell*.

16 **COMMISSIONER SKOP:** Okay.

17 **MS. KEATING:** It's 682 *So.2d* 1126. It is a
18 commonly cited case on the standard for summary final
19 order. In fact, if I recall correctly, it was cited in
20 the very next recommendation that was on this agenda.

21 **COMMISSIONER SKOP:** Okay. And with respect to
22 that case, does that case strictly deal with disputed
23 issues of fact in terms of final summary order or does
24 it address the matter of lack of subject matter
25 jurisdiction at all?

1 **MS. KEATING:** It is cited for the standard on
2 summary final order.

3 **COMMISSIONER SKOP:** Okay. Then one quick
4 question I guess to Mr. O'Roark. With respect to the
5 chart, I was trying to follow along. Am I correct to
6 understand that the incoming ONT fiber comes in and it
7 splits going partially to coaxial, which would provide
8 the data and video, and the remainder to copper, which
9 would provide the voice? Is that a correct
10 understanding?

11 **MR. O'ROARK:** That is correct.

12 **COMMISSIONER SKOP:** Okay. And I think I have
13 one other question for staff. With respect to some of
14 the Commission rules versus the applicable statute here
15 I guess on Commission Rule 25-4.038, safety, and also
16 Rule 25-4.036, design and construction of plant, how are
17 those rules applicable or not applicable in relation to
18 the statute?

19 **MR. MURPHY:** Commissioner, the statutes deal
20 with regulated services and facilities for the provision
21 of telecommunications. If you go to 25-4.002, the scope
22 of the rules of the chapter that we're talking about,
23 these rules are intended to define reasonable service
24 standards which will promote the furnishing of adequate
25 and satisfactory local and long distance service to the

1 public. They do not extend to in any way cable or VoIP
2 or those services, there's no intent there, and the
3 statutes that they implement do not extend that far.

4 **COMMISSIONER SKOP:** Okay. And I'm -- thank
5 you for that clarification in terms of the scope. With
6 respect to the Commission rule on safety, it doesn't --
7 it's not really that detailed. It speaks to each
8 utility. So how would staff reconcile that in terms of
9 applicability? Would it still relate back to the scope
10 or would staff just assert that the jurisdiction or the
11 statute trumps the rule?

12 **MR. MURPHY:** Well, the reference to utility,
13 utility is defined in the definitions to mean a
14 telecommunications company as set forth in statute.

15 **COMMISSIONER SKOP:** Okay. So in this case, by
16 virtue of the scope of the Commission rules as well as
17 the statute, staff is asserting that the statutory
18 jurisdiction does not extend to the complaint that's
19 being provided by Bright House; is that correct?

20 **MR. MURPHY:** Yes, sir. And along those lines,
21 Bright House does not even assert that in every instance
22 of which they complain that telecommunications is being
23 installed. They say it may be installed. So they're
24 not even able to say that in every instance that Verizon
25 is in fact installing phone service.

1 **COMMISSIONER SKOP:** Okay. Thank you, Madam
2 Chair.

3 **COMMISSIONER EDGAR:** Commissioner Argenziano.

4 **COMMISSIONER ARGENZIANO:** Thank you. I want
5 to focus on the safety issue. And the jurisdiction
6 issue is clear to me. We don't have, to me,
7 jurisdiction of a nonregulated entity. However, what's
8 going to be outstanding in my mind is are we -- how are
9 we dealing with the safety issue and is there really a
10 safety issue? If a wire is disconnected and Ms. Keating
11 said there's fear of electrocution, is that true, number
12 one? And if it is, where do we go from there? And
13 knowing that we do not have regulation over a
14 nonregulated utility, I'm not going to sit here and just
15 say it's okay to leave a wire dangling that's going to
16 electrocute somebody. So somebody has got to make me
17 feel better about where we go from there.

18 Let me, let me just say this too. Would it be
19 then incumbent upon the nonregulated utility to make
20 sure that that wire is not hanging loose? And I'll ask
21 Ms. Keating, are you aware when your service is being
22 disconnected or when Verizon comes in to reconnect -- to
23 connect their service?

24 **MS. KEATING:** Bright House may not be aware of
25 the specific date but they have a real, a good idea

1 because they go out two to five days after the Verizon
2 service is connected to disconnect the Bright House wire
3 out at the tap, which is out towards the road. So they
4 are aware at that point in time. Bright House has taken
5 steps to train its employees to not only be very
6 cautious about this issue but also to check. However,
7 I'd just point out that that's on a going-forward basis.
8 For instances where this has already occurred --

9 **COMMISSIONER ARGENZIANO:** Didn't you say
10 you've worked with Verizon?

11 **MS. KEATING:** Uh-huh.

12 **COMMISSIONER ARGENZIANO:** Isn't there any
13 working with them saying when you come to disconnect,
14 can we be notified the day of disconnection so that we
15 can get there to, to remove the safety hazard?

16 **MS. KEATING:** Absolutely, Commissioner. And
17 the companies do work together in that way. I guess
18 what I'm saying is on a going-forward basis I think
19 Bright House agrees that you will probably see less
20 instances of this problem. And we do agree as well that
21 Verizon has taken steps to better train its installation
22 technicians so that you don't see this going forward. I
23 guess the concern that Bright House really has at this
24 point is that we think there is still a significant
25 segment of Verizon's customer population that has

1 grounding issues currently in existence because of prior
2 instances where Verizon made installations at customers'
3 homes and left Bright House's service ungrounded. These
4 are things that have occurred in the past but nobody has
5 found them yet.

6 **COMMISSIONER ARGENZIANO:** Okay. But don't you
7 know when you don't have service to a home anymore?
8 Can't you have a crew go out and start checking on those
9 prior ones where you had Bright House service one day
10 and then the next month you're not serving that customer
11 anymore? Isn't it incumbent upon you if there is a
12 safety hazard to get out there and check those things?

13 **MS. KEATING:** Commissioner, when Bright House
14 first discovered this problem, Bright House
15 investigated, contacted the Verizon manager, and let
16 them know that there was an issue, provided pictures,
17 provided addresses. And there was communication with
18 that Verizon manager that Verizon was going to take
19 steps to train their personnel and that they were going
20 to do proactive things to make sure this didn't happen
21 in the future.

22 When Bright House asked what Verizon was going
23 to do about instances prior, there was no more
24 communication from Verizon.

25 **COMMISSIONER ARGENZIANO:** Okay. We're

1 clouded. I don't understand. Excuse me. If it's in
2 the past and you knew you had a customer and then you
3 don't have it anymore and you're dependent upon the new
4 company to now call you to tell you that there's a wire
5 dangling that could electrocute somebody, what I'm
6 trying to say is since you don't have that customer
7 anymore, wouldn't it be smart for the company to not
8 have that liability of a wire hanging that could
9 electrocute somebody to go out there since the service
10 has been cut off and make sure that that's not
11 happening? I think it's Bright House's -- I would like
12 Verizon to cooperate, of course, and say, look, here are
13 the places, but I think it's Bright House's
14 responsibility to now cut off that power or whatever it
15 is to that home they're not serving anymore.

16 **MS. KEATING:** Commissioner, I'm sure Bright
17 House will do what it needs to do. But at this point
18 it's Verizon that caused the issue. Bright House has
19 taken steps, has investigated further, has provided both
20 Verizon and the Commission with information, but Verizon
21 is the one that caused the issue. You're talking about
22 Bright House having to go back out to Verizon customers
23 when Bright House did not cause this situation and incur
24 the cost.

25 **COMMISSIONER ARGENZIANO:** Maybe I'm missing

1 something. Okay. If your service is disconnected from
2 a home, is the wire dead? Is there -- where is, where
3 would the electrocution come from, one of your cables?

4 **MS. KEATING:** An ungrounded wire even if it's
5 not connected to a power source --

6 **COMMISSIONER ARGENZIANO:** Is it your
7 ungrounded wire?

8 **MS. KEATING:** It is our ungrounded wire that
9 was disconnected by a Verizon technician in violation of
10 NEC provisions.

11 **COMMISSIONER ARGENZIANO:** If a customer says I
12 don't want your service anymore, I think it's, I think
13 there is a severing there and saying now take your
14 service away. And I understand that Verizon, they were
15 asked by the customer to come in and put a new service
16 in, but I would think liability would make me go out
17 there and just say, okay, if that's a possibility. And
18 my concern is, not the contest between Verizon and
19 Bright House right now, that the consumer does not get
20 electrocuted. Now if it's your wire that's there, I
21 would think that Bright House would have been out there
22 in an, in an instant to try to get rid of that
23 liability.

24 **MS. KEATING:** And Bright House is out there
25 correcting all instances that it finds --

1 **COMMISSIONER ARGENZIANO:** Okay. Good.

2 **MS. KEATING:** -- when it's out there. But,
3 again, these are Verizon customers and the occurrence of
4 this violation is caused by Verizon. And Bright House
5 has already invested company time and money to
6 investigate this issue, to make Verizon aware of it,
7 and, you know, to bring this issue to light. But at
8 this point we feel like the ball is in Verizon's court.
9 They're causing the issue. Shouldn't they have some
10 responsibility in fixing it?

11 **COMMISSIONER ARGENZIANO:** Maybe I can go to
12 staff, back to staff on the questions I asked. And
13 Ms. Keating talks about a violation. Can you tell me
14 what the violation is? Knowing where I want to go and
15 trying to figure out is the consumer going to be harmed
16 and how do we fix that and who's really responsible for
17 it and --

18 **MR. MOSES:** This is Rick Moses with Commission
19 staff. The violation occurs whenever the Verizon
20 installer was installing the FiOS system. Instead of
21 disconnecting the inside coax cable that goes to the
22 people's TV at the customer side of the demarcation
23 point, they were disconnecting Bright House's coax cable
24 and just coiling it back and leaving it loose inside of
25 the container box that it's housed in. That creates a

1 problem with the NEC in that there's a cable on the side
2 of the premises that is no longer grounded. Had they
3 just disconnected the inside coax cable and connected
4 their FiOS cable to that and left the Bright House cable
5 connected to the terminal that it was connected to, it
6 would remain grounded and it wouldn't be an issue.

7 **COMMISSIONER ARGENZIANO:** How is it a -- are
8 we talking about a fire code violation?

9 **MR. MOSES:** The National Electric Code is
10 published by the National Fire Protection Association,
11 which is a committee of members of the insurance
12 business, industry members, architects, all kinds of
13 different people that are on the committee. And all
14 that is is a guideline that is published periodically
15 and it is updated periodically. It's not a document
16 that really has anything other than just an advisory
17 forum. And then it is adopted by regulatory agencies,
18 local franchise authorities, local governments, anybody
19 that wants to adopt it as a standard.

20 **COMMISSIONER ARGENZIANO:** So now let me go
21 back to what I'm trying to get at. If Bright House's
22 service is turned off or the customer says I don't want
23 your service anymore, I'm choosing Verizon, wouldn't,
24 wouldn't it be logical that Bright House would have to
25 go in and remove that wire? If they're not coming to

1 some kind of agreement between each other, saying, hey,
2 when you do this, you have to go inside and remove this
3 wire, wouldn't it be Bright House's obligation to do
4 that?

5 **MR. MOSES:** Normally the companies, both
6 Verizon and Bright House when they do an installation
7 and the customer elects to go to another provider, they
8 do not go back out and remove their equipment in the
9 event that that customer may be dissatisfied and decide
10 to go back with them.

11 **COMMISSIONER ARGENZIANO:** You mean in the
12 litigious society that we are, someone would just leave
13 the customer with the possibility of becoming
14 electrocuted and not go back out and do that? I --

15 **MR. MOSES:** Well, that's not the intent of the
16 installation that occurred because of this mistake.

17 **COMMISSIONER ARGENZIANO:** Sure.

18 **MR. MOSES:** But maybe if I can explain what
19 the danger is, it'll, it'll be helpful.

20 When they disconnect that wire and they just
21 coil it back up inside of there, there is a ground that
22 exists there that's being used by Verizon when they,
23 when they connect their cable. It's a short distance
24 between the end of that coax and that ground, maybe six
25 or eight inches of air space and that's it. If that

1 cable is still connected to Verizon, I mean, excuse me,
2 Bright House's coax network and if an electrical wire is
3 broken and lays across that coax and is able to contact
4 the outer sheath, now you've got the potential of having
5 an electrocution hazard coming through there. Because
6 the coax is a fairly heavy piece of wire that will
7 conduct the amperage, as Ms. Keating illustrated, that
8 it doesn't take a lot to kill a person, and it's got the
9 ability to conduct that amount of electricity. Also, if
10 lightning strikes that cable, there is the possibility
11 because of the high potential that it can arc across and
12 seek that ground and cause a fire.

13 **COMMISSIONER ARGENZIANO:** So we sit here
14 because they're unregulated and do nothing? What I'm
15 trying to figure out is then, is the regulated portion
16 of Verizon then somehow responsible for, for the
17 possibility of somebody being electrocuted? It doesn't,
18 it just doesn't work for me. I'm trying to think if I'm
19 the company that supplied the cable to a home, I would
20 think that I would want to get my cable out of there or
21 get that potential for harming someone out of there.

22 **MR. MOSES:** If they could keep it grounded,
23 there wouldn't be a problem. They could leave it there.
24 There's the problem.

25 **COMMISSIONER ARGENZIANO:** So Bright House is

1 basically wanting Verizon to keep it grounded.

2 MR. MOSES: Correct.

3 COMMISSIONER ARGENZIANO: And if Verizon can
4 answer to me why is that so difficult to do?

5 MR. O'ROARK: Commissioner Argenziano, after
6 the complaint was filed, as Ms. Keating has said and as
7 we noted in our affidavit, we have taken a number of
8 steps concerning the training and discipline and so
9 forth of our employees to ensure that they follow our
10 correct methods and procedures for disconnecting the
11 customer's home wire and connecting it to Verizon's
12 facilities.

13 In addition to that, it is Verizon's practice
14 that when a technician goes out to make a repair, any
15 repair -- it doesn't have to be to the cable facilities,
16 it could be to, on the telecom side -- Verizon will
17 check to make sure that all the facilities are properly
18 grounded. That's on the checklist that the repair
19 person has.

20 And to your point as to, okay, if you take the
21 allegations at face value, what's to be done? We would
22 submit that the best thing is for the parties to work
23 together and we're willing to do that. If for whatever
24 reason the parties aren't able to work together and
25 Bright House still has a concern, there are other places

1 that they can go to have this dispute resolved: Maybe
2 the FCC, maybe in court. The point is not that, gee,
3 this is, this is a problem that nobody has got authority
4 over and nobody can do anything about it. No. There
5 are agencies that can do something about this. The
6 point here is that the Florida Legislature has spoken
7 very clearly using bright-line rules as to what the PSC
8 can handle and what it can't, and this, if you consider
9 it a problem, is a problem that the PSC cannot handle.

10 **COMMISSIONER ARGENZIANO:** And, and I
11 understand that. But it comes down to me if one person
12 gets electrocuted, then both of you companies are
13 responsible. That's how I look at it. Because here we
14 are talking about it today that the potential to
15 actually have someone electrocuted, and we're looking at
16 it as, well, I don't have -- you know, the Florida
17 Legislature says I don't have the authority to regulate
18 and I don't. I see that, I see that that is an
19 unregulated utility and that's what makes it very
20 difficult. But at the same time do we, as individual
21 Commissioners do we -- or one Commissioner, I'm not
22 going to speak for my colleagues, I'm sure they feel the
23 same way, are we going to sit here and just listen and
24 say, well, okay, we can't do anything until somebody
25 gets electrocuted? What are you, both companies doing

1 to prevent that? I mean, my goodness, think about the
2 liability if people -- I don't know how easy that would
3 be to happen. But if the potential was there, I would
4 think that, especially the company whose service is
5 disconnected I think has the responsibility to remove
6 that. I understand what you're saying is the other
7 company has left it this way, but where do you take it
8 from today? I don't know how I could sit here and say,
9 well, okay, we'll send it to civil court or send it
10 someplace else and knowing that somebody could actually
11 get killed. That's what makes it difficult. Even --
12 despite what the Legislature has said, and I understand
13 that, I agree with you, I think that it's totally
14 unregulated and we don't have the right to regulate.
15 But there is a safety concern, and if one person dies,
16 that's just too much.

17 So what the heck are you guys doing to -- you
18 know, if it goes into a long litigious process and
19 somebody gets hurt, what does that say about both
20 companies? And I appreciate the fact that we're trying
21 to work on it, but we're here talking about, well,
22 basically I'm going to say, well, I have no regulation
23 over this. And if somebody dies between now and the
24 time you guys figure out how to solve the problem, it
25 doesn't make me feel better. And I'm sure you as

1 individuals don't, don't appreciate that position
2 either. I'm just wondering what can we leave here
3 feeling, today feeling more comfortable that maybe
4 somebody won't be harmed in a way that seems so flippant
5 if somebody is watching out there? It's okay, you know
6 --

7 **MR. O'ROARK:** Commissioner Argenziano, I'm
8 sorry to interrupt.

9 **COMMISSIONER ARGENZIANO:** Go ahead. I'm
10 sorry.

11 **MR. O'ROARK:** I was just going to say that
12 Verizon has offered to work with Bright House to
13 establish a process where we can try to work through
14 these issues and we are still willing to do that.

15 **COMMISSIONER ARGENZIANO:** And Bright House?

16 **MS. KEATING:** And, Commissioner, Bright House
17 has and is willing to continue to have these discussions
18 with Verizon on this issue. It's just to date we don't,
19 thus far we don't believe that Verizon has stepped up to
20 the plate in a significant way with regard to past
21 occurrences of this issue. But we are more than willing
22 to continue to have these discussions with Verizon.

23 **COMMISSIONER ARGENZIANO:** Can I ask a simple
24 question of both companies? Has anybody alerted the
25 consumer that all they have to do is remove the wire

1 from inside, maybe just prevent them, or you're afraid
2 of liability issues in letting them know? It would be
3 really nice to have the consumer know that you can just
4 remove this coaxial cable and maybe not get
5 electrocuted. Has anybody done that?

6 **MS. KEATING:** These are Verizon customers, so
7 I would assume --

8 **MR. O'ROARK:** To answer your question,
9 Commissioner, Verizon has not sent out that kind of
10 notice.

11 **COMMISSIONER ARGENZIANO:** All I can hope is
12 that the media is listening today, that the consumers
13 would have some kind of warning to be able to get the
14 coaxial out of their house. And I, I hate to say this
15 this way, but I would think Bright House has a
16 responsibility to their past customers since it's their
17 wire to get that message out to those consumers.

18 Thank you, Madam Chair.

19 **COMMISSIONER EDGAR:** Commissioner McMurrin.

20 **COMMISSIONER McMURRIAN:** Yes. To follow along
21 that line of Commissioner Argenziano's, have -- and I
22 think you might have touched on this earlier but I'll
23 ask you both -- have you retrained your workers to deal
24 with the situation that we have to try to make sure that
25 it at least doesn't continue? I realize that you've got

1 an issue with what's been done in the past, but have you
2 both addressed it from a training standpoint going
3 forward?

4 **MR. O'ROARK:** Commissioner McMurrian, Verizon
5 has. We've done extensive retraining of our
6 technicians, we have developed an inspection process, we
7 have stepped up discipline, shortened the disciplinary
8 process when these kind of issues are found. So we have
9 done a number of things to ensure that our methods and
10 procedures are being followed out there in the field.

11 **COMMISSIONER McMURRIAN:** Ms. Keating.

12 **MS. KEATING:** We agree that they have
13 certainly taken steps to reduce the instances of this on
14 a going-forward basis. Our tech, our disconnect techs
15 have found a few more out in the field recently, but
16 significantly fewer than were the original cause for
17 concern.

18 **COMMISSIONER McMURRIAN:** So can I ask you,
19 Ms. Keating, I'm trying not to too much put you on the
20 spot here, but I guess I'm trying to see what it is you
21 want done with respect to the past problems. Are you
22 wanting someone to go back and figure out where all
23 those problems have occurred and do something about
24 those? Has that been done yet or not?

25 **MS. KEATING:** At this point that's the biggest

1 issue is the past occurrences. And Bright House
2 doesn't -- in particular, I think I mentioned, you know,
3 Verizon had fired one of its contractors that it knew
4 was doing installations in violation of the NEC and
5 Verizon's guidelines and they counseled an employee. I
6 mean, Verizon doesn't know which installations were done
7 by those two people. I mean, Bright House doesn't know.
8 So there's no way for Bright House to go survey the
9 population of Verizon customers to see if Verizon's
10 installer improperly disconnected Bright House's
11 facilities.

12 I come back to if, if Verizon had done these
13 installations properly, the Bright House wire remains
14 grounded and there is not an electrocution hazard or an
15 NEC violation. So all we would really seek at this
16 point is for Verizon to go back and do something about
17 the installations that were done improperly.

18 **COMMISSIONER EDGAR:** Commissioner Argenziano.

19 **COMMISSIONER McMURRIAN:** I can wait.

20 **COMMISSIONER ARGENZIANO:** To Verizon, what
21 steps have you taken to go back? I mean, there's a
22 liability issue there. I would imagine that you'd want
23 to make sure if your installer was fired because of
24 improperly connecting, I would think that you'd want to
25 go back and check all of those installations.

1 **MR. O'ROARK:** Again, Commissioner Argenziano,
2 one of the steps that we're taking is that when our
3 repair folks are out in the field doing whatever kind of
4 repair, one of the items on their checklist is to ensure
5 that the facilities are properly grounded. And as you
6 know, we're out in the field quite a lot. So that is
7 one way that we are addressing the embedded base. As
8 I've said, we're also willing to work with Bright House
9 to come up with a process to continue to address this
10 issue.

11 And if I may, Commissioner Argenziano, I
12 understand that some of the allegations here are rather
13 shrill, but I need to point out that Verizon has been in
14 the FiOS business now for more than four years here in
15 Florida and elsewhere around the country. We have done
16 millions of FiOS installations, and many of which have
17 involved migrating service from the cable company to
18 Verizon. Verizon is not aware of a single incident,
19 incidence of electric shock or damage that has resulted
20 from the way Verizon has grounded facilities.

21 **COMMISSIONER ARGENZIANO:** Well, that's great
22 and I appreciate that. What my concern is, listening
23 here, and I don't know -- I'm taking this at face value
24 for both sides. My ultimate concern is what I have
25 jurisdiction to look at and what I can't ignore. And if

1 there's a safety hazard out there, and I didn't hear
2 anybody tell me there's not, and if you had a contractor
3 who was improperly -- now's the time to tell me they
4 weren't or that's not true, but what I'm hearing is that
5 there was a violation by your contractor in connecting
6 these things, leaving something ungrounded. And if that
7 were the case, do you have, instead of just when you go
8 out and repair, do you have any plan in action that goes
9 back to whether that contractor to those homes that the
10 contractor did, do you have some kind of -- you must
11 have a log of where the contractor went to, or is the
12 number so great or so small or --

13 **MR. O'ROARK:** Commissioner Argenziano, as to
14 that specific contractor, as I sit here today I don't
15 know. But, again, one of the things that Verizon has
16 done is we've put in place an inspection program, and as
17 part of that program we ensure that the techs are in the
18 field doing it correctly. And when they don't, they are
19 disciplined and we make sure that the installations are
20 done correctly.

21 **COMMISSIONER ARGENZIANO:** And I think that's
22 admirable and I think that's important. But it doesn't
23 address the concern on the other side that I'm hearing
24 is that there could be many homes out there that you
25 have not inspected yet that could be improperly

1 installed. What are you doing to protect those
2 consumers? And since you are regulated, then I have the
3 right to ask what safety or safety hazard could there be
4 that you should be checking on?

5 MR. O'ROARK: Commissioner Argenziano, if I
6 may, you said because "you are regulated."

7 COMMISSIONER ARGENZIANO: I'm sorry.

8 MR. O'ROARK: With respect to these
9 facilities, we are not regulated by the Commission.

10 COMMISSIONER ARGENZIANO: Right. Well --

11 MR. O'ROARK: And I've tried to describe what
12 we're doing and what we're willing to do going forward
13 with Bright House to address issues they've raised.

14 COMMISSIONER ARGENZIANO: I'm going to take a
15 step back. Yes. I didn't mean regulated. What I mean
16 to that particular box that was Bright House's that has
17 the ungrounded wire, are you going back to look at those
18 homes that could be a safety hazard that have, that
19 were -- the contractor I guess who was fired, do you
20 have anything in place to tell me that at least you're
21 going back there to look at those particular houses?
22 That's what Bright House is saying here, and I don't
23 hear an argument saying that we're looking at those. I
24 don't know who's looking at what. You're going out and
25 forward and looking when you have to go out for a

1 repair, and I think that's great. You want to be doing
2 that.

3 Do you feel or does Verizon feel that there's
4 a safety hazard left dangling out there somewhere,
5 excuse me, from the contractor who you let go?

6 **MR. O'ROARK:** Commissioner Argenziano, based
7 on Verizon's several years of experience, we believe
8 that Bright House's allegations are overblown and
9 exaggerated. And for purposes of today though I
10 understand that we have to live with those allegations
11 and we are. And, again, for purposes of this Commission
12 and today the issue is jurisdiction. We have taken a
13 number of steps, we are taking steps, as I mentioned, to
14 deal with installations that are already out there. And
15 we're willing to sit down with Bright House and take
16 what we think is the appropriate approach here, and that
17 is for the company to try to work together on this.

18 **COMMISSIONER EDGAR:** Commissioners, any
19 further questions? Commissioner McMurrin.

20 **COMMISSIONER McMURRIAN:** Maybe there's a
21 question in here somewhere.

22 I agree with what Commissioner Argenziano said
23 earlier that the jurisdictional issues are clear, and I
24 do think it's true that we all have concern about what
25 we're hearing and we're not sure what's going on. We're

1 not engineers, except for Commissioner Skop, and we're
2 not experts about exactly what's going on out in the
3 field, but we're -- I think that it would be safe to say
4 that we're probably all concerned there, but it doesn't
5 do away with the fact that we don't have jurisdiction in
6 my mind.

7 And I wanted to go back to something
8 Ms. Keating said about how the courts aren't a good
9 forum, and I think you said it was because they can't
10 grant injunctions for acts that have already occurred,
11 and I think I understand what you're saying. But a
12 court would have, I think this is my question, a court
13 would have the ability to look at the facts of the
14 situation and perhaps order whatever party they felt
15 needed to to go back out in the field and look at what
16 had been done in the past, wouldn't they?

17 **MS. KEATING:** Possibly. I'm not a civil
18 litigator and I haven't looked at what would be the
19 appropriate court for this, but certainly in a civil
20 type suit that would be a possibility. But, again, the
21 court process is extremely expensive, extremely time
22 consuming and is not likely to provide a remedy in a
23 short time frame.

24 **COMMISSIONER McMURRIAN:** I hear what you're
25 saying. Madam Chair. I hear what you're saying, but it

1 just seems to me that going through this process is time
2 consuming. And that if the jurisdictional issues are as
3 clear -- because I feel like I tried really hard to
4 give, give your arguments weight. But every time we
5 looked at a different rule, and staff has gone through
6 them here and some of the statutes, everything led back
7 to telecommunications facility or telecommunications
8 company or a monopoly service. And every time those
9 words came up, it sent you right back to this is not the
10 type of service we're dealing with or the facilities
11 we're dealing with. So I just can't seem to get past
12 that.

13 It seems like the court -- and, again, I'm not
14 an attorney and definitely not an expert in that
15 particular area of the law either. But it just seems
16 like a court would have the ability to look at all the
17 facts, and that perhaps if you're not able to work it
18 out somehow -- and I do think that that's the best
19 thing, that if you all could work together and figure
20 out where the problem exists, if the problem exists.
21 I'm not saying that it does. I don't know. That would
22 be the best remedy. It doesn't look like that's very
23 likely, quite frankly, from where I sit. So it seems
24 like it's best to go ahead and take the issue to the
25 court that has jurisdiction over the matter. That's my

1 two cents, Commissioners. I'm not sure what else to
2 ask.

3 **COMMISSIONER EDGAR:** Thank you.

4 Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you, Madam Chair.

6 Just a quick question to staff with respect to
7 the potential safety issue. Again, I think it's well
8 documented that we lack subject matter jurisdiction.
9 Safety is also a big concern for the Commission.
10 However, I think I heard from the parties that the FCC
11 may have jurisdiction over the nonregulated services
12 provided. But I guess my question goes to if these
13 interconnect points are actually attached to a dwelling,
14 would not local authorities, municipalities, what have
15 you, building inspectors, have some sort of jurisdiction
16 to address electrical safety issues?

17 **MR. MOSES:** It's not real clear who would have
18 the authority anymore since they changed the laws and
19 gave statewide franchising authority to the cable
20 companies. Used to when it was a local franchising it
21 could have been part of that franchise agreement, if
22 they so chose to take on that responsibility, but right
23 now it's not clear. I looked at the FCC regulations
24 this morning and couldn't find any reference to the NEC
25 in their regulations. They have a lot of technical

1 specifications as far as signal strength and things of
2 that nature, but nothing on grounding. So I really
3 believe that the court would be the proper place to go.

4 **COMMISSIONER SKOP:** Okay. And I guess some of
5 my colleagues have brought up the suggestion with
6 respect to the parties perhaps getting together and
7 having maybe, for lack of a better word, a joint action
8 team to address this issue to, you know, cooperate. And
9 if one of their representatives sees a problem, you
10 know, they inform and follow up and address these issues
11 in a cooperative manner. You know, certainly I would
12 support that again. It seems like the parties have a
13 fundamental difference, as evidenced by the proceeding
14 before us. But certainly working together cooperatively
15 to address the issue I think would go a long way in
16 terms of ensuring safety issues and standards are met.
17 And to that point I think Commissioner Argenziano raised
18 an excellent point with respect to, you know, some of
19 the issues in our litigious nature of our society. You
20 know, often times, and maybe this is just a commentary
21 on society, but often times I think from a business
22 perspective these days, right or wrong, it's often
23 cheaper to accept a remote claim than it is to take the
24 time and the expense to tie up the loose ends on
25 something. It seems to me at least over my lifetime

1 just the manner in which society approaches things has,
2 has changed substantially. But, again, you know, tort
3 litigation, the courts may be an alternate option
4 should, you know, some sort of damage occur.

5 But, again, I think to Ms. Keating's point,
6 she had mentioned that there's numerous issues, disputed
7 issues of fact here. You know, I guess my conclusion
8 based on staff's recommendation and my own legal
9 judgment would be you would never reach disputed issues
10 of fact in the absence of subject matter jurisdiction,
11 and I don't think we have that. So, again, I'm
12 struggling with the issue of how to protect consumers,
13 but I'm also trying to grapple with, you know, could the
14 parties work together to, to address this issue
15 proactively, and then how attenuated is the possibility
16 of actual damage occurring? Is it, you know, a once in
17 a, you know, great lifetime event that something like
18 that would ever happen? Because from what I heard from
19 our staff, you have to have a couple of things come
20 together in sequence to, to have that occur in the first
21 place; not to say it could never happen and not to say
22 that it could not cause significant harm or damage
23 should those events occur. But, again, I just wanted to
24 kind of throw my two cents in there and further the
25 discussion.

1 **COMMISSIONER EDGAR:** Thank you, Commissioner.
2 Commissioner Argenziano.

3 **COMMISSIONER ARGENZIANO:** I just want to go
4 over a couple of things very quickly because as far as
5 the jurisdictional portion of what we have here, as you
6 indicate on your chart, the blue we do not regulate, the
7 red we do. That's what I was mentioning before as far
8 as Verizon. In that particular part we regulate the
9 red. We have, we have regulation over the red. And my
10 comment before was indicating that could it be stretched
11 out as far to say that since you're putting the red in
12 place, the component that Bright House has is not
13 regulated by us? So looking at that component and
14 saying, well, do you have jurisdiction of that in the
15 blue, no, I don't, and we can't look at that. But my
16 question I think was, and I'm trying to articulate it,
17 is since you have a red component there which is
18 regulated and affected the nonregulated portion that
19 possibly could arrive, possibly could be a safety
20 hazard, that kind of draws in my feeling of possible
21 having, possibly having some type of jurisdiction or
22 that -- and I don't want to make it more complicated
23 than it is.

24 I guess my point is what I'm hearing is that
25 Verizon is acting proactively to go out, when they go

1 out for repairing to see, to make sure that everything
2 is connected right and don't feel, I guess they don't
3 feel that there's maybe as large a hazard as Bright
4 House is indicating.

5 Bright House feels there is a bigger problem.
6 Staff has indicated to me that there's a possibility
7 that in the event certain things do happen, they may be
8 unlikely, but if they do, someone could be electrocuted.
9 And let's say it, you know, let's not do the Pinto thing
10 here, that it was easier or cheaper to make one or two
11 people get electrocuted than actually go out there and
12 fix the problem.

13 And I guess really what it comes down to, and
14 I still see that that one component really is Bright
15 House and we don't regulate Bright House. But since
16 there is a red component that we do regulate, does that
17 give me any kind of ability to say -- and that to me
18 would help me a lot -- to say that since you have a red
19 component here that we do regulate and there is a safety
20 concern, do I have any kind of authority there to say,
21 hey, start making sure that something happens here that
22 the safety concern is taken care of?

23 **MR. MURPHY:** Staff's opinion is no. The
24 entire complaint has to do with the unregulated Verizon
25 piece being attached to the -- or manipulating with the

1 unregulated Bright House piece. We just don't see that
2 there is any Commission jurisdiction there.

3 **COMMISSIONER ARGENZIANO:** So even though there
4 is a red component, I can see somebody -- if Bright
5 House, Ms. Keating, wants to answer, and I would ask
6 Verizon to do the same. So even though there is a
7 regulated component in there?

8 **MR. MURPHY:** Well, as I suggested, when you
9 look at Bright House's pleading, they can't even say,
10 and they don't say in their argument, that in every
11 instance there is even a phone being installed. They
12 are saying that phone may be being installed, because
13 Verizon doesn't always offer this service in conjunction
14 with telephones.

15 **COMMISSIONER ARGENZIANO:** Right. But on the
16 other hand you could is there no phone service being
17 installed?

18 **MR. MURPHY:** Yes, it could be that there is no
19 phone service being installed.

20 **COMMISSIONER ARGENZIANO:** But they're not
21 saying that. So if there's a possibility, then it
22 remains that there is phone service being installed,
23 which is regulated.

24 **MR. MURPHY:** Well, the other piece is that
25 their remedy is to have Verizon go out and inspect

1 thousands of unregulated facilities. I mean, the
2 question would be what is our jurisdiction.

3 **COMMISSIONER ARGENZIANO:** It wouldn't be
4 thousands. It would be thousands that they unhooked by
5 that one contractor. And I still see that Bright House
6 has a responsibility, too, because it is their
7 component, and it's their wire, I believe, that's in the
8 home that could electrocute the person --

9 **MR. MURPHY:** Well, I believe that Ms.
10 Keating's argument is that because they in some
11 instances are concurrently installing phone service,
12 that you would have jurisdiction over the process of
13 that. And while they are doing that, concurrently they
14 are doing this other alleged mischief that you would
15 then have jurisdiction. I believe that that is a fair
16 representation of her argument.

17 **COMMISSIONER EDGAR:** Ms. Keating.

18 **MS. KEATING:** Madam Chair, may I respond to
19 the Commissioner's question?

20 **COMMISSIONER EDGAR:** Please.

21 **MS. KEATING:** With the Chair's indulgence and
22 with counsel's permission, could I perhaps use your --
23 you were talking about the difference between the
24 facilities and whether telecommunications comes into
25 play.

1 One thing that I think gets overlooked is that
2 when Verizon is installing this wire, this is what both
3 of the services are carried on. Their video, their
4 broadband, and their voice are carried on this wire at
5 the same time. It is only when it is brought into the
6 ONT that it's split.

7 So when Verizon is doing this installation
8 process, which we argue is what you should be looking at
9 as the whole process, they are, in many instances, if
10 not most, concurrently installing a regulated and an
11 unregulated service. Because before this wire hits the
12 box it's carrying both. And so we believe that you
13 should be looking at the process as a whole, because it
14 involves both.

15 **COMMISSIONER EDGAR:** Commissioner.

16 **COMMISSIONER ARGENZIANO:** I guess what I'm
17 coming up with is that both companies have a
18 responsibility to make sure that they have not left any
19 person with a safety hazard. And it would be great if
20 you both could get together and make sure it doesn't
21 happen. Because I will tell you, I mean, if it were my
22 son, or my mother, or someone I loved that got
23 electrocuted, in the case that it could happen, and
24 nobody told it couldn't happen, I would be one unhappy
25 person with both companies. And I just would like to

1 know. And rather than we do the legal thing that we
2 have to do all the time, is that both companies are
3 really trying hard to make sure that doesn't happen.

4 And I guess looking back at some of the
5 installations that were done, it may be costly, but it
6 may be wise to do on both companies' parts. I mean,
7 right now what I'm seeing is that there are some areas
8 of regulation that we have. When it comes to that one
9 box, probably not. But I would hope that we could just
10 get some kind of -- and I know there is a civil court,
11 and that's probably where it's going to go, but I would
12 hope that both companies would just really try harder to
13 make sure that something is done and not just say, well,
14 it's your responsibility; oh, no, it's yours. Just get
15 together and do it. I mean, I don't know how that
16 doesn't make better sense to everybody.

17 Sorry, Madam Chair, but --

18 **COMMISSIONER EDGAR:** Commissioner Skop.

19 **COMMISSIONER SKOP:** Thank you, Madam Chair.

20 Just to staff based on Ms. Keating's
21 analysis -- I mean, argument that she just made. How
22 would that change the analysis, if any, as to the
23 character of the incoming signal in terms of the
24 fiberoptic into the ONT?

25 **MR. MOSES:** Are you speaking in reference as

1 far as compliance with our rules?

2 COMMISSIONER SKOP: Just in general. I mean,
3 I would like to get staff's professional opinion as to
4 whether that should change, if at all, the staff
5 recommendation on this issue, the point raised by
6 Ms. Keating.

7 MR. MOSES: It would not change the
8 recommendation.

9 COMMISSIONER SKOP: Thank you.

10 COMMISSIONER EDGAR: Commissioners, any
11 further discussion?

12 And, again, what we have before us is a
13 request for a granting of summary judgment or, in the
14 alternative, motion to dismiss.

15 CHAIRMAN CARTER: Madam Chair.

16 COMMISSIONER EDGAR: Mr. Chairman.

17 CHAIRMAN CARTER: Can you hear me?

18 COMMISSIONER EDGAR: We can hear you. Go
19 right ahead.

20 CHAIRMAN CARTER: Okay. I'm having trouble
21 hearing you guys.

22 I just wanted to have one question to
23 Mr. O'Roark. I know we don't have jurisdiction, and it
24 is fairly clear on that, but just as a matter of common
25 sense, would Verizon be willing to go back and at least

1 look at that area where they terminated the contract at
2 least to evaluate that?

3 **COMMISSIONER EDGAR:** Mr. O'Roark, can you
4 respond?

5 **MR. O'ROARK:** Mr. Chairman, as I sit here
6 right now, I don't know if we know everywhere that the
7 contractor was. We may. Just as a lawyer sitting
8 before you, I'm not sure. I will take that action item
9 back.

10 **CHAIRMAN CARTER:** I'd like to request that you
11 guys do that. I mean, you know the contractor at
12 least -- it should be fairly simple to find the
13 geographical areas where he worked, where he conducted
14 those installations and all. And I think at a minimum,
15 just as a good neighbor, you guys would want to go back
16 and do that.

17 **MR. O'ROARK:** I will take that back to my
18 client.

19 **COMMISSIONER EDGAR:** Thank you, Mr. O'Roark.

20 **CHAIRMAN CARTER:** Thank you, Madam Chair.

21 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.
22 Commissioner Argenziano, did you have a -- no.

23 **MR. MOSES:** Commissioner.

24 **COMMISSIONER EDGAR:** Yes, Mr. Moses.

25 **MR. MOSES:** One other suggestion that you

1 might want to consider. Since it is kind of a liability
2 on both sides that there is the potential of
3 electrocution, and it's my understanding, at least
4 unless they have changed the way they code tickets and
5 everything, that when these installations are done that
6 Verizon would know who installed the FIOS systems,
7 whether it be a contractor or whether it be the person
8 that they counseled. Would it be acceptable if the
9 companies were to take that list and split it down the
10 middle and both of them go out and inspect each half of
11 it, and that way they kind of split the cost among both
12 companies and it wouldn't be such a huge financial
13 burden on them.

14 **CHAIRMAN CARTER:** It makes sense to me.

15 **COMMISSIONER ARGENZIANO:** No takers?

16 **MR. O'ROARK:** From Verizon's standpoint, as I
17 sit here right now I'm not authorized to be able to say
18 we can do that. We have, as I said, been willing to
19 work with Bright House and establish a process and we
20 remain willing to do that.

21 **COMMISSIONER EDGAR:** Ms. Keating, anything
22 additional?

23 **MS. KEATING:** Likewise, I can't really speak
24 for Bright House as to whether they would be willing to
25 do that. I will take that back to my client. I'm sure

1 they will have a bit of a concern about taking on costs
2 for an issue they didn't create, but I will certainly
3 take that back to my client and make them aware of that
4 suggestion.

5 COMMISSIONER ARGENZIANO: Madam Chair.

6 COMMISSIONER EDGAR: Commissioner.

7 COMMISSIONER ARGENZIANO: Just a question and
8 possibly a sneeze. Excuse me. All right. I've got it
9 under control, I think.

10 How many people -- how many potential clients
11 could be affected?

12 MR. MOSES: I don't really have that
13 information. I think maybe Verizon could answer that
14 question.

15 COMMISSIONER ARGENZIANO: I mean, we don't
16 really know. Could it be really minimal, could it be
17 really large? Is there any idea? Does Verizon know?

18 MR. O'ROARK: Commissioner Argenziano, we
19 could get back to you with that. I'm not sure I can
20 tell you as I sit here today.

21 COMMISSIONER ARGENZIANO: Does Bright House?

22 MS. KEATING: I'm not sure, either, with
23 regard to the two specific personnel that have been
24 addressed. I know we had some general ideas based on
25 the audit that we did, but that was not specific to

1 those installers.

2 **COMMISSIONER EDGAR:** Of course, Commissioner,
3 as you pointed out it only takes one to go dreadfully
4 wrong for there to be an obviously incredibly
5 unfortunate situation.

6 Commissioners, we have had a good discussion.
7 I think we have given good direction to the companies
8 and also to our staff. We do have before us for
9 decision today a request for a motion for summary final
10 order. Is there discussion on that?

11 Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam Chairman.

13 I guess at the appropriate time, maybe this
14 would be a good point, I would move to adopt Staff's
15 recommendations as to Issue 1 through 4 with the further
16 understanding that Verizon has agreed to conduct an
17 internal review, if I heard them correctly, as to
18 looking at the installations and as to whether they may
19 wish to go back and do an inspection to ensure that
20 those connections are, in fact, safe.

21 **COMMISSIONER EDGAR:** Thank you, Commissioner.

22 **CHAIRMAN CARTER:** Second.

23 **COMMISSIONER EDGAR:** Thank you, Commissioner
24 Skop. We have a second from Chairman Carter.

25 And, Commissioner Skop, if I may, recognizing

1 that we have disposed of Issue 1, and that 2, 3, and 4
2 go together as a package, that's inclusive in your
3 motion and the second.

4 Commissioners, any further discussion on the
5 motion before us?

6 Hearing none, all in favor say aye.

7 (Simultaneous aye.)

8 **COMMISSIONER EDGAR:** Opposed? Show it
9 adopted. Thank you to our staff and to the parties.

10 Commissioners, we will take just five minutes
11 for a brief stretch while we trade out and switch
12 subject areas. We are on break for five minutes.

13 **CHAIRMAN CARTER:** Madam Chairman.

14 **COMMISSIONER EDGAR:** Commissioner Carter.

15 **CHAIRMAN CARTER:** Just before you break, just
16 for the record, I just wanted the record to reflect that
17 I voted in the affirmative for the move staff list.

18 **COMMISSIONER EDGAR:** Thank you. We will make
19 note of that. And we are on brief break. Thank you.

20 **CHAIRMAN CARTER:** Okay.

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STATE OF FLORIDA)
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)
COUNTY OF LEON)


CERTIFICATE OF REPORTERS

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.


IT IS FURTHER CERTIFIED that we stenographically the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 18th day of May, 2009.

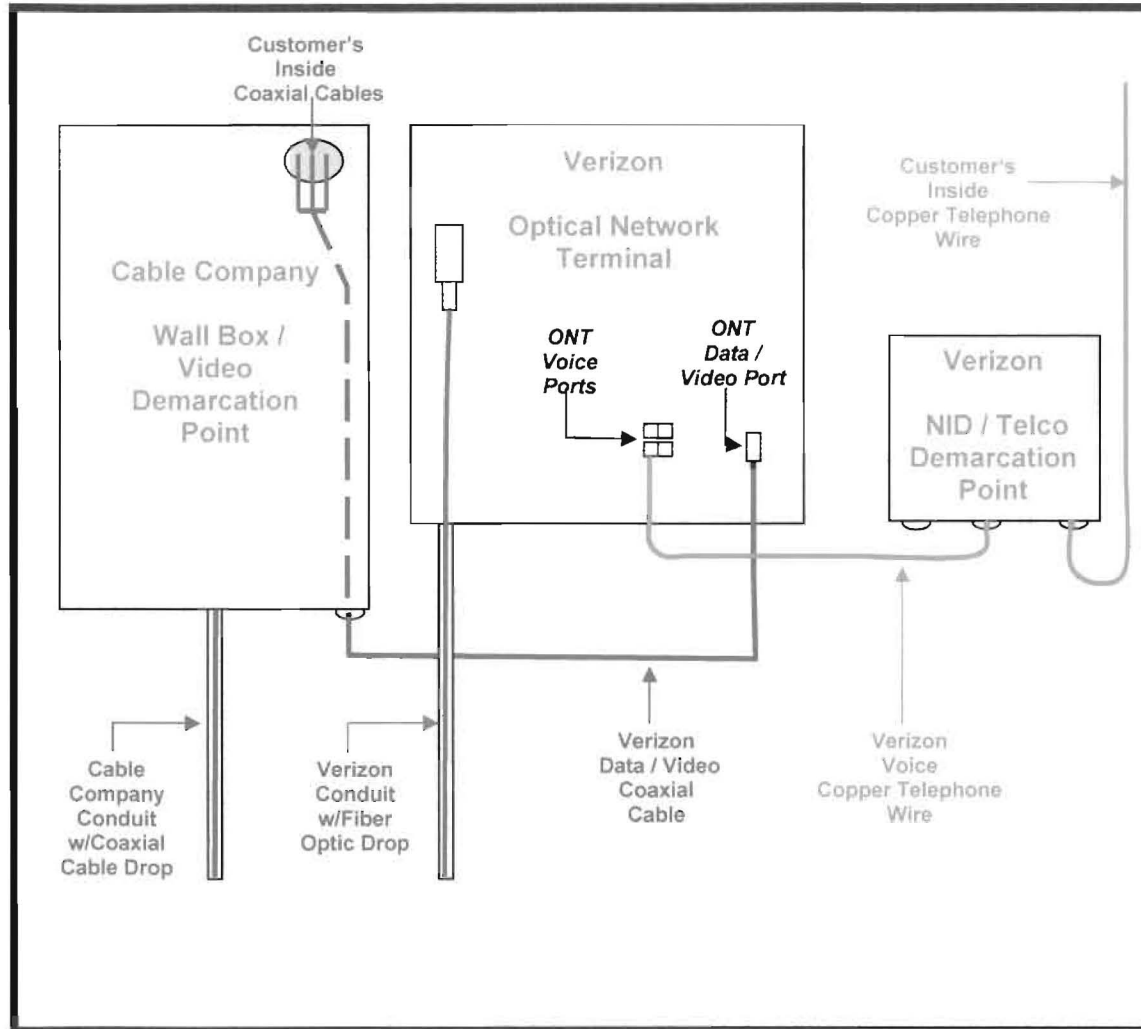


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Parties/Staff Handout
Internal Affairs Agenda
on 5/15/09
Item No. 4
080701-TP



425 1 y76577fe425.htm 425

Filed by Chesapeake Utilities Corporation
 Pursuant to Rule 425 under the Securities Act of 1933
 And Deemed Filed Pursuant to Rule 14a-12
 under the Securities Exchange Act of 1934
 Subject Company: Florida Public Utilities Company
 Commission File No.: 001-10608
 Date: April 20, 2009


CHESAPEAKE
 UTILITIES CORPORATION


FLORIDA PUBLIC
 UTILITIES

Shared Future

Merger Conference Call April 20, 2009

John Schimkaitis
Jack English
Mike McMasters
Beth Cooper

President and CEO, CPK
Chairman, President and CEO, FPU
Executive Vice President and COO, CPK
Senior Vice President and CFO, CPK

~~Parties~~ Staff Handout
 Internal Affairs Agenda
 on 5/5/09
 Item No. 10
 080366-MLL

CHESAPEAKE
ENERGY SERVICES CORPORATION



Shared Future

Strategic Benefits from FPU's Perspective

- ❖ Potential for meaningful increase in value to FPU's shareholders
- ❖ Earnings accretion in 2010 for FPU shareholders
- ❖ Increased financial strength and access to capital to profitably fund growth
- ❖ Geographic and regulatory diversity
- ❖ Combines two companies that have similar values
- ❖ Larger corporate infrastructure to support business needs and meet increasing public company regulations

13

CHESAPEAKE

Shared Future

Synergy Potential

- ❖ The merger is expected to be earnings neutral or slightly accretive in 2010 and meaningfully accretive in 2011
- ❖ **Corporate overhead cost reductions**
 - Audit, legal, insurance, etc.
 - IT integration
 - Administrative and other public company costs
- ❖ **Operational efficiencies**
 - Utility billing system
 - Facilities and related costs
 - Other operating efficiencies
- ❖ In addition, combined company will continue to work towards longer-term implementation of best practices
- ❖ **Significant opportunities for cost savings in Florida based upon the above, i.e.,:**
 - the elimination of administrative redundancies
 - the implementation of operational efficiencies
 - the adoption of best practices
- ❖ Transition team to develop plans to achieve targeted synergies

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**CHESAPEAKE**
UTILITIES CORPORATION**FLORIDA PUBLIC**
UTILITIES

Shared Future

Financial Attributes

- ❖ Earnings neutral to mildly accretive in 2010
- ❖ Meaningfully accretive to earnings in 2011 based upon Chesapeake's earnings expectations
- ❖ Broader shareholder base
- ❖ Debt to total capitalization: range of 45-50% over next five years
- ❖ Dividend payout to be approximately 60% in 2010
- ❖ Interest coverage ratio: about 3.2-3.9x
 - Well above the 1.2x required by our Senior Notes
- ❖ Incremental goodwill of approximately \$28 million

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The Chesapeake logo features the word "CHESAPEAKE" in a bold, sans-serif font. Below it, in a smaller font, is the text "A CHESAPEAKE ENERGY COMPANY".

Shared Future

Organizational Discussion

- ❖ **Board Composition**
 - Two FPU Board members will join the Chesapeake Board of Directors
- ❖ **Management**
 - Chesapeake management team will be unchanged
 - **Florida management team**
 - John Schimkaitis will become Chairman and CEO of FPU.
 - **Jack English will be retained as a consultant for up to twenty-four (24) months to assist in the integration**
- ❖ **Headquarters**
 - Headquarters of Chesapeake remains in Dover
 - **Combined Florida utilities will be renamed Florida Public Utilities; Florida administrative groups to be combined**

CHESAPEAKE



Shared Future

Summary

- ❖ Long-term value for shareholders of both companies
- ❖ Larger critical mass in Florida operations
- ❖ Significant synergy savings potential
- ❖ Strong balance sheet/proven access to capital
- ❖ Merger creates larger, stronger platform for future growth
- ❖ Closing is expected in the fourth quarter of 2009

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