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# TROUTMAN SANDERS

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February 23, 2010

VIA HAND DELIVERY

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10 MAR -2 AM 7:11  
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Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Re: **Bright House Networks LLC v. Tampa Electric Company, File No. EB-06-MD-003**


Dear Madame Secretary:

Please find enclosed an original and four copies of Tampa Electric Company's Motion to Withdraw and Amended Motion for Leave to Supplement the Record and Renewal of Request for Evidentiary Hearing. Also enclosed is a return copy that we ask that you file-stamp and return to the courier.

This Amended Motion is being filed in replacement of Tampa Electric's February 12, 2010 filing, which was not filed pursuant to 47 C.F.R. § 1.731.

Tampa Electric respectfully requests that the Commission file this Motion in the above-captioned proceeding pursuant to the Commission's standard procedures and pursuant to 47 C.F.R. § 1.731.

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SSC \_\_\_  
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OPC \_\_\_  
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Sincerely,  
  
Benjamin A. Gastel

cc: Michael Engel, FCC, Market Disputes Resolution Division

10 MAR -2 AM 11:20  
COMMISSION CLERK  
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10 MAR 2010  
FPSC-COMM-06-00000000

ATLANTA CHICAGO HONG KONG LONDON NEW YORK NEWARK NORFOLK ORANGE COUNTY  
RALEIGH RICHMOND SAN DIEGO SHANGHAI TYSONS CORNER VIRGINIA BEACH WASHINGTON, DC

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
BRIGHT HOUSE NETWORKS, LLC, )  
 )  
    *Complainant,* )  
 )  
    v. )  
 )  
TAMPA ELECTRIC COMPANY, )  
 )  
    *Respondent.* )

File No. EB-06-MD-003

To: Enforcement Bureau  
Market Disputes Resolution Division

**TAMPA ELECTRIC COMPANY'S MOTION TO WITHDRAW AND AMENDED  
MOTION FOR LEAVE TO SUPPLEMENT THE RECORD AND RENEWAL OF  
REQUEST FOR EVIDENTIARY HEARING**

On February 12, 2010, Tampa Electric Company ("TECO") filed a Motion for Leave to Supplement the Record and Renewal of Request for Evidentiary Hearing (the "Motion for Leave"). Pursuant to request from opposing counsel seeking to protect the confidential nature of the material filed in the Motion to Leave, TECO now respectfully requests that it be permitted to withdraw the Motion to Leave and file this Motion to Withdraw and Amended Motion for Leave to Supplement the Record and Renewal of Request for Evidentiary Hearing (the "Amended Motion"). This Amended Motion is identical in all material respects with the Motion for Leave except that it is filed pursuant to 47 C.F.R. § 1.731 in order to protect the confidential information contained herein.

Pursuant to 47 C.F.R. §1.1407(a) TECO, through its undersigned attorneys, hereby requests authority from the Federal Communications Commission ("Commission") to file a

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Supplement setting forth newly discovered evidence in response to the above-referenced Complaint filed by Bright House Networks, LLC (“BHN”).

As the Commission is aware, the parties to this proceeding are also parties to a civil action before the Circuit Court of the 13<sup>th</sup> Judicial District in Hillsborough County, State of Florida.<sup>1</sup> Discovery in that action was stayed for an extended period at BHN’s request. The stay was lifted on May 22, 2008, but discovery again stalled while BHN attempted an appeal. Discovery finally began in August, 2008 and was concluded on February 5, 2010.

During the course of discovery, TECO uncovered a significant volume of evidence conclusively demonstrating that BHN’s attachments to TECO’s poles were used to provide telecommunications service throughout the period from 2001 through the present. Specifically, TECO has discovered that BHN, its affiliate Bright House Networks Information Service (“BHNIS”), and other unaffiliated telecommunications companies (including, but not limited to, XO Communications, T-Mobile, and Time Warner Telecom) have used and are currently using BHN’s attachments to provide telecommunications services. This evidence includes hundreds of contracts for the provision of telecommunications service, product manuals detailing the specific telecommunications services offered, internal BHN correspondence and other business records documenting BHN’s own activities as a telecommunications carrier, and the testimony of numerous BHN and BHNIS personnel.

This evidence confirms the use of BHN’s attachments by unaffiliated carriers to provide telecommunications services to their customers. This evidence also confirms BHN’s transport of Digital Voice phone service for BHNIS and shows BHN’s past representations regarding Digital Voice in this proceeding to have been misleading and in some cases false. And this evidence

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<sup>1</sup> See *Tampa Electric Company v. Bright House Networks, LLC*, Civil Action File No 06-00819, Circuit Court of the Thirteenth Judicial Circuit In and For Hillsborough County Florida.

confirms BHN's substantial and pervasive wholesale and retail transport business, including services such as Metro Ethernet private line service, unbundled internet access, virtual private network service, and carrier last-mile transport, which BHN and its predecessors have provided using TECO's poles.

TECO is still reviewing these materials, which include more than 160,000 pages of documents and 14 depositions. Based on these records and other information that has come to light, TECO anticipates that the trial, scheduled to begin on March 8, 2010, will reveal still more evidence of BHN's attachments being used to provide telecommunications service.

This body of evidence, all of which has surfaced since the closing of the pleading cycle in the above-captioned Complaint proceeding, is directly relevant to the issues raised by the pleadings and could not have been submitted by TECO in its Response because BHN had not disclosed it. Indeed, much of this evidence shows that BHN's prior submissions in this proceeding, including its Interrogatory Responses ordered by the Commission, were inaccurate or incomplete. TECO is now requesting that the Commission permit TECO to supplement the record with representative samples of the aforementioned additional evidence. The evidence TECO intends to submit includes evidence provided to the Court with TECO's motion for summary judgment, a copy of which is attached hereto<sup>2</sup>, and other selected evidence that TECO is currently assembling and will file promptly after the upcoming trial.

TECO recognizes that pole attachment complaint proceedings are usually intended to be streamlined and simple, but BHN's use of this particular complaint proceeding as a tactical device to impede the Hillsborough County breach of contract action, coupled with BHN's now documented tactics of concealment and misrepresentation, makes this a most unusual case.

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<sup>2</sup> The Motion for Summary Judgment and Memorandum of Law in Support thereof is contained within the CD attached hereto.

TECO notes that BHN has already made supplemental submissions of its own in this proceeding from materials obtained during the civil litigation discovery process.

As the Commission will recall, TECO has requested an evidentiary hearing be held in this proceeding. The sheer volume and scope of evidence confirming the provision of telecommunications services over BHN's attachments is better suited to an evidentiary proceeding than to the normal 3-pleading cycle. BHN's sustained, and long-successful, efforts to prevent that evidence from coming to light made it impossible for TECO to put this evidence before the Commission in TECO's Response. TECO respectfully submits that BHN's conduct merits a thorough review by the Commission, and that an evidentiary hearing is the appropriate context for that review.

Respectfully submitted,

TROUTMAN SANDERS LLP

A handwritten signature in black ink, appearing to read 'B A D', is written over a horizontal line.

Robert P. Williams II  
Benjamin A. Gastel  
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Atlanta, Georgia 30308  
(404) 885-3000 (telephone)  
(404) 885-3900 (fax)

*Counsel to Tampa Electric Company*

Dated: February 22, 2010

**CERTIFICATE OF SERVICE**

I, Robert P. Williams, hereby certify that a copy of the foregoing TAMPA ELECTRIC COMPANY'S MOTION TO WITHDRAWAL AND AMENDED MOTION FOR LEAVE TO SUPPLEMENT THE RECORD AND RENEWAL OF REQUEST FOR EVIDENTIARY HEARING has been served upon the persons listed below by first-class mail, postage prepaid or by hand delivery(\*) this 22<sup>nd</sup> day of February 2010 to:

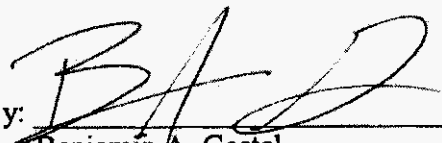
Alexander P. Starr, Esq.\*  
Chief  
Market Disputes Resolutions Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 5C828  
Washington, D.C. 20554

Rosemary McEnery, Esq.\*  
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Office of the General Counsel  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

By:   
Benjamin A. Gastel

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Respectfully submitted,

TROUTMAN SANDERS LLP



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(404) 885-3900 (fax)

*Counsel to Tampa Electric Company*

Dated: February 23, 2010

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Chief  
Market Disputes Resolutions Division  
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STATE OF FLORIDA

COMMISSIONERS:  
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NATHAN A. SKOP  
DAVID E. KLEMENT  
BEN A. "STEVE" STEVENS III



OFFICE OF COMMISSION CLERK  
ANN COLE  
COMMISSION CLERK  
(850) 413-6770

**Public Service Commission**

**ACKNOWLEDGEMENT**

DATE: March 2, 2010

TO: Benjamin A. Gastel, Troutman Sanders

FROM: Ruth Nettles, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

**This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket Number EB-06-MD-003 or, if filed in an undocketed matter, concerning attachment to Tampa's motion to withdraw and amended motion for leave to file supplement, and filed on behalf of Tampa Electric Company. The document will be maintained in locked storage.**

**If you have any questions regarding this document, please contact Kim Peña, Records Management Assistant, at (850) 413-6393.**

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