

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090501-TP

In the Matter of:

PETITION FOR ARBITRATION OF
CERTAIN TERMS AND CONDITIONS OF
AN INTERCONNECTION AGREEMENT
WITH VERIZON FLORIDA, LLC BY
BRIGHT HOUSE NETWORKS INFORMATION
SERVICES (FLORIDA), LLC.



_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 12

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, November 9, 2010

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

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER DATE
09440 NOV 16 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** Let's go to Item Number
3 12.

4 **MR. BLOOM:** Good morning, Commissioners.
5 You have before you Staff's recommendation on the
6 eight issues requiring resolution of Docket Number
7 090501 between Bright House Networks Information
8 Services and Verizon Florida.

9 Bright House filed its initial petition in
10 November of 2009 seeking rulings from this
11 Commission on roughly 50 issues. That number was
12 pared down to eight by the time the matter went to
13 hearing in May, and Staff is prepared to move
14 forward at this time in whatever manner the
15 Commission deems appropriate. I would point out
16 that we are posthearing, so participation is limited
17 to Commissioners and Staff.

18 **CHAIRMAN GRAHAM:** Thank you, Mr. Bloom.

19 Panel, just to let you know -- I'm sorry,
20 Commission board, just to let you know that this is
21 a panel that does not include me, so I'll just be
22 conducting it, but I cannot be voting on it. That
23 being said, to the board.

24 Commissioner Skop.

25 **COMMISSIONER SKOP:** Thank you.

1 To staff on Issue 7, I read the staff
2 analysis, and I'm trying to get a better perspective
3 as to why staff rejected the Verizon position
4 regarding Section 50 of the general terms and
5 conditions entitled "Withdrawal of Services."

6 **MR. MURPHY:** This is Charles Murphy on
7 behalf of staff. When it came to presenting facts
8 that would tend to support it, the only facts that
9 were in evidence was impairment, and I think the
10 parties recognized how impairment would be handled,
11 and staff was convinced that you could go forward
12 under the change in existing law, statute and apply
13 that to impairment, because it would require a
14 change in the regulatory treatment by the FCC for a
15 central office, and that the change in law
16 provisions would be adequate.

17 There was also a good bit of evidence that
18 this was a one-sided proposition. That Verizon
19 could unilaterally, on thirty days notice cancel it,
20 and it could be done without a change in law. It
21 could be done with what was perceived as a change in
22 circumstance or even a change in interpretation of
23 existing law. And that seemed pretty far reaching
24 for something that would, in essence, negate the
25 benefit of having a contract. It created a

1 situation where Bright House would be very
2 vulnerable in the future.

3 **COMMISSIONER SKOP:** Okay. And moving on
4 to Issue 24, where the Commission was asked to
5 determine if access toll connection of ATC trunks
6 qualifies as interconnection facilities that should
7 be priced according to Total Element Long Run
8 Incremental Costs, TELRIC principles. Can staff
9 briefly explain why they adopted what appears to be
10 the Bright House position on that?

11 **MR. BLOOM:** Yes, sir, Commissioner.

12 Fundamentally, we do not believe that
13 there is -- we don't believe that Bright House was
14 persuasive in showing that those access toll
15 interconnection trunks were interconnection
16 facilities. I would point out that interconnection
17 is the mutual exchange of traffic between two
18 companies. And in this case, those trunks do not
19 result in a mutual exchange of traffic. They route
20 traffic from Bright House customers to the IXCs of
21 the Bright House customer's choice.

22 **COMMISSIONER SKOP:** Okay. And then just
23 one final question. On Issue 36A where it talks
24 about termination of traffic, I believe, if I read
25 this correctly, staff has adopted the Commission

1 precedent regarding that the originating carrier
2 pays, is that correct?

3 **MR. TRUEBLOOD:** Frank Trueblood,
4 Commission staff. That's correct, Commissioner
5 Skop.

6 **COMMISSIONER SKOP:** Okay. All right. I
7 think that's the only questions that I have. I will
8 be voting against the staff recommendation on Issue
9 7.

10 **CHAIRMAN GRAHAM:** Thank you, Commissioner
11 Skop.

12 Any other questions, concerns, comments?
13 Commissioner Skop indicated he is voting
14 against Issue 7, was it?

15 **COMMISSIONER SKOP:** Actually, I'm for
16 Issue 7, but I guess the way the staff
17 recommendation is styled, it's a little bit
18 confusing. I agree with staff's recommendation, but
19 I disagree that Section 50 should be stricken, so
20 that's probably the better way to clarify it. So I
21 guess I concur in part and dissent in part on Issue
22 7.

23 **CHAIRMAN GRAHAM:** Would you like to make a
24 motion?

25 **COMMISSIONER SKOP:** Sure.

1 I move staff recommendation on all issues
2 with the exception of Issue 7, in which I would deny
3 staff's recommendation that Section 50 should be
4 stricken.

5 **CHAIRMAN GRAHAM:** If I may, can I get you
6 to move all recommendations of staff on everything
7 but Issue 7, and we can come back and clarify that?

8 **COMMISSIONER SKOP:** That's fine.

9 I'll move staff recommendation on all
10 issues except Issue 7.

11 **COMMISSIONER BRISÉ:** Second.

12 **CHAIRMAN GRAHAM:** It has been moved and
13 seconded to move staff on all issues except for
14 Issue 7.

15 It has been moved and seconded. Any
16 further discussion?

17 Seeing none, all in favor say aye.

18 (Vote taken.)

19 **CHAIRMAN GRAHAM:** Those opposed?

20 By your action, you have approved all
21 issues except for Issue 7.

22 Commissioner Skop.

23 **COMMISSIONER SKOP:** On Issue 7, I would
24 modify the staff recommendation that Verizon should
25 be allowed to cease performing duties provided for

1 in the agreement that are not required by applicable
2 law, but I would depart from staff recommendation
3 that Section 50 is appropriate.

4 **CHAIRMAN GRAHAM:** Is there a second on
5 Mr. Skop's motion?

6 **COMMISSIONER BRISÉ:** Let me ask a
7 procedural question. Do we need a second to open
8 discussion or question staff?

9 **CHAIRMAN GRAHAM:** Yes. A second for
10 discussion sake.

11 **COMMISSIONER BRISÉ:** I will second that.

12 **CHAIRMAN GRAHAM:** Okay. It has been moved
13 and seconded. Discussions?

14 **COMMISSIONER BRISÉ:** Yes, I have a
15 question to staff with regard to the issue that
16 Commissioner Skop raised.

17 **CHAIRMAN GRAHAM:** Staff.

18 **MR. MURPHY:** I don't understand the
19 question.

20 **COMMISSIONER EDGAR:** May I?

21 **COMMISSIONER BRISÉ:** Yes. I --

22 **COMMISSIONER EDGAR:** Because I think we
23 are on -- maybe I was trying to ask the same
24 question, which was what would be the impact or the
25 effect of the motion that Commissioner Skop has

1 offered to us as opposed to the impact or effect of
2 the recommendation that is before us.

3 **MR. MURPHY:** Well, the impact, as I
4 understand it, would be that they would be entitled,
5 as the issue suggests, to quit providing services if
6 they are not required to by law. Section, I
7 believe, 4.6, which is the change in law provisions
8 that are in the agreement, would still be in place.

9 But, in addition to that, the language
10 that was proposed by Verizon for Section 50 would be
11 in place, which would give them the right, on their
12 own initiative, to say that there had been a change
13 in circumstances or, conceivably, even
14 interpretation of law that would allow them to
15 unilaterally cancel service subject to the
16 procedures in 50, which put -- it was characterized
17 by Bright House as basically just doing away with
18 the benefit of the contract, because canceling the
19 service -- service is defined to broadly that it
20 takes away the benefit of the contract from Bright
21 House's view, and we found that to be persuasive.

22 We thought it was overkill and not
23 necessary, given that they have the right to go
24 through the procedure in 4.6, which is the change in
25 law. And the only example that they could give was

1 impairment, which would be an FCC determination on a
2 central office, and that could be handled under the
3 change in law provision.

4 **CHAIRMAN GRAHAM:** Commissioner Skop.

5 **COMMISSIONER SKOP:** Thank you. On Page 12
6 of the staff recommendation, second paragraph, with
7 respect to Section 50, according to staff, Verizon
8 maintained that Section 50 is intended to address
9 situations in which the duty to provide the service
10 is limited entirely, and nothing more needs to be
11 negotiated, because one is simply withdrawing a
12 service or a payment. For this reason, Verizon
13 contends that the change in law provision in
14 Section 4 does not effectively address the
15 situation, a separate provision is needed. And
16 Verizon further asserted that the example of such
17 circumstances, the reclassification of a wire center
18 resulting in the cessation in the legal obligation
19 to provide certain services.

20 It seems to me there is a hole, looking at
21 Verizon's argument and Bright House's argument in
22 staff's analysis, but it seems to me that the staff
23 thinks Section 50, in their opinion, is not
24 appropriate and unwarranted, and it seems to me
25 that, at least from my perspective, Verizon has made

1 a very clear showing in its mind that it feels it
2 needs Section 50 in parallel with Section 4 to
3 protect its interests. So that's my position on
4 Issue 7.

5 **CHAIRMAN GRAHAM:** Panel? On the floor we
6 have Commissioner Skop's motion with a second to
7 move forward. We can vote on Commissioner Skop's
8 issue, or if you want to go a different direction,
9 you could withdraw the motion and make another
10 motion to move forward. You're fine moving forward
11 with Skop's issue? Okay.

12 The issue is on the table. All in favor
13 of the motion signify by saying aye.

14 **COMMISSIONER EDGAR:** Mr. Chairman, I just
15 want to make sure the motion does pertain just to
16 Issue 7 alone, correct?

17 **CHAIRMAN GRAHAM:** Mr. Skop's motion was
18 just to Issue 7.

19 **COMMISSIONER EDGAR:** Thank you. I
20 apologize.

21 **CHAIRMAN GRAHAM:** No, that's fine. Let's
22 just get it right.

23 Commissioner Skop.

24 **COMMISSIONER SKOP:** And to restate the
25 intent of the motion, again, it adopt the staff

1 recommendation with the modification that it allows
2 Section 50. And Section 50 should be allowed and
3 not unwarranted, as staff has suggested.

4 **CHAIRMAN GRAHAM:** We are on the Skop
5 motion. All in favor, signify by saying aye.

6 (Vote taken.)

7 **CHAIRMAN GRAHAM:** Those opposed?

8 **COMMISSIONER EDGAR:** Aye.

9 **CHAIRMAN GRAHAM:** It's two-to-one. It
10 passes. So that concludes what we have for the
11 agenda.

12 * * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 16th day of November, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732