

Diamond Williams

110056-TP

From: Scobie, Teresa A (Terry) [terry.scobie@verizon.com]
Sent: Wednesday, June 01, 2011 2:26 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; App, Frank (Frank); Beth Keating; Beth Salak; Kimberly Caswell; Chris Savage; David Christian; Clark, Demetria Germaine; Marva Johnson; O'Roark, Dulaney L
Subject: Docket No. 110056-TP - Supplement to Verizon's Motion to Dismiss or Stay Bright House's Complaint
Attachments: 110056 VZ Supp to MTD 6-1-11.pdf



The attached is submitted for filing in Docket No. 110056-TP on behalf of Verizon by

Dulaney L. O'Roark III
P. O. Box 110, MC FLTP0007
Tampa, Florida 33601-0110
(678) 259-1657
de.oroark@verizon.com

The attached document consists of a total of 9 pages - cover letter (1 page), Supplement (7 pages), and Certificate of Service (1 page).

Terry Scobie
Legal Secretary II
Verizon Legal Department
P. O. Box 110 - MC FLTP0007
Tampa, Florida 33601-0110
813-483-2610 (tel)
813-204-8870 (fax)
terry.scobie@verizon.com

DOCUMENT NUMBER-DATE

03840 JUN-1 =

FPSC-COMMISSION CLERK

6/1/2011

Dulaney L. O'Roark III
Deputy General Counsel, Southeast
Legal Department



5055 North Point Parkway
Alpharetta, Georgia 30022

Phone 678-259-1657
Fax 678-259-5326
de.oroark@verizon.com

June 1, 2011 – VIA ELECTRONIC MAIL

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

Re: Docket No. 110056-TP
Complaint against Verizon Florida LLC and MCI Communications Services, Inc.
d/b/a Verizon Business Services for failure to pay intrastate access charges for
the origination and termination of intrastate interexchange telecommunications
service, by Bright House Networks Information Services (Florida), LLC

Dear Ms. Cole:

Enclosed for filing in the above matter is Verizon Florida LLC's and MCI Communications Services, Inc. d/b/a Verizon Business Services' Supplement to Motion to Dismiss or Stay Bright House's Complaint. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1657.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

tas

Enclosures

DOCUMENT NUMBER-DATE
03840 JUN-1 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Verizon Florida LLC and) Docket No. 110056-TP
MCI Communications Services Inc. d/b/a) Filed: June 1, 2011
Verizon Business Services for failure to pay)
intrastate access charges for the origination and)
termination of intrastate interexchange)
telecommunications service, by Bright House)
Networks Information Services (Florida), LLC)
_____)

**SUPPLEMENT TO VERIZON'S MOTION TO DISMISS
OR STAY BRIGHT HOUSE'S COMPLAINT**

On March 14, 2011, MCI Communications Services, Inc. d/b/a Verizon Business Services and Verizon Florida LLC (together, "Verizon") filed a Motion to Dismiss or Stay Bright House's Complaint asking the Commission to treat voice-over-Internet-protocol ("VoIP") traffic like traditional telephone traffic and to order Verizon to pay intrastate switched access charges on it. Verizon explained that Bright House's Complaint must be dismissed because the Commission has no jurisdiction over any aspect of VoIP services. Here, Verizon supplements its Motion to provide the Commission information that was not available when Verizon filed its Motion and that further justifies dismissal of Bright House's Complaint.

I. Bright House and Verizon Florida Have Settled Their VoIP Compensation Dispute.

Bright House filed its Complaint against two Verizon affiliates, Verizon Florida LLC ("Verizon Florida") and Verizon Business Services ("Verizon Business"). Bright House and Verizon Florida have now settled their dispute about what intercarrier compensation rate should apply to VoIP traffic, at least until the FCC makes that

determination.¹ In their new interconnection agreement, the parties have agreed to pay each other at a rate of \$0.0007 per minute to exchange VoIP traffic (defined as traffic originating in Internet protocol (“IP”) format and terminating in traditional circuit-switched format or originating in circuit-switched format and terminating in IP format). *Id.*, § 8.6.1.1. This is the same rate that Verizon has been paying since it began disputing Bright House’s application of switched access charges to VoIP traffic.

Bright House has yet to settle its Complaint with Verizon Business, even though Bright House lodged exactly the same claims against both Verizon affiliates, and even though the functions it performs in originating and terminating IP traffic are exactly the same, regardless of whether it exchanges the traffic with Verizon Business or Verizon Florida. Verizon Business still hopes to reach a negotiated settlement with Bright House, and Bright House has indicated to Verizon and to the Commission that it shares that hope. (See, e.g., Bright House Complaint at 5 n. 10.) Plainly, though, the prospects of settlement will dim if the Complaint proceeds and Verizon is forced to divert to litigation the resources necessary to resolve the parties’ dispute.

In any event, the Bright House-Verizon Florida settlement is relevant to the Complaint still open against Verizon Business. The premise of Bright House’s Complaint is that the legacy intercarrier compensation regime, including switched access charges, applies to VoIP traffic, because it is just “plain old telephone traffic on the public switched telephone network,” no different from any other traffic.² Bright House, therefore, argued that its switched access price list is “binding” and *must* apply

¹ See Agreement by and Between Bright House Networks Information Services (Florida) LLC and Verizon Florida LLC for the State of Florida, filed in Docket No. 090501-TP (deemed approved by the Commission on May 31, 2011), Interconnection Att., § 8.6.

² Bright House’s Opposition to Motion to Dismiss or Stay Complaint (“Bright House Opposition”) at 1.

to VoIP traffic to the same extent it applies to traditional telephone traffic.³ Indeed, Bright House claimed that it risked losing its certificate of operating authority if it failed to apply its price-listed switched access charges to IP traffic: “by filing a price list, a CLEC commits itself potentially on pain of losing its fundamental authority to operate at all—to following the terms and conditions contained there.” (Bright House Opposition at 18.)

Verizon’s Motion to Dismiss explained why Bright House was wrong that Florida law requires the application of access charges to IP traffic. Now, Bright House has proven that even it does not believe the arguments it made in its Complaint and Opposition. If Bright House believed that VoIP traffic were just “plain old telephone traffic,” Bright House would not have agreed to a compensation regime for it that differs from the legacy regime that applies to the traditional local and intraLATA toll traffic also exchanged with Verizon Florida. If Bright House believed it could lose its operating authority if it charged anything other than price-listed switched access rates on VoIP traffic, it would not—indeed, it could not—have agreed to exchange that traffic with Verizon Florida at a different rate. And if Bright House believed that applying a \$0.0007 rate to IP-formatted traffic was “unfair and unreasonable” (Complaint at 19-20), Bright House would not have agreed to that rate in its agreement with Verizon Florida.⁴

Bright House’s Complaint rests entirely on the notion that traffic originating or terminating in IP format is no different from traditional traffic, so Bright House’s price-listed switched access charges must, by law, apply to IP traffic. Bright House’s

³ Bright House Opposition at 2, 17-19.

⁴ In any event, the statute upon which Bright House’s Complaint relies for its claim of unfair treatment by Verizon—§ 364.01(4)(g)—will be deleted from the Florida Statutes effective July 1, 2011 under the Regulatory Reform Act signed by Governor Scott last month, so that claim will soon be moot. Count III of Bright House’s Complaint, which relied exclusively on that section, should be stricken, along with the portion of Count I that was based on § 364.01(4)(g) and the other sections of the Complaint, including the jurisdictional allegation (at page 7) and the request for relief (at page 20), that relied on § 364.01(4)(g).

agreement with Verizon Florida confirms that that premise is wrong. There is no law imposing switched access charges on VoIP traffic, so Bright House's Complaint must be dismissed.

II. Bright House Agrees that the FCC Is the Appropriate Body to Determine VoIP Intercarrier Compensation Obligations.

In its Motion to Dismiss, Verizon explained that the FCC intended to determine VoIP compensation obligations on an accelerated track within its comprehensive intercarrier compensation rulemaking.⁵ The comment cycle on the VoIP compensation issue concluded in mid-April and an FCC decision is pending; all five Commissioners have committed to issuing an order "within a few months."⁶

The FCC's identification of the VoIP compensation issue for comment apart from its overall reform of the intercarrier compensation regime indicates that—contrary to Bright House's theory here—VoIP traffic is not just plain old telephone traffic that is necessarily subject to the existing legacy intercarrier compensation regime. There is no existing compensation rule for VoIP, because the FCC has not yet established one, and there is no "intrastate" aspect of VoIP compensation for states to decide. The FCC is considering compensation obligations for all VoIP traffic.

Indeed, Bright House acknowledges all of this in its own FCC Comments. It recognizes that the compensation "rules remain uncertain"⁷ and emphasizes the need for "clarity from this Commission" (that is, the FCC) (*id.* at 9), urging it to "establish[]

⁵ See Motion at 26, citing *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, FCC 11-13, WC Docket No. 10-90, etc. ("*ICC/USF Notice*"), ¶¶ 603-06 (Feb. 9, 2011).

⁶ See <http://beta.fcc.gov/blog/making-universal-service-and-intercarrier-compensation-reform-happen> (visited May 19, 2011).

⁷ Comments of Bright House Networks Information Services, LLC in response to the FCC's *ICC/USF Notice* ("Bright House FCC Comments") at 6.

some clear rule” for intercarrier compensation for VoIP services during the transition to uniform rates for all traffic (Bright House FCC Comments at 6 n. 8 (emphasis in original)). Contrary to Bright House’s claim here that the parties’ dispute “relates entirely to intrastate telecommunications traffic within the jurisdiction of this Commission” (Complaint at 3), Bright House’s FCC comments recognized that the FCC “has the legal authority to dictate intercarrier compensation rates for all traffic PSTN carriers might exchange with each other,” including *all* IP traffic exchanged with the PSTN.⁸ And although Bright House advocates applying existing intercarrier compensation rules to IP traffic until the FCC can reform the larger intercarrier compensation scheme, Bright House recognizes that it is the FCC’s job to declare whether those rules should apply for some period. (See Bright House FCC Comments at 5 and FCC Reply Comments at 7-8.)

Bright House’s FCC filings confirm that the FCC is the appropriate forum to determine VoIP compensation obligations. Even if this Commission believed it had the authority to require the payment of switched access on VoIP traffic (and it does not), it should at least stay this proceeding pending completion of the FCC’s rulemaking on VoIP compensation, or for some reasonable period.

Indeed, this is the approach federal courts are taking, even though they *do* have jurisdiction over VoIP compensation disputes. Last month, a U.S. District Court in California granted a six-month stay of a case involving a dispute over the appropriate compensation for VoIP traffic and ordered the dispute referred to the FCC for a

⁸ Reply Comments of Bright House Networks Information Services, LLC (“Bright House FCC Reply Comments”) at 8.

declaratory ruling.⁹ And just this month, a U.S. District Court in Georgia stayed a VoIP compensation case until the earlier of six months or until the FCC acts in its rulemaking.¹⁰ The Court observed that “the claims and defenses in this action include the proper classification of VoIP telephone calls, the rate structure applicable to such telephone traffic, and whether such telephone traffic is subject to state regulation and tariffs or instead is subject only to federal regulation.” It concluded that a stay “will promote the interests of justice and judicial economy” because “the FCC’s action on these issues, which is expected by the end of summer, will narrow—and could potentially eliminate—the issues in dispute in this litigation.” (N.D. Georgia Order at 2-3.) The same logic applies here, where the same kinds of issues are before this Commission. It makes no sense for the Commission and its Staff (and the parties) to waste their time and limited resources trying to resolve the same VoIP compensation issue as the FCC, especially when that issue falls within exclusive federal jurisdiction.

For the reasons Verizon discussed here and in its underlying Motion, the Commission should dismiss Bright House’s complaint seeking payment of intrastate switched access charges on VoIP traffic. The Commission has no jurisdiction over VoIP services or providers, including the authority to establish compensation for calls that begin or end on VoIP services. If the Commission is reluctant to dismiss Bright House’s Complaint at this stage, it should at least stay this proceeding until the FCC issues its pending VoIP compensation ruling, or for six months, whichever comes first.

⁹ *Pac-West Telecomm, Inc. v. MCI Comm. Services, Inc. d/b/a Verizon Business Services*, No. 1:10-cv-01051-OWW-GSA (E.D. Cal. Apr. 8, 2011) (order granting motion for primary jurisdiction referral and stay pending FCC ruling).

¹⁰ *CBeyond Comm., LLC v. MCI Comm. Services, Inc. d/b/a Verizon Business*, No. 1:11-cv-0693-TCB (N.D. Ga. May 19, 2011) (order granting unopposed motion to stay proceedings) (“N.D. Georgia Order”).

Respectfully submitted on June 1, 2011.

By: s/ Dulaney L. O'Roark III
Dulaney L. O'Roark III
5055 North Point Parkway
Alpharetta, Georgia 30022
Phone: (678) 259-1657
Fax: (678) 259-5326
Email: de.oroark@verizon.com

and

Kimberly Caswell
P. O. Box 110, MC FLTP0007
Tampa, Florida 33601-0110
Phone: (727) 360-3241
Fax: (813) 204-8870
Email: kimberly.caswell@verizon.com

Attorneys for MCI Communications Services,
Inc. d/b/a Verizon Business Services and
Verizon Florida LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on June 1, 2011 to:

Adam Teitzman, Attorney Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us

Beth Salak
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
bsalak@psc.state.fl.us

Christopher W. Savage
Davis, Wright Tremaine, LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006
chrissavage@dwt.com

Beth Keating
Gunster Yoakley
215 S. Monroe Street, Suite 618
106 East College Avenue
Tallahassee, FL 32301-1804
bkeating@gunster.com

Marva B. Johnson
Bright House Networks
301 E. Pine Street, Suite 600
Orlando, FL 32801
marva.johnson@mybrighthouse.com

s/ Dulaney L. O'Roark III