

Diamond Williams

From: Scobie, Teresa A (Terry) [terry.scobie@verizon.com]
Sent: Friday, June 10, 2011 4:02 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; App, Frank (Frank); Beth Keating; Beth Salak; Kimberly Caswell; Chris Savage; David Christian; Marva Johnson; O'Roark, Dulaney L
Subject: Docket No. 110056-TP - Motion to Dismiss Verizon Florida LLC As A Party
Attachments: 110056 Motion to Dismiss VZ Florida as a Party 6-10-11.pdf



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

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The attached document consists of a total of 6 pages - cover letter (1 page), Motion (4 pages), and Certificate of Service (1 page).

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04026 JUN 10 =

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6/10/2011

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June 10, 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 a Motion to Dismiss Verizon Florida LLC as a
Party. 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

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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 10, 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)
_____)

MOTION TO DISMISS VERIZON FLORIDA LLC AS A PARTY

Bright House Networks Information Services (Florida), LLC's Complaint initiating this docket was filed against two Verizon affiliates, Verizon Florida LLC ("Verizon Florida") and Verizon Business Services ("Verizon Business"). The Complaint asked the Commission to order both Verizon companies to pay Bright House's switched access charges on Voice over Internet Protocol ("VoIP") traffic as if it were traditional telephone traffic. On March 14, 2011, the Verizon companies filed a Motion to Dismiss or Stay Bright House's Complaint because the Commission has no jurisdiction over any aspect of VoIP services, and the FCC is deciding what intercarrier compensation applies to VoIP traffic.

Bright House and Verizon Florida have settled their dispute about what intercarrier compensation rate should apply to VoIP traffic, at least until the FCC makes that determination.¹ In their interconnection agreement filed on April 29, 2011 in Docket No. 090501-TP, the parties 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

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, Interconnection Att., § 8.6.

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and terminating in IP format). *Id.*, Interconnection Attachment, § 8.6.1.1. This is the same rate that the Verizon companies have been paying since they began disputing Bright House's application of switched access charges to VoIP traffic.²

In conjunction with the Bright House/Verizon Florida settlement, Bright House agreed to dismiss Verizon Florida as a party to its Complaint in this docket upon approval of the interconnection agreement. That approval occurred on May 31, 2011, in accordance with 47 U.S.C. § 252(e)(4), which states that an arbitrated agreement "shall be deemed approved" if the state commission takes no action to reject or approve it within 30 days after its submission. The Commission took no action on the agreement and the 30-day approval period ended on May 31. A Staff memorandum in the arbitration docket, therefore, confirmed that the interconnection agreement took effect by operation of law on May 31, and that docket was closed on June 2, 2011.³

Despite its agreement to dismiss Verizon Florida from this case once the interconnection agreement was approved, Bright House has made no move to do so. Bright House does not dispute the fact that it has settled its VoIP compensation dispute with Verizon Florida and it has explicitly recognized that the settlement requires Verizon Florida's dismissal: "Once the ICA becomes legally effective, we agree with Verizon that it will be appropriate to dismiss Verizon-ILEC from this case."⁴ But in a filing earlier this week in this docket, Bright House erroneously stated that the interconnection agreement has not yet taken effect and that the Commission might still rule on it.

² 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.

³ Memorandum from J. Bates, Div. of Reg. Analysis and C. Murphy, Office of the General Counsel, to Docket File (dated June 2, 2011).

⁴ See Bright House Response to Supplement to Verizon's Motion to Dismiss at n. 18 (filed June 7, 2011).

Bright House claims that the agreement cannot take effect by operation of law until July 28, 2011, 90 days from its submission, because most of the agreement's terms were negotiated, rather than arbitrated. A 90-day approval period applies to negotiated agreements under 47 U.S.C. § 252(e)(4).

Bright House is wrong because an interconnection agreement is considered arbitrated for purposes of § 252(e)(4) if the state commission arbitrated any of its terms. The vast majority, if not all, of the interconnection agreements arbitrated by this Commission consist of mostly negotiated terms. The Telecommunications Act of 1996 ("Act") expressly contemplates that arbitrated agreements will include negotiated terms; although state commissions arbitrate only the issues that remain open after negotiations conclude, the Act's arbitration procedures require them to submit documentation concerning not just "unresolved issues," but "any other issue discussed and resolved by the parties." 47 U.S.C. § 252(b)(1). This Commission—and, to Verizon's knowledge, every other state Commission—treats interconnection agreements as arbitrated if it has arbitrated any disputed terms. Contrary to Bright House's novel view, Commissions do not try to count up arbitrated versus negotiated contract provisions to determine whether the agreement should be considered arbitrated or negotiated for purposes of the § 252(e)(4) approval schedule.

As the Commission already confirmed in closing the arbitration docket, the interconnection agreement filed in the Bright House/Verizon arbitration (and that reflects the Bright House/Verizon Florida VoIP compensation settlement) took effect on May 31, 2011. Therefore, Verizon Florida must be dismissed from this case under Bright

House's agreement with Verizon Florida, and Verizon asks the Commission to order Bright House to amend its Complaint to remove Verizon Florida as a party.

Respectfully submitted on June 10, 2011.

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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 10, 2011 to:

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s/ Dulaney L. O'Roark III