

**Diamond Williams**

110056-TP

**From:** Keating, Beth [BKeating@gunster.com]  
**Sent:** Friday, June 17, 2011 3:02 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** 'O'Roark, Dulaney L'; Martha Brown; Adam Teitzman; Kimberly Caswell; David Christian; 'Savage, Christopher'  
**Subject:** Docket No. 110056-TP  
**Attachments:** 20110617135722283.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact me at the number below. Thank you.

**Person Responsible for Filing:**

Beth Keating  
 Gunster Law Firm  
 215 South Monroe Street, Suite 601  
 Tallahassee, FL 32301  
 Direct: 850-521-1706  
 Main: 850-521-1980  
[bkeating@gunster.com](mailto:bkeating@gunster.com)

Christopher W. Savage  
 Davis Wright Tremaine, LLP  
 1919 Pennsylvania Avenue, NW  
 Suite 800  
 Washington, DC 20006  
 Phone: 202-973-4200  
 Fax: 202-973-4499  
[chrissavage@dwt.com](mailto:chrissavage@dwt.com)

**Docket Name and Number:** 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

**Filed on Behalf of:** Bright House Networks Information Services (Florida), LLC

**Total Number of Pages:** 5

**Description of Documents:** Response to Verizon Florida's (ILEC) Motion to Dismiss



**GUNSTER**  
 FLORIDA'S LAW FIRM FOR BUSINESS

Beth Keating | Attorney  
 Governmental Affairs  
 215 S. Monroe Street, Suite 601  
 Tallahassee, FL 32301

DOCUMENT NUMBER-DATE  
 04183 JUN 17 =  
 FPSC-COMMISSION CLERK

P 850-521-1706 C 850-591-9228  
[gunster.com](http://gunster.com) | [View my bio](#)

---

**Tax Advice Disclosure:** To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein. Click the following hyperlink to view the complete Gunster IRS Disclosure & Confidentiality note.

<http://www.gunster.com/terms-of-use/>



Writer's Direct Dial Number: (850) 521-1706  
Writer's E-Mail Address: [bkeating@gunster.com](mailto:bkeating@gunster.com)

June 17, 2011

**VIA ELECTRONIC FILING - FILINGS@PSC.STATE.FL.US**

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

Re: Docket No. 110056-TP: In re: 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:

Attached for electronic filing, please find the Response to Verizon Florida's Motion to Dismiss, filed today on behalf of Bright House Networks Information Services (Florida), LLC.

Thank you for your assistance with this filing. Please don't hesitate to contact me if you have any questions.

Kind regards,

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706

MEK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Bright House Networks Information Services  
(Florida) LLC,

Complainant

v.

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

Defendants

Docket No. 110056-TP

June 17, 2011

RESPONSE TO VERIZON FLORIDA'S (ILEC) MOTION TO DISMISS

Bright House Networks Information Services (Florida), LLC, ("Bright House") through its attorneys, hereby responds to the "Motion to Dismiss Verizon Florida LLC as a Party" ("Motion to Dismiss Verizon-ILEC") filed in this matter on June 10, 2011.

As Verizon is aware, Bright House agrees that Verizon-ILEC should be dismissed from this case; the only question is when dismissal should occur. As part of an otherwise confidential settlement agreement with Verizon, Bright House agreed to the following:<sup>1</sup>

I am now authorized to represent that, *upon the effectiveness of the interconnection agreement* whose terms Verizon and Bright House have agreed to, Bright House Networks Information Services (Florida), LLC ("Bright House") will dismiss Verizon Florida, LLC ("Verizon-ILEC") from the case styled "Bright House Networks Information Services (Florida) LLC, Complainant v. Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services, Defendants," Florida PSC Docket No. 110056-TP. ... Verizon Business (MCI Communications Services, Inc.) would remain as a defendant in the case.

The question, then, is when the parties' new interconnection agreement ("ICA") takes effect. That question is governed by 47 U.S.C. § 252(e)(4). Under that provision, in the absence of an affirmative Commission order approving the ICA, it will take effect as a matter of law after either a

<sup>1</sup> Email from C. Savage (counsel for Bright House) to W. Carnell (counsel for Verizon) dated Friday, April 22, 2011 (emphasis added).

30-day or 90-day waiting period:

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved.

Because the Commission has not issued an order approving the ICA, the question is whether the 30-day or 90-day waiting period applies.<sup>2</sup>

Bright House is aware of no cases – and Verizon cites none – addressing which waiting period applies to a “hybrid” ICA, with some negotiated and some arbitrated provisions. Here, the new ICA is in some sense the result of an arbitration proceeding, in that the parties were not able to negotiate each and every term. But out of a document of more than 150 pages and hundreds if not thousands of separate provisions, there were less than a dozen arbitrated issues. Since the overwhelming majority of the new ICA’s provisions – including the provision directly relevant to *this* proceeding – were “adopted by negotiation,” that would trigger the 90-day waiting period, not the 30-day period.<sup>3</sup>

In practical terms, the distinction only determines whether Verizon-ILEC is dismissed from this case in late July or August. An earlier dismissal would be needed if this Commission were on the verge of issuing a judgment on the merits against Verizon-ILEC, and it needed to be dismissed

---

<sup>2</sup> While we are aware that the Commission has issued a ruling closing the ICA proceeding, that ruling, does not state that it “approves” the ICA, and so does not itself constitute an “act to approve .. the agreement.” As a result, either the 30-day or 90-day the waiting period applies.

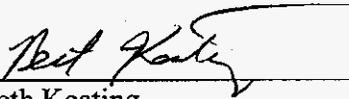
<sup>3</sup> As relevant here, while Bright House provided an interim draft of the ICA for consideration in the arbitration proceeding, the version of Section 8.6 of the Interconnection Attachment in the final ICA – the provision regarding treatment of so-called VoIP traffic relevant to *this* proceeding – was not settled on by the parties until April 2011, and was presented to the Commission for the first time in the final ICA, filed with the Commission on April 29, 2011.

to protect itself against liability, but that is not the case here. As such, the reasons for Verizon's sense of urgency in filing this motion are, at best, unclear to Bright House.

That said, in these circumstances, Bright House has no objection to dismissing Verizon-ILEC, as long as the Commission's order of dismissal either (a) states that the new ICA is legally effective, or (b) is not, itself, issued until after July 28, 2011, when the 90-day waiting period will have run.

Respectfully submitted,

s/Christopher W. Savage  
Christopher W. Savage  
Davis Wright Tremaine, LLP  
1919 Pennsylvania Avenue, NW  
Suite 800  
Washington, D.C. 20006  
Tel: 202-973-4200  
Fax: 202-973-4499  
chrissavage@dwt.com

  
Beth Keating  
Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe Street, Suite 618  
Tallahassee, FL 32301-1804  
Tel: 850-521-1980  
Fax: 850-576-0902  
bkeating@gunster.com

Attorneys for:  
Bright House Networks Information Services (Florida), LLC

June 17, 2011

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 17<sup>th</sup> day of June, 2011.

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

David Christian  
Verizon Florida, Inc.  
106 East College Avenue  
Tallahassee, FL 32301  
David.christian@verizon.com

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

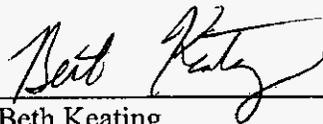
Martha Brown  
Senior Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399  
mbrown@psc.state.fl.us

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

Kimberly Caswell  
Verizon  
P. O. Box 110, MC FLTP0007  
Tampa, Florida 33601-0110  
kimberly.caswell@verizon.com

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

Dulaney L. O'Roark III  
Verizon  
5055 North Point Parkway  
Alpharetta, GA 30022  
de.oroark@verizon.com



Beth Keating  
Gunster Yoakley & Stewart, P.A.  
215 South Monroe Street, Suite 601  
Tallahassee, FL 32301