

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110056-TP

In the Matter of:

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.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM 2

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 9, 2011

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

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

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DATE

06062 AUG 24 =

FPSC-COMMISSION CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN GRAHAM:** So that all being said, let's
3 move to Item Number 2.

4 **MS. BROWN:** Good morning, Commissioners.

5 **CHAIRMAN GRAHAM:** Good morning.

6 **MS. BROWN:** Martha Brown for the Commission
7 legal staff. Item 2 is staff's recommendation on
8 Verizon's motion to dismiss Bright House's complaint.
9 Bright House alleges that Verizon has unilaterally refused
10 to pay appropriate interstate interexchange -- intrastate
11 interexchange access charges. Verizon argues that the
12 Commission lacks jurisdiction under state or federal law
13 to resolve the complaint.

14 In Issue 1, staff recommends that the Commission
15 grant Verizon's request for oral argument and allow ten
16 minutes for argument on each side. In Issue 2, staff
17 recommends that the Commission does have jurisdiction to
18 resolve the complaint under Florida law, and there is
19 nothing in federal law that preempts the Commission from
20 addressing the matter. We're ready to proceed on Issue 1,
21 if you would like to.

22 **CHAIRMAN GRAHAM:** All right. Could I get a
23 motion to move staff recommendation on Issue Number 1?

24 **COMMISSIONER BROWN:** So moved.

25 **COMMISSIONER EDGAR:** Second.

FLORIDA PUBLIC SERVICE COMMISSION

1 **CHAIRMAN GRAHAM:** It has been moved and
2 seconded, staff recommendation on Issue Number 1. Any
3 discussion?

4 Seeing none, all in favor say aye.

5 (Vote taken.)

6 **CHAIRMAN GRAHAM:** Any opposed? By your action,
7 you have moved staff recommendation on Issue Number 1.
8 And, I guess, who is going to start first with the oral
9 argument?

10 **MS. CASWELL:** I think I would, because it's our
11 motion. I'm Kim Caswell on behalf of Verizon.

12 Verizon and Bright House disagree about whether
13 legacy intercarrier compensation rules apply to VoIP
14 calls; that is, calls that begin or end in Internet
15 protocol format. The question today is whether you may
16 resolve that dispute or whether, in the alternative, you
17 should stay the case and let the FCC resolve it.

18 Until the FCC rules, Bright House wants Verizon
19 to pay intrastate access charges, even though the FCC
20 recently made clear that it has never addressed whether
21 VoIP is subject to existing intercarrier compensation
22 rules. Verizon's agrees that it should pay Bright House
23 for handling the calls, but not under legacy rules. So it
24 invited Bright House to negotiate a compensation
25 arrangement, and in the meantime started paying .0007 a

1 minute on VoIP traffic, a rate Bright House agrees is
2 appropriate when it's Verizon Florida that exchanges VoIP
3 traffic with Bright House.

4 When Verizon Florida and Bright House agreed to
5 apply the .0007 rate, Bright House dismissed Verizon
6 Florida from the complaint, but the complaint remains open
7 against Verizon Business. To move forward on that
8 complaint, you must find jurisdiction to do so. Staff
9 says you do have jurisdiction, but doesn't cite any
10 statutes to support that conclusion. It just assumes that
11 you have jurisdiction over all wholesale compensation
12 disputes, so you can ignore the statutes telling you not
13 to regulate VoIP in this instance.

14 You shouldn't take that advice. Your
15 jurisdiction comes from the Florida Legislature. You
16 can't address any complaint unless a specific provision in
17 Chapter 364 allows you to. And as this Commission in
18 Florida courts have said time and again, if you have any
19 doubt about your jurisdiction, you must resolve that doubt
20 against taking jurisdiction. As you have stressed, we
21 should avoid even the appearance that we are replacing the
22 Legislature's judgment with our own.

23 So let's look at that legislative judgment.
24 Section 364.011, says VoIP services are exempt from
25 Commission jurisdiction. It doesn't distinguish between

1 retail and wholesale aspects of VoIP, and there are no
2 exceptions for addressing complaints.

3 A second statute, 364.013, reiterates that VoIP
4 shall be free of state regulation except as delineated
5 elsewhere in the chapter or as authorized by federal law.

6 The legislature repeated its hands-off policy
7 for VoIP a third time in Section 364.02(12), which
8 excludes VoIP from the term service in the statutes for
9 purposes of regulation by the Commission. That section
10 also includes the only grant of authority to address VoIP
11 issues and it's extremely limited. It recognizes that the
12 Commission may arbitrate and enforce interconnection
13 agreements and resolve disputes as provided by federal
14 law, recognizing that LECs have no state law duties with
15 respect to VoIP. This subsection also says that the VoIP
16 exemption does not affect the rights and obligations of
17 any entity related to the payment of switched network
18 access rates or other intercarrier compensation, if any,
19 related to VoIP service.

20 If any is the key language here, and it is left
21 out of staff's recommendation. The legislature
22 acknowledged that there may be obligations to pay VoIP
23 compensation, including possibly intrastate access whether
24 from federal law or an interconnection agreement, and
25 simply wanted to make clear that by denying the Commission

1 jurisdiction to create such obligations it was not leaving
2 the Commission powerless to enforce such federal
3 obligations.

4 And, indeed, Bright House did not cite this VoIP
5 compensation provision as a source of jurisdiction over
6 its complaint. It relies instead on three other statutes.
7 First, Bright House cites 364.16(2), which directs the
8 Commission in resolving disputes to treat all providers of
9 telecommunications services fairly by preventing
10 anticompetitive behavior, including but not limited to
11 predatory pricing. This isn't a jurisdictional grant, it
12 doesn't say anything about the kinds of disputes that the
13 Commission may resolve.

14 The following Subsection 364.16(3), does
15 describe the disputes the Commission may resolve, those
16 concerning violations of Chapter 364, and under the
17 authority conferred by federal law to resolve such
18 disputes. Less there be any doubt about whether the
19 Commission's authority extends to VoIP-related disputes,
20 this section explicitly does not confer jurisdiction on
21 the Commission for services that are exempt from
22 Commission jurisdiction under Sections 364.011 or 364.013.
23 Those are the VoIP exception provisions I just discussed.
24 So instead of granting jurisdiction to resolve disputes,
25 as Bright House alleges, Section 364.16 confirms that the

1 Commission has none.

2 Next, Bright House cites Section 364.012, but
3 that's just a general statement of intent to give the
4 Commission jurisdiction to regulate in all matters set
5 forth in this chapter. Of course, VoIP is not set forth
6 as a matter for regulation by the Commission. The
7 legislature told the Commission not to regulate it.

8 The last section Bright House cites for
9 jurisdiction is 364.02(13)(h). It says that interexchange
10 companies shall continue to pay interstate switched
11 network access rates or other intercarrier compensation
12 for the origination and termination of the interexchange
13 telecommunications services. This Subsection (13)(h)
14 doesn't say anything about VoIP-related compensation like
15 Subsection 12 that I discussed does, but Bright House
16 relies on Subsection 13 because of its theory that IP
17 traffic is just plain old interexchange traffic, so IXCs
18 have to pay intrastate access on such traffic.

19 First, the statute doesn't prescribe access
20 rates even for plain old interexchange traffic, which VoIP
21 is not. It says access rates or other intercarrier
22 compensation. More fundamentally, though, Bright House's
23 theory that traffic to or from VoIP networks is just like
24 any other traffic is contrary to what Florida law says,
25 what the FCC said, what the industry said, and with what

1 Bright House itself has done. As I have discussed, the
2 Florida Legislature treats VoIP, all VoIP, whether it
3 crosses exchange boundaries or not, as a distinct category
4 from interexchange service. Both are unregulated, but
5 they are treated separately throughout the statute.

6 The intercarrier compensation proceedings at the
7 FCC likewise refute Bright House's argument that IP calls
8 are no different from any others. The FCC identified
9 compensation for VoIP traffic as an especially urgent
10 issue to be resolved apart from compensation from non-VoIP
11 traffic. And as you no doubt know, Verizon, AT&T, and
12 others just filed a plan at the end of July to resolve the
13 FCC's intercarrier comp USF docket, and it has gained
14 general support from a diverse group of companies and
15 associations. It would transition compensation for all
16 calls, VoIP and nonVoIP down to .0007 a minute. But
17 unlike regular telephone traffic, IP traffic would not
18 start at intrastate access rates, which would never be
19 applied to VoIP. Again reflecting the widely understood
20 distinction between IP and traditional traffic.

21 In fact, Bright House itself does not really
22 believe that the traffic is just like traditional traffic.
23 Its agreement with Verizon Florida applies .0007 to most
24 VoIP traffic as opposed to the access and reciprocal
25 compensation rates that would otherwise apply. The

1 special rate applies if traffic originates or terminates
2 in IP. The fact that Bright House Cable instead of Bright
3 House CLEC is the retail VoIP provider is irrelevant for
4 assessing the special rate, and that's important because
5 Bright House claims a retail/wholesale distinction as the
6 reason that there is nothing about this disputed traffic
7 that implicates the prohibition on regulating VoIP.

8 That's wrong, because while Bright House Cable may be the
9 one marketing Bright House's VoIP service, it wouldn't
10 exist without Bright House CLEC. Without the CLEC, cable
11 customers couldn't make calls to or receive calls from
12 Verizon's network or anywhere else on the public switched
13 telephone network.

14 What Bright House CLEC is doing fits squarely
15 within the definition of VoIP service in
16 Section 364.02(15). That section describes exactly Bright
17 House's role in providing the retail VoIP service. It's
18 enabling two-way voice communications that originate or
19 terminate from the user's location in IP, and it's
20 permitting users to receive calls from and terminate calls
21 to the public switched telephone network.

22 The retail/wholesale distinction Bright House is
23 making isn't supported by the facts or the law, so you
24 should dismiss its complaint. You do have other options,
25 though. Even if you think you have jurisdiction, the best

1 course is to stay the case and avoid a contentious
2 jurisdictional ruling and a waste of your resources, as
3 federal courts in California and Georgia have done in
4 staying similar VoIP compensation cases. The FCC's call
5 for comments on the industry plan this month, and a vote
6 is predicted in October. The FCC's action will affect
7 this case where Bright House seeks future as well as past
8 relief. Even if the FCC's decision is just prospective,
9 it can be expected to guide resolution of existing
10 disputes. And if there is anything left for you to decide
11 after the FCC rules, you can then proceed if the parties
12 haven't settled by then.

13 A stay will promote the Florida Legislature's
14 directive to achieve greater efficiency in regulation by
15 coordinating with federal regulators. That's in
16 Section 364.01(2)(1). The last option is deferring a vote
17 today and directing staff to revise its recommendation to
18 consider the FCC developments after it was written and to
19 promote a more thorough jurisdictional analysis.

20 In no event should you take jurisdiction over
21 the complaint without a clearer explanation of what
22 statute gives you that jurisdiction and that explanation
23 is missing from the current staff recommendation. Thank
24 you.

25 **CHAIRMAN GRAHAM:** Thank you very much.

FLORIDA PUBLIC SERVICE COMMISSION

1 **MS. KEATING:** Good morning, Mr. Chairman and
2 Commissioners. I am Beth Keating with the Gunter law
3 firm. I would just like to introduce Mr. Chris Savage
4 with the Davis Wright Tremaine law firm. He will be
5 presenting Bright House's response today.

6 **CHAIRMAN GRAHAM:** Good morning, sir.

7 **MR. SAVAGE:** Good morning, Commissioners,
8 Chairman. And thank you for granting the option to have
9 oral argument.

10 There was a lot put out there. I will try to
11 respond to some of it. First, on just the raw practical
12 question of whether a stay would be useful in helping
13 resolve this case, as it sits right now, Verizon is
14 racking up bills to us on the order of three to \$500,000 a
15 month, and they are just not paying it. And if you want
16 to have a situation in which the parties have a motivation
17 to settle this case, the case needs to be going forward so
18 that Verizon is subject to some actual prospect of being
19 forced to pay its bills. Because until there is some
20 actual prospect of being told they actually have to pay
21 their bills, they are not going to do it. And so any
22 notion that staying this case or letting it go forward
23 would actually promote a private settlement is completely
24 backwards. If you actually want to promote a settlement
25 in this case, you want to move it forward.

1 I know that, you know, there has been some
2 personnel changes, but I know at least Commissioner Edgar
3 will recall that is exactly what happened in our
4 arbitration case that started about a year and a half ago.

5 We talked, we talked, we talked, we talked, but when we
6 finally filed the arbitration, and we finally had a
7 schedule, and we finally had to file testimony, man, the
8 settlements came fast and furious. And so if you want
9 there to be a prospect of actually settling this case, do
10 not stay it. That would just allow them not to pay.

11 Now, with respect to the settlement, I think we
12 have to be clear about that. In the context of our
13 arbitration case with Verizon, the incumbent phone company
14 conducted generally under federal law, we ended up with a
15 settlement that was reflected in the staff's
16 recommendation to dismiss Verizon, the incumbent, from
17 this case.

18 Now, we did that because we reached an agreement
19 that for all intraLATA traffic, all traffic that isn't,
20 you know, from Tampa to Miami, you know, local toll
21 traffic, that would be rated the same as local as .0007.
22 That was a position that we took early on and Verizon said
23 no. Once they changed their position and said, well, all
24 VoIP traffic, as they define it, is subject to .0007, that
25 was just an opportunity for us to go ahead and agree to

1 something we kind of wanted anyway.

2 And so while it's true that we have settled with
3 Verizon ILEC and agreed to dismiss them from the case,
4 they were kind of -- that is the tail wagging the dog. I
5 mean, that was not where most of the money was. It is
6 subject to separate consideration. And just for what it's
7 worth, there is a special provision of federal law that
8 says that if two parties in arbitration can agree, they
9 can agree completely irrespective of what the law
10 requires. If it works for them, they can ignore their
11 otherwise applicable requirements. So trying to take that
12 settlement and using it as a precedent for dismissing the
13 case against Verizon Business is just completely
14 inappropriate.

15 Now, the very essence of Verizon's motion is
16 based on a confusion that when things are going by fast
17 and furious, it's either -- it's a mistake, and that's the
18 confusion between what a VoIP service is, a
19 voice-over-Internet-protocol service, which is something
20 you offer to a retail end user, and what an access service
21 is. An access service is something a local exchange
22 carrier provides to a long distance carrier in order to be
23 able to reach end users. It doesn't matter if the end
24 user is a VoIP service, an electric company, a law firm,
25 an individual residence customer, a big business with its

1 own private switch, to get from the long distance company
2 through a local carrier to that end user is an access
3 service. That's what this dispute is about.

4 Now, in terms of jurisdiction, you know, 364.012
5 says that you all have jurisdiction over all matters set
6 forth in this chapter. Well, one of the things set forth
7 in this chapter, and I know the numbering has changed, and
8 I appreciate Verizon handing out the current numbering.
9 When you look at Section 364.02, Sub 12, it states that
10 service itself doesn't include the VoIP service, which is
11 the retail service, and I will get to that in a minute,
12 but nothing about that exclusion, nothing herein shall
13 affect the rights and obligations of any entity related to
14 payment of switched network access rates or other
15 intercarrier compensation, if any, related to VoIP
16 service.

17 So the fact that VoIP was carved out as
18 something under your retail jurisdiction, the Legislature
19 was very clear, that doesn't affect these intercarrier
20 compensation issues. And so the notion that somehow it's
21 VoIP, therefore you can't regulate the intercarrier
22 compensation, is a plain misreading of the statute.

23 But the most important language, I think, comes
24 down in subsection -- let's see, it's (14)(h), which says
25 that each intrastate interexchange telecommunications

1 company, that's for, you know, calls from Tampa to Miami,
2 or Jacksonville to Orlando, or Jacksonville to, you know,
3 St. Petersburg, shall continue to pay intrastate switched
4 network access rates or other intercarrier compensation.
5 That word continue is extremely significant because, first
6 of all, it indicates that the legislature is understanding
7 that that was the state of the play at the time they
8 passed this law. They were paying, they shall continue to
9 pay.

10 Second, it's particularly relevant here because
11 from 2007 until toward the end of 2010, Verizon Business
12 paid and then they stopped. And how they can possibly say
13 that it's consistent with this law that says they shall
14 continue to pay, to stop paying and say, well, I get to
15 stop paying, that's crazy. There is just no possible way
16 to square their behavior with this language.

17 Now, another thing you can't square their
18 behavior with is what they urged the Commission to do, and
19 the Commission did do in our arbitration case about this
20 precise issue. We have our own fiber-optic network. They
21 have got their network. It's mainly over -- as between
22 Verizon in the Tampa area, but one of the disputes in our
23 arbitration case was there's facilities we pay them about
24 \$60,000 a month to link some of their switches back to our
25 network almost entirely to handle this long distance

1 traffic that comes back and forth. We took the position
2 in arbitration that those facilities should be subject to
3 a special low rate because we thought that's what the law
4 required. You explained to us in the order that we were
5 wrong about that, and that, no, the law actually required
6 that we would pay higher access rates to Verizon for that
7 traffic.

8 The reason you said that is because Verizon said
9 to you it is perfectly fair to let Verizon charge Bright
10 House high rates for those facilities, because Bright
11 House can then charge access rates to the long distance
12 carriers who use them. That's what they said to you, and
13 that's what you relied on in your decision. And then they
14 turn around and say, well, no, when it's our -- maybe some
15 other long distance carrier, but when it's our long
16 distance carrier we don't have to pay those rates. If
17 anything could make clearer they are completely
18 opportunistic to shift to whatever makes them the most
19 financial sense and not really related to any legal
20 development, I think that's pretty clear.

21 When they wanted to keep getting their \$60,000 a
22 month, oh, of course, you can charge access. Once that
23 decision is in, well, we'll stop paying. Completely
24 unfair. It is inconsistent with what they said to you and
25 what you ruled.

1 Last but not least, I guess I have to address
2 the FCC. One of my favorites topics. I have been in this
3 business for too long. I mean, I was in the business when
4 they invented access charges back in -- you know, I
5 started in '85. They invented them in '84. So I remember
6 in 2001 when the FCC issued this great rulemaking saying
7 we are going to fix this problem of intercarrier
8 compensation, and in particular we are going to deal with
9 IP voice traffic, or whatever they call it, Internet
10 traffic, Internet voice. And then in 2005 they tried
11 again and came out with another notice of proposed
12 rulemaking. And then they got in trouble with the D.C.
13 Circuit for something else and gave them a hard deadline
14 to solve a particular issue by the end of -- by November
15 of 2008. And then Chairman Martin was we are going to do
16 this, and we are going to have a big deal, and Verizon had
17 a plan then and everybody was behind it. And, you know,
18 when the boat came, they put out another notice of
19 rulemaking. And, guess what, this spring they put out --
20 or this winter, in February, they put out another notice
21 of proposed rulemaking.

22 You know, I'm 55 years old. You know, I've got
23 another five or ten years in practice. I'm not sure which
24 way I would bet as to whether the FCC will actually get
25 this issue resolved before I retire. But it would be very

1 bad public policy for this Commission to fail to take
2 action within its own jurisdiction on the hope that this
3 time really, after a decade, this Commission, noted for
4 its political power and efficiency, is going to get this
5 issue done when over the last decade they have been unable
6 to. That doesn't make any sense.

7 Finally, finally, as to precedent. As far as we
8 can tell, every state commission, every state commission
9 that has been presented with the question of whether it
10 has jurisdiction to require access charges on intrastate
11 traffic that might start or might end with a retail VoIP
12 service has said that they do have that authority. There
13 are a dozen or so of them that are cited in our brief.
14 The most recent federal case to address this issue is also
15 cited in our opposition to their motion to dismiss, which
16 is a full decision on the merits in which the federal
17 court said, you know, there is no federal law that
18 prevents this, and, therefore, these payments are
19 permissible.

20 So all that said, we think the staff got it
21 exactly right. The one point I mentioned, kudos to the
22 staff, because we totally missed this in our brief. They
23 point out that the FCC has issued a case called the UTEX
24 case --

25 **CHAIRMAN GRAHAM:** Sir, you're at ten minutes;

FLORIDA PUBLIC SERVICE COMMISSION

1 you've got about 30 seconds to sum up.

2 **MR. SAVAGE:** I will wrap it up. The UTEX case
3 kind of says it all. What it says is just because there
4 is an issue that is pending before the FCC, that is no
5 reason for states to refuse to act. States should act and
6 should decide matters that come before them until and
7 unless the FCC issues a binding order. So we obviously
8 support the staff's recommendation and would urge you to
9 vote against Verizon's motion.

10 **CHAIRMAN GRAHAM:** Thank you, sir.

11 Staff.

12 **MS. CASWELL:** Chairman.

13 **CHAIRMAN GRAHAM:** Staff.

14 **MS. BROWN:** Commissioners, having listened to
15 the oral arguments presented, I have not -- we have not
16 changed our opinion on recommending that you deny the
17 motion to dismiss. We urge that you have state
18 jurisdiction to resolve competitive disputes between
19 carriers. There's nothing in federal law that would
20 preclude you or preempt you from making this decision.
21 There are mixed questions of law and fact that probably
22 need an administrative proceeding to resolve, and we think
23 that it would be draconian of you to deny Bright House the
24 opportunity to present evidence on its complaint.

25 **CHAIRMAN GRAHAM:** Commission board.

FLORIDA PUBLIC SERVICE COMMISSION

1 **MS. CASWELL:** Chairman, may I have an
2 opportunity to do a brief rebuttal?

3 **CHAIRMAN GRAHAM:** No, ma'am.

4 **MS. CASWELL:** All right. Thank you.

5 **CHAIRMAN GRAHAM:** Commissioner Balbis.

6 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.

7 And, once again, representatives from each party
8 provide some compelling arguments either way. So what I
9 would like to do and what I have done in reviewing this
10 docket is really focus on what is before us today. And,
11 staff, correct me if I'm wrong, it's not whether or not we
12 have jurisdiction, it's whether or not one which we voted
13 on, which was whether or not we should grant the request
14 for oral argument, and the other is whether or not we
15 should grant the motion to dismiss, and not whether or not
16 we have jurisdiction, is that correct?

17 **MS. BROWN:** You have jurisdiction to determine
18 whether or not you have jurisdiction. And I think that --
19 (Laughter.) I know that sounds strange, but it's true,
20 you really do. And I think that's what you are deciding
21 to do today, to take later steps to determine, based on
22 facts, on a factual record, whether you have jurisdiction
23 over this particular complaint.

24 And the complaint, I think, boils down to is it
25 once VoIP, always VoIP, or is there an intervening action

1 that takes place on the part of the carrier. And that, I
2 think, is a factual determination that you would have to
3 make. And based on that determination, you would
4 ultimately decide whether you wanted to take action or
5 not.

6 **COMMISSIONER BALBIS:** Thank you. And that comes
7 to my point that the further discussion on the record as
8 to whether or not we have jurisdiction at a later date if
9 we deny the motion to dismiss. But I'm afraid that if we
10 grant the motion to dismiss we will never have that
11 opportunity to, again, discuss the details as far as
12 jurisdiction.

13 **CHAIRMAN GRAHAM:** So was that a motion?

14 **COMMISSIONER BALBIS:** With that, I move staff's
15 recommendation on Issues 2 and 3.

16 **CHAIRMAN GRAHAM:** It has been moved and
17 seconded, staff recommendation on Issues 2 and 3.

18 Any further discussion? Commissioner Edgar.

19 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

20 In listening to the arguments, I believe that
21 early in the presentation we heard from Verizon their
22 position that we must find jurisdiction in order to move
23 forward today. And what I think I'm hearing from our
24 staff counsel is a difference of opinion on that point.
25 So I'd like to ask Verizon if I heard your position

1 clearly, and, if so, if you would like to elaborate.

2 **MS. CASWELL:** Yes, you did hear it clearly. To
3 move forward on this complaint, you must have jurisdiction
4 to do so. Subject matter jurisdiction is the power to
5 address particular categories of complaints or other
6 proceedings. If you don't have that authority, you can't
7 move forward on the complaint. So we do have a difference
8 of opinion as to what the law is here.

9 **COMMISSIONER EDGAR:** If I may?

10 **CHAIRMAN GRAHAM:** Sure.

11 **COMMISSIONER EDGAR:** So am I hearing you to say
12 that it is your opinion that if we were to move forward
13 with the staff recommendation today that we would be
14 making a finding of subject matter jurisdiction?

15 **MS. CASWELL:** Yes. This staff recommendation
16 says you do have jurisdiction over Bright House's
17 complaint. So once you approve this staff recommendation,
18 an order is issued based upon this recommendation, it says
19 you have jurisdiction over this wholesale intercarrier
20 compensation complaint involving VoIP. And I want to
21 point out there is another option. There is a stay here
22 that you can grant which will avoid any jurisdictional
23 rulings which will be very contentious, or you could have
24 staff go back and rethink about its recommendation to give
25 you a clearer picture of your jurisdiction.

1 **COMMISSIONER EDGAR:** And I'd like to hear from
2 Bright House, as well, and then from staff again, if I
3 may.

4 **MR. SAVAGE:** Thank you. Well, I mean, I think
5 in both the papers and in my brief argument we laid out
6 that you do have jurisdiction because you have
7 jurisdiction over anything laid out in the statute, and
8 the statute specifically advises interexchange carriers to
9 continue to pay access and intercarrier compensation. So
10 linking the statute to what our complaint says, it's very
11 straightforward.

12 Now, that said, I think that the exchange
13 between Commissioner Balbis and staff was actually
14 enlightening in that I can imagine a factual development
15 that when the case goes forward Verizon might try to prove
16 as a factual matter that our assertion that there is a
17 separate access service involved here is wrong. I don't
18 see how they can prove that, but, you know, at this stage
19 let's assume they could prove that. You could then in
20 your order say, well, gosh, now that we understand the
21 facts, I guess we didn't have jurisdiction. And I know
22 that you aren't formally a court, but that happens to
23 courts all the time where they hear a case, and as the
24 facts are finally developed and they conclude that they
25 are going to dismiss the case later on.

1 So I obviously think we're right and don't think
2 you should do that. I think staff is correct that if as
3 the facts develop, you came to the conclusion that you
4 didn't have jurisdiction, you could certainly dismiss it
5 later. I would not expect to win a case if the facts
6 showed you didn't have jurisdiction. Let's put it that
7 way.

8 **COMMISSIONER EDGAR:** Ms. Brown.

9 **MS. BROWN:** Commissioner, on the basis of the
10 facts as asserted in Bright House's complaint, which you
11 are under our standard for granting motions to dismiss
12 supposed to take as true, you can reach the preliminary
13 opinion that you have jurisdiction to proceed. And then
14 as Bright House suggested, if the facts -- and I think
15 there are facts that you need to develop in order to make
16 that final determination. If the facts show otherwise,
17 then you would determine that you actually did not have
18 jurisdiction.

19 I think, Commissioner Balbis, you do on this
20 preliminary basis, at least, have jurisdiction now going
21 forward to determine whether you do based on the factual
22 record. Thank you.

23 **CHAIRMAN GRAHAM:** Commissioner Brisé.

24 **COMMISSIONER BRISÉ:** Thank you, Mr. Chairman.

25 And this question is to staff. With respect to

1 a statement that you made, part of the issue that we are
2 looking at today, or would be looking at with this
3 particular docket, when is VoIP actually VoIP?

4 **MS. BROWN:** Yes. It seems to me that Verizon's
5 position is that if anywhere in this transaction that
6 takes place VoIP is involved, then everything that happens
7 after that is VoIP. And under our statutes, you don't
8 have retail jurisdiction over the provision of VoIP
9 services. And that's the question, is it once VoIP always
10 VoIP. That is the issue that -- I think one of the issues
11 anyway. The parties would develop the issues going
12 forward, but that would be one of the issues that you
13 would want to resolve. And if Mr. Bloom had anything to
14 add, he can. No.

15 **COMMISSIONER BRISÉ:** So then you are suggestion
16 through the staff recommendation is that considering that
17 we have that dilemma to deal with in determining
18 whether -- when the call is made or then it goes to the
19 PTSN, at what point do we gain jurisdiction, and then
20 where do we retain the jurisdiction to determine what is
21 correct with respect to the dispute. So, therefore, if we
22 move forward with respect to not -- if we move forward
23 with the case, it would allow us an opportunity to address
24 that broader issue.

25 **MS. BROWN:** Yes.

1 **CHAIRMAN GRAHAM:** Commissioner Brown.

2 **COMMISSIONER BROWN:** Thank you, Mr. Chairman. I
3 do want to point out that I believe that this is
4 essentially a compensation dispute. And the standard of
5 review for a motion to dismiss is quite high. There are
6 obviously conflicts of law here, conflicts of fact, and I
7 believe that an administrative hearing provided so that we
8 can have an opportunity to hear all of that is in the best
9 interest of the parties. So I would support the motion of
10 Commissioner Balbis.

11 **CHAIRMAN GRAHAM:** Okay. There's a motion on the
12 floor to move staff recommendation. It has been seconded.
13 All in favor say aye.

14 (Vote taken.)

15 **CHAIRMAN GRAHAM:** Any opposed?

16 By your action you have approved staff
17 recommendation on Issue Number 2 and 3, which concludes
18 Item Number 2.

19 **MR. SAVAGE:** Thank you, Your Honor.

20 * * * * *

21

22

23

24

25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter
6 Services Section, FPSC Division of Commission Clerk, do
hereby certify that the foregoing proceeding was heard
at the time and place herein stated.

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

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

13 DATED THIS 23rd day of August, 2011.

14
15 

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

Section 1. This act may be cited as the "Regulatory Reform Act."

Section 2. Section 364.01, Florida Statutes, is amended to read:

364.01 Powers of commission, legislative intent.—

(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

(2) It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. However, ~~the provisions of this chapter~~ does ~~shall~~ not affect the authority and powers granted in s. 166.231(9) or s. 337.401.

(3) ~~Communications activities that are not regulated by the Florida Public Service Commission, including, but not limited to, VoIP, wireless, and broadband, are subject to this state's generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by the appropriate state authority or through actions in the judicial system. This chapter does not limit the availability to any party of any remedy or defense under state or federal antitrust laws. The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and has provided will provide customers with freedom of choice, encouraged encourage the introduction of new telecommunications service, encouraged encourage technological innovation, and encouraged encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce. The Legislature further finds that the provision of voice over Internet protocol (VoIP) free of unnecessary regulation, regardless of the provider, is in the public interest.~~

(4) ~~The commission shall exercise its exclusive jurisdiction in order to:~~

(a) ~~Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.~~

~~(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.~~

~~(c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.~~

~~(d) Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.~~

~~(e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.~~

~~(f) Eliminate any rules or regulations which will delay or impair the transition to competition.~~

~~(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.~~

~~(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.~~

~~(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.~~

Section 3. Section 364.011, Florida Statutes, is amended to read:

364.011 Exemptions from commission jurisdiction.—The following services are exempt from oversight by the commission, except to the extent delineated in this chapter ~~or specifically authorized by federal law:~~

- (1) Intrastate interexchange telecommunications services.
- (2) Broadband services, regardless of the provider, platform, or protocol.
- (3) VoIP.**
- (4) Wireless telecommunications, including commercial mobile radio service providers.

364.013 Emerging and advanced services.---Broadband service and the provision of voice-over-Internet-protocol (VoIP) are exempt from commission jurisdiction and shall be free of state regulation, except as delineated in this chapter, regardless of the provider, platform, or protocol. Notwithstanding the exemptions in this chapter, a competitive local exchange telecommunications company is entitled to interconnection with a local exchange telecommunications company to transmit and route voice traffic between both the competitive local exchange telecommunications company and the local exchange telecommunications company regardless of the technology by which the voice traffic is originated by and terminated to an end user. The commission shall afford such competitive local exchange telecommunications company all substantive and procedural rights available to such companies regarding interconnection under the law.

(4) The department ~~may is authorized to~~ enter into contracts necessary or useful to carry out the purposes of this section.

(5) The department ~~may is authorized to~~ establish any committee or workgroup to administer and carry out the purposes of this section.

(6) The department ~~may is authorized to~~ adopt rules necessary to carry out the purposes of this section. Any rule, contract, grant, or other activity undertaken by the department shall ensure that all entities are in compliance with any applicable federal or state laws, rules, and regulations, including, but not limited to, those applicable to private entities providing communications services for hire and the requirements of s. 350.81, including, without limitation, the authority to establish definitions of terms pertinent to this section.

Section 6. Section 364.02, Florida Statutes, is amended to read:

364.02 Definitions.—As used in this chapter, the term:

(1) “Basic local telecommunications service” means voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as “911,” all locally available interexchange companies, directory assistance, operator services, and relay services, ~~and an alphabetical directory listing~~. For a local exchange telecommunications company, the term includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

(2) “Broadband service” means any service that consists of or includes the offering of the capability to transmit or receive information at a rate that is not less than 200 kilobits per second and either:

(a) Is used to provide access to the Internet; or

(b) Provides computer processing, information storage, information content, or protocol conversion in combination with the service.

The definition of broadband service does not include any intrastate telecommunications services that have been tariffed with the commission on or before January 1, 2005.

(3) “Commercial mobile radio service provider” means a commercial mobile radio service provider as defined by and pursuant to 47 U.S.C. ss. 153(27) and 332(d).

(4) “Commission” means the Florida Public Service Commission.

(5) “Competitive local exchange telecommunications company” means any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995.

(6) "Corporation" includes a corporation, company, association, or joint stock association.

(7) "Intrastate interexchange telecommunications company" means any entity that provides intrastate interexchange telecommunications services.

(8) "Local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

~~(9) "Monopoly service" means a telecommunications service for which there is no effective competition, either in fact or by operation of law.~~

~~(9)~~⁽¹⁰⁾ "Nonbasic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection, resale, or unbundling pursuant to arrangement described in s. 364.16, or a network access service described in s. 364.163. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.

~~(10)~~⁽¹¹⁾ "Operator service" includes, but is not limited to, billing or completion of third-party, person-to-person, collect, or calling card or credit card calls through the use of a live operator or automated equipment.

~~(11)~~⁽¹²⁾ "Operator service provider" means a person who furnishes operator service through a call aggregator.

~~(12)~~⁽¹³⁾ "Service" is to be construed in its broadest and most inclusive sense. The term "service" does not include broadband service or voice-over-Internet protocol service for purposes of regulation by the commission. Nothing herein shall affect the rights and obligations of any entity related to the payment of switched network access rates or other intercarrier compensation, if any, related to voice-over-Internet protocol service. Notwithstanding s. 364.013, and the exemption of services pursuant to this subsection, the commission may arbitrate, enforce, or approve interconnection agreements, and resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or any other applicable federal law or regulation. With respect to the services exempted in this subsection, regardless of the technology, the duties of a local exchange telecommunications company are only those that the company is obligated to extend or provide under applicable federal law and regulations.

~~(13)~~⁽¹⁴⁾ "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

(a) An entity that provides a telecommunications facility exclusively to a certificated telecommunications company;

(b) An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;

(c) A commercial mobile radio service provider;

(d) A facsimile transmission service;

(e) A private computer data network company not offering service to the public for hire;

(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; ~~or~~

(g) An intrastate interexchange telecommunications company; ~~or~~

(h) An operator service provider.

However, each commercial mobile radio service provider and each intrastate interexchange telecommunications company shall continue to be liable for any taxes imposed under chapters 202, 203, and 212 ~~and any fees assessed under s. 364.025.~~ Each intrastate interexchange telecommunications company shall continue to be subject to s.s. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.336, 364.501, 364.603, and 364.604, ~~shall provide the commission with the current information as the commission deems necessary to contact and communicate with the company,~~ and shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.

~~(14)(15)~~ “Telecommunications facility” includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state.

~~(15)(16)~~ “VoIP” means any service that:

(a) Enables real-time, two-way voice communications that originate from or terminate to the user’s location in Internet Protocol or any successor protocol;

(b) Uses a broadband connection from the user’s location; and

(c) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network the voice over Internet protocol as that term is defined in federal law.

Section 7. Section 364.025, Florida Statutes, is repealed.

Section 8. Section 364.0251, Florida Statutes, is repealed.

party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs.

(h)(4) The commission shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers who are subscribing to Lifeline service and the effectiveness of any procedures to promote participation.

(i) The commission may undertake appropriate measures to inform low-income consumers of the availability of the Lifeline and Link-Up programs.

(j) The commission shall adopt rules to administer this section.

Section 21. Section 364.15, Florida Statutes, is repealed.

Section 22. Section 364.16, Florida Statutes, is amended to read:

364.16 Connection of lines and transfers; Local interconnection, unbundling, and resale; telephone number portability.—

(1) The Legislature finds that the competitive provision of local exchange service requires appropriate continued regulatory oversight of carrier-to-carrier relationships in order to provide for the development of fair and effective competition.

(2) It is the intent of the Legislature that in resolving disputes, the commission treat all providers of telecommunications services fairly by preventing anticompetitive behavior, including, but not limited to, predatory pricing.

(3) The commission shall, upon request, arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections. The commission has the authority to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, local interconnection, unbundling, number portability, dialing parity, access to rights-of-way, access to poles and conduits, and reciprocal compensation. However, this section does not confer jurisdiction on the commission for services that are exempt from commission jurisdiction under s. 364.011 or s. 364.013. Additionally, a competitive local exchange telecommunications company is entitled to interconnection with a local exchange telecommunications company to transmit and route voice traffic between both the competitive local exchange telecommunications company and the local exchange telecommunications company regardless of the technology by which the voice traffic is originated by and terminated to an end user. The commission shall afford the competitive local exchange telecommunications company all substantive and procedural rights available to such companies regarding interconnection under the law.