

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: May 10, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Harris) *[Handwritten initials]*
Division of Regulatory Analysis (Bloom, Hawkins) *[Handwritten initials]*

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.

AGENDA: 05/22/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110056.RCM.DOC

Case Background

On February 22, 2011, Bright House Networks Information Services (Florida) LLC ("Bright House") filed a complaint alleging that Verizon Florida, LLC ("Verizon ILEC"), and MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") were violating Sections 364.01(4), 364.02(13) and 364.02(14), Florida Statutes (F.S.), and "other statutory provisions and applicable law and rules" by refusing to pay Bright House's established intrastate interexchange access charges. On July 28, 2011, Bright House filed a notice of voluntary dismissal of its complaint against Verizon ILEC, and Verizon ILEC has been dismissed from this

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docket. On August 26, 2011, the Commission issued Order No. PSC-11-0359-PCO-TP, denying Verizon's March 14, 2011, Motion to Dismiss or Stay Proceeding.

After several Motions for Extension of Time, on January 3, 2012, Bright House filed a Motion to Temporarily Suspend Procedural Schedule ("Motion to Suspend"). In the Motion to Suspend, Bright House represented that on October 27, 2011, the FCC adopted its Report and Order and Notice of Proposed Rulemaking ("Order") addressing comprehensive reforms to the Universal Service Fund and Intercarrier Compensation mechanisms.¹ The complete text of the Order was subsequently issued on November 18, 2011, and based on their analysis and review of the provisions of the FCC's order, avers Bright House, the parties began discussions geared towards the settlement of matters in dispute in this docket. In the Motion to Suspend, the parties acknowledged that they had reached a mutually acceptable resolution and that additional time would allow the parties to finalize a settlement. Accordingly, the Prehearing Officer granted Bright House's Motion to Suspend the remaining procedural schedule by Order PSC-12-0018-PCO-TP, issued January 6, 2012.

In the instant Notice of Voluntary Dismissal with prejudice, filed May 1, 2012, Bright House represents that the parties have finalized a settlement of this matter, which will resolve all issues in this docket, such that this proceeding can be terminated. This recommendation addresses Bright House's Notice of Voluntary Dismissal with prejudice. The Commission is vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes.

¹ Report and Order and Notice of Proposed Rulemaking, Order FCC 11-161, issued in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, November 18, 2011.

Discussion of Issues

Issue 1: Should the Commission acknowledge Bright House's May 1, 2012, Notice of Voluntary Dismissal?

Recommendation: Yes, the Commission should acknowledge Bright House's May 1, 2012, Notice of Voluntary Dismissal with prejudice. (Harris)

Staff Analysis: The law is clear that a plaintiff's right to take a voluntary dismissal is absolute² and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.³ Both of these legal principles have been recognized in administrative proceedings⁴ and are consistent with past Commission decisions.⁵ Staff recommends that the Commission acknowledge Bright House's voluntary dismissal with prejudice of its petition as a matter of right.

² Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

³ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

⁴ Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) *aff'd*, 645 So. 2d 374 (Fla. 1994).

⁵ See Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In Re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; Order No. PSC-08-0493-FOF-TP, In Docket 070408-TP, In re: Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, there is nothing further for the Commission to consider in this docket. Therefore, staff recommends that Docket No. 110056-TP be closed. (Harris)

Staff Analysis: If Issue 1 is approved, there is nothing further for the Commission to consider in this docket. Therefore, staff recommends that Docket No. 110056-TP be closed.