

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request for emergency relief against Verizon Florida, LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC.

DOCKET NO. 070691-TP

In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

DOCKET NO. 080036-TP

ORDER NO. PSC-08-0325-PCO-TP

ISSUED: May 19, 2008

**ORDER MODIFYING PROCEDURE**

**I. CASE BACKGROUND**

On November 16, 2007, Bright House Networks Information Services (Florida) LLC, and Bright House Networks, LLC (together, "Bright House") filed with the Commission its Complaint and Request for Emergency Relief ("Petition"). Bright House alleges that Verizon Florida, LLC, ("Verizon") is engaging in anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, Florida Statutes (F.S.), and is failing to facilitate the transfer of customers' numbers to Bright House upon request, contrary to Rule 25-4.082, Florida Administrative Code (F.A.C.). We assigned Docket No. 070691-TP to address Bright House's complaint.

On December 6, 2007, Verizon filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings ("Motion"). On that same date, Verizon also filed its Request for Oral Argument on the Motion. Verizon alleged that Bright House's complaint should be dismissed because it failed to state a claim for which relief can be granted. Verizon also sought dismissal, or in the alternative a stay, on the independent ground that Bright House has already put the same issues before the Federal Communications Commission ("FCC"), thus giving rise to the potential for conflicting decisions and wasteful and duplicative proceedings. On December 13, 2007, Bright House filed its Opposition to Verizon's Motion.

At the Commission's Regular Agenda, on March 4, 2008, we voted unanimously to deny Verizon's Motion to Dismiss, and by a 4-to-1 vote, voted to deny Verizon's alternative motion to stay proceedings.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

On January 10, 2008, Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone ("Comcast") filed with the Commission its Complaint and Request for Emergency Relief, with essentially the same allegations made against Verizon by Bright House. We assigned Docket No. 080036-TP to address Comcast's complaint.

On February 4, 2008, Verizon filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings, citing the same allegations as in its Motion in Docket No. 070691-TP. On February 11, 2008, Comcast filed its Opposition to Verizon's Motion, and on February 12, 2008, filed its Amended Opposition to Verizon's Motion.

At the Commission's Regular Agenda on March 18, 2008, in Docket No. 080036-TP, we voted unanimously to deny Verizon's Motion to Dismiss and by a 4-to-1 vote, voted to deny Verizon's alternative motion to stay the proceedings.

The issues in these two cases are identical and the alleged circumstances are substantially similar. Finding that administrative efficiencies will be gained through a single proceeding, and no party objecting to such, by Order No. PSC-08-0213-FOF-TL, issued April 2, 2008, we ordered that Docket No. 080036-TP shall be consolidated with Docket No. 070691-TP, for purposes of hearing.

By Order No. PSC-08-0235-PCO-TL (Order Establishing Procedure), issued April 10, 2008, certain controlling dates for filing testimony for this consolidated Docket were established, as was an issues list guiding the scope of this proceeding. Staff counsel has now requested an extension of the dates set for filing Direct and Rebuttal Testimony, and a modification of the Issues List (Attachment A). The original seven issues have been consolidated into four issues. All parties agree with the need for the testimony filing extensions and the issue modification. Staff believes that the filing date extensions and the modified issues are both necessary for staff to meet the needs of the Commission by providing the Commission with the most complete picture possible of the issues in this matter.

In order to allow staff and the parties the opportunity to fully present the facts and arguments for the Commission's decision in this matter, I find it reasonable and appropriate to make the following modifications to the schedule:

- (1) Direct Testimony shall be filed on May 23, 2008.
- (2) Rebuttal Testimony shall be filed on July 3, 2008.
- (3) The original Issues List shall be modified as shown in Attachment A.

Based upon the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, Prehearing Officer, that Order No. PSC-08-0235-PCO-TL is modified as set forth in the body of this Order. It is further

ORDERED that the schedule as modified, shall be followed unless further modified by the Commission. It is further

ORDERED that Order No. PSC-08-0235-PCO-TL is reaffirmed in all other aspects.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 19th day of May, 2008.

  
LISA POLAK EDGAR  
Commissioner and Prehearing Officer

( S E A L )

HFM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ISSUES LIST

1. Is Verizon giving undue or unreasonable preference or advantage to any person when receiving an LSR to port a number for Bright House or Comcast? If so, how is Verizon doing so?
2. Does Verizon facilitate porting of a subscriber's telephone number upon request of Bright House or Comcast, pursuant to Rule 25-4.082, F.A.C.?
3. Is Verizon's retention marketing program appropriately competitive or anti-competitive? Why or why not?
4. What action, if any, should the Commission take with respect to Verizon's Retention Marketing Program?