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July 24, 2008 – VIA OVERNIGHT MAIL

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

Re: Docket No. 070691-TP  
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. 080036-TP  
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  
Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone

Dear Ms. Cole:

Enclosed for filing in the above-referenced matters are an original and seven copies of  
Verizon Florida LLC's Prehearing Statement. Also enclosed is a diskette with a copy of  
the Prehearing Statement in Word format. Service has been made as indicated on the  
Certificate of Service. If there are any questions regarding this filing, please contact me  
at (678) 259-1449.

Sincerely,

  
Dulaney L. O'Roark III

tas

Enclosures

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ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

06474 JUL 25 8

FPSC-COMMISSION CLERK

**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  
Filed: July 25, 2008

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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 Comcast Phone )  
of Florida, LLC d/b/a Comcast Digital Phone )

Docket No. 080036-TP

**VERIZON FLORIDA LLC'S PREHEARING STATEMENT**

In accordance with Order No. PSC-08-0235-PCO-TP, as modified by Order Nos. PSC-08-0325-PCO-TP, PSC-08-0344-PCO-TP and PSC-08-0437-PCO-TP, Verizon Florida LLC ("Verizon") hereby files this prehearing statement.

**1. Witnesses**

Verizon has prefiled the following testimony:

Direct Testimony of Alan F. Ciamporcero, adopted by Michelle Robinson  
(addressing Issues 1-4)

Direct Testimony of Bette J. Smith (addressing Issues 1, 3 and 4)

Direct Testimony of Patrick J. Stevens (addressing Issues 1-4)

Rebuttal Testimony of Jeffrey A. Eisenach (addressing Issues 1,3 and 4)

Rebuttal Testimony of Michelle A. Robinson (addressing Issues 1-4)

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06474 JUL 25 8

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## **2. Exhibits**

Verizon plans to introduce exhibits AFC-1 to -8, which are attached to the Direct Testimony of Alan F. Ciamporcero being adopted by Michelle A. Robinson, Exhibits MAR-9 and -10 to the Rebuttal Testimony of Michelle A. Robinson, and JAE-1 and -2 to the Rebuttal Testimony of Jeffrey A. Eisenach. Verizon reserves the right to introduce additional exhibits at the hearing or other appropriate points.

## **3. Verizon's Basic Position**

The Verizon retention marketing program at issue in this case provides consumers accurate information about the voice, broadband, and video services and attractive pricing plans and incentives that Verizon offers. The program provides that information at a meaningful time – after the customers have initially decided to cancel their Verizon voice service but before they have left Verizon's network. Consumers benefit from more complete information and superior value; those who choose to remain with Verizon, rather than switching service to a rival, do so because Verizon offers a better deal. Cable companies engage in the same, and in many instances more aggressive retention marketing. This intense competition for subscribers represents the ideal of facilities-based competition that the Commission has been seeking to encourage for more than a decade. Contrary to the claims made by Bright House Networks Information Services (Florida) LLC and Bright House Networks, LLC (collectively, "Bright House") and Comcast Phone of Florida LLC ("Comcast"), Verizon's program fully complies with Florida law.

The Commission consistently has interpreted Florida law as conforming to applicable federal law when it has resolved retention marketing issues. As Verizon has

asserted in the federal retention marketing case pending in the D.C. Circuit Court of Appeals, Verizon's retention marketing program complies with federal law. Section 222(b) of the Communications Act was designed to prevent incumbent providers from using to their advantage proprietary information they obtained from competing providers solely by virtue of the incumbents' wholesale role. Verizon has not violated section 222(b) because the information Verizon used in its retention marketing program – the customer's cancellation of service and the fact that the customer requested that his or her number be ported – was not another carrier's proprietary information, but rather directions Verizon received from its retail customers. Moreover, Verizon did not receive this information in a wholesale capacity (as required to trigger section 222(b)) because Verizon provides no "telecommunications service" to Bright House or Comcast. Verizon's role in the LNP process is not a "telecommunications service" as defined by section 153(46) of the Act because it does not involve transmission of a customer's information for a fee.

Moreover, the Commission should not grant the requested relief because it should not prevent Verizon from directing targeted speech to its customers. The First Amendment bars such a restriction on truthful commercial speech unless it can be justified under a three-part test: (i) the regulation must be supported by a substantial governmental interest; (ii) it must directly advance that interest; and (iii) it must be narrowly tailored not to restrict more speech than necessary to accomplish its objectives. That test cannot be met in this case because restricting Verizon's program would fail to advance the governmental interest underlying applicable state and federal

law, or indeed any governmental interest, and because it would have the effect of authorizing speech by one group of speakers while banning it for another.

#### **4. Verizon's Positions on Specific Questions of Fact, Law and Policy**

All of the Issues in this proceeding are mixed questions of fact, law, and policy.

**ISSUE 1: IS VERIZON OBTAINING AN UNDUE OR UNREASONABLE ADVANTAGE BY MARKETING A CUSTOMER WHEN RECEIVING A LOCAL SERVICE REQUEST TO PORT A SUBSCRIBER'S TELEPHONE NUMBER FOR BRIGHT HOUSE OR COMCAST, IN VIOLATION OF SECTION 364.10(1)? IF SO, HOW IS VERIZON DOING SO?**

**VERIZON'S POSITION:** No. The customer disconnect and LNP information relayed to Verizon by another carrier at the request of Verizon's customer is not carrier proprietary information. By using this information for retention marketing purposes, Verizon does not obtain an undue or unreasonable advantage over other carriers. Moreover, Bright House and Comcast receive the same customer information when a customer switches from one of them to Verizon. And when a customer accepts a Verizon retention marketing offer, Verizon notifies the other provider, which may continue to compete for the customer. Finally, Verizon does not provide an undue or unreasonable advantage to customers accepting retention marketing offers because any customer may take advantage of available retention offers by calling Verizon about disconnecting his or her service.

**ISSUE 2: DOES VERIZON TIMELY COMPLETE PORTING OF A SUBSCRIBER'S TELEPHONE NUMBER UPON REQUEST OF BRIGHT HOUSE OR COMCAST, PURSUANT TO RULE 25-4.082, F.A.C.?**

**VERIZON'S POSITION:** Yes. Verizon completes the steps required for its role in the number porting process on the requested due date for a high percentage of Bright House's and Comcast's LNP requests. Once a customer changes his or her mind and decides to keep Verizon's service, however, Bright House or Comcast are no longer the "acquiring company." At that point, Verizon should, in compliance with the customer's request and Rule 25-4.082, stop the number port if there is time to do so.

**ISSUE 3: IS VERIZON'S RETENTION MARKETING PROGRAM FOR VOICE CUSTOMERS ANTI-COMPETITIVE, IN VIOLATION OF SECTION 364.01(4)(G)? WHY OR WHY NOT?**

**VERIZON'S POSITION:** No. Verizon's retention marketing program benefits consumers by informing them about available services and pricing plans at a meaningful time, after the customers have initially decided to cancel their Verizon voice service but before they have left Verizon's network. Verizon's program has been implemented in a highly competitive environment in which many facilities-based providers are trying to win customers' business. The competition between Verizon on the one hand and Bright House and Comcast on the other is especially vigorous, with each competitor offering bundles of voice, data and video service and informing its customers of those service offerings through retention marketing programs. Bright House and Comcast are well-established and enjoying continued success in the Florida telephone market, while Verizon has experienced substantial line losses. Although Verizon's program has been successful, it has not significantly affected the rapid growth of service providers such as Bright House and Comcast, both of which attempt to retain their customers prior to their leaving for Verizon.

**ISSUE 4: WHAT ACTION, IF ANY, SHOULD THE COMMISSION TAKE WITH RESPECT TO VERIZON'S RETENTION MARKETING PROGRAM?**

**VERIZON'S POSITION:** Because Verizon's retention marketing program complies with Florida law, and is pro-competitive and pro-consumer, the Commission should take no action concerning the program. Moreover, the relief requested should be denied because it would prevent Verizon from directing targeted speech to its customers in violation of the First Amendment.

**5. Stipulated Issues**

There are no stipulated issues.

**6. Pending Motions and Other Matters**

Verizon's motion for reconsideration or clarification concerning the Second Order Modifying Procedure is pending and is scheduled to be addressed at the Commission's July 29, 2008 agenda conference.

**7. Pending Requests for Confidentiality**

Verizon has requests for confidential classification pending with respect to Staff's First Set of Interrogatories (1-21); the Direct Testimony of Alan F. Ciamporcero, Patrick J. Stevens and Bette J. Smith; and the Rebuttal Testimony of Jeffrey A. Eisenach.

**8. Objections to a Witnesses' Qualifications as an Expert**

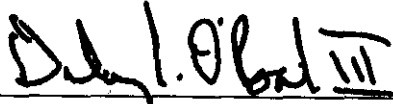
Verizon has no objections to a witness's expert qualifications at this time.

**9. Procedural Requirements**

Verizon is unaware of any requirements set forth in the Commission's Procedural Order that cannot be complied with at this time.

Respectfully submitted on July 25, 2008.

By:

A handwritten signature in black ink, appearing to read "Dulaney L. O'Roark III", written over a horizontal line.

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Attorney for Verizon Florida LLC



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing were sent via overnight mail(\*)  
on July 24, 2008 and U. S. mail(\*\*) on July 25, 2008 to:

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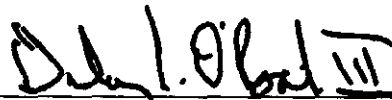
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