

**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

**SUPPLEMENTAL RESPONSES OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC, AND ITS AFFILIATE, BRIGHT HOUSE NETWORKS, LLC TO VERIZON'S FIRST SET OF INTERROGATORIES (NOS. 1-23)**

Bright House Networks Information Services (Florida) LLC and Bright House Networks, LLC (collectively, "Bright House"), hereby provide supplemental responses to Verizon's first set of interrogatories. Those responses follow this cover sheet.

Respectfully submitted,

/s/ Christopher W. Savage

Christopher W. Savage  
Davis Wright Tremaine, LLP  
1919 Pennsylvania Ave., NW, Suite 200  
Washington, D.C. 20006  
Tel: 202-973-4200  
Fax: 202-973-4499  
chrissavage@dwt.com

Beth Keating  
Akerman Senterfitt  
106 East College Ave., Suite 1200  
Tallahassee, Fl 32301  
Tel: 850-521-8002  
Fax: 850-222-0103  
beth.keating@akerman.com

**COM** \_\_\_\_\_  
**ECR** \_\_\_\_\_  
**GCL** \_\_\_\_\_  
**OPC** \_\_\_\_\_  
**RCP**   /    
**SSC** \_\_\_\_\_  
**SGA** \_\_\_\_\_  
**ADM** \_\_\_\_\_  
**CLK** \_\_\_\_\_

Attorneys for:  
Bright House Networks Information Services, LLC  
Bright House Networks, LLC  
August 6, 2008

DOCUMENT NUMBER DATE

06948 AUG -7 8

1. Please state the total number of customers that subscribed to your telephone service in Verizon's Florida service territory as of April 30, 2008.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

**CONFIDENTIAL INFORMATION**



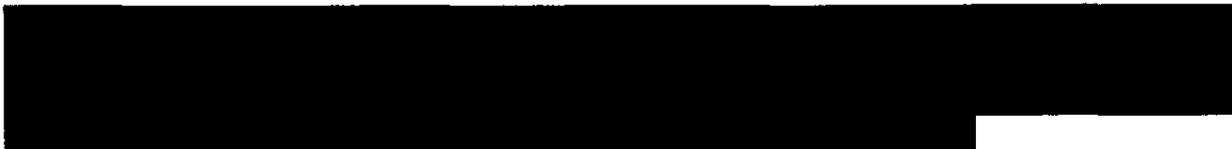
**CONFIDENTIAL INFORMATION**

\* \* \* \* \*

2. Please state the number of new customers that subscribed to your telephone service in Verizon's Florida service territory each month from January 2007 to April 2008.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

**CONFIDENTIAL INFORMATION**



**CONFIDENTIAL INFORMATION**

\* \* \* \* \*

3. For the period August 2007 to April 2008, please state for each month and in total the number of customers you claim Verizon retained in Florida as a result of its retention marketing program.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

**CONFIDENTIAL INFORMATION**



**CONFIDENTIAL INFORMATION**

\* \* \* \* \*

4. Do you require Florida customers to contact you directly to cancel video or broadband Internet access service? If so, please:
- a. Describe any methods or processes you use or have used to retain or win back customers when they call you to cancel video or broadband Internet access service.
  - b. State whether, when such customers call you to cancel video or broadband Internet access service, you offer them incentives to remain customers. If you do not offer such incentives to every customer, please describe the criteria you use to determine the customers to which you make such offers and the percentage of customers to which you make such offers.
  - c. Identify any scripts or written communications you use or have used to retain or win back customers when they call you to cancel video or broadband Internet access service.
  - d. Describe any methods or processes you use or have used to retain or win back customers when they cancel video or broadband Internet access service in writing.
  - e. State whether, when such customers cancel video or broadband Internet access service in writing, you offer them incentives to remain customers. If you do not offer such incentives to every customer, please describe the criteria you use to determine the customers to which you make such offers and the percentage of customers to which you make such offers.
  - f. Identify any scripts or written communications you use or have used to retain or win back customers when they cancel video or broadband Internet access service in writing.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

See attached, which was provided in connection with the FCC case challenging Verizon's retention marketing program.

\* \* \* \* \*

5. Do you require Florida customers to return equipment after they cancel video or broadband Internet access service? If so, please:
- a. State the manner in which customers are permitted to return the equipment (such as in person or by mail).
  - b. State whether you permit the equipment to be sent or delivered by a third person such as a competing provider.
  - c. Describe any methods or processes you use or have used to retain or win back customers when they return such equipment.
  - d. State whether, when such customers return equipment, you offer them incentives to remain customers. If you do not offer such incentives to every customer, please describe the criteria you use to determine the customers to which you make such offers and the percentage of customers to which you make such offers.
  - e. Identify any scripts or written communications you use or have used to retain or win back such customers when they return equipment.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

See materials provided in response to Interrogatory No. 4.

\* \* \* \* \*

6. In response to Staff's Interrogatory No. 7, you stated that winback marketing efforts "are automatically engaged" when you enter a disconnect order in your billing system. Please state whether you begin such winback marketing efforts before you have disconnected the customer's telephone service.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

No.

\* \* \* \* \*

7. **Please describe the process you use to disconnect a customer's telephone service after you have entered a disconnect order in your billing system. Please state how long on average it takes to complete this process and what performance objectives, if any, you have for completion of this process.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

Bright House strives to respond quickly to all requests to port out a Bright House customer. We have service objectives to respond to LSR requests by the next business day and meet this standard greater than 95% of the time. We require a minimum of three business days after receipt of the LSR to release a telephone number; aside from this requirement, carriers are free to request a convenient port date, which varies depending on the carriers' business needs. Only after we have confirmed that the telephone number has successfully ported to the other carrier do we enter a disconnect order in our billing system.

Disconnect orders received from Verizon (or other third parties) are not made available to marketing personnel in any way.

\* \* \* \* \*

8. For the period January 2007 to April 2008, please:
- a. State for each month and in total the number of Florida customers with video or broadband Internet access services (or both) who you retained as a result of the methods or processes described in response to Interrogatory Nos. 4 and 5.
  - b. State for each month and in total the number of customers identified in response to Interrogatory No. 8, subpart a that subscribed to your telephone service and kept that service as a result of the methods or processes described in response to Interrogatory Nos. 4 and 5.

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

Bright House does not have this information readily available. Our best business judgment is that the percentage of customers who decided to stay with Bright House after having been signed up by Verizon is small.

\* \* \* \* \*

9. **State whether you refrain from seeking to retain Florida customers to which you provide a package of (i) video or broadband Internet access service (or both) and (ii) telephone service, using the methods or processes described in response to Interrogatory Nos. 4 and 5, when a competing provider's request to port the customer's telephone number and terminate the customer's telephone service is pending. If not, please:**
- a. **For the period January 2007 to April 2008, state for each month and in total the number of Florida customers who subscribed to your telephone service that you retained using the methods or processes described in response to Interrogatory Nos. 4 and 5 when a request by Verizon to port the customer's telephone number and terminate the customer's telephone service was pending.**
  - b. **Describe the process you use to cancel the pending request or otherwise retain the customer's telephone service.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

If a customer calls to cancel video and/or broadband service, Bright House will attempt to persuade that customer to stay with Bright House. These calls are handled by marketing personnel who have access to a record of all of the customer's services. The fact that a request to port a customer's telephone number to Verizon (or any other third party) is pending, however, is not made available to Bright House's marketing personnel.

\* \* \* \* \*

10. **When Verizon retains or wins back a Florida telephone customer from you as a result of its retention marketing program, do you continue to compete to win the customer? If so, please:**
- a. **State the methods and processes you use to compete for the customer.**
  - b. **For the period January 2007 to April 2008, state for each month and in total the number of Florida telephone customers you have won after Verizon initially retained or won back the customer from you as a result of its retention marketing program.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

1. When Verizon wins back a former Bright House customer (that is, the customer has already terminated all Bright House services and begun taking service from Verizon), Bright House attempts to win such customers back to Bright House both through Bright House's normal marketing and, from time to time, through marketing efforts focused on former Bright House customers.
2. When Verizon, by means of its retention marketing program, "retains" a customer that had originally decided to switch to Bright House (that is, the customer cancels its orders for Bright House services and no longer has any Bright House orders pending), Bright House will subsequently market to such customers by means of Bright House's normal marketing efforts.
3. When Bright House wins a customer and places an LSR for that customer with Verizon, and the number port is placed in jeopardy by Verizon based on the claim that the customer has canceled the order, Bright House will try to contact the customer to determine whether the customer actually canceled the order. (In some cases, we have found that no such customer cancellation occurred, *i.e.*, Verizon's retention marketing efforts mistakenly counted the customer as wanting to stay with Verizon.) In those discussions with the customer, even if the customer confirms that he canceled his original order with Bright House, we will attempt to persuade the customer (again) to take our services.
4. Other than contacting customers in cases where Verizon claims the customer canceled service (as described in (3) above), we do not have marketing efforts directed specifically to customers who had originally chosen to leave Verizon for Bright House, but whose transfer to Bright House was interrupted as a result of Verizon's retention marketing program.
5. We do not have any specific figures available indicating how many customers we have been able to re-convince to come to Bright House after such customers accepted offers in connection with Verizon's retention marketing program.

\* \* \* \* \*

11. **How many video customers do you have in Verizon's Florida service territory? What percentage of those video customers subscribe to your broadband Internet access and telephone service? What percentage of those video customers subscribe to your telephone service, but not your broadband Internet access service?**

Bright House stands on its earlier objections to this interrogatory.

\* \* \* \* \*

- 12. How many broadband Internet access customers do you have in Verizon's Florida service territory? What percentage of those broadband Internet access customers subscribe to your telephone service, but not your video service?**

Bright House stands on its earlier objections to this interrogatory.

\* \* \* \* \*

**13. How many telephone customers do you have in Verizon's Florida service territory that do not subscribe to your video or broadband Internet access service?**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

**CONFIDENTIAL INFORMATION**

[REDACTED]

**CONFIDENTIAL INFORMATION**

\* \* \* \* \*

**14. Do you contend that BHNIS is offering two-way telecommunications service to the public for hire in Florida? If so, please state the basis for your contention.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

See attached materials. These materials were filed in the FCC proceeding regarding Verizon's retention marketing program.

\* \* \* \* \*

**15. Has BHNIS provided telecommunications service to any entity in Florida other than BHN? If so, please identify each of those customers.**

The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.

*See materials provided in response to Interrogatory No. 14.*

\* \* \* \* \*

- 16. Has BHNIS offered any telecommunications service in any public written or oral communications, such as a tariff, an advertisement, a brochure, a hand-out, a press release, an industry trade-show presentation, or a website posting in Florida? If so, please identify any such communications.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

See materials provided in response to Interrogatory No. 14.

\* \* \* \* \*

**17. Does BHNIS provide service over its network exclusively using Voice over Internet Protocol?**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

No. BHNIS provides telecommunications services that interconnect with the public switched telephone network (including direct interconnections with Verizon and other carriers) using traditional digital circuit-switched public switched telephone network ("PSTN") technology. BHNIS's services include the conversion of IP-based voice traffic into PSTN format and vice versa.

\* \* \* \* \*

19. **Please state the basis for your allegation in paragraph 22 of your complaint that “Bright House is not in a similar position to try to retain the customer as against Verizon’s marketing efforts.”**

Bright House already answered this interrogatory.

\* \* \* \* \*

- 20. Do you contend that Verizon violates section 364.10(1), Florida Statutes, when it does not inform you in advance that it is seeking to retain a customer or win back a customer from you? If so, please explain the basis for this contention.**

Bright House already answered this interrogatory.

\* \* \* \* \*

**21. Please state the basis for your claim that Verizon has violated section 364.10(1).**

Bright House already answered this interrogatory.

\* \* \* \* \*

- 22. Please identify BHNIS's and BHN's affiliates that provide telephone, broadband Internet access service or video service in Florida and describe their relationship to BHNIS, BHN and one another within your corporate structure. Also please describe the relationship of BHNIS and BHN within your corporation structure.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

BHNIS, the CLEC providing telephone service, is wholly-owned by BHN. BHN is a cable operator that provides VoIP-based voice service, cable service, and high speed data service, to its end users. BHN is managed by Advance/Newhouse Partnership of Syracuse, New York.

\* \* \* \* \*

**23. Please identify any contracts or rates, terms and conditions between BHNIS and BHN that apply to the provision of telephone service in Florida.**

*The following response is given notwithstanding Bright House's objections to this interrogatory, which are not waived, but are expressly reserved.*

The actual contract between BHN and BHNIS is extremely confidential, and the intrusiveness of providing it far outweighs any tangential relevance it might have to the issues in this proceeding.

That said, the materials being provided in these supplemental responses to Interrogatory No. 14 provide a non-confidential review of key terms of this contract.

\* \* \* \* \*

Respectfully submitted,

/s/ Christopher W. Savage

Christopher W. Savage  
Davis Wright Tremaine, LLP  
1919 Pennsylvania Avenue, NW, Suite 200  
Washington, D.C. 20006  
Tel: 202-973-4200  
Fax: 202-973-4499  
[chrissavage@dwt.com](mailto:chrissavage@dwt.com)

Beth Keating  
Akerman Senterfitt  
106 East College Ave., Suite 1200  
Tallahassee, FL 32301  
Tel: 850-521-8002  
Fax: 850-222-0103  
[beth.keating@akerman.com](mailto:beth.keating@akerman.com)

Attorneys for:  
Bright House Networks Information Services, LLC  
Bright House Networks, LLC  
August 6, 2008

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail, U.S. Mail First Class, or Hand Delivery this 6th day of August, 2008, to the persons listed below:

Dulaney L. O'Roark, III, VP/General Counsel Verizon Florida, LLC P.O. Box 110, MC FLTC 0007 Tampa, FL 33601 de.oroark@verizon.com <b>(Next Day Tampa per Request) (Highlighted)</b>	David Christian Verizon Florida, Inc. 106 East College Ave. Tallahassee, FL 32301-7748 David.christian@verizon.com (redacted)
Rick Mann, Staff Counsel Florida Public Service Commission, Office of the General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 rmann@psc.state.fl.us (redacted)	Beth Salak, Director/Competitive Markets and Enforcement 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 bsalak@psc.state.fl.us (redacted)  Floyd R. Self, Esquire Messer, Caparello & Self, P.A. 2618 Centennial Place Tallahassee, FL32308 (redacted)

  
Beth Keating  
Akerman Senterfitt  
106 East College Ave., Suite 1200  
Tallahassee, FL 32301  
Tel: 850-521-8002  
Fax: 850-222-0103  
beth.keating@akerman.com

SUPPLEMENTAL RESPONSES TO VERIZON'S FIRST SET OF INTERROGATORIES TO BRIGHT HOUSE NETWORKS, LLC DOCKETS NOS. 070691 AND 080036-TP

I do hereby attest that the foregoing answers to Interrogatories Nos. 1 - 23 are hereby true and correct to the best of my knowledge.

Timothy Freundberg

*As to BHN's Supplemental Responses to VERIZON's First Set of Interrogatories Nos. 1 - 23*

**AFFIDAVIT**

STATE OF FLORIDA     )  
  )  
COUNTY OF PINELLAS    )  

---

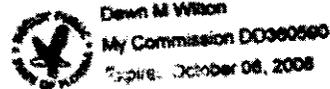
I hereby certify that on this 6th day of August, 2008, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Tim Freundberg, who is personally known to me, and who acknowledged before me that he provided or reviewed the supplemental answers to Interrogatories Nos. 1 - 23 provided in response to Verizon's First Set of Interrogatories to Bright House in Docket No. 070691 and 080036-TP, and that the responses to the aforesaid interrogatories are true and correct to the best of his personal knowledge.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the State and County set forth above as of this 6th day of August, 2008.

Dawn M. Wilton

Notary Public

State of Florida



My Commission Expires: October 6, 2008

# EXHIBIT

Matthew A. Brill  
Direct Dial: (202) 637-1095  
matthew.brill@lw.com

555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004-1304  
Tel: +1.202.637.2200 Fax: +1.202.637.2201  
www.lw.com

**LATHAM & WATKINS** LLP

**FIRM / AFFILIATE OFFICES**

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

March 6, 2008

**BY HAND DELIVERY**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W.  
Washington, D.C. 20554

Attention: Enforcement Bureau, Market Disputes Resolution Division

Re: Accelerated Docket Proceeding: Bright House Networks, LLC, Comcast Corporation and Time Warner Cable Inc. v. Verizon, File No. EB-08-MD-002

Dear Ms. Dortch:

Pursuant to the status conference held on March 4, 2008 and the Commission's March 6, 2008 letter, Bright House Networks, LLC, Comcast Corporation and Time Warner Cable Inc. (collectively, "Complainants"), through counsel, hereby amend the stipulations they originally proposed at page 47 of their reply filed in the above-referenced proceeding on February 29, 2008. Specifically, Complainants offer to stipulate as follows:

Complainants typically require customers to contact them directly to cancel video or broadband Internet access service. There are no statutory or industry-standard processes that allow for provider-to-provider communications relating to the migration of customers' video or broadband Internet access services.

When customers call Complainants directly to cancel video or broadband Internet access service, Complainants offer such customers incentives to remain customers in some instances.

In the event there are any questions concerning this matter, please contact the undersigned.

Sincerely,



Matthew A. Brill  
Counsel for Time Warner Cable Inc.

**LATHAM & WATKINS<sup>LLP</sup>**

cc: Alexander P. Starr  
Lisa Saks  
Suzanne Tetreault  
Aaron M. Panner  
Christopher W. Savage  
Mark D. Schneider

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Bright House Networks, LLC, Comcast  
Corporation, and Time Warner Cable Inc.,

Complainants,

v

Verizon Florida, LLC, *et al.*

Defendants.

File No. EB-08-MD-002

**Bright House Networks' Supplemental Statement**

This supplemental statement addresses the second question raised in the Staff's March 4 Status Conference and memorialized in the Staff's March 5 letter order to the parties. Staff has asked Bright House Networks, LLC ("BHN") to "file a supplemental statement providing all factual evidence and legal authorities supporting its contention that Bright House Networks Information Services (Florida), LLC provides 'telecommunications service' to complainant [BHN] within the meaning of 47 U.S.C. §§ [153(46)] and 222(b), and qualifies as a 'telecommunications carrier' within the meaning of 47 U.S.C. §§ [153(44)] and 222(a)." The disputed facts referred to are set forth in a footnote.<sup>1</sup> We discuss below both the relevant statutory definitions and associated case law, as well as how the facts already in the record, and

---

<sup>1</sup> "The parties dispute whether: (a) Bright House Network Information Services (Florida), LLC provides telecommunications services to multiple wholesale customers, including, *inter alia*, Bright House's voice-over-IP ("VoIP") provider, including transmission services, interconnection services, and local number portability ("LNP") functions; and (b) through its interconnection agreement with Verizon, Bright House Network Information Services (Florida), LLC buys and/or sells telecommunications services including interconnection from/to Verizon."

as supplemented by the “Second Affidavit of Marva B. Johnson,”<sup>2</sup> show that Bright House Networks Information Services (Florida) LLC (“Bright House”) indeed provides “telecommunications service” and is a “telecommunications carrier” within the meaning of the relevant law.<sup>3</sup>

The legal test for whether an entity is a “telecommunications carrier” offering “telecommunications services” is laid out in certain statutory and regulatory provisions as interpreted and applied in the case law. As a statutory matter, “telecommunications” essentially means transmitting customer information, without change, as directed by the customer.<sup>4</sup> A “telecommunications carrier” is (with exceptions not relevant here) any provider of “telecommunications service,” with the proviso that an entity can be a carrier with respect to some activities but not others.<sup>5</sup> The heart of the issue lies in the definition of

---

<sup>2</sup> This affidavit is attached to this Supplemental Statement as Exhibit 1.

<sup>3</sup> We note at the outset that Verizon has not provided any evidence or analysis that would suggest that Bright House is *not* a carrier, and that Bright House has clearly asserted that it *is*, including indicating that it is certificated by the Florida Public Service Commission. *See* Affidavit of Marva B. Johnson at ¶ 2. In the normal course, with such a *prima facie* showing, it is incumbent on the entity challenging carrier status to come forward with some evidence that would counter that showing. *See Fiber Technologies Networks, LLC v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3292 (WCB 2007). By making this additional response as called for by the Staff, Bright House does not waive the claim that no additional evidence or legal analysis is needed to establish its status as a carrier.

<sup>4</sup> 47 U.S.C. § 153(43) states that the term means “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”

<sup>5</sup> 47 U.S.C. § 153(44) states that the term means “any provider of telecommunications services . . . . A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services . . . .” The related term “common carrier” is defined somewhat circularly (and with exceptions not relevant here) as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio.” 47 U.S.C. § 153(10).

“telecommunications service,” which means providing telecommunications for a fee to “the public,” either directly or “effectively,” “regardless of the facilities used.”<sup>6</sup>

There can be no question that Bright House provides “telecommunications” to BHN (and others) for a fee. The original Affidavit of Marva B. Johnson notes that Bright House provides exchange access services, and also contained, as an attachment, a contract between Bright House and BHN memorializing the functions that Bright House performs for BHN. These include the overarching responsibility to provide voice-grade connectivity to the public switched telephone network (“PSTN”), which enables end users connected to BHN’s cable system to originate and receive telephone calls by means of Bright House’s telecommunications equipment. These obligations also include arranging for interconnection with other carriers (such as Verizon), paying and receiving intercarrier compensation, as well as handling number portability, E911, and operator services functions. Moreover, Bright House is paid for these activities, as provided for in the Bright House-BHN contract.<sup>7</sup>

The question, then, is whether Bright House offers its services “directly to the public, or to such classes of users as to be effectively available directly to the public.” In common law terms, this question can be restated as whether Bright House “holds itself out” as offering its services. As discussed below, it does.<sup>8</sup>

---

<sup>6</sup> 47 U.S.C. § 153(46) states that the term means “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

<sup>7</sup> See Affidavit of Marva B. Johnson at ¶¶ 2-3 & Exh. MJ-1; Second Affidavit of Marva B. Johnson at ¶¶ 2-6, *passim*.

<sup>8</sup> While Bright House is plainly a common carrier, and therefore a telecommunications carrier, with respect to the services it provides BHN under the common law tests, this conclusion is also compelled by the specific language of Sections 153(43), (44) and (46) of the Communications Act. *See infra*.

The language of 47 U.S.C. §§ 153(43), (44) and (46) is not identical to the traditional definition of “common carrier” in Section 3 the Act (47 U.S.C. § 153(10)), but the Commission and the courts have found that the traditional tests for common carriage are at least a useful guide to interpreting these provisions and that they may be essentially equivalent. *See, e.g., Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921, 926 (D.C. Cir. 1999) (“*VITELCO*”).<sup>9</sup> That traditional test is embodied in *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976) (“*NARUC I*”). There, the District of Columbia Circuit summarized the key points of the common carriage doctrine as follows:

[T]he critical point is the quasi-public character of the activity involved. To create this quasi-public character, it is not enough that a carrier offer his services for a profit, since this would bring within the definition private contract carriers which the courts have emphatically excluded from it. What appears to be essential to the quasi-public character implicit in the common carrier concept is that the carrier “undertakes to carry for all people indifferently . . . .”

*This does not mean a given carrier's services must practically be available to the entire public. One may be a common carrier though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population. And business may be turned away either because it is not of the type normally accepted or because the carrier's capacity has been exhausted.* But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so.

*NARUC I*, 525 F.2d at 641 (emphasis added, footnotes omitted). *See also USTA v. FCC*, 295 F.3d 1326 (D.C. Cir. 2002) (entity is a common carrier even if its potential customer base is narrowly limited by law).

---

<sup>9</sup> In *VITELCO*, the Commission itself applied the common law tests to the entity at issue there, and the court found that, while the language in §§ 153(43), (44) and (46) was not necessarily equivalent to the common law tests, it was permissible under *Chevron* for the Commission to read that language that way. The Commission thus retains the discretion to apply different but reasonable interpretations to these statutory provisions in an appropriate case.

There is no statutory or case-law definition of what is entailed within the common law notion of “holding out.” The question is to be determined based on the facts and circumstances of each individual case. See *Southwestern Bell v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (“Whether an entity in a given case is to be considered a common carrier or a private carrier turns on the particular practice under surveillance”). It is quite clear, however, that offering one’s services under tariff is *not* required. This is shown by the unquestioned “carrier” status both of commercial mobile radio service providers (who have been relieved of their federal tariffing obligations and as to which state-level tariffs are banned by statute)<sup>10</sup> and by the continuing carrier status of interstate long distance carriers notwithstanding the Commission’s decision to affirmatively ban tariffing of interstate long distance services.<sup>11</sup> Consistent with the lack of a tariffing requirement, it is also not necessary that the terms on which customers receive service be identical. To the contrary, individual customer negotiations, and providing common carrier services under contract, are entirely permissible for carriers.<sup>12</sup>

---

<sup>10</sup> See 47 U.S.C. § 332(c)(1) (declaring CMRS providers to be common carriers); § 332(c)(3) (banning state regulation of rates); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, Second Report & Order, 9 FCC Rcd 1411 (1994) at ¶¶ 175-79

<sup>11</sup> See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report & Order, 11 FCC Rcd 20730 (1996) at ¶¶ 21-28, *passim*, affirmed, *MCI WorldCom Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

<sup>12</sup> See, e.g., *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003). Of course, the numerous cases upholding Sprint’s status as a common carrier in providing wholesale connectivity to cable operators all involved providing services under contract rather than under tariff. See, e.g., *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007); *Consolidated Communications of Fort Bend Co. v. Pub. Util. Comn of Texas*, 497 F. Supp. 836, 844 (W.D. Tx. 2007); *Berkshire Tel. Corp. v. Sprint Communs. Co., L.P.*,

In fact, all that is needed to be considered “holding oneself out” is to obtain the relevant authorizations from regulators to act as a carrier. In this regard, for example, the Commission has long provided by rule that all it takes for an entity to be an interstate common carrier is for it to decide to be one:

Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

47 C.F.R. § 63.01. Indeed, on more than one occasion the Commission has made clear that acquiring carrier status is essentially entirely up to the entity in question.<sup>13</sup>

Voluntarily undertaking carrier status – which is inherently implied in seeking and obtaining certification – necessarily amounts to a willingness to serve all potential customers consistent with carrier obligations. Notably, these service obligations arise even though their scope is not specifically laid out in rules, regulations, or tariffs. For example, once an entity has decided to be a common carrier, it is subject to the obligation in Section 201(a) of the Act (and similar obligations under state and common law) to provide services “upon reasonable request,”

---

2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. 2006); *Sprint Communs. Co. L.P. v. Neb. PSC*, 2007 U.S. Dist. LEXIS 66902 (D. Neb. 2007).

<sup>13</sup> See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) at ¶ 91 (facilities-based providers of broadband Internet access may declare whether they will provide the “telecommunications” underlying their broadband service as a private carrier or common carrier); *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 6040 (1998) at ¶ 33 (Internet Service Providers seeking interconnection rights under Section 251 may simply “obtain certification” as a CLEC in order to get those rights). On the other hand, in practical terms the Commission appears to have accepted that an entity that fails to obtain state certification may not be able to exercise “carrier” rights under Section 251. See, e.g., *Petition for Commission Assumption of Jurisdiction of Low-Tech Designs, Inc.’s Petitions for Arbitration*, Memorandum Opinion & Order, 13 FCC Rcd 1755 (1997) (noting state commission refusal to conduct arbitrations under Section 252 at the request of an entity that had neither sought nor received state certification as a CLEC).

47 U.S.C. § 201(a), even if the services in question were not previously offered or contained in tariffs.<sup>14</sup> This is consistent with the common law of common carriage: a common carrier loses the unfettered discretion to arbitrarily refuse to serve customers seeking services that the carrier is authorized and able to provide.<sup>15</sup>

Applying these precedents, it is completely clear that Bright House is a common carrier with respect to the provision of wholesale telecommunications services to BHN. Bright House is certificated as a CLEC by the Florida PSC. This certification is a public act and Bright House's certificate is a public document. By publicly declaring itself to be a CLEC, Bright House voluntarily undertook the obligation to provide its services to similarly situated customers upon reasonable request. Bright House has not (yet) actively marketed its wholesale services, but there is no requirement that it do so and, in any event, as Ms. Johnson explains in her Second Affidavit, Bright House did not have the capacity to effectively serve additional customers while it was undertaking the migration of hundreds of thousands of customers from MCI's facilities to its own. It would have made no sense to actively look for additional customers at a time when

---

<sup>14</sup> See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report & Order & Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817 (2007) at ¶¶ 1, 2, 23-29 (relying on § 201(a) to impose on CMRS carriers the obligation to offer automatic roaming). See also *Petition of the Embarq Local Operating Companies for Forbearance*, Memorandum Opinion & Order, 22 FCC Rcd 19478 (2007), at ¶ 34 (obligation under Section 201 to provide services upon "reasonable request" survives detariffing of services in question); *Petition of AT&T Inc. for Forbearance*, Memorandum Opinion & Order, 22 FCC Rcd 18705 (2007) at ¶¶ 35, 65 (same).

<sup>15</sup> Of course, a request for service from a potential customer must be "reasonable." In practical terms a carrier is not required to provide service to a requesting customer if facilities are temporarily unavailable, for example. See, e.g., *ITT v. Western Union*, 87 F.C.C. 2d 684 (1981) at ¶ 17 & n.3, citing *Pennsylvania R.R. Co. v. Puritan Coal Mining Co.*, 237 U.S. 121, 123 (1915) ("The common law of old in requiring the carrier to receive all goods and passengers recognized that 'if his coach be full' he was not liable for failing to transport more than he could carry").

they could not have been accommodated due to pre-existing demand.<sup>16</sup> And, obviously, there is no requirement that a carrier actually have *any* customers as a prerequisite to obtaining carrier status; otherwise, carriers could not exercise their carrier rights to, for example, secure pole attachments and interconnection prior to obtaining customers – but then could not obtain customers due to lack of pole attachments and interconnection.<sup>17</sup>

Moreover, in the specific circumstances here, there is no need under the terms of the statute for Bright House to have any customers other than BHN. Section 153(46) states that to be providing “telecommunications service” (the statutory *sine qua non* of carrier status), an entity must offer telecommunications for a fee “directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” A competitive telecommunications entity focused on the residential market, and seeking to make its services “effectively available directly to the public,” would have a difficult time finding a better entity to work with than a cable operator with a cable system that already passed by essentially all of the residential customers in an area. Indeed, in most areas, because of the cost of building

---

<sup>16</sup> Of course, as noted above, common carriers are permitted to fail to serve customers when existing demand fills their capacity.

<sup>17</sup> See, e.g., *Fiber Technologies Networks, LLC v. North Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3292 (2007) at ¶ 19 (the law does not place entities in the “Catch-22” of having to first provide services in order to be entitled to obtain the facilities needed to do so); *id.* at ¶ 20 (entity may gain status as a common carrier despite the fact that it “is not yet actually supplying service to any customers”); 47 C.F.R. § 51.301(c)(4) (determining that it constitutes bad faith for an ILEC to require state certification before negotiating for interconnection with a CLEC). *Fiber Technologies* also notes that it is conceivable that obtaining carrier status under the law of some (unnamed, hypothetical) state might not, for some reason, be sufficient to warrant carrier status under federal law. See *id.* at ¶ 14 n.38 (noting that in theory a state could define carrier status in a manner “flatly inconsistent” with the requirements of federal law). There is no suggestion that such a situation exists here, and it does not. See, e.g., Fl. Statutes § 364.01 (powers of Florida PSC and legislative intent to promote competition but exercise regulatory authority as appropriate); § 364.02 (definitions of, *inter alia*, “service” and “telecommunications company”).

out a ubiquitous network, other than the ILEC itself, a cable operator may be the only potential entity to deal with that would permit the carrier to make services “effectively available” to the public.<sup>18</sup> In this regard, doubtless recognizing that the precise path of the development of local competition was unpredictable, Congress made clear in 47 U.S.C. § 153(46) that an entity that makes telecommunications for a fee “effectively” available to the public is a carrier “*regardless of the facilities used*” to do so. As a result, not only would it be inappropriate to conclude that Bright House is not a carrier due to the non-carrier, unregulated cable system physically located between Bright House’s telecommunications equipment and end users, it would violate this provision of the statute to do so.<sup>19</sup>

From this perspective, while it is of course reasonable to conclude that Bright House (the CLEC) provides wholesale-level telecommunications services to BHN (the cable operator), it is also reasonable to conclude that Bright House is a telecommunications carrier providing its

---

<sup>18</sup> This does not mean that the cable operator itself is a carrier. To the contrary, it is perfectly common in the telecommunications industry for there to be intervening non-carrier facilities between a carrier and its customers. Indeed, this is the case in essentially every multi-tenant environment, where the carrier’s facilities and services end at a minimum point of entry onto a property – which can be a large building or office park – with the carrier having no direct physical connection to its customers. *See generally Promotion of Competitive Networks in Local Telecommunications Markets*, First Report And Order And Further Notice Of Proposed Rulemaking In Wt Docket No. 99-217, Fifth Report And Order And Memorandum Opinion And Order In Cc Docket No. 96-98, And Fourth Report And Order And Memorandum Opinion And Order In Cc Docket No. 88-57, 15 FCC Rcd 22983 (2000).

<sup>19</sup> Some courts have reached the correct result in this type of situation without appreciating the significance of the “regardless of the facilities used” language in the statute. *See, e.g., Consolidated Communications of Fort Bend Co. v. Pub. Util. Comm of Texas*, 497 F. Supp. 836, 844 (W.D. Tx. 2007); *Berkshire Tel. Corp. v. Sprint Communs. Co., L.P.*, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. 2006); *Sprint Communs. Co. L.P. v. Neb. PSC*, 2007 U.S. Dist. LEXIS 66902 (D. Neb. 2007). These courts suggest that Sprint (the CLEC) and various cable operators are somehow “jointly” providing telecommunications services and are therefore “jointly” a carrier or carriers. The better reading of these cases is that Sprint is a carrier that uses, among other facilities, those of its non-carrier cable operator customers to provide its carrier services.

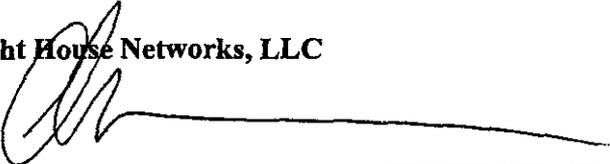
services “effectively” to the public by means of the facilities of BHN. This conclusion would not affect the status of Bright House’s relationship with Verizon as being “wholesale” in nature – neither Bright House nor Verizon are “retail” customers of the other – it would simplify the question of the nature of Bright House’s own status as a carrier.

\* \* \* \* \*

The foregoing legal analysis, combined with the facts as shown in the two affidavits of Marva B. Johnson (and attachments), conclusively demonstrate that Bright House is a “telecommunications carrier” within the meaning of the Communications Act, as a general matter; with respect to the wholesale services it provides to BHN; and with respect to end users themselves notwithstanding the non-carrier cable entity between Bright House and those end users.

Respectfully submitted,

**Bright House Networks, LLC**

By: 

Christopher W. Savage  
DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
(202) 973-4211 (phone)  
(202) 973-4499 (fax)

Dated: March 10, 2008

**EXHIBIT 1**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Bright House Networks, LLC, Comcast  
Corporation, and Time Warner Cable Inc.,

Complainants,

v

Verizon Florida, LLC, *et al.*

Defendants.

File No. EB-08-MD-002

**Second Affidavit of Marva B. Johnson**

1. My name is Marva B. Johnson. I am the Director, Carrier Relations and Vendor Services at Bright House Networks Information Services (Florida), LLC ("Bright House"). I have previously submitted an affidavit in this proceeding on behalf of Bright House. My background and position with Bright House is as stated there. I submit this second affidavit in support of the supplemental filing being filed by Bright House and others in further support of their complaint against various Verizon entities.

2. In my initial affidavit, I provided information that was intended to show that Bright House is a telecommunications carrier (as that term is used in federal law, as I understand it), which includes holding itself out as offering the same type of services it offers to Bright House Networks, LLC ("BHN") to other similarly situated entities. I am not testifying as a lawyer (although I have legal training), but I am aware that as a general matter, in order to be a telecommunications carrier under federal law, an entity must provide telecommunications for a

fee, and must offer those services to “the public.” *See* 47 U.S.C. §§ 153(43), 153(44), & 153(46) (definitions).

3. At the outset, in my original affidavit, I stated that “Bright House is a CLEC, certificated by the Florida Public Service Commission as a local exchange carrier in Florida. Through a predecessor company, Bright House was granted CLEC authority by the Florida Public Service Commission in 2003. Bright House provides telecommunications services such as exchange access to a variety of entities. As relevant here, Bright House provides connectivity to the public switched telephone network (“PSTN”) (as well as a number of back office support services) to” BHN. Affidavit of Marva B. Johnson (“M. Johnson Aff.”) at ¶ 2. As I stated there, the acronym “CLEC” means “competitive *local exchange carrier*.” *Id.* at ¶ 1 (emphasis added), so in stating that Bright House is a CLEC, it was clear that I was stating that Bright House is, indeed, a “carrier.” I am attaching a copy of the Florida PSC order that constitutes our certificate, by its own terms.

4. In my affidavit, I also pointed out that “Bright House has an interconnection agreement with Verizon in Florida. Bright House sends traffic to, and receives traffic from, Verizon, pursuant to that agreement. Bright House is responsible for ensuring that calls from BHN’s customers are properly routed to the PSTN (including Verizon), and for ensuring that calls for BHN’s customers from the PSTN are properly routed to BHN for delivery to those customers.” *Id.* at ¶ 3. This showed that Bright House provides for the transmission of traffic to and from BHN customers (it is impossible to ensure that “calls ... are properly routed” without doing so). That is, Bright House is providing “telecommunications” to BHN (and to others). I am not attaching a copy of the Bright House – Verizon interconnection agreement, which is an extremely voluminous document. However, I can state that that agreement contains provisions

that will be familiar to anyone with experience in ILEC-CLEC interconnection, including arrangements for physical interconnection, the exchange of traffic, collocation, directory listings, and numerous administrative matters, as noted above.

5. In my affidavit, I did include a copy of the contract between Bright House and BHN pursuant to which these services are provided. Although we view the key business terms of that contract to be highly proprietary, I can state in this public affidavit that the contract on pages 3-5, and then on pages 11-15, provides a detailed description of the specific telecommunications services that Bright House provides to BHN. By way of example, the contract: (a) states that Bright House “is a telecommunications provider that is in the business of providing telecommunications services” (page 1); (b) states that Bright House’s duties include “providing two-way voice-grade connectivity to the PSTN” (page 3); (c) obliges Bright House to perform number-portability functions (page 4); (d) obliges Bright House to pay, and entitles Bright House to receive and retain, any reciprocal compensation and/or access charges that arise in connection with traffic to and from BHN’s end users (*id.*); and (e) provides (page 16) that Bright House will receive specified compensation for performing these services to BHN

6. All of the foregoing shows that Bright House provides “telecommunications” to BHN (routing traffic to and from the PSTN) as well as a variety of ancillary functions that any mass-market telecommunications carrier must provide (such as operator services and arrangements for E-911 service). The foregoing also clearly shows that Bright House gets paid for these functions. Moreover, in my earlier affidavit I pointed out that “Bright House provides telecommunications services such as exchange services to a variety of entities.” This shows that Bright House is, indeed, a full-fledged “telecommunications carrier” in Florida. Again, Bright House is certificated as a CLEC (which stands for “competitive *local exchange carrier*”), and,

among other things, it provides access services to long distance carriers seeking to deliver traffic to BHN end users.

7. My understanding, however, is that a question has arisen whether Bright House is a “telecommunications carrier” with respect to the specific functions it provides to BHN. Since those functions clearly include both pure “telecommunications” and various ancillary functions, and since Bright House is getting paid to perform them, the issue is whether we offer those services to “the public.” The short answer is that we do.

8. First, my experience in the telecommunications industry indicates that, and, as I understand it, the law recognizes, some services are not suitable to the needs of, or actually of any interest to, “the public” at large. Residential customers will not be likely purchasers of (for example) OC-48 special access circuits. My understanding, instead, is that a carrier must be prepared to provide its services on broadly similar terms to the segment of “the public” that might actually have a use for them. In this regard, Bright House indeed holds itself out as offering its wholesale services to the class of entities that might have an interest in those services.

9. I have always understood that being willing to serve potential customers was simply an inherent part of being a certified local exchange *carrier* – which we are. Our certificate from the Florida PSC is a public document that, in practical business terms, constitutes a public declaration of our willingness to serve on reasonable and nondiscriminatory terms. A sophisticated entity looking for wholesale telecommunications services (the kind of entity that would be interested in the kinds of services we provide to BHN) can obtain a list of certified carriers from the Florida PSC’s web site. See <http://www.psc.state.fl.us/utilities/mcd/index.aspx>. If such an entity approached us and was dissatisfied with our response to a request for service,

we are aware (and any sophisticated customer would be aware) that we could be brought before the PSC to deal with the issue. Without speculating about how any such hypothetical regulatory proceeding might be resolved, in practical terms the only reason we would be subject to such a proceeding is that our certificate constitutes a public declaration of willingness to serve in accordance with the applicable requirements of Florida public utility law. In practical business terms, therefore, being a publicly certified carrier, in my view, necessarily advertises to potential customers that you are willing to serve them if you can do so. That is, public certification as a carrier, in and of itself, amounts to a "holding out" to the public. We have certainly always understood that to be the case, and have made our business decisions accordingly

10. That said, we have not (yet) actively advertised the availability of our wholesale telecommunications services (such as those provided to BHN), but there is good reason for this. Although we have been certified as a CLEC for some time, initially we did not have our own physical network facilities in Florida. Instead, we contracted with a third party CLEC, MCI (then an independent entity) to provide actual physical connectivity to the PSTN on our behalf. (Essentially, we were reselling MCI's services). Later (after MCI was purchased by Verizon, our largest competitor) we made the business decision (in coordination with BHN, whose services would be immediately affected), to establish our own physical network facilities to provide these functions. By the time that decision was implemented, however, BHN had literally hundreds of thousands of end users whose PSTN connectivity had to be migrated from MCI's facilities over to our own. That process (which included, among other things, porting to our switch hundreds of thousands of numbers which had been resident on MCI's switch) is complete, so we now are in a position to actively market our wholesale services, as opposed to being willing to serve customers who might request the service. Indeed, at this point, our network

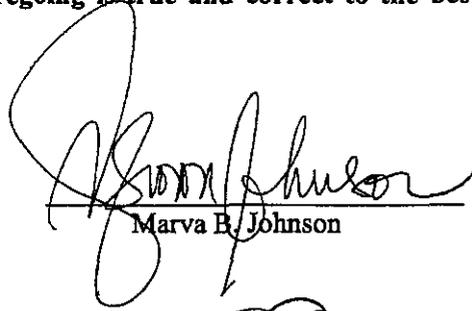
(including both our transmission facilities and our softswitches) is technically configured, or can readily be configured, to permit wholesale level entities other than BHN to obtain PSTN connectivity from and through us.

11. As a business matter, we welcome additional wholesale customers and believe that providing wholesale PSTN connectivity to entities other than BHN is in our business interest. To that end we have hired both a Vice President of Wholesale Markets and two Directors reporting to that Vice President to develop an expand our wholesale marketing, including (without limitation) marketing to entities similarly situated to BHN. We are prepared to serve entities seeking wholesale PSTN connections today – and, in light of our certification with the Florida PSC, have understood that we had an obligation to do so since the beginning – and will begin actively marketing these services in earnest later in 2008.

12. We do not have a tariff for the wholesale services we provide to BHN on file with the Florida Public Service Commission. As a business matter, no such tariff is necessary. Large wholesale customers will always have some unique or specific needs that will have to be handled individually. I note in this regard that it is common knowledge in the industry that Sprint is regarded as a carrier when it provides wholesale services similar to those we provide to BHN, but that Sprint does so by means of confidential contracts rather than tariffs. It is also common knowledge in the industry that wireless carriers, while indeed “carriers,” have not had to file retail tariffs for more than a decade, and that the FCC has affirmatively forbidden long distance *carriers* from filing tariffs for their interstate long distance services.

13. To summarize, Bright House is a telecommunications carrier in Florida, including with respect to the services it provides BHN. Our public certification as a carrier both advises the public of our carrier status – including our service obligations – and provides a means by which regulators can require us to fulfill such obligations should we fall short of doing so. Our network is ready to receive additional wholesale customers beyond BHN, and our active marketing efforts with regard to those services will begin later this year.

I hereby swear or affirm that the foregoing is true and correct to the best of my knowledge and belief.



Marva B. Johnson



ELENA ALPERT  
NOTARY PUBLIC, FULTON COUNTY  
STATE OF GEORGIA  
My Commission Expires 04-09-2011

# **EXHIBIT 1**

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for name change  
on CLEC Certificate No. 8015  
from Time Warner Cable  
Information Services (Florida),  
LLC d/b/a Time Warner Cable  
Information Services d/b/a Time  
Warner Cable d/b/a Time Warner  
Communications to Bright House  
Networks Information Services  
(Florida), LLC.

DOCKET NO. 030713-TX  
ORDER NO. PSC-03-0989-FOF-TX  
ISSUED: September 3, 2003

ORDER ACKNOWLEDGING NAME CHANGE

BY THE COMMISSION:

By letter dated June 24, 2003, Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner Cable d/b/a Time Warner Communications, holder of CLEC Certificate of Public Convenience and Necessity No. 8015, requested that Certificate No. 8015 be amended to reflect the new corporate name, Bright House Networks Information Services (Florida), LLC. Upon review of the Department of State, Division of Corporations' records, it appears that Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner Cable d/b/a Time Warner Communications has properly registered the new corporate name. Accordingly, we find it appropriate to amend Certificate No. 8015 to reflect the new corporate name.

This Order will serve as the amended CLEC Certificate of Public Convenience and Necessity No. 8015 for Bright House Networks Information Services (Florida), LLC. Bright House Networks Information Services (Florida), LLC should retain this Order as evidence of the name change. We are vested with jurisdiction over this matter pursuant to Section 364.335, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request by Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner

ORDER NO. PSC-03-0989-FOF-TX  
DOCKET NO. 030713-TX  
PAGE 2

Cable d/b/a Time Warner Communications to change the name on Certificate No. 8015 from Time Warner Cable Information Services (Florida), LLC d/b/a Time Warner Cable Information Services d/b/a Time Warner Cable d/b/a Time Warner Communications to Bright House Networks Information Services (Florida), LLC is hereby approved. It is further

ORDERED that this Order will serve as Bright House Networks Information Services (Florida), LLC's amended certificate and that this Order should be retained as evidence of the name change. It is further

ORDERED that this change will be effective upon issuance of this Order. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission this 3rd Day of September, 2003.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: /s/ Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

This is a facsimile copy. Go to the Commission's Web site, <http://www.floridapsc.com> or fax a request to 1-850-413-7118, for a copy of the order with signature.

( S E A L )

JLS