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August 8, 2008 – **VIA ELECTRONIC 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 is Verizon Florida LLC's Motion to  
Compel Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone to Respond to  
Interrogatories. 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,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and request for emergency relief ) Docket No. 070691-TP  
against Verizon Florida LLC for anticompetitive ) Filed: August 8, 2008  
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 )  
\_\_\_\_\_ )

In re: Complaint and request for emergency relief ) Docket No. 080036-TP  
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 )  
\_\_\_\_\_ )

**VERIZON FLORIDA LLC'S MOTION TO COMPEL COMCAST PHONE OF FLORIDA, LLC D/B/A COMCAST DIGITAL PHONE TO RESPOND TO INTERROGATORIES**

Verizon Florida LLC ("Verizon") moves to compel Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone ("CDP") to respond to the interrogatories discussed below. CDP objected and refused to respond to most of Verizon's interrogatories without providing specific explanations for the objections, but rather by referring to selected stock objections. In several cases, CDP has refused to answer interrogatories even when it has offered testimony directly related to the question. Counsel for Verizon attempted to resolve its discovery disputes with counsel for Comcast, but Comcast refused to provide any additional information. Accordingly, Verizon requests that CDP be required to respond to the following interrogatories, for the reasons discussed below.

### Interrogatory No. 1

Verizon requested CDP to “[p]lease state the total number of customers that subscribed to your telephone service in Verizon’s Florida service territory as of April 30, 2008.” CDP listed six objections, principally that Verizon should not be able to ask questions about CDP affiliates such as Comcast Cable Communications, LLC (“Comcast”) (Objections 1 and 2) and that the information sought is not relevant to this case (Objection 5).<sup>1</sup> Both objections are spurious.

CDP’s objection to discussing Comcast cannot be squared with its own pre-filed testimony. Comcast witness Beth Choroser describes at some length Comcast’s network, the upgrades it has made to its cable facilities, the services it can offer over its network and the “millions of customers” it serves nationally.<sup>2</sup> Ms. Choroser states that Comcast provides VoIP service in Florida through three wholly owned subsidiaries (not through CDP).<sup>3</sup> She asserts that one of the consequences of Verizon’s program is that *Comcast* will lose customers,<sup>4</sup> making clear that Comcast is the real party in interest in this case and that CDP is its surrogate. Ms. Choroser states that Comcast “competes primarily for residential telephone service customers throughout Florida wherever its facilities based network has been deployed” and notes that in Verizon’s local service

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<sup>1</sup> The other three objections obviously do not justify failure to provide the requested information. The objection to providing proprietary information (Objection 9) is now moot because the parties have entered into a Protective Agreement. The objection to creating documents that did not exist at the time of the request (Objection 12) has no bearing because Verizon is asking how many voice customers Comcast has in Verizon’s Florida service territory, which does not require the creation of documents. Finally, the objection to supplementation (Objection 14) does not justify a failure to provide information in the first instance.

<sup>2</sup> Choroser Direct at 4.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 13. Note that “Comcast” is defined in Ms. Choroser’s testimony at page 2 as “Comcast Cable Communications, LLC,” which she describes at page 4 as “a leading provider of cable, entertainment, and communications products and services in the United States.”

territory, Comcast offers its voice service in Sarasota and Manatee counties.<sup>5</sup> In short, CDP may not offer detailed testimony about Comcast and then flatly refuse to answer any questions about it.

CDP's objection based on relevance is equally unfounded. Ms. Choroser asserts that Comcast "is a new entrant into what remains largely a monopoly market for voice services in Florida."<sup>6</sup> She also maintains that "there is an extreme dearth of true facilities-based competition" in Florida.<sup>7</sup> Information about the number of voice customers Comcast has been able to win thus is directly relevant to Ms. Choroser's testimony. Moreover, that information, when compared to the number of customers Verizon has won through its retention marketing program, will provide context demonstrating the competitive impact (or lack of impact) of Verizon's program.

Verizon further notes that Bright House has provided the requested information. CDP should be required to do likewise.

#### Interrogatory No. 2

CDP was requested to "[p]lease 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." CDP asserted seven objections, four of which can be ruled out immediately.<sup>8</sup> CDP again asserts that Verizon should not be allowed to ask questions relating to Comcast (Objections 1 and 2), but for the reasons explained with respect to Interrogatory No. 1, CDP may not shield information from disclosure on that

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<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> CDP again raises Objections 9, 12 and 14, which do not justify failure to provide the requested information for the reasons explained in footnote 1. CDP adds the objection that it is a large corporation and may not be able to find all responsive information (Objection 10), but that is no excuse for not providing information that CDP and its affiliates are able to obtain after reasonable investigation.

basis. Moreover, the requested information is relevant because the number of customers Comcast is winning relates directly to Ms. Choroser's testimony about the supposed dearth of facilities-based competition in Florida and is necessary for the Commission to determine whether there is any significant competitive impact arising from Verizon's program.

Verizon notes that it reached a compromise with Bright House under which Bright House provided the requested information for the period August 2007 to May 2008, without a breakdown by month. Bright House also provided the information requested in Interrogatory No. 3 on that basis, enabling a direct comparison of the number of customers won by Bright House during that period to the number of customers won by Verizon during the same period through its retention marketing program. Verizon is willing to accept information from CDP on the same basis.

### Interrogatory No. 3

Interrogatory No. 3 provides as follows: "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." Even CDP did not object to the relevance of this question. The only substantive objection it made was to providing any information not related to "Florida intrastate operations subject to the jurisdiction of the Commission,"<sup>9</sup> or in other words to providing information about the services Comcast provides (Objection No. 2). CDP's complaint, however, alleges that the company "has lost and is continuing to lose a significant number of customers in

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<sup>9</sup> CDP also raised Objections 9, 12 and 14, which do not justify failure to provide the requested information for the reasons explained in footnote 1.

response” to Verizon’s program and that it was “working to develop a better estimate of the number of lost customers.”<sup>10</sup> Having based its claim in this case on the “significant” number of customers it alleges have been lost, CDP cannot now hide the requested information.

As noted with respect to Interrogatory No. 2, Verizon reached a compromise with Bright house in which Bright House produced the requested information for August 2007 to May 2008, without a breakdown by month. Verizon is willing to accept information from Comcast on the same basis.

#### Interrogatory No. 6

Interrogatory No. 6 states: “Please state whether you engage in winback marketing efforts after you receive notice that a customer is moving its telephone service to another provider. If so, please state whether you begin such winback marketing efforts before you have disconnected the customer’s telephone service.” CDP interposed eight objections, most of which already have been addressed or otherwise have no basis.<sup>11</sup> The remaining objection – relevance – is unfounded because the question is specifically directed to the practices of Comcast relating to its attempts to win back telephone customers before they have been disconnected. The Commission is entitled to know whether Comcast engages in conduct similar to what CDP is seeking to prevent Verizon from undertaking. Verizon further notes that Bright House responded to a similar interrogatory.

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<sup>10</sup> CDP Complaint at ¶¶10-11.

<sup>11</sup> Objections 1 and 2 are invalid for the reasons discussed for Interrogatory No. 1. Objections 9 and 14 are addressed in footnote 1 and Objection 10 is addressed in footnote 7. CDP provides no basis for its claim that the request exceeds the requirements of the Florida Civil Procedure or Florida law (Objection 6). Finally, CDP asserts that the period of time covered by the interrogatory is excessive (Objection 13), but the question is phrased in the present tense, so that objection has no merit.

### Interrogatory No. 7

This interrogatory states: "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." CDP asserted the same objections as for Interrogatory No. 6 and they are invalid for the same reasons explained above. CDP should be required to describe how the disconnection process works so it can be determined whether Comcast engages in conduct similar to what CDP is seeking to prevent Verizon from undertaking. Verizon further notes that Bright House has responded to this interrogatory.

### Interrogatory No. 8

This interrogatory states as follows:

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.

CDP asserted the same twelve objections to both subparts of this interrogatory.<sup>12</sup> Its principal objection is that information about Comcast's retention marketing practices is outside the approved issues list under Order No. PSC-08-0344-PCO-TP (Objection 15). This objection is misguided because although that order declined to include specific issues relating to the cable companies' retention marketing programs, it did not hold that information about those programs could not be relevant to other issues in the case. Here, Verizon seeks to compare the number of voice customers it has retained to the number of voice customers the cable companies have retained so that the competitive impact (if any) of Verizon's program can be assessed. An answer that provided CDP's best estimate of the number of voice customers that have been retained would be satisfactory.<sup>13</sup> Verizon further notes that Bright House has responded to this question and, although it stated it did not have the requested information readily available, it provided a qualitative estimate.

#### Interrogatory No. 9

This interrogatory states as follows:

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:

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<sup>12</sup> Objections 1 and 2 are invalid for the reasons discussed for Interrogatory No. 1. Objections 9, 12 and 14 are addressed in footnote 1 and Objection 10 is addressed in footnote 7. Comcast's relevance objection (Objection 5) and claim that the request exceeds the requirements of the Florida Civil Procedure or Florida law (Objection 6) appear to have the same basis as Objection 15, which is discussed in the text. CDP provides no explanation as to what information is in the public record or in Verizon's control (Objection 7) or would be burdensome to provide (Objection 8), so they do not justify the refusal to provide any responsive information. Finally, CDP asserts that the period of time covered by the interrogatory is excessive (Objection 13), but the question is phrased in the present tense, so that objection has no merit.

<sup>13</sup> Verizon is not seeking to compel a response to Interrogatory No. 8a, but has quoted it for reference.



- 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.

CDP asserted the same twelve objections to both subparts of this interrogatory as it did for Interrogatory No. 8 and they should be rejected for the substantially the same reasons as stated above. Verizon should be able to find out whether Comcast seeks to retain telephone customers as part of its retention marketing program. If Comcast is doing so, it will have to explain to the Commission why retention marketing for telephone customers is acceptable for Comcast and not for Verizon. Verizon further notes that Bright House provided information in response to this interrogatory.

#### Interrogatory No. 10

This interrogatory states as follows:

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.

CDP interposed nine objections to both subparts, again with no explanation as to why any of them should apply.<sup>14</sup> In fact, there is no valid objection to this question. Verizon has noted that when it successfully retains a customer, the cable companies are free to continue competing for the business. Interrogatory No. 10 is relevant to that point. CDP should be required to confirm whether it in fact competes for these customers and if so what measure of success it has enjoyed. Verizon further notes that Bright house responded to this interrogatory.

#### Interrogatory No. 13

The interrogatory asked “[h]ow many telephone customers do you have in Verizon’s Florida service territory that do not subscribe to your video or broadband Internet access service?” CDP asserted the same twelve objections as it did for Interrogatory Nos. 8 and 9 and those objections are invalid for substantially the same reasons as noted above. The requested information will enable the Commission to determine the number of cable telephone customers who have bundled services versus the number of stand-alone telephone customers, which bears directly on Verizon’s testimony about the importance of bundled services. Verizon further notes that Bright House provided the requested information.

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<sup>14</sup> Objections 1 and 2 are invalid for the reasons discussed for Interrogatory No. 1. Objections 9, 12 and 14 are addressed in footnote 1 and Objection 10 is addressed in footnote 7. CDP provides no explanation as to what information is in the public record or in Verizon’s control (Objection 7) or would be burdensome to provide (Objection 8), so they do not justify the refusal to provide any responsive information. .

Respectfully submitted on August 8, 2008.

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Attorney for Verizon Florida LLC

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on August 8, 2008 to:

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