

COLE, RAYWID & BRAVERMAN, L.L.P.

CHRISTOPHER W. SAVAGE  
ADMITTED IN DC AND CA  
DIRECT DIAL  
1 202 828 9811  
CSAVAGE@CRBLAW.COM

ATTORNEYS AT LAW  
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20006-3458  
TELEPHONE (202) 659-9750  
FAX (202) 452-0067  
WWW.CRBLAW.COM

LOS ANGELES OFFICE  
2381 ROSECRANS AVENUE, SUITE 110  
EL SEGUNDO, CALIFORNIA 90245-4290  
TELEPHONE (310) 643-7999  
FAX (310) 643-7997

September 29, 2004

**VIA COURIER**

Blanca S. Bayó  
Director, Division of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Filing of Complaint of Bright House Networks Information Services, LLC  
(Florida) Against Verizon Florida, Inc., Request for Oral Argument and  
Request to Name Christopher W. Savage a Qualified Representative,  
Docket No. 041170-TP**

Dear Ms. Bayó:

On behalf of Bright House Networks Information Services, LLC (Florida) ("BHN"), enclosed for filing and distribution are the **original and 15 copies** of the following:

- a Complaint and Request for Declaratory Ruling
- a Request for Oral Argument regarding the matters identified in the complaint, and
- BHN's Request to name me and Ms. Danielle Frappier as qualified representatives of BHN in this proceeding.

I have also enclosed an additional copy to be stamped and returned to the courier, and thank you in advance for your assistance in this matter.

Sincerely yours,



Christopher W. Savage

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2540 SHUMARD OAK BLVD.  
TALLAHASSEE, FL 32399-0850

Bright House Networks Information Services,  
LLC (Florida),  
Complainant

v

Verizon Florida, Inc.,  
Defendant

No. 041170-TP

**COMPLAINT AND REQUEST FOR DECLARATORY RULING OF  
BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC (FLORIDA)**

Bright House Networks Information Services, LLC. (Florida) (“BHN”), through its attorneys and pursuant to Sections 25-22.036(2), 28-106.104 and 28-106.301 of the Florida Administrative Code and Section 120.57(2) of the Florida Statutes, brings the following complaint against Verizon Florida, Inc. (“Verizon”).

**INTRODUCTION AND SUMMARY**

1. The facts giving rise to this complaint are not in dispute: when a Verizon customer who buys both intrastate telephone exchange service (“plain old telephone service,” or “POTS”) and digital subscriber line (“DSL”)/Internet access service from Verizon, seeks to switch to BHN for voice services, Verizon refuses to port the customer’s POTS number unless the customer first disconnects the DSL service and completely closes out the account.<sup>1</sup> What is in dispute is whether such practice is

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<sup>1</sup> Verizon has consistently rejected porting requests submitted on behalf of BHN voice service customers, citing the presence of DSL on the customer’s account as the reason for rejecting the request. As such, there is no dispute concerning the core factual basis for the present complaint, *i.e.*, that Verizon refuses to port the POTS number of a customer who also purchases

permissible under applicable law. Aside from the fact that federal number portability rules do not contemplate an incumbent local exchange carrier (“ILEC”) using control over a customer’s telephone number to interfere with competition for basic telephone service, this Verizon practice imposes an anticompetitive, unjust and unreasonable condition on the termination of intrastate telephone exchange service in violation of FLA. STAT. § 364.10.

2. It is not anticompetitive for Verizon to try to sell its POTS customers other services in addition to POTS, such as DSL/Internet access service. But it clearly *is* unjust and unreasonable to impose, as a condition of *terminating* POTS service, a requirement that the customer give up the technically and regulatorily distinct DSL/Internet access service. Such a requirement severely impedes direct, on-the-merits, facilities-based competition for voice customers, harming consumers as well as competitive providers. Customers are significantly inconvenienced by being unable to smoothly and efficiently move from one voice services supplier to another; by being prevented from freely taking their telephone numbers with them when they change voice providers; by having to seek alternative providers of high speed Internet access, which involves changing email addresses and time, effort and expense on the part of the consumer; and by having to endure the hassle and frustration that BHN customers have encountered in having to

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Verizon DSL services, and this complaint meets the requirements to file a proceeding in which no disputed issues of material fact are involved. FLA. STAT. § 120.57(2); FLA. ADMIN. CODE § 28-106.301. Although Verizon may, in response to this complaint, attempt to argue that there are legal, technical or policy reasons why such practice may be permissible, it cannot deny that it is refusing to port such numbers. Of course, BHN argues that there are no legal, technical or policy justifications for such practice, and that indeed, Florida law and policy *require* Verizon to timely port these numbers to BHN.

make several to many calls to Verizon for it to effectively cancel their DSL service and port their numbers.

3. BHN provides its Voice over Internet Protocol (“VoIP”) service (“Digital Phone”) as a facilities-based competitive local exchange carrier (“CLEC”), primarily to residential customers in Florida. BHN serves its customers using transmission capability obtained from its affiliated cable entity, and switching and routing functionality obtained from MCI WorldCom Network Services, Inc. or an affiliate thereof (“MCI”). MCI, in turn, is interconnected with Verizon and provides a venue through which BHN can exchange traffic with the traditional public switched telephone network (“PSTN”). As a facilities-based provider, BHN does not rely on Verizon for any unbundled network elements (“UNEs”); BHN does not resell any Verizon services; and BHN has no collocation arrangements with Verizon. Given Verizon’s status as the ILEC in the area in which BHN primarily operates, however, most of BHN’s customers formerly received their voice services from Verizon. As a result, BHN depends on Verizon porting telephone numbers when BHN competes for and wins the business of an existing Verizon customer.

4. Number porting has generally not been problematic for customers switching to BHN Digital Phone when Verizon only sells its customers POTS. When Verizon also sells its customers DSL service, however, Verizon uses its provision of DSL to interfere with customers taking their telephone numbers for use with the services offered by BHN, thereby preventing Florida consumers from enjoying the full benefits of Florida’s competitive voice services market.

5. In light of the foregoing, BHN seeks an order directing Verizon to immediately cease its practice and to permit the unconditional and timely porting of customers' POTS numbers when they choose BHN over Verizon for voice service, irrespective of whether the customer does or does not buy DSL service from Verizon.

6. Moreover, BHN requests that the Commission make a declaratory ruling that the type of practice described above, is anticompetitive and a violation of Florida laws and regulations.

#### **PARTIES**

7. BHN is a Delaware limited liability company that was granted CLEC authority in 2002. BHN's cable affiliate currently serves approximately 1.7 million customers in Florida. BHN launched its Digital Phone service in the summer of 2004. It currently provides Digital Phone in the Pinellas and Hillsborough County areas. It has plans to offer Digital Phone in the Tampa Bay and central Florida areas. BHN's principal place of business in Florida is 301 East Pine Street, Suite 600, Orlando, FL 32801, telephone (407) 210-3165.

8. On information and belief, Verizon is the ILEC, as that term is defined in 47 U.S.C. § 251(h), authorized to provide telecommunications services in various areas in Florida, including the Pinellas and Hillsborough County areas where BHN offers its Digital Phone service. On information and belief, Verizon's principal place of business in Florida is 106 East College Avenue, Tallahassee FL 32301-7748. On information and belief, Verizon typically does not sell the DSL service directly to its end user, but rather it sells this service to Verizon's Internet Service Provider ("ISP") affiliate or some other Verizon affiliate ("Verizon ISP Affiliate"). Upon information and belief, the Verizon ISP

Affiliate bundles the interstate DSL service with unregulated Internet access service and sells the package to the end user. Verizon itself then bills the end user for the bundled package.

### JURISDICTION

9. As described more fully below, Verizon's practice of refusing to port the number of a POTS customer who also subscribes to DSL violates state law. The Commission has jurisdiction under FLA. STAT. § 364.01 to adjudicate complaints alleging violations of Florida statutes regulating telecommunications companies such as Verizon. This Commission has previously ruled that it has jurisdiction to resolve complaints regarding a BellSouth policy similar to the Verizon policy complained of here. Specifically, the Commission found that BellSouth's policy:

raised valid concerns regarding possible barriers to competition in the local telecommunications voice market that could result from BellSouth's practice of disconnecting customers' FastAccess [DSL] Internet Service when they switch to FDN voice service. *That is an area over which we do have regulatory authority.*<sup>2</sup>

The Commission, therefore, has jurisdiction to hear and resolve this dispute.

### FACTUAL BACKGROUND

10. BHN has been certificated as a CLEC in Florida since 2002, and began providing Digital Phone services in Florida in June 2004. Using its cable affiliate's

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<sup>2</sup> *In Re Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996*, Final Order on Arbitration, 2002 Fla. PUC LEXIS 401 (Fla. PSC June 5, 2002) at 8 (hereinafter "FDN Order") (emphasis added), *appeal in federal district court stayed BellSouth Telecommunications, Inc. v. Florida Digital Network, Inc.*, Case No. 4:03cv212-RH, Order Staying Proceedings and Requiring Reports (N.D. Fl. Feb. 24, 2004) (staying appeal until the FCC resolves the BellSouth request for declaratory relief).

hybrid fiber-coax transmission plant, BHN connects to its residential customers without any reliance on the loop or other facilities of the incumbent. Calls between Digital Phone customers are routed over the facilities of BHN's cable affiliate through VoIP technology, which is unregulated in Florida.<sup>3</sup> Like any other local telephone customers, however, BHN customers want to send calls to and receive calls from the traditional PSTN. To address this need, BHN routes those calls through its arrangement with MCI, without any use of Verizon or any other ILEC facility. By relying entirely on non-ILEC facilities to serve its customers, BHN provides facilities-based competition in Florida. As was recently recognized by the Federal Communications Commission ("FCC") Chairman Michael Powell "[f]acilities-based competition brings the innovation and value that consumers demand . . . ."<sup>4</sup> and "[i]n the long run, the transition to facilities-based competition holds out the best promise of real benefit to America's telephone consumers."<sup>5</sup>

11. Because BHN provides its service over its own and third party facilities and does not use any Verizon UNEs, the ongoing industry disputes about which parts of ILEC networks must be unbundled, at what prices, and on what terms, are not at issue in BHN's dispute with Verizon. Similarly, BHN does not resell Verizon's services and so is

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<sup>3</sup> In May 2003, Florida enacted the Tele-Competition Innovation and Infrastructure Enhancement Act. 2003 FLA. SESS. LAW SERV. Ch. 2003-32 (C.S.S.B. 654) (West) (hereinafter "Tele-Competition Innovation and Infrastructure Enhancement Act"), codified at FLA. STAT. § 364.01 *et seq.* This legislation clearly exempts VoIP from the traditional regulation applicable to telecommunications companies in Florida.

<sup>4</sup> FCC Chairman Michael K. Powell Announces Plans for Local Telephone Competition Rules, News, 2004 FCC LEXIS 3139 (FCC rel. June 14, 2004) (citation omitted).

<sup>5</sup> FCC Chairman Michael Powell's Comments on AT&T's Proposal to Transition to Facilities-Based Competition, News, 2004 FCC LEXIS 2202 (FCC rel. Apr. 29, 2004).

unconcerned about the wholesale discounts applied to such services. BHN's network and operations, therefore, function independently of Verizon's. Even so, in order to fully serve its customers' needs, BHN requires the seamless portability of telephone numbers from Verizon.

12. Verizon, however, is directly and blatantly interfering with the porting of telephone numbers when it loses voice customers to BHN. Verizon is doing so despite the fact that DSL/Internet access services are technically and regulatorily distinct from POTS. DSL is provided through equipment attached to both ends of a copper loop that sends high-speed data signals over the loop at high frequencies that are distinct from, and do not interfere with, the voice signals used for POTS (which are transmitted using very low frequencies). Because they use distinct and separate frequencies on the loop and different equipment attached to that loop, there is no technical need for POTS to be active and in-service while DSL/Internet access services are being offered. At least one other ILEC already offers so-called "naked DSL" services to end users.<sup>6</sup> Thus, unless Verizon's Florida network is technically backward compared to other ILECs, Verizon can certainly offer naked DSL as a technical matter. In fact, at least one Verizon affiliate apparently began offering naked DSL to certain customers last April, and has publicly announced that it intends to offer stand-alone DSL by the end of 2004.<sup>7</sup>

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<sup>6</sup> Jim Duffy, *Naked DSL*, Network World (March 5, 2004), available at <http://www.nwfusion.com/edge/columnists/2004/0301edgecol2.html> (noting that Qwest provides stand-alone DSL). BHN also notes that Sprint is offering a naked DSL service.

<sup>7</sup> Marguerite Reardon, *Verizon to Offer 'Naked' DSL*, News.com (May 26, 2004), available at [http://news.com.com/Verizon+to+offer+'naked'+DSL/2100-1034\\_3-5221095.html](http://news.com.com/Verizon+to+offer+'naked'+DSL/2100-1034_3-5221095.html).



13. DSL and Internet access services are also distinct from POTS as a regulatory matter. POTS is essentially intrastate telephone exchange service. As such, the terms and conditions associated with Verizon's offering of this service are subject primarily if not exclusively to the jurisdiction of the Commission.<sup>8</sup> Internet access service is an information service, subject primarily if not exclusively to the jurisdiction of the FCC, and essentially unregulated. The transport component of an integrated DSL/Internet service is presently classified as a telecommunications service, and is also primarily interstate in nature.<sup>9</sup> Thus, this Commission has full authority over the conditions under which Verizon sells its intrastate POTS service to customers, including the terms and conditions under which they are allowed to terminate such service. The fact that the customer purchases or has purchased in the past an interstate DSL service from Verizon does not diminish this Commission's authority over Verizon's intrastate POTS offerings.

14. Despite the technical and regulatory distinctiveness of POTS and DSL/Internet access service, Verizon has impermissibly linked the terms and conditions of offering these two services by insisting that end users may not terminate their intrastate plain old telephone service unless they also terminate their interstate DSL/Internet access service. There is no conceivable justification for imposing this unjust and unreasonable

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<sup>8</sup> FLA. STAT. § 364.01.

<sup>9</sup> The FCC is currently considering whether to deem the entire DSL/Internet access bundled service commonly offered by ILECs as an integrated, unregulated interstate information service as well. *In Re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (FCC rel. Feb. 15, 2002).

condition on end users choosing to terminate their POTS service with Verizon. Nor is there any justification for Verizon's policy of enforcing this unreasonable condition by refusing to port the telephone numbers of customers who initially buy both services from Verizon but who then choose to obtain Digital Phone services.

15. When a new BHN customer seeks to port his old telephone number for use with his Digital Phone service, MCI, which is directly interconnected with Verizon, submits a porting request to Verizon. Upon receiving the request, if the customer buys Verizon DSL service, Verizon rejects the request and refuses to port the number without making any attempt to develop a solution to allow its customers to obtain voice services from the provider of their choice.

16. This unjust and unreasonable Verizon practice has caused significant interference with BHN's ability to compete in the marketplace for voice services in Florida. Recent experience indicates that Verizon is rejecting an increasing number of Digital Phone-related number porting requests BHN submits, because those customers also purchase or purchased DSL/Internet access from Verizon. When that happens, BHN can either drop its plan to serve the customer (which requires an explanation to the customer that the service they want to buy from BHN will not be forthcoming) or try to convince the customer to drop his or her Verizon DSL/Internet access service as a condition of getting BHN's Digital Phone service. Not surprisingly, many customers depend on their broadband Internet access services too heavily to wait for this process to play itself out over the course of two weeks or more, and simply cancel order for BHN's service. Moreover, canceling the DSL service often takes several phone calls from the customer, due to Verizon's failure to properly remove notations on the customer account

that the customer has DSL service. In the months of June through August, approximately 24% of new customers who have attempted to port their numbers and who currently have or had Verizon DSL at some time in the past have cancelled their orders to sign up for BHN Digital Phone service due to problems with canceling their Verizon DSL, closing out their Verizon DSL accounts and porting their telephone numbers.<sup>10</sup> Even if the customer is patient enough to endure this process, BHN incurs additional expenses in having to reschedule installations when the DSL service is not cancelled properly and assisting customers in dealing with the DSL cancellation process.<sup>11</sup>

**VERIZON'S REFUSAL TO PORT NUMBERS VIOLATES STATE  
AND FEDERAL POLICIES OF PROMOTING COMPETITION IN VOICE SERVICES**

17. BHN repeats and realleges the allegations contained in paragraphs 1 through 16 above.

18. The Commission noted in its *FDN Order* that Florida Statutes direct the Commission to “encourage competition in the local exchange market and remove barriers to entry,” and noted that the Commission has jurisdiction to “address behaviors and practices that erect barriers to competition.”<sup>12</sup> It also noted that under Section 706 of the Federal Communications Act, Congress directed state commissions to encourage the

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<sup>10</sup> Of course, the 24% does not include customers who initially contact BHN seeking to switch to its Digital Phone service, but then decline to sign up for the service upon learning that they would have to cancel their DSL service. Thus, the total number of lost potential Digital Phone customers is higher than this documented 24%. In the months of June through end August 2004, cancellations due to porting resulted in a decrease of 35% in new customers for BHN.

<sup>11</sup> BHN's cable affiliate, of course, offers a high-speed Internet access service that customers may buy, if they so chose, in addition to buying BHN's Digital Phone offering. The problem here arises because not all customers want both services from BHN. BHN offers Digital Phone to customers who do not choose to purchase high-speed Internet access from its cable affiliate.

<sup>12</sup> *FDN Order* at 9.

deployment of advanced telecommunications by promoting competition and removing barriers to investment in infrastructure.<sup>13</sup>

19. The Florida legislature recently reaffirmed its commitment to promoting competition for voice services. Specifically, in May 2003, the legislature enacted the Tele-Competition Innovation and Infrastructure Enhancement Act reaffirming that:

the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.<sup>14</sup>

As part of its strategy to encourage competition between legacy voice services and emerging voice technologies, the legislature also included in this Act that VoIP should remain unregulated in Florida.<sup>15</sup> BHN's Digital Phone service offers Florida consumers the kind of competitive choice and alternative to Verizon's POTS service envisioned by the legislature in passing this landmark, pro-competition legislation.<sup>16</sup>

20. Timely porting is central to the promotion of competition in voice services. The Commission recently underscored the importance of carriers cooperating to comply with their number porting responsibilities, when it added a new rule applicable to

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<sup>13</sup> *Id.*; FLA. STAT. § 364.02(12) (defining the term "services," which the Commission is given the jurisdiction to regulate, as excluding VoIP services).

<sup>14</sup> Tele-Competition Innovation and Infrastructure Enhancement Act, at § 364.01 (codified at FLA. STAT. § 364.01(3)).

<sup>15</sup> *Id.*

<sup>16</sup> By simultaneously directing the Commission to encourage the development of competition and investment in the state's infrastructure, the legislature clearly recognized the importance of facilities-based competition to the citizens of the state.

ILECs in Florida requiring that “[t]he serving local provider shall facilitate porting of the subscriber’s telephone number upon request from the acquiring company.”<sup>17</sup>

21. The FCC has also repeatedly recognized the crucial role that timely and efficient porting plays in promoting competition in voice services. For example, in a recent order the FCC stated:

number portability promotes competition . . . by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers.<sup>18</sup>

This conclusion from last fall echoes the FCC’s earlier discussion of the significance of number portability in a 1998 order in which the FCC stated:

Congress recognized that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition. ... ***‘[t]he ability to change service providers is only meaningful if a customer can retain his or her local telephone number.’*** H.R. Rep. No. 104-204, at 70 (1995).<sup>19</sup>

22. The FCC has also specifically ruled that carriers may not use the number porting process to facilitate marketing plans or respond to other concerns not related to the actual porting process itself. In an order issued last fall the FCC stated that “carriers

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<sup>17</sup> *In Re Proposed Adoption of Rules 25-4.082, F.A.C., Number Portability, and 25-4.083, F.A.C., Preferred Carrier Freeze; and Proposed Amendment of Rules 25-4.003, F.A.C., Definitions; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated*, Notice of Adoption of Rules, Docket No. 040167-TP, Order No. PSC-04-0830-FOF-TP (Fla. PSC issued Aug. 25, 2004) at 3.

<sup>18</sup> *In Re Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697 (Nov. 10, 2003) at ¶ 4 (internal quotations omitted).

<sup>19</sup> *In Re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (May 12, 1998) at ¶ 3 (emphasis added).

may not impose non-porting related restrictions on the porting out process.”<sup>20</sup> Verizon’s unilateral practice of refusing to port the POTS numbers of active DSL/Internet access customers is, without question, a “non-porting related restriction.”

23. As far as BHN can tell, Verizon’s position on this matter is, in effect, a form of support for a Verizon marketing strategy of selling customers bundled POTS/DSL/Internet access service whenever possible. BHN has no objection to selling bundles of services; but BHN objects strongly to Verizon interfering with the number porting process for customers with whom the approach does not work, *i.e.*, those who want Digital Phone from BHN but want to retain their DSL/Internet access from Verizon.

#### **VERIZON’S REFUSAL TO PORT NUMBERS VIOLATES FLORIDA LAW**

24. BHN repeats and realleges the allegations contained in paragraphs 1 through 23 above.

25. Verizon’s practice violates the requirements of state law applicable to intrastate telecommunications services. Under Verizon’s practice, an intrastate POTS customer cannot terminate intrastate POTS service unless the customer complies with an unrelated, onerous condition: terminate DSL/Internet access services provided over the same physical facility. This condition violates Section 364.10 of the Florida Statutes.

26. In the *FDN Order* the Commission found that “our state statutes provide that we must encourage competition in the local exchange market and remove barriers to

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<sup>20</sup> *In Re Telephone Number Portability—Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971 (FCC rel. Oct. 7, 2003) at ¶ 11.

entry.”<sup>21</sup> In order to encourage competition, Florida Statutes charge the Commission to exercise its jurisdiction to:

- “ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services”<sup>22</sup>
- “promote competition by encouraging new entrants into telecommunications markets”<sup>23</sup>
- “ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior”<sup>24</sup>

Section 364.3381(3) provides the Commission with continuing oversight jurisdiction over anticompetitive behavior and specifically provides the Commission with the power to investigate—either in response to a complaint or on its own motion—allegations of anticompetitive practices.<sup>25</sup> Thus, not only does the Commission have jurisdiction over the matters alleged in this complaint, the legislature has explicitly directed the Commission to protect Florida consumers and communications providers from the type of anticompetitive behavior engaged in by Verizon that is limiting consumer choice in voice providers and services.

27. Verizon’s refusal to port numbers to competitive voice providers where the customer purchases Verizon DSL service has a demonstrably harmful effect on the competitive voice market in Florida. As discussed above, nearly a third of BHN’s customers decline to install its Digital Phone service when faced with the requirement of disconnecting their DSL service and the ordeal of enduring unreasonable porting delays.

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<sup>21</sup> *FDN Order* at 9.

<sup>22</sup> FLA. STAT. § 364.01(4)(b).

<sup>23</sup> FLA. STAT. § 364.01(4)(d).

<sup>24</sup> FLA. STAT. § 364.01(4)(g).

<sup>25</sup> FLA. STAT. § 364.3381(3).

This anticompetitive practice effectively bars Florida consumers from getting voice services from the provider of their choice and creates a barrier to entry into the voice services market.

28. In the *FDN Order*, the Commission found this type of behavior to be in violation of Florida law. In that proceeding, the Commission was considering BellSouth's requirement that its customers discontinue their DSL service if they chose to receive voice service from another provider. In the situation with BHN, not only does Verizon refuse to continue to provide DSL service, it throws up an *additional barrier* to competition by refusing to allow consumers to take their telephone numbers with them. In the FDN case, the Commission was "troubled" that BellSouth was using its provision of DSL "as leverage to retain voice customers" and ordered BellSouth to stop its anticompetitive practice "in the interest of promoting competition in accordance with state and federal law."<sup>26</sup> In a subsequent proceeding involving BellSouth and Supra, another competitive voice provider, the Commission noted that its decision in the *FDN Order* was not limited solely to the FDN arbitration, and it ordered BellSouth to stop using its control over customers' DSL service to restrict their choice of voice service providers. In the Supra proceeding, the Commission relied on its analysis in the *FDN Order* in determining that BellSouth was once again "imped[ing] competition."<sup>27</sup>

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<sup>26</sup> *FDN Order* at 8, 10.

<sup>27</sup> *In Re Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Agreement with Supra Telecommunications and Information Systems, Inc.*, Order on Procedural Motions and Motions for Reconsideration, 2002 Fla. PUC LEXIS 622 (Fla. PSC July 1, 2002) at \*87-88 (hereinafter "*Supra Order*") appeal in federal district court stayed *BellSouth Telecommunications, Inc. v. Supra Telecommunications and Information Systems, Inc.*, Case No. 4:02cv325-SPM, Order Granting Motion to Stay (Mar. 16, 2004) (staying appeal until the FCC



29. The proceedings noted above involved both federal and state law considerations, because the CLECs in those cases sought to provide voice service by means of UNE loops rather than their own facilities. While BHN supports the results in the FDN and Supra matters, BHN's situation here is different in a critical respect. In those matters, the ILEC was effectively required either to share a UNE loop with a CLEC or deploy a new loop to offer interstate DSL. Here, as described above, the dispute has nothing to do with sharing UNE loops, and nothing requires Verizon to deploy new loops for its interstate DSL service.

30. What is relevant to this matter was that in the *FDN Order*, the Commission found that BellSouth's practice of using its provision of DSL as a barrier to changing voice providers violated *Florida* law as well as federal law. Specifically, the Commission found that the practice violated Section 364.10(1), which provides that:

A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.<sup>28</sup>

31. Verizon's refusal to port numbers violates this statutory provision. There is no sound reason to allow Verizon to force BHN customers to choose between giving up their DSL service or losing their telephone numbers. The practice is undue and unreasonable because there is no technical reason why Verizon is not able to port these

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resolves the BellSouth request for declaratory relief). As the Commission is aware, a complaint filed by the Florida Competitive Carriers Association complains of similar BellSouth practices that the Commission found to be anticompetitive in the *FDN Order* and the *Supra Order*. *In Re Complaint of the Florida Competitive Carriers Association Against BellSouth Telecommunications, Inc. and Request for Expedited Relief*, Docket No. 020507-TL (filed June 12, 2002).

<sup>28</sup> FLA. STAT. § 364.10(1).

numbers, nor to the best of BHN's knowledge, has Verizon ever offered a meaningful technical explanation for its refusal to port numbers. It is also undue and unreasonable because it clearly violates federal porting rules, which provide that carriers such as Verizon not impose non-porting related restrictions on the porting out process.<sup>29</sup> Moreover, this obviously provides an undue and unreasonable preference and advantage to Verizon. POTS customers are significantly inconvenienced by being unable to smoothly and efficiently move to another voice provider, forcing the customer to (i) stay with Verizon's POTS service when he wants to change to BHN's Digital Phone service, or (ii) endure the inconvenience of terminating Verizon's DSL service, lose his telephone number and make alternative arrangements for high-speed Internet access—when again, this is manifestly *not* what the customer wants to do. Many customers will simply choose to stay with Verizon's POTS service because it is the choice that involves the least amount of effort and expense on the customer's behalf.

32. For example, a current BHN customer recently ordered Digital Phone service and wanted to port his number to use with the new service. Having been forewarned that Verizon would require him to cancel his DSL service in order to port the

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<sup>29</sup> In this regard, the federal number portability requirement — since it directly affects intrastate services — can reasonably be viewed as informing the Commission's application of general state-level regulatory requirements such as those contained in Section 364.10(1). FCC regulations define the term "number portability" as ". . . the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, *or convenience*, when switching from one telecommunications carrier to another." 47 C.F.R. § 52.21(l) (emphasis added). The FCC clearly supported the seamless porting of numbers sought by BHN in a recent order considering wireless local number portability in which it stated that "[w]e interpret . . . [the] language [of Rule 52.21(l)] to mean that consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them." *In Re Telephone Number Portability and Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971 (FCC Oct. 7, 2003) at ¶ 11.

number, the customer requested cancellation of his DSL service on the same day he ordered Digital Phone service. Nine days later, Verizon denied the port request because its system still showed that this customer had DSL service. The customer provided BHN with the Verizon DSL cancellation order number, and BHN tried once again to provide the customer with Digital Phone service. Over two weeks later, Verizon again denied a second port request due to an indication on the customer's account that he once had had Verizon DSL service, even though the customer had made repeated attempts to cancel the DSL. At BHN's suggestion, the customer called Verizon to confirm the cancellation order and Verizon has indicated that it would cancel the DSL. As of the filing of this complaint, the customer still has not been able to port his number due to Verizon's inability or refusal to effectively cancel his DSL service. The end result for this customer is that the installation of his Digital Phone service was delayed by *over seven weeks* due to the refusal of Verizon to timely port his number, he endured a frustrating and time-consuming process in order to cancel his DSL service and he had to reschedule several BHN installation appointments and make several phone calls to Verizon in order to cancel his DSL service. Such a practice is obviously aimed at discouraging customers from changing voice providers, thereby providing an undue and unreasonable preference and advantage to Verizon in its provision of POTS. From BHN's standpoint, Verizon's practice causes BHN to lose sales and imposes additional costs and burdens when BHN has to assist customers navigate through the frustrating process of disconnecting their DSL service and fully closing out their accounts. As such, BHN is subjected to undue and unreasonable prejudice and disadvantage in the marketplace, in violation of Section 364.10(1).

33. The Commission also found in the FDN proceeding that BellSouth's use of its DSL service to keep its POTS customers and discourage consumers from obtaining competitive voice services created a barrier to competition and unlawfully prejudiced and penalized customers and competitive voice providers, in violation of Florida and Federal law. The Commission noted that Sections 364.01(4)(g), 364.01(4)(d) and 364.01(4)(b) require the Commission to encourage competition and remove barriers to entry, and found that BellSouth's practice specifically violated Section 364.01(4) of the Florida Statutes. Section 364.01(4) requires the Commission, among other things to "ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services," "promote competition" and "ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior"<sup>30</sup> Refusing to port numbers associated with the intrastate local telecommunications service unless consumers terminate their DSL service clearly discourages them from taking voice services from a competitive provider, and amounts to an anti-competitive barrier to entry and unfair treatment of BHN, in violation of Section 364.01(4). The Commission held that BellSouth's practice of using its DSL service to prevent customers from exercising their right to obtain voice services from the provider of their choosing, unduly prejudices or penalizes those customers who switch their voice service, as well as their new voice provider.<sup>31</sup>

34. Verizon's practices surrounding its POTS offering clearly constitute an anticompetitive practice that is harmful to competitive providers and Florida consumers.

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<sup>30</sup> FLA. STAT. § 364.01(4)(b), (d), (g).

<sup>31</sup> *Id.*

Several other state commissions that have considered the issue of whether ILECs should be allowed to require customers who want to take voice service from a competitor to give up their ILEC-supplied DSL/Internet access service, have concluded that such a requirement is unjustifiable under state law. These include, for example, commissions in Georgia, Kentucky, Louisiana and **California**.<sup>32</sup> These other commissions have concluded that the ILEC practice at issue is anticompetitive and unreasonable under state law.

35. In this regard, when this issue has arisen in the past, it has been in the context of an ILEC and a CLEC that needed to rely on the ILEC for a UNE loop. As noted above, in that situation, the ILEC either has to share a UNE loop with a CLEC or deploy a new loop to offer its DSL service. This different situation has led to claims by

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<sup>32</sup> *PSC Approves Proceeding to Study BellSouth's DSL Policy in Response to Consumer Concerns*, New Release (Ga. PSC Aug. 17, 2004) (opening up a general docket regarding BellSouth's refusal to offer DSL services separately from voice services, noting that "Today, the Georgia Public Service Commission (Commission) responded to numerous consumer complaints about BellSouth by initiating a generic proceeding to examine Digital Subscriber Line (DSL) policies. Residential telephone customers have complained that BellSouth disconnected their DSL service, or refused to sell them DSL service, once they chose to buy voice telephone service from one of BellSouth's competitors."); *In Re Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 11901-U, Order on Complaint (Ga. PSC Nov. 19, 2003) at 20 (order BellSouth to discontinue its policy of requiring customers to receive BellSouth voice service in order to receive BellSouth's DSL service); *In Re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 16583-U, Order (Ga. PSC Jan. 14, 2004); *BellSouth Telecommunications, Inc. v. Cinergy Communications Co.*, 297 F. Supp. 2d 946 (E.D. Ky. 2003) at (upholding a Kentucky Public Service Commission order holding that BellSouth may not refuse to provide DSL service to a customer who has chosen to receive voice service from a CLEC that provides service over a UNE-P platform.); *CLARIFICATION; Louisiana Public Service Commission, ex parte*, Opinion, 2003 La. PUC LEXIS 8 (La. PSC Apr. 4, 2003) at \*18 (noting that there is no technical reason why BellSouth could not provide naked DSL); *Telscape Communications, Inc. v. Pacific Bell Telephone Company*, Opinion, 2004 Cal. PUC LEXIS 235 (Cal. PUC June 9, 2004) at \*25-28 (noting that SBC-CA's refusal to provide naked DSL has a significant negative impact on consumers).

ILECs (notably BellSouth) at the FCC that requiring the ILEC to continue to offer DSL/Internet access, while a CLEC uses an ILEC UNE loop to offer POTS, violates the FCC's UNE-related rules about "line sharing" with the ILEC.<sup>33</sup> BHN notes this FCC matter solely to emphasize that these UNE-related issues are utterly absent from BHN's dispute with Verizon here, and the UNE-related federal law issues that complicated those other proceedings are also absent here. BHN does not use, need, or want Verizon's loops to provide BHN's Digital Phone offering. BHN is competing to take away Verizon's POTS customers, and wants to serve these customers using BHN's own facilities (either actually owned by BHN and its affiliates, or supplied by non-Verizon third parties). Verizon's imposition of its unjust and unreasonable condition on the termination of regulated intrastate POTS service is entirely a matter within the Commission's jurisdiction. The pending FCC matter, while involving, generally speaking, similar issues, has no direct relationship to the instant complaint.

36. For these reasons, Verizon's practice of conditioning a customer's ability to terminate Verizon plain old telephone service and receive such service from BHN on the customer's dropping Verizon's DSL/Internet access service is anticompetitive and violates Florida and Federal law.

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<sup>33</sup> *In Re BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requesting BellSouth to Provide Wholesale or Retail Broadband Services to CLEC UNE Voice Customers*, Emergency Request for Declaratory Ruling, WC Docket No. 03-251 (filed Dec. 9, 2003). Note that the FCC has concluded that the high-frequency portion of the loop, used to provide DSL service, is to be phased out as a separate UNE.

## RELIEF REQUESTED

Based on the foregoing, BHN respectfully requests that the Commission:

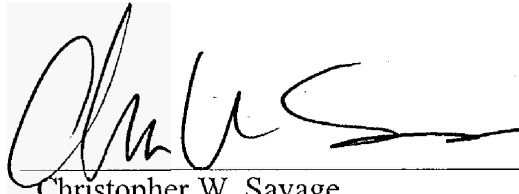
a. Declare that the refusal Verizon to terminate its intrastate telephone exchange service, and port the telephone numbers of POTS customers, who remain active DSL/Internet access customers is an undue and unreasonable preference or advantage to Verizon and an undue and unreasonable prejudice or disadvantage to Florida consumers and BHN in violation of FLA. STAT. § 364.10(1), and Florida's policy of encouraging competition in the voice services market.

b. Issue an order directing Verizon to immediately cease this practice and to immediately permit porting of telephone numbers where the customer chooses to receive BHN Digital Phone service, irrespective of whether the customer purchases, or continues to purchase, DSL/Internet access service from Verizon.

c. Issue a declaratory ruling that the practice, by any ILEC or CLEC, of refusing to terminate intrastate telephone exchange service, and port the telephone numbers of POTS customers who remain active ILEC DSL/Internet access customers, to another voice provider is an undue and unreasonable preference or advantage to the current POTS provider and an undue and unreasonable prejudice or disadvantage to Florida consumers and the potential voice provider in violation of FLA. STAT. § 364.10(1), and Florida's policy of encouraging competition in the voice services market.

d. Such additional relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted,



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Christopher W. Savage  
Danielle Frappier  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, N.W., Suite 200  
Washington, D.C. 20006  
Tel: 202-659-9750  
Fax: 202-452-0067  
chris.savage@crblaw.com  
dfrappier@crblaw.com

Attorneys for:  
Bright House Networks Information  
Services, LLC (Florida)

September 29, 2004



**CERTIFICATE OF SERVICE**

I, Lena Mosley, certify that true and correct copies of the following documents were delivered to the following parties, as indicated, on September 30, 2004:

- Complaint and Request for Declaratory Ruling of Bright House Networks Information Services, LLC (Florida)
- Request for Oral Argument of Bright House Networks Information Services, LLC (Florida)
- Request to Name Christopher W. Savage and Danielle Frappier qualified representatives

**David Christian\***  
Verizon Florida, Inc.  
106 East College Avenue  
Tallahassee, FL 32301-7748

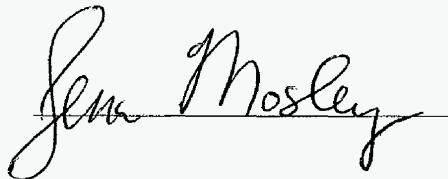
**Richard Chapkis\***  
Verizon Florida, Inc.  
P.O. Box 110  
Tampa, FL 33601

and

201 N. Franklin Street, FLTC0717  
Tampa, FL 33601

**Beth Salak\*\***  
Director, Division of Competitive Markets and  
Enforcement  
Florida Public Service Commission  
bsalak@psc.state.fl.us

**Beth Keating\*\***  
Florida Public Service Commission  
bkeating@psc.state.fl.us



\* By U.S. Mail

\*\* By Electronic Mail