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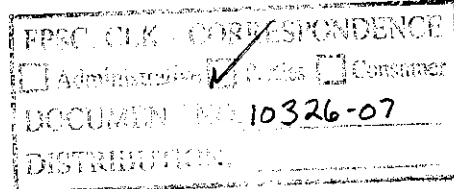
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November 2, 2007

## PARTIES

### FIRST-CLASS MAIL

Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850



Re: Petition for relief from carrier-of-last-resort (COLR) obligations pursuant to Section 364.025(6)(d), F.S., for Villages of Avalon, Phase II, in Hernando County, by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.  
Docket No. 070126-TL  
*max*

Dear Sir/Madam:

As of Friday, November 16, 2007, Greenberg Traurig LLP will be moving to 2101 L Street, N.W., Suite 1000, Washington, D.C. 20037.

All telephone numbers will remain the same. Please make a note of this for your future communications.

Very truly yours,

Walter Steimel, Jr.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Bright House Networks Information Services  
(Florida) LLC, and Bright House Networks, LLC,  
Complainants

v.

Verizon Florida, LLC (TL 710), Defendant

No. \_\_\_\_\_

**COMPLAINT AND REQUEST FOR EMERGENCY RELIEF**

In accordance with Rule 25-22.036, Florida Administrative Code, Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC (together, “Bright House”) through their attorneys, bring the following complaint against Verizon Florida, LLC (“Verizon”), for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, Florida Statutes, and for failure to facilitate transfer of customers' numbers to Bright House upon request, contrary to Rule 25-4.082, Florida Administrative Code.

**INTRODUCTION AND SUMMARY**

1. Bright House Networks Information Services (Florida), LLC is a competitive local exchange carrier (“CLEC”) in Florida that, in conjunction with services provided by its affiliate, Bright House Networks, LLC, provides local voice service to thousands of residential customers in Florida under the brand name “Digital Phone.” Digital Phone competes against Verizon's traditional telephone service. Bright House uses its own facilities to provide its services. Bright House does not use Verizon unbundled network elements, does not resell Verizon services, and does not collocate in Verizon central offices. Bright House does, however, depend on Verizon to properly and promptly implement industry-standard, number portability processes, and to do so in a manner that does not create unfair competitive advantages for itself.

2. Under normal industry practices, when Bright House wins a customer from Verizon, Verizon must receive advance notice that the customer is switching. This advance notice is necessary to avoid double-billing the customer, to ensure that the customer's service is not degraded or interrupted, and to make number portability work. Verizon is obliged under this Commission's rules, to "facilitate" the process of moving the customer's telephone number to Bright House. Florida Administrative Code § 25-4.082(1). In fact, however, Verizon is using its advance notice of the pending disconnect – notice that it receives on its wholesale side – to advise its retail operations that the customers are leaving and to include those customers in retention marketing campaigns.

3. Verizon's retention marketing activities violate federal law, and Bright House is pursuing those violations with the Federal Communications Commission ("FCC"). The FCC has clearly ruled under federal law (47 U.S.C. § 222) that practices such as Verizon's are unlawful. For example, in 1999 the FCC stated that "competition is harmed if *any* carrier uses carrier-to-carrier information, such as switch or PIC change orders, to trigger retention marketing campaigns, and [we] prohibit such actions accordingly." *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999) at ¶ 76 (emphasis in original). Explaining further, the FCC stated:

77. The [FCC] previously determined that carrier change information is carrier proprietary information under section 222(b). In the *Slamming Order*, the Commission stated that pursuant to section 222(b), the carrier executing a change "is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier." Thus, *where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b)*. We concede that in the short term this prohibition falls squarely on the shoulders of the BOCs and other ILECs as a practical matter. As competition

grows, and the number of facilities-based local exchange providers increases, other entities will be restricted from this practice as well.

78. We agree with SBC and Ameritech that section 222(b) is not violated if the carrier has independently learned from its retail operations that a customer is switching to another carrier; in that case, the carrier is free to use CPNI to persuade the customer to stay, consistent with the limitations set forth in the preceding section. We thus distinguish between the “wholesale” and the “retail” services of a carrier. If the information about a customer switch were to come through independent, retail means, then a carrier would be free to launch a “retention” campaign under the implied consent conferred by section 222(c)(1).

*Id.* at ¶¶ 77-78 (footnotes omitted, emphasis added).

4. Federal law aside, however, Verizon’s activities also, and independently, violate Florida law and this Commission’s regulations. The Florida statutes and regulations Verizon’s practices violate include the following:

- Florida Statutes § 364.01(4)(g), which requires the Commission to ensure that competitors are treated fairly “by preventing anticompetitive behavior;”
- Florida Statutes § 364.01(4)(i), which requires the Commission to act as a surrogate for competition when market forces will not do so;
- Florida Statutes § 364.10(1), which bars Verizon from giving “any undue or unreasonable preference or advantage to any person,” which includes Verizon itself;
- Florida Statutes § 364.3381(3), which gives the Commission “continuing oversight jurisdiction” to prevent “anticompetitive behavior” by carriers such as Verizon; and
- Florida Administrative Code § 25-4.082, which requires Verizon to “facilitate” the transfer of a customer’s number to Bright House “upon request” from Bright House.

Indeed, on at least two occasions, this Commission has specifically asserted jurisdiction over the precise question of retention marketing efforts by an incumbent local exchange carrier (“ILEC”) and, except in limited circumstances not relevant here, banned such efforts and instead recognized a 10-day “quiet period” following a customer’s transfer to another carrier during which neither retention marketing nor win-back marketing is permitted. *See Petition for Expedited Review and cancellation of BellSouth Telecommunications, Inc.’s Key Customer promotional tariffs and for investigation of BellSouth’s promotional pricing and marketing practices, by Florida Digital*

*Network, Inc.*, Docket Nos. 020119-TP *et al.*, Order No. PSC-03-0726-FOF-TP (June 19, 2003) (“Order No. PSC-03-0726-FOF-TP”); *Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. regarding BellSouth’s alleged use of carrier-to-carrier information*, Docket No. 030349-TP, Order No. PSC-03-1392-FOF-TP (December 11, 2003) (“Order No. PSC-03-1392-FOF-TP”). In these circumstances there can be no serious question that Verizon’s conduct violates applicable Florida law.

5. The Commission has jurisdiction to hear and determine this matter under Florida Statutes § 364.01(4). That statute directs the Commission to exercise its jurisdiction to, among other things, “encourage competition” (§ 364.01(4)(b)); to “prevent[] anticompetitive behavior” by telephone companies such as Verizon (§ 364.01(4)(g)); and to act as a surrogate for competition where the market itself does not constrain the behavior of a carrier such as Verizon (§ 364.01(4)(i)). *See also* Order No. PSC-03-1392-FOF-TP at 3-5 (taking jurisdiction over similar issues involving BellSouth). This is so even though, as noted above, Verizon’s conduct also violates applicable federal statutes and rules. In this regard, the Commission observed in 2003 that, “Not only is sharing of information [from the wholesale to the retail side] prohibited by Section 222 of the federal Act, ***it also appears to present a barrier to competition as prohibited by state law.***” *See* Order No. PSC-03-1392-FOF-TP at 11 (emphasis added).

6. In these circumstances, Bright House requests that the Commission issue an immediate, interim ruling requiring that Verizon abide by the same 10-day “quiet period” that the Commission has approved for BellSouth, i.e., to refrain from all retention and “win-back” marketing for a period of ten days following the transfer of a customer from Verizon to Bright House. *See* Order No. PSC-03-0726-FOF-TP at 41. Not only would requiring Verizon to follow

this practice prevent its anticompetitive exploitation of advance knowledge of customer departures, it would also harmonize the practices of the two largest LECs in the state.

**PARTIES**

7. Bright House Networks Information Services (Florida), LLC and Bright House Networks, LLC are both Delaware limited liability companies. Bright House Networks Information Services (Florida), LLC, through a predecessor company, was granted CLEC authority in 2003 and has been offering its services since 2004. It currently provides service throughout the Tampa and Central Florida areas. Bright House's registered address with the Commission is 12985 North Telecom Parkway, Temple Terrace, FL 33637-0907. Bright House's representatives for this matter are:

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8. On information and belief, Verizon is a Delaware limited liability company. Verizon is the ILEC, as that term is defined in 47 U.S.C. § 251(h), for various areas in Florida, including many of the areas where Bright House offers its service, as well as a local exchange telecommunications company as that term is defined in Section 364.02(8), Florida Statutes. On information and belief, Verizon serves large number of both residence and business customers in Florida. Verizon's registered address with the Commission is 06 East College Avenue, Suite 710, Tallahassee, FL 32301-7721.

## **JURISDICTION**

9. As already explained, Verizon's retention marketing practices violate state law. The Commission has jurisdiction under Florida Statutes, § 364.01(4) to adjudicate complaints alleging violations of Florida statutes regulating telecommunications companies such as Verizon, and, indeed, has previously considered complaints regarding BellSouth's retention marketing practices. *See*, Order No. PSC-03-1392-FOF-TP and Order No. PSC-03-0726-FOF-TP. In each of those cases, the Commission took jurisdiction and resolved the matter, even though the telephone company conduct under review also arguably violated applicable federal law. Here as well, Bright House believes that Verizon's conduct violates federal legal requirements as well as state law.

## **FACTUAL BACKGROUND**

10. Bright House provides its voice services primarily to residential customers in Florida. Bright House is interconnected with Verizon to exchange traffic. As a facilities-based carrier, Bright House does not rely on Verizon, the ILEC, for any unbundled network elements ("UNEs"); Bright House does not resell any Verizon services; and Bright House's only collocations with Verizon are for the purpose of exchanging traffic. Given Verizon's status as the ILEC within the area in which Bright House primarily operates, however, most of Bright House's customers formerly received their voice services from Verizon. As a result, Bright House depends on Verizon porting telephone numbers when Bright House competes for and wins the business of an existing Verizon customer.

11. Under industry standard practices, Bright House cannot unilaterally port an existing Verizon number to Bright House in order to serve a customer. Instead, Bright House must advise Verizon in advance that a customer is leaving Verizon for Bright House. Typically, Verizon requires three or more days advance notice of the fact that a customer is changing from Verizon to

Bright House in order to ensure a seamless transition from Verizon to Bright House. To make such a seamless transition occur, Verizon's disconnection of the customer from its own network needs to occur at essentially exactly the same time that the customer's service on Bright House's network is activated and the number is actually "ported" to Bright House.

12. This coordination is, in part, a matter of convenience for the customer. If the customer is disconnected from Verizon's network before the number port is active, then the customer will not be able to receive calls until the port is completed. On the other hand, if the port is put into place before the Verizon service is disconnected, the customer will be double-billed for both carriers' services until the Verizon disconnection is accomplished.

13. The industry-standard number porting interval is three days. This means that Verizon will necessarily have three days (or more) advance notice of a customer seeking to move from Verizon to Bright House. If there were some way consistent with industry processes and standards for Bright House to simply take customers away from Verizon without giving Verizon advance notice, Bright House would do so. Unfortunately, as of today there is not. Instead, as noted, Verizon and Bright House have to coordinate the activation of number portability with the disconnection of Verizon's service to the customer. This means, again, that Verizon will necessarily have advance notice of a pending disconnection in order that these "behind the scenes" activities – that are and should be invisible to customers – can occur.

14. This coordination is also an integral part of making number portability work. Once the relevant industry-wide number portability databases are updated with the customer's new information, calls from most parts of the public switched network will indeed be connected. However, the customer's closest neighbors – that is, Verizon subscribers served by the same Verizon switch that used to serve the new Bright House customer – will not go through until



Verizon has disconnected the customer's service. This is because, with the customer's service still "active," the Verizon switch will not "know" to look up the customer's new routing instructions in the number portability database. Instead, calls from the customer's old switch will simply not complete.

15. Verizon is exploiting the industry-standard advance notice that Bright House provides in order to coordinate the customer's carrier change, to engage in efforts to retain the customer. Specifically, once Bright House sends Verizon the disconnect and number portability notices, Verizon essentially immediately notifies its retail side that the customer will be disconnecting. In and of itself, the bare notice to Verizon's retail side is not objectionable, since the retail side needs to know of the pending disconnect in order to cease billing the customer. However, Verizon takes this information and engages in retention marketing based on it.

16. The negative impact of this Verizon conduct on Bright House, and on healthy competition in Florida, is severe. As of the filing of this complaint, over the last several months Bright House has lost between 500 and 1,000 customers who had signed up with Bright House but who changed their mind in response to Verizon's illegal retention marketing efforts. Bright House is losing more customers every day that Verizon continues its illegal practices. The current number of lost customers translates into lost revenues of more than \$2,000,000 over the next several years. This number, too, is only going to grow as long as Verizon is permitted to continue with its retention marketing.

17. In light of the foregoing, as noted above, Bright House seeks an order directing Verizon to immediately cease its practice of retention marketing to those customers as to whom Verizon's only knowledge of the pending disconnection comes from Bright House.

## **VERIZON'S RETENTION MARKETING EFFORTS VIOLATE FLORIDA LAW**

18. Bright House repeats and realleges the allegations contained in Paragraphs 1 through 17 above.

19. Verizon is using information obtained from Bright House's submission of service disconnection and number porting requests to initiate retention marketing efforts directed toward the customers Bright House has competed away from Verizon. Specifically, Verizon is sending letters to soon-to-be-former customers urging them to stay with Verizon and offering them inducements to do so. It may be making other retention marketing efforts as well.<sup>1</sup> This conduct violates a variety of Florida statutes, this Commission's regulations, and this Commission's specific rulings.

20. First, Verizon's practices violate Florida Statutes § 364.01(4)(g). This statute directs the Commission to prevent "anticompetitive behavior." For reasons that the Commission considered fully in Order No. PSC-03-0726-FOF-TP and Order No. PSC-03-1392-FOF-TP, it is plainly anticompetitive for Verizon to exploit its wholesale-side advance knowledge that a customer is leaving for Bright House to engage in efforts to keep that customer."). To this same effect is Florida Statutes § 364.3881(3), which gives the Commission "continuing oversight jurisdiction" to prevent "anticompetitive behavior" by carriers such as Verizon. Without question, Verizon's undermining of the orderly transfer of a customer from one carrier to another, by virtue of relying on confidentially-supplied information, constitutes "anticompetitive behavior" that the Commission is empowered to prevent.

20. Second, Verizon's practices violate Florida Statutes § 364.01(4)(i), which directs the Commission to "continue its historical role as a surrogate for competition for monopoly services

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<sup>1</sup> For example, some customers that have transferred to Bright House have reported receiving telephone calls from Verizon.

provided by local exchange telecommunications companies.” Here, Bright House has no choice but to work with Verizon in coordinating the disconnection of soon-to-be-former Verizon customers and porting their numbers to Bright House. With respect to these services, therefore, Verizon is a monopoly provider, and the Commission must act to prevent Verizon from abusing that position. In this regard, note that Florida Statutes § 364.02(13) states that the term “service” is used in Chapter 364 “in its broadest and most inclusive sense.”

21. Third, Commission Rule 25-4.082 requires Verizon to “facilitate” the transfer of a customer’s number to Bright House “upon request” from Bright House. Obviously, retention-marketing to a customer while the number portability request is pending is totally inconsistent with Verizon’s plain obligation to “facilitate” the transfer of the number – such conduct is plainly directed to prevent, and reverse, the transfer of the number.

22. Fourth, Verizon’s practices violate Florida Statutes § 364.10(1), which bars Verizon from giving “any undue or unreasonable preference or advantage to any person,” which includes Verizon itself. Here, as the carrier serving a soon-to-be-former customer, Verizon is uniquely situated to give a preference to itself by using its unique (and confidentially-acquired) knowledge that the customer is leaving, on a specific date, to market to that customer. Bright House is not in a similar position to try to retain the customer as against Verizon’s marketing efforts, and third-party carriers have no opportunity to do so either. So Verizon’s practices inherently constitute an undue, unreasonable preference and advantage to itself.

23. Fifth, as noted above, on at least two occasions, this Commission has specifically concluded that retention marketing efforts by an ILEC are not permitted, for a 10-day “quiet period” following the customer’s initial transfer, unless the ILEC’s retail marketing operations independently and legitimately obtain information that the customer is leaving. *See* Order No.

PSC-03-1392-FOF-TP (December 11, 2003); Order No. PSC-03-0726-FOF-TP (June 19, 2003).

Noting the requirements of Florida Statutes § 364.14(2) just discussed, Bright House submits that this long-standing 10-day “quiet period” rule constitutes the Commission’s endorsement of what *are* “reasonable” and “just” practices in this regard.

24. In sum, Verizon's “regulations and practices” surrounding its retention marketing efforts clearly constitute an anticompetitive practice that is harmful to competitive providers and to Florida consumers. It is unjust and unreasonable for Verizon to interfere with the competitive process – which necessarily entails a certain amount of cooperation “behind the scenes” between competing carriers – by using the advance notice that those “behind the scenes” activities provide to try to retention market.

25. For these reasons, Verizon's practice of retention marketing based on information it receives from Bright House on the wholesale side is anticompetitive and violates Florida law.

### **RELIEF REQUESTED**

Based on the foregoing, Bright House respectfully requests that the Commission:

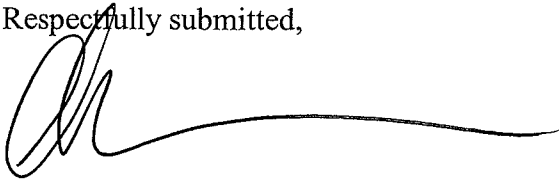
a. On an expedited basis, issue a ruling stating that Verizon’s retention marketing efforts based on disconnect orders received from Bright House is an undue and unreasonable preference or advantage to Verizon and an undue and unreasonable prejudice or disadvantage to Bright House in violation of Florida Statutes § 364.01(4)(g), and Florida's policy of encouraging competition in the voice services market.

b. Issue an order directing Verizon to immediately cease its retention marketing practices and instead to apply the same 10-day quiet period that BellSouth uses when a customer shifts from BellSouth to another carrier.

c. Award Bright House’s reasonable attorneys’ fees; and

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

Respectfully submitted,



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Attorneys for:  
Bright House Networks Information Services, LLC

November 16, 2007

**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 16th day of November, 2007, to the persons listed below:

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