

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080110-TP

In the Matter of:

COMPLAINT AND PETITION FOR RESOLUTION
OF INTERCONNECTION PRICING DISPUTE
AGAINST VERIZON FLORIDA, LLC, BY BRIGHT
HOUSE NETWORKS INFORMATION SERVICES, LLC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 5

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, May 20, 2008

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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1 PARTICIPATING:

2 CHRISTOPHER SAVAGE, ESQUIRE, and BETH KEATING,
3 ESQUIRE, representing Bright House Networks Information
4 Services, L.L.C.

5 DULANEY L. O'ROARK III, ESQUIRE, representing Verizon
6 Florida, L.L.C.

7 RICK MAN, ESQUIRE, representing the Florida Public
8 Service Commission staff.

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P R O C E E D I N G S

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2 CHAIRMAN CARTER: Commissioners, we are now on Issue
3 5. Give staff a moment to get set up. We're on Issue 5 --
4 Item 5. Sorry. Item 5.

5 Staff, you're recognized.

6 MR. MANN: Good morning, Mr. Chairman. This is
7 Rick Mann on behalf of Commission staff regarding Item 5,
8 Docket 080110-TP. This is a complaint and petition for
9 resolution of interconnection pricing dispute against Verizon
10 by Bright House Networks Information Services, LLC.

11 Mr. Chairman, this item has several issues for your
12 consideration. The first issue, however, is Bright House's
13 request for oral argument on its complaint. You have in the
14 past considered and ruled on this issue before staff introduces
15 the other issues. At your pleasure, Mr. Chairman, I'll follow
16 your past preference or, if you prefer, I'll introduce all of
17 the issues at this time.

18 CHAIRMAN CARTER: Hang on a second. Let's do this.
19 Commissioners, since we have a request for oral arguments and
20 there was no objection from the other party, the parties are
21 requesting ten minutes apiece. What is your -- Commissioner
22 Skop.

23 COMMISSIONER SKOP: Thank you, Mr. Chairman.

24 Normally I pride myself on hearing argument any time
25 it's requested because always getting more information is a

1 good thing, particularly when we're trying to address issues
2 that are important to consumers in the State of Florida.
3 However, in this case I have to depart from my usual course of
4 liberally supporting oral argument in this case. There was an
5 alternate dispute provision within the contract. Those are
6 strictly construed and enforced by courts in the State of
7 Florida, and, frankly, I just don't think oral argument is
8 warranted on the issues. They're pretty clear-cut to me.
9 Thank you.

10 CHAIRMAN CARTER: Thank you, Commissioner.
11 Commissioners, any other Commissioner on the issue of whether
12 or not to grant oral arguments?

13 COMMISSIONER EDGAR: I'd kind of like to hear it.

14 CHAIRMAN CARTER: Okay. Commissioners? Commissioner
15 McMurrin.

16 COMMISSIONER McMURRIAN: Chairman, just to be honest,
17 I'm kind of indifferent. I perhaps wouldn't support ten
18 minutes per side because I do think there is some clarity in
19 the recommendation and in the, in the filings that the parties
20 have put before us. But I think that if a Commissioner wants
21 to hear the oral argument, that normally if one Commissioner
22 wants to hear it, we go ahead and hear the oral argument, and I
23 think that that's a good practice.

24 CHAIRMAN CARTER: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I agree. I agree with

1 Commissioner Skop's assessment as far as a contract. But if
2 Verizon has no problem with it and we have a Commissioner that
3 would like to hear the oral argument, I think there's no harm
4 in hearing something that may give us, enlighten us a little
5 bit more.

6 CHAIRMAN CARTER: In light of what Commissioner
7 McMurrian is saying, would you think that maybe five minutes
8 would be appropriate?

9 COMMISSIONER EDGAR: Chairman Carter, and I thank my
10 colleagues and Commissioner Skop for, for being willing to
11 entertain a few minutes of discussion. Five minutes a side
12 would be absolutely fine with me.

13 CHAIRMAN CARTER: Okay. Five minutes each side.
14 Okay. Let's -- give me one second here. Let me tee up my
15 clock here.

16 Okay. Why don't we just have the parties recognize
17 themselves.

18 MR. O'ROARK: Good morning, Mr. Chairman,
19 Commissioners. I'm De O'Roark and I represent Verizon.

20 CHAIRMAN CARTER: Okay.

21 MR. SAVAGE: Mr. Chairman and Commissioners, this is
22 Chris Savage with Davis Wright Tremaine representing Bright
23 House Networks. With me is Beth Keating from Akerman
24 Senterfitt also representing Bright House.

25 CHAIRMAN CARTER: Okay. So we'll hear from, we'll

1 hear from Bright House. You have five minutes.

2 MR. SAVAGE: You know, the last time I was down here
3 with a disagreement with Mr. O'Roark, Mr. Mann was firmly on my
4 side, and I have to tell you it feels a little different being
5 the other way.

6 I very much appreciate the time you've given me. And
7 it's a fair question to ask why we are here because it's
8 absolutely correct that the agreement says, gee, you'll go to
9 the alternative dispute resolution and here we are saying we
10 want you to hear the case. I think we have some good reasons
11 as to why you ought to do that.

12 Let me say first, I understand that this is a matter
13 entirely within your discretion. No court is going to reverse
14 you if you rule for Mr. O'Roark and no court is going to
15 reverse you if you rule for me on this. So the question is
16 what is the best way to get this dispute resolved?

17 Now one of the things I think I mentioned last time I
18 was here and I'd like to emphasize again is from the
19 perspective of a facilities-based competitor in the world of
20 telecommunications we are observing a pattern, and it's
21 discussed a bit in our papers, but the pattern is this. When
22 we don't resale their services and we don't use unbundled
23 network elements, the opportunities for the incumbent to throw
24 kind of grit in the gears of the competitive process become
25 limited and they become intensely focused on issues surrounding

1 the transition of a customer from their network to our network.
2 That's where they have the opportunity to do things that are
3 anticompetitive and that affect the development of competition
4 and that's what they've done.

5 Our earliest dispute against them had to do with
6 number porting that they wouldn't do if there was DSL on the
7 line. As you know, we've got a dispute pending with them about
8 retention marketing while number porting. Well, here's another
9 thing that's going on right at that time when we get a customer
10 amendment saying, oh, by the way, you owe us \$24 per customer
11 just to get their name in the, in the phone book, just in the
12 face of an agreement that says totally and clearly this should
13 be done for free.

14 This is not an accident. One time is an accident,
15 two times is a coincidence, three times is a pattern of
16 behavior that we believe that you, the Commission, need to take
17 notice of and recognize there is more going on than random
18 individual disputes. We believe very firmly that the handling
19 of this transition from one customer to another, one carrier to
20 another is an important competitive policy matter that is going
21 to come before this Commission again and again and again, but
22 in the nature of things each one is going to be a little
23 different as different kinds of tactics get used. That's why
24 we very much believe this is not a garden-variety commercial
25 dispute that can just be handled by some, some third party

1 arbitrator.

2 Now what about third party arbitrators? I like AAA,
3 I've used AAA, I've been a plaintiff and a defendant in AAA.
4 There's a problem with them in some issues regarding
5 telecommunication and it's this: The telecommunications bar,
6 with no offense to my colleague, is kind of like the insurance
7 bar. You're either a plaintiff or a defendant. You're either
8 an ILEC lawyer or you're a competitive company lawyer. And
9 what that means is when you go out into the world trying to
10 find a good AAA arbitrator, the people who know the industry
11 are automatically disqualified because they're too aligned with
12 one side or another. So your AAA arbitrators end up being
13 people who are nice, smart, intelligent and, with due respect
14 to many of them, kind of clueless about the details of the
15 telecom industry.

16 And so when you have a dispute relating to something
17 that isn't just who paid who how much but rather gets into the
18 policy, an arbitration is actually grossly less efficient than
19 coming to you folks because you have to spend an enormous
20 amount of time educating the arbitrator about the history and
21 the background that you and your staff already know. So it's
22 not -- what it's supposed to be is efficient and quick and so
23 on. It's not in the real world. It's more expensive, it's
24 slower, it's messier. And so at a purely pragmatic level the
25 dispute will be resolved more quickly and more efficiently and

1 I would submit more intelligently by having it brought to you
2 rather than to a AAA arbitrator.

3 And then last but not least, our prediction based on
4 our attempts to work this out with them is we're going to be
5 back before you anyway. And I take Mr. Mann's point that,
6 well, maybe not. You know, maybe it'll all work out. Going
7 back to my first point about the broader policy issues, this
8 isn't one, this isn't just a commercial dispute. If it was
9 just a commercial dispute, we'd have decided it a long time
10 ago. This is part of something broader and that's why we're
11 bringing it to your attention. So I, I appreciate their
12 arguments. They're not crazy. I understand why they're
13 bringing them.

14 But I want to make sure you all understand that we're
15 not sort of cavalierly trying to just, well, let's mess up the
16 system. We very firmly believe that this matter sooner or
17 later will come before you, A, and we very firmly believe, B,
18 that it's part of a broader issue of managing the transition
19 from one carrier to another in a facilities-based competitive
20 world that is going to come before you again and again and
21 again in different forms until and unless you begin to take a
22 more active role in it. And we're inviting you perhaps hoping
23 that this might be an opportunity for you to begin to do that.
24 So with that, I'll conclude.

25 CHAIRMAN CARTER: Thank you very kindly. Right at

1 five minutes. Let's hear from Verizon.

2 MR. O'ROARK: The first thing I want to make clear is
3 that there is no allegation in this case that Verizon is
4 failing to process the directory listing orders that we're
5 receiving. In fact, I believe Bright House acknowledges that
6 we are receiving the orders, that we're processing them.
7 There's no question about the service quality that we're
8 providing. The only issue here is about money.

9 Obviously Verizon agrees with staff's recommendation
10 that the arbitration provision should be enforced. When we're
11 talking about an issue about what is the correct rate to be
12 applied to a service under an interconnection agreement, you
13 look to the interconnection agreement to see what the dispute
14 resolution provisions are.

15 And here they're clear. I'd suggest that there are
16 three basic issues that you could consider. One, does a
17 dispute arise under the interconnection agreement? Two, does
18 the interconnection agreement require arbitration? Three, must
19 the arbitration clause be enforced? We'd respectfully submit
20 that staff is absolutely correct that the answer to all three
21 questions is yes.

22 I'll walk you through each point very quickly.
23 First, the dispute clearly arises under the interconnection
24 agreement. This is a dispute about the amount due for a
25 service that Verizon provides under the interconnection

1 agreement. You don't have to look any further than the first
2 paragraph of the complaint to see that the two points that
3 Bright House is dealing with are its allegations that the
4 amount Verizon is charging, they say, is in violation of the
5 interconnection agreement. And Bright House is asking, second
6 point, for a determination regarding the scope and meaning of
7 the interconnection agreement. This is a dispute that arises
8 out of the interconnection agreement.

9 Second point, what does the interconnection agreement
10 say about alternate dispute resolution on that point? As
11 Commissioner Skop has already recognized, the agreement is
12 crystal clear. The agreement provides that except for certain
13 disputes that aren't at issue here, all disputes arising under
14 the agreement will be resolved under the agreement's
15 alternative dispute resolution provisions. Those provisions
16 state the negotiation and arbitration are the exclusive remedy
17 for disputes between the parties. It is only after that
18 process has been completed that a party can appeal to the
19 Commission.

20 Third point, arbitration clauses are enforced, must
21 be enforced, and this Commission has routinely done that. We
22 pointed you to three cases where the Commission enforced
23 arbitration clauses in interconnection agreements. The
24 Commission is absolutely right in those holdings. Under the
25 Federal Arbitration Act it is required that arbitration clauses

1 be honored. Likewise, under the Florida Arbitration Code
2 arbitration clauses are to be honored, and this arbitration
3 clause should be honored. Thank you.

4 CHAIRMAN CARTER: Thank you. Commissioners, we're --
5 let's go into our questioning phase. Any question you have for
6 either staff or the parties?

7 Commissioner Edgar, you're recognized.

8 COMMISSIONER EDGAR: Thank you, Mr. Chairman. And
9 not a question, just kind of a comment. And, again, I thank my
10 fellow Commissioners for their patience because I did find it
11 helpful to hear the oral arguments. So, again, I appreciate
12 your patience.

13 I just -- having sat through over the past few years
14 a number of hearings in this room on the differing
15 interpretations of interconnection agreements, it's kind of
16 interesting to hear in particular a cable company ask for us to
17 jump into that fray perhaps. You know, I do find something a
18 little persuasive about this is an area where we have expertise
19 and that there may be some efficiency in moving forward in the
20 way that Bright House has proposed. However, I also recognize
21 the points that Verizon has raised about the arbitration
22 language that's in the interconnection agreement and that this
23 Commission has directed that those steps be followed through
24 first. So, again, I appreciate the opportunity to listen to
25 the arguments.

1 Again, thinking back on some of the issues we've
2 dealt with the last few years, I find it kind of interesting
3 that this is where we are. I'm interested to see where we go
4 next. But with that, if there's no further question or
5 discussion, I would make a motion in favor of the staff
6 recommendation.

7 COMMISSIONER SKOP: Second.

8 CHAIRMAN CARTER: Commissioners, we have a motion and
9 a second. Any further questions or any discussion?

10 COMMISSIONER SKOP: Actually I'd like to make --

11 CHAIRMAN CARTER: Commissioner Skop, you're
12 recognized, sir.

13 COMMISSIONER SKOP: Thank you, sir.

14 Again, I do recognize the benefit of oral argument in
15 this case. Again, I was against granting it. The discussion
16 was insightful. However, in my mind Bright House voluntarily
17 agreed to the ADR provisions in the contract or the
18 interconnection agreement, and that's nonbinding arbitration.
19 And to deviate from that process and seek immediate relief from
20 the Commission impacts our resources and our ability to do the
21 job. And, again, staff recommendation, staff took a lot of
22 time to prepare this recommendation, it was excellently
23 prepared, and I commend staff for doing so. But, again, these
24 provisions are strictly construed and enforced in Florida, and
25 there is a process to go through that's not binding upon the

1 parties. But you voluntarily agreed to that, and to come
2 before the Commission out of sequence is, is troubling to me.
3 So, again, I would enthusiastically second the motion and look
4 forward to a vote. Thank you.

5 CHAIRMAN CARTER: Commissioner Argenziano, you're
6 recognized.

7 COMMISSIONER ARGENZIANO: I basically feel the same
8 way as far as you signed a contract. That provision was in the
9 contract, and I feel that you should be more careful the next
10 time in signing a contract or developing a contract. But I did
11 hear some of the words that Bright House said. I don't know if
12 they're true or not at this point. If there -- and you have a
13 Legislature that's very, that looks unfavorably to
14 anticompetitive behavior, so I would hope that Verizon and
15 other companies also would realize that someday, somewhere down
16 the line that could come back to us as a legislative mandate to
17 make sure that there is not anticompetitive behavior because
18 that seems to be the way the state is going, let's bring more
19 competition in, and, of course, that's part of our jobs.

20 But today, what is before us today, as my colleagues
21 have mentioned, you signed a contract and that's in the
22 contract. And I appreciate the oral argument because it maybe
23 shed some light where down the road I'd be looking to see is
24 that anticompetitive behavior. But just, I guess I just agree
25 with my colleagues. It's a contract and it's -- you signed it.

1 CHAIRMAN CARTER: Any further debate? Hearing none,
2 Commissioners, we have a motion and second. All those in favor
3 of the motion, let it be known by the sign of aye.

4 (Unanimous affirmative vote.)

5 All those opposed, like sign. Show it done.

6 (Agenda Item 5 concluded.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON) CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27th day of May, 2008.

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734