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July 25, 2008

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COMMISSION
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Hand Delivery

Ms. 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, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

COM 51
ECR _____
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CLK _____

~~Dear Ms. Cole:~~

Enclosed for filing in the above-referenced consolidated Dockets, please find the original and 15 copies of the Rebuttal Testimony of Coleman D. Bazelon, submitted on behalf of Bright House Networks, LLC.

Thank you for your assistance with this filing. If you have any questions whatsoever,

DOCUMENT NUMBER-DATE

06496 JUL 25 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC

Docket No. 070691-TP

In re: Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

Docket No. 080036-TP
Filed: July 25, 2008

PREFILED REBUTTAL TESTIMONY OF COLEMAN D. BAZELON

on behalf of

**Bright House Networks Information Services, LLC
and Bright House Networks, LLC**

DOCUMENT NUMBER-DATE

06496 JUL 25 08

FPSC-COMMISSION CLERK

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND PROFESSIONAL AFFILIATION.**

3 A. My name is Coleman D. Bazelon. I am a principal with The Brattle Group, an
4 economic consulting firm. My office address is 1850 M Street NW, Suite 1200,
5 Washington, D.C. 20036.

6 **Q. HAVE YOU FILED TESTIMONY IN THIS PROCEEDING?**

7 A. Yes. I prefiled direct testimony in this matter on May 30, 2008.

8 **Q. WHAT NEW INFORMATION HAVE YOU REVIEWED SINCE YOU**
9 **FILED YOUR DIRECT TESTIMONY?**

10 A. I have reviewed Verizon Florida LLC's Request for Confidential Classification
11 and Motion for Protective Order,¹ the testimonies of Alan F. Ciamporcero,²
12 Bette J. Smith,³ Patrick J. Stevens⁴ and Timothy M. Frendberg⁵ and the Federal

¹ Verizon Florida LLC's Request for Confidential Classification and Motion for Protective Order, In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, May 30, 2008 ("Verizon Protective Order").

² Direct Testimony of Alan F. Ciamporcero on Behalf of Verizon Florida, LLC. In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, (REDACTED), May 30, 2008 ("Ciamporcero Testimony").

³ Direct Testimony of Bette J. Smith on Behalf of Verizon Florida, LLC. In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its
(note continued)...

1 Communications Commission's ("FCC's") Memorandum Opinion and Order
2 ("FCC MO&O") in the federal case regarding Verizon's retention marketing
3 practices, adopted on June 20, 2008.⁶

4 **Q. HAVE THERE BEEN ANY RELEVANT NEW DEVELOPMENTS**
5 **REGARDING VERIZON'S RETENTION MARKETING PRACTICES**
6 **SINCE THE TIME YOU FILED YOUR DIRECT TESTIMONY?**

7 A. Yes. The principal development since I filed my direct testimony in this matter
8 is that the FCC issued a ruling in the related matter before that agency, and that
9 the United States Circuit Court for the District of Columbia Circuit denied
10 Verizon's petition to have the FCC's ruling stayed. Based on these
11 developments, it is my understanding that, at least for now, while Verizon is
12 continuing to pursue an appeal of the FCC's ruling in court, the FCC MO&O is
13 the controlling ruling on this matter at the federal level. It is also my

...(note continued)

affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, (REDACTED), May 30, 2008 ("Smith Testimony").

⁴ Direct Testimony of Patrick J. Stevens on Behalf of Verizon Florida, LLC. In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, (REDACTED), May 30, 2008.

⁵ Prefiled Direct Testimony of Timothy M. Frendberg. In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC and its affiliate, Bright House Networks, LLC, Before the Florida Public Service Commission, Docket No. 070691-TP, (REDACTED), May 30, 2008 ("Frendberg Testimony").

⁶ Memorandum Opinion and Order, In the Matter of Bright House Networks, LLC, *et al.*, v. Verizon California Inc., *et al.* Before the Federal Communications Commission, File No. EB-08-MD-002, June 20, 2008 ("FCC MO&O").

1 understanding that, in light of these federal developments, Verizon has, at least
2 for now, ceased its retention marketing activities.

3 **Q. WHAT HAVE YOU BEEN ASKED TO DO IN THIS REBUTTAL**
4 **TESTIMONY?**

5 A. In addition to summarizing my direct testimony, I have been asked to reply to
6 testimony filed by Verizon's witnesses on the supposed competitive nature of
7 Verizon's retention marketing program and the issue of undue advantage. I was
8 also asked to describe the impact of the FCC MO&O on my testimony.

9 **II. SUMMARY OF PREVIOUS TESTIMONY**

10 **Q. COULD YOU SUMMARIZE THE MAIN CONCLUSION OF YOUR**
11 **DIRECT TESTIMONY?**

12 A. My direct testimony focused on the economic impacts of Verizon's use of
13 proprietary information, which it receives through Local Service Requests
14 ("LSRs") submitted by Bright House, in its retention marketing campaign. I
15 agree with the FCC MO&O when it said that "the LSR discloses in advance that
16 a competing carrier has convinced a particular Verizon customer to switch to the
17 competing carrier's voice service on a particular date. This is the information
18 that is proprietary."⁷ In economic terms, it is exploitative for Verizon to base its
19 retention marketing on competitive intelligence that Bright House, at

⁷ FCC MO&O, ¶ 15.

1 considerable expense and effort, has developed and, but for the peculiarities of
2 the number porting process, would not willingly reveal to Verizon.

3 Verizon's behavior is anticompetitive, not pro-competitive. Florida law, as I
4 understand it, bans anticompetitive actions by telecommunications firms such as
5 Verizon. Verizon's retention marketing campaign clearly violates the law in this
6 regard. Simply put, the exploitative nature of Verizon's retention marketing
7 program makes it the economic equivalent of stealing. That is, Verizon's
8 program is anticompetitive for the same reasons that it is anticompetitive for a
9 firm to steal a rival's assets—it diminishes the benefits to a firm from competing
10 and therefore leads to less competition.

1 **Q. WHY IS THE INFORMATION ABOUT SPECIFIC CUSTOMER**
2 **DEFLECTIONS “PROPRIETARY” TO BRIGHT HOUSE?**

3 A. The information in the LSR submitted to Verizon, the identity of Verizon
4 customers that want to switch to Bright House service and the planned timing of
5 the switch, is proprietary to Bright House because it is information that was
6 developed by Bright House and that, absent the peculiarities of the number
7 porting process, Bright House never would have disclosed to Verizon. I would
8 note as well that Bright House’s Mr. Frendberg makes exactly the same point
9 from his perspective as a businessman in his prefiled direct testimony.⁸

10 **Q. GIVEN THAT IT IS THE CUSTOMER WHO IS DECIDING TO LEAVE,**
11 **DOESN’T THAT MAKE IT THE CUSTOMER’S INFORMATION?**

12 A. In fact, the information belongs to both Bright House and the customer. Bright
13 House would not willingly make this information available to Verizon, but the
14 customer is free to contact Verizon to try to negotiate a better deal. Who
15 *informs* Verizon of the switch is the key factor.

16 To elaborate on my prior testimony, it is worth noting that Verizon is free to
17 inform all of its existing customers that if they sign up with a competitor, they
18 can contact Verizon to receive discounts to stay. That said, Verizon does not do
19 this—that is, Verizon does not actually advertise its retention marketing bonuses—
20 because it would encourage customers to game the system; at least some savvy
21 customers would contact competitors not because they truly wanted to change

⁸ Frendberg Testimony, p. 3.

1 carriers, but instead with the objective of receiving a retention marketing
2 discount from Verizon. This would make retention marketing much more costly
3 to Verizon than when it uses Bright House's proprietary information and only
4 informs a select subset of customers about the retention marketing offers.

5 The fact that it would be costly to Verizon to widely advertise the discounts it
6 offers in its retention marketing program simply emphasizes my basic point that
7 Verizon's program is *not*—as Verizon claims—simply a focused form of normal
8 competition. It is an attempt by Verizon to game the system to exploit Bright
9 House's proprietary information to its (unfair) advantage.

10 **Q. VERIZON IS GOING TO LEARN THAT THE CUSTOMER HAS LEFT**
11 **ONCE THE NUMBER IS PORTED. DOESN'T THAT MAKE THE**
12 **FACT THAT THE CUSTOMER IS LEAVING NON-PROPRIETARY**
13 **INFORMATION?**

14 A. No, it does not. The issue is largely one of timing, as the FCC correctly
15 observed. Once the customer has initiated Bright House service, Verizon will
16 know that the customer is gone. At that point, however, if Verizon attempts to
17 win the customer back, it is (as it should be) in exactly the same position that
18 Bright House was when it won the customer from Verizon. Absent the number
19 porting process, Verizon might not even know what happened to the customer.
20 Verizon witness Bette J. Smith notes that when Verizon develops the customer
21 retention marketing list, it uses information from the LSR to eliminate customers

1 that leave the market or port their number to another Verizon service.⁹
2 Nevertheless, Verizon will know, after the fact, that a customer has left and it is
3 free to engage in win-back marketing with that customer. The ability to engage
4 in win-back marketing, but not retention marketing based on proprietary
5 information, would put facilities based competition on the same footing as
6 competition based on unbundled network elements (“UNEs”) or pure resale. In
7 the UNE or resale situation, the incumbent LEC receives competitively sensitive
8 information, which—even Verizon apparently acknowledges—may not be used
9 for marketing on the grounds that doing so would be anticompetitive. The same
10 is true here, and the result should be the same.

11 **Q. EVEN IF VERIZON IS ALLOWED TO HAVE ACCESS TO THE**
12 **PROPRIETARY INFORMATION IN THE LSR, WHAT HARM COMES**
13 **FROM VERIZON’S USE OF IT FOR MARKETING PURPOSES?**

14 The harm from Verizon’s behavior is that the competitive process itself is
15 undermined. Bright House invests in marketing to Verizon’s customers—a
16 practice commonly referred to as “competition”. If Verizon inappropriately uses
17 Bright House’s proprietary information it reduces the returns Bright House
18 expects from its investments in competition. The result is that Bright House’s
19 incentives to compete are diminished.

⁹ Smith Testimony, p. 2 ll. 9-25.

1 Q. DESPITE VERIZON'S CONTENTION THAT ITS RETENTION
2 MARKETING PROGRAM IS PRO-COMPETITIVE, YOU TESTIFIED
3 THAT IT HAS NEGATIVE ECONOMIC IMPACTS ON THE MARKET
4 FOR VOICE SERVICES IN FLORIDA. HOW DOES VERIZON'S
5 PROGRAM HARM CONSUMERS AND HINDER COMPETITION?

6 A. As I explained previously, Verizon's use of Bright House's proprietary
7 information prevents Bright House from fully realizing the returns on its
8 investment. By diminishing Bright House's benefits from its own marketing
9 efforts, Verizon reduces Bright House's incentives to invest and, thus, decreases
10 the level of competition in the market for voice services. This harms consumers
11 in several ways. First, consumers who would have preferred Bright House over
12 Verizon may no longer be made aware of this option because of Bright House's
13 reduced marketing efforts. Furthermore, with fewer customers facing
14 alternatives, Verizon will face less pressure to reduce prices and/or improve
15 quality. In addition, the majority of Verizon's customers—those who do not
16 receive a retention offer—end up subsidizing the few that do receive a retention
17 offer. Although a select few benefit from Verizon's program in the short run,
18 they too will suffer in the long run when they are faced with a less competitive
19 market.

1 Q. YOU HAVE EXPLAINED WHY IT IS IMPORTANT TO KEEP
2 PROPRIETARY INFORMATION FROM BEING EXPLOITED. DO
3 YOU HAVE ANY REASON TO BELIEVE THAT VERIZON
4 DISAGREES WITH THIS POINT?

5 A. No. To the contrary, as the following passage from Verizon's Protective Order
6 indicates, it is clear that Verizon understands the harm created by not keeping
7 proprietary information confidential:

8 Florida Statutes section 364.183(3)(e), further provides that
9 "proprietary confidential business information" includes
10 "information relating to competitive interests, the disclosure of
11 which would impair the competitive business of the provider
12 of information."

13 If competitors were able to acquire this detailed and sensitive
14 information regarding Verizon, they could more easily develop
15 entry and marketing strategies to ensure success in competing
16 with Verizon. This would afford them an unfair advantage
17 while severely jeopardizing Verizon's competitive position. In
18 a competitive business, any knowledge obtained about a
19 competitor can be used to the detriment of the entity to which
20 it pertains, often in ways that cannot be fully anticipated. This

1 unfair advantage skews the operation of the market, to the
2 ultimate detriment of the telecommunications consumer.¹⁰

3 I could not agree more. Simply replacing the name ‘Verizon’ with ‘Bright
4 House Networks’ summarizes my testimony well.

5 **III. RESPONSE TO VERIZON WITNESSES**

6 **A. COMPETITIVENESS OF RETENTION MARKETING**

7 **Q. IN HIS DIRECT TESTIMONY, ALAN F. CIAMPORCERO MAINTAINS**
8 **THAT “...THERE CAN BE NO SERIOUS ARGUMENT THAT**
9 **VERIZON’S RETENTION MARKETING HAS ANY IMPACT ON ITS**
10 **COMPETITORS’ ABILITY TO COMPETE FOR, WIN AND RETAIN**
11 **CUSTOMERS.”¹¹ DO YOU AGREE?**

12 **A. Not at all. Simply put, it is not a fair fight if one side (Verizon) can selectively**
13 **lower the price it charges its customers *after* the other side (Bright House)**
14 **makes a sale, but—for reasons specific to the number porting process—before**
15 **the sale is consummated.**

16 Contrary to Mr. Ciamporcero’s claim, I believe Bright House’s ability to
17 “*compete for, win and retain customers*” is very much affected by Verizon’s
18 retention marketing. Bright House is still free to compete for customers.

¹⁰ Verizon Protective Order, pp. 1-2.

¹¹ Ciamporcero Testimony, p. 17, ll. 23-25.

1 Certainly, its ability to retain customers that it has successfully signed up and
2 initiated service with will be dictated by the quality and price of its services as
3 compared to other alternatives—that is, the overall competitiveness of the
4 market. The problem is that Verizon’s retention marketing program
5 inappropriately undermines Bright House’s ability to successfully win
6 customers. It is only after Bright House has “won” a customer that Verizon’s
7 retention marketing program kicks in. By marketing to this select group of
8 Bright House (former Verizon) customers, Verizon undercuts the value to Bright
9 House of being able to “compete for” and “retain” customers.

1 Q. BETTE J. SMITH CLAIMS THAT ONE OF THE REASONS
2 VERIZON'S RETENTION MARKETING PROGRAM HAS BEEN
3 SUCCESSFUL IS THAT "SOME CONSUMERS WHO SWITCH TO A
4 CABLE OPERATOR OFFERING A BUNDLE OF VOICE, VIDEO, AND
5 HIGH-SPEED INTERNET SERVICES ARE NOT AWARE THAT
6 VERIZON OFFERS COMPARABLE BUNDLES. VERIZON'S
7 RETENTION LETTERS INFORM CUSTOMERS ABOUT THIS FACT
8 AND ENSURE THAT CONSUMERS HAVE ALL THE INFORMATION
9 THEY NEED TO MAKE THE BEST DECISION."¹² ANOTHER
10 REASON IS "DIRECT [MONETARY] SAVINGS TO CONSUMERS."¹³
11 DON'T YOU AGREE THAT INFORMING CONSUMERS OF THE
12 AVAILABILITY OF SERVICE BUNDLES AND COST SAVINGS IS
13 BENEFICIAL?

14 A. As discussed in my direct testimony, in general, it is beneficial to make
15 customers aware of pricing and service options. However, Ms. Smith's
16 argument mischaracterizes Verizon's retention marketing program. Verizon
17 uses Bright House's proprietary information to create a price for a select subset
18 of customers that are the target of the retention marketing campaign. For
19 example, a Verizon voice customer in Florida would not be offered the steep
20 price discounts as part of Verizon's retention marketing program until after the
21 customer signed up with Bright House to receive the cable provider's voice

¹² Smith Testimony, p. 6, ll. 13-18.

¹³ Smith Testimony, p. 7, ll. 7.

1 service. No doubt, the consumer who accepts Verizon's retention marketing
2 offer will enjoy short term benefit, but they do so at the expense of their fellow
3 consumers, who will bear a larger share of Verizon's network costs, and at the
4 expense of their future selves as they will face a less competitive market in the
5 future.

6 Furthermore, the pro-competitive benefits Verizon claims to achieve through
7 retention marketing can be achieved in other ways which do not use Bright
8 House's proprietary information. If specific consumers are indeed better off as a
9 result of lower prices and bundled services, as Ms. Smith contends—and I don't
10 disagree that those specific customers are better off—then all consumers, not
11 just those who have decided to switch to Bright House, would benefit from
12 access to this knowledge. Should Verizon choose to market the availability of
13 service bundles and lower prices to consumers in general, or to specific groups
14 for promotional purposes (students, military members, etc.), rather than to the
15 unique group identified solely on the basis of Bright House's proprietary
16 information, the negative economic consequences of retention marketing could
17 be avoided and the benefits to consumers would be both pervasive and
18 sustainable. The fact that Verizon does not inform *all* of its customers about its
19 retention marketing program casts doubt on the characterization of the program
20 as simply ensuring “that consumers have all the information they need to make
21 the best decision.” Apparently, Verizon is only concerned about its customers'
22 need to be fully informed after they have decided to leave Verizon for another
23 carrier.

1 **Q. DOESN'T VERIZON'S RETENTION MARKETING PROGRAM GIVE**
2 **CONSUMERS INFORMATION THAT THEY NEED AT THE MOST**
3 **CRUCIAL MOMENT IN THE CONSUMERS' DECISION-MAKING**
4 **PROCESS?**

5 A. No, it does not. When consumers are contacted by Verizon and offered
6 retention pricing they have already made the decision to switch to a new
7 provider. The most crucial moment in the consumers' decision-making process
8 has passed.

9 Under some circumstances, such as with big purchases—an automobile, for
10 instance—or complicated transactions, there may be justification for giving
11 consumers a chance to change their minds. For example, some transactions,
12 such as those selling used cars, will offer a window of time in which a
13 purchaser can change her mind. The choice of a telephone service provider,
14 however, does not warrant, and is not subject to, such procedures. To the
15 contrary, the FCC has established different rules—such as real-time third-party
16 verification of carrier changes—that are designed to simultaneously ensure that
17 a customer's immediate decision to change carriers is, on the one hand, a valid
18 choice by the affected consumer and, on the other hand, that that choice is
19 promptly implemented. Verizon's program seeks to undo that consumer choice
20 during a period of administrative delay while the consumer's choice is
21 implemented. Going back to the example of the car sale, it would be
22 unconscionable to suggest that a car dealer not only give consumers a period of
23 time to change their minds, but must also inform its competitors during the

1 waiting period that such a “reversible” sale has been made. Yet that is the exact
2 situation forced on Bright House by Verizon’s exploitation of the number
3 porting process.

4 **Q. HOW IS THIS MARKET DIFFERENT FROM OTHER MARKETS**
5 **WHERE NEW AND OLD SERVICE PROVIDERS INTERACT?**

6 I cannot think of an example of another industry where, after the decision to
7 change service providers has been made, but before the decision is effectuated,
8 the new service provider has to inform the old service provider of the change
9 and the old service provider uses that information for retention marketing. The
10 number porting situation in the telephone industry appears to be truly unique.

11 That said, there certainly are circumstances in which a new service provider
12 informs the old service provider in the course of transferring customer specific
13 information. For example, a patient seeking care from a new doctor will
14 authorize that doctor to request medical records from their previous doctor. I do
15 not believe it is standard practice for doctors to engage in retention marketing
16 when they receive such a request.

1 Q. MR. CIAMPORCERO ARGUES THAT THE MARKET FOR VOICE
2 SERVICES IN FLORIDA IS HIGHLY COMPETITIVE.¹⁴ DOES A
3 COMPETITIVE RETAIL MARKET MITIGATE THE HARM CAUSED
4 BY VERIZON'S BEHAVIOR?

5 A. No, it does not. Allow me to illustrate this point by expanding on an example
6 from my previous testimony: inappropriately using proprietary information has
7 economic effects similar to stealing. With over 48,000 shopping malls,¹⁵ no one
8 would disagree that the market for clothing in the United States is competitive.
9 So, an individual who steals a pair of slacks is doing so in a highly competitive
10 environment. But that hardly excuses the shoplifter's action. The action of this
11 individual negatively impacts the victim, the victim's other customers, and
12 ultimately the degree of competition in the marketplace.

13 A competitive market is not shielded from the harmful effects of anticompetitive
14 behavior, nor does it justify anticompetitive conduct. The fact that the
15 marketplace is competitive means that the benefit to the perpetrator is greater
16 than it otherwise would be. Prior to the intense competition noted by Verizon,
17 there was little benefit to engaging in anticompetitive behavior. Faced with
18 intense competition, Verizon sought to protect its eroding market share. But the
19 fact that intense competition gave Verizon the motivation to engage in
20 anticompetitive activity does not transform these actions into pro-competitive
21 activity.

¹⁴ Ciamporcero Testimony, p. 17, ll. 13-15.

¹⁵ National Research Bureau, 2005, http://www.statemaster.com/graph/lif_num_of_sho_mal-lifestyle-shopping-malls-total-number, accessed June 11, 2008.

1 Q. IS THERE ANY CONNECTION BETWEEN THE COMPETITIVE
2 MARKET AND THE POTENTIAL HARM FROM RETENTION
3 MARKETING?

4 A. Yes. The more competitive the market becomes, the more threatened the
5 incumbent's market position will be. As entrants gain strength, the benefits to
6 be gained by, and the potential for overall harm from, anticompetitive behavior
7 increases. Let me be clear: Consumers benefit from competition. Incumbents
8 faced with potential or real entrants are often forced to increase efficiency
9 resulting in lower costs, increased output, lower prices and so on. As the market
10 gets more and more competitive, the private benefits from anticompetitive
11 behavior increase—firms engaging in this behavior stand to gain more—and the
12 potential for harm from anticompetitive behavior—reduced competition—
13 becomes more salient.

1 **Q. HOW DOES VERIZON DEFEND ITS RETENTION MARKETING**
2 **PROGRAM IN FLORIDA ON ECONOMIC GROUNDS?**

3 A. Actually, Verizon does not defend its behavior on economic grounds at all.
4 Unlike its activity at the federal level, at least thus far, Verizon has not presented
5 any economic testimony in this case. Here, Mr. Ciamporcero states that Verizon
6 is not behaving anticompetitively but does not provide an economic explanation
7 for his claim.¹⁶

8 Verizon filed economic testimony in the related FCC case, which I addressed in
9 my direct testimony here. If Verizon chooses to introduce economic testimony
10 in this case, I will comment on the content of their economic discussion at that
11 time.

¹⁶ Ciamporcero Testimony, p. 17, ll. 12-25.

1 **B. UNDUE ADVANTAGES**

2 **Q. MR. CIAMPORCERO STATES THAT VERIZON HAS LOST ACCESS**
3 **LINES AND SUFFERED SIGNIFICANT LOSSES IN FLORIDA IN**
4 **RECENT YEARS AND, ACCORDING TO HIM, VERIZON'S**
5 **RETENTION MARKETING CAMPAIGN IS MERELY A MEANS TO**
6 **SHORE ITSELF UP AGAINST THE TIDE OF COMPETITION.¹⁷**
7 **DOESN'T THE PUBLIC BENEFIT FROM VERIZON'S ABILITY TO**
8 **REMAIN A SUCCESSFUL COMPETITOR IN THE MARKET?**

9 **A. Only if that success is based on Verizon competing by offering valued services.**
10 Verizon's arguments, if taken literally, suggest that it should be given a leg up in
11 competing in the voice market, the very market in which it is the dominant
12 incumbent provider. I disagree. Number porting was instituted to facilitate
13 competition in the voice marketplace and to counter the additional market power
14 enjoyed by incumbents from the lock-in effect caused by the value to consumers
15 of retaining a telephone number. Not even Verizon suggests that Bright House
16 has an advantage in the voice market similar to the lock-in effect of telephone
17 numbers that requires regulatory intervention. Furthermore, if the regulatory
18 authorities did find that Verizon could not compete effectively with facilities
19 based entrants *and* that the company needed protection from competition, there
20 are more direct (and economically efficient) ways to protect an incumbent.

¹⁷ Ciamporcero Testimony, p. 13, ll. 9-22.

1 Q. MR. CIAMPORCERO CLAIMS THAT VERIZON'S RETENTION
2 MARKETING DOES NOT GIVE IT AN UNDUE OR UNREASONABLE
3 ADVANTAGE.¹⁸ IN YOUR DIRECT TESTIMONY, YOU ASSERT
4 THAT VERIZON'S ACTIONS LEAD TO AN UNDUE ADVANTAGE.
5 WHY DO YOU DISAGREE WITH MR. CIAMPORCERO'S
6 ASSESSMENT?

7 A. Mr. Ciamporcero focuses on whether Verizon is obtaining an undue advantage
8 for itself,¹⁹ not whether Verizon is creating and passing along an undue
9 advantage to some of its customers. In fact, both are occurring. First, Verizon *is*
10 obtaining an undue advantage for itself by unfairly exploiting Bright House's
11 proprietary information, as I discuss above. Only Verizon engaged in retention
12 marketing based on LSRs from Bright House, so only Verizon obtained the
13 advantage. Moreover, Verizon's retention marketing program inherently
14 operates only to Verizon's benefit, and not to the benefit of any other carrier. It
15 certainly does not assist Bright House in any way, and third-party carriers are
16 simply unaware that Bright House has won a customer from Verizon, that Bright
17 House has passed that proprietary information on to Verizon as part of the
18 number porting process, or that Verizon is making a bid to retain the customer
19 based on its exploitation of Bright House's proprietary information. Verizon's
20 exploitation of Bright House's proprietary information, in short, is calculated to
21 give an advantage to Verizon unavailable to any other carrier and, because it is

¹⁸ Ciamporcero Testimony, p. 3, ll. 18 - p. 4, ll. 2.

¹⁹ Ciamporcero Testimony, p. 3, ll. 15-18.

1 based on Bright House’s proprietary information, as noted above, it is certainly
2 fair to characterize the advantage Verizon obtains as “undue” or “unreasonable.”

3 Second, it is my understanding that it is also possible to read the language of the
4 underlying statute here, Section 364.10(1), as constituting a ban on a regulated
5 carrier such as Verizon discriminating against some of its customers and in favor
6 of others—thereby giving an “undue” or “unreasonable” advantage to the few
7 customers who receive the special retention marketing bonuses, etc. From that
8 perspective, by offering discounts and gift cards to only a select group of
9 consumers—those identified solely on the basis of their desire to switch from
10 Verizon to Bright House—Verizon is giving an undue advantage to some
11 customers over others. This would seem to also constitute a violation of Section
12 364.10(1).

1 Q. MR. CIAMPORCERO CLAIMS THAT BRIGHT HOUSE IS SEEKING
2 TO "IMPOSE AN ARTIFICIAL REGULATORY CONSTRAINT ON
3 VERIZON THAT WILL BAR VERIZON FROM ENGAGING IN
4 PRECISELY THE SAME TYPE OF RETENTION MARKETING THAT
5 THE CABLE INCUMBENTS FREELY EMPLOY."²⁰ WOULDN'T A
6 REGULATORY CONSTRAINT ON VERIZON'S RETENTION
7 MARKETING GIVE BRIGHT HOUSE AN UNFAIR ADVANTAGE IN
8 BOTH THE VOICE AND VIDEO MARKETS?

9 A. No. With no requirement that a cable operator be notified of a video service
10 customer's departure days before the departure, there is no equivalence between
11 Verizon's retention marketing and Bright House's video marketing efforts.
12 Verizon's contention that the regulations governing voice and video services
13 favor the cable providers fails to take account of the distinctive features of the
14 two markets. The voice and video services markets differ in at least two
15 significant respects. First, there is no technical need for a replacement video
16 provider to inform a cable company in advance of a customer changing to the
17 new provider. In fact, a customer can call to cancel after the new service
18 provider's system is already installed and operating. Should the cable provider
19 wish to, they may conduct win-back marketing at that time. Prohibiting Verizon
20 from using the advance notification it receives from Bright House as part of the
21 LSR to conduct retention marketing leaves Verizon in a similar position—with
22 the option to conduct win-back marketing. Likewise, both Verizon and Bright

²⁰ Ciamporcero Testimony, p. 17, ll. 4-7.

1 House can engage in retention marketing if one of their exiting customers
2 chooses to contact them prior to the initiation of the new service.

3 Second, cable customers are required to call their existing cable providers
4 directly to cancel service. According to Verizon's witnesses, this gives cable
5 providers the ability to conduct retention marketing. These witnesses fail to
6 acknowledge two points. First, while in the telephone business a new provider
7 can contact the old provider to cancel the customer's service, this is only
8 possible because of an extensive set of regulatory requirements regarding signed
9 letters of authorization from the customer, and/or real-time third-party
10 verification of a customer's decision to switch providers. It is only due to the
11 existence of this regulatory structure that the current voice provider is required
12 to accept the new provider's cancellation of a customer's service. No such
13 regulatory apparatus exists to immediately generate a record verifying the
14 customer's decision to change providers in the video market, so there is no basis
15 to think that an existing video provider would be called upon to accept a
16 cancellation request from the new provider rather than the customer. Second,
17 the regulations governing cable services, while different from those governing
18 voice services, apply equally to all cable service providers. In other words, rules
19 with respect to voice services are the same whether a customer switches from
20 Verizon to Bright House or from Bright House to Verizon. Similarly, rules with
21 respect to the cable market are the same whether a customer switches from
22 Bright House to Verizon or from Verizon to Bright House. So there is no
23 unfairness in the way providers in the two markets are treated.

1 For these reasons, the regulatory constraint on Verizon's retention marketing
2 that the FCC has found to exist at the federal level, and that Bright House is
3 asking the Florida PSC to confirm at the state level, would not give Bright
4 House an unfair advantage. Quite the contrary: it would take away the unfair
5 advantage Verizon derived from using Bright House's proprietary information to
6 conduct retention marketing.

7 **Q. MS. SMITH STATES THAT ONCE VERIZON SUBMITS A JEOPARDY**
8 **NOTICE, BRIGHT HOUSE "HAS THE SAME OPPORTUNITY THAT**
9 **VERIZON HAD TO TRY TO CONVINCING THE CUSTOMER TO**
10 **CHANGE HIS OR HER MIND."**²¹ **ISN'T THIS TRUE?**

11 **A.** No. Bright House does not have the same opportunity to convince a customer
12 for two reasons. First, once Verizon submits the jeopardy notice, Bright House
13 would have to reinitiate contact with the customer who will likely be more
14 resistant to switching once they have made an affirmative decision to stick with
15 the status quo. I have also been informed that Verizon's processes for handling
16 service orders would make it difficult or impossible for Bright House to actually
17 "re-sign-up" the customer in this situation. Second, Bright House, forced to
18 lower its price as costs increase,²² would receive less net benefit from engaging
19 in what would amount to its own "retention marketing," than it would receive
20 simply from "cold calling" other Verizon customers. The end result is less

²¹ Smith, p. 7, ll. 17-18.

²² The costs of providing services would remain the same, but there would be additional administrative costs, such as refiling the LSR, and additional marketing expenses. See Frendberg Testimony, p. 3.

1 effective competition in the market for voice services. As the entrant facing a
2 long established incumbent, Bright House clearly does not have “the same
3 opportunity that Verizon had to try to convince the customer to change his or her
4 mind.”

5 **IV. IMPACT OF FCC MO&O**

6 **Q. DO YOU AGREE WITH THE ECONOMIC REASONING IN THE FCC**
7 **MO&O IN THE RELATED FEDERAL CASE?**

8 A. Yes, I do. I have no comment on the strictly legal analysis in the case (such as
9 the right way to parse the language of the federal statute at issue there).
10 However, the FCC’s economic reasoning is consistent with the arguments I
11 made in my direct testimony. For example, the FCC says:

12 ...the Commission has already acknowledged what Verizon’s
13 economist principally asserts—that in the short term retention
14 marketing may benefit some consumers... The Commission
15 went on to hold, nevertheless, that retention marketing’s long-
16 term harm to competition in the market as a whole outweighs
17 any short-term benefits to individuals... Moreover, Verizon’s
18 economist simply assumes, with no support, that material
19 competition in the residential voice market would continue to

1 exist despite the barriers to competition that retention
2 marketing would entail.²³

3 **Q. SINCE YOU AGREE WITH THE ECONOMIC REASONING OF THE**
4 **FCC MO&O, WOULD YOUR TESTIMONY BE UNDERMINED IF**
5 **THAT FCC RULING WERE TO BE REVERSED ON APPEAL?**

6 A. No, not at all. My economic analysis of the problems with Verizon's retention
7 marketing program stands on its own. My direct testimony in this matter was
8 written before the FCC MO&O was released. At that time, the FCC's then-
9 current "quasi-official" pronouncement was the FCC Enforcement Bureau's
10 Recommended Decision,²⁴ which drew a very different conclusion about the
11 economic effects of retention marketing. My analysis accurately explained the
12 economic effects of Verizon's retention marketing based on Bright House's
13 proprietary information before the FCC adopted the same reasoning. My
14 analysis will continue to accurately explain the same economic reasoning,
15 irrespective of any potential judicial action regarding the FCC's ruling. That
16 said, I would be surprised if the federal court reviewing the FCC's decision were
17 to take issue with the FCC's economic reasoning at all. To the contrary, given
18 the accuracy of that reasoning, I would suspect that a court would focus its
19 attention on legal, rather than economic, issues.

²³ FCC MO&O footnote 104.

²⁴ Recommended Decision, In the Matter of Bright House Networks, LLC, et al., v. Verizon California, Inc., et al. Before the Federal Communications Commission, File No. EB-08-MD-002, April 11, 2008.

1 V. CONCLUSION

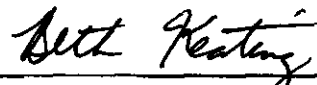
2 Q. **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

3 A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Rebuttal Testimony of Coleman D. Bazelon on Behalf of Bright House Networks Information Services, LLC and Bright House Networks, LLC, has been served via Electronic Mail, U.S. Mail First Class, or Hand Delivery this 25th day of July, 2008, to the persons listed below:

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