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Sent: Monday, January 12, 2009 4:08 PM
To: Filings@psc.state.fl.us
Cc: Beth Keating; Charles Murphy; David Christian; De O'Roark; Demetria Clark; Marva Johnson
Subject: Docket No. 080701-TP - Verizon Florida LLC's Motion to Dismiss Complaint and Petition or in the Alternative for Summary Final Order and Request for Oral Argument
Attachments: 080701 VZ FL Motion to Dismiss 1-12-09.pdf; 080701 VZ FL Req for Oral Arg 1-12-09.pdf



The attached documents are submitted in Docket No. 080701-TP on behalf of Verizon Florida LLC by

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The first .pdf document consists of a total of 30 pages - cover letter (1 page), Motion to Dismiss (20 pages), Affidavit (8 pages) and Certificate of Service (1 page).

The second .pdf document consists of a total of 3 pages - cover letter (1 page), Request for Oral Argument (1 page) and certificate of service (1 page).

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1/12/2009

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January 12, 2009 – **VIA ELECTRONIC MAIL**

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 080701-TP
Emergency complaint and petition requesting initiation of show cause proceedings
against Verizon Florida LLC for alleged violation of Rules 25-4.036 and 25-4.038,
Florida Administrative Code, by Bright House Networks Information Services
(Florida) LLC and Bright House Networks, LLC

Dear Ms. Cole:

Enclosed for filing in the above-referenced matter is Verizon Florida LLC's Motion to Dismiss Complaint and Petition or in the Alternative for Summary Final Order. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1449.

Sincerely,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency complaint and petition requesting) Docket No. 080701-TP
initiation of show cause proceedings against Verizon) Filed: January 12, 2009
Florida LLC for alleged violation of Rules 25-4.036)
And 25-4.038, Florida Administrative Code, by Bright)
House Networks Information Services (Florida) LLC)
and Bright House Networks, LLC)
_____)

**VERIZON FLORIDA LLC'S MOTION TO DISMISS COMPLAINT AND PETITION
OR IN THE ALTERNATIVE FOR SUMMARY FINAL ORDER**

Verizon Florida LLC ("Verizon") moves to dismiss the complaint and petition ("Complaint") filed by Bright House Networks Information Services (Florida), LLC and Bright House Networks, LLC (collectively, "Bright House") in this docket. The Commission lacks jurisdiction over Bright House's claims because Bright House's allegations, even taken at face value, exclusively concern the disconnection of unregulated Bright House coaxial cable facilities and the installation of unregulated Verizon coaxial cable facilities. These matters fall outside the Commission's purview. Moreover, Bright House's allegations are insufficient to sustain its claims that Verizon has violated Rules 25-4.036 and 25-4.038, F.A.C., or that Bright House has standing to bring its claims before the Commission. The Complaint therefore must be dismissed.

Verizon requests in the alternative that the Commission issue a summary final order, a request that Verizon makes out of an abundance of caution because of the way Bright House has pleaded its Complaint. Bright House attempts to obfuscate the jurisdictional issue by failing to adequately describe the facilities and services that are the subject of the Complaint. Bright House notes that Bright House Networks Information Services (Florida), LLC is a competitive local exchange carrier ("CLEC") and that Verizon is an incumbent local exchange carrier ("ILEC") that are subject to the

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Commission's jurisdiction over telecommunications providers, and intimates that this matter involves "installations and disconnections" that are subject to the Commission's telecommunications authority.¹ But the Complaint *fails to allege in any way* that the facilities described in the Complaint – the Bright House coaxial cable that it alleges has been disconnected or the Verizon coaxial cable, the installation of which it alleges caused its coaxial cable to be improperly disconnected – are *telecommunications* facilities. And there is an obvious reason for this omission – these facilities are *not* telecommunication facilities subject to the jurisdiction of this Commission.

The pictures in Exhibit 1 to the Complaint clearly show Bright House coaxial cable that carries VoIP, broadband and cable television service and Verizon coaxial cable that carries broadband and cable television service. Those pictures, Bright House's allegations (or absence thereof) and the inferences that must be drawn from them, and the commonly known facts that may be judicially noticed, all provide additional support for Verizon's motion to dismiss the Complaint. If, however, the Commission determines that it must rely on facts outside the pleadings to dismiss the Complaint, then it may do so by summary final order. The Affidavit of Bret Reelfs (Exhibit A), which describes the facilities in question, is attached in support of the alternative motion.

Because Bright House has made inaccurate allegations about Verizon in an obvious attempt to exploit regulation for its own marketing advantage, Verizon has provided additional information in the Reelfs Affidavit for the Commission's background. The Reelfs Affidavit shows that Verizon responded promptly and appropriately to Bright House's e-mails concerning this dispute in late September and early October 2008.

¹ Complaint ¶¶ 1-2, 4.

Further, Verizon investigated each of the instances noted in Bright House's "audit" and found that the audit results were inaccurate and (among other things) failed to disclose more than 100 instances where Bright House failed to ground its own facilities. Finally, Verizon has appropriate methods and procedures ("M&Ps") in place for the disconnection of competitors' facilities and ensures compliance with those M&Ps through employee training and routine inspections.

In short, there is no basis for Bright House's claims and there is no need for the Commission to take "urgent action"² for an alleged "emergency" concerning the alleged incorrect disconnection of Bright House's coaxial cable when a customer chooses to no longer receive service from Bright House. Bright House's motives are plain. By requesting that Verizon be ordered to "cease and desist [all] new installations of FiOS for customers won from Bright House,"³ Bright House seeks to eliminate a competitor from the marketplace unless and until its allegations are sorted out. This is nothing less than an attempt to abuse the regulatory process, and the Commission should not permit Bright House to manipulate the complaint mechanism in this manner. The Complaint should be dismissed.

I. MOTION TO DISMISS

The Commission must grant a motion to dismiss when, accepting all allegations in a complaint as facially correct, it fails to state a cause of action for which relief can be

² *Id.* ¶ 7.

³ *Id.* at p. 14.

granted.⁴ The Commission applies this standard to motions like this one that seek dismissal in part based on lack of subject matter jurisdiction.⁵ Because, even accepting the Complaint's allegations as true, Bright House fails to state a claim for which relief may be granted, the Complaint must be dismissed.

A. Bright House's Allegations

1. The parties' services and facilities

Bright House provides voice, data and video service using coaxial cable service drops.⁶ A Bright House service drop is connected to the customer's inside cabling at the demarcation point just outside the home, often using a wall box, to a pedestal some distance away.⁷ Bright House provides unregulated voice service using VoIP, as the Commission knows and may judicially notice.⁸ Bright House delivers its VoIP, broadband and cable services to the home over the same coaxial cable facility, as shown in Exhibit 1 to the Complaint.

Verizon provides FiOS⁹ services over its Fiber to the Premises network. The pictures in Exhibit 1 show Verizon's coaxial cable that can be used to provide broadband and video services. That coaxial cable, the installation of which is alleged in the Complaint to result in the incorrect disconnection of Bright House's coaxial cable facilities, connects Verizon's Optical Network Interface ("ONT") to the customer's inside

⁴ *In re: Petition by Sprint Communications Co. et al. for arbitration of rates, terms and conditions of interconnection with BellSouth Telecommunications, Inc.*, Docket No. 070249-TP, Order No. PSC-07-0608 (2007).

⁵ *Id.* See also Fla. R. Civ. P. 1.140(b).

⁶ Complaint ¶¶ 1 and Exhibit 1.

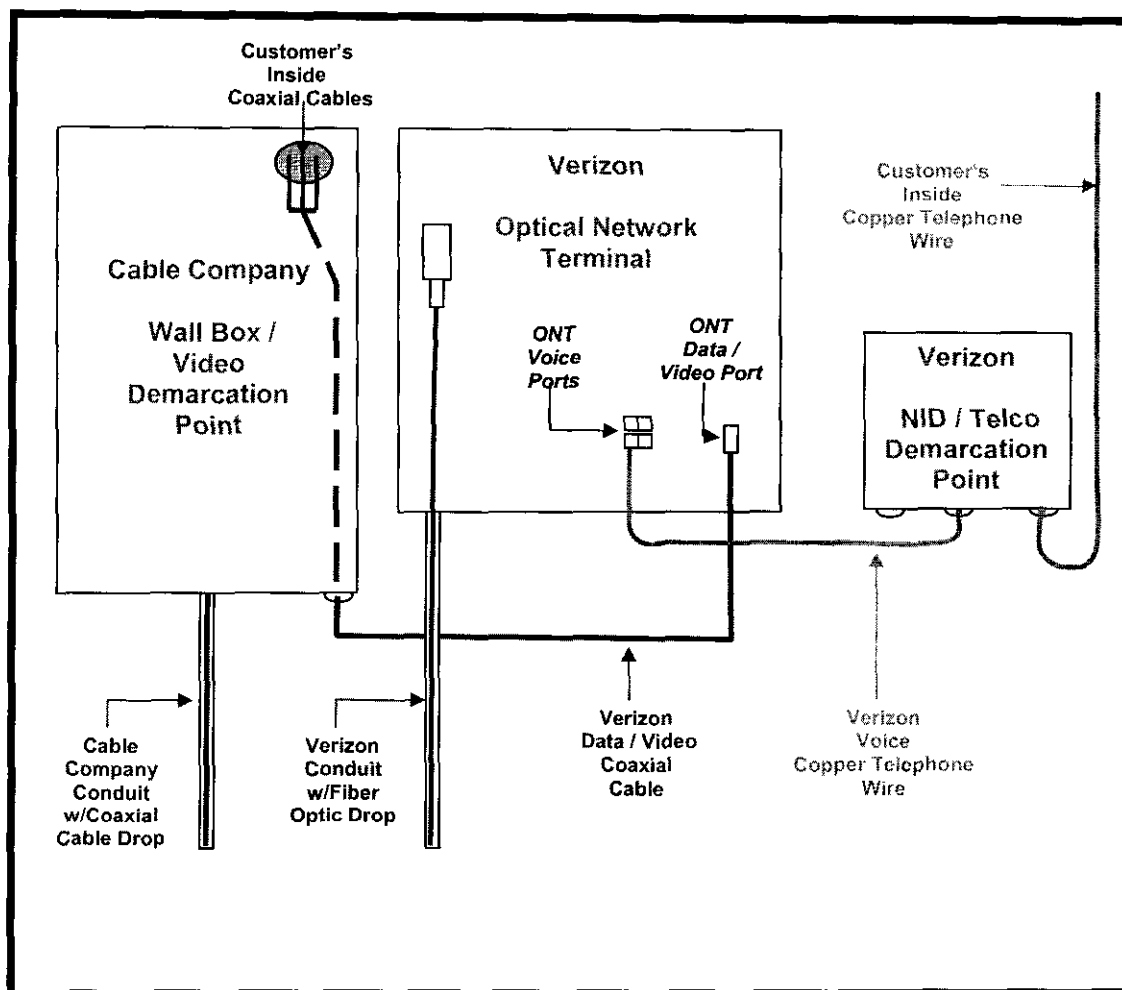
⁷ *Id.* ¶ 12 and Exhibit 1.

⁸ See Fl. Stat. 90.202(11).

⁹ FiOS is Verizon's service mark for a suite of services, provisioned over all-fiber distribution facilities, which in Florida currently include advanced data and video capabilities.

coaxial cable previously connected to Bright House's network. Bright House does not allege, nor could it truthfully, that Verizon provides telephone service using this coaxial cable. Further, the Commission is well aware that Verizon provides regulated voice service using copper wire that is connected to the customer's inside wire at the Network Interface Device ("NID"). For FiOS installations, this copper wire extends from the ONT to the NID and is entirely separate from the coaxial cable used to provide broadband and cable television services.

The configuration just described is shown in the schematic diagram below:



The diagram shows the cable company's conduit with coaxial cable drop, which previously (before Verizon won the customer) connected the cable company's pedestal (not shown) to the customer's inside coaxial cables at the video demarcation point in the wall box. When in operation, the cable company's coaxial cable drop can carry unregulated VoIP, broadband and cable services.

The diagram also shows the Verizon conduit with fiber optic drop that runs from Verizon's network to the Verizon ONT. From the ONT Verizon's broadband and cable television signals can be sent through the ONT data/video port, and Verizon's voice signal is sent through the ONT voice ports. The Verizon data/video coaxial cable connects the Verizon ONT data/video port to the customer's inside coaxial cables at a demarcation point in the wall box. The Verizon voice copper telephone wire connects the ONT voice ports to the telco demarcation point at the Verizon NID, where the customer's inside copper telephone wire extends from the house.¹⁰

The fundamental flaw in the Complaint is that Bright House's allegations relate to the disconnection of Bright House's coaxial cable drop and the installation of Verizon's data/video coaxial cable, neither of which are telecommunications facilities within the scope of the Commission's authority as defined in Chapter 364.

2. The alleged disconnection of Bright House facilities

Bright House contends that it conducted an "audit" and found that in 368 of 1,963 instances where customers switched service from Bright House to Verizon's FiOS

¹⁰ The schematic diagram and description are provided to help the Commission understand the allegations in the Complaint for purposes of ruling on Verizon's motion to dismiss. This information also is provided in the Affidavit of Bret Reelfs at ¶¶ 5-8 so the Commission may consider them in connection with Verizon's motion for summary final order.

service, Bright House's facilities were left ungrounded.¹¹ Specifically, Bright House claims that Verizon incorrectly disconnected or cut the Bright House coaxial cable service drop on the network side of the ground block that serves as the demarcation point between Bright House's facilities and the customer's inside cabling. (The ground block, which is located in the Bright House wall box, is not depicted in the diagram above.) According to Bright House, Verizon then connected Verizon's coaxial cable facilities to the network side of the ground block, leaving Bright House's coaxial cable (which was no longer being used to provide service to the customer) detached and ungrounded.¹² Bright House acknowledges, however, that it disconnects the cable service drop from the rest of its network almost immediately – within one to five days.¹³

3. Relief sought

Bright House seeks draconian relief, consistent with its competitive interest in hobbling and punishing its competitor. Among other things, Bright House asks that Verizon be stopped from installing new FiOS service pending a “full investigation” of the alleged disconnection practices and until the alleged problems are “fully remediated.”¹⁴ For good measure, Bright House also asks the Commission to order Verizon to show cause why it should not fine Verizon \$25,000 per day per alleged violation of Rules 25-4.036 and 25-4.038.¹⁵

¹¹ Complaint ¶ 14.

¹² *Id.* ¶ 15.

¹³ *Id.* ¶ 23. Bright House alleges that its claims are similar to those that have been addressed by the New York Public Service Commission. Complaint ¶ 26. This statement is disingenuous and misleading because the New York commission has declined to require Verizon to take any action concerning the claims made by Cablevision, Verizon's cable competitor. Instead, the parties have been working through their respective concerns on a business-to-business basis.

¹⁴ *Id.* ¶ 14.

¹⁵ *Id.*

B. The Complaint Must Be Dismissed

Bright House's Complaint must be dismissed because (1) the Commission does not have jurisdiction over VoIP, broadband and cable television services and facilities; (2) Verizon has not violated Rules 25-4.036 or 25-4.038; and (3) Bright House lacks standing to assert its claims before the Commission.

1. The Legislature has exempted VoIP, broadband and cable services and facilities from the Commission's jurisdiction

Bright House's allegations that Verizon has incorrectly disconnected Bright House's coaxial cable in connection with the installation of its own coaxial cable exclusively concern unregulated services and facilities. The cable that Bright House contends has been disconnected is used to provide unregulated VoIP, broadband and cable television services. Moreover, the cable that Verizon installs, and that allegedly results in the incorrect disconnection of Bright House's cable, is used to provide unregulated broadband and cable television services. Accordingly, the Complaint must be dismissed.

Under Florida law, the Commission has no jurisdiction over any of the services and facilities at issue in the Complaint. On the contrary, the Commission has jurisdiction only over those things that it is authorized by statute to regulate. The Commission's authority extends only to "telecommunications services" provided over "telecommunications facilities," as those terms are used in Chapter 364. But neither the broadband Internet access service or video service provided over Verizon's coaxial cable, nor the unregulated services provided over Bright House's facilities, fall within the scope of this authority. In fact, they are expressly excluded.

As an initial matter, under Chapter 364 the Commission is limited to certain express powers delegated to it by the legislature “over and in relation to telecommunications companies,” defined as entities “offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.”¹⁶ A “telecommunications facility” includes property “used and operated to provide two-way telecommunications service to the public for hire within this state.”¹⁷ The definition of “service” excludes broadband service and VoIP service for purposes of regulation by the Commission.¹⁸ Under the terms of Chapter 364, therefore, a facility used exclusively to provide VoIP, broadband or cable service is not a “telecommunications facility,” is not used and operated by a “telecommunications company,” and may not be regulated by the Commission.

Moreover, in addition to the fact that they do not fall within the defined scope of the Commission’s authority, the particular services provided over the coaxial facilities at issue here also are expressly excluded from the scope of that authority. For example, the definition of “telecommunications company” subject to the Commission’s authority specifically excludes a “cable television company providing cable service as defined in 47 U.S.C. s. 522.” Thus, Bright House’s cable television service is exempted from Commission regulation, and so is Verizon’s video service because when Verizon provides that service it is acting as a cable company providing cable service.¹⁹

Likewise, both “broadband service” and “the provision of voice-over-Internet-protocol (VoIP)” are expressly exempt from the Commission’s authority “regardless of

¹⁶ Fl. Stat. § 364.02(12).

¹⁷ Fl. Stat. § 364.02(15).

¹⁸ Fl. Stat. § 364.02(13).

¹⁹ Verizon’s cable service is provided under its local franchise agreements and the state franchise it obtained under the Consumer Choice Act of 2007. See Fl. Stat. §§ 610.102-120.

the provider, platform or protocol.”²⁰ As noted above, this is in addition to the fact that the definition of “service” excludes broadband service and VoIP service for purposes of regulation by the Commission.²¹

In sum, the coaxial cable facilities pictured in Bright House Exhibit 1 and that are the subject of the Complaint are unregulated when used by Bright House and when used by Verizon.

If Verizon were to file a complaint at the Commission against Bright House concerning its treatment of Verizon’s broadband and video facilities, Bright House would oppose the complaint on jurisdictional grounds and demand that Verizon assert those claims in another forum. Likewise, if Bright House wishes to press its claims in this case, it must look elsewhere to resolve them. That result not only puts the companies on an equal footing, but also ensures that each party may assert claims against the other in the same case before the same tribunal.

2. The statutes Bright House cites do not authorize the Commission to exercise jurisdiction in this case

Bright House ignores the relevant terms of the statute just discussed and claims the Commission has jurisdiction over this dispute under sections 364.01(4)(c) and 364.15, Florida Statutes. Bright House is wrong on both counts.

Under section 364.01(4)(c), the Commission is charged with exercising its jurisdiction to “ensur[e] that monopoly services provided by telecommunications companies continue to be subject to effective price, rate and service regulation.” This subsection applies only to services provided by telecommunications companies, which,

²⁰ Fl. Stat. § 364.013. See also Fl. Stat. § 364.011.

²¹ Fl. Stat. § 364.02(13).

as just discussed, does not include VoIP, broadband and cable services.²² Indeed, the previous subsection in section 364.01 (section 364.01(3)) acknowledges that VoIP and broadband are “[c]ommunications activities that are not regulated by the Florida Public Service Commission.”²³ Section 364.01(4)(c) therefore does not authorize the Commission to hear Bright House’s claims.

Neither does section 364.15, which empowers the Commission to order “repairs, improvements, changes, additions, or extensions” to any telecommunications facility when it finds “that repairs or improvement to, or changes in, any *telecommunications facility* ought reasonably to be made, or that any additions or extensions should reasonably be made to any *telecommunications facility* in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for *telecommunications services*.” (Emphasis added.) In paraphrasing this section, Bright House carefully omits the terms “telecommunications facility” and “telecommunications services,”²⁴ but its selective parsing cannot hide the statute’s clear meaning. For the reasons explained above, these provisions do not apply to the services and facilities that are the subject of Bright House’s Complaint, and its Complaint therefore cannot be based on section 364.15.

C. Verizon Has Not Violated Rules 25-4.036 or 25-4.038

Bright House alleges that Verizon’s disconnection of Bright House’s unregulated coaxial facilities in connection with Verizon’s installation of its own unregulated coaxial

²² Verizon of course would not agree that it provides “monopoly” services, given the tremendous competition it faces and large line losses it has experienced.

²³ See also Fl. Stat. §§ 364.011, 364.013, 364.02(13).

²⁴ Complaint ¶ 8.

cable facilities violated Rules 25-4.036 and 25-4.038, F.A.C., but it makes no allegations that, even if true, would support such claims.

Rule 25-4.036 provides as follows:

(1) The plant and facilities of the utility shall be designed, constructed, installed, maintained and operated in accordance with provisions of the National Electrical Safety Code (IEEE C2-2007) and the National Electrical Code (NFPA 70-2005), which is incorporated herein by reference, *pertaining to the construction of telecommunications facilities.*

(2) Compliance with these codes and accepted good practice is necessary to insure as far as reasonably possible continuity of service, uniformity in the quality of service furnished and the safety of persons and property.

(Emphasis added.) This rule applies to local exchange telephone companies²⁵ and concerns the construction of their telecommunications facilities. For all the reasons explained above, the rule does not and could not apply to the allegedly incorrect disconnection of Bright House's VoIP, broadband and cable facilities in connection with the installation of Verizon's broadband and cable facilities. Bright House's allegations therefore fail to state a claim that Verizon has violated Rule 25-4.036.

Similarly, Rule 25-4.038 provides:

Each utility shall at all times use reasonable efforts to properly warn and protect the public from danger, and shall exercise due care to reduce the hazards to which employees, customers, and the public may be subjected by reason of its equipment and facilities. All *subscriber loops* shall be properly installed to prevent harm to the public as referenced in Article 800.30 and 800.31 of the National Electric Code (NEC), incorporated herein by reference.

(Emphasis added.) Like Rule 25-4.036, Rule 25-4.038 applies to local exchange telephone companies and their telecommunications equipment and facilities. The rule requires that these carriers exercise due care with respect to their telecommunications

²⁵ Rule 25-4.002, F.A.C.

equipment and facilities and that they follow certain NEC rules concerning the installation of subscriber loops, but does not purport to address the disconnection or installation of facilities not used for telecommunications. Rule 25-4.038 therefore does not apply to the alleged incorrect disconnection of Bright House's VoIP, broadband and cable facilities in connection with the installation of Verizon's broadband and cable facilities.

D. Bright House Lacks Standing to Bring the Alleged Claims

To proceed with its Complaint, Bright House must have standing to bring the claims it asserts. To establish standing under *Agrico*, Bright House must show "1) that [it] will suffer injury in fact which is of sufficient immediacy to entitle [it] to a section 120.57 hearing, and 2) that [its] substantial injury is of a type or nature which the proceeding is designed to protect."²⁶ Even assuming for the sake of argument that Bright House has alleged injury in fact, it clearly fails to meet the second prong of the *Agrico* test because Bright House fails to allege a substantial injury that is of the type that Rules 25-4.036 and 25-4.038 are designed to protect. Bright House's alleged injuries do not arise from the disconnection or installation of telecommunications equipment and facilities that those rules address. Rather, Bright House claims injuries allegedly arising from the disconnection of Bright House's unregulated facilities in connection with the installation of Verizon's unregulated facilities, to which the rules do not apply. Bright House therefore fails to meet the *Agrico* standing test.

²⁶ *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2nd DCA 1981) (emphasis added).

For each of these reasons, Bright House has failed to state a claim and the Commission must dismiss its Complaint.

II. MOTION FOR SUMMARY FINAL ORDER

Under section 120.57(1)(h) of the Florida Statutes and section 28-106.204(4) of the Florida Administrative Code, a summary final order shall be granted if the pleadings demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled as a matter of law to the entry of a final order.²⁷ If the Commission does not grant Verizon's motion to dismiss, then it should issue a summary final order based on the facts presented in Bright House's Complaint and described below.

A. Statement of Facts

1. The parties' services and facilities

The Bright House coaxial cable facilities pictured in Exhibit 1 to its Complaint are part of the service drop connecting the Bright House network to the customer's home. Typically the service drop runs from the terminal (sometimes called a pedestal) above or below ground (when an underground drop is used) or mounted on a telephone pole (when an aerial drop is used) to a wall box on the side of the customer's house. Inside the wall box Bright House's coaxial cable is connected to the customer's inside coaxial

²⁷ See also *Complaint Against BellSouth Telecomm., Inc. Seeking Resolution of Monetary Dispute Regarding Alleged Overbilling Under Interconnection Agreement by Saturn Telecomm. Services, Inc.*, Order Granting Motion to Strike and Motion for Summary Final Order, Order No. PSC-05-0702-FOF-TP (June 29, 2005); *Complaint and Petition by CAT Comm. Int'l, Inc. Against BellSouth Telecomm., Inc. for Alleged Unlawful Emergency Tel. Service Charge*, Order Granting Motion for Summary Final Order, Order No. PSC-04-0500-FOF-TP (May 14, 2004); *Request for Arbitration Concerning Complaint of ITCDeltaCom Comm., Inc. Against BellSouth Telecomm., Inc. for Breach of Interconnection Terms*, Order Granting Motion for Summary Final Order, Order No. PSC-00-1540-FOF-TP (Aug. 24, 2000).

cable at the demarcation point between Bright House's network and the customer's inside cable. Bright House provides VoIP, broadband and cable television services over the coaxial cable service drop.²⁸

Verizon provides FiOS services over its Fiber to the Premises network. As the name suggests, Verizon provides services over fiber that runs from its network to the customer's home. Fiber from Verizon's network is connected to the ONT mounted on the side of the customer's house or inside the home. Voice, broadband and video services are carried over the fiber to the ONT, which splits the signals so they can be carried over different facilities into the home. Verizon's telephone service is routed over a copper wire that runs from the ONT to the NID, which is the demarcation point between Verizon's network and the customer's inside wire used to provide telephone service. The coaxial cable that runs from the ONT to the customer's inside cabling can provide Verizon's broadband and cable television service.²⁹

2. Alleged disconnection of Bright House Facilities

Bright House alleges that in September 2008 its technicians who were installing service to customers that Bright House had won back from Verizon discovered instances where Bright House's unregulated facilities previously had been disconnected.³⁰ Bright House informed Verizon of its allegations in an e-mail dated September 29, 2008, including three pictures allegedly depicting disconnections and requesting that Verizon discuss the situation with its managers and supervisors.³¹ Verizon responded the same day, told Bright House that it would reinforce Verizon's

²⁸ Reelfs Aff. ¶ 3.

²⁹ *Id.* ¶ 4.

³⁰ *Id.*

³¹ *Id.* ¶ 4 and Composite Exhibit 1.

M&Ps concerning treatment of the previous service provider's facilities, and then directed supervisors to review the correct procedures with Verizon's technicians. Verizon also promptly sent a technician to each home to ensure that these disconnections conformed to Verizon's M&Ps.³²

Bright House sent a second e-mail on October 2, 2008 in which it provided two pictures allegedly showing disconnections of Bright House facilities at homes of former Bright House customers who had switched to Verizon. Bright House stated that it would be conducting an audit of Verizon's disconnection of Bright House facilities and that it would forward "addresses of these as they are discovered."³³ Verizon responded to the October 2 e-mail later the same day, informing Bright House that one of the installations in question had been performed by a contractor who had been released and the other had been done by an employee who was receiving additional training. Verizon further stated that its trainers would "recover the demarcation policies with all technicians over the next two weeks."³⁴ Verizon completed the training within that time and also dispatched a technician to each house to ensure that the disconnections conformed to Verizon's M&Ps.³⁵

Although Bright House had stated that it would provide Verizon with the addresses of homes as they were discovered when its auditors concluded that Bright House's facilities had been disconnected, it did not do so. Instead, without discussion or warning, Bright House filed its "emergency" Complaint with the Commission on December 9, 2008, alleging that Verizon had disconnected Bright House's facilities at

³² Reelfs Aff. ¶ 9.

³³ Complaint ¶ 4 and Composite Exhibit 1.

³⁴ *Id.* ¶ 4 and Exhibit 2.

³⁵ Reelfs Aff. ¶ 10.

368 homes currently receiving service from Verizon.³⁶ Bright House claimed that the identity of Verizon's customers was confidential, even to Verizon, and refused to provide even the addresses of the 368 homes until Verizon signed a confidentiality agreement. Bright House finally provided the addresses to Verizon on Friday, December 12, 2008.³⁷

3. Verizon's investigation

Verizon promptly investigated each of the alleged disconnections and discovered that Bright House's audit was riddled with errors. Verizon discovered that in more than 100 cases, there was no ground wire connecting Bright House's facilities to ground, meaning that Bright house had not grounded its own facilities in the first place. Verizon has subsequently found a number of other instances (before the installation of Verizon's facilities) where Bright House's facilities have not been grounded.³⁸ During its investigation, Verizon found more than 50 instances where all facilities were properly grounded, belying Bright House's allegations that they had not been. In several other cases, Verizon discovered that the cable facilities in question did not belong to Bright House. In fewer than 10 cases, Bright House's drop wire had been disconnected and removed so that the only cable remaining on the customer's property was below ground level.³⁹

4. Verizon has installation procedures in place to ensure compliance with applicable laws and regulations⁴⁰

³⁶ Complaint ¶ 6.

³⁷ Reelfs Aff. ¶ 11.

³⁸ *Id.* ¶ 12.

³⁹ *Id.* ¶ 13. Verizon's M&Ps do not permit the cable drop to be cut in this manner and Verizon has no reason to believe that its technicians cut these cable drops. In this connection it should be noted that some homeowners' associations require that unused cable be removed, and customers may have removed the cable in these instances for that reason. *Id.*

⁴⁰ This section describes Verizon's installation practices as they relate to other carriers' facilities. The Commission does not have jurisdiction over these installation practices, but Verizon is providing this information for the Commission's background so it can better understand the allegations in this case.

Verizon has developed and implemented practices and procedures to ensure that its FiOS installation procedures comply with applicable laws and regulations. In addition, Verizon has devoted substantial resources to training its technicians to ensure that they are able to perform properly each of their job functions. Verizon also inspects FiOS installations to ensure that actual practices in the field conform to the company's M&Ps as well as to applicable laws and regulations.⁴¹

a. M&Ps for FiOS installations

Verizon has prepared an extensive set of M&Ps governing FiOS installations. These documents cover an array of topics to ensure, among other things, that Verizon's technicians properly install and activate FiOS services without interfering with the services of another provider. For example, Verizon has developed M&Ps governing the proper grounding of services, the appropriate demarcation point for video services and the proper replacement of fiber drops. These M&Ps are not static documents: as Verizon gains field experience installing FiOS services, the M&Ps are updated to reflect the benefits of this experience. Verizon requires all FiOS projects to be installed in compliance with the applicable M&Ps, and technicians are not allowed to deviate from the procedures set forth in the M&Ps and training materials.⁴²

b. Technician training program

Verizon has also developed and implemented a comprehensive, standard training curriculum for FiOS technicians. This curriculum relies on a wealth of information, including the knowledge and experience of subject matter experts, M&Ps, and vendor manuals for approved products, equipment, and tools. Each FiOS

⁴¹ Reelfs Aff. ¶ 14.

⁴² *Id.* ¶ 15.

technician receives at least 15 days of training, including, among other things, instruction on the proper installation of fiber drop wires, the grounding of facilities, and the capping of video provider drop wires. Verizon updates the training curriculum based upon its ongoing experience in the field.⁴³

c. Quality control initiatives

Verizon inspects FiOS installations to ensure that M&Ps and training are being properly applied in the field. When an inspector finds that a technician has not properly disconnected a competitor's facility, the disconnection is modified to conform to Verizon's M&Ps and the technician who initially disconnected the facilities is informed of the error and coached on proper procedures. Technicians who fail to comply with Verizon's grounding M&Ps are subject to disciplinary action, up to and including termination.⁴⁴

B. Verizon's Alternative Motion for Final Summary Order Should Be Granted

Verizon incorporates the legal arguments in its motion to dismiss by reference. For the same reasons that Bright House's allegations fail to state a claim, the undisputed facts demonstrate that the Commission lacks jurisdiction over Bright House's claims, Verizon has not violated Rules 25-4.036 and 25-4.038, and Bright House lacks standing to assert its claims.

III. CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission grant its motion to dismiss or in the alternative its motion for summary final order.

⁴³ *Id.* ¶ 16.

⁴⁴ *Id.* ¶ 17.

Respectfully submitted on January 12, 2009.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency complaint and petition requesting)	Docket No. 080701-TP
initiation of show cause proceedings against Verizon)	Filed: January 12, 2009
Florida LLC for alleged violation of Rules 25-4.036)	
And 25-4.038, Florida Administrative Code, by Bright)	
House Networks Information Services (Florida) LLC)	
and Bright House Networks, LLC)	
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AFFIDAVIT OF BRET S. REELFS

On this 12th day of January, 2009, personally appeared before me in Hillsborough County, Florida, the undersigned notary, Bret S. Reelfs, a person of lawful age, who being first duly sworn, on his oath, deposes and says:

1. I have been employed by Verizon Florida LLC ("Verizon") for more than 14 years and have held a number of positions with the company. Since 2005, I have been the Verizon regional operations support manager responsible for managing a workforce that supports FiOS installation and repair activities in Florida and South Carolina. My responsibilities include ensuring that Verizon's technicians understand and comply with Verizon's methods and procedures ("M&Ps") for FiOS installations. I graduated from the University of South Florida with a Bachelor of Science Degree in Finance in 1993.

2. I have reviewed the complaint and petition ("Complaint") filed by Bright House Networks Information Services (Florida), LLC and Bright House Networks, LLC (collectively, "Bright House") in this docket.

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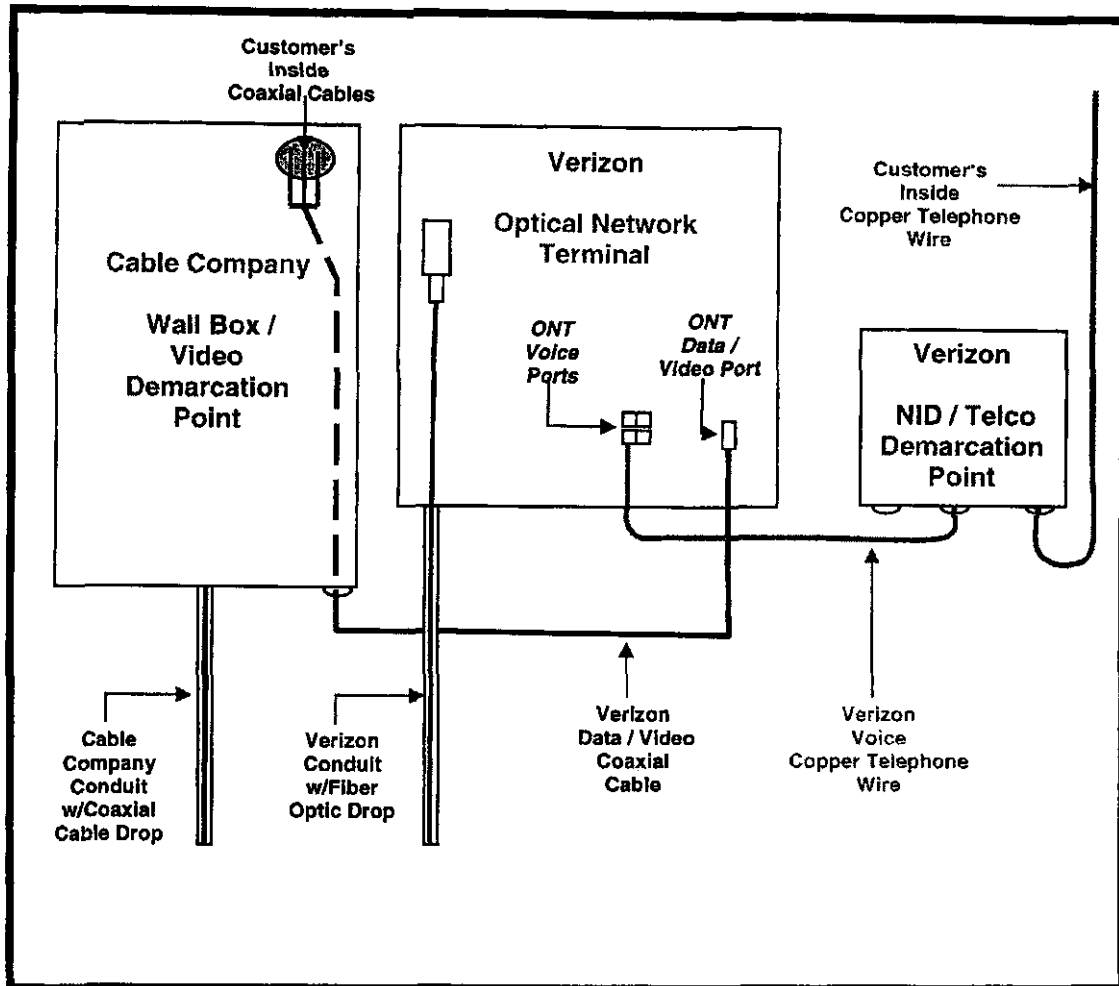
The parties' services and facilities

3. The Complaint does not describe in detail the facilities in question and the services they provide, so at the outset it may be helpful to provide a brief explanation. The Bright House coaxial cable facilities pictured in Exhibit 1 to its Complaint are part of the service drop connecting the Bright House network to the customer's home. Typically the service drop runs from a terminal, sometimes called a pedestal, above or below ground (when an underground drop is used) or mounted on a telephone pole (when an aerial drop is used) to a wall box on the side of the customer's house. Inside the wall box Bright House's coaxial cable is connected to the customer's inside cabling at the demarcation point between Bright House's facilities and the customer's inside cabling. Bright House provides VoIP, broadband and cable television services over the coaxial cable service drop.

4. Verizon provides FiOS services over its Fiber to the Premises network, which carries fiber from Verizon's network to the customer's home. Fiber from Verizon's network is connected to the Optical Network Terminal ("ONT") mounted on the side of the customer's house or inside the home. Voice, broadband and video services are carried over the fiber to the ONT, which splits the signals so they can be carried over different facilities into the home. Verizon's telephone service is routed over a copper wire that runs from the ONT to the Network Interface Device ("NID"), which is the demarcation point between Verizon's network and the customer's inside wire used to provide telephone

service. The coaxial cable that runs from the ONT to the customer's inside cabling can provide Verizon's broadband and cable television service.

5. The configuration I have just described is shown in the schematic diagram below:



6. The diagram shows the cable company's conduit with coaxial cable drop, which previously (before Verizon won the customer) connected the cable company's pedestal (not shown) to the customer's inside coaxial cables at the video demarcation

point in the wall box. When in operation, the coaxial cable drop can carry VoIP, broadband and cable services.

7. The diagram shows the Verizon conduit with fiber optic drop that runs from Verizon's network to the Verizon ONT, which can be mounted on the side of the customer's house or placed inside the home. Inside the ONT the signals carried by the fiber are split so the different services can be carried over the appropriate facilities inside the house. From the ONT, Verizon's broadband and video signals can be sent through the ONT data/video port, while Verizon's voice signal is sent through the ONT voice ports.

8. The diagram shows the Verizon data/video coaxial cable that connects the Verizon ONT data/video port to the customer's inside coaxial cables at the video demarcation point at the wall box where the customer's inside coaxial cables emerge from the house. It also depicts the Verizon voice copper telephone wire that connects the ONT voice ports to the telco demarcation point at the Verizon NID, where the customer's inside copper telephone wire extends from the house.

Alleged disconnection of Bright House facilities

9. Bright House sent me an e-mail dated September 29, 2008 in which it alleged that its technicians, who were installing service to customers that Bright House had won back from Verizon, found instances where Bright House's unregulated facilities had been disconnected. The e-mail included three pictures allegedly depicting disconnected Bright House coaxial cable and requesting that Verizon discuss the situation with its managers and supervisors. I sent an e-mail response to Bright

House's e-mail on the same day, telling Bright House that Verizon would reinforce its M&Ps concerning treatment of the previous service provider's facilities. I then directed field supervisors to review the correct procedures with Verizon's technicians. I promptly had a technician sent to each home to ensure that the disconnections conformed to Verizon's M&Ps.

10. Bright House sent me a second e-mail on October 2, 2008 in which it provided two pictures and stated that they showed disconnections of Bright House facilities at homes of former Bright House customers who had switched to Verizon. Bright House stated that it would be conducting an audit of Verizon's disconnection of Bright House facilities and that it would forward "addresses of these as they are discovered." I responded to the October 2 e-mail later the same day, informing Bright House by e-mail that one of the installations in question had been performed by a contractor who had been released and the other had been done by an employee who was receiving additional training. I further stated that its trainers would "recover the demarcation policies with all technicians over the next two weeks." We completed the training within that time and also dispatched a technician to each house to ensure that the disconnections conformed to Verizon's M&Ps.

11. Bright House did not provide me any of the results of its audit until after it filed its Complaint, nor did it discuss the Complaint with me or warn me that it was planning to file a Complaint. Bright House claimed that the identity of Verizon's customers was confidential, even to Verizon, and refused to provide even the addresses of the 368 homes where it claims Verizon disconnected its facilities (after the customer switched to Verizon's FiOS service) until Verizon signed a confidentiality

agreement. Bright House finally provided the addresses to Verizon on Friday, December 12, 2008.

Verizon's investigation

12. Verizon promptly investigated each of the alleged disconnections and discovered that Bright House's audit had many inaccuracies. We discovered that in more than 100 cases there was no ground wire connecting Bright House's facilities to ground, meaning that Bright house had not grounded its own facilities in the first place. We have since found a number of other instances (before the installation of Verizon's facilities) where Bright House's facilities have not been grounded.

13. During our investigation of Bright House's audit, we found more than 50 instances where all facilities were properly grounded, contrary to Bright House's allegations that they had not been. In several other cases, we discovered that the cable facilities in question did not belong to Bright House. In fewer than 10 cases, Bright House's drop wire had been disconnected and removed so that the only cable remaining on the customer's property was below ground level. Verizon's M&Ps do not permit the cable drop to be cut in this manner and Verizon has no reason to believe that its technicians cut these cable drops. (In this connection I note that some homeowners' associations require that unused cable be removed, and customers may have removed the cable in these instances for that reason.)

Verizon has installation procedures in place to ensure compliance with applicable laws and regulations

14. Verizon has developed and implemented practices and procedures to ensure that its FiOS installation procedures comply with applicable laws and regulations. In addition, Verizon has devoted substantial resources to training its technicians to ensure that they are able to perform properly each of their job functions. Verizon also inspects FiOS installations to ensure that actual practices in the field conform to the company's M&Ps as well as to applicable laws and regulations.

a. **M&Ps for FiOS installations**

15. Verizon has prepared an extensive set of M&Ps governing FiOS installations. These documents cover an array of topics to ensure, among other things, that Verizon's technicians properly install and activate FiOS services without interfering with the services of another provider. For example, Verizon has developed M&Ps governing the proper grounding of services, the appropriate demarcation point for video services and the proper replacement of fiber drops. These M&Ps are not static documents: as Verizon gains field experience installing FiOS services, the M&Ps are updated to reflect the benefits of this experience. Verizon requires all FiOS projects to be installed in compliance with the applicable M&Ps, and technicians are not allowed to deviate from the procedures set forth in the M&Ps and training materials.

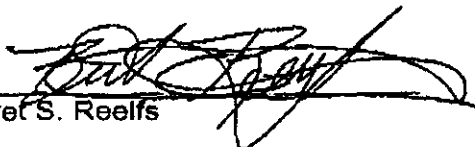
b. **Technician training program**

16. Verizon has also developed and implemented a comprehensive, standard training curriculum for FiOS technicians. This curriculum relies on a wealth of

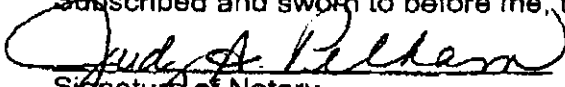
information, including the knowledge and experience of subject matter experts, M&Ps, and vendor manuals for approved products, equipment, and tools. Each FiOS technician receives at least 15 days of training, including, among other things, instruction on the proper installation of fiber drop wires, the grounding of facilities, and the capping of video provider drop wires. Verizon updates the training curriculum based upon its ongoing experience in the field.

c. Quality control initiatives

17. Verizon inspects FiOS installations to ensure that M&Ps and training are being properly applied in the field. When an inspector finds that a technician has not properly disconnected a competitor's facility, the disconnection is modified to conform to Verizon's M&Ps and the technician who initially disconnected the facilities is informed of the error and coached on proper procedures. Technicians who fail to comply with Verizon's grounding M&Ps are subject to disciplinary action, up to and including termination.


Bret S. Reelfs

Subscribed and sworn to before me, this 12th day of January, 2009.


Signature of Notary

Judy A. Pelham
Printed or typed name of Notary



NOTARY PUBLIC

My commission expires: 3/27/2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail and U.S. mail on January 12, 2009 to:

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s/ Dulaney L. O'Roark III