Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

VERIZON FLORIDA LLC,	*	
	*	
Complainant,	*	Docket No. 15-73
	*	File No. EB-15-MD-002
v.	*	
	*	Related to
FLORIDA POWER & LIGHT	*	Docket No. 14-216
COMPANY,	*	File No. EB-14-MD-003
	*	
Respondent.	*	
	*	

RESPONDENT FLORIDA POWER & LIGHT COMPANY'S
REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AND MOTION TO HOLD PROCEEDING IN ABEYANCE PENDING

Respondent Florida Power & Light Company ("FPL"), by and through its attorneys, respectfully submits this Reply in Support of FPL's Motion for Leave to File to and Motion to Hold Proceeding in Abeyance Pending Resolution of Complainant's Appeal of State Court Decision. In further support thereof, FPL states as follows.

1. Verizon claims in its Opposition to FPL's Motion to Stay that in the state court litigation between the parties it is appealing "only two issues." Verizon's Notice of Appeal expressly states otherwise, enumerating that Verizon is appealing:

> the **Final Judgment** of this Court entered on October 26, 2015, the **Order on Plaintiff's Motion for Summary Judgment** entered on October 16, 2015, the **Order Denying Motion to Reconsider and Rehear** the Final Judgment and Order on Plaintiff's Motion for Summary Judgment entered on November 6, 2015, and **all prior adverse orders**.[1]

[1] *See* Verizon Florida, LLC, Notice of Appeal, Miami-Dade County Circuit Court Case No. 13-01 4808-CA-01 (Dec. 4, 2015)(emphasis added), attached as Exhibit B to FPL's Motion for Stay.

2. Verizon clearly is not appealing only two issues and demurely asking the Florida court only "to retain jurisdiction" for enforcement purposes and "strike factually incorrect statements." Had Verizon wanted to limit its appeal as it now claims, it would have done so in its Notice of Appeal. It did not. Verizon's disingenuous approach now is completely consistent with its approach that led the Commission to stay this proceeding originally. It is also consistent with its refusal to respond to FPL's repeated requests and inform both the Commission and FPL of its intentions regarding whether and what it would appeal. Verizon wants to decide unilaterally how it can keep all of its options open, regardless of whose resources its conduct wastes. Indeed, Verizon told the state court judge that his role was irrelevant and falsely claimed that the Commission had already decided a significant part of this matter in its favor: "The FCC has addressed that and made clear that it can and will set a rental rate going back to the effective date of the [2011] order."[2]

3. Verizon's conduct is also consistent with the way it created the current issues in the first place. It could, of course, have avoided the jurisdictional and procedural issues created by the parallel proceedings here and in the Florida state court by doing one simple thing – paying its bills to FPL. That, in fact, is exactly what the FCC's jurisprudence proscribing self-help and its office of Office of General Counsel direct companies like Verizon to do: "in the absence of an FCC adjudication, a cable [or telecommunications] company seeking pole access must pay the rate that the utility demands."[3] Verizon fully understands this commonsense and lawful

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[2] *Florida Power & Light Company v. Verizon Florida LLC*, Case No. 13-014808-CA-01 (Fla. 11th Cir. Ct. Mar. 27, 2014)("*FPL v. Verizon*"), Tr. at 53:13-20 (Oct. 15, 2015).

[3] Letter Brief of United States Department of Justice at 2, Gulf Power Co. v. United States, No. 98-2403 (11th Cir. March 29, 1999).

approach, as it specifically states that it can and will terminate communications services to customers who refuse to pay Verizon.[4]

4. Here, however, where Verizon is the customer, it has been recalcitrant and refused to pay its bills for over four years. It currently owes FPL $2,921,887.06 for 2011 and 2012, which it has not paid despite the final judgment entered by the Florida court. And it owes FPL $1,716,439.49 for 2013 and $1,763,029.03 for 2014. Indeed, Verizon's refusal, even after the Florida court's ruling on its 2011 and 2012 debt to FPL, to pay its bills for 2013 and 2014 has forced FPL to file another civil suit in an effort to collect monies rightfully owed FPL's electric customers. If its past conduct is any indicator, Verizon will again contest every issue in that case, including the contractually agreed-upon rate, creating yet another reason that the FCC should stay this proceeding. Verizon should simply stipulate to the proper contract rate in that case and pay its bills, thus avoiding recreating the same situation the Commission and the parties now confront.

5. In sum, after engaging in four years of self-help to the extent of nearly $6.5 million, Verizon now complains that its unlawful conduct has created procedural complexities and stubbornly refuses to agree to a clear path forward. If Verizon had simply paid FPL the amount it owes, as required by law – *and as Verizon requires of its customers if they want continued service* -- there would have been no Florida state court proceedings and the parties

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[4] *See Disconnected Service*, VERIZON.COM, available at https://www.verizon.com/support/residential/phone/homephone/general+support/phone+troubleshooting/calling+problems/95311.htm (last visited Dec. 15, 2015)("Telephone service can be disconnected if you do not pay your telephone bill."); *Verizon FiOS® Digital Voice Terms of Service*, VERIZON.COM, available at http://www.verizon.com/about/sites/default/files/documents/terms/fdv_tos_07_09_14.pdf (last visited Dec. 15, 2015)("Verizon can, without notice, limit, suspend or terminate your Service if: (1) you are in breach of any of the terms of this Agreement or any payment obligations with respect to the Service, or if charges owed by you to any Verizon affiliate are past due for service(s) provided to you…"); *Regional Value Plan Terms*, VERIZON.COM, available at http://www.verizon.com/about/sites/default/files/documents/terms/regional_essentials_value.pdf (last visited Dec. 15, 2015)("Failure to pay your Regional Value plan charges in full may result in a loss of some/all of your plan services.").

would not now be arguing the present issue. The FCC's intended process would have proceeded to an orderly conclusion.

6. The Bureau's statement in its September 22, 2015 letter order remains as true today as it was then: "It would be premature and improvident for the Commission to rule on the merits of the instant complaint before the Florida district court resolves the parties' dispute about the correct contractual rates."[5] Given Verizon's express and unambiguous language in its Notice of Appeal, it is plain that the Florida court has not resolved the parties' dispute about the correct rates -- Verizon has appealed each and every issue decided by the court. No amount of wishful writing by Verizon can change the intent and effect of its appeal.

7. The remaining arguments in Verizon's eight page diatribe against FPL's straightforward motion for stay are as irrelevant as they are misguided. FPL will therefore not address them, except to emphasize and agree with one point: "The FCC didn't say go back and have that Judge do our work for us. The FCC said go get a judgment in the State Court, and then come back to us."[6] This statement quoted and relied upon by Verizon is exactly right. Issues regarding breach of the parties' contract and appropriate remedies are for the state court to decide. The Communications Act recognizes this demarcation point for state law breach of contract claims, providing as follows:

> REMEDIES IN THIS ACT NOT EXCLUSIVE Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

47 U.S.C. § 414. It has thus been held: "[W]here the scheme established by the 1996 Telecommunications Act does not answer a particular question, and if state law remedies would

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[5] *See* Letter from Christopher Killion Chief, MDRD, Enforcement Bureau (Sep. 22, 2015), attached as Exhibit B to FPL's Motion to Stay.

[6] *FPL v. Verizon*, Tr. at 58:4-6 (Oct. 15, 2015); *see also Verizon Florida LLC v. Florida Power & Light* Company, Verizon Florida's Opposition to Florida Power and Light Company's Motion for Leave to File, Docket No. 15-73, File No. EB-15-MD-00, n. 17 (Dec. 11, 2015).

complement, and not frustrate, the federal scheme, section 414 of Title 47 applies." *In re UPH Holdings*, 2014 WL 4296696 at *18 (W.D. Tex Bankr. 2014).

7. On the other hand, issues regarding whether the rate under the contract is just and reasonable and the available and appropriate regulatory implementation of a just and reasonable rate are for this Commission to decide. FPL has always said as much, both to the Florida state courts and to the Commission. All that FPL asks now is for the Florida courts to be allowed to finish their job.

For the foregoing reasons, FPL respectfully requests that the Bureau grant FPL leave to file this reply, enter an order staying this proceeding pending a resolution of Verizon's appeal of the parties' state court case and grant FPL such other and further relief as the Bureau deems proper.

Respectfully submitted,

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