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April 24, 2008

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**RE: Bright House Networks *et al.* v. Verizon, File No. EB-08-MD-002  
Local Number Portability, WC Docket Nos. 07-243, 07-244**

Dear Chairman Martin:

I am writing in response to a petition filed last month by Verizon seeking to regulate how a customer may cancel multichannel video service. According to Verizon, switching to a new video provider is too “confusing” and “cumbersome” and therefore requires FCC intervention to allow a new provider to be the customer’s agent for purposes of cancelling service.

Verizon’s basic premise – that it is too burdensome for customers to call their video provider and cancel service – is patently ridiculous. Ordering service from a new provider and separately cancelling service from the old provider, without regulatory oversight, is the norm for almost all consumer services, *e.g.*, newspapers, magazines, lawn service, alarm service – even broadband service. The fact that satellite video providers like DirecTV and EchoStar today provide service to one in three multichannel video households, and that Verizon itself already has over 1 million video subscribers, demonstrates that consumers long have been able to freely terminate video service and change service providers.<sup>1</sup>

To be clear, Verizon’s petition is nothing more than an attempt to distract the Commission from its very clear responsibility to promote competition in *voice* service. Unlike video, for voice services there is a unique obstacle that inhibits the ability of consumers to switch providers: number porting. Because most consumers want to keep their existing phone number when changing voice providers, new competitors must depend on existing providers to transfer or “port” that telephone number *before* the offering of new voice services can commence.

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<sup>1</sup> In the context of multi-dwelling units (MDUs), of course, coordination between competing service providers may be required to ensure that consumers' communications services are not disrupted. *See, e.g.*, Letter from Alexandra M. Wilson, Vice President of Public Policy and Regulatory Affairs, Cox Enterprises, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 07-51 (filed Oct. 24, 2007).

Congress and the Commission long understood that competition in the voice market depends on efficient number porting and that incumbent providers have no incentive to process porting requests quickly and accurately. Congress mandated that all local exchange carriers provide number portability, and the Commission implemented regulations, including a mandatory porting interval (currently 4 business days),<sup>2</sup> specifically designed to prevent incumbent carriers from delaying the porting process.

To prevent the unfair advantage that a porting request gives a customer's existing carrier because of advance notification of a customer switch, Congress and the Commission prohibited that provider from engaging in retention marketing during the narrow window when a port request is being processed.<sup>3</sup> Because the new carrier must contact the old carrier anyway to request the port, it is more efficient for the new carrier to also arrange to let the old carrier know that the customer is terminating service, rather than requiring the customer to make a separate call to the carrier. Telephone companies can market immediately and without restriction, however, when a customer informs them directly of a decision to cancel service; the restriction on retention marketing is limited to the unique situation where an existing carrier has an opportunity to exploit its receipt of proprietary information that another carrier is required to provide in connection with a porting request.

Verizon's contrived reliance on "regulatory parity" in support of unnecessary regulation glosses over these obvious difference between the provisioning of competitive voice and video services. Perhaps more importantly, Verizon also ignores the fact that regulatory parity already exists. All voice providers are subject to the same rules, and all video providers are subject to the same rules. Regulatory parity does not, and should not, mean that rules created for voice service should blindly be extended to video service, where in the latter case there is nothing to "port."<sup>4</sup>

The Commission can most usefully promote competition by rejecting the Verizon petition, and by adopting a final order in the pending rulemaking on number porting that will shorten the wireline porting interval to 2 days so that consumers get what they've asked for quickly.

Finally, while it is somewhat unusual to discuss a petition not put out for public comment or even available on the Commission's website, I note with concern that the petition *was* discussed in a Recommended Decision issued by the Enforcement Bureau in response to complaints by three cable

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<sup>2</sup> Recognizing the harm to consumers from long delays in switching providers, the Commission has tentatively concluded that the porting interval should be reduced to 48 hours. *Local Number Portability Porting Interval and Validation Requirements, et al.*, WC Docket Nos. 07-244, *et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188 at ¶ 60 (rel. Nov. 8, 2007). NCTA supports that proposal.

<sup>3</sup> See, e.g., *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14449-50, ¶ 77 (1999) ("We conclude that section 222 does not allow carriers to use CPNI to retain soon-to-be former customers where the carrier gained notice of a customer's imminent cancellation of service through the provision of carrier-to-carrier service.").

<sup>4</sup> Verizon's proposal would not produce regulatory parity in any event because it does not cover DirecTV and EchoStar, two of the three largest providers of multichannel video programming, nor does it cover Verizon and other local exchange carriers.

operators against Verizon's practice of retention marketing during the porting process.<sup>5</sup> In doing so, the Enforcement Bureau appears to have strayed from its role as a neutral arbiter of the facts and the law, a role which is so critical to the development of competition in the voice market.<sup>6</sup>

The complaints in this case involved Verizon's use of information it received through the porting process when *voice* customers chose to switch providers. The process for changing *video* providers was not relevant to that complaint, nor was it a defense that might somehow justify Verizon's conduct. Yet the Bureau, on its own and without soliciting comments from the complainants or others, devotes *nearly half* of its "Legal Analysis" to consideration of the Verizon petition and its implications. For the Bureau, in an adjudication, to consider any petition that has not been docketed in the proceeding or commented upon by all parties before it is inappropriate. But for it to do so when the petition is filed by the defendant in the very matter it is adjudicating, as it did here, calls into serious question the basis on which it reached its recommended decision.

Respectfully submitted,

**/s/ Kyle McSlarrow**

Kyle McSlarrow

cc: The Honorable Michael J. Copps  
The Honorable Jonathan S. Adelstein  
The Honorable Deborah T. Tate  
The Honorable Robert M. McDowell  
Elizabeth Andrion  
Ian Dillner  
Rick Chessen  
Scott Deutchman  
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Scott Bergmann  
Amy Blankenship  
Chris Moore  
Cristina Pauzé  
John Hunter  
Kris Monteith  
Dana Shaffer  
Monica Desai

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<sup>5</sup> *In the Matter of Bright House Networks, LLC, et al. v. Verizon California, Inc.*, File No. EB-08-MD-002 (rel. Apr. 11, 2008) (Recommended Decision). Even though this letter does not address the merits of the complaints, out of an abundance of caution and in conformance with the FCC's rules regarding restricted proceedings, NCTA is serving this letter on all parties in the case.

<sup>6</sup> *Implementation of the Telecommunications Act of 1996; Amendment of the Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order, 13 FCC Rcd 17108 (1998) (establishing Accelerated Docket procedures).

**CERTIFICATE OF SERVICE**

I, Gretchen M. Lohmann, do hereby certify that on April 24, 2008, I served a true copy of the foregoing letter in the accelerated docket proceeding of *Bright House Networks, LLC, Comcast Corporation and Time Warner Cable Inc. v. Various Verizon Companies*, File No. EB-08-MD-002, via hand delivery and electronic mail upon the following:

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/s/ Gretchen M. Lohmann

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<sup>1</sup> The Enforcement Bureau received seven copies of the foregoing document.