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## Utility sues over digital phone fees

**Tampa Electric says Bright House's phone service is telecom and thus subject to charges more than triple those for information services.**

By LOUIS HAU, Times Staff Writer

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Tampa Electric and Bright House Networks are embroiled in a billing dispute over millions of dollars, all focused on a surprising question: Should Bright House's "Digital Phone" service be considered a "telecommunications" product?

Of course it should, says Tampa Electric. Bright House disagrees, citing federal rules that classify cable broadband services as "information services," and thus subject to lighter regulation.

At stake is \$6.67-million in fees the Tampa utility argues Bright House owes it for the right to attach overhead cables to Tampa Electric utility poles. The case highlights the murkiness of federal telecom regulations amid technological advances.

Tampa Electric has sued Bright House in Hillsborough County Circuit Court for breach of contract and underpayment of fees. Meanwhile, Bright House has responded by taking the case to the Federal Communications Commission, filing a complaint that argues that Tampa Electric's attempts to get higher pole-attachment fees represent "fundamentally unlawful actions."

Bright House launched its Digital Phone service in the Tampa Bay area in 2004. The service differs from regular landline phone service in that it uses "Internet protocol" technology to deliver phone calls as compressed digital packets of information, initially over its cable network and then through the traditional phone company system of circuits, switches and copper wiring.

Slightly more than half of Bright House's cables in the Tampa Bay area are mounted on utility poles, with the rest installed underground. Tampa Electric charges Bright House \$5.63 per attachment per year for wires used for the delivery of cable TV service. That's less than a third of the \$17.67 the utility charges for telecom wires.

Bright House's pole-attachment agreements with Tampa Electric "have always contemplated the use of ... attachments only for delivery of cable television services and have never contemplated delivery of telecommunications services," states the utility's complaint with the Hillsborough County court.

Tampa Electric said Bright House operates its Digital Phone service much like a regular telecom carrier, noting that it includes a federal universal service fund charge on its bills and refers to itself in promotional materials as a "residential phone service."

But in its FCC complaint, Bright House countered that federal regulators have never classified Internet

protocol phone service as a "telecommunications service" because of their interest in encouraging the development of broadband services. The cable company argued that the FCC has historically favored "novel applications of advanced technology without imposing a utility pole attachment penalty."

Bright House said Tampa Electric's fees were excessive and wrongly applied in its case.

Andrew Schwartzman, president and chief executive of Media Access Project, a Washington consumer advocacy group, said he would prefer that federal regulators classify cable broadband and DSL connections as telecom services because it would require them to allow other companies to lease access to their networks. That would promote competition and increase consumer choice, he said.

But Schwartzman noted that recent rulings by the FCC and the U.S. Supreme Court have declared that broadband services should be viewed as "information services" exempted from the open-access requirements imposed on telecom carriers.

"It strikes me as a pretty long reach," he said of Tampa Electric's position.

Meanwhile, Progress Energy Florida has adopted a more conservative approach. The St. Petersburg utility is "awaiting further clarification" on the matter from the FCC, Progress spokeswoman Cherie Jacobs said. The St. Petersburg utility has opted to charge Bright House pole-attachment fees that classify its wires as cable TV lines because of federal regulatory precedent.

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