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August 3, 2010

**VIA ELECTRONIC MAIL**

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

**Re:** **Docket No. 090501-TP:** Petition for Arbitration of Certain Terms and Conditions of An Interconnection Agreement with Verizon Florida LLC by Bright House Networks Information Services (Florida), LLC

Dear Ms. Cole:

Attached for electronic filing, please find the **Amended** Post Hearing Reply Brief of Bright House Networks Information Services (Florida), LLC, along with Bright House's Motion for Leave to File its Amended Post Hearing Brief. If you have any questions whatsoever, please do not hesitate to contact me.

Thank you for your assistance with this filing.

Sincerely,

Beth Keating

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## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| In Re: Petition for Arbitration of Certain Terms and Conditions of An Interconnection Agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC. | Docket No. 090501-TP<br><br>Filed: August 3, 2010 |
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## BRIGHT HOUSE'S AMENDED POST-HEARING REPLY BRIEF

Bright House Networks Information Services (Florida) LLC ("Bright House") respectfully files this reply to Verizon's brief.[1]

### I. ISSUE NO. 24: TELRIC PRICING OF INTERCONNECTION FACILITIES.

#### A. Introduction.

We seek a ruling that (a) Verizon must provide us with interconnection facilities/entrance facilities from our network to Verizon's network at TELRIC rates; and (b) the existing facilities from our collocated equipment in two Verizon end offices to Verizon's tandem switch fall within this rule. This issue arose from our proposal to include § 2.1.1.3 in the Interconnection Attachment. The parties have agreed in § 1.1 of that Attachment that Verizon will provide interconnection at "any technically feasible Point(s) of Interconnection" ("POIs") for the purpose of "the transmission and routing of Telephone Exchange Service and Exchange Access … ."[2] Section 2.1.1.3 states that we may obtain facilities from its network to the POI "provided by Verizon at TELRIC rates."[3] This language is the basis for Issue No. 24, which asks: "Is Verizon

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[1] Verizon Florida LLC's Post-Hearing Brief ("Verizon Brief") at 1. Our initial brief will be cited as "Bright House Brief." Citations to the record will follow the same form as in our opening brief.

[2] *See* Exhibit TJG-3 (marked-up draft ICA) (Hearing Exhibit No. 17) at page 59. Note that this language exactly tracks 47 U.S.C. § 251(c)(2), which the FCC has interpreted to include both local traffic and pure "exchange access" traffic. Bright House Brief at 7 n.20 and 22 n.62, *citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") at ¶ 184.

[3] *See* Exhibit 2 to Arbitration Petition (Decision Points List, or "DPL") at page 67 (proposed Interconnection Attachment, § 2.1.1.3). *See also* Exhibit TJG-2 (chart relating issues to agreement provisions) at page 6 (Issue No. 24 relates to proposed § 2.1.1.3) (Exhibit 16, including in Transcript,

obliged to provide facilities from Bright House's network to the point of interconnection at total element long run incremental cost ('TELRIC') rates?" If § 2.1.1.3 is included in the contract, both the existing disputed facilities connecting our network to Verizon's tandem switch, as well as any new interconnection facilities we might order from Verizon, will be provided at TELRIC rates.[4] As we described in our opening brief, this result is required by both the relevant FCC rulings as well as the decisions of three of the four courts of appeals to consider the question.[5]

### B. The Commission Should Deny Verizon's Request To Ignore Issue No. 24.

Verizon raises an untimely request that the Commission not address Issue No. 24.[6] It claims that because we are not (right now) asking for new TELRIC-rated facilities under proposed § 2.1.1.3, that aspect of Issue No. 24 is supposedly "moot."[7] And it claims that, in seeking to apply TELRIC rates to the existing facilities we obtain from Verizon, we supposedly "changed [our] approach" between our direct and rebuttal testimony.[8]

At the outset, the notion that the Commission should not decide Issue No. 24 prospectively (that is, decide whether TELRIC rates apply to new facilities) because we have not yet ordered any such facilities, is ludicrous. We obviously need to know how much we will have

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Volume 4). Due to a scrivener's error, § 2.1.1.3 was not included in the draft ICA attached to Mr. Gates' direct testimony, *see* Gates Depo. Tr. at 59:18-61:33 (Exhibit 9, included in Transcript, Volume 4), although it was included in the DPL, which was the definitive statement of our contractual proposals. *See* Arbitration Petition at 21.

4 The existing facilities at issue are dedicated links connecting Bright House's network equipment to Verizon's tandem switch. These arrangements are graphically shown in Hearing Exhibit 22, included in both Verizon's and Bright House's initial briefs.

5 Bright House Brief at 26-29. *See* 47 C.F.R. §§ 51.501 *et seq.*; 47 C.F.R. § 51.321(a), (b); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2005) ("*TRO*") at ¶ 360-61; *Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*TRRO*") at ¶ 136; *Pacific Bell v. California Public Utilities Commission*, 597 F.3d 958 (9th Cir. 2010); *Illinois Bell v. Box*, 526 F.3d 1069 (7th Cir. 2008); *Southwestern Bell v. Missouri PSC*, 530 F.3d 676 (8th Cir. 2008).

6 Verizon Brief at 8-12.

7 *Id.* at 9, 9-11.

8 Verizon Brief at 8-12.

to pay Verizon for new facilities before we can decide whether to order them.[9]

Verizon's request that the Commission disregard the evidence on this issue as it relates to existing facilities also must be denied because it is untimely: Verizon missed at least three chances to ask Commission to narrow or delete Issue No. 24. First, Verizon's request amounts to a motion to strike our testimony regarding pricing the existing facilities at TELRIC rates. The Procedural Order states that motions to strike must be made no later than the Prehearing Conference.[10] Verizon did not move to strike our testimony on this issue, so it cannot obtain the same result, nearly two months late, by asking the Commission to "refuse to consider" that testimony.[11] Second, the Prehearing Order states that prefiled testimony will be accepted into the record "subject to appropriate and timely objections."[12] If Verizon had an objection to Mr. Gates' rebuttal testimony (where it says we "changed" Issue No. 24), it had to object to that testimony at the hearing. Its failure to do so is another waiver of any objection it might have had to the scope of Issue No. 24.[13] Third, Verizon's position statement on Issue No. 24 shows that it knew we wanted TELRIC rates for the disputed facilities, but it raised no objection to the scope of the issue. It should have raised any objection at that time as well.

More fundamentally, Verizon is wrong – we ***never changed our position***. The language of Issue No. 24 tracks the our proposed § 2.1.1.3 – which would apply TELRIC pricing to both

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9 *See* Tr. 343:22-24 (Gates Redirect) ("Bright House needs to know how that is going be priced in order to determine how it's going to reconfigure, if at all, its network"). *See also Tr.* 226:21-228:2 (Gates Rebuttal); Bright House response to Staff Interrogatory No. 32(a), in composite Exhibit 3 (Transcript, Volume 4). Consider a more prosaic example: a family might know that in their situation it would be nice to have a new minivan, but they are not going to actually ***order*** one without knowing what it costs.

10 Procedural Order at page 6, § IV.D.

11 Verizon does not call its request a motion to strike, but there is no real difference between asking the Commission to "refuse to consider" an issue and asking it to the strike the testimony bearing on it.

12 Prehearing Order at 3.

13 In this same vein, Mr. Gates testified about this issue in his deposition, in response to questions from Verizon. *See* Gates Depo. Tr. at 58:20-75:21 (Exhibit 9, included in Transcript, Volume 4). Verizon stipulated to the admission of the deposition.

new and existing facilities. Verizon apparently did not focus on how § 2.1.1.3 (and Issue No. 24) applies to existing facilities until we made the issue very explicit in our rebuttal testimony, but its apparent misunderstanding does not mean that our position changed. In this regard, Verizon implies that it was confused by Mr. Gates' use of the term "entrance facilities,"[14] but this makes no sense: neither § 2.1.1.3 nor Issue No. 24 uses that term. Both refer to applying TELRIC pricing to facilities "from Bright House's network to the POI." Moreover, Mr. Gates tied his use of the term to the *Local Competition Order* at ¶ 1062, which refers broadly to "facilities that are dedicated to the transmission of traffic between two networks."[15] So, when he used the term, it referred to ***any*** facilities for transmitting traffic between two networks – consistent with both Issue No. 24 and proposed § 2.1.1.3. Thus, the disputed existing facilities ***are*** "entrance facilities" as the FCC and the courts – and Mr. Gates – use that term.[16]

In sum, Issue No. 24 and proposed § 2.1.1.3 always embraced ***any*** Verizon-supplied "facilities" from Bright House's network to a POI, and when Mr. Gates used the term "entrance facility" he defined it broadly, consistent with the FCC's and the courts' usage of the term. Therefore, not only has Verizon waived any right to object to the scope of Issue No. 24, its claim that we expanded or changed the scope of the issue is baseless.[17]

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14 *See* Verizon Brief at 8-12 (nearly thirty separate references by Verizon to "entrance facilities").

15 Tr. 109:3-7 (Gates Direct), *quoting Local Competition Order* at ¶ 1062.

16 Verizon is thus wrong when it says that we "purchase no entrance facilities." Verizon Brief at 9. Both the FCC and the courts use the term "entrance facility" in a broad sense, like Mr. Gates. *See TRO* at ¶¶ 361, 370; *TRRO* at ¶ 136; *Illinois Bell v. Box*, supra, 526 F.3d at 1071; *Pacific Bell v. California Public Utilities Commission, supra*, 597 F.3d at 961; *Southwestern Bell v. Missouri PSC, supra*, 530 F.3d at 681. So, the disputed, existing facilities *are* "entrance facilities."

17 For these reasons, Verizon's reliance on 47 U.S.C. § 252(b)(4)(A) – which limits the Commission's consideration of issues to those "set forth in" the arbitration petition and the response to it – is misplaced. *See* Verizon Brief at 11. Our petition asked the Commission to include § 2.1.1.3 in the contract, *see* note 6, *supra*, and § 2.1.1.3 would subject the existing disputed facilities to TELRIC pricing. So, this issue was "set forth in the petition" as required § 252(b)(4)(A). Finally, § 252(b)(5) requires parties to continue negotiating after an arbitration is filed, and the Commission's Procedural Order states that the issues may evolve and be clarified up until the Prehearing Conference. Procedural Order at 2. So

### B. Rebuttal of Verizon's Arguments On The Merits of Issue No. 24.

Verizon implies that ILEC-supplied facilities connecting a CLEC and ILEC network are not subject to TELRIC,[18] but this is wrong for the reasons stated in our opening brief.[19] Verizon also erroneously claims that the disputed facilities are not "interconnection facilities" or "entrance facilities" within this rule.[20] As noted above, there is no formal definition of "entrance facility" or "interconnection facility." Instead, these terms refer to any high-capacity link used to transmit traffic between an ILEC and a CLEC.[21] That is just what the disputed facilities here do, so they are precisely the type of facilities to which the FCC's TELRIC pricing rules apply.[22]

Verizon's third – and most radical – claim is that § 251(c)(2) interconnection rights do not apply to "exchange access" traffic ***at all***. It claims that § 251(c)(2) only applies to calls

– in addition to everything else – even if Bright House's conception of the scope of Issue No. 24 *did* change to some extent between direct and rebuttal testimony – which it did not – that is permissible under the Commission's procedures for handling arbitrations.

18 Verizon Brief at 12 (advising Commission not to "wade into a legal dispute"); *id.* at 12-20 (arguing that, since the disputed facilities carry access traffic, TELRIC pricing does not apply).

19 Bright House Brief at 25-29. Verizon seems to argue that TELRIC pricing should not apply because at Mr. Gates did not cite a specific FCC rule requiring that result. Verizon Brief at 18-19. But Mr. Gates cited the *TRRO*, where the FCC cited the *TRO*, both of which said that ILECs had to provide these facilities at TELRIC rates, based directly on § 251(c)(2). If the statute itself is good enough for the FCC, it is good enough in this case. That said, as we noted in our opening brief, the specific FCC rule Verizon is apparently looking for is 47 C.F.R. § 51.321(a). *See also Pacific Bell v. California PUC, supra*, 597 F.3d at 966 (relying on that rule to uphold TELRIC-pricing for interconnection facilities).

20 *See, e.g.*, Verizon Brief at 9 (denying that the disputed facilities are "entrance facilities").

21 As to "entrance" facility, *see* note 16, *supra*. As to "interconnection facility," *see* 47 C.F.R. § 51.305(a)(3) (ILEC must "design interconnection facilities to meet the same technical criteria and service standards that are used within the [ILEC's] network"); *TRRO* at ¶ 140; *Southwestern Bell v. Missouri PSC, supra*, 530 F.3d at 684; *Pacific Bell, supra*, 597 F.3d at 967. The 9th Circuit rejected the claim that the FCC's ruling that "interconnection facilities" would be available at TELRIC rates somehow excluded "entrance facilities." *Id.* at 967-68. The court also made clear that entrance facilities are a "method of obtaining interconnection" within the meaning of 47 C.F.R. § 51.321(a). *See id.* at 965-66.

22 In this regard, Verizon claims that the parties do not use the disputed facilities "for the mutual exchange of traffic," evidently because the traffic is going to or coming from a long distance carrier. *See* Verizon Brief at 13, 16-17. Verizon is playing word games. The ***statute*** does not refer to traffic "exchange" It refers to the "transmission" and "routing" of traffic – including exchange access traffic. Verizon's tandem "routes" the traffic in question from long distance carriers to Bright House or vice versa, and the sole function of the disputed facilities is the "transmission" of this traffic between Verizon's tandem switch and Bright House's network. Under any normal understanding of the term, therefore, Bright House and Verizon have indeed "exchanged" this traffic.

directly between the ***retail end users*** of competing local networks – who generate "telephone exchange service" traffic – but not to calls bound to or from ***access service*** customers of the two networks – long distance carriers – who generate "exchange access" traffic.[23] This is an unfounded attempt to amputate half of § 251(c)(2). It flies in the face of Congress's clear statement that interconnection rights apply to the "transmission and routing" of ***both*** "telephone exchange service" traffic ***and*** "exchange access" traffic. It is absurd in light of the FCC's ruling that Competitive Access Providers ("CAPs") have full interconnection rights under § 251(c)(2), and that a carrier is entitled to interconnection under § 251(c)(2) even if it does not offer ***any local services to end users at all.***[24] Moreover, it is inconsistent with the fact that § 251(c)(2) interconnection rights were built upon the *Expanded Interconnection* regime, which related entirely to the competitive provision of ***access*** services.[25]

Verizon's sole support for its effort to lop off half of § 251(c)(2) is a vague reference to § 251(g), which Verizon says is supposed to "preserve" the "pre-existing access regime."[26] But the courts disagree. Section 251(g) is merely a transitional device that preserves the pre-1996-Act ***obligations*** of LECs to provide access services to long distance carriers at tariffed rates.[27] It does not address LEC-to-LEC charges ***at all,*** much less whether interconnection facilities are

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23 *See* Verizon Brief at 15-17, 35.

24 *Local Competition Order* at ¶ 184.

25 *Local Competition Order* at ¶¶ 610-12; *see Expanded Interconnection with Local Telephone Company Facilities,* Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7639 (1992); *Expanded Interconnection with Local Telephone Company Facilities,* Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993); Bright House Brief at 14-17, 22 & nn. 62-64.

26 Verizon Brief at 19-20.

27 *See WorldCom v. FCC,* 288 F.3d 429, 432-33 (D.C. Cir. 2002). ***Worldcom reversed*** an FCC claim that it could "override virtually any provision of the 1996 Act, so long as the rule it adopted were in some way, however remote, linked to [ILECs'] pre-Act obligations." *Id.* at 433. *Accord, Pacific Bell v. Pac-West,* 325 F.3d 1114, 1122, 1131 (9th Cir. 2003). This is precisely what Verizon is arguing for here.

subject to § 251(c)(2).[28] And, requiring TELRIC rates for interconnection facilities would not interfere with Verizon's ability to impose access charges on long distance carriers using those facilities, and, therefore, would not interfere with the "pre-existing access regime" in any event.[29]

Finally, not only is Verizon's claim about the scope of § 251(c)(2) legally unsupportable, it makes no sense in the real world. Interconnection for local traffic and interconnection for exchange access traffic are two sides of the same coin. A successful competitor like Bright House will obtain a substantial number of end users who will generate lots of local traffic, to be sure, but who will also make and receive lots of long distance calls. We must provide long distance carriers with originating and terminating access services to reach our end users. Because not all long distance carriers will directly interconnect with us, we ***must*** interconnect with Verizon to provide these access services. So, while the exchange access traffic at issue here legally falls under our provision of access services to long distance carriers, ultimately it all comes down to meeting the needs of the end users that we win from Verizon in the competitive marketplace. Even if, as Verizon claims, § 251(c)(2) interconnection rights were somehow

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[28] As the *WorldCom* court observed, "§ 251(g) speaks only of services provided 'to interexchange carriers and information service providers'; LECs' services to other LECs ... are not 'to' either an IXC or to an ISP." 288 F.3d at 433-34. In other words, § 251(g) has no application ***at all*** to what Verizon can and cannot charge Bright House for interconnection facilities. The FCC now understands that § 251(g) acts merely as a check on the very broad intercarrier compensation language of § 251(b)(5) – "preserving" an ILEC's right to impose access charges, not just reciprocal compensation, on "exchange access" traffic. *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008) ("*2008 Reciprocal Compensation Order*") at ¶ 16.

[29] Verizon also claims that its narrow view of § 251(c)(2) is supported by ¶ 176 of the *Local Competition Order*, where the FCC says that "access charges are not affected by our rules implementing section 251(c)(2)." Verizon Brief at 19-20. But the FCC there is referring to the distinction between § 251(c)(2) (physical interconnection arrangements) and § 251(b)(5) (intercarrier compensation). It does not suggest that access rates apply to interconnection facilities under § 251(c)(2). Verizon's claim about ¶ 176 of the *Local Competition Order* is also defeated by the FCC's specific ruling that TELRIC applies to interconnection facilities and arrangements. *See* 47 C.F.R. §§ 51.321(a), (b), 51.501 *et seq.*

limited to facilitating competition for the business of end users, it is traffic ***to and from those end users*** that makes it necessary for us to interconnect with Verizon for the "transmission and routing" of exchange access traffic. It would be nonsensical, therefore, to interpret § 251(c)(2) interconnection rights as being limited to "local" traffic.

## II. ISSUE NO. 36: MEET-POINT BILLING ISSUES.

### A. Meet Point Billing Traffic Is Subject To Section 251(c)(2).

The first issue under Issue No. 36 involves our right to specify the POI for the hand-off of exchange access traffic between Bright House and Verizon.[30] The dispute is whether § 251(c)(2) applies to this traffic. If so, we may designate the POI.[31] If not, then the selection of the POI is governed by negotiations under the MECOD and MECAB documents.[32]

Verizon argues that § 251(c)(2) does not apply, but it gives no reason to ignore the plain meaning of § 251(c)(2). Traffic coming in from, or going out to, a long distance carrier is "exchange access" traffic.[33] Section 251(c)(2) applies to "the transmission and routing of ... exchange access." Therefore, § 251(c)(2) applies to this traffic.[34] While Verizon says "there is no law to support" our supposed "conflation of meet-point billing arrangements with the Act's

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[30] There is no dispute that Bright House is financially responsible for getting to the POI where we exchange this traffic. *See, e.g.*, Verizon Brief at 33-34. The discussion under Issue No. 24 addresses whether TELRIC rates apply to Verizon-supplied facilities used for this purpose. And there is no dispute that once the POI for has been established, Verizon will not bill us for facilities or services on its side of the POI. Instead, the long distance carriers will be billed, under normal meet point billing rules. *Id.*

[31] *See* Verizon *Brief* at 34 ("A CLEC can, however, unilaterally designate a point of interconnection for purposes of § 251(c)(2) interconnection, as long as that POI is at a technically feasible point on the ILEC's network"). The specific configuration we are considering is to designate our end-office collocations as the POIs for exchanging meet-point billing traffic. In this scenario, we would not pay for the disputed facilities, but Verizon would recover their costs via charges to long distance carriers.

[32] *Id.*

[33] Bright House Brief at 25-26; *See* Tr. 508:12-14, 509:22-510:7 (Vasington Cross-Examination); Gates Depo. Tr. 64:12-13, 106:21-107:7 (Exhibit 9, included in Transcript, Volume 4); Tr. 303:8-11 (Gates Cross-Examination).

[34] *See* discussion under Issue No. 24, *supra*. *See also* Bright House Brief at 25-29.

local interconnection regime,"[35] that is obviously false. Aside from the plain language of § 251(c)(2), we have pointed to the equally plain definition of "exchange access" to establish that the traffic at issue falls within that category.[36] And, we have explained that providing exchange access services to long distance carriers is a defining characteristic of a "local exchange carrier" under the 1996 Act.[37] We have also shown the FCC ruled that § 251(c)(2) fully applies to CAPs – whose business model, under the *Expanded Interconnection* regime, involved providing some, but not all, of the access services that long distance carriers need to reach particular customers – exactly the situation we have here.[38] That is "law" enough, and more, to establish what is actually obvious from the plain meaning of § 251(c)(2) – which is that it applies to exchange access traffic, including meet-point billing traffic.

It is Verizon, not Bright House, whose position is without legal support. Given that the traffic at issue is "exchange access," and given that § 251(c)(2) expressly applies to "exchange access," surely Verizon has to cite some case, some FCC rule – ***something*** – to explain why a statutory provision that plainly ***does*** reach "exchange access" traffic, somehow doesn't apply here. Verizon has nothing on this point. The only conclusion is that § 251(c)(2) does apply.[39]

Verizon's only other objection to treating meet point billing traffic as subject to § 251(c)(2) is that it might have to construct and maintain an unreasonably high number of trunks and facilities to handle the traffic on its side of the POI we designate. Its fear is that by

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35 Verizon Brief at 35.

36 *See* note 33, *supra;* Bright House Brief at 18 & n.54, 19 & n.56, *discussing* 47 U.S.C. § 153(16) (definition of "exchange access").

37 Bright House Brief at 18 & n.53, *discussing* 47 U.S.C. § 153(26) (definition of "local exchange carrier").

38 Bright House Brief at 7 & n.20, 22 & n.62, 26 & n.74, *discussing Local Competition Order* at ¶¶ 184, 610-12.

39 Verizon mentions the MECOD and MECAB industry documents, which call for negotiation of the POI. *See* Verizon Brief at 35-36. Obviously, industry documents cannot trump the specific language of a statute, and even Verizon does not argue that those documents can override the law.

letting Bright House specify the POI, we might require that there be too many of trunks or facilities in place, leaving Verizon unable to recover the costs of those trunks and facilities through access charges imposed on the third-party long distance carriers.[40] That fear, however, is unwarranted in light of our proposed contract language. We proposed the following:

> [T]he Parties shall, ***by mutual agreement,*** determine to route Meet Point Billing traffic over (a) interconnection facilities and trunks used to carry Reciprocal Compensation and other traffic; (b) the same interconnection facilities used to carry Reciprocal Compensation and other traffic, but isolate such Meet Point Billing traffic on separate trunk groups; (c) separate facilities and trunks; or (d) some combination of (a), (b) and (c) above. If the Parties are unable, through good faith negotiations undertaken for a commercially reasonable period, to ***determine the facility and trunking arrangements applicable to Meet Point Billing traffic, then the dispute resolution provisions of Section 14 of the General Terms and Conditions shall apply.***[41]

Clearly – while we assert our right to designate the POI(s) for this traffic, once we designate a POI – "the facility and trunking arrangements" would be established "by agreement," with the contract's normal dispute resolution provisions kicking in if our respective engineers could not agree. In other words, Verizon's fear of being forced to maintain unreasonably large amounts of facilities or trunking for this traffic is completely fanciful.[42]

In these circumstances, we urge the Commission to rule that exchange access traffic to or from third-party long distance carriers – meet-point billing traffic – is subject to § 251(c)(2), and that, as a result, Bright House may specify the POIs where such traffic will be exchanged. We also urge the Commission to adopt our proposed contractual language dealing with these issues

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40 Verizon Brief at 36-37.

41 Exhibit 21 (Exhibit TJG-7 to Mr. Gates' Rebuttal Testimony, included in the Record in Transcript, Volume 4) (emphasis added). *See also* Tr. 241:12-14 and note 34 (Gates Rebuttal) (Verizon's objections may have been based on a failure to consider our actual proposal regarding this issue).

42 Verizon's own witness, Mr. Munsell, agreed that there would be no operational concerns about allowing Bright House to move the POI for the exchange of third-party long distance traffic from the access tandem to Bright House's end office collocations as long as concerns about the sizing of those facilities could be addressed. *See* Munsell Depo. Tr. 183:16-184:17 (Exhibit 14, included in Transcript, Volume 4). Our proposed language fully addresses this concern.

provided in Exhibit 21 (Exhibit TJG-7), including, specifically, the language quoted above.

### B. Bright House Can Provide Competing Tandem Transport Service, Which Is Also Subject To Section 251(c)(2).

We noted in our brief that there appears to be agreement that we may provide tandem transport service to compete with Verizon's tandem and transport network.[43] The dispute is that Verizon wants to require us to provide that service only under Verizon's tariff for these functions, established under the FCC's *Expanded Interconnection* regime.[44] By contrast – and contrary to Verizon's tariff – because this traffic is subject to § 251(c)(2), we may determine the POIs for this traffic, and can only be required to pay TELRIC rates for any Verizon functions involved.[45] On this issue, we rest on the discussion in our opening brief and in this brief regarding the applicability of § 251(c)(2) to this traffic and the contract terms for dealing with it.

### *C. Terms For Bright House Acting As A Local Transit Carrier.*

This final matter under Issue No. 36 involves Verizon's effort to make Bright House pay for third-party local traffic from carriers that use Bright House as a transit network to reach Verizon. We want to use the normal rule that the originating carrier pays the terminating carrier. Verizon claims that this is not appropriate because we could allow a carrier that would have to pay a higher rate if it interconnected directly with Verizon to deliver traffic under our \$0.0007/minute rate.[46] But this arbitrage would be possible only if Bright House delivered substantial traffic without the data needed to identify and bill the originating carrier, and there is no evidence that this would occur. Verizon's baseless speculation is no reason to make us pay

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43 In practical terms, this would entail Bright House acting as a CAP, and seeking to get long distance carriers to agree to send their traffic bound for Verizon's end offices to Bright House, not Verizon's tandem, for delivery to those end offices. Tr. 168:21-170:13 (Gates Direct).

44 *See* Verizon Brief at 27-29.

45 Bright House Brief at 32-34.

46 Verizon Brief at 30-31.

third parties' bills to Verizon and then collect from the third parties.

Verizon justifies its position by noting that it is legally obliged to provide transit service while we are not,[47] but that is irrelevant. We are no less exposed to hypothetical arbitrage (*e.g.*, Verizon sending us inbound access traffic on a "local" trunk) because Verizon is obliged to provide transit service, and Verizon is no more exposed to hypothetical arbitrage from us because we are not legally obliged to provide transit service. Verizon's speculative fear of arbitrage, in other words, goes both ways. As a result, its proposal to saddle us with financing obligations as a condition of being a local transit carrier is unreasonable and should be rejected.

## III. ISSUE NO. 37: LOCAL CALLING AREAS/INTERCARRIER COMPENSATION.

Issue No. 37 involves applying reciprocal compensation to traffic we send from our end users to Verizon. We do not impose toll charges for any of this traffic, so none of it is toll traffic. So, Verizon is not providing "exchange access" when it terminates this traffic. Reciprocal compensation applies to everything except "exchange access," so we should not pay Verizon access charges for any of our traffic – even if it crosses a Verizon local calling area boundary.[48]

Verizon does not challenge our legal analysis. That is, it does not dispute that when we send Verizon a call on which we do not charge a toll, that call is not "exchange access."[49] And, it does not dispute that the FCC's most recent ruling on this topic expressly repudiated the idea that reciprocal compensation is limited to "local" traffic.[50] So Verizon appears not to dispute that, at least in theory, this traffic ***should*** be subject to reciprocal compensation, not access.

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47 Verizon Brief at 31-32.

48 Bright House Brief at 35-38.

49 *See* Bright House Brief at 35-36.

50 *See* Bright House Brief at 35 n.100, 37-38, *citing and discussing 2008 Reciprocal Compensation Order*, *supra*. As we explained, under that FCC ruling, the only traffic excluded from reciprocal compensation is "exchange access" traffic. Bright House Brief at 37-38. (As we noted, "information access" is also excluded, but has no bearing on this case. *Id.* at 35 n.100.)

Verizon argues that our proposal would create administrative difficulties, but never identifies those difficulties, how much expense (if any) would supposedly be involved in dealing with them, or how they could be avoided. Its witness on this point based his claim that handling our proposal would create problems on having attended some "requirement sessions 14 years ago." And, even though he is "definitely ... not an IT person," based on that 14-year-old set of meetings, he asserts that implementing our proposal would be "really, really difficult."[51]

This kind of vague and unsupported testimony cannot justify ignoring the FCC's latest ruling on reciprocal compensation (which Verizon never mentions) holding that all traffic between LECs, except for exchange access traffic, is subject to reciprocal compensation. Verizon's objections to our proposal should be dismissed for this reason alone.

But even if there were potential administrative problems with individually rating calls as local or toll from multiple CLECs with multiple local calling areas, Mr. Gates explained – and Verizon's Mr. Munsell admitted – that the standard practice for more than two decades has been that, when billing for individual calls is impractical, parties use a factor to determine the portion of traffic subject to specific rates.[52] Of course, in the actual case of Bright House and Verizon, this factor would be simplicity itself: apply the agreed-to $0.0007/minute rate to all traffic.[53]

Verizon next claims that our proposal would not be competitively neutral.[54] This claim is

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51 *See* Verizon Brief at 40-41 (quoting Mr. Munsell).

52 Tr. 702:9-703:6 (Munsell Cross-Examination); Munsell Depo. Tr. 206:15-207:1 (included as Exhibit 14 in Transcript, Volume 4); Tr. 336:7-13 (Gates Redirect).

53 *See* Tr. 336:7-13 (Gates Redirect). Verizon claims this would be "a giant step backwards" from the supposedly "accurate" process in place today, Verizon Brief at 41-42 & n.32, but today's process is not "accurate" at all – it erroneously imposes access charges on a great deal of traffic to which those charges do not properly apply. And if billing based on factors is such a step "backwards," why is it still contained in Verizon's access tariffs and considered an industry standard practice, as testified to by Mr. Munsell? Munsell Depo. Tr. 206:15-207:1 (included as Exhibit 14 in Transcript, Volume 4). In fact, Verizon has no sound objection to using factors to bill reciprocal compensation to Bright House and other CLECs if, as Mr. Munsell claims, it would be "really, really difficult" to bill calls on an individual basis.

54 Verizon Brief at 42.

simply absurd. As Mr. Gates explained, one way a CLEC competes for end users is to offer a larger and more convenient local calling area, thus forgoing toll charges it might collect if it were a more timid competitor and simply mirrored Verizon's calling areas. To require such a CLEC to pay the *same* access charges it would have to pay anyway is not competitively neutral – it is an anticompetitive "tax" on CLECs who offer broader calling areas.[55]

Verizon's suggestion that it would be unfair to long distance carriers and other CLECs to adopt Bright House's proposal is also misplaced.[56] Of course long distance carriers would pay access charges – they are not LECs, and have no right to reciprocal compensation rates in the first place. Also, they will have collected toll revenues that make payment of access charges economically understandable. And, other CLECs (and Verizon) can avoid access charges simply by taking the pro-competitive step of also offering a large local calling zone to their customers.[57] This is neither unfair not anticompetitive. Only our proposal is competitively neutral.

Finally, as we anticipated, Verizon cites a number of decisions that it claims undermine our proposal, but in fact do not.[58] Under our proposal, where an interconnected ILEC and a CLEC are competing for end users, when one sends a call to the other, access charges will only apply if the originating carrier charges its end user a toll. Our proposal thus relates directly to, and encourages, the competitive dynamic between two LECs in head-to-head competition for end users. In contrast, Verizon's cases relate to a CLEC that did not compete for end users, but instead specialized in serving dial-up ISPs in order to collect reciprocal compensation on the

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55 Tr. 136:16-23 (Gates Direct). *See* Tr. 136:1-140:2 (Gates Direct); Tr. 247:3-22 (Gates Rebuttal).

56 Verizon Brief at 42.

57 *See* Tr. 317:7-318:16 (Gates Cross-Examination).

58 Verizon Brief at 42-45, *citing, e.g., In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 02-876-TP-ARB, at 8 (Ohio PUC Sept. 5, 2002). All of Verizon's cases involve the same CLEC, during the same general time period, with the same business plan.

enormous number of calls the ILEC's end users make to the ISPs. Not content to collect compensation for calls within the ILEC's end users' calling area, the CLEC established so-called "VNXX" arrangements, where the ILEC ***would*** treat calls to the ISPs as long distance if it could, but where the calls slip by the normal billing system by virtue of the CLEC's assignment of a "local" number to the ISP's lines. So, the ILEC was being asked to ***pay*** reciprocal compensation on traffic where it would normally ***receive*** either a toll or access charges. The fact that a large number of state regulators rejected that CLEC's attempt to obtain additional compensation in this situation is simply irrelevant to the Commission's consideration of Bright House's proposal.[59]

Moreover, all of Verizon's cases were decided before the FCC made clarified, in 2008, that the geographic metes and bounds of ILEC local calling zones do not control the scope of reciprocal compensation under § 251(b)(5).[60] Although the FCC had suggested as much in an earlier ruling,[61] regulators and courts had held that the FCC's even-earlier discussion of this topic in the *Local Competition Order* still governed.[62] The result in those cases is not surprising, considering the competitive circumstances between the ILEC and CLEC in those cases and the different legal environment in which they were decided. But this has nothing to do with the head-to-head competition that underlies the dispute here between Bright House and Verizon.

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59 The CLEC in those cases may have argued that the ILEC's inability to charge a toll meant that the traffic was not "exchange access" and that no access charges should apply – an argument superficially similar to ours. But the actual market situation, with its different policy concerns, is totally different. We are trying to ensure that in competing head-to-head for end users, we are not penalized by paying access charges on calls where we offer our end users the benefit of larger local calling areas and, therefore, forgo the toll revenues that would otherwise make access charges appropriate.

60 *See 2008 Reciprocal Compensation Order* at ¶¶ 9, 14-15.

61 *See id.* at ¶¶ 7, 9, *discussing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001).

62 *See, e.g., Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005); *Qwest v. Washington State Utils. & Transp. Comm'n*, 484 F. Supp. 2d 1160 (D. Wash. 2007). The earlier FCC discussion had directed states to apply a geographic test to determine whether access charges apply. *Local Competition Order* at ¶ 1035.

## IV. ISSUE NO. 32: TRUNKING AT THE DS-3 LEVEL AND ABOVE.

Our specific proposed contract language under Issue No. 32 says that we may interconnect at DS-3, OC-3 or higher levels "as traffic levels dictate."[63] Verizon's has not objected to this provision, so the Commission should adopt it. The broader dispute here is which party must pay for demultiplexing traffic we send to Verizon.[64] On this point, Verizon misunderstands how TELRIC works. We know that Verizon's switches require DS-1 inputs, and that demultiplexing is required to run ***that existing network*** efficiently. But Verizon does not dispute that soft switches are the most efficient current technology, and that they use DS-3 or higher interfaces.[65] TELRIC rates assume that the ILEC uses the most efficient technology.[66] If Verizon used soft switches, there would be no demultiplexing, so the TELRIC cost of demultiplexing is zero, and, as a result, Verizon may not charge for demultiplexing.[67]

## V. ISSUE NO. 49: DISCOUNTED RESALE OF RETAIL PRIVATE LINES.

On the issue of discounted resale of private line data services, we note three points in rebuttal. First, even in the *dicta* Verizon cites, the FCC repeatedly refers to "exchange access service," not all "access services," to describe what is carved out from the discount obligation.[68] Second, § 252(c)(1) states that this Commission must rule based on "the requirements of section

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[63] *See* Exhibit 17 (Exh. TJG-3) (redlined contract) at page 69 (included in Transcript, Volume 4) (proposed language for Interconnection Attachment, § 2.4.6).

[64] Verizon Brief at 24-27. With respect to our point that multiplexing charges may not properly apply because they are part of "transport" covered by the $0.0007/minute rate, we rest on our opening brief.

[65] *See* Gates Depo. Tr. 49:18-19 (Exhibit 9, included in Transcript, Volume 4).

[66] *See* Tr. 101:1-107:11 (Gates Direct); Gates Depo. Tr. 97:13-98:8 (Exhibit 9, included in Transcript, Volume 4).

[67] An analogy: If you drive a Hummer you will do many things to run it "efficiently." But a Hummer is not the most efficient car on the market. Say that would be a Chevy Volt. TELRIC would set the rate for an ILEC's "car services" based on the costs of operating a new, efficient Chevy Volt, even if the ILEC actually owns a Hummer, and even if it is operating the Hummer in an "efficient" manner.

[68] *See Local Competition Order* at ¶¶873-74. *See also TRRO* at ¶ 51 n.146.

251, including the ***regulations*** prescribed by the [FCC] pursuant to section 251." Only Bright House's proposal would conform to this requirement. Third, the record shows that Verizon offers the data circuits at issue out of a ***retail*** tariff.[69] This separate retail private line tariff eviscerates Verizon's claim that its private line services even ***are*** "access" services that should be exempt from the discount obligation.

## VI. ISSUE NO. 7: WALKING AWAY FROM THE CONTRACT.

Verizon tries to minimize the problems and unfairness its proposed contract language (General Terms and Conditions, § 50) would create.[70] But as we explained in our opening brief, those problems are quite real.[71] The key problem is that § 50 can apply even if the ***law*** does not change, but, rather, only Verizon's ***opinion*** about the law changes.[72] That is unjust and unreasonable on its face. Moreover, because § 50 would operate "*notwithstanding*" any other provision in the agreement, Verizon seeks to avoid the normal dispute resolution provisions.

Verizon claims it needs § 50 for situations where the facts change in such a way that it has no obligation to perform.[73] But contract law automatically protects Verizon in such situations. Suppose Alice agrees to pay Bob $25 to cut her lawn on weekends by Sunday afternoon, but to pay an extra $10 if the job is done Saturday morning. Now suppose Bob cuts the lawn every Saturday morning for months – earning him $35 each time. If the next weekend Bob doesn't cut the lawn until Sunday, no special provision is needed to protect Alice – Bob (factually) didn't cut the lawn on time, so Alice (legally) doesn't owe him the extra $10. So it is

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[69] Tr. 500:22-501:8 (Vasington Cross-Examination). *See* Verizon Florida Inc., General Services Tariff, § A.25.3. This tariff incorporates the access tariff by reference, but remains a distinct retail offering. We respectfully request that the Commission take official notice of the tariff.

[70] Verizon Brief at 1-5.

[71] Bright House Brief at 43-46.

[72] *See* Munsell Depo. Tr. at 85:8-86:18 (included as Exhibit 14 in Transcript, Volume 4). The parties agree (in § 4.6 of the General Terms & Conditions) what to do where the law ***does*** change.

[73] Verizon Brief at 4-5.

with Verizon's "fact-based" worries. If the facts change so that a Verizon obligation does not exist – then Verizon has no obligation to perform. So, § 50 is entirely unnecessary.[74]

Verizon also tries to minimize the scope of § 50 by noting that it only applies to "Services" under the agreement.[75] The problem is that the definition of "Service" is extraordinarily broad – "Any Interconnection arrangement, Network Element, Telecommunications Service, collocation arrangement, ***or other service, facility or arrangement offered or provided by a Party under this Agreement.***"[76] It is hard to see what contractual activities would ***not*** be covered by the "other service … or arrangement" clause in this definition.

The best solution to these problems posed by § 50 is simply to strike it. At a minimum the Commission should (1) expressly rule that Bright House is entitled to full interconnection rights as a CLEC under 47 U.S.C. §§ 251(b) and 251(c); (2) require that any Verizon claim that it may stop providing a service is subject to the contract's normal dispute resolution mechanism,; and (3) require that Verizon many not withdraw from any of the services or arrangements provided for in the Interconnection Attachment, or cease providing Directory Listings in accordance with the contract, without an affirmative Commission order permitting it to do so.

## VII. TIME LIMITS ON BILLING FOR SERVICES AND DISPUTING BILLS.

It is unreasonable for a party to bill more than a year after a service is rendered, or to object to charges more than a year after they were paid. Verizon claims that the statute of limitations addresses these concerns,[77] but a statute of limitations only determines when a party

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[74] This applies to Verizon's worries about its wire centers becoming classified as "Tier 1," thereby eliminating its obligation to provide certain UNEs, as well its other worries. *See* Verizon Brief at 4-5 and note 5. The factual changes automatically end Verizon's obligation to provide the UNEs in question.

[75] Verizon Brief at 3.

[76] Exhibit TJG-3 (marked-up draft ICA) (Hearing Exhibit No. 17), Glossary Attachment § 2.109 (emphasis added).

[77] Verizon Brief at 6-7.

may ***file a lawsuit*** for breach of contract.[78] Billing/bill protest provisions determine what a contract ***requires*** in the first place. Confusing these two leads to absurd results. Under Verizon's theory, it could back-bill us in 2015 for services rendered in 2010, and then, after we pay in 2015, we could raise a protest in 2020. To avoid this absurdity, the contract must expressly say when back-bills and protests must be made. One year is a reasonable time for those functions.[79]

Verizon tries to wish away this problem by noting that "both parties have always submitted bills and disputed charges within a one-year period, anyway,"[80] but this shows that Verizon would not be harmed by our proposal. Moreover, Verizon is wrong to suggest that this practice gives us "certainty." Even if Verizon has rendered some back-bills within a year, the only thing that the passage of that year means is that Verizon hasn't sent out additional back-bills – yet. Until the 5-year limitations period passes, we have no certainty at all.

## VIII. COORDINATION OF LNP FOR LARGE CUSTOMERS.

Verizon knows it may not charge for direct LNP functions,[81] so it argues that coordination for multi-line ports is a separate service.[82] It claims that coordination is like asking for a port to be expedited – a function that both parties agree is chargeable.[83] But coordination simply ensures that for large orders, the basic LNP function is performed correctly. We do not want any port to go awry, but if the customer is a business, health care provider, school or

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78 *See, e.g., Florida Dept. of Health & Rehab. Svcs. v. S.A.P.*, 835 So. 2d 1091, 1096 (Fl. 2002).

79 Note that we are not asking the Commission to alter the statute of limitations. *See* Verizon Brief at 7-8. We are asking the Commission to establish reasonable contractual time frames for a party to bill for services or to retroactively protest a bill already paid. If one party sends the other a bill and the billed party ignores it, the billing party would have the full 5-year statutory time frame to file a lawsuit. The Commission has full authority to establish such just and reasonable contract terms under 47 U.S.C. § 252(c), and under Fl. Stat. §§ 364.012, 364.013, 364.16(3), and 364.162.

80 Verizon Brief at 7.

81 *See* Tr. 197:4-201:19 (Gates Direct).

82 Verizon Brief at 45-46.

83 Verizon Brief at 47-48. Coordination is totally different from expediting a port. Shortening the standard interval *is* something extra. Coordination just ensures the basic job is done right.

government institution with many lines, the consequences of a botched port can fall on the many members of the public who need to call that customer.[84] Coordination on large ports, therefore, is integral to ensuring that the basic LNP function is performed properly.[85]

## CONCLUSION.

For the reasons stated in our briefs, and based on the entire record, we respectfully ask the Commission to adopt our position on all of the disputed issues, as described in our briefs.

Respectfully submitted,

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84 Tr. 196-202 (Gates Direct); Tr. 333-34 (Gates Redirect).

85 Note that unlike "coordination" for, *e.g.*, cutting over UNE loops, the coordination needed for handling large-customer LNP situations would not involve any facilities transfers, central office, or outside plant work. It would simply involve having someone available from whichever carrier is losing the customer to coordinate with the winning carrier to ensure that the port goes smoothly.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via Electronic Mail on August 3, 2010 to:

| | |
|---|---|
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