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

DIRECT TESTIMONY OF WILLIAM MUNSELL

ON BEHALF OF

VERIZON FLORIDA LLC

PUBLIC VERSION

COM 5
APA
ECR
GCL 2
RAD 7
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ADM
OPC
CLK 1

MARCH 26, 2010

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is William Munsell. My business address is 600 Hidden Ridge, Irving, Texas 75038.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I have an undergraduate degree in Economics from the University of Connecticut and a master's degree from Michigan State University in Agricultural Economics. I joined Verizon (then GTE) Florida in 1982 and have worked for the Verizon family of companies continuously since then. During the course of my career with the Verizon companies, I have held positions in Demand Analysis and Forecasting, Pricing, Product Management, Open Market Program Office, and Contract Negotiations.

Q. WHAT ARE YOUR CURRENT POSITION AND DUTIES WITHIN VERIZON?

A. I am employed by Verizon Services Corporation and represent Verizon Communications Inc.'s incumbent operating telephone company subsidiaries in negotiations, arbitrations, and disputes that arise between those subsidiaries (such as Verizon Florida LLC) and competitive local exchange carriers ("CLECs") concerning interconnection, resale, and unbundled elements pursuant to section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act").

Q. PLEASE DESCRIBE THE SCOPE OF YOUR EXPERIENCE WITH RESPECT TO INTERCONNECTION AGREEMENTS AND ARBITRATIONS UNDER THE 1996 ACT.

A. Since 1996, I have been involved in the negotiation of hundreds of interconnection agreements with CLECs and have testified before state commissions on behalf of Verizon companies in approximately 40 proceedings on various issues concerning interconnection of networks. As a result, I am very familiar with and fully understand the Verizon companies' positions on matters that involve interconnection with the networks of CLECs. Since 1996, my area of expertise has been interconnection between Verizon incumbent local exchange carriers ("ILECs") and facilities-based CLECs, which Bright House Networks Information Services (Florida), LLC ("Bright House") claims to be.[1]

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is to present evidence supporting the positions Verizon Florida LLC ("Verizon") has taken on the following issues identified for resolution in this arbitration: 5, 7, 11, 13, 22(a)-(b), 36(a)-(b), 37, 39-41, and 43-44. My testimony (and the testimony of other Verizon witnesses in this case) assumes that Bright House is entitled to section 251(c) interconnection, but, as Verizon noted in its Response to Bright House's Petition for Arbitration of Interconnection Agreement ("Response"), Verizon does not waive any claims that it has no section 251(c) obligations to Bright House because Bright House is

[1] *See* Petition for Arbitration of Interconnection Agreement (Nov. 3, 2009) ("Petition") at 5-6.

not acting as a telecommunications carrier providing telephone exchange service or exchange access. *See* Response at 5 n. 2.

Q. IN GENERAL, WHAT IS THE PURPOSE OF AN INTERCONNECTION AGREEMENT UNDER § 251(c) OF THE 1996 ACT?

A. The purpose of an interconnection agreement is to define the parties' rights and obligations with respect to the interconnection contemplated by the 1996 Act. The 1996 Act envisions that interconnection will provide CLECs with certain access to the networks of more established ILECs so as to facilitate the CLECs' ability to handle phone calls their customers make to and receive from customers on the ILECs' (and other carriers') networks. This framework is set out in 47 U.S.C. § 251(c)(2)(A), which addresses ILECs' obligation to provide interconnection with other local exchange carriers "for the transmission and routing of telephone exchange service and exchange access." But, for the most part, the statute leaves the details of that interconnection to be worked out contractually by the interconnecting parties.

Because an interconnecting CLEC is gaining access to and utilizing a competitor's network, it is important for the interconnection agreement to define how the interconnection will take place. Defining those terms clearly is necessary not only to facilitate the CLEC's access and to establish how the CLEC will compensate the ILEC for that access, but also to protect the ILEC's network, avoid interference with the ILEC's operations, and ensure that the CLEC does not exploit its access to the

ILEC's network for some purpose other than simply facilitating phone calls to and from its customers. Accordingly, the 1996 Act provides, among other things, that interconnection must be at a "technically feasible point" on the ILEC's network, "on rates, terms and conditions that are just [and] reasonable," and for the purpose of facilitating "the transmission and routing of telephone exchange service and exchange access" – not for any other purpose. 47 U.S.C. § 251(c)(2)(A)-(D). Moreover, the concept of standardized treatment is important. The statute *requires* that *interconnection* be provided on a "nondiscriminatory" basis, such that all carriers have the same level of interconnection.

The terms of the interconnection agreement should reflect these statutory requirements and clearly define the parties' interconnection arrangements, so that both sides can understand the rules of the game and operate efficiently, within the requirements of federal law, going forward.

Q. HAS THE EXISTING INTERCONNECTION AGREEMENT BETWEEN VERIZON AND BRIGHT HOUSE ACHIEVED THOSE PURPOSES?

A. Yes. The current ICA is, in many respects, similar to the approximately 150 interconnection agreements Verizon has used successfully with other carriers in Florida, and it has proven to work particularly well in the case of Bright House. Bright House and Verizon have been interconnecting for several years in a manner that has provided Bright

House with the access it needs to be successful, consistent with the level of access Verizon has provided to other carriers and without raising significant operational concerns for Verizon's network. These existing arrangements have been so successful that Bright House's cable affiliate ("Bright House Cable") now serves "roughly one-third of the residential market" in the Tampa Bay area." (Petition at 4.) In fact, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Bright House reports XXXXXXX Home Phone customers as of year-end 2009, while Verizon had XXXXXXXXXXXX residential customers. Moreover, Bright House Cable has *added* XXXXXXXXXXXXXXXX subscribers every year since 2007, while Verizon has *lost* hundreds of thousands during the same period. Bright House likewise acknowledges that the existing ICA has allowed Bright House Cable "to receive recognition for customer service for its products and services, recently earning national attention by the highly respected J.D. Power and Associates organization for its Digital Phone service, for the fourth year in a row." (Petition at 5.) In short, under the current ICA, Bright House and its cable affiliate represent what Bright House touts as "one of the most significant, and sustained, success stories in the efforts of the State of Florida (as well as the federal government) to promote local telephone competition." (Petition at 6.) By any objective measure, Bright House's existing interconnection arrangements with Verizon have enabled Bright House to compete successfully.

Nevertheless, Bright House seeks to profoundly alter those arrangements. Bright House would change hundreds of provisions in the parties' existing ICA to, among other things, require Verizon to provide Bright House with uniquely favorable arrangements that Verizon is not required to offer, that it does not offer to other carriers and, in some cases, that Verizon literally cannot provide. All of these changes should be rejected.

ISSUE 5: IS VERIZON ENTITLED TO ACCESS BRIGHT HOUSE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY? (Additional Services ("AS") Attachment ("Att.") §§ 9.1, 9.2)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 5?

A. Pursuant to the undisputed language in § 9.1 of the Additional Services Attachment, Verizon would provide Bright House with "non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by Verizon." Verizon's proposed Section 9.2 contains the reciprocal requirement for Bright House to "afford Verizon non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by [Bright House]." The ICA expressly contemplates parity of access for each party, with the terms and conditions offered by Bright House to Verizon to "be no less favorable" than those offered by Verizon to Bright House. That way, neither party can be denied access to customers who want its service—as has sometimes happened to

Verizon, for example, in multi-tenant situations where the landlord or developer has signed up for service with a competitor. Bright House, however, proposes to delete § 9.2, so that Verizon would have no right of access to Bright House's poles, ducts, conduits and rights-of-way.

Q. IS VERIZON ENTITLED TO ACCESS BRIGHT HOUSE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY?

A. Yes. Section 364.16(5) of the Florida Statutes provides that "[w]hen requested, each certificated telecommunications company shall provide access to any poles, conduits, rights-of-way, and like facilities that it owns or controls to any local exchange telecommunications company or competitive local exchange telecommunications company pursuant to reasonable rates and conditions mutually agreed to which do not discriminate between similarly situated companies." Despite this clear directive, Bright House has refused even to discuss allowing Verizon access to poles, ducts, conduits and rights-of-way that Bright House owns or controls. The parties have agreed upon terms of Bright House's access to Verizon's facilities; it is reasonable to apply these same terms to Verizon's access to Bright House's facilities.

ISSUE 7: SHOULD VERIZON BE ALLOWED TO CEASE PERFORMING DUTIES PROVIDED FOR IN THIS AGREEMENT THAT ARE NOT REQUIRED BY APPLICABLE LAW? (General Terms & Conditions ("GTC") § 50.)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 7?

A. This dispute concerns Verizon's proposed language in § 50 of the ICA's General Terms and Conditions that would permit Verizon to cease providing a service or paying intercarrier compensation for traffic on 30 days prior written notice when Verizon no longer has the legal obligation to do these things. Bright House opposes this provision.

Q. WHAT IS THE PURPOSE OF VERIZON'S PROPOSED LANGUAGE?

A. Verizon's language would address situations where Verizon's duty to provide service is eliminated because of a change in factual circumstances or a change in law. In such a situation – where all that must be done is to stop providing something, or stop making some payment – it is not necessary to go through the process of negotiating terms and conditions to accommodate the change. All that must be done is to stop providing, or stop paying. Unlike most changes in law, which might require the negotiation of implementing terms and conditions, there is essentially nothing more that needs to be negotiated when one is simply withdrawing a service or payment. The same is true when the duty to provide a service is eliminated because of a change in factual circumstances. For example, Verizon has no obligation to provide DS1 transport between two wire centers classified as "Tier 1" under FCC indicia of competitive deployment of transport facilities.[2] If a particular wire center becomes classified as a Tier 1 wire center during the term of the ICA, Verizon will no longer have a duty to provide UNE

[2] See *Triennial Review Remand Order*, 20 FCC Rcd 2533, ¶¶ 111-15 (2005).

DS1 transport between that wire center and another Tier 1 wire center. Verizon's proposed language would make clear that, in these and other situations where a change in facts negates Verizon's obligation to provide a service of facility, the ICA is not intended to override constraints on Verizon's legal obligation to provide such services or facilities. (Of course, if the parties disagree about the existence of relevant facts, they may bring their dispute to the Commission for resolution.)

I understand that Bright House contends that, in the course of the parties' negotiations, Verizon may voluntarily agree to undertake some obligation that it is not in fact required to perform, and that this language might thereby deprive Bright House of the benefit of that bargain. If Bright House believes that it is entitled to any particular service or payment notwithstanding a change in law or facts that renders Verizon no longer under an obligation to provide that service or payment, Verizon would entertain a request to insulate such a service or payment from the generally applicable language.

<u>ISSUE 11</u>: SHOULD THE ICA STATE THAT "ORDERING" A SERVICE DOES NOT MEAN A CHARGE WILL APPLY? (GTC § 51; Glossary ("Glo.") § 2.92; Pricing Att. §§ 1.4, 1.5, 1.6, 1.7.)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 11?

A. Bright House proposes language for various provisions of the ICA (including General Terms & Conditions § 51, Glossary § 2.92 and Pricing Attachment §§ 1.4-1.7) to address what it suggests is an "ambiguity" regarding when payment obligations exist and when they do not. *See* DPL 29-31, 42, 126-28. Bright House correctly notes that, under the ICA, certain functions by a Party may be performed without charge. But the ICA already spells out what those services are and when payment is or is not required. Nonetheless, Bright House claims that the ICA should include paragraph after paragraph of new language broadly suggesting that the "ordering" of a whole host of services under the ICA would not result in a charge. *See*, *e.g.*, *id.* at 29-31 (proposing an entirely new four-paragraph General Terms & Conditions § 51). But these changes simply are not necessary and would introduce ambiguity into the contract.

Q. SHOULD THE ICA STATE THAT "ORDERING" A SERVICE DOES NOT MEAN A CHARGE WILL APPLY?

A. Verizon agrees that the ordering of services under the ICA does not necessarily mean that a charge will apply. That much is already clear in the existing ICA, which the parties have operated under for years, as well as in the new ICA language to which the parties have already agreed. But, to the extent it would be helpful to state as much explicitly, Verizon is willing to do so – just as succinctly as it was stated in the first sentence of this answer: "The ordering of a service under this Agreement does not necessarily mean that a charge will apply."

However, Bright House has taken a concern that could be addressed in that one short sentence and instead proposed multiple paragraphs of language that would tilt the scales much too far in the other direction (suggesting that the default result under the agreement is that there is "no charge" for services ordered and provided, unless stated explicitly enough for Bright House's liking). This would create an entirely new problem – eliminating charges for services that both Parties agree should be compensated.

Bright House suggests that its proposed changes are not designed to change any substantive payment obligations, claiming that "[t]his language is not in any way intended to deprive Verizon (or Bright House) of the right to receive payment when payment is appropriate and required by the contract." DPL at 30. But that is exactly what Bright House's changes could do. For example, CLECs sometimes may wish to expedite a particular order for service. When a CLEC requests expedition, the tariff (Intrastate Access Tariff §5.2.2(E)) provides a process by which Verizon will accommodate that request and assess a fee for doing so. Under Bright House's formulation that there be "no charge" for any service unless that charge explicitly included in the ICA, Verizon might be required (and Bright House likely would argue that Verizon would be required) to provide such services without charge. This would unfairly deprive Verizon of a legitimate recovery for expenses incurred to render the service, and would unjustly provide a windfall to Bright House. But perhaps equally important would be the

perverse incentives that such a regime would foster: if there is no charge for an expedited order, for example, Bright House would have no reason ever to accept a normal provisioning interval. If "expedites" are free, every order would become an "expedite."

At bottom, Bright House's proposed language is simply too broad to achieve its purported purpose. While Verizon would be amenable to addressing Bright House's claimed concern with an express recognition that "ordering" a service does not mean a charge necessarily will apply, the Commission should reject Bright House's overly broad language, which incorrectly suggests that the default under the ICA should be that a charge won't apply for services that Bright House orders.

ISSUE 13: WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES' RIGHT TO BILL FOR SERVICES AND DISPUTE CHARGED FOR BILLED SERVICES? (GTC § 9.5)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 13?

A. Bright House seeks to modify § 9.5 of the General Terms & Conditions portion of the ICA to limit the time in which the parties can bill each other for services provided under the ICA or dispute such charges. Bright House's language would require Verizon to contractually waive its right to (1) payments that it otherwise would be entitled to receive or (2) challenge illegitimate charges assessed by Bright House. Verizon

therefore objects to Bright House's proposal.

Q. WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES' RIGHT TO BILL FOR SERVICES AND DISPUTE CHARGES FOR BILLED SERVICES?

A. The existing ICA language acknowledges that it is "the intent of both Parties to submit timely statements of charges," but recognizes that it is not always possible to do so. ICA, General Terms & Conditions § 9.5. Indeed, proper billing is one of the more difficult challenges in telecommunications. Carriers (including CLECs) order a wide variety of services from Verizon. Those services are by their nature complex, and frequently involve a variety of elements and charges. For example, the billing for a single circuit might involve a fixed fee, a usage sensitive charge, and/or a mileage sensitive charge. It might also carry additional charges for multiplexing or other services, and various non-recurring charges may apply that are not service-specific, such as an expedite or order cancellation charge.

Verizon nevertheless strives for accurate and timely billing at all times. After all, it is in Verizon's interest to facilitate payment as quickly as possible. Most of Verizon's systems are now nearly fully automated from end to end, thus reducing the chances of error and increasing the speed with which billing can occur. For its part, Bright House has not raised any specific concerns about Verizon's billing practices under the existing ICA or otherwise identified any widespread problems or delays.

Of course, from time to time, isolated mistakes or delays may occur. For example, there are circumstances in which billing is purposely delayed for a service, such as when certain maintenance charges are incurred when no trouble is found and Verizon must perform an unnecessary dispatch. To ensure that there really is no trouble, Verizon typically waits for another month to pass to confirm that there is no subsequent trouble. This delay ensures that Verizon only bills this charge when it is warranted.

In addition, Verizon undertakes periodic reviews of its billings to make sure that all services were properly charged and to correct any errors – including any overbillings. When those reviews are completed, Verizon may backbill to correct any errors. Backbilling is a fact of life in the telecommunications industry. Verizon is routinely backbilled by other carriers, sometimes for an extended timeframe. CLECs also file claims for bills related to time periods long past.

Given this environment, Verizon's language rightly provides that failure to provide timely statements shall not constitute a breach, default or waiver of the right to payment unless and until "Applicable Law" provides otherwise – *i.e.*, until the applicable statute of limitations has run. Using the statute of limitations as the limit is the standard approach in Verizon's agreements with other carriers.

Q. HAS THIS COMMISSION ALREADY RECOGNIZED THE STATUTE OF LIMITATIONS AS THE APPROPRIATE BACK-BILLING LIMIT?

A. Yes. In Verizon's arbitration with Covad in 2003, the Commission correctly recognized that "back-billing occurs on occasion out of necessity; however, placing a time limit on back-billing can conflict with the [applicable] statute of limitations in Florida."[3] Accordingly, the Commission rejected the CLEC's attempts to impose a contractual backbilling limitation in its interconnection agreement with Verizon and ordered that the applicable statute of limitations would remain the standard under the parties' agreement. *See* Verizon/Covad Order at 14-16.

Using the statute of limitations period is the best way to fully protect the parties' right to payment and to dispute inappropriate charges. As the Commission recognized in the Verizon/Covad Order, Verizon's own self-interest will ensure that it bills and disputes charges as promptly as possible: "We agree with Verizon's claim that it is in Verizon's best interest to bill as promptly as possible in order to collect on amounts owed." *Id.* at 14. And any "surprise" or other purported harm to Bright House caused by a billing delay would be mitigated by the fact that Bright House should know, based on its own records, that it ordered a service for which it knows it has not yet been billed.

Verizon should not be expected to contractually waive its right to

[3] *See Petition for Arbitration of Open Issues*, Order No. PSC-03-1139-FOF-TP, Docket No. 020960-TP at 14 (Oct. 13, 2003) ("Verizon/Covad Order").

payment, nor is it in either party's interest to contractually waive any rights it otherwise may have to dispute improper billings. As the Commission held in the Verizon/Covad Order (at 16) with respect to this issue of using the statute of limitations versus contractual limitations, "[w]e believe that the current state of the law should be sufficient." Indeed, absent any voluntary contractual agreement, it is unclear that there is even any legal basis on which the Commission could impose a limitation that conflicts with the existing state law embodied in the statute of limitations. The Commission, likewise, is not "aware of any authority" allowing it to depart from Florida's statute of limitations. *Id.* Accordingly, Bright House's proposed changes to § 9.5 of the General Terms and Conditions should be rejected.

ISSUE 22(a): UNDER WHAT CIRCUMSTANCES, IF ANY, MAY BRIGHT HOUSE USE VERIZON'S OPERATIONS SUPPORT SYSTEMS ("OSS") FOR PURPOSES OTHER THAN THE PROVISION OF TELECOMMUNICATIONS SERVICE TO ITS CUSTOMERS? (AS Att. § 8.4.2.)

Q. HOW DOES BRIGHT HOUSE PROPOSE TO RESOLVE ISSUE 22(a)?

A. Bright House proposes to delete § 8.4.2 of the Additional Services Attachment to the ICA in its entirety. That section refers to Verizon's Operations Support Systems ("OSS"), which (among other things) allow interconnecting carriers to place electronic orders for various services with Verizon. In particular, Section 8.4.2 provides that "Verizon OSS

Facilities may be accessed and used by [Bright House] only to provide Telecommunications Services to [Bright House] Customers." This provision typically is not a source of controversy in Verizon's interconnection agreements, because it reflects the fact that interconnection is only available to "telecommunications carriers," as defined in the 1996 Act, "for the transmission and routing of telephone exchange service and exchange access" – and not for other purposes. 47 U.S.C. § 251(c)(2)(A). Yet, Bright House claims – without explanation – that this section "is not authorized by Applicable Law" and must be deleted. DPL at 58.

I am not a lawyer and Verizon can further address this issue in its briefs, but I understand that there is no basis for Bright House's position that Verizon's language—which has been approved by state commissions hundreds of times in ICAs across the country—is not "authorized" by applicable law.

If Bright House has legitimate concerns about its ability to continue providing service under this language, then Verizon can try to address them. In particular, Verizon has no objection to Bright House continuing to use Verizon's OSS to place orders for voice service for customers of Bright House Cable, just as it always has under the existing ICA. Verizon is not interested in interfering with service to those VoIP customers. If that indeed is Bright House's concern (and it is difficult to tell because Bright House hasn't explained its position), Verizon would

be willing to accommodate it by excepting this traffic from any prohibitions under § 8.4.2 of the Additional Services Attachment.

Q. WHAT IS THE PROBLEM WITH BRIGHT HOUSE'S PROPOSAL TO DELETE SECTION 8.4.2?

A. Entirely eliminating section 8.4.2 would suggest that Bright House could use OSS to support any services at all, whether or not they have anything to do with the purposes for which Verizon must make interconnection available under federal law. Without any contractual restrictions on Bright House's use of Verizon's OSS, Bright House (and any company that subsequently adopts Bright House's interconnection agreement) could arguably use it to support any kind of business, selling any kind of good or service. Bright House's proposed, unexplained change therefore must be rejected. As stated above, consistent with the parties' past practice, Verizon is willing to continue to allow Bright House to use OSS to place orders for customers of Bright House Cable, if that is the root of Bright House's concern about this standard provision.

ISSUE 22(b): WHAT CONSTRAINTS, IF ANY, SHOULD THE ICA PLACE ON VERIZON'S ABILITY TO MODIFY ITS OSS? (AS Att. §§ 8.2.1, 8.2.3, 8.8.2, 8.11.)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 22(b)?

A. Issue 22(b) reflects another dispute regarding Verizon's OSS. Verizon

has developed its OSS to, among other things, electronically receive and track orders for services provided under its interconnection agreements with numerous carriers. Verizon has invested considerable time and expense in developing this system and integrating it with Verizon's billing and provisioning systems, thus implementing electronic ordering capabilities for most services. In some instances, electronic ordering capability may not yet be available for a particular service or might not otherwise be appropriate due to operational or other concerns. But, in developing this system, Verizon has had every incentive to establish an efficient and workable system that can properly record and track orders from the largest number of carriers possible. That way, Verizon can better fulfill orders and, where appropriate, receive payment for ordered services.

To meet those objectives, Verizon has made various changes to its OSS over time and continues to modify and improve its OSS today. Verizon recognizes that any such modifications will necessarily affect all the carriers that use the OSS, and therefore takes all appropriate care in deciding which changes to make, and in the procedures by which it makes those changes. Whenever Verizon makes a change to its OSS, Verizon follows the procedures set forth in its Change Management Guidelines and required by applicable law – including providing notice of its changes to interconnecting carriers that use Verizon's OSS. *See* ICA, Additional Services Attachment § 8.2.3.

Bright House seeks to impose new requirements for Verizon's OSS and to afford Bright House considerable individual say over when and how Verizon can modify a system that is designed to also serve all interconnecting parties. Among other things, Bright House would change § 8.2.1 of the Additional Services Attachment to require Verizon to provide Bright House with OSS electronic ordering for *all* services – even those services for which Verizon does not currently have electronic ordering capability. *See* DPL at 57. Similarly, Bright House would modify § 8.8.2 to remove any obligation it has to avoid using OSS in such a manner that would exceed the system's capacity or capability – effectively substituting Bright House's judgment of what is "commercially reasonable" for Verizon's judgment of how best to operate its own system in the overall interest of all stakeholders, not just any particular user. *Id.* at 61. On top of that, Bright House would impose additional limitations on when Verizon could make changes to its OSS under § 8.2.3 – requiring Verizon to provide Bright House with additional notice of any changes beyond that required by applicable law and the Change Management Guidelines. *Id.* at 57. Verizon disputes all of these proposals.

Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S PROPOSALS?

A. The ICA should not constrain Verizon's ability to modify its own OSS beyond those limitations already required by the Change Management Guidelines and applicable law. Indeed, those Guidelines already reflect

applicable legal requirements and industry standards. After all, Verizon's change management process is not only used by the parties to this agreement, but by all interconnecting carriers that use Verizon's OSS.

Pursuant to the Guidelines, Verizon will provide Bright House (and all relevant carriers) with notice of any changes to its OSS. But there is no need to impose additional constraints on Verizon's ability to modify its own internal ordering systems solely for Bright House's convenience. Bright House has provided no support for its suggestion that the very same change management process used for all other carriers is somehow "commercially unreasonable" in this particular case or otherwise inadequate to protect Bright House's legitimate interests.

Bright House likewise has provided no support for its position that Verizon should be required to furnish Bright House with electronic ordering capability for all services. As noted, Verizon already has implemented electronic ordering capabilities for most services. But, to the extent that OSS electronic ordering may not be available for a particular service, Verizon cannot be required to develop it upon Bright House's demand, regardless of the cost to Verizon or whether it is efficient for a particular service. An ILEC cannot be required to upgrade or otherwise modify its own internal ordering systems to suit the desires of one particular interconnector for access to a superior network, rather than the ILEC's existing network. As Verizon will explain in its legal

briefs, Bright House takes Verizon's network and systems "as is," not as Bright House would like them to be. There is no basis for requiring Verizon to provide Bright House with the type of ordering system it wishes for all services at all times.

Accordingly, the arbitration panel should reject Bright House's proposed changes to Sections 8.2.1, 8.2.3, 8.82 and 8.11 of the Additional Services Attachment.

ISSUE 36: WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING, INCLUDING BRIGHT HOUSE NETWORK'S PROVISION OF TANDEM FUNCTIONALITY FOR EXCHANGE ACCESS SERVICES? (Interconnection ("Int.") Att. §§ 9-10.)

Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO ISSUE NO. 36?

A. Bright House seeks to modify various provisions in Sections 9 and 10 of the Interconnection Attachment to recognize expressly Bright House's ability to operate as a competitive tandem provider. Verizon has no objection to Bright House operating as a competitive tandem provider, but the language Bright House has proposed to achieve this purpose is highly problematic. Verizon can accommodate Bright House's desire to operate as a competitive tandem provider under the existing ICA language and through the provision of Tandem Switch Signaling ("TSS") under Verizon's FCC Tariff No. 14.

Q. WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING, INCLUDING BRIGHT HOUSE'S PROVISION OF TANDEM FUNCTIONALITY FOR EXCHANGE ACCESS SERVICES?

A. The existing provisions in §§ 9 and 10 of the Interconnection Attachment should apply to meet point billing and are sufficient (in combination with TSS services under Verizon's tariff) to accommodate Bright House's desire to operate as a competing tandem provider. As I have stated, Verizon has no objection to Bright House providing competitive tandem functionality. The problem lies in the specific language Bright House has proposed to facilitate this functionality. Bright House's proposed changes to §§ 9 and 10 of the Interconnection Attachment would require Verizon to divert or otherwise handle traffic in ways that Verizon is not capable of doing.

At the outset, I should make clear the significant difference between Access Toll Connecting Trunks, and Local Interconnection Trunks. The key difference stems from the fact that end users may choose a pre-subscribed interexchange carrier ("PIC") to carry their interexchange traffic, while the end users of a particular local carrier by definition use only that local carrier to carry their traffic. So when an end user dials a 1+ interexchange call, that end user must be associated with the appropriate interexchange carrier (by means of the carrier identification code ("CIC")), and the CIC must then be signaled along with the call as it is routed through the network. Thus, if an end user has subscribed to AT&T long distance, the network would signal the CIC "0288" when that

end user dials a 1+ interexchange call. That CIC would be signaled along with the call as it is routed from the end-office switch to the appropriate access tandem, and then the access tandem is able to route the call appropriately to any of the various interexchange carriers that have interconnected their facilities at the access tandem – to AT&T in this example, or to whichever other carrier the end user has presubscribed.

For local telephone calls, industry standards do not provide that a CIC be signaled. Local calls are routed to the terminating carrier based on the called number, while interexchange calls are routed from the originating carrier to the toll service provider based on the CIC. As a result, local interconnection trunks would lack the data necessary to permit the access tandem provider to route the call to the appropriate interexchange carrier.

My understanding of Bright House's proposal is that Bright House would set itself up as an alternative access tandem provider, and that the parties would attempt to route 1+ dialed calls, destined to IXCs, to each other over local interconnection trunks. But, as described, calls so routed would lose the CIC that is necessary to route the call to the interexchange carrier chosen by the calling party. Thus, it would be unworkable to route calls as Bright House has proposed.

Another issue with Bright House's proposal, as I understand it, is that it

appears to contemplate that Verizon would, in some instances, subtend the Bright House competitive tandem. For the routing of inbound interexchange traffic, it would appear that Bright House is proposing that traffic routed from the IXCs that use Bright House's competitive tandem service should route through Bright House's tandem and then to the appropriate Verizon end office, such that the Verizon end offices would, in at least some circumstances, subtend the Bright House switch. I believe that this could not work from a network routing perspective, as a switch can only subtend a single tandem for any given NPA/NXX.

Because Verizon cannot operate in the way Bright House proposes, Bright House's proposed changes should be rejected. Verizon can and will accommodate Bright House's desire to operate as a competitive tandem provider through the existing ICA provisions and through the TSS provisions in Verizon's tariff, which already spell out the manner in which Bright House can obtain what it needs to provide tandem functionality for exchange access services.

ISSUE 36(a): SHOULD BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR THE TRAFFIC OF ITS AFFILIATES OR THIRD PARTIES WHEN IT DELIVERS THAT TRAFFIC FOR TERMINATION BY VERIZON? (Int. Att. § 8.3)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE NO. 36(a)?

A. Issue 36(a) stems from what appears to be a misunderstanding on Bright House's part.

Bright House proposes to delete § 8.3 from the Interconnection Attachment. Section 8.3 addresses the situation in which a third party carrier originates local traffic that Bright House then transits for that carrier to Verizon for termination. In that scenario, there is no dispute that Verizon is entitled to payment for terminating the traffic. The only dispute is whether Bright House is responsible for making that payment when it delivers the traffic to Verizon.

Section 8.3 of the Interconnection Attachment says that Bright House is financially responsible for any traffic originating with a third party carrier that Bright House delivers to Verizon in the same amount that the third party would have paid had it delivered the traffic directly. Bright House seeks to delete this provision, suggesting that it "is unnecessary" and that "[m]eet point billing arrangements [would] cover any legitimate Verizon concern on this point." DPL at 92. However, the meet point billing arrangements are for a different kind of traffic (jointly provided Switched Exchange Access traffic) and do not cover this point. Section 8.3 should, therefore, remain in the ICA.

Q. WHY IS IT NECESSARY TO RETAIN SECTION 8.3?

A. Section 8.3 of the Interconnection Attachment provides that, when Bright House transits local traffic for a third party to Verizon, Bright House is

financially responsible to Verizon for terminating that traffic in the same amount that the third party would have had to pay had it delivered the traffic itself. This provision acts as an important check on potential arbitrage, and it is fair to expect that a carrier that chooses to bring traffic to Verizon's network should pay Verizon for the services that Verizon renders.

If and when a carrier transits (and delivers to Verizon for termination) a third party's traffic, it does so voluntarily, for commercial reasons. Generally speaking, of course, a carrier is entitled under Section 251 to direct interconnection with Verizon. To the extent that a carrier has end users in a particular LATA within Verizon's ILEC footprint, one would generally expect that carrier to interconnect directly with Verizon for the exchange of traffic between those parties' end users. This is because, in almost all cases, direct interconnection is a more efficient use of network resources. By transiting through another carrier en route to Verizon, a third party would necessarily use additional facilities: the third party would need facilities to connect to the transiting carrier, the transiting carrier would need to switch the traffic and then transport it to Verizon. That adds at least two functions (connection to the transiting carrier and switching), that would not need to be performed under a direct interconnection. Therefore, such an arrangement generally would be less efficient than direct interconnection.

Perhaps the greatest motivation for a carrier to use such a relatively

inefficient method of interconnection would be to take advantage of a disparity in intercarrier compensation rates. Verizon offers two intercarrier compensation "rate plans" for local and ISP-bound traffic: a carrier may choose reciprocal compensation (with a tandem rate of $0.0040108) or the "mirroring rule" rate of $0.0007. It would be relatively easy for a carrier to send all of its outbound traffic through a carrier whose ICA enables it to pay only $0.0007 for termination, while receiving inbound traffic directly at the standard reciprocal compensation rate of $.0040108. Thus, by strategically using transit, a carrier could, in that scenario, collect five times more intercarrier compensation than is paid on its outbound traffic. Verizon's language addresses this situation. By requiring Bright House to pay the same amount that the third party would have had to pay had it delivered the traffic directly, Section 8.3 eliminates this arbitrage opportunity.

Bright House does not address any of these issues, instead suggesting that this is all covered by meet point billing arrangements and that § 8.3 therefore is unnecessary. But meet point billing arrangements do not cover local transit traffic. Meet point billing arrangements instead address the termination of Switched Exchange Access traffic. Because they address different types of traffic, *both* Section 8.3 and meet point billing arrangements are necessary. Accordingly, Bright House's proposal to delete § 8.3 of the Interconnection Attachment as unnecessary should be rejected.

ISSUE 36(b): TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE BRIGHT HOUSE TO PAY VERIZON FOR VERIZON-PROVIDED FACILITIES USED TO CARRY TRAFFIC BETWEEN INTEREXCHANGE CARRIERS AND BRIGHT HOUSE'S NETWORK? (Int. Att. § 9.2.5)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE NO. 36(b)?

A. Issue 36(b) stems from a proposal by Bright House that would absolve Bright House from paying for any facilities that are used to connect its network with interexchange carriers. Verizon's position, of course, is that it must be paid for the facilities that Bright House uses to connect with interexchange carriers.

Q. WHAT FACILITIES AND SERVICES ARE AT ISSUE HERE?

A. Most CLECs and wireless carriers connect to interexchange carriers indirectly, through the ILEC's access tandem. When a CLEC's end user dials a 1+ interexchange call, that call is routed from the CLEC's network to the ILEC's access tandem, where the ILEC switches the call and hands it off to the appropriate IXC. A similar call flow happens in reverse. When an IXC needs to deliver a call to a CLEC's end user, it hands it off to the ILEC tandem, where the ILEC switches the call and hands it off to the CLEC. The facilities used by the CLEC to connect its network to the ILEC switch are called "access toll connecting trunks." These access toll connecting trunks may be DS1 or DS3 facilities; they

may or may not include multiplexing or other services. Again, these are the facilities that the CLEC uses to transport interexchange traffic from its network to the ILEC switch, and from the ILEC switch to the CLEC's network.

Q. WHO BEARS THE COST FOR THESE FACILITIES USED TO CONNECT TO AND FROM INTEREXCHANGE CARRIERS?

A. The cost of the facilities used to carry traffic to and from IXCs is borne indirectly by the IXCs themselves, as the local exchange carriers levy access charges to the IXC. On a call routed from Bright House through the Verizon access tandem to AT&T Long Distance, for example, Verizon charges AT&T only for tandem switching, which is the only function that Verizon performs. Bright House charges AT&T for end office switching, and potentially for other functions, as well as the transport from its network to the Verizon tandem. As discussed above, that transport from Bright House's network to the Verizon tandem consists of an access toll connecting trunk. Bright House pays Verizon for that facility, but then it recovers that cost from IXCs through its originating and terminating access charges.

Q. SHOULD BRIGHT HOUSE RECEIVE ACCESS TOLL CONNECTING TRUNKS FOR FREE?

A. No. Verizon is absolutely entitled to charge for these facilities. I don't know why Bright House would expect Verizon to provide those facilities for free, but there is no legitimate basis for such an expectation.

Accordingly, the Commission should reject Bright House's proposed Interconnection Attachment section 9.2.5.

ISSUE 37: HOW SHOULD THE TYPES OF TRAFFIC (E.G., LOCAL, ISP, ACCESS) THAT ARE EXCHANGED BE DEFINED AND WHAT RATES SHOULD APPLY? (Int. Att. §§ 6.2, 7.1, 7.2, 7.2.1-7.2.8, 7.3, 8.2, 8.5; Glo. §§ 2.50, 2.60, 2.63, 2.79, 2.106, 2.123)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE NO. 37?

A. Much of the disputed language in the sections covered by this issue appears to be essentially semantic, but there are also some substantive issues encompassed within this issue. For purposes of my testimony, I identify three principal sub-issues, in addition to those semantic disputes. The three sub-issues involve (1) what should define the local calling area for purposes of intercarrier compensation; (2) which party bears financial responsibility for which facilities used in connection with local call termination; and (3) how the use of local interconnection facilities should be treated when they are used to carry interexchange traffic.

Q. WHY HAVE THE PARTIES NOT AGREED ON THE DEFINITION OF VARIOUS TYPES OF TRAFFIC, AND WHEN THE RATES SHOULD APPLY?

A. As discussed above, I believe that much of the disagreement on this

account is essentially semantic. Verizon's model interconnection agreement defines and uses terms in a particular way, but when Bright House started its mark-up, it proposed to redefine some of those terms in ways that rendered them inappropriate to use in the manner that they are subsequently used in the agreement, or vice versa. Given some time to go through and reconcile various terms to their usage in various contexts, I believe that these disputes will be resolved. I believe that the parties generally agree as to what traffic should be considered local (with the exception noted below as to local calling areas), Internet service provider ("ISP")-bound, and interexchange (again with that exception), and how it should be treated by the parties.

Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING LOCAL CALLING AREAS?

A. For intercarrier compensation purposes, interexchange traffic is compensated at access rates, and local traffic is compensated at reciprocal compensation (or the FCC's transitional rate for ISP-bound traffic). The question here is how we should define what is "interexchange" and what is "local." Bright House maintains that the categorization of traffic for intercarrier compensation purposes should depend on the retail local calling area provided by the calling party's carrier. But such a shifting standard is prone to manipulation and is unworkable. The Commission-approved basic local exchange areas, as detailed (and mapped out) in Verizon's local exchange tariffs, should determine what is considered "local," subject to reciprocal compensation

(or the ISP rate), or "interexchange," subject to access.

Q. WHY SHOULD THE JURISDICTION OF A CALL BE DETERMINED ACCORDING TO THE COMMISSION-APPROVED VERIZON EXCHANGES?

A. To properly categorize traffic as "local" or "interexchange," it is necessary to have a knowable, uniform standard. Various carriers' retail products may have vastly different local calling areas for their retail end users. A carrier might offer free "local" calling within a particular city, region or state, or even nationwide – Verizon itself offers a variety of calling plans. So the concept of what is "local" and what is "long distance" can be virtually impossible to trace if one looks at a carrier's end user retail offerings. And to implement such a shifting standard on the kind of scale that is necessary when dealing with millions of minutes exchanged among dozens of carriers is literally unworkable. There would be simply no way for the industry to discern what call would be "local" and what would be "interexchange," if it were necessary to look to the dozens of competing local calling areas that would exist. In order to work, there must be a standard that applies to all carriers – the standards and norms of the industry cannot deal with a system that depends on the identity of the calling party in order to determine the jurisdictionalization of a call. Verizon's local calling areas offer just such a uniform and knowable standard. When I look at Verizon's Local Exchange Service Tariff A200, I see detailed "metes and bounds" descriptions of each of Verizon's local calling areas, along with detailed,

professionally drawn maps. These local calling areas are well known, they have been approved by the Commission, and they are the proper means by which to judisdictionalize calls for intercarrier compensation purposes.

Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING THE FINANCIAL RESPONSIBILITY FOR FACILITIES USED FOR CALL TERMINATION?

A. In essence, Bright House wants to avoid paying some of the costs associated with terminating Bright House traffic to Verizon's network.

Q. AREN'T CARRIERS REQUIRED TO BEAR THE COST OF TERMINATING THEIR OWN LOCAL TRAFFIC?

A. Yes. When carriers exchange traffic, the general rule is "calling party pays": the originating carrier is responsible not only for the cost of originating the call, it is also responsible for the cost of terminating the call. There are various functions that must be performed in order to carry a call all the way to termination, and the originating carrier is financially responsible for those functions.

Q. WHAT COSTS HAS BRIGHT HOUSE PROPOSED TO AVOID?

A. To understand this, it's important first to review the various functions that are performed in connection with a call that is originated by one carrier and terminated to another carrier. When a Bright House end user calls a local Verizon end user, a typical call flow would be as follows: from

Bright House's switch, the call is transported to the relevant Verizon tandem switch, it is switched at that tandem, then transported to the relevant Verizon end office, and then it is switched and delivered to the Verizon end user. So there is (1) transport from the Bright House switch to the Verizon tandem, (2) tandem switching, (3) transport to the Verizon end office, and (4) end office switching.

Of those four costs, some can be recovered on a per-minute-of-use basis and some can be recovered on a facilities basis. When an interconnecting carrier chooses to hand off traffic at the end office, it pays only the end office reciprocal compensation rate, which includes only end office switching. But in order to hand off traffic at the end office, the interconnecting carrier must, of course, bear whatever facilities cost is associated with delivering traffic to the end office. If a carrier delivers large volumes of traffic to a particular end office, it often makes sense to pay the fixed cost of facilities directly to that end office, in order to receive the lower per-minute end office rate. Conversely, where traffic volumes do not justify direct end-office trunking, a carrier may reasonably choose to interconnect at the tandem. When an interconnecting carrier chooses to hand off traffic at the tandem, three of those four costs are recovered on a minute-of-use basis in the tandem reciprocal compensation rate: tandem switching, transport between the tandem and the end office, and end office switching. But in any case, whether the hand-off is made at the tandem or at the end office, the interconnecting carrier bears the facilities cost of bringing its traffic to

that point.

Here, Bright House appears to propose that it should avoid the cost of facilities to the tandem or the end office, as the case may be. Instead, Bright House has proposed that Verizon should bear the cost of transporting traffic from Bright House's switch to the relevant Verizon switch.

Q. SHOULD BRIGHT HOUSE BE PERMITTED TO AVOID THOSE COSTS?

A. No. The rule is that each carrier bears the cost of terminating its own traffic. That includes all of the costs. Bright House's proposal to avoid the facilities cost of bringing its traffic to the relevant tandem or end office should be rejected.

Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING THE USE OF LOCAL INTERCONNECTION FACILITES FOR INTEREXCHANGE TRAFFIC?

A. In the course of normal traffic exchange between carriers, some amount of interexchange traffic will end up being exchanged over local interconnection trunks. For interexchange traffic, of course, the terminating carrier is entitled to collect terminating access charges for that traffic. Bright House appears to propose that when interexchange traffic is delivered over local interconnection trunks, that traffic should be exempt from normally applicable access charges.

Q. SHOULD BRIGHT HOUSE BE EXEMPT FROM ACCESS CHARGES FOR TRAFFIC DELIVERED OVER LOCAL TRUNKS?

A. No. When interexchange traffic is delivered over local interconnection trunks, the standard practice is to determine the pro-rata part of that facility that is used for the carriage of access traffic, and then to re-rate the facility accordingly. If ten percent of a facility is used to carry access traffic, for example, ten percent of it would become chargeable at the access rate. Bright House claims that it should be exempt from that normal practice, but there is no reason for such unique treatment. It would be unfair to do so; it would deprive Verizon of revenue to which it would otherwise be entitled (if the traffic had been routed normally, instead of over local trunks) and it could lead to distortions and arbitrage, as Bright House (or a similarly situated carrier) might strategically route greater volumes of traffic over local trunks to take advantage of what would effectively be a discount off normal access rates.

ISSUE 39: DOES BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR TRAFFIC THAT IT TERMINATES TO THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO TRANSIT THE TRAFFIC? (Int. Att. § 12.5)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE?

A. Issue 39 addresses the question of whether Bright House can change Section 12.5 of the Interconnection Attachment to shift the costs

associated with certain Bright House-originated traffic to Verizon, rather than paying the associated third-party charges itself.

This situation arises when Bright House originates traffic, but either cannot or chooses not to directly interconnect with the carrier to which that traffic is destined, so it routes that traffic through Verizon's tandem and Verizon carries the traffic to the terminating carrier for Bright House. In this scenario, Verizon provides what is known as "Tandem Transit Traffic Service" and both parties agree that Verizon is entitled to bill Bright House for that service at the rates set forth in the Pricing Attachment to the ICA. *See* Interconnection Attachment § 12.5; DPL at 100.

The carrier receiving the traffic will assess a fee for terminating that traffic (generally either reciprocal compensation or "Switched Exchange Access Service," depending on whether the traffic is local or Exchange Access). Both parties agree that Verizon is not responsible for the third-party fees associated with terminating that traffic. *See* DPL at 100 (Bright House stating that "[w]e agree that Verizon is not liable to 3rd parties for Bright House originated traffic"). Accordingly, when Verizon delivers the traffic to the terminating carrier, it advises the terminating carrier that any charges for that traffic should be assessed on Bright House, as the originating carrier. However, in some instances, the terminating carrier will bill Verizon (or both Verizon and Bright House). In that case, Section 12.5 of the Interconnection Attachment provides

that Verizon can assess Bright House for any charges or costs that the terminating carrier imposes or levies on Verizon and that Bright House will take steps to ensure that the carrier properly routes the bills to Bright House on a going-forward basis. Bright House has deleted these provisions from the ICA, signaling that it does not intend to reimburse Verizon for these charges, even though Bright House agrees that Verizon is not liable for them.

Q. DOES BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR TRAFFIC THAT IT TERMINATES TO THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO TRANSIT THE TRAFFIC?

A. Yes. If Bright House makes the business decision to route traffic to another carrier indirectly through Verizon's tandem, rather than through direct interconnection, it cannot then force Verizon to accept financial responsibility for any resulting billings from that terminating carrier. If the third-party carrier bills Verizon instead of Bright House, Bright House remains responsible for this traffic.

As noted, Bright House "agree[s] that Verizon is not liable to 3rd parties for Bright House originated traffic." DPL at 100. Yet, it has deleted the language from the ICA that would require Bright House to make Verizon whole for any charges it is levied by third parties for such Bright House-originated traffic. Bright House apparently is concerned that the terminating carrier will assess unreasonable fees that it does not wish to pay. *Id.* ("We cannot agree to pay whatever some 3rd party might

impose on Verizon, since we do not know what those charges are or might be.") However, leaving Verizon on the hook for charges Bright House agrees Verizon should not have to pay is not an appropriate way to address that concern. As between Verizon (which Bright House agrees is not liable for any of these fees) and Bright House (which admittedly is responsible for at least the reasonable and appropriate portion of these fees), Verizon is not the party that should be left holding the bag. Bright House should retain its financial obligations and reimburse Verizon for any charges levied by the third party terminating carrier. If then Bright House feels those charges were unreasonable or otherwise inappropriate, it should look to recover those amounts from the third party. Bright House can and should dispute any improper charges, but Verizon has no liability for any of those charges and the ICA should reflect as much.

Q. HAS THE COMMISSION REACHED THIS SAME CONCLUSION?

A. Yes. The Commission previously has held that the originating carrier (which, in this case, would be Bright House) "shall compensate [the ILEC] for providing the transit service," "is responsible for delivering its traffic ... in such a manner that it can be identified, routed, and billed," and "is also responsible for compensating the terminating carrier for terminating the traffic to the end user." *In re: Joint petition by TDS Telecom*, Docket No. 050119-TP, Docket No. 05125-TP, Order No. PSC-06-0776-FOF-TP (Sept. 18, 2006). Bright House's proposed changes to § 12.5 of the Interconnection Attachment should be rejected

as inconsistent with these conclusions, as well as Bright House's own recognition that it is responsible for traffic it sends to third parties across Verizon's network.

ISSUE 40: TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE VERIZON TO FACILITATE NEGOTIATIONS FOR DIRECT INTERCONNECTION BETWEEN BRIGHT HOUSE AND VERIZON'S AFFILIATES? (Int. Att. § 16)

Q. SHOULD THE ICA REQUIRE VERIZON TO FACILITATE NEGOTIATIONS FOR DIRECT INTERCONNECTION BETWEEN BRIGHT HOUSE AND VERIZON'S AFFILIATES?

A. No. The ICA should not require that Verizon facilitate negotiations for direct interconnection between Bright House and Verizon's affiliates. This ICA and this arbitration are solely for the purpose of determining the terms and conditions on which Bright House will interconnect with Verizon. They are not for the purpose of facilitating Bright House's interconnection with other, separate parties.

Verizon understands that Bright House may wish to interconnect directly with Verizon's affiliates, rather than having to do so indirectly by requesting that Verizon (or another carrier) transit traffic to Verizon's affiliates. Verizon therefore is willing to provide Bright House with contact information for the appropriate interconnection personnel at its affiliate companies so that Bright House may pursue negotiations with

them. However, Bright House's proposal that Verizon somehow should be required to "facilitate" those negotiations – and, if unsuccessful, transit Bright House's traffic for free – is patently unreasonable and unsupported by any law. *See* DPL at 107.

Verizon's affiliates are separate companies that enter into their own interconnection arrangements. They are not parties to this agreement. They are not parties to this arbitration. The mere fact that Verizon has entered into an agreement to provide Bright House with interconnection to its network does not mean that it is somehow obligated to ensure that Bright House also is able to obtain interconnection to other carriers' networks on terms Bright House deems suitable. Indeed, Verizon could not fulfill such an obligation, as it does not have the authority to impose any interconnection requirements on these separate affiliates.

There simply is no basis or reason to impose any requirements on Verizon to facilitate Bright House's negotiations with these separate companies. Bright House's proposed changes to § 16 of the Interconnection Agreement therefore should be rejected.

ISSUE 41: SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER BETWEEN THE PARTIES AND LNP PROVISIONING? IF SO, WHAT SHOULD THOSE PROCEDURES BE? (Int. Att. §§ 15.2, 15.2.4, 15.2.5; Proposed Transfer Procedures Att. (All).)

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 41?

A. Bright House seeks to make additional unwarranted changes to the ICA language regarding Local Number Portability ("LNP") provisioning.[4] Among other things, Bright House seeks to modify sections 15.2, 15.2.4 and 15.2.5 of the Interconnection Attachment to require Verizon to set up certain processes and perform certain services uniquely for Bright House that Verizon does not and cannot currently provide for other interconnecting carriers (at no charge to Bright House). None of these LNP-related changes is necessary or appropriate.

Bright House separately also proposes to add an all new "Transfer Procedures Attachment" to the ICA that apparently is intended to collect in one place all of the rights and procedures regarding customer transfers that are spelled out in the other parts of the ICA and elsewhere. However, this new "Transfer Procedures Attachment" alternates between, in some cases, being redundant and unnecessary and, in other cases, simply misstating the applicable rights and obligations.

Q. SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER BETWEEN THE PARTIES AND LNP PROVISIONING? IF SO, WHAT SHOULD

[4] LNP provisioning refers to the process by which a customer's phone number is transferred or "ported" from his or her old service provider to a new service provider, such that the customer can still make and receive calls using that number with the new service provider.

THOSE PROCEDURES BE?

A. Verizon has proposed its standard provisions spelling out the procedures governing the wholesale relationship between the parties as it relates to the transfer of a customer, including LNP provisioning. Bright House's additional proposed language is unnecessary and inappropriate.

With respect to the changes Bright House seeks to make to ICA provisions *regarding* LNP *provisioning*, Bright House first proposes modifying § 15.2 of the Interconnection Attachment, which simply provides that the parties "will follow the LNP provisioning process recommended by the North American Numbering Council (NANC) and the Industry Numbering Council (INC), and adopted by the FCC." However, Bright House is not content to have Verizon follow these industry guidelines and instead seeks to impose additional requirements on Verizon beyond those established by these standard-setting organizations and adopted by the FCC.

For example, Bright House proposes new language that would limit the instances *in which a particular LNP port could be considered* "complex" (as opposed to a "simple" port) – suggesting that "presence of a Verizon DSL or similar service on a line [should] not convert an otherwise simple port into a complex port." DPL at 103. Bright House fails to define what other "similar service[s]" it would sweep in with this language. But, more importantly, it fails to explain why Verizon should be forced to agree to a

contractual limitation on what constitutes a simple versus a complex port that is any different than what is spelled out in FCC rules (or NANC and INC guidelines). Verizon will comply with whatever FCC rules are in place; but it should not have to agree to any unique contractual arrangements with Bright House that differ from the standard definitions used by the rest of the industry.

Q. DOES BRIGHT HOUSE SEEK TO DEPART FROM INDUSTRY NORMS IN OTHER RESPECTS?

A. Yes. Bright House seeks to depart from industry norms in its request that § 15.2 be modified to eliminate any charges for services ancillary to LNP provisioning, such as coordinated ports. *See* DPL at 103 (Bright House proposing that "[t]here shall be no charges ... for any LNP-related services or functions ... including without limitation coordinated ports or ports involving multiple lines or numbers of a single Customer/End User."). Bright House proposes a similar change for § 15.2.5, insisting that – where a customer of Party A ports 12 or more numbers to Party B – Party A should be required to coordinate that cutover at no charge to Party B (or the customer). *Id.* at 105.[5] Bright House concedes that this potential situation is "relatively rare." *Id.* But it claims this language is necessary because, subject to certain federal rules, "LNP costs are not to be assessed on competitors or end users" and, therefore, "no charges should apply for coordinated LNP cutovers."

[5] Bright House's proposal is for an all new Section 15.2.5. That section previously contained information regarding the exchange of the Jurisdiction Information Parameter ("JIP"), which the parties have agreed to move to Section 5.4 of the Interconnection Attachment.

Id.

Bright House very well might be entitled to free ports under the ICA. Indeed, Verizon generally does not assess any charges for LNP provisioning – regardless of how many numbers are being ported for a single customer or end user.[6] However, Bright House is seeking to avoid charges not just on LNP ports, but on whatever additional services it seeks to include under the concept of "coordination."

As an initial matter, it is unclear to what extent (if any) Bright House would be seeking any such additional ancillary services, such as coordination. But when Verizon receives a request for separate ancillary services such as coordination or expedites, it does – consistent with industry practice – charge for those services. The reason for this is straightforward. Whereas LNP provisioning is largely an automated process that requires little time or effort to conduct, ancillary services such as coordination are a different animal, requiring manual human operations. Indeed, such ancillary services can occupy and necessitate input from multiple different departments and people, which requires an allocation of time, attention and manpower that standard LNP provisioning does not. In that sense, coordination and other ancillary services do not represent LNP costs; they reflect the cost of special handling. And those costs can be significant. So, when a company such as Bright House interrupts the efficient, automated LNP process

[6] Bright House's proposed language refers to porting of multiple lines. *See* DPL at 103. However, for LNP provisioning, service providers do not port lines – only telephone numbers.

that Verizon has developed over many years (with the input of CLECs) and asks Verizon to expend time and resources on special handling such as coordination, Bright House should be required to pay for that special handling. Even if Bright House is entitled to free LNP ports, it is not entitled to unlimited "coordination" or other ancillary services free of charge. Its corresponding proposed changes to §§ 15.2 and 15.2.5 should be rejected.

Bright House seeks one more addition to § 15.2 of the Interconnection Attachment that it claims is necessary to port reserved numbers.[7] In particular, Bright House insists that, "[u]pon request, a Party shall provide the other Party with a description, in commercially reasonable detail, of that Party's procedures and policies for reserving numbers for customers so that such reserved numbers may be ported as appropriate." DPL at 103. However, this addition to the ICA is wholly unnecessary. Pursuant to § 15.2.3 of the Interconnection Attachment, the parties already have agreed to port reserved telephone numbers. So there is no need to exchange or examine any underlying policies or procedures regarding reservation of numbers to assure that "such reserved numbers may be ported." Because the parties already have agreed to port such reserved numbers, the additional information sought

[7] Bright House also proposes to add a sentence to § 15.2 to make clear that "LNP shall be available with respect to all of a Party's Customers/End Users," whether they be "a government, business, or residence customer." DPL at 103. Verizon agrees that LNP should be (and currently is) available to all customers, regardless of their status as a business, residential or government customer. However, given the differences between those different classes of customers, certain different steps may need to be taken with respect to each different class of customer in order to effectuate LNP porting for that customer. For example, LNP provisioning for government customers requires the local service provider to update its profile.

by this language is irrelevant. This proposed addition to § 15.2 therefore should be rejected.

Q. DOES BRIGHT HOUSE PROPOSE ANY OTHER UNREASONABLE CHANGES WITH RESPECT TO ISSUE 41?

A. Yes. Bright House also seeks inappropriate changes to Section 15.2.4 of the Interconnection Attachment, which addresses the process for porting a customer's telephone number between the parties. Among other things, § 15.2.4 provides that, when a customer of Party A ports a telephone number to Party B, Party A must utilize the ten-digit trigger feature when available. The ten-digit trigger is a sort of safeguard mechanism to ensure that calls are properly routed to the customer switching to Party B around the time that the switch is scheduled to occur. During that transition period, the trigger forces Party A to check whether the number has been ported yet, so that any calls can be properly processed and routed. Because Party A does not know precisely when Party B will activate porting, the trigger is applied to the customer's number before the due date of the porting activity and, in Verizon's case (consistent with industry standards), stays in place until at least one day after the port is scheduled to have been completed. This ensures continuity of service in the period surrounding the due date. Once the port has occurred, the trigger is no longer necessary, as traffic is then simply routed to Party B.

However, Bright House seeks to impose an additional set of

requirements *after* the due date of the porting activity – proposing that the ten-digit trigger must remain in place for at least 10 days following the due date and that no associated translations tear-downs (functions associated removal of the ten-digit trigger) may take place in Party A's network until after the port is completed. *See* DPL at 104. Bright House does not explain its rationale for these post-due date changes. Instead, Bright House cryptically asserts that "field experience" would suggest that such requirements are necessary to "assure an efficient porting process." But it is unclear what, if anything, is inefficient about the current porting process that the parties have been using (and that Verizon has been using in its interconnection arrangements with other carriers pursuant to industry guidelines) for years. But, regardless, these proposed changes are both unnecessary and inappropriate.

Indeed, as noted above, Verizon *already* retains the trigger until at least 11:59 p.m. the day *after* the due date. Both of these practices are consistent with standard industry practice – including the Local Number Portability Administration Working Group ("LNPA-WG") Guidelines – and allow sufficient time after the due date to accommodate any late ports or otherwise address any concerns that arise. By contrast, Bright House's proposed changes are unheard of in the industry and would require Verizon to create a post-due date and post-port process unique to Bright House that would extend well beyond any reasonable time period that Verizon currently is capable of accommodating.

For example, in order for Verizon to stop any translations tear-downs for 10 days after the port is completed, Verizon no longer would be able to rely upon the due date. Verizon instead would have to continuously monitor the Number Portability Administration Center ("NPAC"), which is an industry-wide database into which carriers send data regarding ported numbers, to determine when the port was complete. Verizon then would have to take steps to ensure that the translations remain in place for at least 10 days thereafter. Verizon's processes and systems currently are not set up to allow this. Bright House's proposal therefore would require internal Verizon process changes and, potentially, reprogramming. This would be burdensome to Verizon, requiring significant time, labor and expense. However, Verizon is under no obligation to modify its own internal systems to suit Bright House's desire for unique arrangements – particularly where Bright House has failed to demonstrate any particular problem with the existing systems or any specific benefit to a new system. Accordingly, these proposed changes to § 15.2.4 of the Interconnection Attachment should be rejected.

Q. IS THERE ANY REASON TO INCLUDE BRIGHT HOUSE'S NEW TRANSFER PROCEDURES ATTACHMENT?

A. No. Bright House's entirely new proposed Transfer Procedures Attachment is just as unwarranted as its other proposals. Bright House suggests that "[e]xperience has shown that the parties' agreement should expressly define what happens when a Customer/End User

transfers from one Part[y] to the other." DPL at 108-111. But the parties' ICA – supplemented by existing laws and regulations – already expressly defines the relevant procedures and the parties' respective rights and obligations with respect to customer transfers.

Section 15 of the Interconnection Agreement, in particular, provides detailed procedures for the transfer of customers in the context of local number portability. Federal rules fill in the gaps regarding other issues – such as retention marketing – that previously have been a source of dispute between the parties.[8] Indeed, Bright House's proposed Transfer Procedures Attachment largely appears to be an effort to re-open various prior disputes with Verizon that already have been resolved in one manner or another, with both parties' rights and duties spelled out in those contexts.[9] Bright House's proposed new "Transfer Procedures Attachment" adds little to those existing terms and legal requirements. Accordingly, Bright House's proposed additions are not only redundant and unnecessary, but – in some instances – simply wrong.

[8] Bright House's suggestion that its proposed changes are necessitated by "experience" is an allusion to its prior dispute with Verizon regarding retention marketing practices. Indeed, Bright House's proposed transfer procedures expressly address retention marketing. *See* DPL at 108. But the resolution of that prior dispute by the FCC and the U.S. Circuit Court for the D.C. Circuit established what the parties can and cannot do with respect to retention marketing. *See In the Matter of Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd 10704 (2008), *aff'd*, *Verizon Cal., Inc. v. Federal Communications Comm'n*, No. 08-1234 (D.C. Cir., Feb. 10, 2009). In light of this clear guidance, there is no need to further address the issue with additional contract language.

[9] For example, Bright House seeks in Transfer Procedures Attachment section 2.4.1 to address Verizon's grounding practices when it wins a customer from Bright House's cable affiliate and disconnects the customer's cable wiring. Not only is the cable affiliate not a party to this case, but the Commission ruled just last year that it did not have jurisdiction over the matter. *See In re: Emergency Complaint and Petition Requesting Initiation of Show Cause Proceedings Against Verizon Florida, LLC*, Docket No. 080701-TP, Order No. PSC-09-0342-FOF-TP (May 21, 2009).

For all these reasons, Bright House's proposed changes regarding customer transfers and LNP provisioning should be rejected.

ISSUE 43: SHOULD THE ICA REQUIRE NEGOTIATION OF PROCEDURES TO REMOVE PRESUBSCRIBED INTEREXCHANGE CARRIER ("PIC") FREEZES? (AS. Att. § 12)

Q. SHOULD THE ICA REQUIRE NEGOTIATION OF PROCEDURES TO REMOVE PIC FREEZES?

A. No – the ICA should not include this requirement because it is unnecessary and potentially inconsistent with Commission rules.

Bright House suggests that the parties "need to work out a commercially reasonable means for removing PIC freezes" and therefore has proposed a change to § 12 of the Additional Services Attachment to the ICA that would require the parties "to negotiate in good faith to establish a commercially reasonable" set of procedures for doing so. DPL at 64. In other words, Bright House proposes that the parties get together to work out a set of procedures for lifting PIC freezes; it does not advance any proposal for what those procedures should be. However, there is no need for the parties to negotiate a whole new set of procedures. The Commission already has spelled out the method for removal of PIC freezes.

Just last October, the Commission adopted amendments to Rule 25-4.083 of the Florida Administrative Code that address the procedure for removal of PIC freezes. *See In re: Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications*, Docket No. 080641-TP, Order No. PSC-09-0659-FOF-TP (Oct. 2, 2009). Among other things, those amendments incorporate the procedures and requirements prescribed by the FCC in Title 47, Code of Federal Regulations, Part 64, Section 64.1190. *Id.* at 5. Those FCC rules, entitled "Procedures for lifting preferred carrier freezes," provide for lifting of freezes through electronic, written or oral authorization and they require local exchange carriers to offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift the freeze.

The combination of the Commission and FCC rules provides a more-than-adequate set of procedures to govern the removal of PIC freezes. Bright House offers nothing to dispute this. And, in the absence of any specific additional procedural proposal from Bright House, there is no need for the parties to further address this issue in the ICA.

Moreover, even if Bright House had some different procedure in mind, the procedures surrounding PIC changes and PIC freezes generally are (and should be) resolved on an industry-wide basis, either through FCC or Commission rules or through various multilateral carrier working

groups. It would be inappropriate to deviate from those generally established procedures in order to implement a process unique to one carrier – namely, Bright House. Accordingly, Bright House's proposed changes to § 12 of the Additional Services Attachment should be rejected.

ISSUE 44: WHAT TERMS APPLY TO LOCKING AND UNLOCKING E911 RECORDS? (911 Att. § 2.3.5)

Q. WHAT HAS GIVEN RISE TO THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 44?

A. Bright House seeks to modify § 2.3.5 of the 911 Attachment. That section addresses E-911 information stored in the Automatic Location Information ("ALI") Database, and addresses the locking, unlocking and migration of a customer's E-911 data when that customer changes carriers or its local exchange carrier discontinues service. In this scenario, Verizon's interconnection agreements (including the existing agreement with Bright House) require that unlocking and migration of the customer's E-911 records be done in accordance with National Emergency Number Association ("NENA") standards. However, Bright House proposes to modify § 2.3.5 such that the parties must also "fully comply with all North American Numbering Council ("NANC") guidelines regarding the processes for locking and unlocking E-911 records." DPL at 123. Bright House suggests that "it is important that the parties comply with NANC processes," but does not explain why it is important,

why compliance with the existing NENA standards is insufficient, or even whether or how the NANC guidelines materially differ from the NENA standards.

Q. WHAT TERMS SHOULD APPLY TO LOCKING AND UNLOCKING E911 RECORDS?

A. The parties should maintain Verizon's standard ICA language providing that E-911 records should be handled in accordance with NENA standards. The NENA standards have been used successfully for years not only under the parties' ICA, but in connection with numerous other interconnection agreements Verizon has with other carriers. Bright House has not identified any problem stemming from the use of the NENA standards or otherwise identified any way in which the NENA standards are inadequate. To the contrary, Bright House proposes language that would have the parties continue to use the NENA standards going forward – confirming both parties' agreement that those standards, in fact, are appropriate.

Nevertheless, Bright House seeks to have the parties simultaneously also use other guidelines in addition to the NENA standards. But Bright House has not explained why additional guidelines are necessary or what they would accomplish that the NENA standards do not. But, perhaps more importantly, Bright House does not explain what would happen in the event of a conflict between the two different standards. As such, Bright House's proposed changes to § 2.3.5 of the 911

Attachment are an unworkable solution to a nonexistent problem. Bright House's changes therefore should be rejected.

Q. IN LIGHT OF YOUR TESTIMONY, WHAT SHOULD THE COMMISSION DO IN THIS CASE?

A. The Commission should reject Bright House's proposals for the issues I addressed in this testimony. Those proposals are not "fixes" to any problem with the existing interconnection arrangements, under which Bright House (and its cable affiliate) have thrived. Rather, they represent an effort to leverage the interconnection/arbitration process into obtaining uniquely favorable arrangements that Verizon is not required to and does not offer to other carriers and that, in some cases, Verizon literally cannot provide. Bright House's changes should be rejected.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.