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July 9, 2010

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:

Please find enclosed for filing in the above matter an original and seven copies of Verizon Florida LLC's Post-Hearing Brief. Also enclosed is a diskette with a copy of the Brief in Word format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (678) 259-1657.

Sincerely,

Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

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CLK ____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on July 9, 2010 to:

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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 Filed: July 9, 2010

VERIZON FLORIDA LLC'S POST-HEARING BRIEF

In this arbitration, Bright House Networks Information Services (Florida), LLC ("Bright House") asks the Commission to interpret the law in far-fetched ways no one ever has before in order to shift its costs to Verizon Florida LLC ("Verizon"), its chief competitor, and to otherwise obtain unfair competitive advantages. The Commission should reject all of Bright House's extreme proposals, which would, among other things, change the switched and special access regimes in Florida.

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.)

Yes. Verizon provides certain services and makes certain payments under the ICA only because they are required by applicable law. Verizon would not agree voluntarily to those terms. Accordingly, if and when Verizon is not required to provide services or make payments, Verizon should be permitted to stop doing so.

Unlike a typical commercial contract, the parties' interconnection agreement ("ICA") is not derived solely from the mutual, voluntary agreement of the parties. It is instead a product of regulation and, therefore, imposes certain legal obligations on Verizon that it never would agree to in a private contract. (*See* Munsell Rebuttal Testimony ("RT"), Hearing Transcript ("T.") 627-28.)[1] Accordingly, Verizon proposes

[1] Indeed, neither Bright House nor Verizon identified any service or payment obligations that Verizon voluntarily assumed without a legal obligation to do so (*see, e.g.*, Verizon Resp. to Staff Interrogatory ("Int.") 32b, Ex. 2b at 67)--despite Verizon's invitation to Bright House to identify any such service or payment obligation so that Verizon could entertain a request to insulate it from its proposed § 50. *See* Munsell Direct Testimony ("DT"), T.577; Munsell RT, T.632.

language for GTC § 50 that, upon advance written notice to Bright House, would allow Verizon to cease providing a service or stop paying intercarrier compensation under the ICA if and when Verizon has no legal obligation to provide the service or make the payment. (Munsell RT, T.629; Ex. 17.) Verizon's language makes clear that, where applicable law does not require Verizon to provide a service or make a payment, any ICA provisions to the contrary would not be binding because – after all – those obligations are in the ICA only because the parties believed they were required by law. Verizon narrowly tailored its language for this purpose, crafting it to apply only to the offering of a "Service" or the "payment . . . of compensation" for traffic and building in a written notice period of at least 30 days so as to allow Bright House to consider any potential changes and, if appropriate, seek any relief from the Commission prior to the parties implementing any such changes. Bright House opposes Verizon's language based largely on objections steeped in hyperbole that fail to recognize the limited circumstances in which it would apply.[2]

But, for all its talk of the need for a definitive "binding agreement" on a going-forward basis (*see, e.g.*, Prehearing Order at 6), even Bright House agrees that the parties' ICA obligations should be modified in the event of "a material change in law." (*Id.* at 5.) In fact, Bright House itself proposes to include language that would address the elimination of at least one specific category of Verizon payment obligations in the

[2] For example, Bright House claims Verizon's language would allow Verizon "to undermine the entire concept of the implementation of local competition under the 1996 Act" (Johnson DT, T.372); give Verizon a "'get out of jail free' card with respect to a broad array of the obligations it purports to accept under the new ICA" (Gates RT, T.253); "put asunder all the efforts that we have gone through here to agree with regard to the best way to provide service in the state of Florida" (Johnson, T.422-23); "undo everything that we sought to have created through this interconnection agreement" (Johnson, T.427); and raise a concern that, "of all the issues[,] is the one that scares us probably the most." (*Id.*)

event of a future FCC ruling.[3] That is because Bright House also recognizes that the ICA does not necessarily reflect terms that Bright House bargained for, but rather terms that applicable law imposed upon Verizon.

Bright House's purported concerns should not trouble the Commission. In particular, Bright House suggests that the proposed § 50.1 might interfere with the administrative, implementing provisions of the ICA. Bright House argues that, while applicable law may impose certain obligations on Verizon, "'Applicable Law' does not deal with every detail of the actual implementation of [those obligations]" and, therefore, Verizon might argue that "many of the specific contractual obligations that matter to the actual implementation of the parties' interconnection relationship are not 'required by Applicable Law'" and not fulfill them. (Gates DT, T.59; *see also* Johnson DT, T.372.)

Mr. Gates provides two examples of such implementing details, noting that "Applicable Law" may not literally address how the parties should provide notice to each other or assign the contract to another entity in case of a corporate reorganization or refinancing. He asserts that, under proposed § 50, Verizon would then be free to walk away from those notice and assignment provisions. (Gates DT, T.59-60.) But Verizon's language would have no effect at all on those kinds of administrative terms because they do not concern Verizon's offering of a "Service" or its "payment...of compensation" for traffic. Accordingly, those and other such implementing provisions would not be implicated by Verizon's proposed § 50.

Verizon's language likewise would not present the problem Bright House posits regarding traffic termination. Mr. Gates claims that Verizon could use § 50 to set aside

[3] Gates RT, T.255-56. However, Verizon cannot agree to Bright House's proposal to carve out just this one specific kind of obligation that may be eliminated by a future change in law. The better course is to include a provision addressing ***any*** obligation that may not be required by applicable law.

Bright House's choice of the FCC's "mirroring rule" intercarrier compensation rate of $0.0007 for all local and ISP-bound traffic because, he says, FCC rules provide two different options to govern compensation for such traffic such that neither could be said to be literally required by applicable law. (Gates DT, T.60.) But that claim only demonstrates how much Bright House overstates the effect of Verizon's language. In this example, applicable law (*i.e.*, FCC rules) requires compensation under one of the two options; Verizon could not avoid paying under either and claim to be in compliance with applicable law. In other words, that choice is required by applicable law and Verizon's language does not alter its obligations to comply with that requirement.

Bright House incorrectly asserts that § 50 is unnecessary because of the agreed-upon GTC § 4.6, which requires the parties to negotiate ICA modifications upon a change in law. (Gates DT, T.60.) Verizon's proposal contemplates a different scenario in which Verizon's duty to provide service or make payment is eliminated altogether. In such a situation, it is not necessary to go through the process of negotiating terms to accommodate the change in law (or fact); all that must be done is to stop providing or stop paying. Indeed, the Commission has rejected the notion that incumbents must negotiate to stop providing services they have no legal obligation to provide.[4] Accordingly, a different provision is needed beyond the § 4.6 change-in-law provision.

Bright House also complains that Verizon's language would allow it to cease providing a service or stop making a payment even if there has been no change in law. (Gates DT, T.61.) Bright House fails to appreciate that–even if the ***law*** does not change

[4] *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth, etc.*, Order Denying Emergency Petitions, PSC-05-0492-FOF-TP, at 6-7 (May 25, 2005) (rejecting CLECs' arguments that ILECs must negotiate terms allowing them to stop taking orders for unbundled switching after the FCC eliminated ILECs' obligation to provide it).

– the ***facts*** could change in such a way that would render the law no longer applicable.[5] The ICA needs to address both situations, and Bright House's proposal would not.

Moreover, to the extent Bright House is concerned that Verizon would claim that an unchanged law does not require a service or payment that one or both of the parties heretofore thought it did, that does not expose Bright House to any risk of "unilateral" action by Verizon. Instead, Verizon would have to provide Bright House at least 30 days' written notice before implementing § 50. Bright House can then judge for itself what is or is not required by applicable law and discuss the issue with Verizon. If the parties disagree, then Bright House can bring the issue to the Commission, just as it would under the parties' existing change-in-law provision. (*See* Gates DT, T.61.) But there is no danger that, under Verizon's § 50, it could run off on its own and stop providing a service or making a payment without Bright House knowing it and having the opportunity to address the issue with Verizon and, if need be, the Commission.[6]

In short, the carefully limited provision Verizon has proposed appropriately protects both parties and should be adopted.

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[5] For example, if a particular wire center became classified as a Tier 1 wire center during the term of the ICA, that change in facts would mean that Verizon would no longer have the duty under applicable law to provide UNE DS1 transport between that wire center and another Tier 1 wire center. (Munsell DT, T.576-77. *See also* VZ Resp. to BH Int. 44, Ex. 5b at 28-29 (listing additional examples of factual changes that could extinguish Verizon's legal obligation to provide services).)

[6] This would encompass Bright House's concern that Verizon may claim that Bright House is not entitled to interconnection under the Act. (*See, e.g.*, Prehearing Order at 6 (reflecting Bright House's claim that Verizon could "object to Bright House's right to interconnection" and "void its entire contract with Bright House on 30 days notice"); Johnson, T.427.) Verizon has not pursued that claim in this proceeding. But ***if*** Verizon ever did assert such a claim, just like any other matter of applicable law under GTC § 50, Verizon would have to give Bright House advance written notice and Bright House would be able to seek relief from the Commission – just as it would under the existing change of law provision (GTC § 4.6).

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

Consistent with the Commission's prior decision on this issue, the Florida statute of limitations (Fl. Stat. § 95.11(2)(b)) provides the appropriate time limit for the parties' right to bill for services and dispute charges for billed services.

The parties have agreed on ICA language (GTC § 9.5) acknowledging "the intent of both Parties to submit timely statements of charges," but recognizing that doing so is not always possible. Indeed, proper billing is one of the more difficult challenges in telecommunications. (Munsell DT, T.581.) Of course, Verizon strives for accurate and timely billing at all times, for it is in Verizon's interest to facilitate quick payment. (*Id.*) To that end, most Verizon systems are nearly fully automated, thereby reducing the chances of error and increasing billing speed. (*Id.*) But, because of the wide variety of services ordered, the sheer volume of transactions, and the complexity of the technologies and charges involved, both parties agree that from time to time, billing mistakes or delays may occur. (*Id.*, T.582; Johnson DT, T.380; Gates DT, T.81.) Indeed, Mr. Gates, testified that there are "legitimate reasons" for delaying bills beyond just human or system errors – including, for example, intentional delays while adding new features. (Gates, T.329.)

The parties' current ICA establishes the applicable statute of limitations (here, Fl. Stat. § 95.11(2)(b)) – as the time limit for both billing for services and disputing charges for billed services. Using the statute of limitations is standard in Verizon's ICAs. (Munsell DT, T.582.) Bright House has not identified any problems resulting from using the statute of limitations as the time limit for backbilling and disputing charges. (*Id.*, T.581.) Yet, Bright House insists that this limit should be changed from the five-year statue of limitations period to a one-year limit to "provide both parties with

certainty...regarding their own financial position as regards the other party" and to "create a healthy incentive on both parties to ensure that their bills...are accurate." (Prehearing Order at 7; Gates DT, T.80.) But both parties track their own orders, so they already should have a good idea of whether the other party has not fully billed (or otherwise misbilled) them for services received. (Munsell RT, T.637.) And, both parties have always submitted bills and disputed charges within a one-year period, anyway. (VZ Resp. to BH Int. 45, Ex. 5b at 29.) Therefore, as a practical matter, Bright House already has the "certainty" it claims to seek and there is no need for any further "incentive" to ensure timely and accurate bills. If there is a future need to bill for services or dispute a charge more than a year later, Verizon should not be forced to waive its statutory right to that payment or to dispute that charge.

The Commission already decided this issue in another interconnection arbitration and held that "placing a [contractual] time limit on back-billing can conflict with the statute of limitations in Florida." (*See Petition for Arbitration of Open Issues*, Order No. PSC-03-1139-FOF-TP, at 14 (Oct. 13, 2003) ("*Verizon/Covad Order*").) Accordingly, the Commission rejected any attempt to impose a shorter backbilling time limitation in the ICA before it and ordered that the applicable statute of limitations would remain the standard. (*Id.* at 14-16.)

Bright House attempts to evade this ruling by noting that it was rendered seven years ago in a case involving a different kind of CLEC and by suggesting that the Commission could deviate from the statute of limitations if doing so was "just and reasonable." (Gates RT, T.266-67.) But the principles underpinning the Commission's prior decision apply equally here, regardless of the passage of time or the type of CLEC involved, and there is nothing "just and reasonable" about requiring Verizon to contractually waive rights to payment or to dispute charges it otherwise would have

under state law.

As the Commission held in the *Verizon/Covad Order* (at 16), "the current state of the law should be sufficient." Indeed, absent any voluntary contractual agreement, it is unclear that the Commission even has the authority to impose a limitation that conflicts with the existing state law embodied in the statute of limitations. Accordingly, the Commission should reject Bright House's proposed language for GTC § 9.5.

ISSUE 24: IS VERIZON OBLIGED TO PROVIDE FACILITIES FROM BRIGHT HOUSE'S NETWORK TO THE POINT OF INTERCONNECTION AT TELRIC RATES? (Interconnection Attachment ("Int. Att."), BH proposed § 2.1.1.3)

No. Access toll connecting ("ATC") trunks interconnect Bright House with IXCs' networks, not with Verizon's network; they are not part of Verizon's section 251(c) duty to interconnect with CLECs under the Act. ATC trunks have always been priced at tariffed access, not TELRIC, rates; no law supports changing this regime.

I. The Commission Should Refuse to Consider Bright House's New Issue About the Pricing of Access Toll Connecting Trunks.

Bright House completely changed its approach to Issue 24 between the submission of Direct and Rebuttal Testimony (Vasington, T.494), injecting a new issue that the Commission should not consider. Consistent with the issue statement and Bright House's proposed language for Issue 24, Mr. Gates' Direct Testimony described the Issue 24 controversy solely in terms of "entrance facilities." An entrance facility is basically a wire or cable used to transport calls between a CLEC switch and an ILEC switch,[7] "in order to physically link their networks so that traffic can flow between them." (Gates DT, T.98-100, 109.) Mr. Gates explained that entrance facilities are "'transmission facilities that are dedicated to the transmission of traffic ***between*** two

[7] Vasington DT, T.461and RT, T.479. *See, e.g., Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, etc,*, Order on Remand, 20 FCC Rcd 2533 ("*TRRO*"), ¶ 136 (2005) (entrance facilities are "the transmission facilities that connect competitive LEC networks with incumbent networks"); *Michigan Bell Tel. Co. v. Covad Comm. Co., et al.*, Nos. 07-2469/2473, slip. op. at 3 (6th Cir. Feb. 23, 2010) ("an 'entrance facility' is really just a fancy name for a cable or wire used to transport calls from a CLEC switch to an ILEC switch").

networks,"[8] and which typically "run[] from a CLEC's switch location to a nearby ILEC end office." (Gates RT, T.226.) Mr. Gates characterized Issue 24 as a specific disagreement about "how entrance facilities should be priced." (Gates DT, T.111.) He argued that ILECs must provide TELRIC-priced entrance facilities "to the extent they require them to interconnect with the incumbent LEC's network." (*Id.* at 79.) Mr. Gates asked the Commission to resolve Issue 24 by "adopt[ing] Bright House's language and requir[ing] Verizon to provide entrance facilities in support of interconnection and traffic exchange at TELRIC, rather than tariffed, rates." (*Id.* at 80.)

But Bright House purchases no entrance facilities from Verizon and there is no prospect that it ever will. As Bright House has repeatedly reminded the Commission, it is a facilities-based carrier. (*See, e.g.*, Johnson DT, T.364-65, Johnson, T.355; Gates DT, T.49-50; T.291.) Bright House has built its own network, instead of reselling Verizon's services or piecing together services using unbundled network elements from Verizon, as many other competitors do. As part of its stand-alone network, Bright House built its own transport facilities–that is, entrance facilities–between its switch to points of interconnection ("POIs") on Verizon's network at two Verizon end offices and a Verizon tandem office. (Vasington RT, T.480; Gates RT, T.219.) Bright House does not buy these entrance facilities from Verizon--nor did Mr. Gates claim that Bright House does or ever would buy them. (Vasington RT, T.481-82 *citing* Gates DT, T.261-62.) Whether Bright House keeps its existing interconnection arrangements or somehow changes them in the future, it will still be a facilities-based carrier with its own transport facilities to get to Verizon's network. So, as Mr. Vasington observed in his Rebuttal

[8] Gates DT, T.109, *quoting Implementation of the Local Competition Provisions in the Telecomm. Act of 1996, etc.*, ("*Local Competition Order*"), 11 FCC 15499, ¶ 1062 (1996) (emphasis added by Mr. Gates).)

Testimony, Bright House's request to arbitrate an entrance facilities pricing made no sense. (Vasington RT, T.494.)

By the time it filed Rebuttal Testimony, Mr. Gates recognized that there was, in fact, no entrance facilities dispute. Mr. Gates, therefore, abandoned his initial focus on entrance facilities and "clarif[ied]" that the only facilities in dispute in this Issue 24 are the access toll connecting ("ATC") trunks that are covered in Issue 36(b). (Gates RT, T.217-18.) But those ATC trunks are ***not*** entrance facilities used to carry traffic between Verizon and Bright House's networks; they are — as the issue statement reflects – "facilities used to carry traffic between interexchange carriers and Bright House's network." (Gates RT, T.217-18, 227; Vasington, T.494.)[9] Mr. Gates' Direct Testimony on Issue 24 never mentioned any facilities used to carry traffic between IXCs and Bright House and his Rebuttal Testimony recognized that these links between Bright House and IXCs are not entrance facilities. (Gates RT, T.226.) ATC trunks do not fit within either the Issue 24 statement or the language Bright House proposed for Issue 24.[10]

But instead of explicitly dropping Issue 24, Bright House sought to change it by combining it with existing Issue 36, which *does* address ATC trunks. This new, combined issue was: "Whether TELRIC or tariffed rates apply when Bright House buys

[9] Mr. Gates is wrong that, if Bright House had not built its own entrance facilities connecting its switch with Verizon's network, "it could clearly buy TELRIC-rated entrance facilities." (Gates RT, T.226.) Entrance facilities are provided to all CLECs under Verizon's access tariff, not at TELRIC rates.

[10] In his Direct Testimony (at T.98-99), Mr. Gates explained that, for Verizon and Bright House to link their networks so calls can flow between them, Bright House must "show up" at an appropriate point on Verizon's network. The parties agreed upon language requiring Bright House, at its own expense, to "provide transport facilities" to get to the POI on Verizon's network by either (1) building its own facilities; (2) obtaining them from a third party; or (3) buying them from Verizon's tariff. (*See* Gates DT, Ex. TJG-3, §§ 2.1.1, 2.1.1.1, 2.1.1.2.) In connection with Issue 24, Bright House proposed adding a fourth option that addresses entrance facilities: "In the case of Bright House, obtain facilities from Bright House's network to the POI, provided by Verizon at TELRIC rates" (Bright House Petition, Ex. 2 at 67, Bright House § 2.1.1.3).

facilities from Verizon to interconnect their networks for the 'transmission and routing' of...third-party 'exchange access' traffic." (Gates RT, T.244.)

Bright House did *not* present this issue of pricing of ATC trunks in its arbitration petition, it was *not* defined as an issue for Commission resolution, and it was *not* discussed in Bright House's Direct Testimony. The only issue Bright House raised about "Verizon-provided facilities used to carry traffic between interexchange carriers and Bright House's network" was whether Bright House should have to pay Verizon for them at all (Issue 36(b))—not whether Verizon should be ordered to pay *less* for them. Bright House raised the issue of TELRIC pricing for ATC trunks for the first time in its Rebuttal Testimony, when it was too late for Verizon to address this new issue in its own Rebuttal Testimony. This was plainly improper, and the Commission should refuse to consider this new issue. Under section 252(b)(4)(A) of the Telecommunications Act of 1996 ("Act"), a state commission "shall limit its consideration...to the issues set forth in the petition and in the response," and Bright House's issue of TELRIC pricing for ATC trunks appeared in neither.

The Commission should find that Issue 24, as stated in the Prehearing Order, is moot (along with Bright House's proposed language), because there is no dispute about entrance facilities pricing. The Commission should also decline to decide the issue about pricing of ATC trunks that Bright House improperly presented for the first time in the rebuttal stage. If, however, the Commission considers the merits of Bright House's request to price ATC trunks at TELRIC, in the context of either Issue 24 or 36(b), it should explicitly confine its rulings to the only facilities in dispute in this arbitration—that is, the ATC trunks that carry IXC traffic to Bright House's network. Since these ATC

trunks are ***not*** entrance facilities, the Commission should not make any rulings, or even observations, about the nature or appropriate pricing of entrance facilities. Unlike Bright House, many carriers *do* take the entrance facilities from Verizon (under tariffed, not TELRIC, rates). (Vasington RT, T.487). While rulings about entrance facilities would have no practical effect on the Verizon/Bright House relationship, they could disrupt Verizon's relationships with CLECs that do lease entrance facilities from Verizon, and they could have substantial consequences for Verizon, because the Verizon/Bright House ICA will be available for adoption under § 252(i) of the Act. As both Verizon and Bright House have observed, entrance facilities pricing has been the subject of appellate litigation engendered by Commission decisions in a few other states. (Vasington RT, T.487-88; Gates DT, T.111.) The Commission should not inadvertently wade into a legal dispute that has yielded competing interpretations of the law from U.S. Circuit Courts and risk drawing an appeal of the arbitration decision here, despite the absence of any entrance facilities dispute in this arbitration. (Vasington RT, T.487-88.)

II. If the Commission Considers Bright House's New Issue, It Should Reject Bright House's Proposal to Re-Price ATC Trunks at TELRIC Rates.

A principal Bright House objective in this arbitration is to avoid paying Verizon's tariffed charges for access services, both switched and special.[11] Bright House's advocacy on its new Issue 24 and Issue 36(b) is part of this effort. Both issues involve Verizon's charges for the special access facilities known as ATC trunks, which are high-capacity transmission circuits used to carry long-distance calls between IXCs and the end users of LECs. A LEC may build its own ATC trunks or it may lease them from

[11] Special access provides a dedicated transmission path between two points without any circuit switching or routing of individual calls. Switched access provides a transmission path that does involve circuit switching and routing of individual calls. Bright House tries to avoid switched access charges in Issue 37.

another LEC to, in turn, provide access services to the IXC. (Munsell RT, T.660.) The ATC trunks at issue run from Bright House's collocations at two Verizon end offices to Verizon's tandem office, where a number of IXCs connect to pick up and drop off their traffic. These trunks carry calls from IXCs part of the way to Bright House (and they may carry some 8YY toll-free calls in the other direction).[12] Bright House owns its own facilities to get the calls the rest of the way, from its end office collocations to Bright House's switch.[13] The ATC trunks are not used to exchange traffic between Verizon and Bright House end users, and they do not carry any calls between Bright House's network and Verizon's network. (Vasington, T.516; Munsell, T.689.) In fact, Bright House exchanges twice as many minutes with IXCs over these trunks as it otherwise exchanges with Verizon. (Johnson, Dep., Ex. 10, Ex. MJB-1.)

Bright House uses ATC trunks to provide access services to IXCs. They are, as Mr. Gates explains, part of an arrangement under which Verizon and Bright House collaborate to provide access service to IXCs. These kinds of arrangements, common in the industry, are called meet-point billing arrangements. (Gates, T.296.) These arrangements (discussed further in Issue 36(b)) are governed by industry documents known as the MECAB and MECOD rules.[14] Under those industry rules, two LECs voluntarily agree to the demarcation point that determines their respective responsibilities to the IXC, and each LEC bills the IXC its tariffed access rates for the

[12] *See* Gates RT, T.225 n. 28. Bright House's traffic data showed no calls originating from Bright House to IXCs, but Ms. Johnson claimed that that data may have been incomplete. (Johnson, T.405.)
[13] *See* Network Diagram, Ex. 22, attached, which shows the ATC trunks Verizon provides and the transport facilities Bright House owns. The ATC trunks in dispute are those that run from Verizon's two tandem switches in Verizon's tandem office to Bright House's collocations in the two Verizon end offices.
[14] See Exs. 19 (*Multiple Exchange Carrier Access Billing (MECAB)*, Issue 8 (Jan. 2003)) and 20 (*Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Service* (Sept. 25, 2009).)

functions its provides. (*See* Gates DT, T.166; RT, T.253; T.300; Ex. 9 at 69-70; BH Resp. to VZ Int. 26, Ex. 4c at 245; VZ Resp. to Staff Int. 23, Ex. 2a at 17.))

Under their existing meet-point billing arrangement, Bright House and Verizon have agreed upon a meet point at Verizon's tandem switch ports. Verizon charges the IXC its tariffed switched access rates for use of its tandem switch, and Bright House charges the IXC its tariffed switched access rates for transporting calls to and from Bright House customers. (Gates Dep., Ex. 9 at 69-70.) As noted, for part of this transmission path, Bright House uses ATC trunks it leases from Verizon at tariffed special access rates. Bright House then charges the IXCs for use of the trunks under Bright House's own access tariff. (Munsell DT, T.598.)

ATC trunks provided by ILECs have always been tariffed access services, both before and after the Act was adopted. (Vasington T.493-94; VZ Resp. to BH Int. 36(b), Ex. 5b at 11.) All ILECs in Florida—and, to Verizon's knowledge, elsewhere--offer these facilities under their access tariffs. (Vasington, T.511.) Bright House leases them from six Florida ILECs, including Verizon, and pays each ILEC's tariffed special access rates. (Johnson, T.408-09; BH Supp. Resp. to VZ Int. 38(c), Ex. 4c at 271.)

Now, however, Bright House seeks to obtain ATC trunks at rates based on total element long-run incremental cost ("TELRIC"), which would be much lower than the tariffed rates that Bright House and everyone else pays for ATC trunks.[15] (Under Issue 36(b), discussed later, Bright House argues that even TELRIC prices are too high and that it should not have to pay Verizon *anything* for the ATC trunks.) Bright House

[15] Gates RT, T.218; Vasington DT, T.452. Bright House has not proposed any actual price for the ATC trunks at issue, but has only argued that it should be set using the TELRIC standard.

argues that providing ATC trunks at TELRIC rates is part of Verizon's interconnection obligation under § 251(c)(2) of the Act.[16]

But Bright House admits that there is no precedent for adopting its proposal to change the pricing of ATC trunks to TELRIC. (BH Resp. to VZ Int. 29, Ex. 4c at 253.) That proposal relies on an interpretation of the FCC's rules that neither the FCC nor any state Commission has adopted in the Act's 14-year history. Nor should this Commission consider going out on that legal limb--especially because, as explained below, Bright House does not even need ATC trunks from Verizon. (Also, as Mr. Gates recognized, "the parties have reached a settlement regarding the charging that will apply to the specific current configuration that Bright House uses to interconnect with Verizon.")[17]

Bright House's TELRIC pricing proposal has nothing to do with § 251(c)(2) interconnection. Rather, Bright House is seeking to create a lucrative new arbitrage opportunity for itself. Bright House seeks to sharply reduce the rates it pays to Verizon for ATC trunks, but Bright House has no intention of reducing the tariffed switched access rates that Bright House, in turn, charges IXCs for the traffic transported over the ATC trunks. (BH Resp. to VZ Int. 26(e), Ex. 4c at 249.) Bright House would thus create a new profit center at Verizon's expense and gain an artificial regulatory advantage over all of its competitors that must pay tariffed access rates for the same facilities. The

[16] This brief assumes, *arguendo*, that § 251(c) applies to Bright House's arbitration request, but Verizon reiterates that it does not waive any claims that it has no § 251(c) obligations to Bright House, even though it is not pursuing such claims here. (*See* Verizon's Response to Arbitration Petition at 5 n. 2.)

[17] Gates DT, T.99; T. 297. In his Rebuttal Testimony, Mr. Gates suggests (at T.221 n. 25) that the prices in the settlement apply only under the parties "existing ICA." That is incorrect; as Mr. Gates correctly recognized in his Direct Testimony, the settlement pricing will continue to apply as long as the current interconnection configuration does not materially change. (Vasington RT, T.481, 483.)

Commission should reject this anticompetitive scheme, which has nothing to do with Verizon's interconnection obligations.

A. Verizon Has No Obligation to Provide ATC Trunks at TELRIC Rates.

As noted, Bright House seeks to change the longstanding, universal method of pricing ATC trunks at tariffed rates. It claims that ILECs are required to provide ATC trunks at TELRIC rates--even though Bright House acknowledges that no one has ever made such a ruling. (Gates, T.308, 311, 350; Vasington, T.493.)

Bright House's proposal rests upon the novel legal theory that (1) because CLECs are entitled to interconnect with ILECs' networks "for the transmission and routing of telephone exchange service and exchange access" (47 U.S.C. § 251(c)(2)A)); and (2) because interconnection charges under section 251(c)(2) must be cost-based, a standard Bright House contends the FCC has interpreted as TELRIC, then (3) Bright House is entitled to TELRIC rates for ATC trunks because it is using them to provide exchange access to IXCs. (*See* Gates RT, T.222-25.) This theory is wrong. Even if Bright House is providing "exchange access" to IXCs,[18] the ATC trunks Bright House uses to do that have nothing to do with section 251(c)(2) interconnection between Bright House and Verizon.

FCC Rules define "interconnection" as "the linking of two networks for the *mutual* exchange of traffic." (47 C.F.R. § 51.5 (emphasis added).) Mr. Gates recognizes that the § 251(c)(2) interconnection Bright House seeks from Verizon is "for the efficient exchange of traffic between them" (Gates DT, T.99) and is about "two local exchange carriers, an ILEC and a CLEC, linking up to exchange traffic between their networks"

[18] "Exchange access" is defined in 47 U.S.C. § 153(40) to mean "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."

(T.296; *see also* Gates DT, T.100 ("the purpose of interconnection is obviously to exchange traffic"), Gates DT, T.101 (TELRIC pricing applies to "carrier-to-carrier interconnection arrangements between competing networks"). But the ATC trunks at issue are *not* used to link Verizon's network with Bright House's "for the mutual exchange of traffic." They carry no calls between Bright House and Verizon end users; indeed, they carry no Verizon traffic at all. The ATC trunks, instead, link Bright House's network with IXC networks, to allow traffic to flow back and forth between those networks. As Mr. Gates explained, they facilitate Bright House's "ability to send and receive traffic between its own network and long distance carriers." (Gates RT, T.227.)

These ATC trunks satisfy no § 251(c)(2) duty of Verizon to Bright House. If they fulfill any obligation under the Act, it is the duty imposed upon all telecommunications carriers, including CLECs, to interconnect "directly or indirectly with the facilities and equipment of other telecommunications carriers." (47 U.S.C. § 251(a)). Bright House uses the ATC trunks to interconnect with IXCs' networks indirectly, through Verizon's tandem switch. These indirect interconnections are common in the industry. As Mr. Munsell testified, "[m]ost CLECs and wireless carriers connect to interexchange carriers indirectly, through the ILEC's access tandem." (Munsell DT, T.597.)

As noted above, rather than being handled under the interconnection provisions of the Act, the ATC trunks are part of the meet-point billing regime, under which LECs cooperate to provide access service to third-party IXCs. This regime, discussed further in Issue 36(b), is governed by industry rules reflected in MECAB and MECOD publications, not by § 251(c)(2). In short, Bright House is trying to shoehorn ATC trunks

into a paradigm—the local interconnection paradigm—where they have never been and where they do not belong.

In his pre-filed testimony, Mr. Gates claimed the existence of a "long-standing rule that TELRIC-priced facilities must be provided for purposes of interconnection to exchange traffic" (Gates RT, T.222), but cited no such rule. When Verizon asked Bright House to specify the rule in discovery, it cited section 51.501(b) of the FCC's Rules. (BH Resp. to VZ Int. 28, Ex. 4c at 251-52.) But this rule does not require anyone to provide anything, let alone designate ATC trunks as part of the ILECs' § 251(c)(2) interconnection obligation.

Rule 51.501 appears in the FCC's pricing rules, Subpart F ("Pricing of Elements") of the FCC's Part 51 interconnection rules. (47 C.F.R. Part 51.) The entire rule reads:

> **§ 51.501 Scope.**
>
> (a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.
>
> (b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements.

Subsection (b), which Bright House cites as the source of its theory, is nothing more than a clarification of how the term "element" is to be construed in the FCC's pricing rules. Nothing in that subsection or subsection (a) defines what the ILEC must provide under its interconnection and unbundling obligations. The rule specifies only the pricing that will apply to the things that are provided.

Bright House argues that § 51.501(b) supports its proposal to price ATC trunks at TELRIC because "TELRIC pricing applies to 'methods of obtaining interconnection.'"

(BH Resp. to VZ Int. 28, Ex. 4c at 251-52.) But neither the FCC nor anyone else has defined ATC trunks as a "method of obtaining interconnection" that ILECs must offer under section 251(c)(2). In fact, the only examples the FCC lists as "methods of obtaining interconnection or access to unbundled elements" are collocation and meet-point interconnection arrangements.[19] (47 C.F.R. § 51.321; *see also Local Competition Order*, ¶¶ 543-54.) Section 51.321 addresses the premises and points at which interconnection or access to UNEs will occur; it does not impose on ILECs any obligation to provide CLECs with transport or other facilities. Section 51.305, the general rule reciting the ILEC's interconnection obligation, likewise says nothing about an ILEC providing transport facilities (or any facilities at all) to the CLEC as part of § 251(c)(2) interconnection. In short, the FCC has never suggested in its rules or anywhere else that the "method of obtaining interconnection" to be priced at TELRIC means "any method a CLEC chooses to obtain interconnection, including any and all facilities a CLEC wishes to obtain from an ILEC for those purposes"—let alone any and all facilities a CLEC wishes to obtain to interconnect with a third party IXC.

Nor did the FCC intend for its interconnection rules to change the pre-existing access regime, under which ATC trunks have always been provided, and which Congress explicitly preserved in the Act as distinct from the new interconnection regime. (47 U.S.C. § 251(g); Vasington, T.493-97, 517.) In the *Local Competition Order* implementing the Act (at ¶ 176), the FCC emphasized that its interconnection rules did

[19] Meet-point interconnection arrangements should not be confused with the meet-point billing arrangements discussed in this brief. Also known as fiber-meet arrangements, meet-point interconnection arrangements refer to the situation where the ILEC accommodates the CLEC's interconnection with a limited build-out of its network to a point where the ILEC and CLEC networks meet, and where the two carriers then mutually exchange their end-users' traffic over that arrangement. *See Local Competition Order*, ¶ 553. Verizon and Bright House have agreed on fiber-meet interconnection terms for the ICA.

not disturb the access regime: "because interconnection refers to the physical linking of two networks, and not the transport and termination of traffic, access charges are not affected by our rules implementing section 251(c)(2)." Bright House's proposal to reduce the access charges for the transport facilities at issue to TELRIC violates section 251(g) of the Act and the FCC's express intent of its rules implementing that section.

B. Bright House Does Not Need ATC Trunks from Verizon, Anyway.

To put Bright House's arguments about ATC trunks under Issues 24 and 36(b) into the proper perspective, it is important to understand that Bright House does not need ATC trunks from Verizon (Munsell, T.689); it can reduce or eliminate its ATC trunk expenses without any help from this Commission.

First, Bright House can connect directly with IXCs, instead of interconnecting indirectly with them through Verizon's tandem switch. In other words, Bright House can build its own ATC trunks to IXCs (or obtain them from a third party). In fact, Bright House already has established direct connections with some IXCs using its own facilities. (*See* Gates RT, T.225 n.28; Gates Dep., Ex. 9 at 22-23; Johnson Dep., Ex. 10 at 26-27, 30-31.) Moreover, Bright House can and does route some of its traffic to and from IXCs through a third-party tandem provider. (Johnson Dep., Ex. 10 at 31, 53; Gates Dep., Ex. 9 at 24.)

Second, Bright House can continue to interconnect indirectly with IXCs through Verizon's tandem, but without using any ATC trunks from Verizon. According to Bright House, it purchases ATC trunks from Verizon only to provide network redundancy. (Gates RT, T.227.) As noted, Bright House has its own transport facilities running from its switch to Verizon's tandem office, where Bright House is collocated, and where IXCs' calls come in. (Munsell DT, T.604.) Bright House could simply pick up and hand off all

of its IXC traffic at Verizon's tandem switch and use its own ATC trunks to transport it to Bright House's switch. (Munsell RT, T.661, Munsell, T.690; Gates, T.302.) (Bright House could also supplement those facilities to provide itself with sufficient redundancy.) Mr. Gates agreed that Bright House "certainly could" avoid Verizon's tariffed charges entirely in this way, "and may indeed reconfigure its network, in the future, to do so. (Gates RT, T.227; BH Resp. to VZ Int. 34. Ex. 4c at 264.) Despite Mr. Gates' testimony that "planning and implementing that reconfiguration will take a number of months" (Gates DT, T.74), it appears to be underway now, because Bright House has already disconnected a number of ATC trunks. (Johnson, T.408-09.)

In any event, despite Bright House's complaints about how much it is paying Verizon for ATC trunks, the Commission should keep in mind that Bright House, in turn, charges the IXCs for use of these trunks. And it does so under its own switched access tariffs. As Bright House admitted, it has no plans to reduce the switched access charges it assesses upon IXCs for traffic transported over these ATC trunks. (BH Resp. to VZ Int. 26(e), Ex. 4c at 249) This means the principal result of ordering Verizon to provide ATC trunks to Bright House at TELRIC rates would be to increase Bright House's profit margin on these ATC trunks, at Verizon's expense. There is no legal or policy basis for creating this arbitrage opportunity, which has nothing to do with Bright House's request to interconnect with Verizon or with promoting local competition. If the Commission considers the substance of Bright House's proposal for its new Issue 24, it should reject that proposal and Bright House's associated contract language.

ISSUE 32: MAY BRIGHT HOUSE REQUIRE VERIZON TO ACCEPT TRUNKING AT DS-3 LEVEL OR ABOVE? (Int. Att. § 2.4.6.)

*No. Bright House's traffic must be converted to the DS1 level before it can be routed to Verizon's tandem and end office switches. Bright House should be responsible for

multiplexing its own traffic, just as other carriers and Verizon are responsible for multiplexing their traffic.*

Bright House currently interconnects with Verizon's network at two end offices and a tandem office where Bright House has collocation spaces. (Johnson, T.409.) From there, the traffic Bright House exchanges with third-party carriers such as IXCs is routed to Verizon's two tandem switches and the traffic that Bright House exchanges with Verizon is carried over direct end office trunks ("DEOTs") to Verizon's 85 end office switches. (*Id.*, T.410; Johnson Dep., Ex. 10 at 56-57; VZ Resp. to Staff Int. 13, Ex. 2a at 8-11; Network Diagram, Ex. 22.) If all the Bright House DEOTs are full, the traffic overflows to a Verizon tandem switch for routing to the end office switch using Verizon's transport facilities. (Johnson, T.411-412; Johnson Dep., Ex. 10 at 32-33.)

Bright House sends traffic from its switch to its collocation spaces at the DS3 level or higher. (Johnson, T.409-10.) As a matter of network engineering, this traffic must be converted to the DS1 level (at least initially) before it can be routed through Verizon's network, whether it is sent to a tandem or end office switch. Traffic to a tandem switch must be converted to the DS1 level so it can be routed through DS1 tandem ports or distributed across multiple OC3 trunk groups that feed into the tandem's OC3 ports. (VZ Resp. to Staff Int. 13, Ex. 2a at 10.) DS1-level routing is required to prevent blockage that could result from too much traffic being transmitted through a single OC3 interface and to enable Verizon to direct traffic to other ports if an OC3 interface fails. (*Id.*) Traffic that Bright House sends to Verizon's end office switches must be converted to the DS1 level so the DS1s can be separated and routed

to their various destinations.[20] Even putting this basic point aside, conversion would be required in any event because Bright House only has (at most) a few DS1s' worth of traffic from any of its collocations to any of Verizon's end offices,[21] so it would be highly inefficient to transport the traffic to the end office switches using dedicated DS3 circuits.[22] As a practical, engineering matter, therefore, Bright House's traffic must be converted to the DS1 level.

Converting traffic from one level to another is called multiplexing. A multiplexor converts a single high-capacity circuit (such as a DS3) into multiple lower capacity circuits (such as DS1s) or puts multiple circuits such as DS1s on a single DS3 circuit that the DS1s are said to "ride."[23] Because Bright House transports traffic from its switch to its collocated equipment at the DS3 level or higher (Johnson, T.409-10), it must use a multiplexor to convert its traffic to the DS1 level. To do so, Bright House uses its own multiplexing equipment installed in at least one of its collocation spaces as well as multiplexing equipment that Verizon provides. (Johnson, T.415-16; Johnson Dep., Ex. 10 at 35.)

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[20] Bright House acknowledged that even if all its traffic exchanged with Verizon were aggregated and routed through a single collocation, the traffic would still have to be multiplexed to the DS1 level so it could be distributed to the end offices. (Johnson, T.419-20.)

[21] In the aggregate, Bright House sends 10 DS1s to one of Verizon's end offices, 5 or 6 DS1s to 18 of Verizon's end offices, and fewer then 5 DS1s to the remaining end offices. (BH Resp. to VZ Int. 32a, Ex. 4c at 261.) Bright House derived these figures by adding up all the DS1s sent from its the three offices where it is collocated (Johnson, T.418.), so the number of DS1s from any given office will be lower than the total figures Bright House provided – two-thirds lower if they are evenly distributed.

[22] Bright House asserts that DS1 circuits would be put on a DS3 when the number of DS1s on a route reaches 5 or 6, based on "standard engineering practice." (BH Resp. to VZ Int. 32a, Ex. 4c at 261.) Even assuming this analysis were correct, as explained in the previous footnote, Bright House probably does not meet this threshold for any Verizon end office. In any event, a cutover point of 5-6 DS1s assumes that Bright House would pay a recurring charge for the interoffice transport and thus would determine when the aggregate cost of the individual DS1s would be greater than the cost of a single DS3 with multiple DS1 riders. In fact, however, under the ICA Verizon will provide interoffice transport for local traffic between the POI and the terminating Verizon end office without a recurring charge. Network efficiency therefore must be viewed from Verizon's perspective, and Verizon would have no reason to put only 5 or 6 DS1s on a DS3 circuit that can hold up to 28 DS1s.

[23] Up to twenty-eight DS1s can "ride" a DS3 circuit. (VZ Resp. to Staff Int. 13, Ex. 2a at 9.)

Bright House initially sought to require Verizon to accept its traffic at the DS3 level or higher and then multiplex it to the DS1 level for free. The parties reached a settlement governing Verizon's provision of multiplexing as long as the parties' current interconnection arrangements remain materially unchanged. The remaining dispute is what level of interconnection should be required if, hypothetically, different interconnection arrangements are made in the future. In that event, Bright House proposes language that would require Verizon to exchange traffic at the DS3 level, while Verizon's language calls for DS1 level interconnection. If the Commission wishes to address the issue at this point, it should adopt Verizon's language.

Verizon's proposal–to continue to exchange traffic at the DS1 level if the parties establish a different interconnection arrangement–is just and reasonable. As discussed, Bright House's traffic must be multiplexed to the DS1 level before routing to Verizon's switches. The only question is: which party should be required to do the multiplexing? Bright House must be responsible for this function because the multiplexing is dedicated to Bright House's traffic, including a great deal of traffic that Bright House exchanges with carriers other than Verizon. (*See* Johnson Dep., Ex. 10, Ex. MBJ-1.) Bright House can avoid paying Verizon for multiplexing by purchasing its own equipment, as it does today. (*See* Johnson, T.415.) But, if Bright House decides to use Verizon's multiplexing equipment, it must pay Verizon's tariffed rates. Bright House has not challenged the reasonableness of those rate levels.

Verizon's proposed language is nondiscriminatory. Verizon will route Bright House's traffic in the same manner as it does for other carriers and itself. Carriers may either pay for their own multiplexing equipment or pay Verizon's tariffed rates for the use

of multiplexing equipment dedicated to their traffic. Verizon multiplexes its own traffic to the DS1 level so it can be routed within its network and exchanged with other carriers. Verizon buys the multiplexing equipment that enables it to perform that function. (D'Amico RT, T.550.) Verizon's proposed language therefore would permit Bright House to obtain multiplexing on equal footing with other carriers and Verizon itself.

Bright House's language should be rejected if only because Bright House has not stated whether or how it would propose to change the parties' interconnection arrangements. During discovery, Staff and Verizon asked Bright House to identify the changes that it planned or requested. Bright House could not point to any such changes, but could only state that it was considering "a number of possible changes," including two nonexclusive examples described only in general terms. (BH Resp. to Staff Int. 32a, Ex. 3b at 85; BH Resp. to VZ Int. 34, Ex. 4c at 264.) At the hearing, Bright House admitted that it still had not made a proposal to materially change the interconnection arrangement. (Johnson, T.413-15.) Because Bright House cannot say what interconnection arrangement it might want, it is impossible for Verizon or the Commission to evaluate the impact of Bright House's proposed language and it should be rejected for that reason alone.

In any event, Bright House's claim of a right to DS3 or higher interconnection cannot withstand scrutiny. Bright House contends that DS1 level interconnection should not be required because it is based on obsolete network engineering. This assertion ignores the fundamental point that Bright House's traffic must be converted to the DS1 level before it can be routed to Verizon's tandem and end office switches. This requirement has nothing to do with the alleged obsolescence of Verizon's network; it

concerns traffic balancing and outage prevention at Verizon's tandem switches and traffic routing requirements for Verizon's end office switches. Bright House has not contended that there is any way for Verizon to distribute Bright House's traffic without it being converted to the DS1 level. (*See* Gates Dep., Ex. 9 at 56; Johnson, T.420.)

Moreover, Bright House's statements about the effects of multiplexing and the obsolescence of Verizon's network are wrong. In Mr. Gates' Direct Testimony, for example, he claimed that multiplexing traffic to the DS1 level somehow slowed it down (Gates DT, T.160), which he later admitted was untrue (Gates Dep., Ex. 9 at 53-54, 85-86.) In fact, multiplexing does not introduce inefficiencies into the network, nor does it affect the speed or quality of transmission. (VZ Resp. to Staff Int. 13, Ex. 2 at 9.) Bright House also stated that Verizon switches with DS1 ports are obsolete (Gates DT, T.161), but later acknowledged that such switches are still manufactured and used not only by Verizon but by other carriers, including both ILECs and CLECs. (Gates Dep., Ex. 9 at 49, 89-90.) In short, Bright House's network efficiency arguments are unfounded.

Bright House's related contention that DS3 or higher interconnection should be required based on TELRIC principles is similarly misguided. TELRIC is a costing methodology (D'Amico RT, T.549) and even Bright House admits that regulators have not used TELRIC principles to dictate an ILEC's physical network architecture or equipment. (BH Resp. to Staff Int. 33a, Ex. 3b at 86.) Bright House seeks to avoid this fact by arguing that, because (in its view) DS3 interconnection would be more efficient, Verizon may not charge Bright House for a less efficient form of interconnection. (*Id.*) But Bright House's premise is wrong. There is no way, consistent with sound engineering principles, to avoid conversion of Bright House's traffic to the DS1 level

before it is sent to Verizon's switches, so multiplexing cannot be avoided.

Finally, Bright House may not avoid the cost of multiplexing by designating a point on the Bright House side of the multiplexor as the POI for § 251(c)(2) purposes. Bright House's theory is that, if it can move the POI in this way, it will make the multiplexing part of "transport and termination" compensable through reciprocal compensation rather than a separate, tariffed charge for multiplexing. But Bright House is using the multiplexing equipment exclusively for its own traffic and the equipment therefore must be considered part of ***Bright House's*** network, not Verizon's. Indeed, when the Commission determined reciprocal compensation rates, it did ***not*** include the cost of multiplexing dedicated to individual carriers. (VZ Resp. to Staff Int. 15b, Ex. 2 at 12.) If the Commission adopted Bright House's theory, Bright House (and any CLEC adopting Bright House's ICA) would get multiplexing for free. Bright House should not be allowed to shift these costs to Verizon.[24]

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

The parties should continue to apply the same terms to meet-point billing that they have applied successfully for years under the existing ICA. The combination of those terms and the availability of Tandem Switch Signaling under Verizon's tariff already allow Bright House to provide access tandem functionality.

Issue 36 concerns the terms that should apply when Bright House operates as a competitive tandem provider. In essence, a tandem provider provides a link between IXCs and the LECs in a particular area, so that the IXCs can get calls to and from the end users of those LECs that choose to connect to (or "subtend") that particular tandem.

[24] Bright House's language should be rejected for the additional reason that it would allow Bright House to dictate whether facilities used for interconnection would be copper or fiber. To the extent Verizon is responsible for installing interconnection facilities, it should be able to choose the transmission medium.

(Munsell RT, T.652.) Today, LECs in the Tampa/St. Petersburg area typically choose to subtend the Verizon access tandem, and IXCs can go through that tandem to pick up or drop off calls for those LECs' customers. (*Id.*) Bright House proposes to offer an alternative to the Verizon tandem.

Beyond that, as Mr. Munsell suggested, Verizon could not understand what Bright House was seeking to do with respect to this issue. (*See* Munsell, T.694.)[25] From the outset, Verizon made clear that it has no objection to Bright House operating as a competitive access tandem provider and, indeed, emphasized that Bright House ***already*** can do so by utilizing the Tandem Switch Signaling ("TSS") services in Verizon's FCC Tariff No. 14. (Munsell DT, T.590-91; Munsell RT, T.652-54; Prehearing Order at 14 (indicating that "Verizon has no objection to Bright House operating as a competitive tandem provider" and that "Bright House already can operate as a competitive tandem provider under the parties' existing arrangements and through the provision of Tandem Switch Signaling under Verizon's FCC Tariff No. 14").) What concerned Verizon was what it understood to be Bright House's proposal that the IXC traffic be routed over the Local Interconnection Trunks between the parties, rather than over the ATC trunks properly used for such traffic. (*See, e.g.*, Munsell DT, T.592.) As Mr. Munsell explained, that is not technically feasible (at least for outbound traffic to IXCs) because the necessary routing information (*i.e.*, the carrier identification code or "CIC") cannot be transmitted over Local Interconnection Trunks. (Munsell DT, T.591-92; Munsell RT, T.653-56.) Bright House since has indicated it is not interested in pursuing that approach, at least for outgoing IXC traffic. (Gates RT, T.235.) And, as Mr.

[25] For its part, Bright House expressed confusion, as well. *See* Munsell, T.692.

Munsell stated, routing inbound IXC traffic over Local Interconnection Trunks would present a host of unworkable billing problems. (Munsell Dep., Ex. 14 at 195-96.)

Verizon also initially understood Bright House to be proposing to force Verizon (as a LEC) to subtend Bright House's access tandem. Mr. Munsell explained that that would be neither technically feasible (because the third-party routing electronics do not permit a LEC to subtend more than one tandem) nor competitively desirable (because LECs are permitted to choose their tandem provider, rather than being forced to subtend one). (Munsell DT, T.592-93; Munsell RT, T.656-57;VZ Resp. to Int. 48(a), Ex. 5b at 30.) Now, however, Verizon understands that Bright House is not seeking to force Verizon to subtend any access tandem that Bright House ultimately might establish. Rather, Bright House simply seeks to do that which Verizon already offers Bright House the ability to do under the TSS provisions of Verizon's tariff. (Munsell, T.693, 695-96.)[26] Therefore, there does not appear to be any remaining dispute regarding this issue, and the Commission should approve Verizon's language.

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

Yes. There is no dispute that Verizon is entitled to payment for terminating such traffic. The only question is whether Bright House should be responsible for that payment. It should be in order to avoid arbitraging of rates and to encourage more efficient interconnection arrangements.

This issue concerns how Verizon will be compensated for terminating local traffic that Bright House delivers to Verizon, but that originated with a third party (or Bright

[26] Importantly, Verizon's tariff provides that the IXC traffic would have to be sent over a different trunk group (not, for example, over existing Local Interconnection Trunks). (*See* Munsell, T.694.) This avoids both technical and billing concerns.

House affiliate).[27] Verizon has proposed Int. Att. § 8.3, which provides that, where a third-party carrier originates local traffic that Bright House then transits for that carrier to Verizon for termination, Bright House must compensate Verizon in the same amount that the originating carrier would have if it had handed off the traffic directly to Verizon for termination. (Munsell DT, T.594.) In this scenario, there is no dispute that Verizon is entitled to payment for terminating such transit traffic. (*Id.*) The only dispute here is whether Bright House should continue to make that payment (and in what amount). Bright House seeks to avoid that payment obligation by entirely deleting Int. Att. § 8.3.

Section 8.3 should be adopted to require Bright House to pay Verizon in the same amount that the originating carrier would have had it directly handed the traffic off to Verizon for termination--because that acts as an important check on potential arbitrage of intercarrier compensation rates. (Munsell DT, T.595-96.) 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. (*Id.*, T.596.) 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 $0.0040108. (*Id.*) In that scenario, a CLEC could strategically use transit services to collect five times more intercarrier compensation on inbound local traffic than it paid on its outbound traffic. (*Id.*) Verizon's proposed § 8.3 addresses this

[27] The parties appear to agree that, when such traffic is long-distance (IXC) traffic, it should be handled under the parties' meet-point billing arrangements. (*See, e.g.*, Munsell DT, T.594; Prehearing Order at 15 (reflecting Bright House's position).)

situation. Requiring Bright House to pay the same amount that the third party would if it delivered the traffic directly eliminates the arbitrage opportunity.

If not for the potential arbitrage of rates, an originating LEC otherwise would be expected to interconnect directly with Verizon for the exchange of local traffic. (*Id.*, T.595.) Of course, such carriers generally have the right to direct interconnection with Verizon under the Act. In almost all cases, direct interconnection is a more efficient use of network resources. (*Id.*) By transiting through another carrier en route to Verizon, a third party LEC would use additional facilities: the third party would need facilities to connect to the transiting carrier and the transiting carrier would need facilities to switch the traffic and transport it to Verizon. (*Id.*) That adds at least two functions (connection to the transiting carrier and switching) that are not necessary under a direct interconnection. Therefore, such an arrangement generally would be less efficient than direct interconnection. (*Id.*) By eliminating the potential arbitrage opportunities, § 8.3 encourages LECs to establish a more efficient direct interconnection with Verizon.

Bright House seeks to delete § 8.3, claiming that "Verizon should be required to bill the third party carrier directly for any traffic that Verizon terminates for such carrier" because that generally is how the parties have agreed to handle traffic that Verizon transits for third parties to Bright House. (Prehearing Order at 15.) Verizon and Bright House are not similarly situated, however, because Bright House is not required to provide transit services to third-party carriers. (VZ Resp. to Staff Int. 24, Ex. 2a at 18.) If and when Bright House decides to provide transit, it does so on a voluntary, contractual basis, subject to whatever commercial terms it is willing to agree to in order to handle that traffic. (*Id.*; Munsell DT, T.595.) So, when Bright House chooses to

transit local traffic to Verizon, it should be responsible for that choice. And it is fair to expect that a carrier that chooses to bring traffic to Verizon's network should pay Verizon for the services Verizon renders for that traffic. Verizon does not always enjoy the same freedom of choice that Bright House does. Consistent with common carrier obligations and duties to allow adoption of interconnection agreements under the Act, Verizon provides transit services to any requesting third-party carriers. (VZ Resp. to Staff Int. 24, Ex. 2a at 18.) Because Verizon is not in Bright House's position of voluntarily choosing to provide transit for third parties, it should not have the same obligations to be financially responsible for that traffic.

For these reasons, the Commission should reject Bright House's proposed changes regarding the transit of local traffic under Issue 36(a).

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., proposed Bright House § 9.25.)

Bright House must continue to pay Verizon for the ATC trunks used to carry IXC traffic to Bright House. Bright House cannot call a meet-point for access traffic a POI for section 251(c) interconnection and then force Verizon to bill IXCs for ATC trunks carrying only Bright House traffic.

Issue 36(b) involves the same special access facilities, ATC trunks, discussed under Issue 24. There, Verizon addressed Bright House's proposal to change the pricing regime for ATC trunks. Under Issue 36(b), Bright House wants to shift to Verizon the financial responsibility for these trunks and pay Verizon nothing for them. There is no support for Bright House's position.

As Verizon explained under Issue 24, Bright House uses its own facilities to connect directly with some IXCs that send calls to Bright House customers. (*See* Gates RT, T.225 n.28; Gates Dep., Ex. 9 at 22-23; Johnson Dep., Ex. 10 at 26-27, 30-31.) In

other cases, Bright House chooses to interconnect indirectly with IXCs, through Verizon's tandem. In these cases, calls coming from IXCs go through Verizon's tandem; Verizon hands the calls off to Bright House, which transports them to its switch, either using its own transmission facilities or on an alternate path that includes use of ATC trunks Bright House leases from Verizon. (*See* Gates RT, T.217-18.) Regardless of whether Bright House uses its own facilities or ATC trunks, under this latter scenario, Verizon and Bright House are "jointly provid[ing]" access service to a third-party IXC under meet-point billing arrangements, which, as discussed in Issue 24, are common. (*See* Gates DT, T.165-66; Gates RT, T.230.) These arrangements require the collaborating LECs to agree to a meet point to allocate their respective responsibilities for the access functions provided to the IXC, and then each party bills access charges for the functions it provides. (*See* Gates, T.300.) Under their existing meet-point billing arrangements, Verizon provides tandem switching to the IXCs and Bright House provides transport from Verizon's tandem to Bright House's switch. Verizon bills the IXCs only for the tandem switching it provides, and Bright House bills the IXCs access charges for the transport it provides, whether over Bright House's own facilities or by means of the leased ATC trunks. As Mr. Munsell testified, "[t]his practice is the industry standard." (Munsell DT, T.605.)

Mr. Gates explained that establishment of meet-point billing arrangements is governed by the MECAB and MECOD industry documents, along with federal tariffs (Gates RT, T.234; Gates, T.300)--not by § 251 of the Act, which does not mention meet-point arrangements. These industry guidelines specify "provider-to-provider negotiations" to allocate financial responsibility for meet-point arrangements. (Ex. 19, §

3.1.) Mr. Gates agreed that the MECAB/MECOD guidelines provide that the two LECs jointly furnishing access services to IXCs will "negotiate and jointly agree on a specific meet point for handling meet point billing traffic" and that "the location of the meet point is determined by agreement of the parties." (T.300-01). As Mr. Gates described the process, two carriers will negotiate and *agree* as to the point where one's responsibility ends and the other's begins. (Gates RT, T.230 n. 29.)

In this arbitration, however, Bright House wants what it admits is an "exception" to the industry-standard rules, so that it can force Verizon to take on the responsibility for transporting Bright House's IXC traffic. (BH Prehearing Statement at 9; Gates RT, T.230 n.29.) Bright House seeks to achieve this result by moving the agreed-upon meet point from Verizon's tandem to Bright House's collocations at Verizon's end offices, where the parties mutually exchange their own traffic. (Gates DT, T.167-68; Gates RT, T.229-30.) This change (which would not involve any physical network reconfiguration, but just a unilateral declaration by Bright House that the meet points for meet-point billing are now at the end offices)[28] would put ATC trunks on Verizon's side of the meet point. (Gates, T.340.) Under Bright House's plan, Verizon would then be responsible for billing the IXCs for the ATC trunks Bright House orders and uses to carry to carry third-party IXC traffic to Bright House customers. (Gates RT, T.229-31.)

Bright House understands, however, that it cannot force Verizon to agree to a particular meet point, because, as noted, meet points for joint provision of access service must be mutually agreed-upon. 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. So Bright House simply

[28] *See* BH Resp. to Verizon Int. 24, 31, Ex. 4c at 243, 258.

proposes to call the meet point for meet-point billing of access traffic to IXCs a § 251(c)(2) POI (Gates RT, T.228-29), thereby getting around the mutual agreement condition for meet-point billing and foisting upon Verizon the financial responsibility for the facilities carrying Bright House's traffic.[29] Or at least that is Bright House's theory.

Bright House admits that neither the FCC nor any state Commission has ever blessed the "exception" it seeks to create for itself in this arbitration. (BH Resp. to VZ Int. 29, Ex. 4c at 253.) Bright House does not have the arrangement it proposes here with any other ILEC (BH Supp. Resp. to VZ Int. 38(c), Ex 4c at 271), and, as far as Verizon knows, no CLEC anywhere has this kind of arrangement. Bright House's theory for Issue 36(b), like its theory for its new Issue 24, fails for the fundamental reason that provision of access service to a third party is part of the access regime, not part of the § 251(c)(2) interconnection regime. (Vasington, T.493-94.) An ILEC's obligation under § 251(c)(2) is to link its network with the network of the requesting CLEC, so that their respective end users can call each other--that is, the mutual exchange of traffic between the CLEC and ILEC networks. It is not to facilitate the CLEC's mutual exchange of traffic with a third-party long-distance carrier, which is and always has been the purpose of meet-point billing arrangements. (*See* Gates Dep., Ex. 9 at 103-04.) There is no law to support Bright House's conflation of meet-point billing arrangements with the Act's local interconnection regime.

Even if Bright House had a plausible legal argument to support its position (and it does not), it would merit rejection on policy grounds. At the hearing, Mr. Gates

[29] In its responses to Verizon's Interrogatories, Bright House repeatedly indicates that Verizon agreed to a fourth "POI" at Verizon's tandem switch ports for § 251(c)(2) interconnection. *See* BH Resp. to VZ Ints. 22-24, Ex. 4c at 241-43. This is wrong. What Verizon and Bright House agreed to was a meet-point at the switch ports for purposes of the parties' joint provision of access services to third-party IXCs, not for purposes of § 251(c)(2) interconnection. Bright House is misrepresenting its new theory as fact.

characterized the issue as being about "changing who sends the bill to the IXCs" for the ATC trunks. (Gates, T.312.) But it is not that simple. This issue is about matching up costs with the party that controls the costs, and Bright House's proposal would sever that link. That is, Bright House would control the number of ATC trunks that Verizon must provision and, therefore, the costs Verizon must bear, but Verizon would be responsible for collecting the per-minute charges from the IXCs that use the ATC trunks. But "[o]nly Bright House controls how efficiently (or inefficiently) it sets up the facilities on its side of the Verizon access tandem." (Munsell RT, T.661.) Currently, that control gives Bright House the incentive to order an efficient number of trunks, as it bears the risk that the access charges it will collect from IXCs for traffic routed over the trunks will be less than their cost. Or Bright House may decide that the redundancy benefits additional ATC trunks provide are worth the extra cost, even though that cost will not be fully recouped through switched access charges assessed against IXCs. In either case, it is Bright House that controls and bears the costs.

In contrast, as Mr. Munsell testified, Bright House's proposal would break that link and "place Verizon in the situation of trying to collect facility transport charges from the IXC to recover a cost (and potentially an inefficiency) imposed by Bright House." (Munsell RT, T.662.) This would give Bright House the incentive to over-purchase ATC trunks, because it would not have to worry about the costs of those excess trunks or whether its access volume would warrant that number of trunks. Verizon cannot be expected to bear the costs and inefficiencies, deliberate or not, of Bright House's network engineering decisions. And monitoring Bright House's ATC orders and its traffic flow over them to ensure that Bright House has not ordered an inefficient number

of trunks would impose an undue burden on Verizon,[30] including not only the trunk monitoring costs, but the expense of dispute resolution and potentially litigation before the Commission if the parties disagree about whether Bright House has too many trunks.

The Commission should not sanction Bright House's semantic gamesmanship. Bright House cannot obtain a unique "exception" to the industry meet point billing paradigm simply by calling a meet point a § 251(c) POI. Bright House should not be permitted to shift Bright House's transport responsibilities to Verizon and to impose upon Verizon any inefficiencies it wishes. The Commission should reject Bright House's position on Issue 36(b) and its associated contract language.

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. § 7.1; Glossary §§ 2.106, 2.123.)

Traffic should be classified as local (compensated at reciprocal compensation rates) or interexchange (compensated at access rates) based on the ILEC's basic local exchange areas. This provides a stable, uniform, competitively neutral standard – which is why at least ten other commissions have rejected Bright House's proposed alternative approach.

There is only one area of dispute remaining with respect to Issue 37: how to determine whether traffic exchanged between the parties is local (and therefore subject to reciprocal compensation rates) or interexchange (and therefore subject to substantially higher access rates). (Gates RT, T.245 and 246-47.)[31] Under the parties' existing ICA, the local calling areas for intercarrier compensation purposes are defined

[30] Bright House's Response to VZ Int. 24 (Ex. 4c at 243) suggests that Verizon would be involved "under the agreed terms of the new contract" in monitoring Bright House's trunk usage, but there are, in fact, no such terms that would apply to the arrangement Bright House seeks.

[31] In its submission for the Prehearing Order, Bright House indicated that Issue 37 also included an area of dispute regarding "where the 'transport' function ... begins." Prehearing Order at 16. Both parties' testimony addressed that point in their discussion of Issue 32, and accordingly Verizon has addressed it under Issue 32 above.

by reference to the Commission-approved basic local exchange areas spelled out in the local exchange tariff of the relevant incumbent LEC (in this case, Verizon). (Gates, T.314-15.) Any traffic within the tariffed basic local exchange areas is considered local and, therefore, subject to reciprocal compensation rates (or the ISP rate). Any traffic outside those areas is considered interexchange and subject to access rates. This is the same standard used in Verizon's ICAs with other carriers. And, indeed, with the exception of a different regime in New York, this is the same standard that generally is used throughout the country. (*See* Munsell Rebuttal, T.665.)

Bright House, however, proposes to use a different standard in the ICA, arguing that traffic should be rated as local or interexchange based on the retail local calling area offered by the originating carrier to its end users. (BH Resp. to VZ Int. 37, Ex. 4c at 267.) CLECs offer different retail local calling plans, such that their retail local calling areas can be very different than the ILEC's tariffed basic local exchange area. Indeed, they can be very different from the retail local calling areas of other CLECs. But, under Bright House's proposal, if a particular originating carrier has a broader local calling area, then a higher percentage of its traffic will be considered local and subject to intercarrier compensation rates. Bright House claims this better matches up intercarrier charges with how the call is charged to the end user customer. (*See* Gates, T.315-16.) But Bright House's proposal is entirely self-interested: it seeks to avoid paying access charges on interexchange traffic that it sends to Verizon. Because Bright House offers an all-LATA local calling plan, its proposal would treat ***every*** call it originates in the Tampa LATA as "local" and subject only to reciprocal compensation rates. Mr. Gates conceded that this was the effect of Bright House's proposal:

Q. ... Bright House has the all LATA local calling plan. So under Bright House's proposal here, that call is local. And so on a local call like that, the effect is Bright House would not pay access charges to Verizon on that call; right?

A. Yes.

(Gates, T.319.) But this approach is highly problematic for a number of reasons.

To properly categorize traffic as "local" or "interexchange," it is necessary to have a consistent, knowable, stable and uniform standard. (*See* Munsell DT, T.601; Munsell RT, T.664, 666.) But Bright House's proposal to base the categorization on the originating carrier's retail local calling area would instead establish many different standards that would be subject to constant change.

Unlike the tariffed, Commission-approved Verizon local exchange area that the parties currently use, Bright House could change its retail calling plan area at any time, such that what was considered a "free" local call one month may not be a "free" local call the next. (Munsell RT, T.667.) And the originating calling plan does not depend just on Bright House's whims. As Bright House concedes, other CLECs "[a]bsolutely" can adopt whatever ICA comes out of this arbitration. (Gates, T.319; Gates Dep., Ex. 9 at 78.) So, if Bright House's originating carrier proposal were adopted, rating calls as local or interexchange would depend not just on how Bright House decides to set up its own retail local calling area, but on how every other CLEC that adopts the agreement sets up its individual retail local calling plan. And, as Bright House admits, many of those CLECs can and do have different retail calling areas from Bright House and from each other. (Gates, T.318, Gates Dep., Ex. 9 at 79.) Indeed, those CLECs might have different local calling areas for their own individual retail end users, depending on what retail calling plan they have selected. (Gates Dep., Ex. 9 at 79; Munsell RT, T.667.)

Determining the jurisdiction of a call on multiple, changing originating calling areas does not provide the consistency and uniformity necessary to ensure fair and accurate billings. (*See* Munsell RT, T.667-68.) There would be no practical way for Verizon to discern which calls are local and which are interexchange if it has to look at potentially dozens of different retail calling areas and/or the particular retail plan that each individual caller has chosen at the time any given call is made. (*Id.*, T.667.) Verizon's systems cannot do that. (*Id.*) In short, Bright House's proposal is not workable.

Mr. Gates claims it would be "fairly simple" (Gates Dep. Ex. 9 at 113-14) and relatively "straightforward" (Gates RT, T.249) for Verizon to change its systems to accommodate Bright House's originating carrier proposal. But he offers nothing to substantiate the claim. And, as Mr. Gates admits, he has never had responsibility for the type of billing systems at issue (Gates Dep., Ex. 9 at 79), has never had to try to implement billing changes at a telephone company (*id.* at 82), and "do[es]n't have any personal knowledge" about Verizon's systems. (*Id.* at 114.) As Mr. Munsell testified, "[i]t isn't as simple as Mr. Gates has represented .... It isn't." (Munsell, T.699.) Mr. Munsell explained that it would be extremely difficult for Verizon to make the changes necessary to accommodate Bright House's proposal just for the traffic Bright House sends to Verizon, much less to accommodate the numerous other CLECs with different local calling areas that might adopt the agreement:

> Q. Okay. And in the case of Bright House and Verizon, again, looking at us alone, what would you need to know other than that it's coming from one of our numbers and going to one of your numbers to know that it goes into the local bucket?

A. The way that it is done today, the way Verizon set it up since the Act, is you compare the telephone numbers, you go to a Telcordia database to get the rate centers that are associated with those telephone numbers. Then you go to the Verizon retail local calling area table that's used to rate local traffic from Verizon end users, and that's the table that's used to determine whether or not those two telephone numbers of the call that the CLEC has sent us are local or whether they're not local. If they're not local, is it intrastate, intraLATA access or is it some other jurisdiction of access. That's the only table that we've got as a reference point.

Q. And it would be really, really hard to modify that table to reflect traffic coming in from Bright House should simply all be rated as local?

A. Well, it wouldn't be modifying that table. Then we would have to set up a different process that says for Bright House traffic, forget everything you have done for 14 years, we've just built a new table, and now take that traffic and jurisdictionalize it against the new table. I can't say I'm an IT person. I can definitely say I'm not an IT person, but I was in the requirement sessions 14 years ago when we built this, and I have talked with the IT department about this. They have told me this would be difficult.

Q. Really, really difficult?

A. Yes.

(*Id.*, T.700-701.) The difficulties would be exponentially greater if Verizon had to make the same changes for all CLECs that potentially could adopt the ICA. And whatever changes Verizon made would have to be constantly updated each time a CLEC decided to change its retail calling areas.[32]

[32] Bright House alternatively suggests that Verizon "simply" could "take a detailed sample" of all the traffic it receives, "subject that traffic to a special study (outside the normal monthly billing process)," determine what percentage of that traffic is local or interexchange, and then apply that percentage factor to future traffic to approximate the appropriate rates. (Gates RT, T.250.) Obviously, there is nothing "simple" about that approach, which would require substantial time, effort and expense outside what Bright House admits is the "normal" process. Moreover, this approach would be a giant step backwards from what the parties

Even if Bright House's proposal were technically feasible, it is still unacceptable because it is not competitively neutral. Bright House proposes an originating carrier approach because it would result in more of its traffic to Verizon being defined as local, rather than interexchange, so that Bright House would pay the lesser reciprocal compensation rates on that traffic, rather than relatively higher access charges. (Munsell RT, T.668.) Meanwhile, other carriers, both CLECs and IXCs, would continue to pay the higher access rates on their traffic. Verizon likewise would continue to pay access charges on traffic to Bright House. (*Id.*) So, Bright House's standard would minimize its own intercarrier compensation expenses while maintaining the same level of intercarrier compensation from Verizon. Such an approach is anticompetitive and would encourage gaming of the system.

Finally, even if Bright House's proposal were competitively neutral and otherwise sound from a policy perspective (and it is not), it should not be considered in a bilateral arbitration. Bright House's proposal amounts to nothing short of fundamentally restructuring the intrastate access charge regime (even if Bright House only intends to do so for itself). If the Commission wants to entertain that sort of fundamental change, it should do so only in a generic proceeding in which all interested parties can participate – not in an arbitration between just two parties.

Given all these concerns, it is not surprising that the other jurisdictions to consider this issue have rejected the same approach Bright House advocates here. For example, the Rhode Island commission found that the originating carrier approach

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do today. Today, Verizon uses a system that accurately identifies the jurisdiction of calls based on the ILEC's approved basic local exchange area. (*See* VZ Resp. to BH Int. 49, Ex. 5b at 30-31.) Bright House would replace that accuracy with a factor approach that necessarily must estimate what the jurisdiction of any particular call would be. (*Id.*) There is no point in moving from an accurate system that rates each call to a factors approach that only approximates those results.

"seems to be contrary to federal law," would "more likely promote arbitrage rather than competition" and "will bring greater administrative confusion to the competitive marketplace."[33] The Ohio commission concluded in another Verizon arbitration that, rather than an originating carrier approach, the Verizon ILEC's local calling areas "shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation."[34] Vermont likewise held that the originating carrier's selection of the local calling area should "not determine the intercarrier compensation that applies (*i.e.*, whether the call is subject to reciprocal compensation or access charges)."[35] The public service commissions in Massachusetts, Delaware, California and New Hampshire all have reached the same result.[36] Even the New York commission, which established the unique regime referenced above, rejected the originating carrier approach.[37] As the Maryland Public Service Commission found some years earlier:

> [W]ithout a consistent set of boundaries, carriers will be unable to accurately rate their own calls .... We therefore

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[33] *In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon Rhode Island*, Arbitration Decision, Docket No. 3437, at 28-31 (RI PUC Oct. 16, 2002).

[34] *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).

[35] *Petition of Global NAPs, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Order, Docket No. 6742, at 12 (Vt. PSB Dec. 26, 2002).

[36] *See Petition of Global NAPs, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts*, Order, D.T.E. 02-45, at 25 (Mass. D.T.E. Dec. 12, 2002); *Petition by Global NAPs, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware, Inc.*, Arbitration Award, PSC Docket No. 02-235, at 20 (Del. PSC Dec. 18, 2002), *aff'd*, Order No. 6124 (Del. PSC March 18, 2003); *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company and Verizon California, Inc. Pursuant to Section 252(b) of Telecommunications Act of 1996*, A. 01-11-045 and A.01-12-06, Commission Decision, D. 02-06-076 (Cal. PUC June 27, 2002); and *Global NAPs, Inc. Petition for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon, NH*, Report and Recommendation of the Arbitrator Addressing Contested Issues, DT 02-107, *aff'd*, Final Order, Order No. 24,087 (NH PUC Nov. 22, 2002).

[37] *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 02-C-0006, Order Resolving Arbitration Issues, at 12 (NY PSC May 22, 2002).

> see benefits in the use of uniform exchange boundaries, and ... it is most practical to utilize the [Verizon ILEC's] exchange boundaries for uniformity by all competing telecommunications companies.[38]

To adopt an originating carrier approach or "any alternative exchange boundaries would require a massive restructuring ... that is not necessary or beneficial."[39]

Bright House nevertheless suggests that Florida Commission precedent supports its position, although its witnesses both concede that the lone Commission decision Bright House cites was ***vacated*** on appeal because the reviewing court concluded it was not supported by sufficient evidence. (Gates DT, T.138; Johnson DT, T.387.) In particular, the Florida Supreme Court held that there was insufficient evidence demonstrating that adopting the originating carrier's local calling area would be competitively neutral[40] and the Commission issued an "Order Eliminating the Default Local Calling Area."[41] Given that there was insufficient evidence of the competitive neutrality of the originating carrier approach on the record in a comprehensive, multi-party investigation, there is certainly no such evidence here.

Moreover, the Commission's experience in the generic docket and in another roughly concurrent interconnection arbitration bears out that relying upon the originating carrier's calling area is not workable. Specifically, in an arbitration proceeding between Global NAPS, Inc. ("GNAPs") and Verizon that predated the Florida Supreme Court's decision and the Commission's Order Eliminating the Default Local Calling Area, the Commission followed its since-vacated default rule and accepted GNAPs' proposal to

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[38] *In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Interexchange Telephone Service; and Requesting the Establishment of Policies and Requirements for the Interconnection of Competing Local Exchange Networks*, Case No. 8584, Order No. 72348, 1995 Md. PSC LEXIS 261, *70-71 Md. PSC Dec. 28, 1995).

[39] *Id.* at *71.

[40] *Sprint-Florida, Inc. v. Jaber*, 2004 Fla. LEXIS 1519, Nos. SC03-235 & SC03-236 (Fla. Sept. 15, 2004).

[41] *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Order Eliminating the Default Local Calling Area, Docket No. 000075-TP, Order No. PSC-05-0092-FOF-TP (Jan. 2005).

define the local calling area by reference to the originating carrier's calling area.[42] However, the Commission found that, "much like the record in our generic docket, the record here is silent as to exactly what details are necessary to implement the originating carrier plan."[43] GNAPs never was able to provide those details, and Verizon and GNAPs did not implement the originating carrier approach. (Munsell RT, T.671-72.)

Recognizing the problems raised by its last foray into this issue, the Commission should join the multitude of other jurisdictions that have rejected the originating carrier approach proposed by Bright House here. If the Commission wishes to consider changing the intrastate access regime, which is what Bright House proposes to do here, it should be in a focused investigation with the participation of all interested parties.

ISSUE 41: SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER BETWEEN THE PARTIES AND THE PROCESS OF LOCAL NUMBER PORTABILITY ("LNP") PROVISIONING? IF SO, WHAT SHOULD THOSE PROCEDURES BE? (Int. Att., BH proposed § 15.2.2.)

The parties' existing ICA already contains specific procedures governing the process of transferring a customer between the parties and providing LNP provisioning. It is not appropriate to include Bright House's new provision requiring that coordination services be provided free of charge in connection with customer ports.

Issue 41 arose because Bright House sought a number of changes to Verizon's standard language, also in the parties' existing ICA, regarding Local Number Portability ("LNP") provisioning, which is the process by which a customer retains his or her phone number when switching from Verizon to Bright House or vice versa. (*See* Munsell DT, T.611.) (The transfer of the phone number to the new service provider is a "port" of that number.) The only remaining dispute concerns Bright House's proposal to add language to § 15.2.2 of the Interconnection Attachment that would require the parties to

[42] *In re: Petition by Global NAPS, Inc. for arbitration pursuant to 47 U.S.C. 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc.*, Final Order on Arbitration, Docket No. 011666-TP, Order No. PSC-03-0805-FOF-TP (July 9, 2003).
[43] *Id.* at 26.

provide coordination services free of charge on ports involving 12 or more telephone numbers. (*See* Bright House's proposed Int. Att. § 15.2.2, Ex. 17.) Bright House claims a right to free coordination because (a) the FCC has established rules that prevent one carrier from charging another carrier for the costs "directly related" to providing number portability and (b) coordination costs should be considered part of the costs "directly related" to providing number portability. (Gates RT, T.197-98.)[44]

Bright House may be correct that there should be no charges for direct LNP costs and, indeed, Verizon does not charge Bright House for the ports themselves (regardless of how many telephone numbers are being ported). (Munsell DT, T.614.) But coordination is not a direct LNP cost. Coordination is a separate and additional service for which Verizon is entitled to compensation. And Bright House readily concedes that Verizon is entitled to compensation for numerous ancillary functions that can be provided in connection with LNP ports. (*See*, *e.g.*, Gates RT, T.198 (indicating it would be appropriate for ILEC to assess LNP-related charges on carriers that purchase switching ports as UNEs or resell the ILEC's local exchange services); *id.*, T.202 ("Bright House understands and agrees that if it wants Verizon to "expedite" a porting request, it may be subject to additional fees.").)

In most cases, Verizon's LNP provisioning is automated, with orders handled by an electronic system without human involvement. (Munsell DT, T.614; Gates, T.327.) Coordination generally refers to the situation in which human involvement is required – either by providing some form of monitoring, staying on a line during or after the time a port is scheduled and/or otherwise communicating with another carrier to facilitate a port

[44] There is no dispute about whether either party will provide coordination; the only issue is whether they will be compensated for providing that service.

or otherwise ensure that it takes place in a certain way or at a certain time. (*See id.*; Verizon's Resp. to Staff Int. 9c, Ex. 2a at 7.) As Bright House's witnesses admit, "[c]oordination is not required for most ports." (Gates RT, T.199; *see also* Gates, T.328.) That is true whether the port involves just one number or many numbers.[45] In either case, coordination is provided only as a separate "special handling" service in unique circumstances, and necessitates the time, attention and input of multiple departments and people in ways that standard LNP provisioning does not. (Munsell DT, T.614.) As such, the costs of coordination are not LNP costs; they are the costs of an entirely different and additional service. (*Id.*; s*ee also* VZ's Resp. to Staff Int. 9c, Ex. 2a at 7.) And those costs can be significant. (Munsell DT, T.614.)

In that sense, providing coordination is no different than expediting a port. Both are ancillary services not typically provided in connection with a port, but that instead require separate and additional time, effort and cost. And Bright House agrees that compensation should be required for providing expedited service: "although that is an LNP activity...it's appropriate to pay for expedites." (Gates, T.327; RT, T.202 ("Bright House understands and agrees that if it wants Verizon to "expedite" a porting request, it may be subject to additional fees.").) As a practical matter, coordination is no different. Logically, the two ancillary services should be treated the same.

Just as with an expedite, when a company interrupts the efficient, automated LNP process that Verizon developed over many years (with CLEC input) and asks Verizon to expend time and resources on special handling like coordination, it should be required to pay for that special handling. Even if Bright House is entitled to free LNP

[45] There is no basis for Bright House's suggestion that it would be "prudent to have some actual human involvement" when multiple numbers are ported. (Gates RT, T.199.) Verizon's automated processes are capable of handling ports with multiple numbers.

ports, it is not entitled to unlimited coordination or other ancillary services free of charge. Bright House's proposed changes to Int. Att. § 15.2.2 therefore should be rejected.

ISSUE 49: ARE SPECIAL ACCESS CIRCUITS THAT VERIZON SELLS TO END USERS AT RETAIL SUBJECT TO RESALE AT A DISCOUNTED RATE? (Pricing Att. § 2.1.5.2.)

No. The FCC has ruled that special access services are not subject to the resale discount.

Verizon's proposed language provides that it is not required to provide the wholesale discount on exchange access services. (Pricing Attachment § 2.1.5.2.) Bright House would revise this language to state that point-to-point special access services to end users for data transmission are not exchange access services, so the wholesale discount would apply to them. This revision should be rejected because the FCC has ruled that special access services are not subject to the resale discount.

ILECs must provide to CLECs for resale, at a wholesale discount, services the ILECs sell at retail to subscribers that are not telecommunications carriers. (47 U.S.C. § 251(c)(4)). In the *Local Competition Order* (¶¶ 872-74), the FCC ruled that ILECs do not have to offer exchange access services at a resale discount because they are offered predominantly to carriers rather than end users. The fact that some end users buy exchange access services out of ILEC tariffs does not matter. The FCC explained: "The mere fact that fundamentally non-retail services are offered pursuant to tariffs that do not restrict their availability, and that a small number of end users do purchase some of these services, does not alter the essential nature of the services." (*Id.* ¶ 874.)

The same analysis applies to special access services. In the *Local Competition Order*, the FCC noted that end users "occasionally purchase some access services, ***including special access services***," but went on to conclude that such occasional use

did not require the application of the wholesale discount. (*Id.* ¶ 873 (emphasis added).)[46] In the *TRRO*, the FCC confirmed that it had excluded special access services from the resale discount requirement:

> Special access services, however, provide competitors with one wholesale input, rather than with a retail service; competitors generally combine this wholesale input with other competitively provisioned services or facilities to build a complete service, which is then offered to retail customers. ***Thus, the Commission has explicitly excluded special access services from the ambit of section 251(c)(4).***

(*TRRO* ¶ 146 n.146 (2005) (citations omitted; emphasis added).) Because Bright House is not entitled to the resale discount on special access services it buys from Verizon, its proposed revision to Verizon's resale contract language must be rejected.

Respectfully submitted on July 9, 2010.

By: _____

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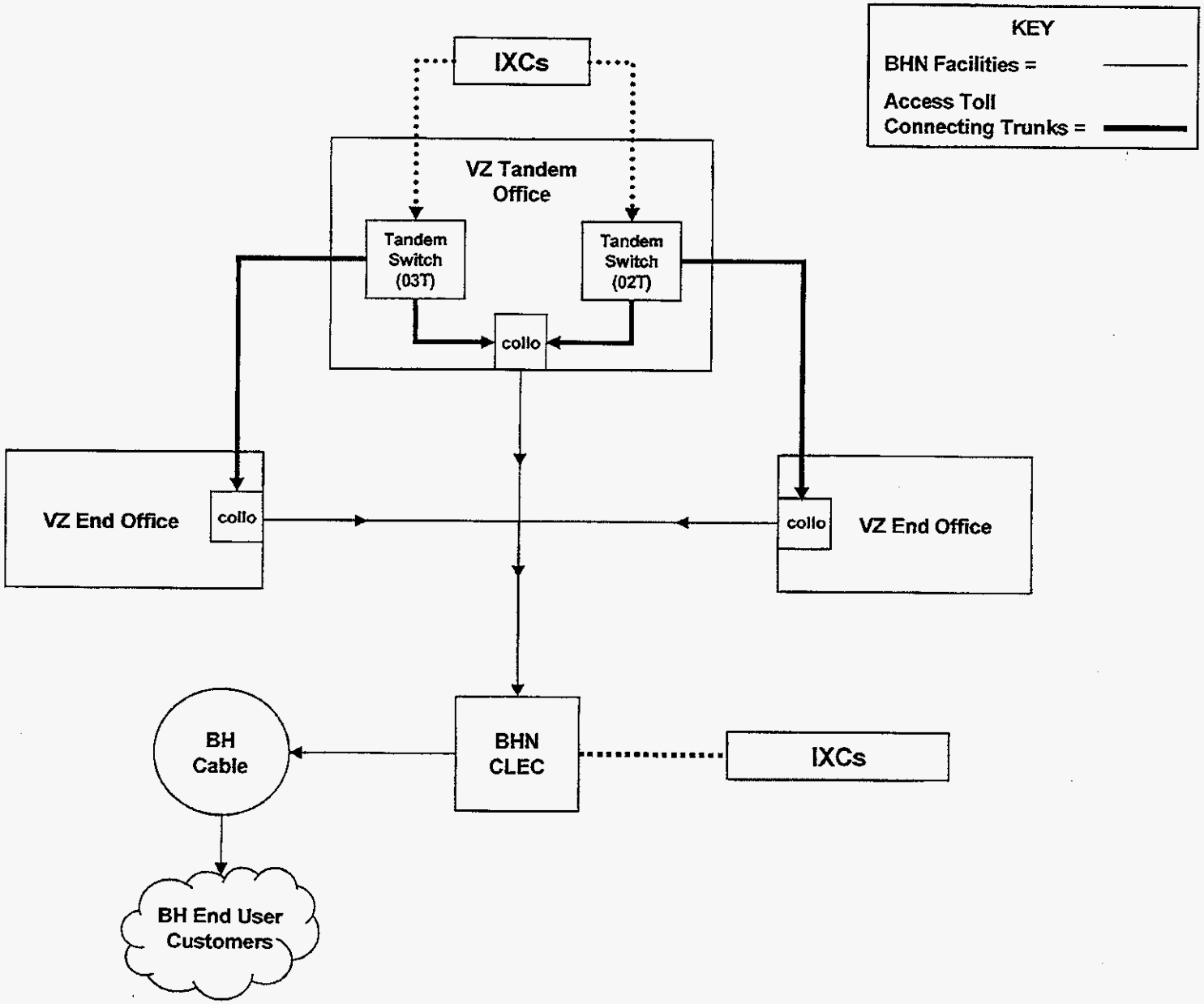
[46] Verizon provides special access services in Florida predominantly to carriers rather than end user customers. (See VZ Resp. to BH Int. 37, Ex. 5b at 24-25.)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