Dulaney L. O'Roark III
Deputy General Counsel, Southeast
Legal Department

5055 North Point Parkway
Alpharetta, Georgia 30022

Phone 678-259-1657
Fax 678-259-5326
de.oroark@verizon.com

March 14, 2011 – **VIA ELECTRONIC MAIL**

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

Re: Docket No. 110056-TP
Complaint against Verizon Florida LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC

Dear Ms. Cole:

Enclosed for filing in the above matter is Verizon Florida LLC's and MCI Communications Services, Inc. d/b/a Verizon Business Services' Motion to Dismiss or Stay Bright House's Complaint. 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,

s/ Dulaney L. O'Roark III

Dulaney L. O'Roark III

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Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Verizon Florida LLC and MCI Communications Services Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC	)	Docket No. 110056-TP Filed: March 14, 2011

VERIZON'S MOTION TO DISMISS OR STAY BRIGHT HOUSE'S COMPLAINT

MCI Communications Services, Inc. d/b/a Verizon Business Services and Verizon Florida LLC (together, "Verizon") move the Commission to dismiss the Complaint of Bright House Networks Information Services (Florida), LLC ("Bright House") filed on February 22, 2011 ("Complaint"), or, in the alternative, to stay this proceeding.[1]

Bright House asks the Commission to treat voice-over-Internet-protocol ("VoIP") traffic like traditional telephone traffic and to order Verizon to pay intrastate switched access charges on it. Bright House's Complaint should be dismissed because it would require this Commission to assert jurisdiction over VoIP, in violation of the Florida statutes that "exempt[] from commission jurisdiction" all VoIP services and VoIP providers. Under the express terms of the Commission's governing statute, the Commission has no jurisdiction over any aspect of VoIP services, whether in a complaint proceeding or otherwise.[2]

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[1] In accordance with Rule 28-106.204(3), counsel for Verizon has conferred with opposing counsel concerning Verizon's alternative motion to stay this docket and has been informed that Bright House opposes Verizon's alternative motion.

[2] VoIP is not traditional telephone traffic. But even if the Commission accepted Bright House's incorrect legal theory that the VoIP traffic at issue is plain old intrastate interexchange telecommunications traffic,

Even if the Florida Legislature had not prohibited this Commission from exercising jurisdiction over VoIP, federal law would. VoIP services are inherently interstate and subject to the exclusive jurisdiction of the FCC. VoIP is, in addition, an information service under federal law, and the tariffed access charge regime therefore does not apply to VoIP traffic, as two federal courts recently found.[3]

Last month, the FCC, the agency with exclusive jurisdiction over VoIP, confirmed that it is the appropriate regulatory body to set intercarrier compensation for VoIP traffic, and that it intends to do so in the near term.[4] In its rulemaking to reform the intercarrier compensation system and universal service funding, the FCC established an expedited schedule for determining intercarrier compensation obligations for VoIP traffic, ahead of comprehensive intercarrier compensation reform. Under that schedule, the FCC's comment cycle will conclude on April 18, likely before this Commission can even decide this Motion. It makes no sense for this Commission to expend its limited resources trying to resolve the same VoIP compensation issue that is now before the FCC and that the FCC has identified for urgent action. Prudent use of Commission resources is especially important now as agency budget pressures mount in light of Governor Scott's commitment to sharply reduce government spending.

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the Commission could not order Verizon to pay access charges on it, because intrastate interexchange telecommunications services and providers are also exempt from Commission jurisdiction, as Verizon discusses later.

[3] *PAETEC Comm., Inc. v. CommPartners, LLC*, No. 08-0397, slip. op., 2010 U.S. Dist. LEXIS 51926 (D.D.C. Feb. 18, 2010); *Manhattan Telecomm. Corp. v. GNAPs*, No. 08-cv-3829, 2010 U.S. Dist LEXIS 32315, 49 Comm. Reg. (P&F) 1296 (S.D.N.Y. Mar. 31, 2010) ("*MetTel*").

[4] *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC docket No. 96-45, WC Docket No. 03-109 ("*ICC/USF Notice*"), ¶¶ 603-619 (Feb. 9, 2011).

Therefore, at a minimum, the Commission should stay this proceeding pending the completion of the FCC's rulemaking on intercarrier compensation for VoIP. A stay will also allow the parties to focus on negotiating a commercial agreement to resolve the intercarrier compensation issue, as they were doing when Bright House filed its Complaint—and as Verizon is doing with a number of other providers. In fact, Verizon has already executed a commercial VoIP compensation agreement with another provider, using the same $0.0007 per-minute rate that Verizon is currently paying Bright House on Internet protocol-enabled traffic.

Bright House acknowledges that it "continue[s] to discuss possible informal resolutions of this dispute with Verizon." (Complaint at 5 n. 10.) These discussions were initiated as a result of Verizon's offer to negotiate a reciprocal rate for the exchange of VoIP traffic. Verizon's objective is a mutual agreement to put both parties on equal footing for exchange of IP-enabled traffic, not to gain a unilateral benefit with respect to compensation for such traffic. Although Bright House may believe that filing a complaint will help it to gain leverage in the ongoing negotiations, this tack will serve only to divert to litigation the very resources that are necessary to resolve the parties' dispute, making an agreement that much less likely.

The Commission should refuse to be drawn into Bright House's plan to game the state regulatory regime. Bright House should not be allowed to claim the benefits of exemption from regulation for its cable company VoIP affiliate, while at the same time asking the Commission to apply access charges to the VoIP traffic generated by or delivered to that affiliate, which could not itself invoke the Commission's jurisdiction to make any such demand.

The Commission should dismiss or, in the alternative, stay the Complaint.

I. BRIGHT HOUSE'S COMPLAINT SHOULD BE DISMISSED

A. The Commission Lacks Jurisdiction to Address Bright House's VoIP-Related Complaint.

Under Florida law, the Commission lacks jurisdiction over the VoIP services that are the subject of Bright House's complaint, and which the Commission would require in order to rule (as Bright House requests) that intrastate access charges are due on VoIP traffic.

Bright House does not dispute that the traffic it exchanges with Verizon originates from or terminates to VoIP end users in Internet protocol ("IP") format. (*See* Complaint at 8-9.) Bright House acknowledges that it provides functions integral to the provision of the retail VoIP service its cable affiliate offers. *Id.* at 8. In addition, Bright House admits that "there is no dispute about the number of minutes the parties have exchanged" (Complaint at 5 n. 10), just the appropriate compensation for those minutes of traffic.[5]

Adjudication of Bright House's Complaint would require the Commission to determine the jurisdictional classification of VoIP traffic, to decide what intercarrier compensation rates apply to VoIP calls, and to compel the payment of particular compensation on traffic generated by and delivered to VoIP providers.

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[5] Verizon does not agree with all the factual allegations in Bright House's Complaint, but for purposes of this Motion to Dismiss, they are taken as facially correct. *See, e.g., Petition for Expedited Enforcement of Interconnection Agreement with Verizon Florida Inc. by Teleport Comm. Group, Inc. and TCG South Florida*, Order Granting Motion to Dismiss, Order No. PSC-02-1705-FOF-TP, at 8-12, 02 FPSC 12:58 (Dec. 6, 2002). Verizon emphasizes that Bright House's characterization of some VoIP traffic as "intrastate" is a legal conclusion, not a factual allegation. Therefore, contrary to Bright House's statement (Complaint at 3 n. 5), there *is* an issue in this case about the proper identification of calls as jurisdictionally intrastate in nature. As Verizon explains later in the Motion, VoIP traffic is, as a legal matter, jurisdictionally interstate.

The Commission cannot do these things unless it has subject matter jurisdiction over VoIP services and VoIP providers. Subject matter jurisdiction is "an agency's power to hear and determine the causes of a general class of cases to which a particular case belongs."[6] "'Jurisdiction of the subject matter does not mean jurisdiction of the particular case but of the class of cases to which the particular controversy belongs.'"[7]

Subject matter jurisdiction must be conferred by Florida statute.[8] Any doubt as to the Commission's jurisdiction in a particular instance must be resolved against an exercise of jurisdiction.[9] The Commission cannot regulate beyond its "specific mandate": "Despite good intentions, we should avoid even the appearance that we are replacing the Legislature's judgment with our own."[10]

Chapter 364 specifically addresses the Commission's jurisdiction over the class of cases to which this one belongs—that is, VoIP-related cases. In a number of provisions, the Legislature made the unequivocal judgment that VoIP activities are outside the Commission's jurisdiction, except where such jurisdiction is explicitly

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[6] *See* Am. Jur. 2d, Admin. Law, § VII, "Adjudications," § B, "Jurisdiction," § 281.
[7] *Complaint and Petition of John Charles Heekin Against Florida Power & Light Co.*, Order No. PSC-99-1054-FOF-EI, 99 FPSC 5:324, at 7 (May 24, 1999).
[8] *See, e.g., Petition for Declaratory Statement that Nextel Partners, Commercial Mobile Radio Service Provider in Florida, Is Not Subject to Jurisdiction of Florida Public Service Commission for Purposes of Designation as "Eligible Telecommunications Carrier"* ("*Nextel Declaratory Statement*"), Docket Nos. 030346-TP & 030413-TP, Declaratory Statement, Order No. PSC-03-1063-DS-TP, at 4-8, *citing City of Cape Coral v. GAC Utils., Inc. of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973); *Lee County Elec. Co-op, Inc. v. Jacobs*, 820 So. 2d 297 (Fla. 2002); *Dept. of Transp. v. Mayo*, 354 So. 2d 359 (Fla. 1977); *Schiffman v. Dept. of Prof. Regulation, Board of Pharmacy*, 581 So. 2d 1375, 1379 (Fla. 1st DCA 1991); *Lewis Oil Co. v. Alachua County*, 496 So. 2d 184, 189 (Fla. 1st DCA 1986).
[9] *Nextel Declaratory Statement*, at 8, *citing Lee County*; *Mayo*; *Complaint Against Fla. Power & Light Co. Regarding Placement of Power Poles and Transmission Lines*, Order No. PSC-02-0788-PAA-EI (June 10, 2002); *Complaint and Petition by Lee County Elec. Coop., Inc. for an Investigation of the Rate Structure of Seminole Electric Coop., Inc.*, Order No. PSC-01-0217-FOF-EC (Jan. 23, 2001).
[10] *Nextel Declaratory Statement*, at 8.

delineated elsewhere in Chapter 364 or authorized by federal law. Neither exception applies here.

Section 364.011 states:

> **Exemption from commission jurisdiction.** The following services are **exempt from oversight by the Commission**, except to the extent delineated in this chapter or specifically authorized by federal law:
> (1) intrastate interexchange telecommunications services.
> (2) *broadband services, regardless of the provider, platform, or* protocol.
> (3) **VoIP**
> (4) Wireless telecommunications, including commercial mobile radio service providers.

(Emphasis added.)

Under the plain terms of the statute, therefore, VoIP services, and the entities that provide those services, are expressly "exempt[] from commission jurisdiction." This broad statutory "exemption from commission jurisdiction" is categorical, and applies to any exercise of jurisdiction over any aspect of VoIP services—whether through a rulemaking proceeding, a complaint proceeding, or otherwise. And, as discussed below, the only stated exceptions to this broad exemption have no bearing on Bright House's Complaint.

In addition to § 364.011's broad exemption from any aspect of the Commission's jurisdiction, a number of other statutory provisions confirm the Commission's lack of authority over VoIP services, activities, and providers.

Section 364.013 states:

> Emerging and advanced services. Broadband service and the provision of **voice-over-Internet-protocol (VoIP) shall be free of state regulation**, except as delineated in this chapter or as specifically authorized by federal law, regardless of the provider, platform, or protocol.

(Emphasis added.)

Section 364.01 ("Powers of commission, legislative intent") includes "**VoIP**" in the "**[c]ommunications activities** that are **not regulated by the Florida Public Service Commission**" and recites the legislative finding "that **the provision of voice-over-Internet-protocol (VoIP) free of unnecessary regulation, regardless of the provider, is in the public interest.**" (§ 364.01(3), Fla. Stat.)

Section 364.02(13) specifies that the term "**service**" in Chapter 364 "**does not include** broadband service or **voice-over-Internet protocol service for purposes of regulation by the commission.**" It also clarifies that a local exchange carrier cannot have any duties with respect to VoIP under state law; any such duties are "only those that the company is obligated to extend or provide under applicable **federal law and regulation.**" (Emphases added.)

These statutes mean just what they say—that services and communications activities relating to VoIP are "exempt[]" from Commission jurisdiction.[11] In fact, the Commission cannot even require VoIP providers to answer questions about their VoIP activities, let alone exercise any oversight of those activities.[12]

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[11] *See, e.g.*, Report on the Status of Competition in the Telecommunications Industry as of December 31, 2009, Fla. Pub. Serv. Comm., Div. of Competitive Markets and Enforcement ("Local Competition Report") at 3 (listing VoIP among the services that "are not subject to FPSC jurisdiction"); 7 ("The Commission does not regulate wireless telecommunications, broadband services, or VoIP services."); 74 ("VoIP is expressly excluded from the statutory definition of service" in Florida law); *Petition of Alltel Comm., Inc. for Designation as Eligible Telecommunications Carrier*, Order No. PSC-07-0288-PAA-TP, 07 FPSC 4:114, at 6-9 (April 3, 2007) (*"Section 364.011, Florida Statutes*, is quite clear that unless authorized by federal law, this Commission retains no jurisdiction over CMRS providers"). Commercial mobile radio services are listed along with VoIP services in section 364.011 as exempt from Commission jurisdiction.

[12] Local Competition Report at 9 (VoIP providers "are beyond the jurisdiction of the Commission and cannot be compelled to contribute"); 51 ("Some limitations exist in arriving at an accurate estimate of VoIP subscribers in Florida because the Commission does not have jurisdiction over VoIP service."); 63 ("Only wireline telecommunications providers are under the regulatory authority of the Commission. The Commission is, therefore, unable to gather certain types of information from providers of nonjurisdictional services since wireless carriers and providers of VoIP service are not obligated to provide data.").

As § 364.011 states, the only possible exceptions to the Commission's lack of jurisdiction over VoIP would be a specific authorization of jurisdiction under federal law or another provision of chapter 364. Bright House does not claim the Commission has any federal authorization to establish VoIP compensation. Its jurisdictional allegation relies solely upon §§ 364.01(2), 364.01(4)(g), and 364.02(14)(g). None of those provisions grants the Commission jurisdiction over Bright House's Complaint.

B. Even If the Disputed Traffic Were Just Intrastate Interexchange Traffic (and It Is Not), the Commission Could Not Address Bright House's Complaint.

Verizon explained above why the traffic at issue in Bright House's Complaint is VoIP and not, as Bright House claims, regular intrastate interexchange telecommunications traffic that would be subject to Bright House's switched access price list. But even if the traffic at issue were, as a legal matter, properly classified as intrastate interexchange traffic (and it is not), the Commission would lack jurisdiction to address Bright House's Complaint. This is because Verizon Florida and Verizon Business, when they provide intrastate interexchange telecommunications services, are exempt from Commission jurisdiction.

Section 364.011, which exempts VoIP from Commission jurisdiction, also exempts "intrastate interexchange telecommunications services" from Commission jurisdiction, except to the extent delineated in Chapter 364 or as authorized by federal law. Fl. Stat. § 364.011(1). In addition, an "intrastate interexchange telecommunications company" is specifically excepted from the definition of

"telecommunications company." The Commission's regulatory jurisdiction is limited to "telecommunications companies." Fl. Stat. § 364.01(1) & (2).

Under Bright House's theory, Verizon Florida and Verizon Business are intrastate interexchange telecommunications companies providing intrastate interexchange telecommunications services when they handle traffic generated by or delivered to VoIP end users. (Complaint at 1, 7.) This theory is wrong, because, as Verizon explained in the previous section, VoIP traffic is legally distinct from traditional telephone traffic. But even if Bright House is right, the Commission lacks jurisdiction over the traffic at issue and over Verizon as a provider of that traffic, because the Commission has no jurisdiction over intrastate interexchange telecommunications companies or the intrastate interexchange telecommunications services they provide. The only statutes the Legislature designated as continuing to apply to intrastate interexchange telecommunications companies are not relevant here.[13] Therefore, Bright House's Complaint must be dismissed under even Bright House's incorrect legal theory that the disputed traffic is no different from traditional intrastate interexchange traffic. The Commission should not, in any event, accept that theory. It can simply rule that Bright House's Complaint must be dismissed whether the disputed traffic comes within the exemption from jurisdiction for VoIP or for intrastate interexchange telecommunications services.

[13] Section 364.02(14)(g) provides that intrastate interexchange telecommunications companies are still subject to §§ 364.025 (universal service assessments); 364.04 (publication of rates); 364.10(3)(a) & (d) (provision of Lifeline service by eligible telecommunications carriers); 364.163 (tariffing and establishment of incumbent local exchange carrier access rates); 364.285 (penalties for entities subject to Commission jurisdiction); 364.336 (regulatory assessment fees); 364.501 (call-before-you-dig requirement); 364.603 (slamming prohibition); 364.604 (billing requirements).

C. The Exceptions Bright House Cites Do Not Ground Jurisdiction Over Its Complaint.

As discussed earlier, Bright House contends that §§ 364.01(2), 364.01(4)(g) and 364.02(14)(g) give the Commission jurisdiction over its Complaint. But none of these exceptions to the jurisdictional exemptions applies in this case.

1. Section 364.01 Precludes, Rather than Prescribes, Jurisdiction Over Bright House's Complaint.

Subsection 364.01(2) states the Legislature's intent "to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service commission in regulating telecommunications companies." That subsection is immediately followed by § 364.01(3), which Bright House does not mention, and which lists VoIP among the "communications activities" that are "*not* regulated by the Florida Public Service Commission" and that shall remain "free of unnecessary regulation, regardless of the provider." (Emphasis added.) Obviously, the Commission cannot rely on § 364.01(2)'s general jurisdictional grant to take jurisdiction over Bright House's VoIP-related Complaint when § 364.01(3) (and § 364.011) specifically except VoIP from that grant. The *specific* provision addressing VoIP must take precedence over the provision addressing the Commission's jurisdiction more generally. *See Bloate v. United States*, 130 S.Ct. 1345, 1354 (2010) (a "specific provision" controls "one of more general application"); Adams v. Culver, 111 So.2d 665, 667 (Fla. 1959) ("It is a well settled rule of statutory construction . . . that a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms.").

Bright House's reliance on § 364.01(4)(g) is unavailing for the same reason. Section 364.01(4)(g) directs the Commission to "exercise its exclusive jurisdiction to "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint." But the Commission's jurisdiction, as reflected in the very same § 364.01 (as well as §§ 364.011, 364.013, *and* 364.02(13)), *does not extend to VoIP-related activities or* providers. The Commission cannot exercise "exclusive jurisdiction" that it does not have.

Moreover, as Verizon discussed earlier, the Commission's jurisdiction under § 364.01 does not extend to intrastate interexchange telecommunications services or providers any more than it does to VoIP services or providers. Therefore, even if Bright House were correct that the traffic at issue is just intrastate interexchange telecommunications traffic (and it is not), the Commission would have to dismiss the Complaint. Therefore, the Commission need not even choose between Verizon's (correct) legal theory and Bright House (incorrect) legal theory in order to dismiss the Complaint.

2. Section 364.02(14)(g) Does Not Impose Access Charges on the Disputed Traffic.

Bright House also cites § 364.02(14)(g) as a basis for Commission jurisdiction over its Complaint, claiming that it "expressly requir[es] intrastate IXCs (like Verizon) to pay access charges" on the disputed traffic. (Complaint at 7.) But § 364.02(14)(g) does not say what Bright House claims it does. The statute merely provides that interexchange carriers, which are exempt from most Commission regulations, "shall continue to pay intrastate switched network access rates *or other intercarrier*

compensation" to local exchange carriers for the origination and termination of interexchange telecommunications service. (Emphasis added.) It does not impose switched access charges as the only measure of intercarrier compensation for even traditional telecommunications traffic, let alone traffic delivered to and originating from VoIP end users and that is exempt from Commission jurisdiction. Indeed, the Commission could not entertain Bright House's action for collection of switched access charges even if the disputed traffic were considered traditional intrastate interexchange telecommunications services, which, like VoIP, are exempt from Commission jurisdiction under § 364.011 and, as noted, are not subject to any access charge mandate.[14] So Bright House's claim that § 364.02(14)(g) grounds jurisdiction over its Complaint fails even if the traffic at issue were plain old "intrastate interexchange telecommunications" (which it is not), instead of IP-originated and IP-terminated traffic (which it is). And Verizon *is*, in any event, paying Bright House "intercarrier compensation" on the traffic it exchanges with Bright House now.

In addition, Bright House's access charges are not even tariffed. They appear in a price list, which Bright House calls the "intrastate equivalent of a tariff for CLECs." (Complaint at 3.) For that proposition, Bright House cites only the "Frequently Asked Questions" section of the Commission's website. The discussion there states only that "ALECs, if providing basic service, file what we refer to as price lists instead of tariffs." In response to the question as to whether ALECs have to file a price list, the site quotes Commission Rule 25-24.825, which requires price list filings for basic local service, but

[14] Collection actions for access charges routinely go to the courts; that would be the appropriate recourse for Bright House in the event that negotiations collapse and Bright House seeks to press the claim it improperly has raised here.

leaves to "the company's option" the filing of price lists for any other services.[15] Only incumbent local exchange carriers must file tariffs for access services. Fl. Stat. § 364.163. Bright House has cited nothing to support its allegation that CLECs' optional price lists have the same legal ramifications as tariffs.

Moreover, the only provision that specifically addresses intercarrier compensation for VoIP-related traffic makes clear that Florida law imposes *no* particular intercarrier obligations with respect to VoIP services. Section 364.02(13), which defines "service," states:

> The term "service" does not include broadband service or voice-over-Internet protocol service for purposes of regulation by the commission. Nothing herein shall affect the rights and obligations of any entity related to the payment of switched network access rates *or other intercarrier compensation, if any, related to voice-over-Internet protocol service.* Notwithstanding s. 364.013, and the exemption of services pursuant to this subsection, the commission may arbitrate, enforce, or approve interconnection agreements, and resolve disputes as provided by 47 U.S.C. ss 251 and 252, or any other applicable federal law or regulation. With respect to the services exempted in this subsection, regardless of the technology, the duties of a local exchange telecommunications company are only those that the company is obligated to extend or provide under applicable federal law and regulations.
>
> (Emphasis added.)

This language reflects, once again, the Legislature's commitment to keeping VoIP free of Commission jurisdiction (except where it is resolving a dispute under federal law), including with respect to determining what entities pay each other, if anything, with respect to VoIP-related traffic. This provision plainly does not obligate any entity to pay access charges or any other intercarrier compensation on such traffic, and simply recognizes that entities may—or may not—have compensation

[15] *See* Telecommunications Tariffs: Frequently Asked Questions, http://www.psc.state.fl.us/utilities/telecomm/tariffs/faq.aspx.

arrangements prescribing some form of compensation for VoIP. These arrangements would include, for example, the VoIP compensation agreements Verizon seeks to negotiate with other providers, including Bright House.

Section 364.02(13) does *not* give the Commission permission to impose such arrangements, or, for that matter, to do anything else—in contrast to other language in § 364.02(13) stating that "the commission may" exercise jurisdiction in the context of interconnection agreements as provided in 47 U.S.C. §§ 251 and 252, *and* which plainly states that this authority is an exception to the broad "exemption" from Commission jurisdiction that would otherwise apply. Nothing in the language recognizing the possible existence of VoIP compensation arrangements gives the Commission the jurisdiction to impose or enforce any such arrangements on VoIP services or VoIP providers or to find that they exist apart from federal law. Indeed, to further emphasize the Legislature's understanding that VoIP is not an intrastate matter, the last sentence of § 364.02(13) provides that a local exchange carrier's duties with respect to VoIP are, as a matter of law, "*only* those that the company is obligated to extend or provide under applicable federal law and regulations" (emphasis added).

Because § 364.02(14)(g) does not require Verizon to pay switched access charges on the disputed traffic, the Commission must reject Bright House's claim that that provision supports the exercise of jurisdiction over its Complaint seeking collection of switched access charges.

D. Bright House Cannot Hide Behind Its Corporate Structure to Avoid the VoIP Jurisdiction Exemption.

Bright House acknowledges in passing that VoIP services are "deregulated" under Florida law, but it claims that the exemption from regulation is limited to "retail" VoIP services (Complaint at 3), and makes much of the fact that Bright House Cable, rather than the complaining Bright House CLEC, is the entity selling Bright House's retail VoIP products to end users (Complaint at 9). But Bright House's claim about the scope of the jurisdictional exemption for VoIP is wrong, and the interposition of the Bright House CLEC between Bright House Cable and Verizon is irrelevant to the parties' dispute (and the Motion to Dismiss).

The "retail" limitation Bright House claims does not appear in the statutory language exempting VoIP from Commission jurisdiction. The provisions addressing VoIP do not distinguish between retail and wholesale jurisdiction with respect to VoIP services or providers (with the exception of allowing the Commission to resolve disputes under 47 U.S.C. §§ 251 and 252 or other applicable federal law, which Bright House does not invoke here). On the contrary, the exemption from state regulatory jurisdiction applies broadly to the "provision of voice-over-Internet-protocol" and any VoIP "communications activities," "regardless of the provider" (§§ 364.013, 364.01(3)). Bright House admits that the services it provides to its cable affiliate are necessary to assemble the VoIP service that that affiliate provides to its end users; these services "allow Bright House-Cable (and indirectly, Bright House-Cable's end users) to make calls to, and receive calls from, the PSTN" (or public switched telephone network). (Complaint at 8.) In other words, part of the retail VoIP service Bright House Cable

offers includes the ability to make calls to and receive calls from Verizon's (and others') networks, an ability the Bright House CLEC provides. Because Bright House CLEC is indispensable to the provision of the Bright House VoIP retail service, it is indisputably engaged in "the provision of" VoIP services and VoIP "communications activities." Because the Commission has no jurisdiction over such VoIP services, activities, or providers, it cannot address Bright House's Complaint asking it to do so.

Moreover, if the Commission granted Bright House's Complaint to apply the intrastate access rate regime to calls delivered to or originated from VoIP subscribers, the Commission would, in fact, be regulating the retail VoIP service. A Commission ruling that intrastate access charges is the right measure of compensation for the aspect of the retail VoIP service that allows end users to make calls to and receive calls from the PSTN would regulate the VoIP service, and the entity providing it, just as surely as requiring a local exchange carrier to file tariffs to collect originating and terminating access charges on traditional voice calls would regulate that carrier.

There is no dispute that Bright House Cable offers its retail VoIP service through a company that is exempt from this Commission's oversight. But Bright House is seeking to have it both ways — that is, to enjoy the freedom from regulation that comes with classification as a VoIP provider while also collecting access charges as if it were a local exchange carrier ("LEC"). By holding itself out as a VoIP provider, Bright House Cable is able to offer a service that is not regulated under Florida law. At the same time, however, because Bright House Cable is not a LEC, nothing in Florida law requires interexchange carriers to pay it access charges or any other intercarrier compensation.

To try to impose such an obligation, while still preserving its status as an unregulated service provider, Bright House Cable has interposed its affiliated CLEC (which has only one customer—Bright House Cable) between interexchange carriers and Bright House Cable's VoIP customers. Bright House is thus attempting to use its corporate structure to create an obligation that would not otherwise exist — namely, a requirement that an interexchange carrier pay intrastate access charges for calls that are delivered to Bright House's VoIP customers. The Commission should reject Bright House's attempt to manipulate its corporate structure to be treated as a VoIP provider while also collecting access charges as if it were a LEC. Indeed, the *ICC/USF Notice* reflects that the FCC's intercarrier compensation regime for IP traffic will apply whether or not the VoIP provider has a "LEC partner" between it and the traditional wireline LEC. *See ICC/USF Notice*, ¶ 610.

* * *

The Legislature could not have more clearly expressed its intent for VoIP services, activities, and providers to remain free of Commission jurisdiction—in not just one, but four, places in the Commission's governing statute (§§ 364.011, 364.013, 364.01, and 364.02(13).) Neither the general jurisdictional provisions Bright House cites nor the obligation of interexchange carriers to pay local exchange carriers for originating and terminating intrastate interexchange calls provide any basis for Commission jurisdiction to address Bright House's Complaint.

E. Federal Law Would Prevent the Commission From Hearing Bright House's Complaint, Even if It Had the Jurisdiction to Do So Under Florida Law.

The Commission need not look beyond the Florida Statutes to conclude that it has no jurisdiction to address Bright House's Complaint. However, the Commission should know that even if explicit prohibitions did not exist in state law, it still would have no jurisdiction to address Bright House's Complaint. This is because VoIP is an interstate, information service subject to the FCC's exclusive jurisdiction.

1. Federal Courts Have Recognized that State Access Charges Do Not Apply to VoIP.

Contrary to Bright House's claim that no state or federal court ruling supports Verizon's position (Complaint at 5-6), two federal courts last year found that state (and federal) tariffed access charges do not apply to traffic in IP format. *See PAETEC and MetTel, supra*. In both cases, the courts denied efforts by a competing local exchange carrier to apply the tariffed access charge regime to VoIP traffic, as Bright House seeks to do here. The *PAETEC* court concluded that VoIP is an "information service[] exempt from access charges" and also that there was no "pre-Act obligation related to inter-carrier compensation for VoIP" that the federal Telecommunications Act of 1996, and specifically 47 U.S.C. § 251(g), could have preserved.[16] The court in *MetTel* also identified an "inability to apply the tariff regime as it stands" to any VoIP traffic Global NAPs delivered to MetTel.[17] The Judge recognized the FCC's determination that "information services . . . are not subject to access charges" and its "preempt[ion] [of] state regulation of VoIP services."[18] Given that the FCC had not resolved the regulatory

[16] *Paetec*, 2010 U.S. Dist. LEXIS 51926, at *9.
[17] *MetTel*, 2010 U.S. Dist. LEXIS 32315, at *8.
[18] *Id.* at 6-7.

classification of VoIP, the court "declined to enter the melee."[19] After finding that Global NAPs' traffic was, at least for the most part, VoIP, the court "conclude[d] that the filed tariff rates cannot be applied to the facts of this dispute," although MetTel was entitled to a "fair[] measure" of compensation for terminating Global NAPs traffic.[20]

These cases directly contradict Bright House's view that the state access charge regime applies to VoIP traffic. Bright House, however, simply dismisses them in a footnote as "wrongly decided" and not binding in Florida. (Complaint at 14 n. 26.) But, although these cases are not binding on the Commission, the principles underlying these decisions are fundamentally sound, as explained below, and would require dismissal of Bright House's Complaint, even if Florida law did not.

2. VoIP Is Inherently Interstate, and Thus Only the FCC May Establish Intercarrier Compensation Rules for Such Traffic.

The FCC's *Vonage Order*, upheld by the Eighth Circuit, found that VoIP traffic is inseverably interstate for jurisdictional purposes, and that states are preempted from regulating the rates, terms, and conditions under which VoIP providers operate.[21] Contrary to Bright House's suggestions (Complaint at 15), the FCC did not limit its conclusions in *Vonage* strictly to "nomadic" VoIP services (which can be used from multiple locations), as opposed to "fixed" VoIP services like Bright House's (which are associated with a particular location). The FCC made clear that its preemption analysis applied not just to Vonage's service, but also to "other types of IP-enabled services having basic characteristics similar to" that service — a class the FCC expressly

[19] *Id.* at 7.
[20] *Id.* at 8, 12.
[21] *See* Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC. Rcd 22404 (2004), *petitions for review denied, Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

recognized included "cable companies" and other "facilities-based providers."[22] As the FCC explained, the "integrated capabilities and features" characteristics of VoIP "are not unique to [Vonage's service], but are inherent features of most, if not all, IP-based services."[23] For example, most VoIP services offer "a suite of integrated capabilities" that enables consumers to "originate and receive voice communications and access other features and capabilities."[24] Tellingly absent from that list of "basic characteristics" of VoIP service is any requirement that a service must be portable in order for state regulation to be preempted, as Bright House suggests. Because the FCC did not have any services other than Vonage's before it, it did not rule directly on those facilities-based services, but made clear that, as to any such services, it "would preempt state regulation" to the same extent.[25]

In addition, the policy considerations underlying the *Vonage Order* apply with equal force to *all* VoIP services, including the service offered by Bright House. The FCC identified as its overriding concern the disastrous policy consequences of permitting every state to impose its own set of regulations with respect to VoIP, a result that would "risk eliminating or hampering this innovative advanced service."[26] The consequences of subjecting IP-enabled traffic to the intrastate access regime would be particularly harmful, because intrastate access charges are multiples higher than any other form of intercarrier compensation (*e.g.*, interstate access charges and reciprocal compensation). Although IP-enabled traffic is just a small portion of the total traffic

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[22] *Id.* ¶¶ 25 n.93, 32.
[23] *Id.* ¶ 25 n.93.
[24] *Id.* ¶ 32.
[25] *Id.*; *see also id.* ¶ 1 (stating that it is "highly unlikely that the Commission would fail to preempt state regulation of [facilities-based] services to the same extent").
[26] *Id.* ¶ 37; *see id.* ¶ 35.

exchanged among providers today, it is growing rapidly as the industry evolves toward all-IP networks. *See ICC/USF Notice*, ¶ 609. It would make no sense to impose upon this traffic the indisputably broken legacy intercarrier compensation scheme that has retarded the deployment of broadband networks. *See id.*, ¶¶ 1-10, 40.

Bright House contends, however, that the FCC's rulings with respect to calculation of universal service fund ("USF") contributions from VoIP providers support its view that determination of VoIP compensation obligations is properly a state matter. (Complaint at 16.) Bright House is wrong.

In the *Federal USF Assessment Order* Bright House cites,[27] the FCC established a framework for allocating a VoIP provider's revenues between state and federal operations for purposes of calculating the provider's contribution to the federal USF. Among the permissible methods of allocating revenues between jurisdictions for purposes of USF assessments, the FCC listed conducting a traffic study and developing a method to track and classify calls by jurisdiction. *Federal USF Assessment Order*, ¶¶ 52, 56-57. In the subsequent *State USF Assessment Order*,[28] the FCC ruled that it would not preempt state requirements assessing USF contributions on VoIP providers if the state's "particular requirements do not conflict with federal law or policies" and are authorized by state law. *Id.*, ¶ 1.

Bright House contends that, because the FCC recognized that VoIP calls may be classified as interstate or intrastate for purposes of calculating state and federal USF assessments, states may, likewise, identify a portion of IP traffic as intrastate for

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[27] *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) ("*Federal USF Assessment Order*").
[28] *Universal Service Contribution Methodology*, Declaratory Ruling, FCC 10-185, WC Dkt. 06-122 (Nov. 5, 2010) ("*State USF Assessment Order*").

purposes of imposing intercarrier compensation obligations on that traffic. (Complaint at 16.) But Bright House reads far too much into the FCC's USF assessment orders, which were expressly limited to the mechanics of *assigning VoIP revenues* for the purposes of USF contributions. The FCC cautioned that nothing in the *State USF Assessment Order* affected its "conclusion in the *Vonage Preemption Order* concerning the preemption of rate regulation, tariffing, or other requirements that operate as 'conditions to entry.'" *State USF Assessment Order*, ¶ 23 (footnote omitted). Nothing in the FCC's USF orders authorizes states to assign a portion of IP traffic to the intrastate jurisdiction in order to *regulate* it by subjecting it to state access tariffs or price lists.

In fact, the FCC's *ICC/USF Notice* makes no distinction between "intrastate" and "interstate" VoIP traffic for purposes of its task to define intercarrier compensation rules. The FCC intends to determine what compensation applies to all VoIP calls, not just those that cross state boundaries. *See ICC/USF Notice*, ¶¶ 608-619. Indeed, the *Notice* refutes the very basis for Bright House's Complaint—that is, that VoIP calls are no different from traditional voice calls, and thus the legacy access regime necessarily applies to VoIP traffic. (Complaint at 1, 3-4.) The *Notice* confirms that VoIP calls are *not* just like any other calls for intercarrier compensation purposes, and that application of tariffed access charges to VoIP calls is *not* the status quo. To the extent that applying the existing intercarrier compensation regime, including intrastate access charges, is to be considered as an option for resolving the VoIP compensation issue at all, the FCC will undertake that consideration, not the states. *See ICC/USF Notice*, ¶ 618. And application of the existing access regime is clearly not the FCC's favored option, given

"the need to move away from today's intercarrier compensation system" for other voice traffic as part of its comprehensive intercarrier compensation reform. *See id.*, ¶ 613.

Even if Florida law did not already make clear that the Commission cannot take jurisdiction over IP traffic, it would lack the jurisdiction to subject that traffic to Bright House's access rates for that traffic, because it is inseverably interstate and state tariffs (or price lists) cannot apply to interstate traffic.

3. VoIP Is an Information Service to which Intrastate Access Charges Cannot Apply.

In addition to being jurisdictionally interstate, traffic that originates or terminates in IP format is information services traffic to which state access charge rules do not apply.

VoIP meets the federal statutory definition of an information service because it offers consumers an integrated suite of capabilities — not merely voice communication, but advanced features such as voicemail, online account configuration and management, and find-me/follow-me and other single-number/multiple-phone services — that allow consumers to "generat[e], acquir[e], stor[e], transform[], process[], retriev[e], utilize[e], or mak[e] available information via telecommunications."[29] Because those capabilities are offered as part of a single, integrated, any-distance service — and cannot practicably be broken apart into component pieces — these services at a minimum "combine both telecommunications and information components" and as a result "are treated as information services."[30]

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[29] 47 U.S.C. § 153(20).

[30] *See PAETEC, supra,* at *6.

A hallmark of information services traffic is protocol conversion. When a VoIP customer places a call to, or receives a call from, the PSTN, that call undergoes a "net protocol conversion." In other words, the call is originated in one format (IP, if the call originates with a VoIP customer) and is terminated in another (time division multiplexing ("TDM"), if the call terminates with a traditional telephone customer). In the U.S. Supreme Court's words, such a net protocol conversion is what enables communication "between networks that employ different data-transmission formats."[31]

This is the case with the traffic flowing between Verizon and Bright House. Verizon sends most calls to Bright House in "standard PSTN format"[32] (that is, TDM) and those calls terminate to the "ultimate end users" in IP format. In the other direction—from Bright House's VoIP end users to Verizon—the protocol conversion is from IP to TDM. (Complaint at 8-9.) The FCC has long classified such services that perform a net protocol conversion as 'enhanced services," and, therefore, "information service" under the statutory definition in § 153(20) of the Communications Act.[33]

No federal or state law authorizes information service providers to file access tariffs, and no federal or state law permits the imposition of access charges on information service providers or information services traffic.

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[31] *National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 977 (2005).

[32] Verizon also originates some calls, from its VoIP customers, in IP format, but Bright House does not appear to contend that the state access regime applies to such IP-to-IP calls.

[33] *See, e.g.*, First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* 11 FCC Rcd 21905, ¶¶ 102-107 (1996). The FCC's definition of "enhanced service" includes services "which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information." 47 C.F.R. § 64.702(a). The statutory definition of "information service" likewise includes, *inter alia*, the "offering of a capability for . . . transforming [or] processing . . . information via telecommunications." 47 U.S.C. § 153(20).

Bright House does not deny that VoIP is an information service, but contends that, even if it is, Bright House Cable, not Bright House CLEC, offers that retail VoIP service. Bright House thus asserts that Bright House CLEC can still collect access charges on "traffic an IXC sends to, or picks up from, a LEC where the LEC's customer is an interconnected VoIP provider." (Complaint at 12-13.) But, as explained above, Bright House plays an essential role in providing the retail VoIP service, transporting traffic between Bright House Cable's customers and the PSTN—traffic that, in both directions, undergoes the net protocol conversion that renders it information services traffic outside the access charge regime.

The interposition of Bright House CLEC between Verizon and Bright House Cable does not change the fact that the traffic at issue originates or terminates in IP, and, as noted, does not remove that traffic from the scope of the FCC's rulemaking (and its exclusive jurisdiction) with respect to VoIP compensation. *See ICC/USF Notice*, ¶ 610. The same rules that prevent VoIP providers from having to *pay* access charges when they deliver IP-to-PSTN traffic to terminating local exchange carriers preclude them from *collecting* access charges when they receive PSTN-to-IP traffic or deliver IP-to-PSTN traffic to toll-free 8YY destinations. Any other rule would enable asymmetric arbitrage. Indeed, the urgent need to curb such arbitrage opportunities was central to the FCC's decision to address VoIP compensation on an expedited schedule. *ICC/USF Notice*, ¶ 610 ("there is some evidence of asymmetrical revenue flows for traffic exchanged between a traditional wireline LEC and a VoIP provider, with the VoIP provider (or its LEC partner) collecting access charges, for example, but refusing to pay them") (footnote omitted).

There is, of course, no need for this Commission to decide or analyze whether VoIP is an information service or a telecommunications service under federal law, because state law forbids the Commission from exercising jurisdiction over VoIP traffic. But the federal analysis provides an additional reason to support dismissal of Bright House's Complaint. The Commission could not take jurisdiction over interstate, information services traffic, even if the Florida Legislature had not already made that clear.

II. THE COMMISSION SHOULD, AT A MINIMUM, STAY THIS PROCEEDING UNTIL THE FCC COMPLETES ITS VOIP INTERCARRIER COMPENSATION RULEMAKING.

Aside from the fact that this Commission has no authority to determine compensation obligations for VoIP traffic, the FCC is considering this precise issue and intends to resolve it in the near future. It would make no sense for this Commission to waste its resources trying to do the same thing. Therefore, the Commission should, at a minimum, stay this proceeding pending completion of the FCC rulemaking on VoIP compensation.

In the *ICC/USF Notice* released last month, the FCC identified the three most pressing intercarrier compensation issues—including VoIP compensation—for expedited treatment.[34] The FCC confirmed that it had not yet determined what compensation, if any, applies to VoIP traffic. *ICC/USF Notice*, ¶ 608. It recognized that the absence of an intercarrier compensation framework for VoIP had given rise to numerous disputes (like this one between Verizon and Bright House) that make quick

[34] *See ICC/USF Notice*, ¶ 603-06 (the other two issues are phantom traffic and traffic pumping).

FCC action especially important to provide regulatory certainty and avoid wasteful litigation. *Id.*, ¶ 614.

As Verizon has explained, the *ICC/USF Notice* indicates that the FCC will determine compensation obligations for all VoIP calls— which, as explained above, are inherently interstate, so there is no "intrastate" aspect of VoIP compensation that this Commission could or should consider while the FCC is conducting its rulemaking. The FCC has established an expedited, 45-day comment cycle for resolving this issue; that cycle ends on April 18. So even if this Commission (incorrectly) decides it has the jurisdiction to proceed on Bright House's Complaint *and* that it should do so despite the FCC's concurrent proceeding, this Commission is highly unlikely to even render a decision on this preliminary motion by April 18, let alone turn to the merits of the dispute. Any Commission deliberations on the VoIP compensation issue here would lag the FCC's, with any FCC decision truncating this proceeding. Even if this Commission could manage to conclude this proceeding before the FCC issues its VoIP compensation decision, it would risk inconsistency with federal law and invalidation of its ruling.

It makes no sense for the Commission and its Staff (or the parties) to waste their time and limited resources trying to resolve the same VoIP compensation as the FCC, especially when that issue falls within exclusive federal jurisdiction. Indeed, aside from the jurisdictional issue, moving forward on Bright House's Complaint would violate the legislative directive to coordinate with the FCC "to achieve greater efficiency in regulation." (Fla. Stat. § 364.012(1). It is not efficient for the Commission to devote resources to the same VoIP compensation issue that is before the FCC, to start a

proceeding likely to be curtailed by FCC action, and to make decisions that may be inconsistent with the FCC's authoritative resolution of this issue.

The need for the Commission to operate efficiently has never been more pressing, given the new Administration's emphasis on cutting government spending and eliminating non-critical agency activities. In anticipation of a potential budget cut, the Commission prioritized activities and positions for possible elimination.[35] These include a number of consumer-facing positions and consumer-oriented activities.[36] The Commission's proposals also included declining to process requests to arbitrate interconnection agreements under §§ 251 and 252 of the federal Act. *Id.* at 12-13, 23-24. Given the difficult choices facing the Commission as it struggles to do more with less resources, declining to address an issue that is properly before the FCC, anyway, should be an easy decision. Indeed, even if the Commission had the jurisdiction to proceed on Bright House's Complaint (and it does not), it would defy reason to drain its resources duplicating the FCC's VoIP compensation inquiry when the Commission is, at the same time, considering deferring to the FCC the interconnection agreement arbitrations that federal law specifically assigns to state commissions.

Aside from conserving resources, a stay will also allow the parties to focus on negotiating a commercial agreement to resolve their VoIP compensation dispute, which has been Verizon's objective all along. Verizon has not taken the kind of "extreme all-or-nothing" position that has been identified as a cause of intractable VoIP compensation disputes (*see ICC/USF Notice*, § 610)—and that Bright House has taken

[35] Priority Listing for Possible Reduction for Request Year, Ex. D3-A, Detail of Expenditures (Oct. 13, 2010).
[36] *See id.* at 3 (reduce distribution of educational materials); 4-5 (reduce consumer outreach); 15-16 (reduce customers meetings); 29-30 (disband customer call center); 39-40 (reduce gas safety inspections).

here with its demand to apply the highest measure of intercarrier compensation, intrastate access charges, to VoIP traffic. Verizon, unlike a number of other providers, has recognized that providers should compensate each other for handling this traffic. The $0.0007 per-minute rate that Verizon is paying Bright House is a reasonable, fair and well-established rate to apply to the exchange of VOIP until parties are able to enter commercial agreements establishing reciprocal rates, terms, and conditions for VoIP traffic. This rate (or a lower rate) is already in use by some for the exchange of VoIP traffic, as well as in other contexts, such as terminating wireless traffic and Internet service provider-bound traffic.

Contrary to the impression Bright House tries to create, its dispute with Verizon over VoIP compensation is in no way extraordinary. As the *ICC/USF Notice* reflects, these collection disputes have become increasingly common because of the existing uncertainty about VoIP compensation obligations. They likely number into the hundreds, with some reaching back years. *See ICC/USF* Notice, ¶ 610.

Bright House tries to mislead the Commission into believing that the FCC "condemned" Verizon's approach of disputing the application of tariffed access charges on VoIP and inviting negotiation of intercarrier compensation agreements. (Complaint at 5 n. 11.) This is not true. Indeed, the FCC cited Verizon's commercial agreement with Bandwidth.com as an example of the VoIP-specific rate approach it presented for comment, listing the $0.0007 per-minute rate used there as one option if the FCC chooses that kind of approach. *ICC/USF Notice*, ¶ 616. Rather than disapproving anything Verizon did, the FCC condemned "unilateral action to disrupt existing *commercial arrangements* regarding compensation for interconnected VoIP traffic" (*id.*,

¶ 614 (emphasis added))—*not* the existing access charge regime, as Bright House wrongly implies.

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The Commission has no jurisdiction to address Bright House's Complaint seeking a determination of what intercarrier compensation obligations apply to IP traffic. Even if it had such jurisdiction, it would be wasteful for the Commission to use resources trying to resolve this issue when the FCC is doing the same thing. If the Commission does not wish to address Verizon's motion to dismiss, it should order a stay of this proceeding until completion of the FCC's rulemaking on VoIP compensation.

Respectfully submitted on March 14, 2011.

By: s/ Dulaney L. O'Roark III
Dulaney L. O'Roark III
5055 North Point Parkway
Alpharetta, Georgia 30022
Phone: (678) 259-1657
Fax: (678) 259-5326
Email: de.oroark@verizon.com

and

Kimberly Caswell
P. O. Box 110, MC FLTP0007
Tampa, Florida 33601-0110
Phone: (727) 360-3241
Fax: (813) 204-8870
Email: kimberly.caswell@verizon.com

Attorneys for MCI Communications Services, Inc. d/b/a Verizon Business Services and Verizon Florida LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on March 14, 2011 to:

Adam Teitzman, Attorney Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us

Beth Salak
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
bsalak@psc.state.fl.us

Christopher W. Savage
Davis, Wright Tremaine, LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006
chrissavage@dwt.com

Beth Keating
Gunster Yoakley
215 S. Monroe Street, Suite 618
106 East College Avenue
Tallahassee, FL 32301-1804
bkeating@gunster.com

Marva B. Johnson
Bright House Networks
301 E. Pine Street, Suite 600
Orlando, FL 32801
marva.johnson@mybrighthouse.com

s/ Dulaney L. O'Roark III