Diamond Williams 110056-TP

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Sent: Monday, March 21, 2011 2:45 PM
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Cc: 'O'Roark, Dulaney L'; David Christian; Beth Salak; Adam Teitzman; Martha Brown; 'Savage, Christopher'
Subject: Docket No. 110056-TP
Attachments: 20110321144422772.pdf

Attached for electronic filing, please find Bright House Networks Information Services (Florida), LLC's Opposition to Verizon Florida's Motion to Dismiss the Complaint in the above-referenced proceeding.

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B. Docket No. 110056-TP - **Complaint by Bright House Networks Information Services (Florida), LLC Against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for Failure to Pay Intrastate Access Charges**

C. On behalf of Bright House Networks Information Services (Florida), LLC

D. Number of pages – 41

E. Opposition to Verizon's Motion to Dismiss or Stay Complaint

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March 21, 2011

VIA ELECTRONIC FILING/ FILINGS@PSC.STATE.FL.US

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

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:

Attached for electronic filing, please find Bright House Networks Information Services (Florida), LLC's Opposition to the Motion to Dismiss filed by Verizon in the above-captioned matter. Service has been made in accordance with the attached Certificate.

Thank you for you assistance with this filing. Should you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,

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MEK

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

OPPOSITION TO MOTION TO DISMISS OR STAY COMPLAINT

Bright House Networks Information Services (Florida), LLC, ("Bright House-CLEC") through its attorneys, hereby responds to the motion by Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, "Verizon")[1] to dismiss or stay Bright House-CLEC's complaint against Verizon arising from Verizon's failure to pay Bright House-CLEC's lawful and effective intrastate access charges.[2]

I. INTRODUCTION AND SUMMARY.

Verizon's motion to dismiss is based on two main claims, both of which are without merit.

There is no dispute that the Florida Legislature has deregulated VoIP services. Verizon, however, seeks to leverage that fact into the completely unwarranted claim that plain old telephone traffic on the public switched telephone network ("PSTN") is ***also*** deregulated, whenever it begins

[1] As in the Complaint, we refer to both entities together as "Verizon." When it is necessary to treat them separately, we refer to "Verizon Business" and "Verizon-ILEC." To avoid any confusion, we refer to Bright House Networks Information Services (Florida) LLC – that is, the certificated local exchange carrier – as "Bright House-CLEC." By contrast, we refer to Bright House Networks, LLC – that is, the cable operator and retail voice service provider – as "Bright House-Cable."

[2] Although we strongly oppose both Verizon's motion to dismiss and its alternative motion to stay, we concur in Verizon's suggestion that the Commission hear argument on its motions. Moreover, while (as explained in this pleading) it is clear that Verizon's claims are baseless, it has raised so many issues, and confused enough different points, that we suggest that each side be given 30 minutes to address the issues. In this regard, as noted in the Complaint, Verizon owes Bright House-CLEC millions of dollars in unpaid access fees, and that amount grows by about $500,000 per month. Complaint, ¶¶ 7, 36. In these circumstances, we respectfully request that the Commission schedule oral argument on this matter as promptly as its schedule permits.

or ends on a deregulated VoIP service. Based on this erroneous and illogical claim, Verizon says that when Bright House-CLEC (a PSTN carrier, not a VoIP provider) exchanges such traffic with Verizon (a PSTN carrier, not a VoIP provider), the normal regulatory rules and requirements governing the carrier-to-carrier exchange of traffic do not apply. Specifically, Verizon claims that this wholesale traffic exchange on the PSTN is exempt from Bright House-CLEC's standard, binding access service price list, and that this Commission is powerless even to consider the question of whether that price list applies.

Verizon's outlandish claim is foreclosed by the plain meaning of Florida Statutes §§ 364.02(14)(g) and 364.02(13). Section 364.02(14)(g) says that even though interexchange carriers ("IXCs") like Verizon are largely deregulated, they are obliged to "continue to pay" access charges to local exchange carriers ("LECs").[3] And Section 364.02(13) says that even though the Legislature is deregulating VoIP services, "nothing [in that deregulation] shall affect" the obligation of carriers to pay access charges. Yet the essence of Verizon's entire argument is that the deregulated status of retail VoIP service not only "affects" Verizon's obligation to pay wholesale access charges to Bright House-CLEC, it totally obliterates that obligation. Verizon's position simply cannot be squared with what the Florida Legislature has actually said.

It is easy to see what is wrong with Verizon's position by looking at how it would apply to another service that the Legislature has deregulated – wireless. From a statutory perspective, wireless service is just like VoIP service.[4] Under Verizon's theory, calls to and from wireless

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[3] IXCs remain subject to a number of other specific statutory obligations as well. *See* Florida Statutes, § 364.02(14)(g).

[4] Verizon Motion at 7 n.11. VoIP and wireless are treated in an exactly parallel manner in the Commission's enabling legislation. *See, e.g.*, Florida Statutes § 364.01(3) ("Communications activities that are not regulated by the Florida Public Service Commission, including, but not limited to, VoIP, wireless, and broadband..."); Florida Statutes, § 364.011 ("The following services are exempt from oversight by the commission, except to the extent delineated in this chapter or specifically authorized by federal law: ... (3) (note continued)...

services would be exempt from Commission jurisdiction and normal regulatory rules. But if that were true, then Florida ILECs would already be authorized – today – to charge basic service customers a special, deregulated fee ($5.00, $10.00, or more) for every call they send to or receive from a wireless network. After all, under Verizon's logic, if normal tariffs and regulatory rules do not apply when Bright House-CLEC accepts a call from Verizon – because it is going to an unregulated VoIP provider – then normal tariffs and regulatory rules do not apply when Verizon-ILEC takes a call from one of its end users and delivers it to an unregulated wireless carrier.

Of course, this is absurd. The (regulated) job of a carrier is to transmit calls where they are supposed to go. The fact that some of the calls get sent to, or received from, deregulated services like VoIP or wireless, does not magically deregulate the carrier's function as well. Moreover, under Verizon's logic, wireless carriers would be immune from having to pay access charges for inter-MTA calls, since retail wireless service is deregulated. In fact, however, wireless carriers pay access charges for these calls like any other user of access service.[5] Verizon cannot abuse its local service customers by charging them outrageous and unregulated fees for sending calls to, or receiving calls from, deregulated wireless networks. And Verizon cannot abuse Bright House-CLEC by refusing to pay its access bills simply because the traffic is going to, or coming from, deregulated VoIP services.

The Florida Legislature created a regime under which local and long distance services remain regulated (at least in part), while other services – such as retail VoIP and wireless services – are outside the Commission's jurisdiction. It did not create a regime in which the Commission's

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...(note continued)
VoIP. (4) Wireless telecommunications, including commercial mobile radio service providers").

5 *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499 (1996) at ¶¶ 1036, 1043.

regulatory authority over intrastate traffic on the PSTN rots away from the core every time a regulated carrier handles a call to or from wireless, VoIP, or some other deregulated service.

Verizon's second main ground for dismissing the Complaint is the notion that all "VoIP services are inherently interstate and subject to the exclusive jurisdiction of the FCC."[6] This is wrong as well. First, although Verizon can speculate about what the FCC might do in the future, the courts have conclusively ruled that the FCC has not preempted state jurisdiction over fixed VoIP services of the type provided by Bright House-Cable. To the contrary, the courts have ruled – consistent with the FCC's own plain statements – that preemption of VoIP services is limited to situations where the retail VoIP provider cannot identify the end points of calls to and from its subscribers.[7] Where the end points of a call to or from a VoIP provider can be identified, there is no preemption. Since Bright House-CLEC can identify the end points of calls to and from Bright House-Cable's retail VoIP subscribers, no federal preemption applies to this case.[8]

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[6] Verizon Motion at 2. Verizon also asserts that VoIP is "an information service under federal law," *id.*, even though the FCC has repeatedly refused to make such a ruling. Indeed, the FCC, in the very rulemaking notice on which Verizon relies to seek a stay of the case, expressly noted that it has ***not*** determined the classification of VoIP services. *See In the Matter of Connect America Fund, et. al,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, FCC 11-13 (FCC February 9, 2011) ("*USF/Intercarrier Compensation NPRM*") at ¶ 73 ("To date, the Commission has not classified interconnected VoIP service as either an information service or a telecommunications service").

[7] *Minnesota Public Utilities Commission v. FCC,* 483 F.3d 570, 582-83 (8th Cir. 2007) (although the FCC suggested that it might preempt state authority over fixed VoIP services, the FCC's order "does not purport to actually do so").

[8] Verizon suggests that it may want to dispute some of the factual allegations in our Complaint. *See* Verizon Motion at 4 n.5. For purposes of the motion to dismiss, however, our factual allegations must be taken as correct. Here, that means that the Commission must accept the fact that we are able to properly identify the end points of traffic to or from Bright House-Cable. Verizon is correct that it literally involves some legal reasoning to go from the fact that we know the end points of the disputed traffic to the conclusion that the traffic is jurisdictionally intrastate and that preemption does not apply, *id,* the statements of the courts and the FCC on this point are entirely clear, so no particular leap of legal logic is required. Moreover, Florida courts have held that a case should not be dismissed when dismissal requires a determination of mixed questions of law and fact. *See Regis Ins. Co. v. Miami Management, Inc.*, 902 So. 2d 966, 2005 Fla. App. LEXIS 9078 (Ct. App. Fl. 2005) (lower court dismissal reversed because it "included a mixed question (note continued)...

But Verizon's argument is wrong even if, as Verizon claims, all retail VoIP service is deregulated as a matter of federal law. Florida and federal law use the same definition of VoIP service, which is an end user service that uses a broadband Internet connection and specialized equipment to allow customers to make calls to, and receive calls from, the PSTN.[9] The fact that this specialized retail service is deregulated does not mean that wholesale services on the PSTN are deregulated as well. To the contrary, the very definition of VoIP service recognizes the ***distinction*** between VoIP – the retail service offered to end users via a broadband Internet connection – and the services and functions provided by the PSTN – such as access service – to which an interconnected VoIP service is attached. The fact that the very definition of VoIP embodies and preserves the distinction between VoIP service and the PSTN refutes Verizon's "infection" theory, under which the normal rules governing wholesale carrier-to-carrier traffic exchange on the PSTN do not apply to calls to or from a deregulated retail service. Traffic on the PSTN is subject to normal regulatory rules and requirements – including the application of tariffs and price lists – without regard to whether it begins and/or ends with a deregulated service.[10]

Finally with regard to Verizon's motion to dismiss, we note that when the Commission was confronted with a motion to dismiss in another case involving applying access charges to traffic

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...(note continued)
of law and fact, which is not appropriate at the motion to dismiss stage"). At a minimum, the jurisdictional status of entirely physically intrastate access services provided in connection with entirely physically intrastate calls that begin or end with a VoIP subscriber constitutes such a mixed question of law and fact, making dismissal without the development of a record inappropriate.

9 Florida Statutes, § 364.02(16) defines "VoIP" by reference to federal law. Federal law defines VoIP as a service that makes use of a broadband connection and specialized equipment to allow customers to send calls to and receive calls from the PSTN. 47 C.F.R. § 9.3; 47 U.S.C. § 153(25) (adopting, for purposes of the Communications Act, regulatory definition of interconnected VoIP service).

10 As noted in the Complaint, essentially all the state regulators to consider this issue have found that it is appropriate to apply normal tariffed rates to calls coming from, or going to, VoIP services. Complaint at ¶ 8 & n. 15. If federal law preempted state action on this issue, every one of those state regulators would have reached the opposite conclusion. This is strong evidence that Verizon's theory is wrong.

that begins or ends with a VoIP subscriber, it allowed the case to go forward.[11] While Verizon's claims here are clearly wrong and should be rejected entirely, we submit that, at a minimum, ***our*** claims are strong enough that the Commission should allow the case to go forward, including any appropriate discovery, testimony, etc., in order to allow the Commission to decide the matter on the basis of full evidence and argument.[12]

Verizon moves in the alternative that this case be stayed while the FCC considers what to do in a recently-initiated rulemaking proceeding.[13] Verizon touts the supposed speed and efficiency with which the FCC will act, but it can only state when comments on the FCC's rulemaking proposals are due, not when the FCC will actually decide anything. On this topic, to be as diplomatic as possible, at least for the last decade or so, the FCC has had difficulty reaching firm conclusions about intercarrier compensation. The specific question of whether the FCC should set rules for intercarrier compensation for some or all calling arrangements that might be called "VoIP" (or, to use an older term, "IP telephony") has been pending since at least 2001.[14] Even if Verizon's

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11 *Complaint Against MCI Communications Services, Inc. D/B/A Verizon Business Services For Failure To Pay Intrastate Access Charges Pursuant To Embarq's Tariffs, By Embarq Florida, Inc.*, Order Denying MCI Communications Services, Inc. D/B/A Verizon Business Services' Motion To Dismiss Complaint, Order No. PSC-08-07S2-PCO-TP, DOCKET NO. 080308-TP (Fl. PSC November 13, 2008).

12 In this regard, as noted above, it is inappropriate to dismiss a case if doing so requires ruling, without a record or evidence, on central issues that are mixed questions of law and fact. *Regis Ins. Co. v. Miami Management, Inc.*, 902 So. 2d 966, 2005 Fla. App. LEXIS 9078 (Ct. App. Fl. 2005) (lower court dismissal reversed because it "included a mixed question of law and fact, which is not appropriate at the motion to dismiss stage"). If the Commission's jurisdiction over intrastate traffic to or from a VoIP subscriber is not entirely clear – which we believe it is – then at least that question constitutes a mixed question of law and fact as to which the Commission should develop a record prior to rendering a decision. We also note that granting Verizon's motion would immediately give license to all IXCs in Florida to simply stop paying some or all access charges to all LECs in Florida – including the LECs serving the largest number of customers on a competitive basis, but also to smaller, rural ILECs as well. It seems unlikely that the Commission would want to set a precedent with such far-reaching results without the benefit of a full record.

13 Verizon Motion at 2, 26-30.

14 *See Developing A Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *Developing A Unified Intercarrier Compensation Regime,* Further Notice of (note continued)...

faith that the FCC will promptly resolve these questions is sincere (which we doubt, for the reasons explained below), that faith hardly provides a sound basis on which this Commission can, or should, base its own decisions.[15]

In fact, Verizon's desire to put this proceeding on hold while the FCC dithers is entirely self-serving. Verizon has unilaterally declared what it wants the FCC to do – hold that access charges do not apply to calls to or from fixed VoIP subscribers – and on the strength of its own prognostication has ceased paying its access bills. Given that Verizon is flouting its obligation to pay its bills, and obviously will not pay them until it is ordered to do so, it is hardly surprising that Verizon wants this Commission to do nothing. As long as the Commission stays its hand, Verizon gets a free ride on Bright House-CLEC's network.[16]

...(note continued)
Proposed Rulemaking, 20 FCC Rcd 4685 (2005). The FCC's ***latest*** foray into this arena, on which Verizon places such high hopes, is in part simply a continuation of this decade-old docket. In fairness to the FCC, the agency at least recognizes its perennial inability to act, noting that "[a]lthough the Commission has sought comment on a variety of proposals over the last decade to comprehensively reform intercarrier compensation, such efforts stalled, ***leaving the current antiquated rules in place.***" *USF/Intercarrier Compensation NPRM* at ¶ 501. Antiquated though they may be, current intercarrier compensation rules indeed ***remain in place today,*** and will do so for the foreseeable future. Verizon is not free to ignore those rules until the FCC actually changes them.

[15] The comparison that most suggests itself is that of Charlie Brown, ever willing to believe that ***this time,*** for sure, Lucy will actually allow him to kick the football, rather than pull it away at the last minute. *See* http://en.wikipedia.org/wiki/Charlie_Brown ("Charlie Brown is a lovable loser ... ultimately dominated by ... a 'permanent case of bad luck.' He and Lucy Van Pelt star in a running gag that recurs throughout the series: Lucy holds a football for Charlie Brown to kick, but pulls it away before he kicks it, causing Charlie Brown to fly into the air and fall on his back").

[16] To see the unfairness in Verizon's proposal, consider that on March 17, 2011, the Chairman of the House Ways and Means Committee proposed that income taxes should be capped at 25% of adjusted gross income. *See* J.D. McKinnon, "Tax Plan Aims for 25% Cap," WALL STREET JOURNAL (March 17, 2011) http://online.wsj.com/article/SB10001424052748703899704576204971305258778.html?mod=WSJ_hp_MIDDLENexttoWhatsNewsThird. Suppose that in light of this proposal, Verizon immediately stopped paying that portion of its corporate income taxes that exceed the proposed 25% cap. The IRS would be unimpressed with Verizon's willingness to believe that this time, for sure, long-promised reform of the federal tax code was just around the corner. And when the IRS started a collection action, nobody would seriously consider staying that action because the proposed 25% cap was pending.

Maybe the FCC will surprise us all and quickly establish new rules for intercarrier compensation for VoIP. Maybe it won't. The FCC will do what it will do, and the industry and state regulators will deal with any FCC decision that may actually be forthcoming. But the fact that the FCC is yet again embarking on a grand plan to thoroughly reform intercarrier compensation is no reason to permit Verizon to ignore its present obligations, under present law, to pay its access charge bills. If and when the FCC finally acts, there will be time enough to implement whatever the FCC might actually decide to do. But the fact that it might act, at some unknown future time, is no reason to delay this proceeding.

II. ARGUMENT.

A. Verizon's Claim That Florida Statutory Law Supports Dismissal Of Its Case Is Fatally Flawed And Should Be Rejected.

1. The Fact That VoIP Services Are Deregulated Does Not Deprive The Commission Of Jurisdiction To Resolve Disputes About Exchange Access Services Provided By A CLEC To An IXC.

Verizon's main claim in support of its motion to dismiss is that, because this case involves "VoIP traffic," the Commission lacks jurisdiction to hear the matter. Its idea is that, because retail VoIP service itself is deregulated, plain old PSTN traffic to or from a VoIP subscriber must be viewed as deregulated as well. Verizon Motion at 4-8, 10-11. Verizon's argument ignores the statutes under which the Commission operates, and, in fact, deliberately blurs the language and meaning of those statutes.

There is no dispute that the Legislature has decreed that certain retail services are not subject to Commission regulation. These are listed in Section 364.01(3) as "VoIP, wireless and broadband," and in Section 364.011 as "intrastate interexchange telecommunications services," "broadband services," "VoIP," and "wireless telecommunications, including commercial mobile radio service providers." Section 364.013 further states that "broadband service" and "the

provision of VoIP" are "exempt from Commission jurisdiction." In light of these statutory provisions, the Commission could not, for example, set the retail rates that a wireless carrier charges its subscribers, or require that IXCs offer an unlimited usage package, or direct that Verizon offer its FiOS broadband service with at least 100 megabits per second symmetrical upload and download speeds.

With respect to VoIP, this means that the Commission cannot dictate the price of Vonage's or Bright House-Cable's retail VoIP offerings. The unregulated status of VoIP services and providers, however, is not at issue in this case. This case is entirely limited to access services provided by one entity under the Commission's jurisdiction (Bright House-CLEC) to two other entities under the Commission's jurisdiction (Verizon-ILEC and Verizon-Business). Verizon is attempting to bootstrap the deregulation of VoIP services – which are defined as a service that connects ***to*** the PSTN – to ***also*** constitute a deregulation of access services ***on*** the PSTN. That is a completely untenable reading of the statute, which, if taken seriously, would lead to absurd and unreasonable results.

No Florida statute purports to deregulate access services, whether provided by a CLEC like Bright House-CLEC or an ILEC like Verizon-ILEC. To the contrary, while the Legislature deregulated long distance services, it made completely clear that the deregulated status of IXCs and the services they offer does not diminish the Commission authority with respect to the obligation of those IXCs to pay appropriate access charges. Thus, in Section 364.02(14)(g), even while confirming that intrastate IXCs do not count as regulated "telecommunications companies" under the law, the Legislature was at pains to say that IXCs:

> shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service

The legislature took the same approach to its deregulation of VoIP services. While noting that the definition of "service" does not include VoIP, the Legislature made clear that "nothing herein" – that is, nothing about the deregulated status of VoIP – "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." Section 364.02(13).

It is impossible to read these statutes and conclude that the Legislature wanted to exempt long distance traffic to or from VoIP providers from access charges. Under Section 364.02(14)(g), IXCs have to keep paying access charges even though they are generally treated as deregulated. And in Section 364.02(13), the Legislature said that "nothing [about the deregulated status of VoIP] shall affect" the obligation of IXCs or any other entity to pay access charges. The Commission has jurisdiction to enforce the requirements imposed by Section 364.02(14)(g), and Section 364.02(13) confirms that those requirements are not affected in any way by the deregulated status of VoIP services. These statutes, therefore, provide the Commission with subject matter jurisdiction over this dispute.[17] Verizon's claim that the Legislature has stripped the Commission of jurisdiction to consider the obligation of IXCs to pay access charges – including in connection with VoIP traffic – is directly foreclosed by the specific language of the statutes just cited.

Verizon tries to avoid this conclusion mainly through the use of fuzzy, imprecise language to describe what the dispute is really about. Thus, Verizon repeatedly uses terms like "VoIP calls," "VoIP traffic," "VoIP activities," or simply "VoIP" without any modifier,[18] as though the Legislature, when it deregulated VoIP ***providers*** and VoIP ***services,*** meant to deregulate any traffic on the PSTN bound to or from such providers. This argument fails, however, both because it

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17 *See* Complaint, ¶ 13 (noting statutory grounds for jurisdiction).

18 *See* Verizon Motion at 1, 2, 3, 4, 9, 18, 19, 21, 22, 26, 27, 29.

ignores the definition of VoIP service, and because it would produce absurd results, as examples from legally parallel services – wireless and intrastate long distance – show.

With regard to the definition of VoIP, as noted above, Florida statutes refer to federal law.[19] Federal law defines VoIP as a service that (1) requires a broadband Internet connection and specialized customer premises equipment; (2) enables real-time two-way communications, and (3) permits users to "receive calls that originate on" and "terminate calls to" the PSTN.[20] This latter portion of the definition embodies the fact that a VoIP service is, itself, something separate and distinct from the PSTN. VoIP services are attached to the PSTN, and can access the PSTN, but they are not, themselves, part of the PSTN.[21] The existence of a specific definition of VoIP service – which Verizon ignores – is fatal to its attempts to use vague and imprecise language to extend the deregulation of VoIP service into the PSTN itself. The retail VoIP services that Bright House-Cable offers to its subscribers are deregulated under Florida law. But neither the access services that Bright House-CLEC provides to Verizon, nor the plain old telephone traffic that Verizon exchanges with Bright House-CLEC, fall within the definition of "VoIP," and so cannot be treated as equivalent to, or part of, the deregulated VoIP services.[22]

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19 Florida Statutes, § 364.02(16). Federal law defines VoIP service at 47 C.F.R. § 9.3. *See also* 47 U.S.C. § 153(25) (adopting regulatory jurisdiction for statutory purposes as well).

20 47 C.F.R. § 9.3. Note, in this regard, that the very definition of VoIP contemplates a ***retail*** service – one which end users can use to make and receive calls, albeit in a non-traditional way, using specialized equipment and connections. By contrast, the carrier-to-carrier access services at issue in this case are ***wholesale*** services provided by Bright House-CLEC to Verizon.

21 This is one reason why, for example, VoIP providers are not themselves entitled to obtain telephone numbers to assign to their subscribers. Only carriers – that is, only entities that constitute ***part of*** the PSTN – are entitled to numbers. *See* 47 C.F.R. § 52.9(a)(1) (numbering resources only available to "telecommunications carriers").

22 The access services that Bright House-CLEC provides to Verizon do not "require a broadband connection from the user's location" and do not "require Internet protocol-compatible customer premises equipment." *See* 47 C.F.R. 9.3, definition of "Interconnected VoIP" service, clauses (2) and (3). Similarly, nothing about the plain old telephone traffic that Verizon exchanges with Bright House-CLEC, or the (note continued)...

Aside from the fact that the wholesale access services at issue in the Complaint do not meet the definition of VoIP, the irrationality of Verizon's argument can be seen by considering what it would mean for deregulated services other than VoIP. Under Florida law, wireless and intrastate long distance services are exempt from Commission jurisdiction, just like VoIP services.[23] Verizon's theory is that the deregulated status of VoIP services and providers infects ***traffic*** to or from VoIP providers as it flows normally through the (regulated) public switched telephone network. But if that theory is correct, it applies "wireless traffic" and to "intrastate interexchange traffic" as well.

This would lead to bizarre results. Under this theory, as discussed above, any ILEC in Florida could charge its residential end users a special $5.00-per-call fee to send or receive calls to any wireless subscriber. This Commission would be powerless to prevent such fees from being assessed, because, under Verizon's theory, the calls to and from wireless networks would be classified as unregulated "wireless traffic," or part of unregulated "wireless activities," beyond the Commission's jurisdiction. Similarly, any ILEC in Florida could charge end users a special $5.00-per-call fee any time the end user sent or received a plain old intrastate long distance call. Again,

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...(note continued)
arrangements between the two carriers, requires a broadband connection or special IP-compatible equipment. Plainly, therefore, neither Bright House-CLEC's access services nor the traffic Verizon exchanges with Bright House-CLEC constitute "VoIP services" within the meaning of Florida or federal law. As a result, neither of these functions, and none of this traffic, is deregulated, even though retail VoIP services are.

[23] Section 364.01(3) lists "VoIP, wireless, and broadband" as "communications activities that are not regulated by the Florida Public Service Commission," and Section 364.011 lists "wireless telecommunications" along with "intrastate interexchange telecommunications services," "broadband services," and "VoIP" as being "services" that are "exempt from oversight by the commission." The deregulation of long distance services is subject to Section 364.02(14)(g), as discussed above, which contains a list of things that intrastate IXCs have to do. These include complying with a number of specific statutes, and – critical here – continuing to pay access charges.

such calls would be classified as unregulated "intrastate long distance" traffic, also – supposedly – beyond the Commission's jurisdiction.

Of course, this is nonsense. The service that ILECs provide to their end users is basic telephone service. That (regulated) service includes within it – as one of its regulated features – the ability to send calls to, and receive calls from, wireless subscribers, and the ability to make and receive intrastate long distance calls. The fact that wireless and intrastate long distance services are beyond the Commission's regulatory authority does not mean that the separate function of providing connections ***to*** those deregulated services is deregulated as well. A LEC providing connections to a wireless network or a long distance network is not, itself, providing wireless services or long distance services. It is providing local exchange services.

This shows the error in Verizon's claim that the Legislature has limited the Commission's jurisdiction in a manner relevant to this case. Verizon Motion at 6-7. In Section 364.011, the Legislature lists VoIP as one of a number of services that are exempt from Commission oversight. But oversight of the access services provided by a LEC to an IXC is not oversight of the services offered by deregulated entities that might receive the traffic at issue. And, in Section 364.013, the Legislature has said that "the provision of [VoIP] shall be free of state regulation." But regulating an exchange access service provided by a LEC to an IXC, used to deliver traffic to a VoIP provider, cannot reasonably be construed to constitute regulation of "the provision of" VoIP services.[24]

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[24] For this reason, Verizon's attempt at pages 10-11 of its Motion to argue that the exemption of "communications activities," including VoIP, from Commission jurisdiction, somehow extends to access services provided by Bright House-CLEC to Verizon, is unavailing.

2. The Commission Has Jurisdiction Over Access Charge Disputes.

Verizon's next argument further confuses the difference between specific types of providers that the Legislature has deregulated, and the regulated services that such entities might buy. Specifically, Verizon notes (correctly) that the Legislature has deregulated the provision of retail long distance services. However, it concludes (incorrectly) that this means that the Commission lacks jurisdiction to resolve disputes concerning the payment of wholesale access charges by IXCs. *See* Verizon Motion at 8-9. Verizon states that:

> 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.[note 13]

Verizon Motion at 9. In footnote 13, Verizon cites Section 364.02(14)(g), duly listing the specific statutes that the Legislature still applied to intrastate IXCs. But Verizon then ignores the fact that the Legislature, in that same provision, expressly requires that intrastate IXCs:

> ***shall continue to pay intrastate switched network access rates*** or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.

Florida Statutes § 364.02(14)(g) (emphasis added). It is obviously wrong to suggest, in the face of this statutory language, that IXCs have no obligation to pay access charges at all, and that the Commission has no authority to enforce the plain terms of the statute. The plain language of the statute is directly contrary to the argument Verizon is making.

3. Section 364.02(14)(g) Applies Fully And Directly To This Case.

At pages 11-14 of its Motion, Verizon argues that Section 364.02(14)(g) does not require the payment of access charges on the disputed traffic.[25] Here, Verizon addresses the text and meaning of Section 364.02(14)(g).[26] Verizon claims that the language of the statute does not require the payment of access charges, in that it refers to payment of "intrastate switched network access rates or other intercarrier compensation." Verizon Motion at 11-12.

The statute does mention "other intercarrier compensation," but this does not help Verizon. First, the statute obliges intrastate IXCs like Verizon to "***continue to pay***" the charges in question. The only logical reading of this language is that, whatever type of compensation the IXC has been paying in the past, it is required to "continue to pay" that compensation in the future. There is no dispute that Verizon routinely paid Bright House-CLEC's access charges in the past, and then stopped paying. This violates its obligation to "continue to pay" the applicable charges.

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[25] This argument, at least in part, is merely a re-hashing of Verizon's erroneous claim that normal traffic on the public switched telephone network, exchanged between two carriers, becomes deregulated simply because it is going to or coming from a VoIP subscriber. We refer the Commission to the discussion above for an explanation of why that claim is wrong.

[26] For ease of reference, here is the text of that provision, with the language relevant to this case emphasized:

> ***The term "telecommunications company" does not include: ... (g) An intrastate interexchange telecommunications company. However,*** each commercial mobile radio service provider and ***each intrastate interexchange telecommunications company*** shall continue to be liable for any taxes imposed under chapters 202, 203, and 212 and any fees assessed under s. 364.025. Each intrastate interexchange telecommunications company shall continue to be subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.336, 364.501, 364.603, and 364.604, shall provide the commission with the current information as the commission deems necessary to contact and communicate with the company, and ***shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.***

Although it does not quite say so, Verizon seems to be arguing that the statute gives IXCs the ***option*** to either pay access charges, or to pay some "other intercarrier compensation." *See* Verizon Motion at 12 (claiming that Verizon is paying "intercarrier compensation" on the disputed traffic). That is clearly not what the Legislature intended. Indeed, if Verizon's reading is correct, then every intrastate IXC in Florida has, evidently, misunderstood this language from the moment it was passed. Under Verizon's theory, the "other intercarrier compensation" language means that the Legislature was giving IXCs the right to a virtually free ride on any LECs' network. The only thing required, under Verizon's reading, is that the IXC voluntarily pay something – anything – that would count as "other intercarrier compensation." The IXCs could unilaterally decide that the "other intercarrier compensation" they wanted to pay was a flat fee of $100 per month for unlimited call termination service, or a 99% discount off tariffed rates, or anything else other than outright stealing of the LECs' access services.

Obviously, this is wrong. The most natural reading of the statutory language is also the correct one: whatever fees applied in the past – whether characterized as access or not – must continue to be paid. From this perspective, the law's reference to "switched network access rates or other intercarrier compensation ... for the origination and termination of interexchange telecommunications services," was an effort by the Legislature to ensure that the LEC's rates for the function at issue – the origination and/or termination of interexchange traffic – would "continue" to be paid, no matter what specific label might be applied to the rate charged for that function. The point of the statute is to say that even though IXCs are being deregulated, they are ***still*** required to comply with the list of statutes specifically listed in Section 364.02(14)(g) – and to keep paying LECs for the origination and termination of calls. In other words, the statute is

designed to protect LECs against lawless IXCs who might interpret their deregulated status as a license to try to obtain access services – however named – either for free or at special low rates.[27]

Verizon also claims that Bright House-CLEC's filed access charge price list does not really constitute a binding tariff, setting out the terms and conditions under which our access services are offered. Verizon Motion at 12-13. This is an odd argument coming from Verizon, which in two recent instances before the Commission expressly argued that the traditional "filed rate doctrine" applies to CLEC access tariffs. To quote Verizon:[28]

> As [the IXC] acknowledges, the Commission's rules permit CLECs to establish intrastate switched access rates by filing price lists with the Commission. [The IXC] admits that [the CLEC] has established its switched access rates in this manner and that [the IXC] was charged those rates for the switched access services it received. The filed-rate doctrine prohibits [an IXC] from arguing that it should be allowed to pay a different rate or seeking damages based on rates that Verizon has filed with the Commission. The Commission has rejected such claims under the principle that if filed rates are ordered to be changed, they can only be changed prospectively, not retroactively. [The IXC's] request [to pay] rates other than those on file with the Commission therefore must be rejected.

Verizon reaffirmed this view as recently as last November:[29]

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[27] The fact that the Legislature left the IXCs' specific obligation to keep paying access charges in the Commission's statute shows that Verizon's claim that this case should be in a court, rather than at the Commission, is misplaced. *See* Verizon Motion at 12 n.14. The Commission has jurisdiction to enforce the provisions of its own statute, against carriers under its jurisdiction. In this case, at a minimum, the Commission has the authority to determine that Bright House-CLEC's access services price list applies to the traffic in dispute, to determine that Verizon is obliged to pay its access bills, and to determine that Verizon is violating Section 364.02(14)(g) by failing to do so. Given the express statutory provisions at issue here, Verizon is simply wrong to characterize this as a simple, unadorned "collection action."

[28] *Complaint of Qwest Communications Company, LLC against MCIMetro Access Transmission Services (d/b/a Verizon Access Transmission Services); [et al.], for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10,* F.S., MCIMetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services Motion to Dismiss Reparations Claim And Motion for Final Summary Order Dismissing All Other Claims Against Verizon Access, Docket No. 090538-TP (filed January 29, 2010) at 5-6 (footnotes/citations omitted).

[29] *Complaint of Qwest Communications Company, LLC against MCIMetro Access Transmission Services (d/b/a Verizon Access Transmission Services); [et al.], for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10,* F.S., Answer of Verizon Access to Amended Complaint, Docket No. 090538-TP (filed November 16, 2010) (note continued)...

> 39. [The IXC] is not entitled to relief under the filed-rate doctrine because [the CLEC's] price list on file with the Commission is presumed to be just and reasonable.
>
> 40. [The IXC] acknowledges that the Commission's rules permit CLECs to establish switched access rates by filing price lists with the Commission. [The IXC] admits that [the CLEC] has established its switched access rates in this manner and that [the IXC] has been charged those rates for the switched access services it received. ... The filed-rate doctrine prohibits [the IXC] from arguing that it should be allowed to pay a rate different than that in the effective price list or obtain a refund based on filed rates that it concedes are lawful. The Commission has rejected such claims under the principle that if filed rates are ordered to be changed, they can only be changed prospectively, not retroactively. [The IXC's effort to pay] rates other than those on file with the Commission therefore must be dismissed or denied.

Verizon set the matter out very succinctly: this Commission's rules expressly permit a CLEC to establish switched access rates by filing a price list with the Commission. When a CLEC complies with that Commission procedure, an IXC cannot claim that the LEC's filed rates do not apply. Instead, if it objects to the rates, it must bring a complaint against those rates at the Commission. If the Commission believes that changes are necessary, it will so order, but the new rates would have prospective effect only.

To the cogent explanation quoted above of why CLEC access price lists are binding and enforceable, we would only add that, while Commission rules may not literally require that a price list for access services be filed, once one ***is*** filed, the CLEC is bound to follow it. In this regard, Rule 25-24.820(1)(d), Florida Administrative Code, states that the Commission may revoke a CLEC's certificate for "violation of a price list standard." Thus, by filing a price list, a CLEC commits itself – potentially on pain of losing its fundamental authority to operate at all – to following the terms and conditions contained there. Moreover, in approving the transfer of various CLECs from one owner to another, the Commission in its orders routinely states that the acquiring

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...(note continued)
(footnotes/citations omitted).

company will adopt the acquired company's price lists and continue to abide by them.[30] Thus, once a price list is filed, it is the regulatory equivalent of a tariff – binding on the carrier filing it, and, therefore, equally binding on the customers taking service under it.

Verizon next tries to twist the language of Section 364.02(13) to avoid its obligation to pay for the access services it has been using. That provision states as follows (emphasis added):

> (13) "Service" is to be construed in its broadest and most inclusive sense. 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.

The most natural reading of this language is that, notwithstanding the fact that VoIP service is deregulated, its deregulated status "shall [not] affect" any obligations to pay access or other intercarrier compensation for VoIP traffic. This is exactly what Bright House-CLEC is saying: VoIP ***providers*** and the retail VoIP ***services*** they offer are outside the Commission's jurisdiction, but that fact literally has nothing to do with "the obligations of any entity" – in this case, Verizon – "related to the payment of switched network access rates or other intercarrier compensation" in connection with the exchange of traffic bound to or from a VoIP provider.[31]

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[30] *See, e.g., In Re: Application of Florida Digital Network, Inc., d/b/a FDN Communications,* Docket No. 070190-TP; Order No. PSC-07-0361-PAA-TP, 2007 Fla. PUC LEXIS 232 (Fl. PSC 2007).

[31] The reason the statute refers to "any entity" as opposed to being limited to IXCs is twofold. First, in a LEC-to-LEC interconnection situation under Sections 251 and 252 of the federal Communications Act, questions of intercarrier compensation for VoIP traffic may well arise. Second, the statute addresses the possibility that at some point a VoIP provider may directly seek to interconnect with an ILEC under Sections 251/252. In these cases, the Legislature has directed the Commission to follow federal interconnection law. Since federal law largely controls the interconnection process, that decision makes complete sense. (note continued)...

Verizon sets up a straw man, claiming that Section 364.02(13) "does ***not*** give the Commission permission to impose such [intercarrier payment] arrangements." Verizon Motion at 14 (emphasis in original). But we never argued that this statutory provision gave such "permission" to the Commission. To be absolutely clear, in this case we are arguing that Verizon's legal obligation to pay its access charge bills arises from: (1) the access rates included in Bright House-CLEC's price list, which is binding on both Bright House-CLEC and Verizon; and (2) ***Section 364.02(14)(g)***, which expressly requires that IXC "continue to pay" access charges. Section 364.02(13) performs a different function entirely – it precludes Verizon from arguing that the deregulated status of VoIP services justifies Verizon's effort to avoid its obligation to pay. That is, the Legislature is saying – quite plainly, it seems to us – that even though it is deregulating VoIP services and providers, that action does not alter any entity's obligation to pay intercarrier compensation with respect to traffic to and from the deregulated VoIP services. In other words, what the Legislature did ***not*** want carriers to do – rely on the unregulated status of VoIP services to try to get out of their access bills – is exactly what Verizon is trying to do.

4. Bright House-CLEC and Bright House-Cable Are Separate Legal Entities With Separate Legal Rights And Responsibilities.

Verizon makes a somewhat tortured argument that "Bright House" is somehow trying to obtain an unfair advantage or otherwise game the system by maintaining a corporate structure in which cable, VoIP and other unregulated operations are handled by one company (Bright House-Cable), while regulated CLEC operations are handled by another company (Bright House-CLEC). *See* Verizon Motion at 15-16. Verizon's claim seems to be that if "Bright House" performed both

...(note continued)
Interpreting the Legislature's discussion of these federal interconnection matters as somehow relating to the separate question of the obligation of IXCs to pay intrastate access charges to CLECs – which Verizon is apparently trying to do – does not. *See* Verizon Motion at 13-14.

regulated CLEC operations and unregulated VoIP operations in a single legal entity, then our claim could not proceed. Building on that shaky premise, Verizon then argues that since our claim could (supposedly) not proceed if VoIP and CLEC operations were in the same company, it cannot proceed even though they are performed in different companies.

This argument fails for the simple reason that, in fact, Bright House-CLEC provides regulated telecommunications functions, while Bright House-Cable provides VoIP and other unregulated functions. Verizon has not suggested any facts or provided any precedent to suggest that maintaining two different legal entities to perform two vastly different sets of activities is unusual in any way, much less inappropriate or illegal. Nor has Verizon suggested that there is any reason to treat the separation of the companies as a sham or that the "corporate veil' should be pierced.[32]

But Verizon's argument would be wrong even if "Bright House" provided all its services within one legal entity. Chapter 364 defines the scope of the Commission's regulatory authority with reference to specific ***services,*** not with respect to specific ***entities*** that may provide those services.[33] Obviously, if a firm provides no regulated services, then that firm is "deregulated" and outside the Commission's jurisdiction. This is the situation with Bright House-Cable. But if Bright

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[32] In this regard, we note that Verizon itself has maintained the separate corporate existence of Verizon-ILEC (Verizon Florida, LLC) (the entity that performs ILEC operations) and Verizon Business (MCI Communications Services, Inc., d/b/a Verizon Business Services) (the entity that provides long distance services). Indeed, Verizon has also maintained the separate corporate existence of yet a third entity, MCIMetro Access Transmission Services (d/b/a Verizon Access Transmission Services) (which we might call "Verizon-CLEC," since it performs CLEC functions). *See* notes 28-29, *supra,* and accompanying text. It does so, presumably, because different legal and regulatory obligations apply to the different functions, and it is both legally and operationally convenient to put those separate functions, with their distinct legal and regulatory obligations, in separate entities.

[33] Thus, Section 364.01(3) deregulates certain "communications activities;" Section 364.011 exempts particular "services" from Commission oversight; Section 364.013 exempts "broadband service" and "the provision of" VoIP, and Section 364.02(13) excludes "broadband service" and "voice-over-Internet-protocol service" from the general definition of the term "service."

House-Cable and Bright House-CLEC were to merge into one entity, nothing would change: the CLEC operations and functions would remain under the Commission's jurisdiction, and the video, VoIP, and broadband Internet operations would remain outside of it. The implication of Verizon's argument is that a firm can escape the regulatory obligations applicable to its regulated services simply by performing unregulated services as well. This is obviously wrong.

In fact, Verizon's complaints about the separate legal existence of Bright House-Cable and Bright House-CLEC amount to nothing more than some "atmospheric" support of its general idea that the deregulation of VoIP services is a vague and free-floating affair, imparting immunity from Commission jurisdiction to anything those services might touch. So, without any coherent logical analysis, in Verizon's view of things, Bright House-Cable is deregulated, and its VoIP service is deregulated, so anything Bright House-CLEC supplies to Bright House-Cable that is "necessary" to deregulated VoIP service must be beyond the Commission's regulatory authority as well. This is so, supposedly because requiring ***Verizon*** to pay access charges to ***Bright House-CLEC*** "would regulate the VoIP service, and the entity providing it, just as surely as requiring a local exchange carrier to file tariffs ... would regulate that carrier." Verizon Motion at 16.

It is hard to know what to make of this argument. Bright House-Cable can configure its VoIP offering to its subscribers however it wants, and can charge those subscribers whatever rates make sense in the market. That is what being "deregulated" means. One of the things Bright House-Cable needs, though, is connectivity to the PSTN. It buys that connectivity from Bright House-CLEC. The fact that Bright House-Cable needs PSTN connectivity to offer its unregulated service does not deregulate the provision of PSTN connectivity, any more than the fact that Bright

House-Cable needs electricity to offer its unregulated service deregulates the provision of electricity.[34]

* * * * *

Verizon's entire statutory argument is built on vagueness, sloppy reading of legislative language, and, ultimately, arm-waving. The Legislature said that even though IXCs were being generally deregulated, they had to keep on paying access charges. The Legislature then said that even though VoIP services were being deregulated, that action did not affect the obligation of IXCs (or anyone else) to pay access charges. Bright House-CLEC's access charges are contained in a duly filed, effective and enforceable price list, established in conformity with this Commission's rules. Verizon paid them for years. Then it unilaterally and arbitrarily stopped paying, claiming that it could do so because Bright House-CLEC's customer was an unregulated VoIP provider. Verizon's actions are impossible to square with the requirements of our effective price list and impossible to square with the plain language of the Florida Statutes.

B. Verizon's Claim That Federal Law Prevents Adjudication Of Bright House-CLEC's Complaint Is Entirely Without Merit.

Verizon argues that federal law prohibits the Commission from granting the Complaint. Its arguments are entirely without merit.

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[34] Verizon claims in passing that Bright House-CLEC "has only one customer—Bright House-Cable." Verizon Motion at 16. Evidently Verizon views this as supporting its view that the separate corporate identify of the two companies is suspect. Verizon, however, is wrong on several counts. First, Bright House-Cable may be the only entity that presently buys wholesale PSTN access from Bright House-CLEC, but a number of long distance carriers buy exchange access services from Bright House-CLEC – including Verizon itself, though it refuses to pay its bills. The claim that Bright House-CLEC has only one customer, therefore, is simply not true. Moreover, even if Bright House-CLEC only had one customer, that would be irrelevant here. This is because, by virtue of its CLEC certification, Bright House-CLEC's local exchange services are available to entities other than Bright House-Cable, even if no other such entities are presently buying those services. Indeed, in part based on its certification, Bright House-CLEC's carrier status has been affirmed by the FCC and the courts after that status was challenged by Verizon. *Bright House Networks, LLC, et al., v. Verizon California, Inc., et al.*, 555 F.3d 270, 276-76 (D.C. Cir. 2009).

1. VoIP Service Is Not Inherently Interstate In Nature, And The FCC Has Not Preempted State Action Regarding Fixed VoIP Services.

Verizon claims that the FCC, in the *Vonage* case, established the rule that all calls to or from a VoIP service are inherently interstate. Based on this claim, Verizon argues that federal law prevents the Commission from considering the Complaint, even if Florida law permits the case to go forward. Verizon Motion at 19-23.

This claim is so blatantly wrong – and yet, at the same time, so central to Verizon's entire position – that it must be rebutted in detail.

Start with the FCC's ruling in *Vonage*. In the Complaint, we pointed out that *Vonage* did not purport to preempt state authority over fixed VoIP services (such as those offered by Bright House-Cable). *See* Complaint at ¶ 28 & notes 33-34. Verizon takes issue with that assertion, stating as follows:[35]

> 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. ***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 recognized included "cable companies" and other "facilities-based providers."

Verizon's statements above are simply, flatly wrong – as Verizon should well know, since it was an intervening party in the federal court appeal of the *Vonage* ruling, in which the actual state of the law was established.[36]

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35 Verizon Motion at 19 (emphasis added, footnotes omitted).

36 *See Minnesota Public Utilities Commission v. FCC, supra,* 483 F.3d at 570. The full caption of the decision available through the LEXIS database provides the full list of all parties and intervenors; Verizon is (note continued)...

The FCC based its ruling in *Vonage* on the facts presented in that case, which involved a state regulator attempting to impose traditional utility regulation on Vonage, an entity that provided a nomadic VoIP service called "DigitalVoice." The FCC preempted the state commission's assertion of authority over DigitalVoice. It did so, however, in express reliance on the nomadic nature of the service. Specifically, the FCC preempted the Minnesota PUC because it was impossible to separate DigitalVoice into interstate and intrastate portions. The key ***reason*** such separation could not occur was the nomadic nature of the service:[37]

> 23. In this section, we examine whether there is any plausible approach to separating DigitalVoice into interstate and intrastate components for purposes of enabling dual federal and state regulations to coexist without "negating" federal policy and rules. We find none. ***Without a practical means to separate the service,*** the *Minnesota Vonage Order* unavoidably reaches the interstate components of the DigitalVoice service that are subject to exclusive federal jurisdiction. ***Vonage has no means of directly or indirectly identifying the geographic location of a DigitalVoice subscriber.*** Even, however, if this information were reliably obtainable, Vonage's service is far too multifaceted for simple identification of the user's location to indicate jurisdiction. Moreover, the significant costs and operational complexities associated with modifying or procuring systems ***to track, record and process geographic location information as a necessary aspect of the service*** would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.
>
> 24. DigitalVoice harnesses the power of the Internet ***to enable its users to establish a virtual presence in multiple locations simultaneously, to be reachable anywhere they may find a broadband connection, and to manage their communications needs from any broadband connection.*** The Internet's inherently global and open architecture ***obviates the need for any correlation between Vonage's DigitalVoice service and its end users' geographic locations. As we noted above, however, the Commission has historically applied the geographic "end-to-end" analysis to distinguish interstate from intrastate communications.*** As networks have changed and the services provided over them have evolved, the Commission has increasingly acknowledged the difficulty of using an end-to-end analysis when the services at

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...(note continued)
among them.

37 *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* Memorandum Opinion and Order, 19 FCC Rcd 22404 ("*Vonage*") at ¶¶ 23-24 (emphasis added, footnotes omitted).

> issue involve the Internet. DigitalVoice shares many of the same characteristics as these other services involving the Internet, thus making jurisdictional determinations about particular DigitalVoice communications based on an end-point approach difficult, if not impossible.

While not the only factor that the FCC considered, the fact that DigitalVoice was a nomadic service, and the associated fact that Vonage had no practical way to determine the end points of calls, was a critical factor for the FCC.

Despite the critical role that geographic mobility played in the FCC's decision to preempt state regulation of DigitalVoice service, the FCC did say that "to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order."[38] If that were the end of the story, that would provide a reasonable basis for thinking that regulation of Bright House-Cable's VoIP service has been, or at least should be, preempted as well. The problem for Verizon's argument, however, is what happened next.

Numerous parties appealed the FCC's ruling. One of those parties was the New York PSC. That body specifically objected to the idea that the *Vonage* ruling could be read as preempting state regulation of fixed VoIP services, such as those offered by cable companies. When confronted with that objection, the FCC did not try to defend the view that its preemption ruling covered fixed VoIP services. To the contrary, in order to preserve its main point – the preemptive deregulation of ***nomadic*** VoIP – the FCC expressly repudiated the idea that its preemption reached fixed services.

It is also true, as Verizon says, that the 8th Circuit upheld the FCC's ruling in *Vonage*. But it is completely obvious from the face of the 8th Circuit's ruling that it did so ***in express reliance on***

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38 *Vonage* at ¶ 32.

the FCC's repudiation of having preempted any aspect of state regulation of any fixed VoIP services. After summarizing the New York PSC's concerns, here is what the court said:[39]

> The FCC argues this issue [preemption of fixed VoIP] is not ripe for judicial review. Its order states "to the extent other entities, such as cable companies, provide VoIP services, we ***would*** preempt state regulation to an extent comparable to what we have done in this Order." *Id.* (emphasis added). Because the order only addresses services "having basic characteristics similar to DigitalVoice," *id.*, and does not specifically address fixed VoIP service providers, the FCC argues the NYPSC's appeal is premature. ***The FCC contends the language is at most a prediction of what it might do if faced with the issue of fixed VoIP service providers, and argues we should decline to rule on the merits of the NYPSC's appeal until presented with an order preempting state regulation of fixed VoIP service providers.***

In other words, the FCC told the court that the *Vonage* order had not, in fact, preempted any state regulation of fixed VoIP services or fixed VoIP providers. This matters because federal courts only have constitutional authority to decide actual "live" disputes. The New York PSC's challenge to the order would be dismissed as "not ripe," therefore, if – as the FCC was now saying to the court – the *Vonage* order actually ***did not*** preempt state authority regarding fixed VoIP services. That, in fact is what the court ruled:[40]

> We conclude the NYPSC's challenge to the FCC's order is not ripe for review. The order ***only suggests the FCC, if faced with the precise issue, would preempt fixed VoIP services. Nonetheless, the order does not purport to actually do so*** and until that day comes it is only a mere prediction. ... Indeed, as we noted, the FCC has since indicated ***VoIP providers who can track the geographic end-points of their calls do not qualify for the preemptive effects of the Vonage order.*** See *Universal Serv. Contribution Methodology, 21 F.C.C.R. at 7546* P 56. As a consequence, NYPSC's contention that state regulation of fixed VoIP services should not be preempted remains an open issue.

Simply stated, in order to defend its preemption of ***nomadic*** VoIP services such as that offered by Vonage, the FCC told the 8th Circuit that its ruling ***did not reach*** fixed VoIP services, and, based largely on that statement, the court rejected the New York PSC's challenge to the *Vonage* order.

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39 *Minnesota Public Utilities Commission v. FCC*, 483 F.3d at 582 (first emphasis in original)

40 *Id.* at 582-83 (emphasis added, citation omitted).

The other factor relied on by the court, however, is also significant: the FCC's discussion of preemption in the *Federal USF Assessment Order*.[41] As the 8th Circuit observed, if there was any doubt about the critical significance of the ability of a VoIP provider to track the location of calls, that was laid to rest in the FCC's discussion of USF issues. Verizon whistles past this particular graveyard, *see* Verizon Motion at 20-22, but the FCC's express statement about preemption in that ruling destroys Verizon's claims here:[42]

> [To] the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. Under this alternative, however, we note that ***an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation.*** This is because ***the central rationale justifying preemption set forth in the Vonage Order would no longer be applicable to such an interconnected VoIP provider.***

This FCC ruling establishes two points. First, a VoIP provider that can track the jurisdiction of calls does not "qualify for the preemptive effects of [the] V*onage Order*" and, as a result, is "subject to state regulation." Second, the ***inability*** to track customer location was, indeed, "the central rationale justifying preemption" in *Vonage*.[43]

This FCC statement completely obliterates Verizon's assertion that "the policy considerations underlying" the FCC's preemption decisions in *Vonage* "apply with equal force to ***all*** VoIP services, including the service offered by [Bright House-Cable]." Verizon Motion at 20. The FCC itself has made clear that the "central rationale" of preemption – the key policy

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41 *Universal Service Contribution Methodology,* Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) ("*Federal USF Assessment Order*") at ¶ 56.

42 *Id.* (emphasis added).

43 To the extent it is specifically relevant, Bright House-CLEC can demonstrate that it calculates its USF payments based on actual information regarding the jurisdiction of the calls made by Bright House-Cable's VoIP subscribers, not on the basis of any safe harbor or estimation.

consideration for that question – is whether the VoIP provider can track the location of its customers when they use the service. Since fixed VoIP providers can obviously do so, "the policy considerations underlying" *Vonage* do not apply to fixed VoIP providers.

In the face of these rulings, there is simply no rational way to say that the FCC has taken any actions that have the effect of preempting this Commission's authority to decide this case. Back in 2004, in the original *Vonage* order, the FCC said some things that suggested that it might take such preemptive action with respect to fixed VoIP in the future. When challenged in court on the claim that it had preempted state authority over fixed VoIP, the FCC ran for cover and disclaimed ever having done so, leading to an express appellate court ruling, in 2007, that no such preemption had occurred. And in the meantime, in 2006, the FCC made clear that preemption did not apply to fixed VoIP providers who could (necessarily) identify the locations of their customers, noting that this ability nullified "the central rationale justifying preemption."

In these circumstances, Verizon's effort to distinguish both the *Federal USF Assessment Order* and the *State USF Assessment Order* fail. *See* Verizon Motion at 22. Fundamentally, the reason that we know that *Vonage* did not preempt state authority over fixed VoIP services is that the FCC itself told the 8th Circuit that it did not, and the 8th Circuit relied on that statement in reaching its ruling. And, as just discussed, we know from the *Federal USF Assessment Order* that if a VoIP provider can identify the location of its customers, then federal preemption does not apply. For this reason, while it is true, as Verizon notes, that the FCC said that nothing in the *State USF Assessment Order* affected the conclusions in *Vonage,* that doesn't matter here, because the conclusions in *Vonage* do not apply to fixed, cable-delivered VoIP services in the first place.

Finally, Verizon's reliance on the newly-issued *USF/Intercarrier Compensation NPRM*[44] in this regard is completely unwarranted. Verizon claims that statements by the FCC somehow "confirm that VoIP calls are ***not*** just like any other calls for intercarrier compensation purposes." Verizon Motion at 22. But in fact, the *USF/Intercarrier Compensation NPRM* simply confirms that the FCC has done nothing about this topic for the last decade:[45]

> Since 2001, the Commission has sought comment in various proceedings on the appropriate intercarrier compensation obligations associated with telecommunications traffic that originate or terminate on IP networks. Even so, the ***Commission has declined to explicitly address the intercarrier compensation obligations associated with VoIP traffic.***

In other words, there is no FCC ruling that decides the question of what intercarrier compensation applies to VoIP. Moreover, as noted above, the FCC has expressly recognized that, until and unless it acts, existing rules – "antiquated" though they may be – are the only rules that either it or state regulatory bodies have to apply to calls to or from VoIP subscribers. In the FCC's words: "[a]lthough the Commission has sought comment on a variety of proposals over the last decade to comprehensively reform intercarrier compensation, such efforts stalled, ***leaving the current antiquated rules in place.***"[46]

Verizon apparently thinks that when the FCC admits that it has done nothing to resolve an issue for the last 10 years, but declares yet again its intention to really, truly, resolve it now, that somehow means that the FCC has preempted actions by state regulators to deal with this issue. The actual implication of this situation is exactly to the contrary: state commissions retain their full authority to act on intrastate matters that come before them, based on the law as it exists now, until

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44 *USF/Intercarrier Compensation NPRM,* note 6, *supra.*

45 *Id.* at ¶ 610.

46 *Id.* at ¶ 501 (emphasis added, footnotes omitted).

and unless either the law is changed (which it has not yet been), or until their state-level authority is expressly preempted by the FCC (which it has not yet been).

Indeed, the fact that state commissions retain full authority to decide these issues, and to impose intrastate access charges on physically intrastate traffic going to or coming from VoIP services, is shown by the fact that any number of state commissions have done exactly that. As we noted in the Complaint, essentially every state commission to have been confronted with a dispute of this type has brushed aside IXC claims that this is an exclusively federal issue and has treated calls to or from VoIP services just like any other PSTN traffic. *See* Complaint at ¶ 8 & n.15 (listing cases). The repeated actions of states from Georgia to Iowa to Kansas to New Hampshire in requiring IXCs to pay intrastate access charges on intrastate calls to or from VoIP subscribers confirms that under present law, normal intrastate access charges apply to this traffic.

2. VoIP Service May Be An Information Service, But That Has Nothing To Do With This Case.

Verizon claims that (a) VoIP service is an information service and that (b) this means that Verizon is exempt from paying access charges to Bright House-CLEC when its long distance customers make calls to VoIP subscribers who are served by Bright House-Cable. Verizon Motion at 23-26. This claim is a non sequitur.

At the outset, despite Verizon's brave effort to establish the status of VoIP as an information service under federal law, if there is one thing we know for sure, it is that that specific question remains an open issue. In the current NPRM on which Verizon places so much reliance, the FCC says, flat-out, that it "has not yet classified interconnected VoIP services as 'telecommunications services' or 'information services' under the definitions of the Act."[47] The

47 *Id.* at ¶ 35 (footnote omitted)

regulatory classification of interconnected VoIP is, to coin a phrase, a "known unknown." Because we know for sure that VoIP has ***not*** been classified for regulatory purposes, Verizon's argument that this Commission cannot proceed in this case because we supposedly know that VoIP ***is*** (supposedly) an information service is clearly groundless.

Moreover, this argument is simply beside the point. Obviously if VoIP turns out to be a telecommunications service, Verizon's entire argument falls apart. But let's assume that VoIP service, itself, is an information service. That means, in this case, that the service that ***Bright House-Cable*** provides to its end users is an information service. Verizon, however, is not buying access services from Bright House-Cable – it is buying access services from Bright House-CLEC. On this point, Verizon is simply rehashing its somewhat incoherent claim that normal rules and regulations don't apply to Bright House-CLEC and the services it provides, because it is somehow in an "essential role" with regard to Bright House-Cable's VoIP services. Verizon Motion at 25. But Bright House-CLEC's "essential role" ***is simply to provide telecommunications services.*** To Bright House-Cable, we provide local connectivity to the PSTN. To Verizon (and other IXCs), we provide originating and terminating access service. We are entitled to, and expect to, get paid for both functions.[48]

Again, to state the obvious: Bright House-CLEC is a carrier. Pursuant to Commission rules and practices, Bright House-CLEC has an effective access service price list on file with the Commission. Verizon is an intrastate IXC, and is expressly obliged by Florida law to continue to

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[48] Verizon's confusion on this point is evident in statements like the following: "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." Verizon Motion at 25 (emphasis in original). Nobody suggests that Bright House-Cable should pay access charges, and nobody suggests that it should receive them. Bright House-Cable is a provider of (among other things) deregulated retail VoIP services. It neither uses, nor provides, wholesale access services.

pay Bright House-CLEC's filed rates. Bright House-Cable, by contrast, is an unregulated firm that buys services from Bright House-CLEC. All of Verizon's tortured claims about how federal law somehow infects controls, influences, or preempts regulation of the dealings between Bright House-CLEC and Verizon are wrong. They are based either on serious misreadings of what the FCC has said, or, sometimes, on a flat-out decision to ignore what the FCC, and the courts, have said. The Commission should reject all of those claims and move forward with this case.

3. Federal Court Cases Do Not Support Verizon's Position Here.

In the Complaint, we cited two federal court cases – the *PaeTec* and *MetTel* cases – that we understood Verizon to be relying on to justify its refusal to pay its access charge bills. Complaint, ¶ 24, note 26. There, we noted that these cases are not binding in Florida. Verizon agrees. *See* Verizon Motion at 19 ("...although these cases are not binding on the Commission..."). At a minimum, therefore, Verizon has conceded that there is no binding federal court decision that controls this case. Verizon's arguments, therefore, must be understood as simply that – arguments, that must rise or fall on their own merits. As discussed above, Verizon's arguments fail that test.

Because Verizon has forthrightly conceded that *PaeTec* and *MetTel* are not binding on the Commission, the need to rebut those cases in detail is diminished. Very briefly, both courts were confused by the meaning and application of the ESP Exemption. As we explained in the Complaint (at ¶¶ 23-25), that doctrine means that an entity that provides an unregulated information service cannot be forced to buy access services, or to pay per-minute access charges, in order to obtain connections to the PSTN. Instead, such providers are entitled to connect to the PSTN on the same terms as a business customer buying an end user telecommunications service. The exemption says nothing at all about how carriers delivering traffic to or from an information service provider should bill each other – although one sensible interpretation is that, if the information service

provider uses its business line to make a standard outbound long distance call, that call should be treated like any other long distance call – that is, access charges should apply. Similarly, if a distant end user makes a normal long distance call to the telephone line serving the information service provider, normal access charges should apply as the call makes its way through the network.

In this regard, the *PaeTec* and *MetTel* courts made two mistakes. First, they concluded without qualification that VoIP constitutes an information service under federal law, a conclusion that the FCC has scrupulously avoided reaching. *See* Complaint at ¶ 21. But even if VoIP is an information service, that just means that VoIP providers can invoke the ESP Exemption, so that ***they*** can avoid being required to connect to the network like an IXC and ***they*** can avoid paying access charges. Nothing in the ESP Exemption supports the view that traffic to or from an information service provider – VoIP or otherwise – becomes exempt from access charges as it flows through the PSTN. This is shown, among other things, by the fact that essentially every state regulator to consider the question has found that access charges – including, specifically, ***intrastate*** access charges – can indeed be properly assessed by LECs on an IXC that is exchanging traffic with the LEC that is going to or from a VoIP provider. *See* Complaint at ¶ 8 & note 15.

Finally, it bears mention that the most recent federal court case to consider whether traffic to or from a VoIP subscriber can be subject to access charges concluded that it could be. In *Central Telephone v. Sprint*,[49] a long distance carrier, Sprint, unilaterally decided to stop paying access charges on VoIP-originated traffic to Central Telephone, a LEC. While the procedural setting was somewhat complicated, one of Sprint's claims was that it could not be required to pay access

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[49] *Central Telephone Co. of Virginia, v. Sprint Communications Co. of Virginia, Inc.*, 2011 U.S. Dist. LEXIS 20711 (E.D. Va. 2011).

charges on VoIP traffic because such a result was supposedly contrary to federal law. The federal court entirely rejected that claim:[50]

> Sprint even went so far as to claim that, had [a section of the contract in dispute] definitively required access charges for VoIP traffic, that section – and by extension, the [contract] – would have violated federal law. ***The latter contention carries no weight at all.*** Sprint itself admits that the FCC has yet to rule on the propriety of access charges for the type of VoIP traffic at issue in this action. ***It goes without saying that a party cannot violate federal law in an area when no federal law exists.***

That is as succinct a summary as one could imagine of everything wrong with Verizon's federal law arguments. Given that "the FCC has yet to rule on the propriety of access charges" for VoIP traffic, it "carries no weight at all" to claim that it violates federal law to proceed with a case – like the case here – to collect them. And, "it goes without saying" that proceeding with a case to collect access charges from Verizon – the case here – "cannot violate federal law in an area when no federal law exists."

C. There Is No Valid Reason To Stay This Case And Every Reason To Proceed With It.

In a last-ditch effort to avoid paying its access bills, Verizon claims that this Commission should stay this proceeding because the FCC has said that it really, truly, actually means it this time, when it says it is going to promptly resolve all questions regarding intercarrier compensation for traffic originating or terminating on a VoIP service "in the near future." Verizon Motion at 26-30. This claim is wrong for several different reasons.[51]

First, no matter what forward-looking rules the FCC might set for intercarrier compensation between LECs and IXCs for traffic originating or terminating on a VoIP service, it cannot

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50 *Id.* at [*44] (emphasis added).

51 To the extent that Verizon is arguing that the Commission should ignore this case because the issue supposedly "falls within exclusive federal jurisdiction," Verizon Motion at 27, that claim is, obviously, wrong on the merits for all the reasons discussed above.

retroactively invalidate the application of current law to such traffic. As we noted in the Complaint, Verizon already owes us more than $2 million in unpaid access fees, and that amount is growing by $500,000 per month. Complaint at ¶¶ 7, 36. So, Verizon will owe us more than $3 million ***by the time comments to the FCC are due,*** totally putting aside questions of when the FCC might actually rule. If the FCC gets reply comments in May, and then manages to get the entire rulemaking proceeding decided before its summer vacation in August, another $2 million or so will be added to Verizon's tab. This is a real dispute that won't go away no matter what the FCC says or does.[52]

Second, despite its stated good intentions, there is no actual, objective reason to think that the FCC will take swift and effective action now, any more than it took swift and effective action following its rulemaking proposal from April 2001, its rulemaking proposal from March 2005, or its rulemaking proposal from November 2008. Doubtless most industry observers have their own opinions as to ***why*** the FCC seems incapable of making difficult decisions, but we submit that ***every*** informed observer understands ***that*** the FCC has severe problems doing so. If Verizon really does have faith that this time will be different, that is in some respects touching, but provides absolutely no basis upon which this Commission could responsibly base a decision to allow Verizon to evade its plain statutory obligation to "continue to pay" its access charge bills.

And, make no mistake, that is the real reason that Verizon is asking for a stay. Verizon has unilaterally declared what it ***wants*** the FCC to do – hold that access charges do not apply to calls to or from fixed VoIP subscribers. Based on its own raw self-interest, starting last August, it pretended that the FCC had somehow already reached that conclusion, and stopped paying its

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[52] As noted above, while criticizing itself for its own inability to act, the FCC forthrightly admitted that, as a result of its inaction topics, current rules – "antiquated" though they may be – apply to VoIP-originated and –terminated traffic. *USF/Intercarrier Compensation NPRM* at ¶ 501.

access bills. The longer it can avoid paying its bills, the better its cash flow, and the greater its ability to put financial pressure on Bright House-CLEC. There is nothing principled or prudent or efficiency-based about Verizon's position. It is all about money and muscle.

As suggested in the introduction, the unfairness of Verizon's proposal can be seen by an analogy to a proposal now pending in Congress to cap individual and corporate income taxes at 25% of the taxpayer's adjusted gross income.[53] If Verizon used this proposal as an excuse to stop paying its corporate income taxes ***now,*** the tax authorities would be unswayed by claims that this time, for sure, real federal tax reform was just around the corner. That possibility would certainly not justify staying an IRS collection action to enforce current tax rules against Verizon.

Verizon's suggestion that ***staying*** this case will encourage settlement of it, *see* Verizon Motion at 28-29, is particularly unconvincing. Right now, Verizon isn't paying its bills. It has no incentive to pay us anything at all. If the Commission stays this case, Verizon will have no incentive to pay us either, since the risk that it might be ordered to do so will be lifted. On the other hand, with this case going forward, and Verizon exposed to the prospect of being forced to pay its bills, Verizon would, for the first time, have an incentive to discuss meaningful settlement options. If the Commission wants to maximize the chance of this case settling, it needs to move forward with it, not stay it.[54] Moreover, there are no administrative efficiencies to be gained by staying this proceeding; a stay will only result in unproductive delay.

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53 *See* J.D. McKinnon, "Tax Plan Aims for 25% Cap," WALL STREET JOURNAL (March 17, 2011) http://online.wsj.com/article/SB10001424052748703899704576204971305258778.html?mod=WSJ_hp_MIDDLENexttoWhatsNewsThird.

54 Anecdotally, the Commission and staff may recall how many issues in the recent Bright House-CLEC/Verizon-ILEC arbitration were settled once the case was moving forward, with testimony and briefing having to be filed, etc.

For all these reasons, Verizon's proposal to stay this case while we all wait, interminably, for the FCC to act, is unjust, unreasonable, one-sided, and unfair. The Commission should reject it and move forward with setting a schedule for the case to proceed.

III. CONCLUSION.

As described above, Verizon's Motion to Dismiss is without merit. Florida law obliges Verizon to "continue to pay" its access charge bills, and states that the Legislature's decision to deregulate VoIP services does not affect that obligation. Not only has the FCC not preempted state regulation of fixed VoIP service, it has expressly disclaimed that any such preemption has occurred. The FCC has stated that current rules – "antiquated" though they may be – apply to carriers' current exchange of traffic. Contrary to Verizon's claims, therefore, there is simply no federal law that preempts or controls the question of whether VoIP-originated or –terminated traffic may be subject to access charges; it follows that it cannot violate any such federal law to proceed with this case. The Commission, therefore, plainly has jurisdiction to move forward. It is therefore quite clear that Verizon has failed to meet the very high standard for dismissal. Bright House-CLEC has, in fact, stated a cause of action upon which the Commission can grant relief, and as such, the Commission should proceed to hear this case.

As to the request for a stay, putting aside the obvious dangers in putting our faith in the FCC reaching a prompt and effective decision regarding intercarrier compensation any time soon, Verizon's stay request is not only utterly self-serving; granting it would diminish, not enhance, the chances of a private settlement of this matter. Verizon's stay request should be denied as well.

Respectfully submitted this March 21, 2011,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via Electronic Mail on March 21, 2011 to:

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