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November 1, 2011

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

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

Dear Ms. Cole:

*DC*  
Enclosed for filing in the above matter are an original and seven copies of Verizon's  
~~Claim of Confidentiality in connection with its~~ Direct Testimony of Paul B. Vasington and  
William Munsell. ~~Also enclosed are one highlighted and two redacted copies of the~~  
~~information for which confidential treatment is requested.~~  
*15 filed -pm*

Service has been made as indicated on the Certificate of Service. If there are any  
questions regarding this matter, please call me at 678-259-1657.

Sincerely,

*Demetria Clark  
for D. O'Roark III*

Dulaney L. O'Roark III

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on November 1, 2011 to:

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*Demetria Clark for  
Dulaney O'Roark III*

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Dulaney L. O'Roark III

**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 )  

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Docket No. 110056-TP

**REDACTED**

**DIRECT TESTIMONY OF PAUL B. VASINGTON**

**AND WILLIAM MUNSELL ON BEHALF OF**

**MCI COMMUNICATIONS SERVICES INC.**

**PUBLIC VERSION**

**November 1, 2011**

DOCUMENT NUMBER-DATE

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1 **I. INTRODUCTION**

2 **Q. MR. VASINGTON, PLEASE STATE YOUR NAME, BUSINESS**  
3 **ADDRESS, EMPLOYER AND POSITION.**

4 A. My name is Paul B. Vasington. I am a Director - State Public Policy for  
5 Verizon. My business address is 125 High Street, Boston, Massachusetts  
6 02110.

7  
8 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
9 **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

10 A. I have a Bachelor of Arts in Political Science from Boston College and a  
11 Master's in Public Policy from Harvard University, Kennedy School of  
12 Government. I have been employed by Verizon since February 2005.  
13 From September 2003 to February 2005, I was a Vice President at  
14 Analysis Group, Inc. Prior to that, I was Chairman of the Massachusetts  
15 Department of Telecommunications and Energy ("MDTE") from May 2002  
16 to August 2003, and was a Commissioner at the MDTE from March 1998  
17 to May 2002. Prior to my term as a Commissioner, I was a Senior Analyst  
18 at National Economic Research Associates, Inc. from August 1996 to  
19 March 1998. Prior to that, I was in the Telecommunications Division of the  
20 MDTE (then called the Department of Public Utilities), first as a staff  
21 analyst from May 1991 to December 1992, then as division director from  
22 December 1992 to July 1996.

23  
24 **Q. MR. MUNSELL, PLEASE STATE YOUR NAME, BUSINESS ADDRESS,**  
25 **EMPLOYER AND DUTIES.**

1 A. My name is William Munsell. I am Senior Consultant – Product  
2 Management and Development for Verizon. My business address is 600  
3 Hidden Ridge, Irving, Texas 75038.

4

5 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
6 **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

7 A. I have an undergraduate degree in Economics from the University of  
8 Connecticut and a master's degree from Michigan State University in  
9 Agricultural Economics. I joined Verizon (then GTE) Florida in 1982 and  
10 have worked for the Verizon family of companies continuously since then.  
11 During the course of my career with the Verizon companies, I have held  
12 positions in Demand Analysis and Forecasting, Pricing, Product  
13 Management, Open Market Program Office, and Contract Negotiations. I  
14 have represented Verizon's incumbent operating telephone company  
15 affiliates in negotiations, arbitrations, and disputes that arise between  
16 those subsidiaries and competitive local exchange carriers ("CLECs")  
17 concerning interconnection, resale, and unbundled elements pursuant to  
18 section 251 of the Communications Act of 1934, as amended by the  
19 Telecommunications Act of 1996 ("1996 Act").

20

21 **Q. WHAT ARE EACH WITNESS' RESPONSIBILITIES REGARDING THIS**  
22 **TESTIMONY?**

23 A. Each witness has reviewed and concurs with the entire testimony.  
24 However, Mr. Munsell is primarily responsible for technical issues and Mr.  
25 Vasington is primarily responsible for policy issues.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS TESTIMONY?**

3 A. We are submitting this testimony on behalf of MCI Communications  
4 Services Inc., d/b/a Verizon Business Services ("Verizon").

5

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A. We testify to the facts supporting Verizon's position that it does not owe  
8 Bright House Networks Information Services (Florida), LLC ("Bright House  
9 Information Services" or "BHNIS") price-listed intrastate access charges  
10 on voice over Internet protocol ("VoIP") traffic—that is traffic originated or  
11 terminated in Internet protocol ("IP"), rather than the traditional time  
12 division multiplexing ("TDM") format.

13

14 **Q. HAS THE FCC JUST MADE A RULING THAT DIRECTLY AFFECTS**  
15 **THIS CASE?**

16 A. Yes. On October 27, the FCC adopted its long-awaited Order reforming  
17 the intercarrier compensation and universal service systems on a  
18 nationwide basis.<sup>1</sup> The text of the Order, said to be about 500 pages long,  
19 has not yet been released, but the FCC issued an Executive Summary of  
20 the Order that makes clear that the FCC's ruling is relevant to the parties'  
21 dispute here. Among other things, the FCC "ma[d]e clear the prospective  
22 payment obligations for VoIP traffic exchanged in TDM between a LEC

---

<sup>1</sup> See *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, WC Docket No. 10-90, etc. ("ICC/USF Rulemaking") (Order adopted Oct. 27, 2011, but not yet released), Executive Summary ("Exec. Summary") available at [www.fcc.gov/events/open-commission-meeting-october-2011](http://www.fcc.gov/events/open-commission-meeting-october-2011).

1 and another carrier”—which is the kind of traffic in dispute in this case.  
2 Those obligations do **not** include payment of intrastate access charges for  
3 VoIP traffic. Rather, the FCC “establish[ed] that default charges for ‘toll’  
4 VoIP-PSTN traffic will be equal to interstate rates applicable to non-VoIP  
5 traffic, and default charges for other VoIP-PSTN traffic will be the  
6 applicable reciprocal compensation rates.” (Exec. Summary, ¶ 24.) (The  
7 parties’ dispute here involves only “toll” VoIP traffic—that is, calls that  
8 would normally be billed as intrastate interexchange calls, based on the  
9 calling and called party telephone numbers.) Under the FCC’s ruling,  
10 *interstate* access charges are the default, initial rate for such IP traffic  
11 exchanged with the public switched telephone network (“PSTN”), the first  
12 step in a transition to bill-and-keep compensation for all traffic, VoIP and  
13 non-VoIP, interstate and intrastate.

14  
15 The starting point for VoIP and non-VoIP traffic is different, however. The  
16 intercarrier compensation rates for non-VoIP traffic will initially be capped  
17 at existing levels as of the effective date of the FCC’s Order, with intrastate  
18 access rates brought into parity with interstate access rates in two steps  
19 by July 2013. (Exec. Summary, ¶ 19.) VoIP traffic, however, will *never* be  
20 subject to intrastate access rates; as noted, “toll” VoIP traffic will instead  
21 be compensated initially at interstate access rates, which are typically  
22 multiples lower than intrastate rates, unless carriers negotiate different  
23 compensation.

24  
25

1    **Q.    HOW DOES THE FCC’S VOIP COMPENSATION RULING AFFECT**  
2    **THIS CASE?**

3    A.    Because the FCC has determined that intrastate access charges do *not*  
4    apply to IP traffic exchanged with the PSTN, the Commission, at a  
5    minimum, cannot grant BHNIS’ claim for enforcement of its price-listed  
6    intrastate access charges on such traffic from the effective date of the  
7    FCC’s Order. That prospective claim is now moot and Verizon anticipates  
8    that it may be withdrawn once the text of the FCC’s Order issues.

9  
10    The text of the Order may provide additional reasoning relevant to the  
11    disputed issues here, but again, the Executive Summary at least makes  
12    plain that this Commission cannot order Verizon to pay BHNIS’ intrastate  
13    access charges prospectively. The rest of our testimony addresses  
14    BHNIS’ claim for retrospective compensation, to the extent that any such  
15    claim remains open once the parties have had a chance to review the text  
16    of the FCC’s Order.

17  
18    **Q.    WILL THE COMMISSION NEED TO TAKE ADDITIONAL DIRECT**  
19    **TESTIMONY ONCE THE PARTIES HAVE DIGESTED THE TEXT OF**  
20    **THE ORDER?**

21    A.    Most likely. Although some key aspects of the FCC’s new intercarrier  
22    compensation regime are clear from the Executive Summary—including  
23    the fact that intrastate access charges will *not* be applied to VoIP calls—  
24    many details remain to be fleshed out in the text of the Order. Once the  
25    text is released, the parties will need an opportunity to more thoroughly



1 address the effect of the FCC's rulings on the disputed issues here,  
2 through additional direct testimony or otherwise. We assume that Staff  
3 and the parties will work together on a reasonable process to inform the  
4 Commission of their respective views before proceeding further.

5

6 **Q. ARE THE ISSUES IN THIS CASE PRIMARILY LEGAL?**

7 A. Even leaving aside the impact of the FCC's Order on this case, many of  
8 the issues here are legal in nature—including the threshold issue of  
9 whether the Commission has jurisdiction to even address BHNIS'  
10 Complaint (again, this issue would now be limited to, if anything,  
11 addressing BHNIS' retrospective compensation claim). In its earlier  
12 Motion to Dismiss BHNIS' Complaint, Verizon explained that the  
13 Commission lacks such jurisdiction, because Florida law prohibits it from  
14 addressing VoIP-related claims and, even if it did not, federal law would  
15 preclude the Commission from doing so.<sup>2</sup> The Commission ruled that  
16 development of a factual record was necessary to deciding the  
17 jurisdictional issues Verizon raised.<sup>3</sup>

18

19 We are not lawyers, so we will leave the legal analysis to Verizon's briefs,  
20 but we testify to the facts to which the relevant law will be applied. We  
21 provide the facts supporting Verizon's legal conclusion that IP calls are  
22 beyond the Commission's jurisdiction because they are information  
23 services traffic that cannot be neatly divided into interstate and intrastate

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<sup>2</sup> Verizon's Motion to Dismiss or Stay Bright House's Complaint (filed March 14, 2011) ("Motion to Dismiss").

<sup>3</sup> See Aug. 11, 2011 Commission Conference Agenda Transcript, Item 2, at 19-25.

1 components. We will also explain that, if the Commission (erroneously)  
2 determines that it may resolve BHNIS' retrospective compensation claim,  
3 it should find that Verizon has already paid BHNIS appropriate  
4 compensation for the limited services it rendered to Verizon. Indeed, even  
5 if it were appropriate to apply intrastate access charges to IP calls (and it  
6 never has been), BHNIS is not entitled to its price-listed access charges  
7 for these calls, because it has not been providing the switched access rate  
8 elements for which it has been billing Verizon.

9

10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. BHNIS has been, and still is, overcharging Verizon for calls between  
12 Verizon's customers and customers served by BHNIS' cable affiliate  
13 ("Bright House Cable"), which provides telephone service with VoIP  
14 technology to end users. BHNIS itself does not provide any local  
15 telephone service to any end users; it is simply an intermediary carrying  
16 calls between Bright House Cable and the PSTN. There is no dispute that  
17 Bright House Cable, which is not regulated by this Commission, could not  
18 itself collect access charges on the traffic it sends to and receives from  
19 Verizon's end users—and could not even invoke the Commission's  
20 jurisdiction to bring such a claim. But the Bright House family of  
21 companies is trying to have it both ways—shielding its cable affiliate from  
22 regulation of its VoIP telephony services by inserting BHNIS between that  
23 affiliate and the PSTN, and at the same time seeking the benefits of  
24 regulation to try to collect access charges on IP traffic exchanged with the  
25 PSTN.

1 BHNIS can't make a coherent case to support this attempt at regulatory  
2 gaming. On one hand, BHNIS argues that it and Bright House Cable are  
3 completely separate entities "perform[ing] two vastly different sets of  
4 activities"<sup>4</sup>—BHNIS is simply providing "wholesale traffic exchange on the  
5 PSTN" for "plain old telephone traffic" (Opposition at 1, 5, 12), while "VoIP  
6 and other unregulated operations are handled" solely by Bright House  
7 Cable (Opposition at 20). These assertions serve BHNIS' argument that  
8 its claims here do not implicate the Florida statutory exemption from  
9 regulation for VoIP services. On the other hand, BHNIS *also* claims that it  
10 is "responsible for the management of voice services" on both Bright  
11 House Cable's VoIP network and BHNIS' own network, "on an end-to-end  
12 basis."<sup>5</sup> These claims presumably serve BHNIS' arguments that it  
13 connects Verizon to end users (even though those end users pay Bright  
14 House *Cable* and lack any contractual relationship with Bright House  
15 *Information Services* that might entitle BHNIS to collect access charges for  
16 calls to Bright House Cable subscribers).

17  
18 No amount of semantic gymnastics can reconcile BHNIS' contradictory  
19 arguments or conceal the facts critical to resolving the parties' legal  
20 disputes. BHNIS *is* playing a key role in providing VoIP service, because  
21 it "permits users generally to receive calls that originate on the public  
22 switched telephone network and to terminate calls to the public switched  
23 telephone network" (Fla. Stat. § 364.02(15)), an important factor in

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<sup>4</sup> Bright House's Opposition to Motion to Dismiss or Stay Complaint ("Opposition") at 21.

<sup>5</sup> See Bright House Response to Verizon Interrogatory ("BH Resp. to VZ Int.") 21.

1 deciding the issue of Commission jurisdiction over BHNIS' claims. What  
2 BHNIS is *not* doing is providing the switched access elements for which it  
3 is billing Verizon; BHNIS provides few, if any, switched access functions.  
4 It has no end users of its own and it does not own the "last mile" facilities  
5 connecting Verizon with Bright House Cable's subscribers. BHNIS'  
6 overcharges to Verizon for BHNIS' non-existent carrier common lines  
7 since June 2007 are alone *over \$9 million*, not to mention other switched  
8 access elements that BHNIS has never provided. These Carrier Common  
9 Line charges alone far exceed the entire amount in dispute with BHNIS.  
10 Indeed, the Commission need not even reach the jurisdictional issues  
11 here. It can simply deny BHNIS' claim for retroactive compensation on the  
12 basis that, even if the traffic at issue were plain old intrastate  
13 interexchange traffic (and it is not), BHNIS wasn't entitled to collect its  
14 price-listed switched access charges on it, because it wasn't providing the  
15 switched access services reflected in its price list.

16  
17 The rate Verizon has been paying BHNIS for exchanging IP traffic--  
18 \$0.0007 a minute—is a fair and reasonable rate. That rate was the same  
19 one already applied to a substantial amount of traffic, including most  
20 wireless traffic that terminates to the PSTN, and it was the rate cap the  
21 FCC chose for dial-up traffic to information service providers. ***It is also***  
22 ***the rate BHNIS itself negotiated with Verizon Florida for the***  
23 ***exchange of VoIP traffic under their recently executed***  
24 ***interconnection agreement***—a fact that belies BHNIS' claims that the

1           \$0.0007-a-minute rate was an inherently unfair and unreasonable  
2           compensation rate for IP-formatted traffic.

3  
4           Nevertheless, it has always been Verizon's desire and intention to  
5           negotiate a reciprocal commercial agreement with BHNIS for the mutual  
6           exchange of VoIP traffic. Verizon remains open to negotiating a  
7           settlement of the parties' past disputes that may be based on a different  
8           rate and that is tailored to Verizon's particular relationship with BHNIS.  
9           Verizon has consistently taken the position that voluntarily negotiated  
10          commercial agreements are the best way to set intercarrier compensation  
11          rates and, now that the FCC has established the default compensation  
12          rate for IP traffic on a prospective basis, Verizon hopes the parties can,  
13          likewise, resolve their back-billing disputes.

14  
15          If BHNIS declines to negotiate, and if the Commission (erroneously) finds  
16          it has jurisdiction to decide BHNIS' retrospective VoIP compensation  
17          claim, applying BHNIS' intrastate access charges would be wrong as a  
18          matter of policy, as well as fact and law. BHNIS' access charges are  
19          modeled upon the rates charged by legacy incumbent local exchange  
20          carriers ("ILECs"). These rates are not justified for an entity like BHNIS  
21          that does not serve any telephone subscribers and that is not even  
22          performing the switched access functions for which it is charging. In fact,  
23          BHNIS is collecting access charges that are, on a per-minute basis, even  
24          *higher* than the Verizon ILEC's, even though BHNIS has none of the  
25          regulatory or historical baggage that originally justified the subsidy-laden

1 access charge regime that the FCC has just overhauled. As the FCC  
2 observed in capping CLEC interstate access rates a decade ago, in a  
3 competitive market, a CLEC could not successfully enter with access rates  
4 higher than the ILEC rate, the prevailing market price. Higher CLEC rates  
5 raise concerns that the CLEC is shifting an unjust portion of its costs to the  
6 long-distance market.<sup>6</sup> There is no reason to award BHNIS legacy  
7 intrastate access rates with respect to the IP traffic it exchanged with  
8 Verizon in the past, even if it were legally permissible to do so (and it is  
9 not).

10

11 **III. BACKGROUND**

12 **Q. WHAT KIND OF ENTITY IS BHNIS?**

13 A. Although BHNIS inherited a CLEC certificate granted to predecessor  
14 Time Warner in 2001,<sup>7</sup> BHNIS does not provide local telephone service  
15 to end users like other CLECs do. Rather, it helps **[BEGIN**  
16 **CONFIDENTIAL]** XXXXXXXXXX, **[END CONFIDENTIAL]** Bright House  
17 Cable,<sup>8</sup> provide the VoIP telephone service that Bright House Cable  
18 markets and sells to end users. BHNIS does so by interconnecting  
19 Bright House Cable with the PSTN, including Verizon's network. Bright  
20 House Cable sends all of its subscribers' calls through BHNIS for

---

<sup>6</sup> See *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 59 (2001).

<sup>7</sup> See BHNIS' Responses to Verizon's First Requests for Production of Documents, ("BH Resp. to VZ's First DRs"), Att. 1 (Order Acknowledging Name Change); *Application for Certificate to Provide Local Exchange Telecommunications Service by Time Warner Communications*, Notice of Proposed Agency Action Order Granting Certificates to Provide Alternative Local Exchange Telecomm. Services, Order No. PSC-01-2467 (Dec. 18, 2001); BHNIS Complaint at 6.

<sup>8</sup> See BH Resp. to VZ's Int. 3.

1 termination to Verizon and other carriers;<sup>9</sup> in the other direction, BHNIS  
2 accepts calls from Verizon and other carriers for delivery to Bright  
3 House Cable, which, in turn, delivers those calls to its subscribers.  
4 Bright House Cable does not use traditional, circuit-switched technology;  
5 instead, it has an all-IP network. So all calls originate from or terminate  
6 to that network in IP format.

7

8 **Q. HOW DID THE CURRENT DISPUTE ARISE?**

9 A. By letter transmitted to BHNIS in August, 2010, Verizon notified BHNIS  
10 that it was disputing BHNIS' claim for payment of switched access  
11 charges on IP-to-PSTN and PSTN-to-IP traffic, citing two recent federal  
12 court decisions confirming that the tariffed switched access regime then  
13 in place did not apply to such traffic.<sup>10</sup> Verizon invited BHNIS to  
14 negotiate a commercial agreement to establish reciprocal rates, terms,  
15 and conditions for the exchange of IP-to-PSTN traffic and PSTN-to-IP  
16 traffic, and stated that, pending such an agreement, it would  
17 compensate BHNIS at a rate of \$0.0007 per minute of use for the  
18 invoiced traffic and dispute the remainder. The parties did start  
19 negotiations and exchange proposals; in fact, in its Complaint, BHNIS  
20 acknowledged that it "continue[d] to discuss possible informal  
21 resolutions of this dispute with Verizon." (Complaint at 5 n. 10.) But  
22 Verizon and BHNIS have not, as yet, been able to settle their entire

---

<sup>9</sup> See BH Resp. to VZ Ints. 10, 17, and 18.

<sup>10</sup> These cases are *PAETEC Comm., Inc. v. CommPartners, LLC*, No. 08-0397, slip. op., 2010 U.S. Dist. LEXIS 51926 (D.D.C. Feb. 18, 2010) ("*PAETEC*"); and *Manhattan Telecomm. Corp. v. GNAPs*, No. 08-cv-3829, 2010 U.S. Dist LEXIS 32315, 49 Comm. Reg. (P&F) 1296 (S.D.N.Y. Mar. 31, 2010) ("*MetTel*").

1           dispute, although Verizon hopes that the FCC's recent ruling will provide  
2           the impetus to re-start settlement talks.

3

4   **Q.    WAS BHNIS ABLE TO SETTLE ITS DISPUTE WITH VERIZON**  
5   **FLORIDA?**

6   A.    Yes.  BHNIS brought its Complaint against both Verizon Florida and  
7           Verizon Business.  But BHNIS dismissed Verizon Florida from the  
8           Complaint when those parties settled their VoIP compensation dispute  
9           (both for retrospective claims and on a going-forward basis).  BHNIS and  
10          Verizon Florida generally agreed to exchange VoIP traffic (that is, both IP-  
11          originated and IP-terminated calls) that would otherwise be rated as "local"  
12          or "intraLATA" under their interconnection agreement at a rate of \$0.0007  
13          per minute--the same rate that BHNIS is (implausibly) disputing here as  
14          unlawful and unreasonable.  BHNIS refused to apply that rate (or any rate  
15          other than intrastate access) to IP traffic exchanged with Verizon  
16          Business, so their dispute remains open.

17

18   **Q.    WAS DISPUTING BHNIS' APPLICATION OF SWITCHED ACCESS**  
19   **RATES TO IP TRAFFIC AN UNUSUAL STEP?**

20   A.    No.  As the FCC pointed out when it initiated its ICC/USF Rulemaking in  
21           February, it had, at that time, "never addressed whether interconnected  
22           VoIP is subject to intercarrier compensation rules and, if so, the applicable  
23           rate for such traffic....  This uncertainty has led to numerous billing  
24           disputes and litigation and may be deterring innovation and the



1 introduction of new services.”<sup>11</sup> Indeed, there have been many such  
2 disputes in the industry, some open for years, with some carriers paying  
3 \$0.0007, some paying other rates, and some paying nothing at all for  
4 handling IP traffic. And there are at least [BEGIN CONFIDENTIAL] XXX  
5 [END CONFIDENTIAL]<sup>12</sup> companies, other than Verizon affiliates,  
6 disputing BHNIS’ application of intrastate switched access charges to IP  
7 traffic (although, to Verizon’s knowledge, BHNIS has not brought  
8 complaints against these other companies). So Verizon’s approach was  
9 nothing new or extraordinary.

10

11 **Q. EVEN IF THE COMMISSION DECIDES BHNIS’ BACK**  
12 **COMPENSATION CLAIM, WILL THAT RESOLVE THE PARTIES’**  
13 **ENTIRE PAST DISPUTE?**

14 **A.** No. BHNIS’ dispute here involves only IP traffic that it billed in the  
15 intrastate jurisdiction. But a significant portion of the disputed IP traffic  
16 was billed as interstate traffic—about [CONFIDENTIAL] XXXXXXXX [END  
17 CONFIDENTIAL] of the estimated [BEGIN CONFIDENTIAL] XXXXXXXX  
18 [END CONFIDENTIAL] BHNIS claims Verizon owes. Not even BHNIS  
19 claims that this Commission can decide the aspect of the parties’ dispute  
20 that relates to charges billed in the interstate jurisdiction. In addition, the  
21 parties’ disputes cover four states other than Florida (and BHNIS has not  
22 brought complaints against Verizon in any of those states). So, even if the  
23 Commission mistakenly decides that it has the jurisdiction to resolve the

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<sup>11</sup> ICC/USF Rulemaking, Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 604.

<sup>12</sup> BH Resp. to VZ’s Ints. 25 and 26.

1 parties' dispute about past payments for IP traffic, that decision would not  
2 resolve the parties' entire dispute over past billings. This is an additional  
3 reason why negotiation is the best option here. Negotiations would  
4 include the parties' entire retrospective dispute, rather than having it  
5 resolved on a piecemeal basis.

6

7 **IV. SPECIFIC ISSUES**

8 **1. What functions or services does Bright House Networks**  
9 **Information Services (Florida) LLC perform for Bright House**  
10 **Networks, LLC ("Bright House Cable")?**

11

12 **Q. WHAT FUNCTIONS DOES BHNIS PROVIDE TO BRIGHT HOUSE**  
13 **CABLE?**

14 **A.** Bright House Cable provides VoIP telephone service to its voice end  
15 users. (See, e.g., BH Resp. to VZ Int. 43.) VoIP is the technology used  
16 to deliver voice communications over IP networks such as the Internet  
17 and private IP networks. Internet Protocol refers to a set of rules that  
18 permits computers to connect, communicate, and transfer data between  
19 them. VoIP technology enables the set-up of voice calls over an IP  
20 network and enables packets of data (containing voice) to be  
21 transmitted across an IP network.

22

23 BHNIS interconnects Bright House Cable with other carriers' networks,  
24 including Verizon's network, so Bright House Cable's VoIP end users  
25 can call Verizon's (and other companies') end users and vice versa.

1 Although Verizon, like the rest of the industry, has begun to implement  
2 VoIP capabilities in its network, much of its telephony traffic is still  
3 circuit-switched. Circuit-switched networks provide telephone service  
4 using traditional TDM technology, which, in simple terms, allows  
5 switches to set up circuits dedicated to each telephone call. Therefore,  
6 when a Bright House Cable VoIP customer calls a Verizon TDM  
7 customer, the VoIP call must be converted from IP format to TDM format  
8 (and, in the other direction, from TDM to IP). BHNIS performs this  
9 conversion (BH Resp. to VZ Int. 21), so that BHNIS hands off Bright  
10 House Cable's customers' calls to Verizon in TDM format, and Verizon  
11 hands off its customers' calls (and those of third-party carriers) to BHNIS  
12 in TDM format. Without the functions that BHNIS performs, Bright  
13 House Cable's end users could not receive calls from or terminate calls  
14 to other networks.

15

16 **Q. DOES BHNIS PROVIDE THESE FUNCTIONS TO ANY OTHER**  
17 **COMPANIES?**

18 A. No. To our knowledge, Bright House Cable is BHNIS' only "customer"  
19 for these functions, which it provides to Bright House Cable under  
20 contract.<sup>13</sup>

21

22 **Q. PLEASE DESCRIBE THE SPECIFIC FUNCTIONS BHNIS PROVIDES**  
23 **TO BRIGHT HOUSE CABLE UNDER THAT CONTRACT.**

24 A. That contract, the [BEGIN CONFIDENTIAL] XXXXXXXXXXXXXXXXXXXX

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<sup>13</sup> See BH Resp. to VZ Int. 8 and DR 1, Att. 2.

1 XXX  
2 XXX  
3 XXX  
4 XXX  
5 XXX  
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8 XXX  
9 XXX  
10 XXX  
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12 XXX  
13 XXX  
14 XXX  
15 XXX  
16 XXX  
17 XXX  
18 XXX  
19 XXX  
20 XXX  
21 XXX  
22 XXX [END  
23 CONFIDENTIAL]  
24  
25

1 Q. DO THESE FUNCTIONS SHOW THAT BHNIS IS CLOSELY  
2 INVOLVED IN PROVIDING THE VOIP RETAIL SERVICE?

3 A. Yes. In its Opposition to Verizon’s Motion to Dismiss, BHNIS claimed a  
4 sharp distinction between the unregulated “retail VoIP” services of Bright  
5 House Cable and the “wholesale services” BHNIS provides (Opposition  
6 at 2, 3, 5, 8, 11, 19), arguing that those wholesale functions “cannot be  
7 treated as...part of, the deregulated VoIP services” and so “do not meet  
8 the definition of VoIP” (*id.* at 11-12). Therefore, BHNIS concludes that  
9 the exemption from regulation for VoIP in the Florida Statutes does not  
10 preclude the Commission from considering its Complaint.

11

12 Verizon does not agree with BHNIS that Florida law prohibits only  
13 regulation of the finished retail VoIP product, but permits the  
14 Commission to regulate the wholesale aspects of its provision, but as  
15 we said, we will leave the legal analysis to the briefs. In terms of plain  
16 facts, though, it is indisputable that BHNIS is providing the capability that  
17 “[p]ermits users generally to receive calls that originate on the public  
18 switched telephone network and to terminate calls to the public switched  
19 telephone network” and its role is critical to “[e]nabl[ing] real-time, two-  
20 way voice communications that originate from or terminate to the user’s  
21 location in Internet Protocol.” (Fla. Stat. § 364.02(15)(a)&(c).) These are  
22 two of the three elements of the VoIP definition in the Florida statutes.

23

24 Q. IS BRIGHT HOUSE TRYING TO GAME THE REGULATORY  
25 REGIME?

1 A. Yes. Bright House Cable is indisputably unregulated. It is not under the  
2 Commission's jurisdiction, it has no tariffs or price lists, and no basis for  
3 demanding payment of access charges on the IP traffic it sends and  
4 receives. In fact, BHNIS was likely formed to protect Bright House  
5 Cable from any threat of regulation. But now, BHNIS is trying to invoke  
6 the Commission's jurisdiction to demand access charges for calls to and  
7 from Bright House Cable subscribers, when Bright House Cable could  
8 not itself make that demand.<sup>14</sup> BHNIS cannot have it both ways. It  
9 cannot claim the benefits of regulation for its cable affiliate while  
10 avoiding the drawbacks.

11

12 **2. What functions or services does Bright House perform for MCI**  
13 **Communications Services, Inc. d/b/a Verizon Business**  
14 **Services ("Verizon Business")?**

15

16 **Q. DOES BHNIS PROVIDE SWITCHED ACCESS SERVICES TO**  
17 **VERIZON?**

18 A. No. BHNIS claims that it provides originating and terminating switched  
19 access to Verizon under its intrastate access price list, and so Verizon  
20 should pay the rates in that price list for the disputed IP traffic (at least for  
21 the retrospective claim). But even if an intrastate access price list could  
22 apply to VoIP calls (and it cannot), BHNIS would have no right to assess  
23 the charges in its price list, because it is not providing switched access

---

<sup>14</sup> Indeed, BHNIS' price list—which it claims has the force of a tariff enforceable by this Commission—appears to create obligations running from Verizon to *Bright House Cable* and its end users. (See, e.g., the indemnification provision at § 2.3.8.F of BHNIS' price list.) Asked in discovery if this was the case, BHNIS refused to say. BH Resp. to VZ Int. 58.

1 service. The fundamental problem with BHNIS' price list is that it is largely  
2 modeled upon common language in the tariffs of local exchange carriers  
3 that, unlike BHNIS, actually provide local exchange service to retail, end-  
4 user customers, including the "last-mile" connection to that end user. As  
5 we explained, BHNIS provides no such retail services and it has no  
6 contractual relationship with end-user customers, so the functions it  
7 performs for Verizon and other carriers are much different from the access  
8 services typically provided by LECs. Moreover, BHNIS does not even  
9 own any facilities that could be used to provide such switched access  
10 functions.

11

12 **Q. WHAT IS SWITCHED ACCESS SERVICE?**

13 A. Switched access, as uniformly understood in the industry and reflected in  
14 BHNIS' own price list, is a service provided by a local exchange carrier to  
15 another carrier that establishes a connection between a LEC central office  
16 and an individual residential or business retail customer. BHNIS' price list  
17 reflects this common understanding. It defines "Switched Access" as "[a]  
18 service in which the Company [defined as BHNIS] establishes originating  
19 or terminating connections between an End User and a Customer by  
20 means of switching or routing on a Call-by-Call basis."<sup>15</sup> The price list  
21 further provides that "Customer", "[i]n most contexts", is the interexchange

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<sup>15</sup> BH Price List § 1.1. In discovery, BHNIS, likewise, described switched access as "provid[ing] connections between the IXC and the calling or called party on a call-by-call basis, based on the dialed telephone number." (BH Resp. to VZ Int. 35.)

1 carrier (“IXC”) taking service under the price list to “connect its End User  
2 customers with the Company’s End Users.” (BH Price List, § 1.1.)

3 This language would make sense in the typical case of an ILEC or CLEC  
4 selling another carrier access service to connect that carrier’s network with  
5 the ILEC’s or CLEC’s end users. In BHNIS’ case, however, the language  
6 doesn’t make sense, *because BHNIS has no end users*, and so, contrary  
7 to its price list, it does not establish any connection between Verizon (the  
8 “Customer”) and any End Users.

9

10 **Q. HOW DOES BHNIS’ PRICE LIST DEFINE “END USER”?**

11 A. The price list (at § 1.1) defines “End User” to mean any “entity which uses  
12 the retail service of the Company or another carrier.” But the  
13 “Company”—again, defined as BHNIS—has no “retail service” and, as  
14 BHNIS acknowledges, Bright House Cable is not a “Carrier” (defined as  
15 “[a]n entity that provides telecommunications services”) (BH Resp. to VZ  
16 Int. 39); if it were, it would be regulated by this Commission. In short,  
17 there is no “End User” to which BHNIS is providing a connection,  
18 “Switched Access” or otherwise, and BHNIS has no right to charge  
19 Verizon (or anyone else) for such connections.

20

21 **Q. DID VERIZON ASK BHNIS IN DISCOVERY ABOUT THE MEANING OF**  
22 **END USER IN ITS PRICE LIST?**

23 A. Yes, and Verizon received only confusing and convoluted answers. “End  
24 User” appears repeatedly in BHNIS’ switched access price list, as one  
25 might expect, because “Switched Access” is a service connecting carrier



1 “Customers” with “End Users”. Because the “End User” references are  
2 important to understanding what BHNIS is (or is not) providing under its  
3 price list, Verizon propounded numerous requests for admissions and  
4 interrogatories asking about the meaning of End User in several specific  
5 price list provisions.<sup>16</sup> After lodging objections claiming not to know what  
6 “means” means or what “includes” means (BH Resp. to VZ Reqs. for Adm.  
7 2, 4-13), BHNIS repeatedly denied that “End User” referred to Bright  
8 House Cable end users (BH Resp. to VZ Reqs. for Adm. 2, 4,5, 6-13).  
9 Despite these denials, BHNIS *also* stated that “[s]ome Bright House Cable  
10 voice service subscribers may be covered by some uses of the term ‘End  
11 User’ in the price list in some cases” (BH Resp. to VZ Req. for Adm. 2),  
12 but declined to specify those uses or cases. Then it said “End User” could  
13 be any entity that uses the retail service of “another carrier (including other  
14 LECs or IXC).” (*Id.*; see also BH Resp. to VZ Int. 54.) Then it suggested  
15 that even Bright House Cable might be an End User, if one accepted  
16 BHNIS’ newly concocted definition of “retail” to describe the services it has  
17 consistently called “wholesale”<sup>17</sup> and that BHNIS provides to Bright House  
18 Cable under [BEGIN CONFIDENTIAL] XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
19 XXXXXXXXXX [END CONFIDENTIAL]. (BH Resp. to VZ Req. for Adm. 2.)  
20 Finally, BHNIS proposed the theory that Bright House Cable’s voice  
21 service subscribers are “‘End Users’ within the meaning of the price list,”  
22 because they make calls “us[ing] the PSTN connectivity that Bright House  
23 provides to Bright House Cable” (*id.*)—even though BHNIS’ Complaint

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<sup>16</sup> See generally Verizon’s First Requests for Admissions (“Reqs. for Adm.”).

<sup>17</sup> See, e.g., Opposition at 5.

1 emphasized the “key point” that Bright House Cable, not BHNIS, provides  
2 service to end users. (Complaint at 9.)

3

4 BHNIS’ non-answer—or rather, its answer that an End User might be  
5 anyone at all—only emphasizes BHNIS’ inability to show that it is  
6 providing the “connection[s] between and End User and a Customer” that  
7 constitute Switched Access Service under the terms of the Price List that,  
8 it claims, provides the legal basis for this collection action.

9

10 **Q. HAS THE FCC PROVIDED GUIDANCE AS TO WHETHER A LEC**  
11 **ACCESS TARIFF MAY DEFINE AN END USER AS AN ENTITY OTHER**  
12 **THAN SOMEONE PURCHASING SERVICE FROM THE CLEC ITSELF?**

13 A. Yes. The FCC (as well as many states) caps CLEC switched access  
14 rates at the competing ILEC’s level, but CLECs are permitted to charge  
15 those full “benchmark” rates only for calls *to or from the CLEC’s own end*  
16 *users*. The FCC has repeatedly confirmed that this ILEC-level rate is  
17 available “only when a competitive LEC provides an IXC with access to  
18 the competitive LEC’s own end users.”<sup>18</sup> The FCC’s rules also require the  
19 CLECs’ interstate switched access tariffs to include charges for the  
20 “functional equivalent” of elements typically found in ILEC switched access  
21 tariffs—that is, “those services needed to originate or terminate a call to a  
22 LEC’s end-user.” (*CLEC Access Charge Reform Order*, ¶ 13.) A CLEC

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<sup>18</sup> See, e.g., *Access Charge Reform, etc.*, Eighth Report & Order and Fifth Order on Recon., 19 FCC Rcd 9108 (2004) (“*CLEC Access Charge Reform Order*”), ¶ 15, ¶ 13 (“a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC’s own end-users”); *Qwest Comm. Co., LLC v. Northern Valley Comm., LLC*, Order on Reconsideration, FCC 11-148, File No. EB-11-MD-001 (Oct. 5, 2011) (“*Qwest Oct. Order*”), ¶ 4.

1 provides the “functional equivalent” of ILEC switched access service “*only*  
2 *if the CLEC transmits the call to its own end user*”--- that is, a customer of  
3 a CLEC service offered for a fee.<sup>19</sup> “[W]hen a CLEC is *not* transporting  
4 traffic to or from its own end user, the CLEC is *not* providing the functional  
5 equivalent of ILEC access services and is not entitled to charge the full  
6 tariffed benchmark rate.” (*Qwest June Order*, ¶ 8 (emphasis in original).)<sup>20</sup>  
7 “[T]he rate a competitive LEC charges for access components when it is  
8 not serving the end-user should be no higher than the rate charged by the  
9 competing incumbent LEC *for the same functions.*” (*CLEC Access*  
10 *Reform Order*, ¶ 9 (emphasis added).)

11

12 Again, Verizon will provide the relevant legal analysis in its briefs, but no  
13 legal analysis is necessary to grasp the fundamental principle that a  
14 company cannot charge for services and functions it is not providing.  
15 Verizon is not aware of any Florida law that says otherwise. BHNIS claims  
16 to have set its rates by reference to ILEC rates (BH Resp. to VZ Int. 27).  
17 That may be true in the sense that the BHNIS rate for a particular rate  
18 element may mirror the ILEC rate for that same service. But where  
19 BHNIS is not providing those services (or the functional equivalent of  
20 those services) it cannot charge those rate elements. BHNIS isn’t  
21 providing the functional equivalent of ILEC access services, because it  
22 isn’t transmitting calls to or from its own end users. Therefore, BHNIS had

---

<sup>19</sup> *Qwest Comm. Co., LLC v. Northern Valley Comm., LLC*, Memorandum Op. & Order, FCC 11-47, File No. EB-11-MD-001 (June 7, 2011) (“*Qwest June Order*”), ¶ 8 (emphasis added) & ¶ 9 (“a CLEC’s access service is functionally equivalent only if the CLEC provides access to customers to whom the CLEC offers its services *for a fee*”) (emphasis in original).

<sup>20</sup> See also *Qwest Oct. Order*, ¶ 8 (“a CLEC’s access service is ‘functionally equivalent’ only if the CLEC provides access to its own end user, or *paying customer.*” (emphasis in original)).

1 no right to charge Verizon (or anyone else) the switched access rates in its  
2 price list (even aside from the fact that those rates never applied to IP  
3 traffic).

4

5 **Q. IS BHNIS ESTABLISHING ORIGINATING AND TERMINATING**  
6 **CONNECTIONS BETWEEN ANY END USERS AND CUSTOMERS**  
7 **BUYING SERVICE UNDER BHNIS' PRICE LIST?**

8 A. No. BHNIS is not establishing the "originating or terminating connections  
9 between an End User and a Customer" (that is, the IXC) that constitute  
10 Switched Access service under BHNIS's price list. Because BHNIS does  
11 not provide any local exchange service to end users, it does not connect  
12 Verizon (or other carriers) with any end users. Moreover, BHNIS lacks the  
13 "last-mile" facilities connecting to end users, which are the hallmark of  
14 switched access. The **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXXXXX  
15 XXX  
16 XXX  
17 XXX  
18 XXX  
19 XXX  
20 XXX **[END**  
21 **CONFIDENTIAL]** but BHNIS' discovery responses indicate that Bright  
22 House Cable's subscribers' calls enter BHNIS' network at a device called  
23 a "Call Aggregation Router," where data packets representing calls are  
24 gathered for routing to Verizon and other carriers. (BH Resp. to VZ Int.  
25 21.) The facilities connecting Bright House Cable's end user to that

1 aggregation device are owned and operated by Bright House Cable—  
2 including the coaxial cable from the Bright House Cable customer's home,  
3 the Cable Modem Termination System ("CMTS"), the Edge Router, the  
4 Core Router, the Voice Core Router, the Master Hub, and the Broadband  
5 Telephony Switch.<sup>21</sup> Yet BHNIS is charging for this entire path, including  
6 all of these facilities that are part of the Bright House Cable's network  
7 serving Bright House Cable's voice subscribers. BHNIS does not lease  
8 these facilities from Bright House Cable, nor does it appear that BHNIS  
9 **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
10 XX  
11 XX  
12 XX  
13 XX **[END**  
14 **CONFIDENTIAL]**

15  
16 **Q. CAN YOU GIVE EXAMPLES OF SPECIFIC ELEMENTS IN BHNIS'**  
17 **ACCESS PRICE LIST THAT IT IS CHARGING FOR, BUT NOT**  
18 **PROVIDING?**

19 **A.** Yes. There are a number of examples, again due to the fact that BHNIS  
20 modeled its price list on the tariffs of LECs that, unlike BHNIS, provide  
21 telephone service to their own end users. The highest per-minute charge  
22 in BHNIS' price list, at almost two and half cents per minute, is the "Carrier  
23 Common Line Originating and Terminating." "Carrier Common Line" is not  
24 defined or described in BHNIS' price list. This absence of any description

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<sup>21</sup> See BH Resp. to VZ Ints. 21, 56 and Att. D (Network Diagram).

1 for a service is a defect in the price list and it is, in itself, a good indication  
2 that the Carrier Common Line charges do not correspond to anything that  
3 BHNIS is actually providing. A carrier common line is, and has always  
4 been understood to be, a switched access rate element to compensate for  
5 a portion of the local loop between the end user subscriber and the central  
6 office of the carrier serving that subscriber. BHNIS' own description of  
7 "Common Line" in response to Verizon's request for a definition of the  
8 term acknowledged that it is a "run' from the end office switch towards a  
9 particular customer." (BH Resp. to VZ Int. 63.)

10

11 LECs that provide local telephone service to their own end users do have  
12 such links between their switches and their own end users. BHNIS does  
13 not; it has no end users of its own and no relationship with Bright House  
14 Cable's end users. As this Commission has observed, carrier common  
15 line charges "recover the LECs' costs of providing subscriber loops," and it  
16 is inappropriate for a carrier to assess carrier common line charges if it  
17 does not provide such common lines.<sup>22</sup> Because BHNIS provides no  
18 common lines running to any end users, and it admits that its Carrier  
19 Common Line charges recover no particular costs (BH Resp. to VZ Int.  
20 70), BHNIS has no basis for assessing common line charges under its  
21 price list. It has been overcharging Verizon (and other carriers) for its so-  
22 called "switched access services" for years.

---

<sup>22</sup> See *Request for approval of tariff filing to eliminate application of Carrier Common Line access rate element to Type I cellular interconnection arrangements by United Telephone Company of Florida and Central Telephone Company of Florida*, Order No. PSC-96-0006-FOF-TL (1996), 96 FPSC 1:8, quoting FCC Transmittal No. 418 (July 15, 1991).

1 **Q. HOW MUCH HAS BHNIS CHARGED VERIZON FOR THE CARRIER**  
2 **COMMON LINE ELEMENT?**

3 A. Since June 2007, BHNIS has assessed \$9,142,502.00 in Carrier Common  
4 Line charges on Verizon Business. (It has also assessed Carrier  
5 Common Line charges on Verizon Florida, but Verizon Florida was  
6 dropped from the complaint, so it may pursue overcharges separately.)

7  
8 **Q. WHAT PORTION OF THE DISPUTED BACK-BILLINGS IS FOR THE**  
9 **CARRIER COMMON LINE ELEMENTS?**

10 A. Of the \$5.29 million that BHNIS billed Verizon for intrastate switched  
11 access since August of 2010, when Verizon first began disputing BHNIS'  
12 switched access charges, over \$2.6 million was for Carrier Common Line  
13 charges. These charges were improper, even aside from the issue of  
14 whether intrastate switched access charges may be assessed on VoIP  
15 traffic.

16  
17 **Q. ARE THERE OTHER SWITCHED ACCESS ELEMENTS FOR WHICH**  
18 **BHNIS IS CHARGING, BUT NOT PROVIDING?**

19 A. Yes. End Office Switching is another example of a service for which  
20 BHNIS is collecting substantial charges, but not providing. Its price list  
21 includes charges for both End Office Switching (nearly 1.8 cents a minute  
22 for the "statewide rate") and Tandem Switching (a much lower rate, at  
23 .00075 a minute). BHNIS, however, does not charge Verizon for any  
24 Tandem Switching and, in fact, stated in discovery that it has no Tandem  
25 Switches (BH Resp. to VZ Int. 61). Instead, it apparently considers the

1 function of aggregating and routing calls to Bright House Cable's network  
2 to be end office switching for which it charges the End Office Switching  
3 rate—even though Bright House Cable owns and operates the Broadband  
4 Telephony Switches and other facilities that serve and route calls to the  
5 Bright House Cable end users. (See BH Resp. to VZ Int. 57.) The  
6 aggregation and routing functions BHNIS performs are more like tandem  
7 switching, which BHNIS correctly describes as “a traffic concentration and  
8 distribution function” (BH Resp. to VZ Int. 61), as compared to the end  
9 office switching performed by LECs that serve their own end users. Here,  
10 Bright House Cable, not BHNIS, is performing the end-office-type  
11 functions.

12

13 **Q. ARE YOU SAYING THAT BHNIS IS ACTUALLY PROVIDING A**  
14 **TRANSIT SERVICE?**

15 A. Yes. BHNIS is providing a kind of transit service to Verizon and other  
16 carriers whose subscribers call Bright House Cable subscribers. As we  
17 explained, BHNIS interconnects Bright House Cable with Verizon and  
18 other carriers, so each call to and from a Bright House Cable subscriber  
19 passes through BHNIS. BHNIS aggregates the packets of data  
20 representing calls from Bright House Cable subscribers and routes them  
21 to Verizon and other carriers. The process is the same in the reverse  
22 direction, when BHNIS accepts calls from other carriers and routes them  
23 to Bright House Cable, which delivers them to its own subscribers. (BH  
24 Resp. to VZ Int. 63.) This call flow and traffic pattern, this business of  
25 “traffic concentration and distribution,” as BHNIS describes it, precisely



1 meets the definition of tandem transit service. If anything, BHNIS should  
2 have been charging Verizon a tandem switching rate—the BHNIS price-  
3 listed rate is just over \$0.0007 a minute—for the functions it is providing.

4

5 **Q. HAS THE ISSUE OF CABLE COMPANY CLEC PARTNERS FAILING**  
6 **TO PROVIDE THE SWITCHED ACCESS SERVICES THEY'RE**  
7 **CHARGING FOR BEEN RAISED AT THE FCC?**

8 A. Yes. Cable companies including Comcast, Time Warner, and Cox have  
9 asked the FCC to define terminating access to include not just termination  
10 of calls to retail end users, but also delivery of calls to CLECs providing  
11 wholesale serves to VoIP providers who, in turn, serve end users.<sup>23</sup>  
12 Neither this Commission nor the FCC has ever defined terminating access  
13 to include delivery of calls to an intermediary carrier that does not serve its  
14 own end users. On the contrary, as we explained above, CLECs cannot  
15 receive ILEC-level benchmark rates if they are not providing service to  
16 their own end users. If the change requested by the cable companies is  
17 reflected in the text of the FCC's Order, Verizon and Bright can address its  
18 effect on this docket at that time.

19

20 **3. Does Florida law give the Commission jurisdiction to grant**  
21 **Bright House's claim for payment of intrastate access charges**  
22 **on the traffic at issue here, when that traffic originates or**  
23 **terminates in Internet protocol ("IP") format?**

24

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<sup>23</sup> See, e.g., Letter from M.A. Brill, Counsel for Time Warner Cable, to M.H. Dortch, FCC Secretary (Sept. 27, 2011).

1 Q. DOES FLORIDA LAW GIVE THE COMMISSION JURISDICTION TO  
2 AWARD BHNIS INTRASTATE ACCESS CHARGES FOR VOIP  
3 TRAFFIC?

4 A. No. In its briefs, Verizon will explain that the exemption from jurisdiction  
5 for VoIP activities in the Florida Statutes precludes the Commission from  
6 taking jurisdiction over BHNIS' claim. Our testimony here, including the  
7 above discussion of the role BHNIS plays in providing VoIP services, will  
8 be relevant to the legal analysis. Verizon will also explain that nothing in  
9 the Statutes would require or permit the imposition of price-listed switched  
10 access charges on VoIP traffic, even if the Commission had the authority  
11 to decide this dispute about retroactive intercarrier compensation for such  
12 traffic.

13

14 4. If the Commission has jurisdiction over Bright House's claim  
15 under state law, does federal law nevertheless preclude the  
16 Commission from exercising jurisdiction?

17

18 Q. DOES FEDERAL LAW PRECLUDE THE COMMISSION FROM  
19 EXERCISING JURISDICTION OVER BHNIS' COMPLAINT?

20 A. Yes. In its briefs, Verizon will explain that even if state law gave the  
21 Commission jurisdiction to resolve BHNIS' Complaint (and it does not),  
22 federal law would preclude the Commission from doing so, because the  
23 disputed calls are inherently interstate, information services traffic, and  
24 only the FCC has the authority to determine the rates, terms, and  
25 conditions relating to such interstate communications services. In this

1 testimony, we provide relevant facts to which the law will be applied.

2

3 **Q. YOU MENTIONED EARLIER THAT AT LEAST TWO FEDERAL**  
4 **COURTS HAVE DETERMINED THAT IP TRAFFIC IS NOT SUBJECT**  
5 **TO TARIFFED ACCESS CHARGES. HOW DID BHNIS RESPOND TO**  
6 **THAT INFORMATION?**

7 A. In its motion to dismiss BHNIS' Complaint, Verizon explained that the two  
8 court cases we cited earlier—*PAETEC*, from a U.S. District Court in the  
9 District of Columbia, and *MetTel*, from a U.S. District Court in New York—  
10 rejected CLEC efforts to apply tariffed access charges to VoIP traffic.  
11 (Motion to Dismiss, at 18-19). The *PAETEC* court concluded that VoIP is  
12 an “information service[] exempt from access charges” and also that there  
13 was no “pre-Act obligation related to intercarrier compensation for VoIP”  
14 that the federal Telecommunications Act of 1996 could have preserved.<sup>24</sup>  
15 The *MetTel* Court also identified an “inability to apply the tariff regime as it  
16 stands” to any VoIP traffic the CLEC in that case delivered to the ILEC.<sup>25</sup>  
17 BHNIS does not disagree that the Courts drew these conclusions, but  
18 contends that they were wrong. (Opposition at 33-35). In its briefs,  
19 Verizon will discuss why BHNIS is, instead, wrong, and why these cases  
20 confirm that Verizon was justified in disputing BHNIS' application of  
21 intrastate access charges, even before the FCC determined that intrastate  
22 access was not an appropriate measure of compensation for VoIP traffic.

---

<sup>24</sup> See Verizon's Motion to Dismiss at 18, *citing PAETEC*, 2010 U.S. Dist. LEXIS 51926, at \*9.

<sup>25</sup> *Id.* at 18, *citing MetTel*, 2010 U.S. Dist. LEXIS 32315, at \*8.

1 Q. HAS THE FCC PROVIDED GUIDANCE AS TO WHY VOIP SERVICES  
2 ARE INHERENTLY INTERSTATE?

3 A. Yes. In its *Vonage* order<sup>26</sup>, the FCC identified the characteristics that  
4 render VoIP services interstate in nature. Those basic characteristics are  
5 that the service: requires a “broadband connection”; uses IP-compatible  
6 equipment; and “includes a suite of integrated capabilities and features,  
7 able to be invoked sequentially or simultaneously, that allows customers to  
8 manage personal communications dynamically.” *Vonage Order*, ¶ 32.  
9 Again, there should be no need for this Commission to analyze Bright  
10 House Cable’s VoIP services to determine whether VoIP is an interstate  
11 service, because the Florida Legislature has already done so in exempting  
12 VoIP from state regulation. (The parties’ dispute relating to the state  
13 jurisdiction question is, rather, whether BHNIS’ involvement in providing  
14 VoIP service brings its claim within the state jurisdictional exemption.) But  
15 the Commission should know that, even if explicit prohibitions against  
16 exercising jurisdiction over VoIP did not exist in state law, it still would  
17 have no jurisdiction to address BHNIS’ Complaint, because the traffic at  
18 issue is interstate, and only the FCC can set the terms of compensation  
19 for interstate traffic.

20  
21 The FCC’s *Vonage Order* focused on the “inherent capability of IP-based  
22 services to enable subscribers to utilize multiple service features that  
23 access different websites or IP addresses during the same

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<sup>26</sup> *Vonage Holdings Corp.; Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm’n*, Memorandum Op. & Order, 19 FCC Rcd 22404 (2004) (“*Vonage Order*”), petitions for review denied, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8<sup>th</sup> Cir. 2007).

1 communications session and to perform different types of communications  
2 simultaneously.” *Vonage Order*, ¶ 25. It observed that VoIP “offers  
3 customers a suite of integrated capabilities and features that allow[] the  
4 user to manage personal communications dynamically, including but not  
5 limited to real-time, multidirectional voice functionality ... voicemail, three-  
6 way calling” and “online account and voicemail management” features that  
7 “allow[] customers to access their accounts 24 hours a day, through an  
8 Internet web page to manage their communications by configuring service  
9 features, handling voicemail, and editing user information.” *Id.*, ¶ 7.  
10 “Together, these integrated features and capabilities allow customers to  
11 control their communications needs by determining for themselves how,  
12 when, and where communications will be sent, received, saved, stored,  
13 forwarded and organized,” and render it impossible to pinpoint the  
14 termination point of VoIP communications. *Id.*, ¶¶ 8, 25. The FCC  
15 recognized that these “functionalities in all their combinations form an  
16 integrated communications service designed to overcome geography, not  
17 track it.” *Id.*, ¶ 25.

18

19 **Q. ARE BRIGHT HOUSE CABLE’S VOIP SERVICES DESIGNED TO**  
20 **OVERCOME GEOGRAPHY?**

21 A. Yes. We don’t believe there is any dispute that Bright House Cable’s VoIP  
22 telephony service (that BHNIS helps Bright House Cable provide) requires  
23 a broadband network connection, or that the Bright House Cable end user  
24 uses IP-compatible equipment to enable him to make IP calls.<sup>27</sup> And

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<sup>27</sup> As BHNIS explained in its discovery responses, the Bright House Cable telephone service requires the installation of an “eMTA” (or Edge Media Terminal Adapter) at the customer’s

1 Bright House Cable's calling features are inextricably intertwined with  
2 computing functions as part of a single integrated service offering that is  
3 designed to overcome geography and work anywhere a subscriber is  
4 online. For example, according to its website, Bright House Cable allows  
5 customers to "know exactly who's calling your home, *anywhere you're*  
6 *online* with call ID that appears right on your computer screen."<sup>28</sup> Bright  
7 House Cable also allows a subscriber to "personalize Caller ID information  
8 with ringtones and pictures, automatically connect your Home Phone to  
9 anyone on your contact list with a click of your mouse, view and listen to  
10 voice mail messages on your desktop and even send text messages right  
11 from your computer." *Id.* Bright House Cable also advertises the  
12 capability for a subscriber to check voice mail "on the Internet at anytime  
13 and anywhere"; arrange to "have a text message sent to their mobile  
14 phone whenever someone calls their Bright House phone"; "[l]isten to your  
15 Voice Mail on your computer *wherever you are*" (emphasis added);  
16 "[r]emotely forward all incoming calls to another telephone number of your  
17 choosing"; set up features such as selective call blocking and selective call  
18 forwarding with "Home Phone Online Tools"; search for a phone number  
19 and address "from your desktop; then click-to-call a listing, add a listing to  
20 your contacts and even get directions"; "[r]emotely forward your home  
21 Phone to any other phone right from your PC"; "[s]end text messages from  
22 your computer to your friends' and colleagues' mobile phones"; and read

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premises, which connects the customer's in-home premises wiring to Bright House Cable's broadband network for "voice, video, data, or any combination." (BH Response to VZ Int. 21).

<sup>28</sup> See [www.brighthouse.com/corporate/shop/phone/features](http://www.brighthouse.com/corporate/shop/phone/features) (visited Oct. 24) (emphasis added).

1 and listen to messages left on your home phone voice mail through either  
2 “Voice Mail-to-Email” or “Voice Mail-to-Text Transcription.” *Id.* Bright  
3 House Cable also touts the “any-distance” aspect of its phone service:  
4 “Your Home Phone can travel with you, wherever you go. Forward or  
5 redirect your phone calls to your cell phone or any other phone while you  
6 are away from home.” *Id.* “Call anywhere anytime in the U.S. for one low  
7 monthly price with Unlimited Nationwide calling.” *Id.* With flat-rate calling,  
8 Bright House Cable and its customers do not distinguish between “local”  
9 and “long distance” calls.

10

11 In sum, the VoIP services that Bright House Cable provides cannot  
12 practically be segregated into interstate and intrastate categories, so  
13 neither can the IP traffic that BHNIS carries to and from Bright House  
14 Cable. In any event, as discussed above, the FCC has now found that  
15 such traffic is subject only to interstate access rates.

16

17 **Q. IS IT ALSO RELEVANT TO THIS ISSUE THAT THE DISPUTED**  
18 **TRAFFIC IS INFORMATION SERVICES TRAFFIC?**

19 A. Yes. As Verizon will explain in its briefs, VoIP services (and VoIP traffic)  
20 are subject to exclusive federal jurisdiction not just because they cannot  
21 be neatly divided into interstate and intrastate pieces, but because they  
22 are information services, which cannot be regulated by the states. The  
23 FCC is the appropriate body to determine whether VoIP is an “information  
24 service” or “telecommunications service” under federal law; but the  
25 Commission should be aware that this is an additional reason for declining

1 to address BHNIS' Complaint. To the extent the ultimate regulatory status  
2 of VoIP service is a legal conclusion, we are not testifying as to the law,  
3 but discuss the facts relating to the legal analysis.

4

5 **Q. DOES BHNIS DENY THAT VOIP SERVICE IS AN INFORMATION**  
6 **SERVICE?**

7 A. No. It doesn't offer a conclusion one way or the other; it simply argues  
8 that whether VoIP is an information service or not is irrelevant to the  
9 issues here, because BHNIS is not engaged in anything more than  
10 carrying plain old regulated telephone traffic. (Opposition at 31.) As we  
11 discussed, Verizon disagrees with this conclusion and the legal aspects of  
12 that issue will be treated in the briefs.

13

14 **Q. ARE THE SERVICE FEATURES YOU DISCUSSED ABOVE ALSO**  
15 **RELEVANT TO DETERMINING IF THE DISPUTED TRAFFIC IS**  
16 **INFORMATION SERVICES TRAFFIC?**

17 A. Yes. We understand that one way of determining whether something  
18 meets the definition of information service under federal law is to consider  
19 whether it offers consumers an integrated suite of capabilities — not  
20 merely voice communication, but advanced features that allow consumers  
21 to “generat[e], acquir[e], stor[e], transform[], process[], retriev[e], utilize[e],  
22 or mak[e] available information via telecommunications.”<sup>29</sup> Because those  
23 capabilities are offered as part of a single, integrated, any-distance service  
24 — and cannot practicably be broken apart into component pieces — such

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<sup>29</sup> 47 U.S.C. § 153(20).



1 services at a minimum “combine both telecommunications and information  
2 components” and as a result “are treated as information services.”<sup>30</sup> As  
3 we discussed above, Bright House Cable’s VoIP services offer just such  
4 an integrated suite of capabilities. Taken together, these features,  
5 functions, and capabilities go well beyond those available with traditional  
6 circuit-switched telephone services and are tightly integrated and  
7 intertwined with the other capabilities enabled by a cable VoIP provider’s  
8 IP network, thereby offering a wide array of capabilities for “generating,  
9 acquiring, storing, transforming, processing, retrieving, utilizing and  
10 making available information via telecommunications.”

11

12 **Q. DOES A NET PROTOCOL CONVERSION OCCUR WITH RESPECT TO**  
13 **TRAFFIC EXCHANGED BETWEEN BHNIS AND VERIZON?**

14 A. Yes, and we understand that this fact alone places the traffic at issue  
15 within the federal definition of information services.

16

17 **Q. PLEASE EXPLAIN THE DIFFERENCE BETWEEN INTERNET**  
18 **PROTOCOL AND TRADITIONAL TELEPHONE TRAFFIC PROTOCOL.**

19 A. Time Division Multiplexing, or TDM, is the traditional protocol in which  
20 signals are transmitted in legacy circuit switched networks. TDM transmits  
21 multiple subscribers’ calls along the same transmission medium by  
22 creating channels within a transmission stream using successive time  
23 intervals for the different signals. Internet Protocol, or IP, transmits

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<sup>30</sup> See *PAETEC Communications, Inc. v. CommPartners, LLC*, No. 08-cv-397, 2010 WL 1767193 (D.D.C. Feb. 18, 2010) at \*6.

1 information in packets, and is the medium used to transmit data (including  
2 voice) over the Internet.

3

4 **Q. IN WHICH FORMAT IS BRIGHT HOUSE CABLE'S TRAFFIC**  
5 **ORIGINATED AND TERMINATED?**

6 A. All of the traffic BHNIS routes to and accepts from Bright House Cable  
7 originates and terminates on Bright House Cable's network in IP format.  
8 (See, e.g., BH Resp. to VZ Int. 16.) As is typical of all cable telephone  
9 providers today, Bright House Cable provides service to its customers  
10 through VoIP technology, rather than circuit-switched TDM technology.  
11 The customer's voice signal is transformed to IP format at the Edge Media  
12 Terminal Adapter ("eMTA") on the customer's premises (BH Resp. to VZ  
13 Int. 21), so all the traffic enters Bright House Cable's network in IP (and  
14 terminates on that network in IP). When Bright House Cable's customers  
15 call customers of other carriers, BHNIS converts its affiliate's customers'  
16 IP traffic to TDM before sending it on to other carriers, like Verizon, that  
17 primarily use TDM technology. Likewise, in the case of traditional traffic  
18 destined for Bright House Cable's end users, BHNIS converts it from TDM  
19 to IP format before delivering it to Bright House Cable, which, in turn,  
20 delivers it to its end users. (See BH Resp. to VZ. Int. 21.) When BHNIS  
21 exchanges traffic with Verizon, the traffic exchange itself is in TDM format.

22

23 **Q. PLEASE DESCRIBE THE NET PROTOCOL CONVERSION THAT**  
24 **OCCURS WITH RESPECT TO CALLS BETWEEN BRIGHT HOUSE**  
25 **CABLE'S AND VERIZON'S RESPECTIVE END USERS.**

1 A. The eMTA installed inside the Bright House Cable's customer's premises  
2 formats analog signals from the customer's telephone handset into  
3 packets using Internet protocol. These IP packets are then routed through  
4 wiring in the customer's home to Bright House Cable's IP network, which  
5 begins outside the customer's home. When a Bright House Cable  
6 subscriber receives a call, the process is reversed. All of the traffic BHNIS  
7 sends to Verizon either originates or terminates in IP format from Bright  
8 House Cable's VoIP network, and it is converted from IP to TDM when it is  
9 delivered to Verizon or from TDM to IP when Verizon hands it off to  
10 BNHIS for delivery to Bright House Cable's retail VoIP customers. The  
11 traffic undergoes a net protocol conversion because it starts in one format  
12 and ends in another. In the U.S. Supreme Court's words, that conversion  
13 is what enables communication "between networks that employ different  
14 data-transmission formats."<sup>31</sup>

15

16 **Q. IS IT SIGNIFICANT THAT A PHONE CALL STARTS WITH AN**  
17 **ANALOG VOICE SIGNAL?**

18 A. No. BHNIS' Complaint acknowledged that the traffic at issue originates  
19 and terminates in IP, explaining that Bright House Cable's "IP-based  
20 communications equipment...sends IP-formatted traffic to, and receives  
21 it from, the ultimate end users." (Complaint at 9.) In discovery  
22 responses, however, BHNIS hints at a theory that calls from Bright  
23 House Cable might not "originate" or "terminate" in IP because all such  
24 calls start or end as "audible analog voice signals" (BH Resp. to VZ Ints.

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<sup>31</sup> *National Cable & Telecomms. Ass'n v. Brand X Internet Svcs.*, 545 U.S. 967, 977 (2005).

1 12, 13)—in other words, phone calls start and end with humans  
2 speaking into telephone handsets. This obvious fact is irrelevant to the  
3 protocol conversion inquiry. As BHNIS admits, all Bright House Cable  
4 subscribers' calls are passed to BHNIS in IP format, and IP is the format  
5 in which signals are transmitted to and from the eMTA on the Bright  
6 House Cable subscriber's premises. (BH Resp. to VZ Ints. 12, 13.)  
7 We understand that the relevant factor for determining whether a net  
8 protocol conversion has occurred under federal law is how information  
9 enters and exits networks, not how it enters and exits users' telephone  
10 handsets. If BHNIS' theory were correct, no net protocol conversion  
11 could ever occur when a VoIP end user calls a traditional telephone end  
12 user, because the call begins and ends with a voice signal. Here,  
13 Bright House Cable end users send calls into Bright House Cable's  
14 network in IP and they exit BHNIS' network in TDM, after BHNIS  
15 converts them from IP to TDM. A net protocol conversion plainly occurs  
16 (and BHNIS never claims otherwise). Moreover, if BHNIS' new theory  
17 were correct, then Bright House Cable would not be providing  
18 unregulated VoIP services to its subscribers, but traditional, regulated  
19 common carrier telephony.

20  
21 **If the Commission has jurisdiction to resolve Bright House's**  
22 **Complaint:**

- 23 **5. Does Florida law require Verizon to pay Bright House's**  
24 **intrastate access charges on calls that originate and terminate**  
25 **in IP format?**

1    **Q.    WILL VERIZON ADDRESS THIS LEGAL ISSUE IN ITS BRIEFS?**

2    A.    Yes.  Verizon explained in earlier filings in this docket that nothing in  
3           Florida law required the payment of intrastate access charges on VoIP  
4           traffic, even before the FCC set the compensation that applies to such  
5           traffic.  The legal analysis relating to this issue will be provided in Verizon’s  
6           briefs.  But the Commission can see for itself that the only provision that  
7           specifically addresses intercarrier compensation for VoIP-related traffic—  
8           section 364.02(12)—does not prescribe access charges on VoIP traffic  
9           and, in fact, imposes *no* particular intercarrier compensation obligation at  
10          all with respect to VoIP services.  After reiterating that the term “service,”  
11          for purposes of Commission regulation, does not include “broadband  
12          service or voice-over-Internet protocol service,” the section states:  
13          “Nothing herein shall affect the rights and obligations of any entity related  
14          to the payment of switched network access rates *or other intercarrier*  
15          *compensation, if any,* related to voice-over-Internet protocol service.”  
16          (Emphasis added.)  As Verizon has pointed out, this language recognizes  
17          that providers may (or may not) have intercarrier compensation  
18          arrangements relating to VoIP, but it does not give the Commission  
19          permission to *impose* such compensation arrangements (Motion to  
20          Dismiss at 13-14)—and BHNIS expressly agrees with this reading (“we  
21          never argued that this statutory provision gave such ‘permission’ to the  
22          Commission”).  (Opposition at 20.)

23

24

25

1           6.     **Is Verizon Business required to pay the rates contained in**  
2                   **Bright House's access charge price list for the services that**  
3                   **Bright House provides to Verizon Business?**

4  
5   **Q.     ASSUMING THE COMMISSION HAS JURISDICTION TO RESOLVE**  
6           **BHNIS's COMPLAINT, CAN VERIZON BE ORDERED TO PAY BHNIS**  
7           **ITS PRICE-LISTED ACCESS RATES FOR THE SERVICES IT**  
8           **PROVIDES?**

9   A.    No. Even if the Commission had jurisdiction to address BHNIS' Complaint  
10           (and it does not) and even if an intrastate access price list could be  
11           applied to VoIP traffic (and it cannot be), BHNIS' price-listed rates would  
12           not apply to the traffic at issue, for the reasons we discussed in relation to  
13           Issue 2. Again, this issue has a legal component, but it stands to reason  
14           that a company cannot charge for facilities and functions it is not providing.  
15           As we have explained, BHNIS is not providing switched access service, as  
16           described in its own price list, so it is not entitled to charge its price-listed  
17           switched access rates.

18  
19   **Q.     HOW DO BHNIS' SWITCHED ACCESS RATES COMPARE TO**  
20           **VERIZON FLORIDA'S?**

21   A.    BHNIS' rates are higher than the Verizon ILEC's. On a per-minute basis  
22           (measured by Verizon's cost per minute to purchase service from BHNIS'  
23           price list), BHNIS's switched access rate is **[BEGIN CONFIDENTIAL]**  
24           **XXXXXXX [END CONFIDENTIAL]**, compared to Verizon Florida's per-  
25           minute rate of **[BEGIN CONFIDENTIAL] XXXXX [END CONFIDENTIAL]**

1 (measured by Verizon Florida's average revenue per minute for switched  
2 access). And BHNIS just *raised* its switched access rate in August—  
3 specifically, its carrier common line charge—a particularly egregious move  
4 because, as we explained, BHNIS does serve any end users, and it has  
5 no right to collect any Carrier Common Line charges at all.

6

7 **Q. DOES IT MAKE SENSE TO ALLOW BHNIS TO COLLECT LEGACY**  
8 **INTRASTATE ACCESS CHARGES ON IP TRAFFIC?**

9 A. No. It makes no sense to award BHNIS incumbent-level (or higher)  
10 charges for IP traffic. That is, even if BHNIS does provide some or all of  
11 the access services for which it bills Verizon, and even if this Commission  
12 determines that it may establish compensation for exchange of IP traffic, it  
13 is unreasonable to apply BHNIS's existing, price-listed access rates to that  
14 traffic.

15

16 The access regime was devised at the time of the AT&T divestiture in the  
17 1984 timeframe as a way to replace part of the subsidy that historically  
18 flowed from higher-priced long distance services to local services that had  
19 been priced artificially low by regulators. But neither CLECs nor cable  
20 companies ever had their telephony rates set by the regulators, nor have  
21 they been subject to other retail pricing constraints or service obligations  
22 that applied to traditional wireline carriers. CLECs also have the  
23 opportunity to use the most efficient mix of technologies and network  
24 configurations possible, and should be able to operate at least as  
25 efficiently as the incumbent carriers with their legacy networks. And if they

1 are not able to operate efficiently, the Commission has no obligation to  
2 reward them for such inefficiencies. There is no plausible reason  
3 customers of other providers should subsidize Bright House's cable VoIP  
4 operation.

5

6 **Q. IS BHNIS REQUIRED TO FILE A PRICE LIST FOR ITS ACCESS**  
7 **SERVICES?**

8 A. We understand that it is not. The Commission's website states that  
9 "ALECs, if providing basic service, file what we refer to as price lists  
10 instead of tariffs."<sup>32</sup> In response to the question as to whether ALECs  
11 have to file a price list, the site quotes Commission Rule 25-24.825, which  
12 requires price lists for basic local dial-tone services (which BHNIS does  
13 not provide), but leaves to "the company's option" the filing of price lists for  
14 other services<sup>33</sup>--unlike the situation for incumbents, which must file tariffs  
15 for their access services. Fl. Stat. § 364.163. Although BHNIS calls its  
16 price list the "intrastate equivalent of a tariff for CLECs" (Complaint at 3),  
17 we understand that the Commission has never addressed the question  
18 whether that CLECs' optional price lists have the same legal ramifications  
19 as tariffs. But this is a legal issue best left to briefs.

20

21 **7. If Verizon Business is not required to pay Bright House the**  
22 **rates in Bright House's price list for the services Bright House**

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<sup>32</sup> See [www.floridapsc.com/utilities/telecomm/tariffs/faq.aspx](http://www.floridapsc.com/utilities/telecomm/tariffs/faq.aspx) (visited Oct. 31, 2011).

<sup>33</sup> See Telecommunications Tariffs: Frequently Asked Questions, <http://www.psc.state.fl.us/utilities/telecomm/tariffs/faq.aspx>.



1 provides, is there a just and reasonable rate that Bright House  
2 should be paid?

3  
4 **Q. WHAT IS A JUST AND REASONABLE RATE FOR THE SERVICE**  
5 **BHNIS PROVIDED TO VERIZON?**

6 A. The \$0.0007-a-minute rate Verizon paid BHNIS for exchanging IP traffic  
7 during the dispute period, before the FCC established compensation for IP  
8 traffic, is a just and reasonable rate. In the absence of an established rate  
9 — and in light of the federal court rulings confirming that tariffed access  
10 charges did not apply to IP traffic — the best approach was to pursue  
11 negotiation of compensation agreements for such traffic. Pending  
12 completion of such negotiations, Verizon applied the \$0.0007 rate as the  
13 most reasonable commercial rate for a number of reasons. It is widely  
14 used in the industry and was already the default rate for a substantial  
15 portion of the traffic exchanged between carriers, including intraMTA  
16 wireless and ISP-bound traffic, as a result of the FCC's mirroring rule.<sup>34</sup>  
17 Moreover, the market was already moving toward a default rate of  
18 \$0.0007 for VoIP traffic that connects with the PSTN. As we pointed out  
19 earlier, BHNIS itself settled its VoIP compensation dispute with Verizon

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<sup>34</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*") ¶ 89. As the FCC explained, "[t]o limit arbitrage opportunities that arose from 'excessively high reciprocal compensation rates,' the Commission adopted a gradually declining cap on intercarrier compensation for ISP-bound traffic, beginning at \$ .0015 per minute of use and declining to \$ .0007 per minute of use, the current cap. The Commission derived the rate caps from contemporaneous interconnection agreements, in which carriers voluntarily agreed to rates comparable to the rate caps adopted by the Commission." *In re High-Cost Universal Serv. Support*, 24 FCC Rcd 6475 (2008).

1 Florida by agreeing to exchange VoIP traffic at the \$0.0007 rate.<sup>35</sup> Earlier  
2 this year, Verizon also entered into a commercial agreement with  
3 Bandwidth.com for the exchange of VoIP traffic at \$0.0007 per minute.  
4 And Verizon has entered into negotiated, publicly filed interconnection  
5 agreements with several carriers — including AT&T and Level 3 — that  
6 reflect rates at or below \$0.0007 per minute for terminating local traffic and  
7 ISP-bound traffic. Verizon Wireless, too, has entered into commercially  
8 negotiated agreements with several CLECs, including a nationwide  
9 agreement with Comcast, to exchange traffic at or below the \$0.0007 per  
10 minute rate. Further, the industry consensus proposal the FCC  
11 considered before adopting its ICC/USF order also used \$0.0007 as the  
12 ultimate default rate for all terminating traffic, with compensation for IP-  
13 originated or IP-terminated traffic initially set at interstate access rates. Of  
14 course, the FCC has now ordered an ultimate default rate even lower than  
15 \$0.0007—that is, a bill-and-keep system (and it has initially set IP  
16 compensation at interstate access rates).

17  
18 The \$0.0007 rate also reflected that, absent legacy regulatory burdens,  
19 the cost of call termination services is very low. The FCC has observed  
20 that “[i]t is well established that there is a large fixed cost to purchasing a  
21 local switch and that the marginal or incremental cost of increasing the  
22 capacity of a local switch is low (some contend that it is zero).”<sup>36</sup> The  
23 FCC’s National Broadband Plan recognized that termination rates for

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<sup>35</sup> Letter from Dulaney O’Roark, Verizon, to Ann Cole, Florida Public Service Commission, Florida PSC Docket No. O90501-TP, Attachment at 76 (April 28, 2011).

<sup>36</sup> *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd 17989 (2007) at ¶ 14.

1 certain traffic are set at \$0.0007 per minute, but that “terminating rates are  
2 not uniform *despite the uniformity of the function of terminating a call.*”<sup>37</sup> If  
3 the function of terminating a call is the same for all terminating traffic, then  
4 a compensatory rate for one type of traffic should be compensatory for all  
5 traffic, again absent legacy regulatory burdens (which are not an issue  
6 here).

7

8 **Q. DOES THE \$0.0007 RATE ALSO CORRESPOND TO THE FUNCTION**  
9 **THAT BHNIS IS ACTUALLY PROVIDING UNDER ITS PRICE LIST?**

10 A. Yes. As we explained earlier, BHNIS has not been providing many of the  
11 functions for which it charges Verizon and other carriers under its price list.  
12 Among other things, it is not providing service to its own end users, so it is  
13 not providing carrier common lines or end office switching functions, the  
14 elements with the highest per-minute rates in BHNIS’s price list. If  
15 anything, BHNIS provided the aggregation and routing functions that are  
16 the functional equivalent of tandem switching. The tandem switching rate  
17 in BHNIS’ price list is \$0.00075 a minute. Because Verizon has already  
18 compensated BHNIS at virtually that same rate for the disputed traffic—  
19 and because BHNIS’ overcharges to Verizon for switched access  
20 elements it has not provided far exceed what BHNIS claims Verizon owes  
21 here--the Commission should find that Verizon owes BHNIS nothing (in  
22 the event that it asserts jurisdiction over BHNIS’s Complaint, and it should  
23 not).

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<sup>37</sup> *Connecting America: The National Broadband Plan*,  
<http://download.broadband.gov/plan/national-broadband-plan.pdf>, at 147-48 (2010)  
 (“National Broadband Plan” or “NBP”) at 142 (emphasis added).

1           **8. If Verizon Business is obliged to pay Bright House some**  
2                           **amount for the services Bright House provides, how much**  
3                           **does Verizon Business owe Bright House?**

4  
5 **Q. DOES VERIZON OWE BHNIS ANYTHING FOR THE**  
6 **RETROSPECTIVE DISPUTE ABOUT VOIP COMPENSATION?**

7 A. No, it does not, for the reasons we have already explained. Rather,  
8 BHNIS owes Verizon millions of dollars for Carrier Common Line and  
9 other charges BHNIS assessed for services it did not provide.

10

11 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

12 A. Yes.

13

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