BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida LLC by Bright House Networks Information Services (Florida), LLC	)	Docket No. 090501-TP

REBUTTAL TESTIMONY OF

WILLIAM MUNSELL

ON BEHALF OF VERIZON FLORIDA LLC

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APRIL 16, 2010

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Verizon Services Corporation as a Senior Consultant for Product Management and Product Development, with responsibility for the negotiation and arbitration of interconnection agreements between various Verizon incumbent local exchange carriers ("ILECs") and third party competitive local exchange carriers ("CLECs").

Q. ARE YOU THE SAME WILLIAM MUNSELL WHO PREVIOUSLY FILED PREPARED DIRECT TESTIMONY IN THIS PROCEEDING ON MARCH 26, 2010?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my Rebuttal Testimony is to respond on behalf of Verizon Florida LLC ("Verizon") to certain aspects of the prepared Direct Testimony that Timothy J Gates and Marva B. Johnson submitted on behalf of Bright House Networks Information Services (Florida), LLC ("Bright House") in this proceeding. In particular, I will address the Gates and Johnson Direct Testimony ("Gates DT" and "Johnson DT," respectively) regarding Issue Nos. 7, 13, 22(a)-(b), 36(a)-(b), 37, 39, and

41.[1] Since I filed direct testimony, the parties have resolved, at least in principle, Issues 5, 11, 40, 43, and 44, so that no rebuttal testimony on those issues is necessary.

Q. IN YOUR DIRECT TESTIMONY, YOU OPPOSED BRIGHT HOUSE'S POSITIONS WITH RESPECT TO EACH OF THESE ISSUES. IS THERE ANYTHING IN MR. GATES' OR MS. JOHNSON'S DIRECT TESTIMONY THAT HAS CAUSED YOU TO RECONSIDER THAT OPPOSITION?

A. No. For the reasons set forth in my Direct Testimony ("Munsell DT") and below, the Commission should reject Bright House's positions and proposed contract language for each of these issues.

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

Q. IS THERE ANYTHING IN THE DIRECT TESTIMONY OF BRIGHT HOUSE'S WITNESSES THAT HAS CHANGED THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 7?

[1] Both my direct and rebuttal testimony (and the direct and rebuttal testimony of other Verizon witnesses in this case) assumes that Bright House is entitled to section 251(c) interconnection. However, as Verizon noted in its Response to Bright House's Petition for Arbitration of Interconnection Agreement ("Response"), Verizon preserves (and does not waive) any claims that it has no section 251(c) obligations to Bright House because Bright House is not acting as a telecommunications carrier providing telephone exchange service or exchange access, but Verizon is not asking the Commission to decide that issue. *See* Response at 5 n. 2.

A. No. As the testimony of Bright House's witnesses confirms, the dispute underlying Issue 7 concerns Verizon's proposed interconnection agreement ("ICA") language for § 50 of the General Terms and Conditions. *See* Gates DT at 27-28; Johnson DT at 14. That language allows Verizon to cease providing a service or paying intercarrier compensation for traffic on 30 days prior written notice when Verizon no longer has the legal obligation to do these things.

Q. WHY IS SUCH A PROVISION NECESSARY?

A. Because Verizon currently is required by law to provide services and make payments that it otherwise would not on a voluntary, contractual basis. When those requirements are removed, by either a change in law or a change in factual circumstances that would render a legal requirement no longer applicable, Verizon should not have to continue providing those services or making those payments.

To illustrate the point, it may be useful to take a step back and consider the interconnection scheme as a theoretical matter. In the broadest sense, the Act ***requires*** Verizon to provide interconnection with CLECs; Verizon does not have a choice. So, when Verizon enters into a contractual interconnection agreement, it is attempting to fix the terms of the interconnection it must provide. But, if Verizon were not required to provide interconnection, it might not enter into an interconnection agreement with a given carrier, or it might do so on very different terms. So, if that obligation theoretically were removed, Verizon would have to

be afforded the opportunity to withdraw from the prior interconnection agreements it previously had no choice but to enter. It would be patently unfair to hold Verizon to the terms of the prior interconnection agreements once the interconnection obligations were removed. Verizon would not have entered into those agreements with those terms but for the previously existing (and now removed) legal requirements and should be entitled to the benefit of any change in applicable law.

Of course, Verizon does not expect that its broader obligations to provide interconnection will be removed any time in the immediate future. But the same notion very well could apply to certain specific services that Verizon currently provides in connection with its interconnection agreements. Most provisions baked in to the interconnection agreements Verizon has with Bright House and other carriers are there solely because they are required by existing law or the application of that law to existing fact. Verizon has included them in their contracts because it has no choice. For example, Verizon currently is required by law to make DS1 transport available in certain situations as an unbundled network element. Verizon memorializes these and other obligations in its interconnection agreements, but the only reason it does so is because it is required by law. Accordingly, if those requirements are removed, Verizon no longer should be required to fulfill contract terms that would never have been there but for those requirements.

To capture this notion, Verizon proposed language for § 50 that, upon advance written notice to Bright House, would allow Verizon to cease providing a service or stop paying intercarrier compensation under the ICA if and when Verizon no longer has the legal obligation to do these things. Verizon's proposed language would make clear that, where a change in law or facts negates Verizon's obligation to provide a service or facility, the ICA is not intended to override constraints on Verizon's legal obligation to provide such services or facilities.

Q. DO BRIGHT HOUSE'S WITNESSES OBJECT TO THIS LANGUAGE?

A. Yes – although their objections appear to be based on a misunderstanding of Verizon's proposed language and what it is designed to accomplish.

Mr. Gates asserts that "Verizon's proposed Section 50.1 establishes a general rule that Verizon may simply stop performing its obligations under the contract, any time that Verizon unilaterally decides that the particular obligation is not 'required by Applicable Law.'" Gates DT at 27. Ms. Johnson makes a similar claim. *See* Johnson DT at 14. But that is ***not*** the purpose or effect of this language. Verizon is not trying to walk away from any obligation. Just the opposite, Verizon only seeks the ability to walk away from things it is ***not obligated*** to do, if and when it no longer has those obligations. Verizon will fulfill all of its current and future obligations for as long as it is so obligated by Applicable Law (or factual circumstances). Its proposed language says nothing to contrary.

Moreover, despite the contrary suggestion by Bright House's witnesses, the determination of when those obligations cease to exist is not left solely to Verizon's "unilateral view." Johnson DT at 14. Verizon's language would require at least 30 days' advance written notice to Bright House before Verizon ceases providing any service or payment. The very point of that advance notice is to ensure that the parties are agreed that whatever service or payment at issue is not longer required by Applicable Law (or the application of then-current facts to that law). If there is no bilateral agreement during that window, the parties can take whatever steps are necessary to protect their position – including seeking any necessary relief from the Commission, just as Mr. Gates acknowledges they would do under the parties' existing change in law provision. *See* Gates DT at 30. But Verizon cannot simply decide the matter on its own without affording Bright House the opportunity to assess for itself whether any obligations remain under the then-Applicable Law.

Bright House's concerns about how this language might affect the implementation of those obligations likewise is misplaced. Mr. Gates notes that, while Applicable Law may impose certain obligations on Verizon – "'Applicable Law" does not deal with every detail of the actual implementation of [those obligations]." Gates DT at 28. Accordingly, he claims to be concerned that Verizon might take the position that "many of the specific contractual obligations that matter to the actual implementation of the parties' interconnection relationship are not

'required by Applicable Law'" and, therefore, not fulfill them. *Id.* Ms. Johnson expresses a similar concern. *See* Johnson DT at 15. But, again, that is not the point or scope of Verizon's language.

Verizon wants to avoid being stuck with the underlying obligation when it no longer is required by law. The language that Verizon has proposed does not implicate the various contractual provisions implementing those obligations. Verizon's language permits it to terminate its offering of a "Service," or its "payment . . . of compensation" for traffic. Mr. Gates claims that Verizon's proposal would enable it to avoid the "notice" requirements of the agreement, because those are not literally required by applicable law. *See* Gates DT at 28. But Verizon's proposal would not affect those notice requirements. The contractual notice provisions are neither a "service" nor a "payment . . . of compensation" and, therefore would not be implicated by the terms of Verizon's proposed § 50. Nor is there any merit to Mr. Gates' notion that the section could be used by Verizon unilaterally to set aside Bright House's choice of the FCC's "mirroring rule" intercarrier compensation rate of $0.0007 for all local and ISP-bound traffic. *Id.* at 31. Among other things, that choice is required by applicable law and Verizon's language does nothing to alter its obligations to comply with that requirement.

Despite Mr. Gates' suggestions to the contrary, Verizon does not intend, nor would it be permitted under its proposed language, to set aside the administrative details of the contract – notice provisions or the like – that

do not constitute a "Service" or a "payment . . . of compensation." And likewise Verizon could not use the proposed language to evade obligations – such as the "mirroring rule" compensation structure – that are in fact required by law. The fact is that Verizon will agree in this contract to all sorts of obligations (such as unbundling its network to its competitors) to which it would never agree except that it is required to do so under applicable law. Verizon has no objection to doing so, when and to the extent that it is indeed required to do so. But if Verizon is no longer required under applicable law to make a payment or provide a service, it must be permitted to withdraw that payment or service without delay. Verizon cannot be required to make such payments or provide such services if and when they are not required under applicable law.[2]

Q. MR. GATES INDICATES THAT THE ICA ALREADY CONTAINS A "CHANGE IN LAW" PROVISION THAT WOULD ADDRESS THIS ISSUE. WHY IS THAT EXISTING PROVISION NOT SUFFICIENT?

A. Mr. Gates correctly points out that the parties already have agreed upon a "Change in Law" provision in § 4.6 of the General Terms & Conditions. *See* Gates DT at 29. That provision provides, in pertinent part, that "[i]n the event of any Change in Applicable Law, the Parties shall promptly

[2] In addition, as I indicated in my Direct Testimony, I understand that Bright House believes that Verizon may have voluntarily agreed to undertake some obligations that it is not required to perform by Applicable Law and that Bright House therefore is concerned that Verizon's proposed language might deprive Bright House of the benefit of those arms-length bargains. *See* Munsell DT at 9. If Bright House believes that it is entitled to any particular service or payment notwithstanding a change in law or facts that renders Verizon no longer under an obligation to provide that service or payment, Verizon would entertain a request to insulate such a service or payment from the generally applicable language. *Id.*

renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law." As Mr. Gates notes, "[i]f the parties can't agree on how to modify the contract in light of a change in law, they agree to bring the matter to the Commission for resolution." *Id.* at 30. That "Change in Law" provision works well in most circumstances in which some further action by the parties or some further revision to the agreement is required. But it is ill-suited for the situation contemplated by Verizon's proposed changes for § 50.

Verizon's language would address situations where Verizon's duty to provide service is eliminated because of a change in factual circumstances or a change in law. In such a situation – where all that must be done is to stop providing something, or stop making some payment – it is not necessary to go through the process of negotiating terms and conditions to accommodate the change. All that must be done is to stop providing, or stop paying. Unlike most changes in law, which might require the negotiation of implementing terms and conditions, there is essentially nothing more that needs to be negotiated when one is simply withdrawing a service or payment. The same is true when the duty to provide a service is eliminated because of a change in factual circumstances.

Q. HAS THE COMMISSION PREVIOUSLY REJECTED THE NOTION THAT ICA TERMS MUST BE RENEGOTIATED BEFORE AN ILEC CAN STOP PERFORMING A DUTY NO LONGER REQUIRED BY LAW?

A. Yes. After the FCC eliminated the ILECs' obligation to provide unbundled local switching in its *Triennial Review Remand Order*, CLECs argued that they were entitled to keep ordering such switching unless and until the ILECs negotiated new ICA language to reflect the FCC's elimination of the obligation. The Commission rejected these arguments, finding that the elimination of the ILECs' obligation to provide unbundled local switching was self-effectuating, without the need for negotiation of new contract language to prohibit the CLECs from placing new orders for such switching.[3] This ruling is consistent with Verizon's position that, when Verizon is no longer legally required to perform a duty under the ICA, there is nothing to negotiate, and Verizon should be permitted to cease performing the duty without amending the contract.

Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE 7?

A. The Commission should adopt Verizon's proposed language for General Terms & Conditions § 50.

[3] *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecomm., Inc., etc.*, Order Denying Emergency Petitions, Order No. PSC-05-0492-FOF-TP, at 6-7 (May 25, 2005).

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

Q. DOES THE TESTIMONY OF BRIGHT HOUSE'S WITNESSES CONFIRM THAT IT SOMETIMES MAY BE DIFFICULT FOR THE PARTIES TO PROMPTLY SUBMIT INVOICES OR DISPUTE CHARGES TO ONE ANOTHER?

A. Yes. As I explained in my Direct Testimony, Verizon always strives (and has every incentive) to promptly submit bills for services rendered and to dispute any charges that it previously paid but should not have. But the nature, number and complexity of telecommunications transactions sometimes makes such rapid billing practices impossible. Bright House's witnesses readily agree.

As Ms. Johnson explains:

> Bright House and Verizon exchange millions of minutes of traffic each month, and process thousands of orders relating to customers changing from one carrier to another. They jointly link their networks with hundreds if not thousands of individual "trunks" that have to be provided on a coordinated basis, both technically and from an operational perspective. This situation results in a vast number of separate "transactions" to which some charges might – or

> might not – apply. ... [T]his complicated set of transactions means that some amount of errors in billing, or failures to bill, or disputes about billing rates, is inevitable. Some reasonable allowance needs to be made to deal with those possibilities.

Johnson DT at 23.

Mr. Gates concurs, readily conceding that "[c]ompanies do sometimes make legitimate mistakes and simply fail to bill for, or to protest bills for, services rendered" (Gates DT at 50) – a problem only exacerbated here by the fact that "Bright House and Verizon exchange massive amounts of traffic every month – in excess of 25 million minutes of use." *Id.* at 49.

The parties' ICA therefore always has allowed either side a reasonable amount of time to correct prior billing errors, bill for charges that should have been billed earlier, and dispute previously paid bills.

Q. GIVEN THIS AGREEMENT BY BRIGHT HOUSE'S WITNESSES, WHY IS THERE A DISPUTE REGARDING WHETHER THE PARTIES CAN SUBMIT BILLS OR DISPUTE PRIOR CHARGES AFTER THE FACT?

A. Because, even though it acknowledges that backbilling and post-payment billing disputes are "inevitable" in this industry, Bright House nevertheless seeks to place an arbitrary limit on the time period in which such bills or disputes may be presented.

Bright House's witnesses insist that, without "some limit on how far back a party can bill for services rendered, or dispute bills already paid, neither party can have any real certainty regarding where it stands, financially." Gates DT at 49. Therefore, according to these witnesses, "there has to be some point at which these transactions are deemed final." Johnson DT at 23. But both parties track their own orders, such that they already should have a good idea of whether the other party has not fully billed (or otherwise misbilled) them for services received. There is not nearly as much uncertainty in the process as the Bright House testimony would suggest. Moreover, despite the rhetoric of Bright House's witnesses, the existing ICA language does not hold billing and billing disputes open indefinitely. Under the ICA language the parties have been operating under for years (that Bright House now seeks to modify), there already is "some limit" and "some point" at which "these transactions are deemed final." Specifically, the applicable Florida statute of limitations provides a definitive end point for any billings or billing disputes.

Bright House claims this is not enough and, accordingly, "propose[s] a limit of one year." Johnson DT at 23. But Bright House does not identify any prior problems between the parties that have been caused by the use of a statutory limitations period of longer than one year. And Bright House otherwise fails to explain why a one-year limit would be any more reasonable or appropriate than the statutory limit. Instead, Bright House merely asserts its conclusion – without any further analysis at all – that

"[a] year is more than sufficient time" (Gates DT at 49) and "Bright House's proposed one-year limit on back-billing and bill protests strikes a fair and reasonable balance on this issue." *Id.* at 50. But that is not a sufficient justification to impose an arbitrary one-year limit. And, without some compelling justification, Verizon should not have to contractually waive its right to (1) payments that it otherwise would be entitled to receive under Florida law or (2) challenge illegitimate charges assessed by Bright House.

Q. DO BRIGHT HOUSE'S WITNESSES EXPLAIN HOW THE PROPOSED ONE-YEAR LIMIT CAN BE SQUARED WITH THE COMMISSION'S PRIOR RULING RECOGNIZING THE STATUTE OF LIMITATIONS AS THE APPROPRIATE TIME LIMIT?

A. No. As I stated in my Direct Testimony, the Commission already has addressed this issue in the context of an interconnection arbitration and held that "placing a [contractual] time limit on back-billing can conflict with the [applicable] statute of limitations in Florida." *See Petition for Arbitration of Open Issues*, Order No. PSC-03-1139-FOF-TP, Docket No. 020960-TP at 14 (Oct. 13, 2003) ("Verizon/Covad Order"). Accordingly, the Commission rejected any attempt to impose a shorter backbilling time limitation in the interconnection agreement before it and ordered that the applicable statute of limitations would remain the standard. *Id.* at 14-16.

Bright House's witnesses do not cite or even mention this Commission

order, much less attempt to square it with Bright House's proposed contractual limitations period. But, consistent with the Commission's prior decision on this issue, that proposed one-year limit should be rejected. As the Commission held in the Verizon/Covad Order (at 16), "the current state of the law should be sufficient." Indeed, absent any voluntary contractual agreement, it is unclear that the Commission even has the authority to impose a limitation that conflicts with the existing state law embodied in the statute of limitations. Accordingly, Bright House's proposed changes to § 9.5 of the General Terms and Conditions should be rejected.

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

Q. AFTER REVIEWING THE TESTIMONY OF BRIGHT HOUSE'S WITNESSES, DO YOU BELIEVE THE PARTIES STILL HAVE A DISPUTE WITH RESPECT TO ISSUE 22(a)?

A. No. Issue 22(a) arose because Bright House proposed to delete § 8.4.2 of the Additional Services Attachment, which provides that "Verizon OSS Facilities may be accessed and used by [Bright House] only to provide Telecommunications Services to [Bright House] Customers." Because Bright House is a "middle man," whose only customer is its

cable affiliate ("Bright House Cable"), I understood Bright House to be concerned that this language might preclude Bright House from using Verizon's OSS to place orders for voice service for retail customers of Bright House Cable. *See* Munsell DT at 17-18. Bright House's witnesses have now confirmed that, indeed, is Bright House's concern. *See* Gates DT at 55-56; Johnson DT at 25. However, as I indicated in my testimony, Verizon is willing to accommodate that concern and allow Bright House to continue to use OSS to place orders for voice services for customers of Bright House Cable, just as Bright House always has done under the parties' prior ICA. *See* Munsell DT at 17-18.

Verizon communicated as much to Bright House in negotiations, which has led Bright House's witnesses to now acknowledge that "it appears" the parties have reached agreement on this issue. Gates DT at 56. Indeed, Mr. Gates testifies that "there is almost certainly no substantive dispute here, and I would expect the parties to work out mutually acceptable language very shortly." *Id.*

To that end, Verizon generally has proposed to Bright House that Bright House would be permitted to use the facilities and services provided under the interconnection agreement to service the VoIP customers of Bright House's cable affiliate, so long as Bright House remains wholly obligated for all such services and arrangements. The lawyers may need to modify a few different provisions to fully document this proposal, but this proposal satisfies Bright House's stated concern and should

resolve this issue.

Q. WHAT IF THE PARTIES ARE UNABLE TO AGREE ON THIS LANGUAGE AND RESOLVE ISSUE 22(a)?

A. Then the Commission should reject Bright House's position. As I explained in my Direct Testimony, the parties cannot simply eliminate § 8.4.2 (as Bright House proposed) because that would suggest that Bright House could use OSS to support any services at all, regardless of whether they have anything to do with the purposes for which Verizon must make interconnection available under federal law. *See* Munsell DT at 18. Without any contractual restrictions on Bright House's use of Verizon's OSS, Bright House (and any company that subsequently adopts Bright House's interconnection agreement) arguably could use OSS to support any kind of business, selling any kind of good or service. *Id.* That is not something the interconnection mechanism is designed to facilitate. So, while Verizon is willing to address Bright House's concern and continue to allow Bright House to use OSS to place orders for customers of Bright House Cable, Verizon cannot agree to entirely eliminate § 8.4.2 and remove all restrictions on Bright House's use of Verizon's OSS system.

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

Q. DOES THE DIRECT TESTIMONY OF BRIGHT HOUSE'S WITNESSES PROVIDE ANY JUSTIFICATION FOR THE CONSTRAINTS BRIGHT HOUSE SEEKS TO IMPOSE ON VERIZON'S ABILITY TO MODIFY ITS OSS SYSTEM?

A. No. Their testimony only confirms that Bright House's proposed changes regarding Verizon's OSS should be rejected.

As I detailed in my Direct Testimony, OSS is an electronic system that Verizon developed over many years at great expense to, among other things, electronically receive and track orders for services provided under its interconnection agreements with numerous carriers (not just Bright House). *See* Munsell DT at 18-19. In their direct testimony, Bright House's witnesses:

- acknowledge that OSS is Verizon's system, which Verizon developed and owns (Gates DT at 61-62);
- "recognize that Verizon has the right, in general, to upgrade and modify its own systems, including its OSS" (Johnson DT at 27);
- "acknowledg[e] that Verizon may modify the details of how its OSS operates" (Gates DT at 62);
- "acknowledg[e] that Verizon may modify its Operations and Support Systems without getting advance approval from Bright House for any changes" (Gates DT at 63); and
- "acknowledg[e] that Verizon may impose limitations on the volume of orders that can be submitted via its electronic OSS"

(Gates DT at 63).[4]

Yet, despite these admissions, Bright House nevertheless insists that ***it*** should be allowed to dictate significant aspects of the manner in which Verizon can upgrade, modify and operate OSS, including many of the very details that Mr. Gates and Ms. Johnson concede are within Verizon's discretion. Giving Bright House this level of individual control over Verizon's systems is entirely unnecessary for purposes of providing interconnection. There simply is no basis for this position.

Q. BROADLY SPEAKING, HAS BRIGHT HOUSE INDICATED WHY IT BELIEVES IT SHOULD BE ABLE TO DICTATE THE MANNER IN WHICH VERIZON OPERATES AND MODIFIES ITS OWN OSS?

A. To an extent, yes. When asked to describe Verizon's OSS, Mr. Gates testified that OSS "is a computerized system used to handle a variety of administrative functions involved in managing the interconnection relationship ***between Bright House and Verizon***." Gates DT at 60 (emphasis added). If, as Mr. Gates' statement suggests, Verizon only used OSS for its interconnection with Bright House, it would at least be easier to understand why Bright House would claim such significant rights to dictate the manner in which that system is used and modified. But what Mr. Gates fails to mention is that OSS is used for all of the scores of ***other carriers*** with which Verizon interconnects. Verizon therefore designed that system to accommodate as many different

[4] *See also* Johnson DT at 27 (conceding that "there is some upper limit on the number of transactions that Verizon's OSS can process").

carriers as possible. In these circumstances, allowing one party, like Bright House, to dictate changes to OSS on an individualized basis could seriously affect the system's ability to handle other carriers.

Mr. Gates also suggests that Bright House should be given veto-like power over changes that Verizon wishes to make to its OSS because the details of Verizon's OSS are material terms in the ICA and "Verizon [should] not be permitted to vary any of the material terms of the parties' contract without negotiating those changes with Bright House first." Gates DT at 59. Of course, this is inconsistent with the notion – found repeatedly throughout Ms. Johnson's and Mr. Gates' own testimony – that the ability to modify and administer the details of this system rests with the party that owns it (*i.e.*, Verizon). But it also strains credulity to suggest that the details of Verizon's OSS are somehow so "material" to the parties' interconnection agreement that they could not be changed without Bright House's input and consent. The point of the interconnection agreement is to allow Bright House to interconnect with Verizon's network. That interconnection will occur regardless of what OSS details Verizon might modify; indeed, it would occur even if there were no OSS at all. But these details are not as significant to Bright House's operations as Mr. Gates suggests. Just because Bright House desires to get into the details and tailor Verizon's systems to its own unique tastes does not mean that Bright House has a right to do so.

Q. WHAT SPECIFIC CHANGES HAS BRIGHT HOUSE PROPOSED TO MAKE TO THE AGREEMENT REGARDING VERIZON'S OSS AND WHAT CONCERNS (IF ANY) DO YOU HAVE WITH EACH?

A. Bright House proposes to change three contract provisions regarding Verizon's OSS.

First, Bright House would change § 8.2.1 of the Additional Services Attachment to require Verizon to provide Bright House with "electronic OSS ordering for any service provided under the interconnection agreement." Gates DT at 61. Mr. Gates suggests that, "given the volume of transactions between Bright House and Verizon regarding customers shifting from one to the other, the only way to ensure that the transactions occur smoothly is to handle them electronically," rather than through "manual processes" that can be more labor-intensive, time-consuming and error-prone. *Id.*[5] Mr. Gates is correct that, in many cases, electronic ordering is preferable to a manual process. For that reason, Verizon already has implemented electronic ordering capabilities for most services available under the interconnection agreement. But, in some instances, electronic ordering capability may not yet be available for a particular service or might not otherwise be appropriate due to operational or other concerns.

To the extent that OSS electronic ordering may not be available for a

[5] *See also* Johnson DT at 27 (asserting that "any transactions ... under the agreement be handled via [Verizon's] automated OSS" because "[t]he scale and scope of Bright House's interconnection relationship with Verizon makes manual ordering and processing simply untenable as a practical matter").

particular service, Verizon cannot be made to develop it solely for Bright House's purposes, particularly without regard to the cost to Verizon or any consideration of whether it is efficient to do so for a particular service. An ILEC cannot be required to upgrade or otherwise modify its own internal ordering systems to suit the desires of one particular interconnector for access to a superior network, rather than the ILEC's existing network. As Verizon pointed out in its Response to Bright House's Petition for Arbitration and will explain further in its legal briefs, Bright House takes Verizon's network and systems "as is," not as Bright House would like them to be. Accordingly, there is no basis for Bright House's demand that Verizon furnish it with electronic ordering for all services at all times.

Second, Bright House would impose additional limitations on when Verizon could make changes to its OSS under Additional Services Attachment § 8.2.3. Bright House concedes that "Verizon may modify its [OSS] without getting advance approval from Bright House" (Gates DT at 63), but nevertheless insists that Verizon must provide Bright House with "commercially reasonable" advance notice of any changes so as "to allow Bright House to adjust to them." Johnson DT at 27. *See also* Gates DT at 61, 62-63. Bright House does not explain how it would "adjust" to such changes, but emphasizes that even minor changes should require three months' advance notice and that more significant changes would have to be delayed for "a full year" after notice is provided while Bright House "adjusts." Gates DT at 62-63.

Of course, as I explained in my Direct Testimony, Verizon ***already provides notice*** of OSS changes pursuant to applicable law and Verizon's Change Management Guidelines. *See* Munsell DT at 19, 20-21; Additional Services Attachment § 8.2.3. Those Guidelines not only reflect applicable legal requirements, but industry standards. After all, Verizon's change management process is not only used by the parties to this agreement, but by all interconnecting carriers that use Verizon's OSS. There is no need to impose additional notice requirements on top of these existing Guidelines – particularly when Bright House has not identified any problems arising under the previous notice regime. Indeed, while Bright House suggests that additional "commercially reasonable" notice should be required, it has failed to explain why the very same change management process used for all other carriers is in any way "commercially unreasonable." Accordingly, the Commission should reject this additional constraint on Verizon's ability to modify its own OSS. The additional delays proposed by Bright House are unnecessary and, if anything, might interfere with the efficient operation of Verizon's OSS and put off needed modifications that would benefit not only Bright House, but other carriers.[6]

[6] Bright House also has proposed language "to make clear that Verizon's right to make such 'systems' changes – technical matters relating to the form and format of submissions to Verizon – cannot and does not include the right to unilaterally create chargeable events and chargeable services out of order processing or other activities that are not subject to charges today." Gates DT at 63. But there is no need for such language. Verizon's ability (or inability) to charge for services, and the rates that it may charge, are treated elsewhere in the agreement. These OSS provisions could not reasonably be read to trump those other provisions or somehow permit charges that would not be otherwise permissible.

Third and finally, Bright House proposes to modify Additional Services Attachment § 8.8.2, which heretofore has provided simply that "Bright House shall reasonably cooperate with Verizon in submitting orders for Verizon Services and otherwise using the Verizon OSS Services, in order to avoid exceeding the capacity or capabilities of such Verizon OSS Services." Although Bright House's witnesses concede that "there is some upper limit on the number of transactions that Verizon's OSS can process" (Johnson DT at 27), Bright House nevertheless proposes to take that judgment out of Verizon's hands and make it subject to Bright House's view of what is "commercially reasonable." *Id.* As Mr. Gates states, "while Bright House acknowledges that Verizon may impose limitations on the volume of orders that can be submitted via its electronic OSS, Bright House proposes language that any such limitations on volume be commercially reasonable." Gates DT at 63-64. Both Bright House witnesses suggest this is necessary to prevent Verizon from falsely claiming under § 8.8.2 that Bright House's legitimate port-out requests exceed the capacity or capability of Verizon's OSS in order to limit how quickly Verizon loses customers to Bright House. *Id.*; Johnson DT at 27.

But this is not a realistic concern. Bright House has not cited a single instance in which Verizon strategically used its control of the OSS to place Bright House (or any other carrier) at a disadvantage. Moreover, if any such situation arose, there would be ample chance for Bright House (or another affected carrier) to challenge any such hypothetical

anticompetitive conduct – either before the Commission or in any other proper forum. And Verizon's change management process would ensure that Bright House (and other carriers) received abundant notice of any such pending changes, such that they would be afforded plenty of opportunity to raise their concerns to Verizon and, if necessary, bring them in an appropriate proceeding. But Bright House's hypothetical concern over the possibility that Verizon might sometime make strategic use of the OSS is certainly not a basis to substitute its judgment of what is "commercially reasonable" for Verizon's judgment of how best to operate its own system in the overall interest of all stakeholders.

Indeed, given the sheer volume of transactions Verizon must handle from scores of other carriers and the various competing concerns and issues it must juggle with respect to OSS, it is unclear whether or how Bright House would even be able to form a judgment as to what was "commercially reasonable" at any given point in time. (Nor does Bright House's proposed language provide sufficient comfort that it would adequately consider the scores of other carriers at stake, and not just its own self-interest.) But, in any event, Bright House certainly has not raised any concern that would justify removing any obligation it has to avoid using OSS in such a manner that would exceed the system's capacity or capability. Accordingly, this change should be rejected, as well.

Q. AS A PRACTICAL MATTER, DOES BRIGHT HOUSE HAVE ANY NEED TO WORRY THAT VERIZON WILL OPERATE OR MODIFY OSS IN SUCH A WAY AS TO ADVERSELY AFFECT BRIGHT HOUSE?

A. No. In developing and operating OSS, Verizon has had every incentive to establish an efficient and workable system that can properly record and track orders from the largest number of carriers possible. That way, Verizon can better fulfill orders and, where appropriate, receive payment for ordered services. While Verizon continues to modify and improve its OSS today, it recognizes that any such modifications will necessarily affect all the carriers that use the OSS. Verizon therefore takes all appropriate care in deciding which changes to make, and in the procedures by which it makes those changes. Whenever Verizon makes a change to its OSS, Verizon follows the procedures set forth in its Change Management Guidelines and required by applicable law – including providing notice of its changes to interconnecting carriers that use Verizon's OSS. But just as it has every incentive to establish a workable system in the first place, Verizon has every incentive to operate that system effectively and to avoid making changes that will disrupt the ordering process or delay payments to which Verizon is entitled.

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

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

Q. DOES THE DIRECT TESTIMONY OF BRIGHT HOUSE'S WITNESSES JUSTIFY BRIGHT HOUSE'S PROPOSED CHANGES RELATING TO ISSUE 36?

A. No. Mr. Gates addresses Issue 36 on behalf of Bright House. *See* Gates DT at 134-37. While his testimony explains what changes Bright House seeks to make to Verizon's proposed language for Issue 36 and why Bright House would like to make those changes, he never addresses any of the reasons – set forth both in the parties' negotiations and in my Direct Testimony – why Bright House's proposed language is not technically feasible.

Q. WHAT LANGUAGE DOES BRIGHT HOUSE PROPOSE IN CONNECTION WITH ISSUE 36?

A. Bright House seeks to modify various provisions in Sections 9 and 10 of the Interconnection Attachment to (1) recognize Bright House's ability to operate as a competitive tandem provider and (2) alter the parties' meet-point-billing arrangements to facilitate Bright House's operation as a competitive tandem provider. *See* Gates DT at 135 ("The disputes center on some of the details of how a meet point billing arrangement will be implemented, and on how to handle the situation where Bright

House, rather than Verizon, might provide the tandem switching function.").

Q. WHAT IS A COMPETITIVE TANDEM PROVIDER?

A. As Mr. Gates explains in his testimony, long distance or interexchange carriers ("IXCs") that want to connect at a single point to essentially reach all callers or call recipients in the Tampa/St. Petersburg area would typically do so through Verizon's access tandem. *See* Gates DT at 138. That tandem is connected not only to Verizon's end offices, but also to Bright House and most (if not all) other local exchange carriers in the area. *Id.* In essence, that tandem provides IXCs with one-stop shopping. They can go through Verizon's tandem and receive or pass off long distance calls to or from virtually all local carriers and their customers in the area. Bright House apparently wishes to provide a competitive alternative to the Verizon access tandem by making available its own tandem that would link IXCs with local networks in the Tampa/St. Petersburg area.

Q. DOES VERIZON HAVE ANY OBJECTION TO BRIGHT HOUSE OPERATING AS A COMPETITIVE TANDEM PROVIDER?

A. No. Verizon has no objection to Bright House operating as a competitive tandem provider. However, the specific accommodations sought by Bright House are not appropriate in a Section 251 interconnection agreement since the competitive service it seeks to provide is for the benefit of IXCs and not end user customers of Bright

House. *See, e.g.*, Gates DT at 138 ("Bright House would like the opportunity to compete ... for the provision of 'tandem' functionality to third-party IXCs"). The language Bright House has proposed to alter the parties' meet-point arrangements to achieve this purpose is highly problematic and not necessary for Bright House to operate as a local provider of telephone exchange and exchange access services. Nor is it even necessary for the offering of competitive tandem service. If Bright House wishes to provide competitive tandem services to IXCs, Verizon has an existing tariffed service that will facilitate Bright House's ability to make such a competitive offering available.

Q. WHY DOES VERIZON OBJECT TO BRIGHT HOUSE'S PROPOSED LANGUAGE?

A. Because Bright House's proposed language for §§ 9 and 10 of the Interconnection Attachment would require Verizon to divert or otherwise handle traffic in ways that Verizon is not capable of doing.

As I explained in my Direct Testimony, Verizon can accommodate Bright House's desire to operate as a competitive tandem provider through the provision of Tandem Switch Signaling ("TSS") under Verizon's FCC Tariff No. 14. *See* Munsell DT at 22, 25. TSS is a nonchargeable optional service[7] used in conjunction with Feature Group D ("FG-D") Switched Access. TSS allows for the passing of the Carrier Identification Code (as described below) over the FG-D trunks that

[7] Additional transport charges likely would apply per the tariff.

would connect each of the Verizon end offices with the Bright House tandem and thereby allow Bright House to operate as a competitive tandem provider. However, Bright House is not satisfied with this approach and instead proposes that the parties change the meet point at which they exchange third party IXC traffic (also known as "exchange access traffic"). *See* Gates DT at 135-37.

In particular, Mr. Gates suggests that "the meet point for purposes of jointly-provided access to IXCs should be the same physical point at which they exchange their local traffic." *Id.* at 136. However, as I explained in my Direct Testimony, exchange access traffic and local traffic are carried over two different kinds of trunking that have very different characteristics, such that one type of trunk cannot be used to carry the other kind of traffic. *See* Munsell DT at 23-25. Accordingly, the same DS-1 cannot be used to carry the two different kinds of traffic.

Exchange access traffic for IXCs is carried over Access Toll Connecting Trunks, which are specially designed to handle the unique routing information necessary to ensure that exchange access traffic is sent to the appropriate IXC. Because end users may designate a pre-subscribed interexchange carrier ("PIC") to carry all of their interexchange traffic, there is a need to identify the right PIC for each call to ensure that it is properly routed. This is accomplished through use of the carrier identification code ("CIC"), which assigns a numerical code to each different interexchange carrier. When an end user dials a

1+ interexchange call, that end user must be associated with the appropriate interexchange carrier by means of the CIC, and the CIC must then be signaled along with the call as it is routed through the network. In particular, that CIC must be signaled along with the call as it is routed from the end-office switch to the appropriate access tandem, such that the access tandem can then route the call to the appropriate IXC that has interconnected its facilities at the access tandem. Access Toll Connecting Trunks are used to route the call because they have the ability to signal the necessary CIC information along with each call.

Local traffic, however, represents a different story. For local calls, end users have no need to choose a PIC. By definition, their local carrier is the only carrier that will carry their local traffic; no designation of interexchange carrier is necessary. Accordingly, for local telephone calls, industry standards do not provide that a CIC be signaled. Instead, local calls are routed to the terminating carrier based on the called number. Because local calls do not require the same kind of data as exchange access traffic, they use different kinds of trunks. In particular, local traffic is sent over Local Interconnection Trunks.

By proposing that the parties use the same meet point for exchange access (IXC) traffic that they currently use for local traffic, Bright House would have exchange access traffic destined for IXCs routed over the Local Interconnection Trunks that currently only carry local traffic. But calls routed over the Local Interconnection Trunks would lose the CIC

that is necessary to route the call to the interexchange carrier chosen by the calling party. In other words, Local Interconnection Trunks would lack the data that would permit the access tandem provider to route the call to the appropriate PIC. Thus, it would be unworkable to alter the meet point and route calls in the manner Bright House has proposed.

Q. IS THE PHYSICAL MEET POINT PROPOSED BY BRIGHT HOUSE PROBLEMATIC?

A. Yes, because Bright House has proposed to use the same physical point to exchange local and IXC traffic. In order for traffic to route properly over Verizon's tandem from an IXC to a CLEC, the CLEC – in this case, Bright House – must elect to have its switch subtend the Verizon access tandem, such that this election is reflected in industry traffic routing tables – *i.e.*, the Local Exchange Routing Guide ("LERG"). This information allows IXCs to properly route a long distance call destined to a Bright House end user customer by identifying the applicable access tandem that serves the Bright House customer. Critically, Bright House must establish a physical meet point at the designated Verizon access tandem to pick up that traffic. On the other hand, the physical point of interconnection for local traffic may not be at the same location. By proposing to use the same physical point(s) for the hand-off of local and IXC traffic, Bright House has proposed an architecture that in some cases (*i.e.*, in those cases where the point of interconnection is other than at the access tandem) would not work.

Because Verizon cannot operate in the way Bright House requests, Bright House's proposed changes should be rejected. However, as stated above, Verizon can and will accommodate Bright House's desire to operate as a competitive tandem provider through the TSS provisions in Verizon's tariff, which already provide the means by which Bright House can obtain what it needs to provide tandem functionality for exchange access services.

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

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

Q. DO BRIGHT HOUSE'S WITNESSES ADDRESS ISSUE 36(a) IN THEIR TESTIMONY?

A. No – not specifically. Ms. Johnson does not address any aspect of Issue 36. Mr. Gates does, but his testimony on Issue 36 does not specifically refer to Issue 36(a). Instead, Mr. Gates answers certain questions purportedly regarding Issue 36(b). *See* Gates DT at 137-39.

However, it appears that at least some (if not all) of that Issue 36(b) testimony actually was intended to address Issue 36(a).

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH RESPECT TO ISSUE 36(a)?

A. Bright House proposes to delete § 8.3 from the Interconnection Attachment. That section addresses the situation in which a third-party carrier originates traffic that Bright House then transits for that carrier to Verizon for termination. In that scenario, there is no dispute that Verizon is entitled to payment for terminating such transit traffic. The only dispute is whether Bright House is responsible for making that payment when it delivers the traffic to Verizon, as Section 8.3 says it should be. In its DPL, Bright House suggested this provision "is unnecessary" because "[m]eet point billing arrangements [would] cover any legitimate Verizon concern on this point." DPL at 92. But the meet point billing arrangements are for a different kind of traffic (jointly provided Switched Exchange Access traffic) and do not cover this point for traffic that is not to or from an IXC. Section 8.3 should, therefore, remain in the ICA.

Q. WHY IS IT NECESSARY FOR SECTION 8.3 TO REMAIN IN THE ICA?

A. Section 8.3 of the Interconnection Attachment provides that, when Bright House transits traffic for a third party to Verizon, Bright House is financially responsible to Verizon for terminating that traffic in the same amount that the third party would have had to pay had it delivered the traffic itself. As I explained in great detail in my Direct Testimony, this

provision acts as an important check on potential arbitrage, and it is fair to expect that a carrier that chooses to bring traffic to Verizon's network should pay Verizon for the services that Verizon renders. *See* Munsell DT at 25-28. Bright House's witnesses have failed to address these concerns in their direct testimony, much less justify Bright House's position regarding this issue. Accordingly, for the detailed reasons set forth in my Direct Testimony, the Commission should reject Bright House's proposal to delete § 8.3 of the Interconnection Attachment.

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH REPECT TO ISSUE 36(b)?

A. Bright House proposes language for § 9.2.5 of the Interconnection Attachment that would absolve Bright House from paying for any Verizon facilities that are used to connect Bright House's network to interexchange carriers. *See* Gates DT at 136 (expressing concern over the charges Verizon assesses Bright House "for the connection from the physical point where the parties exchange traffic, up to the tandem switch"). In order to understand this dispute, therefore, it is important to understand the charges that Verizon does (or does not) levy on Bright House for the connection that Mr. Gates addresses – the connection from the physical point where the parties exchange traffic up to the access tandem – and it is necessary to discuss this with respect to each of the three Bright House interconnection arrangements currently in place.

In all cases, if Bright House elects to subtend the Verizon access tandem in order to receive and hand off calls to IXCs connected at the Verizon access tandem, Bright House must establish Access Toll Connecting Trunks between the Bright House switch and the Verizon tandem switch. These Access Toll Connecting Trunks are carried over facilities that Bright House may build itself, purchase from a third party provider, or purchase from Verizon. In its current network configuration, for one of its arrangements Bright House has opted to self-provision its own facilities to the Verizon tandem office. In that case, Verizon does not charge Bright House any facilities charges (though Bright House would of course incur certain collocation-related charges) for that connection to the Verizon access tandem.

In its two other arrangements, however, Bright House does not have its own facilities that would allow it to connect to the Verizon access tandem. In those two cases, Bright House has elected to purchase facilities from Verizon to connect with the Verizon access tandem. Verizon therefore charges Bright House for those Verizon-provided facilities. While Verizon does not question Bright House's decision to configure its network in such a manner, Bright House should not be allowed to dodge its financial responsibility for facilities it purchases from Verizon in order to complete the transmission path for access traffic delivered between its network and Verizon's access tandem. But that is precisely what Bright House's proposed language would do.

Q. DOES BRIGHT HOUSE HAVE THE OPTION OF ROUTING ITS TRAFFIC THROUGH THE ONE ARRANGEMENT WHERE IT HAS BUILT ITS OWN FACILITIES?

A. Yes. Bright House has the option of reconfiguring its network such that it routes all of its Access Toll Connecting Trunks over its own facilities, via its collocation at the Verizon access tandem office, in which case there would be no facility charges associated with those trunks. There may be (and from what I know of Bright House's network engineering practices, there probably are) good network reasons that drove Bright House's decision to route some of its traffic over Verizon-provided Access Toll Connecting Trunks, rather than through its own facilities. But Bright House should not be permitted to avoid the financial consequences of that decision.

As Mr. Gates notes, the parties do not disagree on the fundamental concept that each party will recoup from the IXC for the switched access services that it provides. In this instance, Bright House bills the IXC, as part of its own access charges, Bright House's own cost of facility transport, and Verizon does not bill the IXC any facility transport. This is practice is the industry standard in such situations, and is the way that Bright House and Verizon currently operate. One of the advantages of this practice is that it tends to require each party to recover the costs over which that party has control. Only Bright House controls how efficiently (or inefficiently) it sets up the facilities on its side of the Verizon access tandem. If Bright House's proposal were to be

accepted, it would place Verizon in the situation of trying to collect facility transport charges from the IXC to recover a cost (and, potentially, an inefficiency) imposed by Bright House.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 36(b)?

A. The Commission should reject Bright House's proposed language and adopt Verizon's proposed language, including Verizon's proposal to establish the point of financial responsibility at the relevant Verizon access tandem.

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

Q. HAVE THE PARTIES REACHED AGREEMENT ON ANY ASPECTS OF ISSUE 37?

A. Yes. As I stated in my Direct Testimony, many of the disputes regarding Issue 37 are essentially semantic, rather than substantive, and they could be resolved with further discussions. *See* Munsell DT at 31-32. Mr. Gates concurs, noting that "[i]t appears that the parties basically agree on how to define and classify most of the different types of traffic." Gates DT at 91. However, there remain a few substantive exceptions on which the parties do disagree.

Q. WHAT SUBSTANTIVE DISPUTES REMAIN WITH RESPECT TO ISSUE NO. 37?

A. For purposes of my Direct Testimony, I identified three principal areas of substantive dispute: (1) what should define the local calling area for purposes of intercarrier compensation; (2) which party bears financial responsibility for which facilities used in connection with local call termination; and (3) how the use of local interconnection facilities should be treated when they are used to carry interexchange traffic. *See* Munsell DT at 31. I addressed each of these three issues in detail in my Direct Testimony. *Id.* at 32-37. While Mr. Gates expresses a "variety of concerns with Verizon's proposed definitions" under Issue 37, he focuses on the first of the three areas I identified, which he more broadly refers to as the question of "when Verizon and Bright House will have to pay each other access charges, as opposed to reciprocal compensation charges," and labels that the "most important" of his concerns. Gates DT at 92. Because Mr. Gates does not address the other two areas I identified in my Direct Testimony, I will simply refer back to and not repeat that testimony here. *See* Munsell DT at 34-37.

Q. WHAT IS THE NATURE OF THE PARTIES' DISAGREEMENT REGARDING LOCAL CALLING AREAS?

A. As Mr. Gates correctly notes, the parties need to define the local calling area in order to determine "when Verizon and Bright House will have to pay each other access charges, as opposed to reciprocal compensation charges, with respect to traffic they send to each other." Gates DT at

92. For intercarrier compensation purposes, interexchange traffic is compensated at access rates and local traffic is compensated at reciprocal compensation rates (or the FCC's transitional rate for ISP-bound traffic). *See* Munsell DT 32; Gates DT at 92-93. The question here is how we should define what is "interexchange" (*i.e.*, outside the local calling area) and what is "local" (*i.e.*, within the local calling area) for intercarrier compensation purposes. The distinction is important, because the access rates applied to interexchange traffic generally are higher than the reciprocal compensation rates applied to local traffic. *See* Gates DT at 92.

Q. HOW SHOULD THE AGREEMENT DEFINE WHAT IS INTEREXCHANGE VERSUS LOCAL?

A. The local calling areas for intercarrier compensation purposes should be defined by reference to the Commission-approved basic local exchange areas detailed (and mapped out) in Verizon's local exchange tariffs. Anything within those Verizon basic local exchange areas should be considered "local" and therefore subject to reciprocal compensation (or the ISP rate). Any traffic beyond those basic local exchange areas should be considered "interexchange," subject to access rates.

Q. WHY IS THIS THE APPROPRIATE STANDARD?

A. As I explained in my Direct Testimony, to properly categorize traffic as "local" or "interexchange," it is necessary to have a knowable, uniform standard. *See* Munsell DT at 33. Verizon's local calling areas offer just

such a uniform and knowable standard. Verizon's Local Exchange Service Tariff A200 provides detailed "metes and bounds" descriptions of each of Verizon's local calling areas, along with detailed maps. These local calling areas are longstanding, well-known, are not subject to frequent change, and have been approved by the Commission. As such, they represent the best available standard by which to categorize calls as "local" or "interexchange" for intercarrier compensation purposes.

Q. IS THIS THE WAY IN WHICH THE INDUSTRY TYPICALLY DEFINES LOCAL CALLING AREAS?

A. Typically, yes. The only exception of which I'm aware is New York. There, the public service commission has adopted the "LATA-wide calling rule," under which LATAs, rather than exchange areas, determine what traffic is subject to reciprocal compensation and what is subject to access. That is, calls exchanged between local exchange carriers with endpoints within a single LATA are subject to reciprocal compensation, calls with endpoints across LATA boundaries are subject to access. New York's LATA-wide calling rule is administratively workable because LATA boundaries are fixed, and they are well-known and easily discernible. That is the only exception of which I'm aware to the general practice that local calling areas for intercarrier compensation purposes follow the ILEC exchange areas.

Q. IS THIS THE STANDARD THE PARTIES HAVE USED UNDER THE EXISTING INTERCONNECTION AGREEMENT?

A. Yes. And, outside of New York (with its LATA-wide calling rule), it is the standard used in all of Verizon's interconnection agreements.

Q. HOW DOES BRIGHT HOUSE PROPOSE TO CHANGE HOW INTERCARRIER COMPENSATION IS DETERMINED BETWEEN VERIZON AND BRIGHT HOUSE?

A. Bright House maintains that the categorization of traffic as "interexchange" or "local" for intercarrier compensation purposes should depend on the retail local calling area provided by the calling party's carrier (otherwise known as the "originating" carrier). But this would put in place a shifting standard that is prone to manipulation and is unworkable.

Q. WHY WOULD CATEGORIZING TRAFFIC BY REFERENCE TO THE ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA BE "UNWORKABLE"?

A. As I noted above and in my Direct Testimony, to properly categorize traffic as "local" or "interexchange," it is necessary to have a knowable, uniform standard. Bright House's proposal to base the categorization on the originating carrier's retail local calling area would not establish such a standard. To the contrary, it would establish many different standards that would be subject to constant change.

Local exchange carriers have different local calling areas for retail purposes. In fact, each carrier may have multiple different local calling areas, depending on what retail products it has offered to any given retail end user. For example, a carrier might offer free "local" calling within a particular city, region or state, or even nationwide. And these originating carriers frequently change their local calling areas, such that any given carrier may have considered a "free" local call one month may not be a "free" local call the next. Therefore, the concept of what is "local" and what is "interexchange" for purposes of applying intercarrier compensation can be impossible to trace if one looks at the originating carrier's local calling areas and end user retail offerings; it may depend on what particular plan an individual caller has chosen at the particular time a call is made. Obviously, Verizon's billing systems cannot determine intercarrier compensation on a caller-specific basis, let alone a caller-specific basis that changes with the individual caller's choice of calling plans.

If the Commission adopts Bright House's position here, the new method Bright House proposes cannot be limited to just Bright House and Verizon. First, section 252(i) of the Act gives other carriers the right to adopt the Verizon/Bright House agreement under arbitration. Second, if the Commission adopts Bright House's approach in this case, other carriers can be expected to propose it in arbitrations of new agreements. But it would be unworkable to try to implement such a shifting standard for Bright House, let alone Bright House and others, given the millions of

minutes exchanged among dozens of carriers. There would be simply no way for Verizon to discern what call would be "local" and what would be "interexchange," if it were necessary to look to the dozens or more competing local calling areas that would exist. In order to work, there must be a uniform standard that applies to all carriers. It would be impossible to implement a system that depends on the identity of the calling party in order to jurisdictionalize a call for assessing intercarrier compensation.

Q. WHY DOES BRIGHT HOUSE INSIST ON USING SUCH AN UNWORKABLE STANDARD?

A. So it can engage in arbitrage of intercarrier compensation rates. The standard Bright House advocates likely would result in more of its outbound traffic being defined as "local," rather than "interexchange," so that Bright House would pay the lesser reciprocal compensation rates on that traffic, rather than relatively higher access charges. At the same time, Verizon would continue to pay access rates on traffic inbound to Bright House. So, Bright House is attempting to craft a standard that would minimize its own intercarrier compensation expenses while maintaining the same level of intercarrier compensation received from Verizon – regardless of whether that standard is reasonable or workable. Indeed, such an approach would be competitively unbalanced and would encourage gaming of the system.

Q. IS THIS OBJECTIVE REFLECTED IN ANY OF BRIGHT HOUSE'S OTHER PROPOSED DEFINITIONS UNDER ISSUE 37?

A. Yes. Bright House's desire to avoid paying access charges on interexchange traffic is also reflected in its proposed definition of "Toll Traffic."

Q. WHAT IS THE SIGNIFICANCE OF BRIGHT HOUSE'S PROPOSAL REGARDING TOLL TRAFFIC?

A. Bright House is attempting to limit the definition of Toll Traffic in such a way as to comport with its view that access charges should be assessed on as little of its traffic as possible – and, specifically, not on traffic that it, as an originating carrier, has elected to treat as "local."

Typically, callers pay a toll on long distance or interexchange calls and not on local calls. And, typically, long distance carriers (or IXCs) pay access charges to local exchange carriers that take the toll call from the IXC's network to the customer receiving the toll call. Bright House's position is that access charges should be assessed only upon carriers that have assessed a toll on that call. *See* Gates DT at 106 ("Bright House's definition will have the effect of matching up the payment of access charges with the collection of toll charges from end users"). According to Bright House, the regime should rest entirely in the originating carrier's discretion. If the originating carrier charged its customer a toll (because the call crossed that carrier's local calling zone boundary), then the originating carrier would have to pay access

charges to the terminating carrier. But if the originating carrier decided to define its retail local calling area in such a way that it considers a call "local" (no matter the distance it travels) and does not charge a toll, then the originating carrier would only have to pay reciprocal compensation, not access.

However, for the same reasons outlined above, this approach is not practical. Different carriers have different retail calling areas than one another. And each carrier may have its own multiple different calling areas that vary across different retail packages. Moreover, those calling areas are subject to constant change. Originating carriers frequently change their retail local calling areas to allow toll free calling to customers across broader areas – often on a short-term basis – and then shrink the toll-free area upon expiration of a given offer. Defining traffic based on the ever-changing whims of each originating carrier is not a workable system.

Q. DOES COMMISSION PRECEDENT SUPPORT BRIGHT HOUSE'S POSITION REGARDING TOLL TRAFFIC?

A. No. Both Mr. Gates and Ms. Johnson assert that Commission precedent supports Bright House's position, although they both concede that the lone Commission decision they cite was vacated on appeal because the reviewing court concluded it was not supported by sufficient evidence. *See* Gates DT at 107; Johnson DT at 30. Accordingly, there is no "default rule" that the local calling area should be defined by

reference to the originating carrier's local calling area. To the contrary, the Florida Supreme Court held that there was insufficient evidence demonstrating that adopting the originating carrier's local calling area as the default would be competitively neutral[8] and the Commission issued an "Order Eliminating the Default Local Calling Area."[9]

Moreover, the Commission's experience in that docket and in one other roughly concurrent interconnection arbitration bears out that relying upon the originating carrier's calling area is not workable. In another arbitration proceeding between Global NAPS, Inc. ("GNAPs") and Verizon that predated the Florida Supreme Court's decision and the Commission's "Order Eliminating the Default Local Calling Area," the Commission had followed its since-vacated default rule and accepted GNAPs' proposal to define the local calling area by reference to the originating carrier's calling area.[10] However, the Commission found that, "much like the record in our generic docket, the record here is silent as to exactly what details are necessary to implement the originating carrier plan."[11] GNAPs ultimately never was able to provide those details, and the Verizon and GNAPs did not implement the originating carrier

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

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

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

[11] *Id.* at 26.

approach. Regardless of any theoretical appeal the originating carrier approach might appear to have, as a practical matter, it does not work.

Not surprisingly, then, other jurisdictions to consider the issue rejected the approach advanced by Bright House here. Indeed, other Verizon local exchange carriers arbitrated this issue years ago in a number of states with consistent results. For example, the Rhode Island commission found that the originating carrier approach "seems to be contrary to federal law," would "more likely promote arbitrage rather than competition" and "will bring greater administrative confusion to the competitive marketplace."[12] The Ohio commission concluded that, rather than an originating carrier approach, the Verizon local exchange carrier's local calling areas "shall be used to determine whether a call is local for the purpose of intercarrier local traffic compensation."[13] Vermont likewise held that the originating carrier's selection of the local calling area "does not determine the intercarrier compensation that applies (*i.e.*, whether the call is subject to reciprocal compensation or access charges)."[14] The public service commissions in Massachusetts,

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

[13] *In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 02-876-TP-ARB, at 8 (Ohio PUC Sept. 5, 2002).

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

Delaware, California and New Hampshire all reached the same result.[15] Even the New York commission, which established the LATA-wide calling rule referenced above, rejected the originating carrier approach.[16] As the Maryland Public Service Commission found some years earlier, "without a consistent set of boundaries, carriers will be unable to accurately rate their own calls .... We therefore see benefits in the use of uniform exchange boundaries, and ... it is most practical to utilize the [Verizon ILEC's] exchange boundaries for uniformity by all competing telecommunications companies."[17] To adopt an originating carrier approach or "any alternative exchange boundaries would require a massive restructuring ... that is not necessary or beneficial ...."[18]

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

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

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

[18] *Id.* at *71.

The Commission should take the same approach here and, recognizing the problems raised by its last foray into this issue, reject Bright House's proposal to define what is "local" and "interexchange" by reference to the originating carrier's local calling areas.

Q. MR. GATES INDICATES THAT VERIZON'S PROPOSED DEFINITION OF "TOLL TRAFFIC" WOULD INTERFERE WITH HEALTHY COMPETITION.[19] DO YOU AGREE?

A. No – not at all. In fact, Mr. Gates' own testimony confirms that is not the case.

Mr. Gates correctly notes that one of "[t]he points of the 1996 Act is to enable and facilitate direct, head-to-head competition among local exchange carriers." Gates DT at 105. He suggests that one of the ways a local exchange carrier can compete "is by offering more attractive, simpler, and larger local calling areas." *Id.* According to Mr. Gates, "[o]ffering a larger local calling area is competing both on the features of the services being offered ... and on the basis of price (since a large local calling area allows customers to call more individuals or businesses on a flat rate basis and avoid toll charges)." *Id. See also* Johnson DT at 29 ("one way that carriers can compete with each other is by offering broader 'free' local calling areas"). He then concludes that Verizon's proposal to determine whether access charges apply by reference to its own local calling areas is somehow anticompetitive

[19] *See* Gates DT at 104-105.

because "it imposes a penalty on Bright House for offering a larger and more attractive calling area than Verizon offers." Gates DT at 105. *See also* Johnson DT at 30. But that simply is not the case.

Verizon's position merely affects the wholesale rates at which carriers compensate one another with respect to traffic they send to one another. It does not preclude Bright House "from offering a larger or more attractive calling area" on a retail basis. Even if Verizon's proposal results in Bright House paying access charges on some percentage of traffic that Bright House considers to be local for retail purposes, that can hardly be said to amount to a "penalty" that would inhibit Bright House's ability to offer larger retail local calling areas.

Indeed, using Verizon's local calling areas has not precluded Bright House from offering larger retail local calling areas or otherwise adversely affected competition under its existing interconnection agreement with Verizon. Quite the opposite, Ms. Johnson concedes that Bright House already offers broader "free" local calling areas (Johnson DT at 29). On its website, Bright House extols the virtues of an "Unlimited Florida" calling plan, which includes unlimited calling to anywhere within the state, as well as an "Unlimited Nationwide" plan, which includes all-you-can-eat calling within the United States and Canada. And Mr. Gates acknowledges that Bright House has thrived competitively under this standard. Indeed, only sentences before advocating for a change in the existing standard, Mr. Gates refers to the

"full facilities-based competition ... that now exists between Verizon and Bright House in the Tampa/St. Petersburg area" under that standard and to the fact that, "in the residential areas where Bright House's cable affiliate has facilities, consumers ... have a choice of which network to use for their phone service." Gates DT at 105. Bright House cannot tout how much the current standard has boosted competition and then claim that same standard is somehow anti-competitive.

If anything, it is Bright House's proposal that would be competitively unbalanced. By defining its own local calling area, Bright House would minimize the access charges it pays on outbound traffic to Verizon, while still receiving the same level of access revenues on inbound traffic from Verizon (which, after all, is not frequently changing the local calling areas prescribed in its tariffs). Leaving the categorization of traffic for intercarrier compensation purposes in the hands of originating carriers will encourage gaming of the system, as each carrier will be incentivized to alter its local calling area to produce the best possible net result from the perspective of avoiding intrastate access charges, rather than responding to consumer demand.

Bright House's approach would also be anticompetitive because it would give Bright House (and other adopting local exchange carriers) an artificial advantage over interexchange carriers. Perhaps the single biggest expense incurred by a carrier in connection with a long-distance call is the payment of originating and terminating access. Under its

proposal, Bright House could unfairly reduce its access costs by reconfiguring local calling areas, thus significantly reducing its expenses. But interexchange carriers, which compete with Bright House (and other LECs) for any given end-user's long-distance traffic do not have local calling areas. So, under Bright House's proposal, it would be exempt from ever paying terminating intrastate access under its "Unlimited Florida" plan, whereas the IXCs, its competitors for that intrastate long distance traffic, would be stuck paying access charges. The existing system, in contrast, maintains a level playing field for all carriers that provide interexchange services.

For all these reasons, the Commission should reject Bright House's proposed language.

Q. MR. GATES ALSO DRAWS A DISTINCTION BETWEEN "TOLL TRAFFIC" AND "MEET POINT BILLING TRAFFIC" IN HIS DIRECT TESTIMONY. WHAT IS YOUR REACTION TO THAT TESTIMONY?

A. Bright House's proposed revision of these terms is both unnecessary and troublesome. Mr. Gates claims that it is necessary to draw a clear distinction between interexchange traffic that is to (or from) IXCs and interexchange traffic that is exchanged between the parties. That distinction is fine, so far as it goes, and Verizon's proposed interconnection agreement contains two entire sections – sections 9 and 10 – that detail how the parties will handle the former kind of traffic. But Bright House has not described any way in which the ICA, including

those sections, is inadequate in its description of how the parties will handle traffic that is destined for, or coming from, IXCs.

The troublesome part of Bright House's proposal, as reflected in Mr. Gates' testimony, is his claim that, for the facilities carrying traffic destined for, or coming from, IXCs (what they call "Exchange Access Traffic"), Bright House would have no financial responsibility. In Mr. Gates' view, which reflects the language proposed by Bright House, for such arrangements, "[n]either carrier will bill each other anything . . . because they are not providing services to each other; instead they are jointly providing services to the third party IXC." Gates DT at 99. But, as I describe elsewhere in this testimony and in my Direct Testimony, Bright House does, and must continue to, have responsibility for its own Access Toll Connecting Trunks. That is, where Bright House chooses to use Verizon-provided facilities to carry IXC traffic between the Verizon access tandem and the Bright House network, Bright House must retain financial responsibility for those facilities. Bright House's attempt to define a category of "Meet Point Billing Traffic," and then to provide that neither party would bill the other anything in connection with that traffic, is simply another way that Bright House seeks to evade financial responsibility for the Access Toll Connecting Trunks that it ordered and that it uses. As such, the Commission should reject this proposal.

<u>ISSUE 39</u>: DOES BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR TRAFFIC THAT IT TERMINATES TO

THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO TRANSIT THE TRAFFIC? (Int. Att. § 12.5)

Q. DOES A DISPUTE BETWEEN THE PARTIES STILL EXIST WITH RESPECT TO ISSUE 39?

A. No – I do not believe a dispute still remains regarding this issue.

Issue 39 arose as a result of Bright House's attempt to change Section 12.5 of the Interconnection Attachment to shift the costs associated with certain Bright House-originated traffic to Verizon, rather than paying the associated third-party charges itself. However, Mr. Gates' testimony suggests that Bright House no longer maintains this position and that the dispute is now resolved. In particular, Mr. Gates testified that:

> This dispute has been almost entirely settled in principle, even though the parties have not yet settled on final language. At a high level, Verizon and Bright House agree that Bright House may use Verizon's network (essentially, its tandem switch) to send "transit" traffic to third parties connected to Verizon's tandem. They agree that as between Verizon and Bright House, Verizon should not be liable to the third party for termination charges associated with the Bright-House originated traffic. They agree that if Verizon is billed for such charges, there should be a

form of "indemnification" procedure where Verizon would forward the bills to Bright House for Bright House to deal with – that is, to pay them if appropriate, dispute them where need be, etc. And the parties agree that when the traffic between Bright House and some particular third party reaches some appropriate level, Bright House should be required to make commercially reasonable efforts to either directly connect with the third party or, at least, find some way other than via Verizon's tandem to get the traffic there.

Gates DT at 140-41.

Verizon agrees with this position, which is consistent with both my Direct Testimony (*see* Munsell DT at 37-41) and the Commission's prior rulings.[20] Verizon therefore will endeavor to work out language with Bright House reflecting what appears to be an agreement in principle. However, in the event that the parties are unable to work out any additional language, the Commission simply should reject Bright House's proposed changes to § 12.5 of the Interconnection Attachment as being inconsistent with this agreement in principle and with Bright House's own recognition that it is responsible for traffic it sends to third

[20] *See In re: Joint petition by TDS Telecom*, Docket No. 050119-TP, Docket No. 05125-TP, Order No. PSC-06-0776-FOF-TP (Sept. 18, 2006) (holding that the originating carrier (in this case, Bright House) "shall compensate [the ILEC] for providing the transit service," "is responsible for delivering its traffic ... in such a manner that it can be identified, routed, and billed," and "is also responsible for compensating the terminating carrier for terminating the traffic to the end user").

parties across Verizon's network.

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

Q. DOES THE TESTIMONY OF BRIGHT HOUSE'S WITNESSES SUPPORT EACH OF THE SPECIFIC BRIGHT HOUSE PROPOSALS THAT HAVE GIVEN RISE TO ISSUE 41?

A. No. Ms. Johnson does not address Issue 41 in her testimony and Mr. Gates does so only in a vague and general sense.

Issue 41 arose in part because Bright House seeks to make a number of specific changes to the ICA language regarding Local Number Portability ("LNP") provisioning.[21] Those proposed changes specifically include modifications to 15.2, 15.2.4 and 15.2.5 of the Interconnection Attachment that would require Verizon to set up certain LNP-related processes and perform certain LNP-related services uniquely for Bright House that Verizon does not and cannot currently provide for other interconnecting carriers (at no charge to Bright House). For all of the reasons set forth in my Direct Testimony, none of these specific LNP-

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

related changes is necessary or appropriate. *See* Munsell DT at 42-50. But Bright House's witnesses do not address these specific Bright House proposed changes at all, other than in Mr. Gates' almost passing reference to the ten-digit trigger feature at issue in § 15.2.4 as an "example" of what is in dispute. Gates DT at 144-45. (He does not mention § 15.2 or 15.2.5.)

Instead, Mr. Gates engages in a very high-level discussion of the circumstances that prompted Bright House to propose the other set of changes that have given rise to Issue 41: Bright House's proposed new "Transfer Procedures Attachment." *See* Gates DT at 143-46. Mr. Gates begins by noting that "[a] key aspect of facilities-based competition ... is smoothly handling the transfer of a customer from one network to the other when a customer chooses to switch carriers and keep their number." *Id.* at 143. From there, he asserts that, "[o]ver the past several years, Bright House has had at least two significant disputes with Verizon regarding such issues" (*id.*), and therefore concludes "that it is reasonable and prudent to include in the parties' interconnection agreement an express set of procedures to clearly 'choreograph' what happens when a customer moves from one carrier to another." *Id.* at 144. But, again, Mr. Gates does not delve into any of the specifics of Bright House's proposals or why they are necessary.

Among other things, Mr. Gates does not describe the "two significant disputes with Verizon" or disclose that they were resolved in such a way

that clearly spelled out the parties' rights and obligations on a going-forward basis. *See* Munsell DT at 51. Nor does he even attempt to tie those disputes in any way to the specific language Bright House proposes here.

Mr. Gates likewise refers to the need to "choreograph" customer transfer procedures, but fails to mention that the ICA ***already*** contains a host of provisions spelling out the process for transferring customers. He does not explain why those existing provisions are inadequate or how the "Transfer Procedures Attachment" is better. Nor does he explain how the two sets of procedures would work in conjunction with one another, since Bright House has proposed adding a new procedures attachment without deleting any of the existing processes. Indeed, Mr. Gates does not discuss the specific language of Bright House's proposed attachment at all. Even when asked about the language of the lone proposed contractual provision he does mention, § 15.2.4 of the Interconnection Attachment, Mr. Gates sticks to generalities and does not quote or otherwise discuss in detail the specific language Bright House has proposed. *See* Gates DT at 145-46.

This sort of vague and general discussion is entirely insufficient to justify the multiple and significant specific changes that Bright House proposes. To the contrary, those changes should be rejected for the multitude of reasons I detailed in my Direct Testimony, which Bright House's direct testimony does not address or rebut. *See* Munsell DT at

42-52.

Q. YOU DID MENTION THAT MR. GATES HAD SPECIFICALLY REFERENCED BRIGHT HOUSE'S PROPOSED CHANGE TO § 15.2.4 OF THE INTERCONNECTION ATTACHMENT REGARDING THE TEN-DIGIT TRIGGER. IS MR. GATES' TESTIMONY SUFFICIENT TO JUSTIFY THE CHANGES BRIGHT HOUSE PROPOSES TO MAKE TO § 15.2.4?

A. No. Although § 15.2.4 of the Interconnection Attachment is the one specific provision that Bright House's witnesses mentioned in connection with Issue 41, even that mention was far too cursory to justify the change that Bright House seeks to make.

Section 15.2.4 addresses the situation in which a customer of Party A decides to switch service to Party B. It provides, among other things, that when Party A transfers or "ports" the customer's telephone number to Party B, Party A must utilize the ten-digit trigger feature when available. As I explained in my Direct Testimony, the ten-digit trigger is a sort of safeguard mechanism to ensure that calls continue to be properly routed to the customer around the time the switch in service occurs. *See* Munsell DT at 48. Or, as Mr. Gates puts it, the ten-digit trigger allows the "customer [to] continue to be able to receive calls on their [Party A] line, until the porting is actually completed." Gates DT at 144. This provision has worked well to help ensure continuity of service for customers under Verizon's interconnection agreements with Bright

House and numerous other carriers. Indeed, I am not aware of any specific problems with respect to how § 15.2.4 has operated with respect to Bright House.

It is important to emphasize, however, that it is not just the ten-digit trigger, *per se*, that ensures the continuity of service for the customer. The ten-digit trigger is the mechanism by which the customer's "old" switch recognizes that porting activity is imminent, then determines whether the port has been completed, and routes the call to the "new" carrier (if the port has been completed) or keeps it on the "old" carrier's network (if it has not). Implicit in this process is that the "old" carrier's network must remain able to handle calls to that customer during the time that the trigger is active. Thus, the "old" carrier must retain its switch translations – and all of the other incidents of service to that customer – during the time that the trigger is active. So, service may be in place on two networks, and the customer may be double-billed, during the period that the trigger and the switch translations remain active. For this reason, among others, the industry standard is ***not*** to retain the trigger and the translations for a significant period of time beyond the scheduled due date. As I explained in my Direct Testimony, the industry standard with which Verizon complies is to schedule the translation (and trigger) removal no earlier than 11:59 pm the day after the due date. *See* Munsell DT at 49.

Bright House nevertheless seeks to change § 15.2.4 to impose an

additional set of requirements *after* the porting activity is scheduled to occur – proposing that the ten-digit trigger must remain in place for at least 10 days following the due date and that no translations tear-downs may take place in the "old" carrier's network until after the port is completed. *See* DPL at 104. Bright House did not explain its rationale for these post-due date changes in its DPL. And Mr. Gates' Direct Testimony does not shed much further light.

The sum total of Mr. Gates' testimony on this point is that the ten-digit trigger should stay in place for at least 10 days following the due date because a customer might have to put off the switch at the last minute and service might be interrupted in the period of time between the due date and when the port is rescheduled. *See* Gates DT at 145. But this is unnecessary. If there is a last-minute problem with performing the port, the "new" carrier can (and should) re-schedule it. There is a simple, automated process for doing so, which involves issuing a "supplemental" LSR (sometimes called a "supp") using Verizon's normal carrier interface. If the port is delayed at the last minute, it can be re-scheduled to the next day, or ten days later, or essentially any other time of the carrier's choosing. A carrier can submit a supplemental LSR to re-schedule a port up until 7:00 pm on the due date, and the port will be re-scheduled (and "old" service retained) accordingly.

There is no need to extend the trigger and to require that translations be maintained for ten days after the due date. If there is a last-minute

problem, Bright House can re-schedule the port through a supplemental LSR. Even then, Verizon *already* retains the trigger until at least 11:59 p.m. the day *after* the due date. These existing processes allow sufficient time to address any "last minute" changes that might have arisen. Extending the trigger (and translations) for ten more days is entirely unnecessary. And Mr. Gates does not offer any evidence otherwise.

To the contrary, as discussed above, retaining the triggers and translations for a significant period beyond the due date essentially requires duplicative service to be provided; it is inefficient and would likely lead to customer complaints over double-billing. And, as I explained in my Direct Testimony, adopting Bright House's proposed change would require Verizon to create a post-due date and post-port process unique to Bright House that Verizon currently is not capable of providing. *See* Munsell DT at 49-50. Verizon should not have to modify its own internal systems to accommodate Bright House when (a) doing so would require significant time, labor and expense and (b) Bright House has failed to demonstrate that the existing process is inadequate to address its concern. Accordingly, the proposed changes to § 15.2.4 of the Interconnection Attachment should be rejected.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.