BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090501-TP

PETITION FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF AN INTERCONNECTION AGREEMENT WITH VERIZON FLORIDA LLC BY BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC.
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VOLUME 1

Pages 1 through 321

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PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS, III

DATE: Tuesday, May 25, 2010

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
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I N D E X

EXHIBITS

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3	STIP-3	7	7
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P R O C E E D I N G S

CHAIRMAN ARGENZIANO: Okay. We'll convene our hearing. Good morning. If staff would read the notice. And first let me say I believe Commissioner Skop is going to be a little late, so we're just going to start without him and he'll have to catch up.

Staff, good morning.

MS. BROOKS: Good morning, Commissioners. Pursuant to notice filed on April 14th, 2010, this time and place has been set for a hearing in Docket Number 090501-TP, which concerns Bright House Network's Information Services Florida, LLC's petition to arbitrate terms and conditions of an interconnection agreement with Verizon Florida LLC.

CHAIRMAN ARGENZIANO: Thank you. And we'll take appearances. Good morning.

MR. O'ROARK: Good morning, Madam Chairman, Commissioners. I'm D. O'Roark with Verizon, and with me as co-counsel today is David Haga.

MR. SAVAGE: Good morning, Chairman and Commissioners. My name is Chris Savage. I'm with the law firm of Davis Wright Tremaine representing Bright House Networks Information Services, LLC. With me is my associate, Danielle Frappier. And we are ably assisted by Beth Keating, who is with Akerman Senterfitt, has

been working with us as well.

CHAIRMAN ARGENZIANO: Good morning.

Staff?

MS. BROOKS: Timisha Brooks and Charlie Murphy on behalf of Commission staff.

MS. HELTON: And Mary Anne Helton, Advisor to the Commission. And also advising you today is the General Counsel, Curt Kiser.

CHAIRMAN ARGENZIANO: Good morning.

Okay. Stipulated procedures regarding the exhibits.

MS. BROOKS: Madam Chair, staff has compiled a list of discovery exhibits that we believe can be entered into the record by stipulation. In an effort to facilitate the entry of those exhibits, we've compiled a chart that we've provided to the parties, the Commissioners and the court reporter. I would suggest that this list itself be marked as the first hearing exhibit and that the discovery exhibits be marked thereafter in sequential order as set forth in the chart. Excuse me.

CHAIRMAN ARGENZIANO: So we're moving into the record Exhibits 1 through 14?

MS. BROOKS: Yes. Staff requests moving into the record Exhibits 1 through 14.

COMMISSIONER STEVENS: So moved.

(Exhibits 1 through 14 marked for identification and admitted into the record.)

CHAIRMAN ARGENZIANO: Okay. We'll go to opening statements, and each party is permitted ten minutes.

MS. BROOKS: Madam Chair, staff has one more preliminary matter.

CHAIRMAN ARGENZIANO: Oh, I'm sorry. Go right ahead.

MS. BROOKS: Issue Number 16 has been resolved.

CHAIRMAN ARGENZIANO: Okay. That's always nice to hear. Okay. That's 16? Timisha, did you say 16?

MS. BROOKS: Yes.

CHAIRMAN ARGENZIANO: Okay. Thank you. Okay. I think we're ready to move into opening remarks. Yes. Go right ahead. I'm sorry.

MR. SAVAGE: Good morning again, Chairman and Commissioners. My name is Chris Savage, and I'll be trying to do a brief opening for Bright House.

I've been trying to think what's the best analogy of what this case is like and I came up with the following. I think we've all had the experience of

going and buying a new car; right? And you buy a new car and it's been a while and it's great. You know, it's got the better steering and the GPS and the better sound system and it's tremendous, and you drive it and you build it into your life and that's wonderful.

That's kind of where we were back in 1995 and 1996 when the Florida Legislature and then the Federal Legislature changed the rules and enabled and encouraged competition in the telephone business. And it was great. You know, I had a full head of hair back then. But, you know, we were, we were actually doing new and exciting and tremendous things, changing the way this whole industry works, and in a way we still are. But, you know, it's like when you have a new car and you drive it for a while and you drive it for a while, you know, it's hard to start and maybe shimmies a little bit when you're driving along, and what you find is even the greatest new car needs maintenance and needs a tuneup. You've got to change the oil, you've got to rotate the tires, maybe if you've been driving on bumpy roads, you've got to fix something in the suspension. And that's what's going on in this case.

Yes, we are kind of, sort of breaking new ground on a couple of things and we'll get to that, but fundamentally competition in Tampa, Florida, the Tampa

area where we operate is working okay. You know, we've got hundreds of thousands of customers, Verizon has hundreds of thousands of customers, still more, but, you know, it's working but it's not working perfectly. And the interconnection agreement that we're operating under today was actually originally entered into in 1997, and we adopted it and we've operated under it for a while, but it's time to tune up a few things.

Now at a high level here are the things that we understand need to be tuned up. And before I get into the details, let me just say on the record that it may have taken us a little while to get to where we are, but I'd like to compliment someone who is not here, which is Verizon's negotiator, Mr. Bill Carnell. He and I have worked very closely over the last six months, seven months, sort of grinding out the issues. And, you know, when we filed, we had 60 or 70 things in contention and now we're down to about a dozen. And obviously we have some real disagreements, but, as I say, I think the negotiation process has worked well. And we're hopeful before the briefing is done that we can get you some more off the table.

But that said, what's on the table? What we've got here is a way of competing that is not exactly what everybody had in mind back in '96 when they wrote

this law. People are excited about it, it's working. But what that means is there are a few issues in this case where you've got to take the basic principles that were established in '96 and '97 in FCC decisions and court cases and apply them to a slightly different picture, a slightly different way of doing the competitive process than may have existed before.

So, you know, one of the things you're going to hear about in the briefing is whether or not if Bright House buys facilities from its network to a point of interconnection with Verizon, are those facilities priced at their tariff rates, which are relatively high, or at a standard called the TELRIC standard, which is relatively low? Well, we buy them and we like them to be at the lower standard and we think we're right about that. But the facilities that are in question as between us aren't the ones that, you know, MCI and Verizon fought about back in '98 and '99. It's a slightly different network configuration.

Or to give another example, we don't really buy anything from Verizon to resale, although there's a small resale issue in this case. We don't buy piece parts of their network. We have our own network. And so the competitive flashpoint between us isn't whether they'll sell us an unbundled loop or whether they'll do

this or that. The competitive flashpoint between us always has to do with a process by which a customer moves from one carrier to the other.

And so over the years, if you go back into your own records you'll find we've been here when they -- we were mad at them for delaying their, their porting of numbers. We were mad at them for charging us for directory listings when a customer transferred when we thought they shouldn't. We were mad at them because when a customer was transferring, they would do marketing to that customer they shouldn't do. The issues are very much focused on what happens when one of us wins a customer and the other one loses a customer. And there's a whole issue in this case where we believe that needs to be very carefully laid out in the contract, and for various reasons Verizon seems not to think so.

But those are problems that are different than the problems that the old style CLECs had. And so again that's kind of, you know, the point. It's not, it's not that we're asking you to declare a new principle of law, but we are asking you in a couple of cases to look at the way competition has actually developed and apply the old principle of law to the new situation.

So what are the issues in dispute? At a very

high level they are as follows. We've got a couple of -- an issue about a very technical contract issue you may not even hear about until the briefs. We've got a fundamental contract issue where as we read Verizon's proposed language, this is Issue Number 7, as we read Verizon's language, they want to assert the right to walk away from this contract any time they want. We don't think that's right. They have a different take on it, but that's what it looks like to us and we're very, very concerned about that.

On the technical side we have a dispute about when and whether we would be entitled to interconnect our networks at a very high data rate as compared to the lower data rate that Verizon seems to prefer. We have an issue about pricing -- this tariff versus TELRIC pricing I had already mentioned.

We have an issue about -- well, it's a very technical issue about a resale matter that we'll get to in the briefing and probably in the hearing. And then probably the most immediate and direct impact on consumers, we have an issue about how you define what traffic we exchange is essentially rated as local and therefore exchanged at a relatively low rate versus rated as a toll call and therefore exchanged at a relatively high rate.

We have a proposal that we believe is consistent with the most recent FCC decisions relating to this topic, but this is a little different than the way Verizon has traditionally done it, and they obviously don't, don't like that. We believe that our proposal, which would lower the rate that a carrier pays to its competitor if they don't charge their end users a toll, actually will have the effect of encouraging both carriers to offer broader and better local calling areas to all consumers in their service area. So all of this is going to be briefed, we're going to talk about it in great detail.

Our case is going to be put on by two witnesses. Our first witness is going to be Mr. Tim Gates. Mr. Gates has been a member of the telecom industry since 1982 when he started working, I believe, for the Oregon Public Utilities Commission, a long and distinguished career. He now lives and works in Tampa, Florida. And so in addition to his vast experience, he sees first-hand every day the competition between Verizon and Bright House.

Our other witness will be Ms. Marva Johnson, who is a Vice President at Bright House. She had been in other CLECs earlier in her career, works now -- worked for Bright House the CLEC for a certain number of

years, and has now been promoted to the parent company, although she retains responsibility for the industry relations and has been intimately involved in working with us in this case.

So that's, that's pretty much it. Again, it's not -- we're not asking you to remake the world. Competition is there, it's happening, but it does need to be tuned up in a few ways that we're going to talk about today and then much more extensively in the briefs. Thank you.

CHAIRMAN ARGENZIANO: Thank you.

Mr. O'Roark.

MR. O'ROARK: Madam Chairman, Commissioners, again, good morning.

CHAIRMAN ARGENZIANO: Good morning.

MR. O'ROARK: This arbitration shows how much change there has been in the Florida market in the last several years. This is not like the typical case that you would have seen a few years back between an ILEC and a small CLEC that was trying to gain a foothold in the market.

In this case, Bright House is a major player in Central Florida that has hundreds of thousands of residential VoIP telephone customers. As I believe Mr. Savage just said, Bright House provides service

using its own facilities. So the main reason that it needs an interconnection agreement with Verizon is to set up the interconnection arrangements so our customers can call each other. That ought to be -- you need the -- if the networks don't interconnect, if I'm a Bright House customer and I want to call a Verizon customer, I can't do it. There's no way to get there. This interconnection agreement will enable that to happen, and as it has been happening for the last several years. That should be a pretty straightforward proposition. But Bright House is attempting to use this proceeding to gain unfair competitive advantages, to shift its costs to Verizon, and to win arbitrage opportunities.

Madam Chairman, with your permission, I'm going to approach the diagram over there. And I tell you what I'll do; I've made some extra copies. I know that the diagram is a little ways away from you. Just in case you have trouble seeing it, you'll have something in front of you.

CHAIRMAN ARGENZIANO: That, that would be great. Thank you.

MR. O'ROARK: Now as you're looking at the diagram, you'll see at the bottom left something marked BH Cable or, in other words, Bright House Cable. That

is the company that provides retail service to VoIP telephone customers, broadband customers and, of course, cable customers. Those customers are shown in the cloud at the bottom.

Bright House Cable is not a party to this case. It is not regulated by the Commission. Its telephone traffic is handled by Bright House Networks, the CLEC, which is shown in the rectangle here. The CLEC handles only traffic that either is coming from or going to Bright House customers.

Now what this diagram is intended to do is to kind of walk you through how Bright House interconnects with interexchange carriers shown as IXCs here. In other words, long distance companies.

Now the first thing that you'll notice is that the CLEC has direct interconnection with some IXCs so that in some cases if you're a Bright House customer, you pick up the phone, make a call, that call never touches Verizon's network. It goes straight to the IXC and then on to Dallas or wherever it's going.

In other instances, Bright House establishes an indirect interconnection with IXCs, and one of the ways that Bright House can do that is through Verizon's tandems. So if you take a call, say, that is coming from Dallas and it's going to come through one of those

IXCs with which Bright House has established indirect interconnection, this kind of shows the call flow of that call coming from Dallas to a Bright House customer in Tampa. So you'll see that the call would come in from that IXC and it goes to one of two tandem switches located in Verizon's tandem office in Tampa.

From there, that call from Dallas goes to Bright House, and it can go there through one of three ways. Because you'll see that Bright House has established three collocations in Verizon offices. One of them right there at the tandem, two of them at other Verizon end offices. Verizon has about 85 end offices. These are just two of them. And you'll see that you've got the lines from the switches to the collocations are in the little bit heavier, heavier arrows there. Those are what are known as access toll connecting trunks, and we're going to be talking about those today because those are in dispute.

You'll see from the tandem to the, from the tandem switch to the collocation, there's short arrows. Really those are just cross-connects, relatively inexpensive. The bigger issue here are the access toll connecting trunks that go from the tandem switch to the end of office collocations going some distance. Today, Bright House buys those facilities out of the Verizon

access tariff.

Once that call makes it to the collocation, it is then routed on to Bright House's fiber ring. The fiber ring connects the collocations to each other and the collocations to the Bright House switch with the Bright House CLEC. And then the call goes from the CLEC to Bright House Cable and then down to the end user customers. That's how that call flows. I go through that with you to try to give you the picture of the traffic that, relating to a couple of the issues in this case.

One of those issues that Mr. Savage referred to as Issue 24, Issue 24 concerns whether Verizon was providing facilities from Bright House's network to the point of interconnection at TELRIC. And TELRIC is a rate that is lower than the rates that are in our access tariffs.

The point of interconnection is the place where our networks physically link. So looking at the diagram, the points of interconnection that we've established are the offices where the three collocations are. That's where the traffic is, is handled.

In Bright House's direct testimony, Bright House said, you know, for the current interconnection configuration Issue 24 is resolved. And that makes

sense because if you look at it, from the Bright House network to each of the collocations, to the offices where Bright House is collocated, Bright House already has facilities. It doesn't need Verizon facilities.

In its rebuttal testimony, Bright House came up with a new theory. The theory was that Bright House should be able to connect those end office collocations to our tandems. Again, we're going back to those heavy arrowed lines. Those are the access toll connecting trunks that Bright House is buying out of our tariff today. It now says in its rebuttal testimony, you know what, we should get those at TELRIC. And we disagree, no surprise.

Bright House uses the access toll connecting trunks exclusively for IXC traffic, it is using those trunks to establish an indirect connection with IXCs. This is not traffic that is being exchanged between Bright House customers and Verizon customers. These facilities have always been tariffed, they have never been priced at TELRIC by the FCC, by this Commission or, to our knowledge, by anyone else. And as a practical matter, Bright House has an easy way out here because you'll see that Bright House has a collocation at the tandem office. And so if it wants, it could route all this traffic through the cross-connect going to, to that

office and it wouldn't have to route any of the traffic over the access toll connecting trunks going to the end office.

One other issue I want to touch on briefly, and that's Issue 36B. It's yet another theory about access toll connecting trunks. Under this theory, Bright House says it shouldn't have to pay for them at all. The issue involves something called the meet point. The meet point is the point where local carriers that are jointly providing switched access service hand off traffic to one another. The meet point is a term that predates the Telecom Act and it arises out of the access regime. The meet point is different than the point of interconnection. The point of interconnection again is the point where the networks physically link and exchange traffic.

Under the parties' current arrangement, by agreement the meet point is at the tandem switch ports. And so what happens is the IXC traffic comes in, Verizon switches it at its tandem, and Verizon bills the IXC for performing that function. Verizon hands the traffic off to Bright House, Bright House then transports the traffic, switches it and terminates it, and Bright House bills the IXC itself for that traffic.

What Bright House is asking the Commission to

sanction is another new, unprecedented theory that would enable Bright House to force Verizon to move the meet point down to the end office collocations.

CHAIRMAN ARGENZIANO: Mr. O'Roark, you're out of time.

MR. O'ROARK: Okay. Thank you.

CHAIRMAN ARGENZIANO: Mr. Savage.

MR. SAVAGE: Yeah. I have, it's a procedural question. I'm not sure what the evidentiary status of this thing is. I mean, we had not seen this before today. I didn't want to interrupt Mr. O'Roark's presentation. Listening to his discussion and conferring with my witness, I mean, there's some technical issues. We would have objected to this had it been presented as a demonstrative, as a demonstrative exhibit in advance, or at least wanted some clarification. And I'm wondering if -- I mean, I could either mention a few things or have my witness talk to it, but since we hadn't seen this before, I'm a little --

CHAIRMAN ARGENZIANO: Okay. Let me ask staff, can we --

MS. HELTON: I took it as a demonstrative exhibit. But I do think, and I haven't checked the prehearing -- or Order Establishing Procedure lately,

but I think it requests parties who are going to use a demonstrative exhibit to seek permission from the Commission beforehand.

If, Madam Chairman, if you can give me a minute, I'll pull an Order Establishing Procedure.

CHAIRMAN ARGENZIANO: Absolutely. We'll take a minute or two.

(Pause.)

COMMISSIONER SKOP: Ms. Helton, it's on Page 6 on Subsection E.

MS. HELTON: Thank you, Commissioner. I came down here realizing -- or just realized I don't have one. May I borrow that from you for a minute?

COMMISSIONER SKOP: You may.

(Pause.)

MS. HELTON: Commissioner Skop is correct. On Page 6 of the Order Establishing Procedure, in Section E, it says that, "If a party wishes to use a demonstrative exhibit or other demonstrative tools at hearing, such materials must be identified by the time of the Prehearing Conference." And I don't --

MR. O'ROARK: Madam Chairman, I apologize. I did not realize that requirement was there. I did not identify this exhibit at the Prehearing Conference.

CHAIRMAN ARGENZIANO: Okay.

MR. O'ROARK: And I'm willing to -- whatever is appropriate to remedy that, we will certainly do.

MS. HELTON: Well, if --

MR. SAVAGE: Your Honor, if I may, I don't have any -- I mean, I think it's convenient to have a chart. I don't have any objection to it in general.

CHAIRMAN ARGENZIANO: You just want to make some points.

MR. SAVAGE: Yeah. I'd like to address a couple of things about it and then perhaps have my witness be able to discuss it as well.

MS. HELTON: That seems to be appropriate, Madam Chairman, if that meets your will.

CHAIRMAN ARGENZIANO: Okay. Commissioners, any problems with doing so?

Mr. Savage, go right ahead.

MR. SAVAGE: If I can make this work. It's already on? Wow, great.

Just a few points that, I mean, we can get testimony on, at sort of a high level this is right, but obviously the devil is in the details as it relates to a few of these things.

The first is the dark lines -- and there's testimony on this, we'll be able to brief it, but there's a distinction that's important in the industry

between a facility and a trunk. Probably the easiest analogy is think of a facility as a big blank expanse of concrete highway with nothing on it. That's the facility. Then you draw the lane lines and the lane lines are the trunks.

What we pay Verizon for is a facility. And it's true that the kind of trunks that are presently going over that facility are called access toll connecting trunks, but what we're paying them for is what's called a special access facility today. And the reason that matters is, when we get into the briefing, the FCC has rules about the prices that apply to the purchase of facilities. And so our understanding is that these facilities are subject to the lower pricing rule rather than the higher pricing rule. So the distinction between facilities and trunks matters, and by calling this the trunks, it slightly obscures that issue. I don't know that Verizon would disagree with that characterization, but I want it to be clear at the beginning.

The second piece that I'd want to mention is the notion of us using these for free under one of our alternative proposals. Again, this is in the testimony. But to be clear, right now when a long distance carrier buys the service to go from its location, you know,

through Verizon network and off to us, we charge the interexchange carrier for the service starting from here all the way down to the end. Under our proposal, we wouldn't pay Verizon for this, but Verizon would charge the IXC for it. So there's no issue of, at least in our mind, of us trying to get something for free or someone not getting paid. It's a question of who charges who for the use of the facility that's out there.

So with that clarification, that was my, my primary concern. We can get into it in the cross and direct, if need be, but I wanted to make it clear at the outset. But I think it's a convenient chart with those comparisons and I won't object to it being here.

CHAIRMAN ARGENZIANO: Thank you.

MR. SAVAGE: Thank you. I appreciate it.

CHAIRMAN ARGENZIANO: Any questions? If not, we'll move on to witnesses.

MR. SAVAGE: Great. Then if Mr. Gates could take the stand.

CHAIRMAN ARGENZIANO: Mr. Gates, welcome.

COMMISSIONER STEVENS: Have you sworn the witnesses in?

CHAIRMAN ARGENZIANO: No, we have not. So let's do that. Thank you. Good thing. We would have done it eventually, but it's better to do it now.

All witnesses, if you would stand and raise your right hand. Is that everybody?

(Witnesses collectively sworn.)

Did I hear everybody? Okay. Thank you. All right. Now we can proceed. Thank you, Commissioner Stevens.

MS. BROOKS: Excuse me, Madam Chair.

CHAIRMAN ARGENZIANO: Yes.

MS. BROOKS: We needed to know whether or not Verizon is going to mark this as an exhibit or are we going to acknowledge this as an exhibit?

CHAIRMAN ARGENZIANO: I believe that -- was that your intention?

MR. O'ROARK: We would like to mark this as -- and I believe it would be Exhibit 22.

MS. BROOKS: Yes.

CHAIRMAN ARGENZIANO: Okay. So that is Number 22.

(Exhibit 22 marked for identification.)

MS. BROOKS: Thank you.

CHAIRMAN ARGENZIANO: Thank you. Anybody else?

Okay. Mr. Gates.

MR. SAVAGE: And a procedural question. I -- given what we've stipulated to, and I'd just defer to

the staff on this, do we need to formally move the testimony into evidence still or has that been deemed stipulated?

MS. BROOKS: On the exhibit list is all the testimony. We are believing that any remaining identified exhibits will be proffered by the parties at the time that their witnesses are testifying. Does that answer your question, Mr. Savage?

MR. SAVAGE: I think so.

MS. HELTON: You'll need to insert the testimony into the record, identify the exhibits associated with that testimony at the time he is called, and then at the end of his testimony, after his cross-examination, move his exhibits into the record.

MR. SAVAGE: Okay. Well, that's great then.

TIMOTHY J. GATES

was called as a witness on behalf of Bright House Networks Information Services (Florida), LLC, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SAVAGE:

Q. Well, then, Mr. Gates, good morning.

A. Good morning.

Q. Could you briefly state your name and business address for the record?

A. Yes. My name is Timothy J. Gates. My business address is 10451 Gooseberry Court, Trinity, Florida 34655.

Q. And did you cause to be prepared and filed in this case a document called the Direct Testimony of Timothy J. Gates, and then -- on March 26th, 2010, and then a document called the Rebuttal Testimony of Timothy J. Gates on April 16th, 2010?

A. Yes, I did.

Q. And connected to your direct testimony I believe you had Exhibit TCG-1 (sic.), which was your CV; is that correct?

A. Yes.

Q. And TCG-2 (sic.), which was an issues list with contract provisions?

A. That's correct.

Q. And then TCG-3 (sic.) was a red-lined version of the then current interconnection agreement?

A. Yes.

Q. The current -- I say then current -- then currently being negotiated interconnection agreement.

A. Yes. With edits.

Q. And then attached to your rebuttal testimony, I believe, we had TGC-4 (sic.), which was our version of this little chart. And then -- is that correct?

A. Yes.

Q. Okay. And I'll need to remind you, although I'm sure you know, you have to state your answers so the transcript can reflect them.

A. Okay. Thank you.

Q. Exhibit TGC-5 (sic.) is a document called the MECAB, M-E-C-A-B, document; is that right?

A. Yes.

Q. Number 6 was the MECOD, M-E-C-O-D, document.

A. That's correct.

Q. And then Exhibit 7 was Bright House's proposed language for this meet point billing issue we were just discussing.

A. Correct.

(Exhibits 15 through 21 marked for identification.)

BY MR. SAVAGE:

Q. Okay. Now do you have any corrections or additions that you need to make at this time to your prefiled either direct or rebuttal testimony?

A. I do. I have four corrections to my direct and one correction for my rebuttal.

The first correction on my direct appears at Page 15. At the bottom of the page at Line 22, please strike the word "is," the second occurrence of that word

three words -- it's three words from the end of the sentence. So that that sentence fragment would read, "The basic idea is that a network gets more."

And then on Page 73 at Line 13 where I cite the CFR, that should be 51.505(b)(1). So strike the comma and replace it with a period.

And then on Page 77, at Line 19, that same issue, that should be 0.0007, not zero comma.

And finally on Page 79, and this one is more substantive than typographical, in the footnote, Number 40, where I cite to the local competition order, that should be Paragraph 625, not Paragraph 300.

And then in my rebuttal testimony I have one change at Page 56. Page 56, Line 2, the word "provider" should be "provides." So it should read "exchange carriers provides." Those are my only changes.

Q. So with those changes and corrections, if you were asked the same questions set out today, would your answers be the same as stated in your prefiled testimony?

A. Yes, they would.

Q. And do you adopt this prefiled testimony as your direct and rebuttal testimony in this proceeding?

A. I do.

(REPORTER'S NOTE: For ease of the record, the

prefiled direct and rebuttal testimony of Timothy J. Gates is inserted.)

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry Court, Trinity, Florida 34655.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in traditional and non-traditional utility industries, econometric analysis and computer-aided modeling. QSI provides consulting services for regulated utilities, competitive providers, government agencies (including public utility commissions, attorneys general and consumer councils) and industry organizations. I currently serve as Senior Vice President.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree, with an emphasis in Finance and Quantitative Methods, from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I have also attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. Exhibit TJG-1 contains a complete summary of my work experience and education.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION ("COMMISSION")?

A. Yes. I testified in the following Commission Dockets: Case No. 000475-TP, Docket Nos. 050119-TP/050125-TP, Docket No. 031047-TP, Docket No. 000084-TP, Docket No. 000907, and Docket No. 930330-TP. In addition, I have testified more than 200 times in 45 states and Puerto Rico, and filed comments with the Federal Communications Commission ("FCC") on various public policy issues including costing, pricing, local entry, universal service, strategic planning, mergers and network issues. .

Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?

A. Yes. I have participated in dozens of arbitrations since the 1996 amendments to the Communications Act of 1934 ("Act")[1] were enacted. I am knowledgeable about the interconnection and business practice issues addressed in this testimony arising from the obligations imposed by federal and state law.

Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?

A. I am submitting this testimony on behalf of Bright House Networks Information Services (Florida), LLC, which I will refer to here as "Bright House." At times I will need to refer to Bright House's affiliated provider of cable television and Voice-over-Internet-Protocol ("VoIP") services. That entity's formal name is "Bright House Networks, LLC." I will refer to that entity as "BHN."

II. GENERAL ECONOMIC PRINCIPLES

Q. WHAT KEY ECONOMIC PRINCIPLES APPLY TO THE ISSUES IN THIS ARBITRATION?

A. All of my recommendations in this matter are based on a few simple but important economic principles:

- ***First,*** neither party to an interconnection agreement should be able to impose unnecessary costs on the other. Obviously the process of interconnection itself entails certain costs, some of which fairly and properly fall on each party. But neither party should be able to insist on interconnection arrangements that are costly to the other party ***for no good reason.*** As a

[1] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) ("Telecom Act" or "Act").

society, we want interconnection arrangements to be as efficient as possible; requiring needless expense is inconsistent with that goal.

- ***Second,*** interconnection arrangements should reflect the most efficient technical means for handling any particular situation, even if that that is not the technical arrangement currently in place for one of the parties. If a party can prevent an efficient arrangement simply because that party has not taken the time or effort to become efficient itself, the interconnection agreement will, in this respect, become a government-sanctioned transfer of wealth from the more efficient party to the less efficient party. A similar transfer of wealth will occur if the incumbent is allowed to force inefficiencies on the party with which it interconnects. Such inefficiencies do not make any economic sense and are not in the public interest.
- ***Third,*** it needs to be very clear that the incumbent's way of doing things is not necessarily the most efficient way of doing things. From an economic perspective the purpose of the Act is to enable and facilitate competition in traditionally monopolized telecommunications markets by removing economic and operational impediments.[2] Further, with the rapid pace of technological advances in transport and switching technologies, no rational provider would adopt the traditional technologies and methods of operation of the incumbent. Facilitating and enabling competition, therefore, necessarily requires analyzing interconnection and intercarrier compensation issues from

[2] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; **FIRST REPORT AND ORDER;** CC Docket No. 96-98; Released August 8, 1996; at ¶3. Hereinafter referred to as the FCC's "*Local Competition Order.*"

a forward-looking perspective in which the technology that is most efficient from a long-run economic cost perspective may not include the technology currently in use by the incumbent. It follows that "because the incumbent does it that way" is not a good argument in favor of a particular resolution of an issue; in many cases, in fact, it might be a good reason to reach the opposite conclusion.

- ***Fourth*** and finally, a recognition of the critical role that technological advance has played in contributing to economic welfare in the field of telecommunications justifies a preference for the result that favors, and enables, new technology that is readily available. There is no dispute that communications technology is a decreasing cost industry.[3] From an economic perspective, anyone who has a large sunk investment in a particular technical approach will rationally do whatever he can to prevent new technologies from making his technology obsolete. But this private interest in protecting existing investment from the forces of competition is directly contrary to the public interest in innovation and the deployment of new, more efficient technologies.

III. BACKGROUND ON THE DISPUTE

[3] Historical data tracked by the FCC shows that the consumer price index for telephone service has had a very low annual rate of change (only .1%) from 1998 to 2008, while the annual rate of change for the consumer price index for all items over the same period was 2.5%. See FCC Universal Service Monitoring Report, CC Docket No. 98-202, 2009 at Table 7.1. The relatively flat CPI for telephone service reflects, among other things, the huge advances in efficiencies for switching and transport technologies.

Q. BEFORE ADDRESSING THE SPECIFIC OPEN ISSUES IN THIS CASE, PLEASE GIVE AN OVERVIEW OF THE CONTEXT OF THIS DISPUTE BETWEEN BRIGHT HOUSE AND VERIZON.

A. It has been well over a decade since public policy in this country decisively shifted away from the idea of providing local telephone service by means of regulated monopolies and in favor of the idea of promoting competition for local service. The Act and the FCC recognized that competition was the best way to ensure that consumers benefit from lower prices, improved quality, and service innovation. The most dramatic embodiment of that shift was the Telecom Act, in which Congress established a national policy mandating competition and establishing the basic, minimum rules and procedures that would have to be followed nationwide in order to make local competition a reality. In fact, however, a number of states – including Florida – had already begun to modify their own statutory regimes to promote and encourage competition.

Q. DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR COMPETITION?

A. No. Back in 1995, when the final terms of the new federal law were being established (it was signed into law in early February 1996), nobody was really sure how, exactly, competition would develop. In the FCC's *Local Competition Order* the FCC discussed the Act's anticipated market entry methods.

> The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us

> to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities.[4]

Ideally, in the long run, competition would come from independent, separate networks that would serve their own customers using their own facilities, needing only relatively little "support" from the ILEC in order to be successful in the marketplace.

Q. DID THE FCC RECOGNIZE THAT THE CABLE COMPANIES MIGHT BUILD OUT TELECOMMUNICATIONS FACILITIES OVER TIME?

A. Yes. The FCC specifically referred to cable companies with their own networks, but still recognized the need for interconnection on "just, reasonable and nondiscriminatory terms to transport and terminate traffic originating on another carrier's network under reciprocal compensation arrangements."[5] In the short run, however, new entrants were expected to resell the ILEC services, to purchase unbundled network elements ("UNEs") as needed, to build-out their own networks, or some combination of all of these methods. Regardless of the method chosen, the networks must be interconnected to exchange traffic.

Q. PLEASE ADDRESS THE INTERCONNECTION REQUIREMENT.

A. To support and encourage competition, the Act contains clear rules requiring competing networks to interconnect and to support the exchange of traffic in

[4] *Local Competition Order* at ¶ 12.
[5] *Id.* at ¶ 13.

situations where customers of one network call customers of the other. Sections 251(b)(5) and (c)(2) require incumbents such as Verizon to enter into agreements that contain terms and conditions that are just, reasonable and nondiscriminatory to transport and terminate traffic to and from other providers such as Bright House.

Although direct network-to-network competition was the long-term goal, Congress recognized that in the short run competitors would almost certainly need to enter the market more using less expensive, more gradual means. Federal law, therefore, does not just mandate network interconnection as a means to enable competition. It also requires that the ILEC offer its services to CLECs at wholesale prices so that the CLEC can resell those services at retail, and requires the ILEC to "unbundle" its network when requested, *i.e.,* to offer piece-parts of its network separately so that CLECs can buy only the network elements they need to, in effect, fill in the gaps in the CLECs' own networks and be able to compete.

Q. IS IT POSSIBLE FOR THE STATES TO IMPOSE TERMS AND CONDITIONS THAT MIGHT GO BEYOND THOSE PRESCRIBED BY THE FCC?

A. Yes. The states may impose different or additional interconnection requirements as long as they are consistent with the Act and the FCC's rules. This makes sense because situations in individual states may vary, and because state regulators such as this Commission will know much more about conditions in their own states than the federal government would ever know. For these reasons, the Act

expressly permits states to impose obligations regarding interconnection in support of local competition that are consistent with, but may go beyond, the minimum obligations contained in federal law.[6]

Q. HOW DID THINGS ACTUALLY WORK OUT UNDER THIS THREE-PART PLAN TO OPEN NETWORKS TO COMPETITION?

A. I won't burden the record here with a detailed review of the ups and downs of competition since the passage of the Act. But at a high level, competition unfolded, broadly speaking, along the following lines:

Resale: Resale is the quickest and cheapest way to enter the market, but it provides very limited opportunities for the provider and for the consumer. The basic idea is that the ILEC will sell its services at a reduced, "wholesale" rate, to the reseller. The reseller then takes on the job of marketing the service, rendering individual retail customer bills, and collecting the money.[7] The advantage of this approach is that it doesn't require huge amounts of capital to get started and the reseller can get into the market quickly. But the disadvantages are formidable: sales and marketing costs can easily eat up relatively thin profit margins;[8] deciphering ILEC wholesale bills and rendering retail bills turned out to be more complicated and expensive than some may have thought; and, with thin profit margins, it only takes a small number of non-paying customers to result in losses

[6] *See*, for instance, *Local Competition Order* at ¶¶ 133- 137.

[7] I consider UNE Platform to be a form of resale. A UNE-P provider is simply reselling the complete service of the ILEC.

[8] Unless the rate has been changed in the last few years, Verizon's "avoided cost" wholesale discount in Florida is 13.04 percent.

for the reseller. But even if all of those challenges can be overcome, ultimately a reseller can never fundamentally challenge an ILEC because the only services the reseller can offer are the ILEC's own services under a different brand. It is not surprising that now, about a decade and a half into the competitive era, while any number of resellers continue to operate, and while the ILECs' resale obligation is important in the abstract, resellers are not, in fact, significant players in the local telephone marketplace.

Q. ARE YOU SUGGESTING THAT RESALE IS A SHORT-TERM ENTRY STRATEGY?

A. Yes. Resale is generally not thought of as a long-term solution because of the reliance upon the incumbent provider and the inability to distinguish the resold service from that of the underlying carrier. In addition, the reseller has no ability to cut its cost of telecommunications services relative to the retail rates of the incumbent from which it purchases services. No matter how well the CLEC manages its own business, and how efficient it becomes, it will still have the same narrow margin (e.g., 13.04%) upon which to meet its own costs and earn a profit. Clearly the reseller has no ability to impose any competitive threat or pressure on the underlying provider and, as such, cannot be considered effective competition.

Q. DOES THE WHOLESALE DISCOUNT IMPACT THE ABILITY OF THE RESELLER TO SUCCEED?

A. The amount of the wholesale discount can have a significant impact on the ability of resellers to succeed. If the discount is too small, then the reseller may not be

able to recover its marketing costs. I am not taking a position on the level of the Verizon wholesale discount in this proceeding.

Q. PLEASE DISCUSS THE USE OF UNBUNDLED NETWORK ELEMENTS OR "UNES" BY CLECS IN THE PROVISIONING OF SERVICE.

A. At the time the Act passed, there were already specialized competitors in some large markets that owned their own telephone switches (used to route traffic among other switches, and to and from individual customers) and sometimes extensive networks of optical fiber connected to large carrier and business customers. These carriers were referred to as competitive access providers, or CAPs. Generally speaking, the business focus of these entities was to provide connections between large business customers and independent long distance carriers (such as, at the time, AT&T and MCI) that were cheaper and more efficient than the connections available from ILECs. Since these entities already had some local facilities in place, they were viewed as strong potential competitors of the ILECs – if only they could obtain the missing network pieces needed to provide a complete end to end service. Given that these types of entities often had switches and some intermachine facilities in place, the most common missing piece was the "loop" – the industry's term for the connection from the "Class 5" switch out to an individual customer.

To facilitate competition from entities of this sort, the Act requires ILECs to provide access to "elements" of their networks on an "unbundled" basis – that is, CLECs are entitled to buy only the parts of the ILEC networks they need, without having to pay for the parts they don't. The FCC, following the rules set by

Congress, identified a number of different UNEs, such as loops, transport, switching, etc. that ILECs had to provide, and established a methodology for establishing the price of such elements.[9]

As noted, a common need for most CLECs was the local loop or "last mile", and a number of CLECs established themselves in the market by using their own switches to serve individual residence and business customers, with the links (UNE loops) to the customers provided by the ILEC.

Q. DO COMPETITORS USING UNE LOOPS (UNE-L CLECs) DO BETTER IN THE MARKET THAN RESELLERS?

A. A business model based on obtaining UNE loops from an ILEC provides more opportunities for the CLEC to differentiate its services, but this strategy comes with a significant cost. By virtue of the investment in switching facilities, the competitors can differentiate their services by offering new and different features and develop their own efficiencies in the provision of service. While the CLEC is still dependent upon the ILEC for the loop, at least part of the service is being provided directly through the CLEC's own investment. Over time, such competitive providers may deploy their own loops where economics support such a decision.

Q. CAN RELYING ON THE ILEC FOR THE LOOP RESULT IN DIFFICULTIES FOR THE CLEC?

[9] The list of available UNEs has changed over time based on FCC decisions, but the identification of the historical and currently available UNEs is not critical to the disputes in this proceeding.

A. Yes. Putting aside the normal competitive risks of any business, a UNE-L CLEC faces the critical problem of obtaining an essential element of its productive resource – its network – from its principal competitor. As the FCC correctly noted in the *Local Competition Order*, "An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers."[10] Despite these difficulties, UNE-L CLECs have provided, and continue to provide, a modicum of competition to the established ILECs in a number of markets.

Q. PLEASE DISCUSS THE IMPORTANCE OF CLEC OWNED NETWORKS.

A. Competition between interconnected, but stand-alone, networks is in many ways the competitive ideal. Separate, competing networks will be highly motivated to attract customers by offering better services at lower prices. In addition, because separate, stand-alone networks will almost certainly use somewhat different technologies to offer their services, there will be many more opportunities for innovative approaches to meeting consumer needs. This type of head-to-head competition between stand-alone networks is typically called "facilities-based

[10] *Id.* at ¶ 10.

competition," and encouraging this type of robust network-to-network rivalry is the ultimate objective of the Act.[11]

Q. DO FACILITIES-BASED COMPETITORS STILL NEED TO INTERCONNECT WITH THE INCUMBENT?

A. Yes. In this competitive model, the CLEC does not merely resell the ILEC's service, and is not dependent on the ILEC for network elements to offer its own services. Nevertheless, for this competitive model to work, the business, technical and operational terms on which the networks interconnect must be efficient, flexible, and consistent with modern technical advances, so that consumers can receive the full benefits of both parties' competitive efforts and investments. In this regard, while the established carriers like Verizon do have certain obligations regarding network interconnection that competitors like Bright House do not, a wide variety of network interconnection obligations are, in fact, mutual – that is, Bright House owes Verizon, in many respects, exactly the same duties that Verizon owes Bright House.

Q. IF BOTH CARRIERS BENEFIT FROM NETWORK INTERCONNECTION, WHY IS IT NECESSARY TO REGULATE INTERCONNECTION AT ALL?

A. There are several reasons. First, as noted above, the incumbent has no incentive to help its competitors take away customers. In fact, Verizon's incentives are just

[11] As the D.C. Circuit observed, one of the of the statute's principal purposes "is to stimulate competition" in local telephone markets – "preferably genuine, facilities-based competition." *United States Telecom Association v. FCC*, 359 F.3d 554,576 (D.C. Cir. 2004).

the opposite. The ILECs still have no incentive to work with the CLECs to exchange traffic on just, reasonable and nondiscriminatory terms. The Act and the FCC recognize this fact. As a result, regulation of interconnection is still required after all these years, and is probably a permanent feature of the telecommunications landscape.

Q. TELECOMMUNICATIONS SEEMS TO BE UNIQUE FROM THE STANDARD BUSINESS MODEL. WOULD YOU AGREE?

A. Yes. As Bright House noted in its arbitration petition, with most retail products or services, if a customer wants to switch suppliers, they just switch. Changing one's lawn service provider might be a good example. But in the phone business, the old provider has to help move the customer to the new one. Moreover, with most retail products or services, if a customer switches, the old supplier is simply out of the picture. But in the phone business, the old provider remains constantly involved, sending calls to, and receiving calls from, its own former customers. Because of this unusual but unavoidable continuing interaction among providers, for phone competition to work, competing providers have to cooperate behind the scenes, even though they are rivals and even though their economic incentive is to hinder, not help, each other. As a result, no matter how much retail competition there might be, regulation is needed to make sure that the critical behind-the-scenes cooperation actually occurs.

Second, there is a phenomenon referred to in the industry as "network effects," or, sometimes, as "Metcalfe's Law." The basic idea is that a network is gets more

and more valuable as more and more people are connected to it. A telephone "network" with only one phone attached is useless. Two phones is better, a thousand phones is a lot better, and a million is even better. To state the obvious, the value of a service is maximized if the customer can contact any other person on the PSTN or private networks. In competitive terms, though, this means that, other things being equal, whichever network is the biggest will be the most valuable, and the one to which consumers will want to be connected.

Q. DOES METCALFE'S LAW MEAN THAT THE INCUMBENT'S NETWORK WILL ALWAYS BE MORE VALUABLE AND PREFERRED OVER SMALLER NETWORKS?

A. Absent regulation that would undoubtedly be the case. Except in extremely unusual circumstances, as long as the existing, incumbent network is bigger than a competing network, the competing network won't be able to attract any customers – unless those customers can call, and be called by, the people connected to the existing network. Competition simply cannot develop if competing networks do not have a clear and unambiguous right to connect to, and exchange traffic with, the existing, incumbent network on terms that are fair and reasonable as an operational, technical, and financial matter. This is precisely why the Telecom Act of 1996 was required. Absent regulation, there would be no competition because the incumbents would exercise their market power and prevent entry.

Q. HOW HAS FACILITIES-BASED COMPETITION WORKED OUT IN PRACTICE SINCE THE PASSAGE OF THE ACT?

A. It has taken quite some time for real facilities-based competition to develop. After the passage of the Act, CLECs were numerous and investors were anticipating competition. During the early 2000s, however, the glow on the CLEC industry was tarnished by poor earnings, scores of bankruptcies, and FCC decisions that reduced the availability of UNEs. But now, about a decade-and-a-half after the passage of the Act, it appears that competing telephone companies affiliated with, or working with, cable operators have been able to use Internet technology (packet switching with Internet protocol) to provide meaningful competition to the traditional phone companies like Verizon – at least in the residential segment of the market where cable networks already naturally exist in order to provide video and other services. Although the precise figures are proprietary, discovery in this case shows that in the Tampa-St. Petersburg area in particular, where Bright House competes with Verizon, Bright House-supported VoIP service has captured a substantial share of the market.[12]

Q. HOW DOES THE INDUSTRY CONTEXT YOU HAVE JUST DESCRIBED RELATE TO THE ISSUES IN DISPUTE BETWEEN BRIGHT HOUSE AND VERIZON?

A. Several years ago, when Bright House entered the market in earnest, Bright House chose not to negotiate an entirely new interconnection agreement between itself

[12] I should also note that wireless service has also become increasingly viewed as a compliment to traditional ILEC landline service. Wireless networks were granted the same interconnection rights as landline CLECs under the 1996 Act, and as wireless providers have improved their coverage, and wireless phones have become increasingly appealing and sophisticated, wireless service has indeed begun to challenge traditional ILEC phone service for some customers. Basic service quality is not as good as landline (dead zones, dropped calls, etc.), but the benefits of mobility and handset features appear, for some customers at least, to be an adequate trade-off.

and Verizon. Instead, it used a statutory procedure typical for new entrants, which was to "adopt," or "opt into" an existing agreement that Verizon already had in place with another carrier[13] – in this case, the agreement that Verizon had used to interconnect with MCI, established before MCI was actually purchased by Verizon itself. That agreement had originally been partly negotiated and partly arbitrated as between GTE (Verizon's predecessor here in Florida) and AT&T, back when AT&T was an independent competitor; it was amended in various ways over time. This was fine as a way to get started, but many of the key terms of the agreement that Bright House adopted actually dated back to 1997. It was perfectly sensible for Bright House to choose to negotiate a new agreement, with terms that focused on its own business situation, and on the way that the market for local telephone service has actually evolved in the 21st Century.

Q. ARE YOU SUGGESTING THAT AT LEAST IN PART, THIS PROCEEDING IS FOCUSED ON CREATING AN ICA THAT MEETS THE BUSINESS NEEDS OF BRIGHT HOUSE AS OPPOSED TO THE PREVIOUS AGREEMENT WHICH WAS NEGOTIATED BY OTHER PARTIES?

A. Yes. Unlike most CLECs Bright House generally does not resell Verizon services or purchase UNEs. The issues in dispute reflect that new competitive

[13] *See*, Section 252(i). In 2004, the FCC replaced the "pick-and-choose" rule with an "all-or-nothing" rule. This meant that when a CLEC opted into an ICA that it had to opt into the entire agreement and not just certain terms and conditions. *See,* FCC 04-164, SECOND REPORT AND ORDER, Released: July 13, 2004.

reality. Whereas in 1997 or even 2000, an arbitration would often involve dozens of issues and sub-issues about the prices for UNEs, the appropriate discount to apply to different wholesale services, etc., Bright House's dispute with Verizon involves one discrete issue of resale policy and a few isolated issues relating to UNEs; the other issues all deal with the business or technical terms of interconnection and traffic exchange, with matters bearing on how to handle the transfer of customers from one carrier to the other, or business issues that relate to the nature of the parties' contractual relationship.

In other words, Bright House's disputes with Verizon are focused on what is needed to promote and enable full facilities-based competition for voice telephone service in Florida. The Commission should consider its decisions regarding the open issues from the perspective of permitting that type of competition to flourish.

IV ISSUES IN DISPUTE

Q. HOW MANY ISSUES ARE IN DISPUTE AT THIS TIME?

A. As of the date this testimony is being prepared, there are approximately forty-five (45) unresolved issues in this arbitration. I have addressed all but two of those issues in this testimony. The two issues I am not addressing are Issue 43 and Issue 44. Ms. Marva Johnson will address those issues specifically, and other issues as well. My understanding, however, is that the parties are engaged in ongoing negotiations so that issues that are now open may well be resolved as

time goes on. I will attempt to note any newly resolved issues in my rebuttal testimony.

Q. IS FORTY-FIVE A LARGE NUMBER OF OPEN ISSUES IN AN ARBITRATION PROCEEDING UNDER THE ACT?

A. No, not at all. Over the years since the statutory arbitration process has been established, it has not been uncommon for an arbitration between an ILEC such as Verizon Florida LLC ("Verizon") and a CLEC such as Bright House to involve well over a hundred separate open issues – sometimes more. Also, some issues which are separately identified are closely related and will be discussed together.

So, while it appears a bit laborious to address almost fifty issues, in fact the parties' disagreements in this proceeding are relatively limited and focused.

Q. HOW WILL YOU ADDRESS ISSUES YOUR TESTIMONY?

A. As noted above, I will at least touch on every open issue except for Issue 43 and Issue 44. In some cases I may note that an issue will also be addressed by another witness, or that it is primarily a matter for discussion in the company's briefs by its attorneys.

In an attempt to efficiently address the disputes, I will take certain issues "out of order" as compared to how they are presented in the issues list. The reason is that certain issues raise the same or very similar policy or practical concerns, and are

therefore logically grouped together, even though they do not always appear next to each other in the issues list.[14]

Issue 1

Issue #1: Should tariffed rates and associated terms apply to services ordered under or provided in accordance with the ICA?

Q. PLEASE DESCRIBE THE DISPUTE UNDERLYING ISSUE #1.

A. In raising these issues, Bright House was concerned that Verizon's draft language in the interconnection agreement ("ICA") was not sufficiently clear regarding when prices for functions under the agreement would be clear on the face of the ICA itself, as opposed to arising from Verizon's tariffs. As of the date of this direct testimony, however, I am told that the parties have reached agreement on a procedure by which they will identify essentially all the functions under the ICA that are of significance to Bright House and clarify the pricing of each such

[14] Exhibit TJG-2 is a chart indicating Bright House's current understanding of the particular contract sections that are implicated by each of the enumerated issues in dispute. Exhibit TJG-3 is a marked-up copy of the agreement, prepared by Bright House, showing what the parties have been negotiating. In that document, language that Bright House currently believes not to be in dispute appears in normal type, while Bright House's proposed changes, to which Verizon has not agreed, are indicated in the standard format for Microsoft Word's "Track Changes" feature. Please note that while Bright House has worked in good faith to accurately reflect the matters on which it has reached agreement with Verizon, and those where it has not, Verizon has not seen or approved this document, and in any event it does not fully reflect the results of various settlement discussions may not have been reflected with complete accuracy in the attached. I can state for certain that the parties' very recent settlements affecting Issue #1 and Issue #2 (definitive pricing), Issue #23 (directory listings) and Issue #25 (IP-based interconnection) have not been reflected in Exhibit TJG-3, although I do note those settlements in this testimony. I am attaching it as a convenient reference for most issues, not as an "authoritative" document. Bright House has assured me that they will work cooperatively with Verizon to ensure that, well in advance of the hearing in this matter, a "conformed" version of the draft ICA will be developed that accurately reflects, for the Commission and the Staff, the actual contractual language that is in dispute as the case moves forward.

function. The parties still disagree about the underlying principles to be applied in setting some rates – and I discuss that disagreement below – but the question of whether prices should be clearly specified in the ICA appears to have been resolved.

Q. DO YOU HAVE ANY FURTHER COMMENT ON THESE ISSUES?

A. Not at this time. The parties finalized their agreement only a few days prior to the filing of this testimony, so it is possible that some minor matters regarding this issue (e.g., specific contract language to reflect their agreement) may arise. If that occurs, I will address those issues in my rebuttal testimony.

Issue 45

Issue #45: Should Verizon's collocation terms be included in the ICA or should the ICA refer to Verizon's collocation tariffs?

Q. PLEASE DESCRIBE THE DISPUTE UNDERLYING ISSUE #45.

A. Verizon's draft ICA does not contain any specific terms, conditions, or prices relating to collocation. Instead, it simply refers to Verizon's interstate and intrastate tariffs. Bright House believes that the terms and conditions, including rates, of an important function such as collocation should be included in the ICA itself.

Q. WHAT PROBLEMS DO YOU SEE WITH VERIZON'S APPROACH?

A. Verizon's proposed language refers simultaneously to its interstate and intrastate collocation tariffs. Bright House has no idea whether those tariffs are the same as,

or materially different from, either the terms on which Bright House is obtaining collocation today, or even from each other. Moreover, the FCC, in discussing collocation provided to interconnecting carriers under the Act, expressly distinguished the type of collocation that was available under tariff from the type of collocation that is to be provided in accordance with the Act.[15] Bright House needs the opportunity to actually see what collocation terms and conditions Verizon is seeking to impose. Only then can the parties address and iron out any differences they may have.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #45?

A. The Commission should accept Bright House's position and require the parties to include specific language regarding collocation terms and conditions in the ICA itself. If the parties cannot resolve this issue before the Commission's ruling in this case, then that ruling should direct the parties to treat the collocation language as a dispute under the "Dispute Resolution" provisions in the General Terms and Conditions. Under those provisions, after a reasonable period of negotiations, either party may bring the dispute to the Commission for resolution. In the meantime, the Commission should rule that the terms and conditions applicable to Bright House's collocation arrangements today, under the parties' existing ICA, remain in force until new terms are established.

[15] *Local Competition Order at ¶¶ 565-569.*

Issues 2 and 11

Issue #2: **Should all charges under the ICA be expressly stated? If not, what payment obligations arise when a party renders a service to the other party for which the ICA does not specify a particular rate?**

Issue #11: **Should the ICA state that "ordering" a service does not mean a charge will apply?**

Q. PLEASE DESCRIBE THE DISPUTE UNDERLYING ISSUE #2.

A. Issue #2 is closely related to Issue #1, and the parties' agreement to identify the prices of all significant items in the ICA, in the main, settles Issue #2 as well. It is conceivable that the parties will encounter difficulties in agreeing on the specific contract language regarding the implementation of that settlement. If that occurs, I will address the issue in my rebuttal testimony.

A.

Q. IN ISSUE #11, AND IN PART IN ISSUE #2, BRIGHT HOUSE SEEMS CONCERNED WITH THE TERM "ORDER." PLEASE EXPLAIN.

A. It is common practice in the industry, and in the contract, to refer to one party "ordering" something from the other party. That language could be read to imply that the party placing the "order" understands or agrees that there is or should be a monetary charge for the function "ordered." Bright House wants it to be clear that no such implication or understanding is correct. This is addressed in its proposed Section 51.3 of the General Terms and Conditions. That said, assuming the parties are successful in specifying the prices applicable to particular functions, this issue will greatly diminish in importance

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUES #2 AND #11?

A. As noted, it appears that Issue #2 is settled, as it relates to the specific statement of prices. However, the Commission should include Bright House's proposed language for Section 51.3 of the General Terms and Conditions in the contract. It should also include the related language in certain other sections of the agreement.[16]

Issue 12

Issue #12: When the rate for a service is modified by the Florida Public Service Commission or the FCC, should the new rate be implemented and if so, how?

Q. WHAT IS THE UNDERLYING DISPUTE REGARDING ISSUE #12?

A. As discussed above, Bright House requires certainty as to terms and conditions without reference to tariffs. Consistent with that need, Bright House proposed to delete a Verizon provision that had the effect of suggesting that rates could be changed simply by Verizon filing a tariff governing them, without any negotiation with or input from Bright House.

Q. ARE YOU SUGGESTING THAT THE COMMISSION CANNOT CHANGE TARIFFED RATES?

A. No. Bright House accepts that the Commission has jurisdiction over Verizon's tariffs and over the terms and conditions of the new ICA. Bright House has

[16] *See* Exhibits TJG-2 and TJG-3.

modified its initial proposal to include the following language in the Pricing Attachment:

> 1.5 Except to the extent that Appendix A of this Pricing Attachment expressly and specifically states that a particular charge shall be as specified in a Party's tariff, no charge in Appendix A of this Pricing Attachment or any other provision of this Agreement shall be affected by any Tariff.
>
> 1.6 (a) Subject to sections 1.5 and 1.6(b) hereof, if, during the time that this Agreement is in effect, the Commission or the FCC establishes a rate for a function which is chargeable under this Agreement, then the newly established rate shall supersede the rate established in this Agreement.
>
> (b) The approval or establishment by the FCC or the Commission of a rate in a Party's tariff, or the allowing of such a rate to take effect without express approval or establishment by the FCC or the Commission, shall have no effect on any rate to be charged under this Agreement, except where this Agreement expressly states that the rate for a particular function or Service shall be as stated in a Party's tariff.

Verizon has not accepted this language – largely, I suspect, due to the parties' disagreement about the role of tariffs under the agreement. Nevertheless, this language recognizes the Commission's and the FCC's authority to set rates and allows for changes under the ICA. I recommend that the Commission adopt this language as a reasonable compromise.

Issue 7

Issue #7: Should Verizon be allowed to cease performing duties provided for in this agreement that are not required by applicable law?

Q. PLEASE DESCRIBE THE DISPUTE UNDERLYING ISSUE #7.

A. One of Bright House's concerns with Verizon's draft ICA is that in various respects that draft fails to specifically set out all the key terms and conditions under which Bright House will obtain the services and functions that the contract addresses. As noted above, the parties have resolved that problem as it relates to the pricing of functions to be provided under the ICA. However, Verizon's draft language is still deeply flawed as it relates to Verizon's basic obligation to perform its contractual obligations in the first place. This problem with Verizon's draft ICA language arises under this issue (Issue #7) and Issue #6. Verizon's approach eliminates the certainty required to run a business and will also result in disputes that could be avoided.

Q. WHERE IS THIS PROBLEM REFLECTED IN VERIZON'S DRAFT CONTRACT LANGUAGE?

A. This problem is reflected in Verizon's proposed Section 50 of the General Terms and Conditions, which is addressed here, under Issue #7. In Section 50, Verizon has proposed vague language relating to its obligation to continue to perform its contractual duties during the term of the contract. 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."

Verizon's proposed language for Section 50.1 is as follows:

> 50.1 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Verizon may terminate its offering and/or provision of any Service under this

Agreement upon thirty (30) days prior written notice to ***CLEC Acronym TE***.

Proposed Section 50.2 applies that general rule to a specific type of situation – compensation related to traffic.

Q. WHY IS VERIZON'S PROPOSAL NOT ACCEPTABLE?

A. "Applicable Law" refers to state and federal laws and regulations relating to the performance of the contract, and Verizon has to follow "Applicable Law." But "Applicable Law" does not deal with every detail of the actual implementation of interconnection. Indeed, part of the point of the contract negotiation/arbitration process is to flesh out particular details that are not, in fact, addressed by existing law or rules. As a result, many of the specific contractual obligations that matter to the actual implementation of the parties' interconnection relationship are not "required by Applicable Law."

Q. CAN YOU PROVIDE SOME EXAMPLES TO ILLUSTRATE THE PROBLEM YOU SUGGEST?

A. Yes. To give one example, the contract has a specific provision governing how Verizon will give formal "notice" to Bright House of actions relevant to the contract. But nothing in "Applicable Law" says anything about the details of that type of notice. Under Verizon's language in Section 50.1, however, Verizon could simply declare that in 30 days' time it would no longer follow those rules on notice. As another example, after some negotiation the parties' agreed on how to handle situations in which Bright House might want to assign the contract to

another entity in connection with a corporate reorganization or refinancing of its operations. "Applicable Law" says nothing about that issue, and under Verizon's proposed Section 50.1, again, Verizon could simply walk away from the obligations that the parties have negotiated.

But the problem with Verizon's language is actually even worse than that. As I noted above, probably the single most important function that Bright House and Verizon perform for each other under the contract is the termination of traffic coming from the other party. FCC rules indicate that Verizon must offer two different options to govern compensation for such traffic, and the parties have agreed which one they will use. But – precisely because there are different permissible options – neither of them can be said to be literally "required" by Applicable Law. Verizon's proposed Sections 50.1 and 50.2 would, apparently, give Verizon the right to renege on the traffic compensation deal the parties have already agreed to.

Q. ARE THERE ANY OTHER PROBLEMS WITH VERIZON'S PROPOSAL?

A. Yes. The parties recognize that the legal and regulatory context in which they are operating may change in important ways during the time that the contract is in effect. For this reason, they have included a "change in law" provision – which is completely standard in this type of contract. The actual provision is more detailed, but the crucial language is the first sentence of Section 4.6 of the General Terms and Conditions: "In the event of any Change in Applicable Law, the

Parties shall promptly 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." (If 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.)

In other words, if Applicable Law – the legal environment the parties assumed to exist when they negotiated the contract – actually ***changes***, then the parties already agree that they will get together to sort out what the change in law means for their contractual relationship. Since the situation of ***changes*** in applicable law is already covered by Section 4.6 of the General Terms, it is disconcerting that Verizon feels there is a need for its proposed Section 50.1. Verizon's proposal would allow it to either (a) ***unilaterally*** stop performing its contractual duties when applicable law changes – thereby evading the negotiation requirement in Section 4.6; or (b) ***unilaterally*** stop performing any of its contractual duties at all – even if the law has not changed – any time Verizon decides that something it agreed to in the contract is not specifically required of it by applicable law.

Verizon's proposed language is one-sided and unfair. It undermines the entire idea of a binding ICA. Basically, Verizon is saying that it gets to be the judge of what Applicable Law supposedly does or does not require and – notwithstanding its supposed contractual commitments – that it gets to simply walk away from any obligation it has agreed to unless, in Verizon's view, Applicable Law directly requires that obligation to be performed. This is inappropriate and should be rejected by the Commission.

Q. WHAT ABOUT THE SPECIFIC SITUATION THAT VERIZON ADDRESSES IN SECTION 50.2?

A. Section 50.2 specifically says that if Verizon is not required by Applicable Law to pay compensation to Bright House for the delivery of traffic to Bright House, Verizon can stop paying.

Q. IS IT REASONABLE FOR THE ICA TO ALLOW VERIZON TO STOP PAYING INTERCARRIER COMPENSATION?

A. No. First, as noted above, Verizon's asserted right to simply stop paying is not limited to situations in which some identifiable FCC or Commission ruling ***changes*** Verizon's current payment obligations. So Verizon could simply decide one day that payment is not required, and stop. Second, even if some new ruling is issued, the parties may not agree that the correct interpretation of the ruling is that Verizon is not required to pay compensation. By circumventing the requirement that the law ***change*** before Verizon can stop paying, and circumventing Verizon's obligation to negotiate about what to do about changes in law, Verizon would assume complete control over its obligation to pay for services it receives under the contract. Again, this is simply one-sided and unfair.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #7?

A. The Commission should reject Verizon's proposed Section 50. Verizon is entitled to renegotiate affected provisions in the contract if Applicable Law ***changes.***

Verizon is not entitled to cease performing its obligations under the contract just because Verizon's ***opinion*** about Applicable Law changeS, or just because it agreed to something that Applicable Law does not specifically address.

Issue 6

Issue #6: If during the term of this agreement Verizon becomes required to offer a service under the ICA, may the parties be required to enter into good faith negotiations concerning the implementation of that service?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #6?

A. Issue #6 relates to a provision that Verizon proposes to include in the General Terms and Conditions, and, in addition, in each substantive "Attachment" to the contract addressing a particular specific subject area. Verizon entitles this provision, in each case, "Good Faith Performance." What it says is this:

> If and, to the extent that, Verizon, prior to the Effective Date of this Agreement, has not provided in the State of [Florida] a Service offered under this Agreement, Verizon reserves the right to negotiate in good faith with [Bright House] reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such Service; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.

Depending on what Verizon means by this, it could be a serious problem for Bright House and its operations. As written, this language seems to qualify each and every one of Verizon's obligations under the contract. That is, even though the contract clearly says that Verizon has to do something, this language gives Verizon an "out" – if it has not previously performed that task in Florida, then –

its obligations elsewhere in the contract notwithstanding – Verizon doesn't really have to do it. Instead, Verizon gets to start the negotiation process all over again, to establish "reasonable terms and conditions (including, without limitation, rates and implementation timeframes)" for the function.

Q. IT SEEMS THAT THIS LANGUAGE WOULD RESULT IN MINI-ARBITRATIONS FOR ANY AND ALL SERVICES THAT VERIZON MAY NOT HAVE PROVIDED IN FLORIDA. IS THAT CORRECT?

A. I think that is a fair reading of the language. Bright House proposed to delete this language in the half-dozen places in which it appears in the contract. Bright House said that if there is anything in the proposed contract – a contract that Verizon itself drafted – that Verizon was not immediately prepared to provide in Florida, Verizon should identify those things ***now,*** so that actual "reasonable terms and conditions" could be worked out ***before the contract was signed.*** Verizon has refused to do so.

Q. WHAT IS VERIZON'S POSITION ON THIS ISSUE?

A. As I understand it, Verizon is concerned that if (for example) it is required by governing law to offer some particular network element, and agrees to do so in the contract, but has never actually provided that element in Florida, it should be permitted to negotiate the details of how that network element will be provided once a request for it is actually made.

Q. IS VERIZON'S POSITION REASONABLE?

A. No. While it is certainly reasonable to want to negotiate the details of how it will provide some service that it has never before provided, it is not reasonable to refuse Bright House's request to identify what specific items that Verizon is offering to provide in this contract would be subject to additional negotiation because they have not previously been provided in Florida.

Q. HAS VERIZON REFUSED TO IDENTIFY ITEMS IN THE ICA THAT IT HAS NOT PROVIDED IN FLORIDA?

A. Yes. And this refusal by Verizon is a real problem. How is Bright House supposed to know whether something Verizon promises in the contract – something Bright House might need in its operations – is really, actually available, if Verizon will not say?

Note that this language has nothing to do with some ***new*** obligation that might be imposed on Verizon by virtue of a change in law. As discussed earlier, the parties have agreed that if the law changes in a way that materially affects their obligations under the contract, they will sit down and negotiate what to do about it. Since that situation is covered by the change-in-law provision, Bright House is logically concerned that Verizon is trying to avoid the obligations it has agreed to, under existing law, in the contract as written. That is obviously unreasonable and inappropriate.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #6?

A. The Commission should reject Verizon's proposed language and delete it in each place that it appears in the draft.[17]

Issue 5

Issue #5: Is Verizon entitled to access Bright House's poles, ducts, conduits and rights-of-way?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #5?

A. Verizon seems confused about Bright House's regulatory status. Bright House is a CLEC. A CLEC has no obligation to make poles, ducts, conduits or rights-of-way that it might control available to an ILEC like Verizon. The statute that makes one entity's poles, etc., available to other entities (Section 224 of the Act) is focused on ensuring that entities that traditionally controlled such infrastructure – ILECs and power companies – make it available on reasonable terms to entities that traditionally have not controlled such infrastructure – CLECs and cable operators.

Q. HAVE YOU SEEN ILECS ATTEMPT TO GAIN ACCESS TO CLEC POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY IN IN OTHER ARBITRATIONS?

A. No.

Q. CAN YOU SPECULATE AS TO WHY VERIZON HAS RAISED THIS ISSUE?

[17] *See* Exhibits TJG-2 and TJG-3.

A. Generally I try to avoid speculation, but in order to try to add some clarity I will provide my insight into the dispute. Verizon's point seems to be that since Bright House has an affiliate that is a cable operator, and since Verizon now offers video services over its fiber optic "FiOS" service in competition with Bright House's cable affiliate, and since Verizon, in its role as an ILEC, is required by law make its poles, etc. available to CLECs and cable operators, then Bright House, a CLEC, should have to make its poles, etc., available to Verizon – presumably in support of Verizon's cable operations.

Q. IF THAT IS VERIZON'S REASONING FOR ITS PROPOSAL, DOES IT JUSTIFY THE PROPOSAL?

A. No. If this is indeed Verizon's position, it makes no sense. As noted, the relevant legal obligations regarding poles and conduits flow ***from*** the entities that have traditionally controlled the vast majority of this infrastructure ***to*** the entities that have not. In this regard, the FCC has ruled that states may not impose on CLECs, such as Bright House, obligations that the law imposes only on ILECs, such as Verizon.[18] While this rule literally only applies to the ILEC-specific duties contained in Section 251(c) of the Act, the policy underlying the rule is fully applicable here. Congress did impose certain duties only on ILECs, but it also established a process by which a carrier that is not literally an ILEC can be deemed to be one for purposes of Section 251, if the carrier has come to occupy a position in the market comparable to the position held by an ILEC.[19] The point of

[18] *See* 47 C.F.R. § 51.223(a).
[19] *See* 47 C.F.R. § 51.223(b); *Local Competition Order* at ¶ 1248.

this rule is that based on its traditional position in the market, certain obligations are appropriate to impose on an ILEC but not other carriers, unless those other carriers have achieved a market position akin to that of an ILEC. That is clearly not the case with Bright House in the Tampa/St. Petersburg area. Finally, in any event, a proceeding such as this one – an arbitration of network interconnection terms and conditions between two carriers – is not the place to sort out policy disputes regarding Verizon's cable service.

But, again, Verizon's real purpose here is not clear. We will have to await Verizon's testimony to understand it. In the meantime, I recommend that the Commission adopt Bright House's recommendation to delete this proposed contract provision.[20]

Issue 8

Issue #8: Should the ICA include terms that prohibit Verizon from selling its territory unless the buyer assumes the ICA?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #8?

A. Verizon has proposed contract language under which, if it sells all or a portion of the territory covered by the agreement (in this case, the Tampa/St. Petersburg area), then Verizon can simply terminate the contract on 90 days notice. Bright House has proposed language that requires Verizon to first obtain agreement from the entity purchasing the territory to be bound by the terms of the agreement. In effect, this proposal means that Verizon cannot sell its territory unless the buyer

[20] *See* Exhibits TJG-2 and TJG-3.

agrees to assume the terms of the ICA. Verizon is unwilling to accept Bright House's proposal.

Q. IS BRIGHT HOUSE'S PROPOSAL FAIR AND REASONABLE?

A. Yes. Bright House has undertaken the time and expense of negotiating (and now arbitrating) the terms of an agreement with Verizon to govern their interconnection arrangements in the Tampa/St. Petersburg area. Under Verizon's proposal, on 90 days notice the fruits of that effort will be completely undone – the contract terminated – if Verizon sells its operations in that area to a third party (such as AT&T, TDS, etc.). At that time Bright House would have no binding and effective interconnection agreement with either Verizon (if it still owned the territory for some period) or with the new owner. Its entire operation in the Tampa/St. Petersburg area – serving, indirectly, hundreds of thousands of end user customers – would be thrown into limbo.

Q. IF VERIZON WERE TO TELL BRIGHT HOUSE WHO THE POTENTIAL BUYER WAS, COULD BRIGHT HOUSE THEN SEEK TO EXTEND THE AGREEMENT WITH THE NEW BUYER?

A. I suppose Bright House could attempt such a task, but it would be akin to renegotiating the agreement with no guarantee of success. The new owner of the territory could take the position that it will not negotiate about the Tampa/St. Petersburg area until the sale closes. Note also that under applicable federal law, if the new owner and Bright House could not agree on an interconnection agreement, it would be necessary to arbitrate one – just as we are doing now – a

process that typically takes a minimum of 270 days, and sometimes much more. So for many months at least, Bright House would be in the position of operating with no binding contract between it and the new owner of the territory.

Q. MIGHT THE LACK OF AN ICA IMPACT CONSUMERS?

A. Yes. As one can see from the disputes in this case, there are many issues pending that could have a significant impact on Bright House's ability to offer service and its cost to offer service. Any changes in operations, terms and conditions, or other aspects of the business arrangement could impact the quality of service to consumers.

This is plainly unjust and unreasonable. Bright House should not be subject to such uncertainty and consumer services should not be put at risk. The Bright House position resolves these issues in a responsible manner that preserves the operating environment envisioned by the ICA that this Commission will approve.

Verizon is free to sell its territory, but as a condition of doing so, it must get the new buyer to agree to the terms of the existing contract between Verizon and Bright House.

Q. WHAT IS VERIZON'S JUSTIFICATION FOR REJECTING BRIGHT HOUSE'S PROPOSAL?

A. Verizon's reasoning is not clear. Verizon may claim that it will be harder to sell its territory if the buyer has to honor Verizon's contract with Bright House. But that just means that Verizon wants to profit, in the form of a higher sales price for

its territory, by virtue of imposing potentially very significant costs on Bright House and its customers when the new owner shows up and fails to honor the contract.

Q. COULD BRIGHT HOUSE INTERVENE IN ANY PROCEEDING RELATED TO THE SALE OF VERIZON'S SERVING TERRITORY AND ATTEMPT TO PROTECT THE ICA IN THAT MANNER?

A. Presumably it could, but that process would be time consuming and expensive for Bright House. There is no need to wait: Bright House knows that it will want the terms of its contract to be honored by any new owner and, once the Commission has resolved the open issues in this proceeding and approved the new contract, it would seem that the Commission as well would want these terms to be honored by the new owner. Moreover, proceedings to approve the sale of territory can be rushed and complicated matters, with the parties to the transaction and the Commission eager to get the deal closed. Even though Bright House's concern that its contract with Verizon continue to be honored is perfectly reasonable, in the context of a proceeding to approve the sale of Verizon's territory, it may appear that Bright House is trying to interfere with an otherwise reasonable deal, when all it is doing is trying to ensure that the terms and conditions it negotiated for, and arbitrated for, are not simply dissolved. Again, that potential result under Verizon's language seems completely unjust and unreasonable in light of Bright House's reasonable expectation that the terms of its ICA will be honored.

Q. MAY THE NEW OWNER NEGOTIATE NEW TERMS AND CONDITIONS WHEN THE ICA EXPIRES?

A. Of course. The new owner would also be able to exercise the other rights as established in the ICA while the ICA is in effect.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #8?

A. The Commission should adopt Bright House's proposed language which modifies Verizon's language, in Section 43.2 of the General Terms and Conditions regarding the sale or transfer of Verizon's territory.

Issue 16

Issue #16: Should Bright House be required to provide assurance of payment? If so, under what circumstances, and what remedies are available to Verizon if assurance of payment is not forthcoming?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #16?

A. Verizon has proposed to include language in the agreement, supposedly to protect Verizon in the case of Bright House encountering financial difficulties, in General Terms and Conditions Section 6. The terms, however, are one-sided and potentially oppressive. In light of the actual interconnection relationship between the parties – that is, their actual situation in the marketplace – Bright House has proposed to delete these provisions. As an alternative, Bright House has proposed

to make them mutual, that is, have them apply to Verizon as well as Bright House. Verizon has refused.

Q. WHAT IS THE BASIC IDEA BEHIND THE DISPUTED PROVISION?

A. In the past, Verizon has provided services to resellers and other types of CLECs whose business model required complete dependence on Verizon's own facilities and services in order to serve the CLECs' end users. As discussed above, that is a very challenging business model and in many cases these entities went bankrupt after Verizon had provided service to them for some time without getting paid. This is understandably frustrating to Verizon. The end user customer in such a situation was actually physically receiving service from Verizon, using Verizon's network like any other Verizon customer. And the end user customer may well have been paying his or her bills for the service. But the end user was paying their bills to the resale CLEC, not Verizon. If the resale CLEC stopped paying Verizon, then Verizon was left holding the bag. Requiring deposits, letters of credit or similar security from resellers who appeared to be in financial distress is not unreasonable.

Q. BUT YOU ARE OPPOSING THIS PROVISION FOR BRIGHT HOUSE?

A. Yes. Bright House is not a reseller, and, despite some reasonable billing disputes, pays its bills for services rendered. Bright House serves (indirectly) hundreds of thousands of end users in the Tampa/St. Petersburg area using its own facilities and those of its cable affiliate. Verizon interconnects with Bright House and indeed provides services to Bright House by terminating traffic from Bright

House's end users to Verizon's end users. Verizon's own end users call Bright House's end users as well, creating a situation in which Verizon routinely incurs substantial payment obligations to Bright House. That is, in the parties' business relationship – and completely unlike the situation with resellers – while Bright House does incur financial obligations to Verizon each month, Verizon also incurs very substantial financial obligations to Bright House each month.

Q. GIVEN THIS BUSINESS RELATIONSHIP, ARE YOU SUGGESTING THAT ANY ASSURANCE OF PAYMENT PROVISIONS BE SYMMETRICAL OR MUTUAL?

A. Yes. In these circumstances – with each party benefiting from interconnection to the other, and each party exposed to risk that the other might not pay its bills – a reciprocal arrangement might make sense. For instance, if a party were to be late in paying an amount of undisputed bills over a reasonable period such as six months or a year, then the other party could request a deposit or other security in an amount that reflected the other party's ***net*** financial exposure – that is, the amount the other party is owed, ***offset by*** the amount that the other party owes for the services it buys.

Q. IF A DEPOSIT OR LETTER OF CREDIT PROCESS WAS AN OPTION, HOW WOULD SUCH A REQUEST BE MADE?

A. If an assurance of payment process was put into place, it should have reasonable terms and conditions and include objective and verifiable grounds for requiring security that have some relationship to the magnitude of the problem. Some of

those grounds might include failure to pay a material amount of undisputed bills over a significant period of time. Of course these parameters would need to be well defined and based on verifiable information. Parties should never be permitted to demand security arrangements on the mere suspicion that the other party might be having financial troubles, as would be the case with Verizon's proposal. Giving one party the ability to impose potentially significant obligations on the other based on purely subjective criteria is an invitation to disputes and abuse.

Q. ARE THERE ANY OTHER PROBLEMS WITH VERIZON'S PROPOSED ASSURANCE OF PAYMENT LANGUAGE?

A. Yes. One of the most oppressive provisions of Verizon's proposed language states that, "Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as Bright House has provided Verizon with such assurance of payment." In other words, if Verizon asks for assurances of payment, it can immediately stop providing any services to Bright House – including the basic service of delivering calls from Bright House's end users to Verizon's end users – until the assurance of payment is established – even if the request is erroneous, unreasonable, or oppressive. This gives Verizon an almost unfettered right to interrupt Bright House's business and services to its customers. Such ability to unilaterally cut-off consumer services is not in the public interest.

Q. EVEN IF THE ASSURANCE OF PAYMENT DID NOT RESULT IN A CUT-OFF OF SERVICE, COULD THE PROCESS STILL HARM BRIGHT HOUSE?

A. Yes. If Verizon were successful in seeking a letter of credit or deposit, when none was required, it would take monies away from Bright House that could be used to expand service, invest in network facilities, improve or develop new services, etc. Tying up Bright House's resources with letters of credits or deposits, when such are not necessary, simply disadvantages one of Verizon's competitors.

Q. DO YOU BELIEVE THAT VERIZON WOULD ACTUALLY ABUSE BRIGHT HOUSE IN THAT WAY?

A. I don't know, but good public policy dictates that such potential outcomes be avoided and prevented.

My understanding is that Bright House and Verizon have made various proposals and counter-proposals to each other in order to resolve this matter, but to no avail. As a result, they may yet be able to settle this issue. In the meantime, I recommend that the Commission concur with Bright House and delete the entire "Assurance of Payment" provision from the proposed agreement. In the alternative, the Assurance of Payment language should be modified to apply to both parties.

Issue 21

Issue #21: What contractual limits should apply to the parties' use of information gained through their dealings with the other party?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #21?

A. During 2007 and 2008, Verizon and Bright House (along with other cable-affiliated CLECs) engaged in extensive litigation with Verizon regarding Verizon's use of Bright House's (and the other CLECs') confidential information ("ordering information").[21] Essentially, when Bright House would win a customer and place an order with Verizon to transfer the customer's telephone number and directory listing over to Bright House, Verizon would take that confidential information and use it to immediately start trying to win-back the customer or prevent the customer from leaving in the first place. Bright House argued that this was a violation of federal law, which requires a carrier receiving confidential information of this sort – here, the specific identities of customers who were leaving Verizon, along with the specific timing of their departure – to use that information ***only*** for the purpose for which it was supplied – here, to perform the administrative tasks associated with transferring the customer from one carrier to the other.

After litigation before the FCC (and, to some extent, here before this Commission), the FCC ruled against Verizon, finding that it violated the statute,

[21] *See* Bright House Networks, LLC *et al.* v. Verizon California, Inc., *et al.*, *Memorandum Opinion and Order*, 23 FCC Rcd 10704 (2008), *affirmed, Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

and the FCC's rules and rulings, regarding the use of this confidential information. Verizon took its case to federal court on an expedited basis – and, on an expedited basis, received a 3-0 ruling from the D.C. Circuit that the FCC was correct and that Verizon was wrong.

Q. WHAT IS THE RELEVANCE OF VERIZON'S BEHAVIOR REGARDING THE "RETENTION MARKETING" RULES FOR THIS ARBITRATION, AND FOR ISSUE #21?

A. At a high level, Verizon's behavior regarding retention marketing shows what can happen if the interconnection agreement gives Verizon the discretion to change its behavior merely because Verizon unilaterally changes its mind about what the law requires.

As regards Issue #16, Verizon's conduct underlying the retention marketing litigation illustrates just how vulnerable a CLEC can be to a Verizon decision to inappropriately use the confidential information that the CLEC must, as a practical matter, share with Verizon on a day-to-day basis as the parties compete in the marketplace and lose customers to each other. As a result, Bright House has proposed a number of provisions, largely but not entirely in Section 10 of the General Terms and Conditions and Sections 4.5 and 8 of the "Additional Services" attachment, that make Verizon's obligation to protect, and not abuse, Bright House's confidential information exceedingly clear.

Q. IN THESE CIRCUMSTANCES, WHAT DO YOU RECOMMEND THAT THE COMMISSION DO WITH RESPECT TO ISSUE #21?

A. I recommend that the Commission adopt Bright House's proposed language that clearly and strictly establishes Verizon's obligation to treat the information it receives from Bright House during the performance of the contract as confidential.[22]

Issue 13

Issue #13: What time limits should apply to the Parties' right to bill for services and dispute charges for billed services?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #13?

A. Bright House proposes to impose a reasonable time limitation that would apply to bills rendered under the agreement, and to disputes arising about those bills. Specifically, Bright House has proposed that if a party doesn't render a bill for a service for more than a year after the service was provided, then the party's right to bill for the service is waived. Similarly, if a party has a dispute it wants to raise about a bill that it has received (and already paid), the party must raise the dispute within a year after the bill is received.[23] Verizon has rejected these proposals, and wants there to be no time limit other than the applicable statute of limitations for claims under a contract (which, as I understand it, is 5 years in Florida) to either bill for services provided under the contract or raise disputes about bills it has already paid.

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[22] *See* Exhibits TJG-2 and TJG-3.

[23] Note that the parties agree that if a party wants to dispute a bill that it has received and withhold payment of the disputed amounts, it must raise the dispute by the date that payment of the bill would normally be due. The situation being addressed by Issue No. 13 is one in which a party has paid a bill already, but wants to come back after the fact and raise a dispute about it.

Q. WHY IS BRIGHT HOUSE'S PROPOSAL FAIR AND REASONABLE?

A. Bright House and Verizon exchange massive amounts of traffic every month – in excess of 25 million minutes of use. They each serve (directly or indirectly) hundreds of thousands of customers in the Tampa/St. Petersburg area. As a result, while the net amount that the parties owe each other in any given month may not be large in relation to the size of their respective overall business operations, the absolute amounts due from one party to the other are significant. But, regardless of the size of the bills, 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, with respect to its business. A year is more than sufficient time for a party to either bill for services it has provided or object to bills it has already paid. Many providers do not retain billing records past one year anyway, so it would be difficult after that period of time to resolve a billing dispute.

Q. IS VERIZON'S BEHAVIOR REGARDING RETENTION MARKETING, DISCUSSED ABOVE IN CONNECTION WITH ISSUE #21, RELEVANT HERE?

A. Yes, it is. As discussed above, one of the most troubling aspects of Verizon's behavior during the retention marketing dispute was the fact that after a decade of following the law, Verizon unilaterally changed its practices and started breaking the law. In the context of billing and bill protests, this suggests that years after

the fact, Verizon may choose to dispute payments from the past for some unknown reason.

Q. DO YOU CONCEDE THAT THERE MIGHT BE CIRCUMSTANCES WHERE A COMPANY MIGHT NOT EITHER BILL OR DISPUTE A BILL WITHIN ONE YEAR?

A. Yes. Companies do sometimes make legitimate mistakes and simply fail to bill for, or to protest bills for, services rendered. The question is, who should bear the burden of such mistakes? Bright House's proposal reasonably places that burden on the company that should have billed, or should have protested. Moreover, in light of Verizon's history, it is only fair and prudent to put some reasonable contractual limits on the degree of financial exposure that Bright House must bear. Bright House's proposed one-year limit on back-billing and bill protests strikes a fair and reasonable balance on this issue.

Q. IN LIGHT OF THESE CONSIDERATIONS, WHAT SHOULD THE COMMISSION DO WITH REGARD TO ISSUE #13?

A. The Commission should adopt Bright House's proposal to impose a reasonable, one-year limit on back-billing and after-the-fact bill protests.

Issue 20

Issue #20: **(a) What obligations, if any, does Verizon have to reconcile its network architecture with Bright House's?**

(b) What obligations, if any, does Bright House have to reconcile its network architecture with Verizon's?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #20?

A. Verizon proposes in Section 42 of the General Terms and Conditions, that Verizon retains the right to modify and upgrade its network over time. This is a reasonable provision. But Verizon then demands (unreasonably) that no matter what Verizon does to its network, or why, Bright House is completely responsible for absorbing any costs Verizon's actions might impose on Bright House. Bright House recommended that the language either be deleted, or be made mutual.

Q. IF THIS LANGUAGE IS INCLUDED, WHY IS IT IMPORTANT FOR IT TO BE MUTUAL?

A. First of all, it appears that Bright House, not Verizon, offers the technologically more advanced services which suggests that Bright House is investing in network upgrades. Second, both parties provide connectivity (directly or indirectly) to literally hundreds of thousands of customers in the Tampa/St. Petersburg area. Given that both parties are supporting a large portion of the market, it only makes sense that the provision be mutual. Each party should be free to modify and upgrade its network, and each party is obliged to accommodate, within its own network, the effects of the other party's upgrades. Verizon rejected this suggestion, leading to this dispute.[24]

Q. DO YOU HAVE ANY IDEA WHY VERIZON WANTS TO INCLUDE THIS PROVISION?

[24] I should note that Bright House has also proposed, at various points, either (a) deleting this provision of the agreement entirely or (b) deleting the last sentence of the provision, dealing with cost responsibility. Bright House would still accept either of those options.

A. As noted above, one type of competitor, more prominent in years past than today, relies heavily on UNEs from Verizon's own network to provide services. In this regard, the FCC has ruled, for example, that Verizon has to provide copper loops as UNEs, but is not required – at least in some circumstances – to provide fiber optic loops on an unbundled basis.[25] In that context, I can understand that Verizon would want to retain a right to upgrade its loops from copper to fiber, without having to bear the costs of the competitor in accommodating that change. Unfortunately, though, it appears that Verizon took this one concern, which it should have put somewhere in the section of the contract relating to UNEs, and generalized it to apply to any technology upgrade of any kind, in any circumstance.

Q. IS THERE ANY REASONABLE BASIS TO ACCEPT VERIZON'S PROPOSED LANGUAGE IN THE CONTEXT OF A FACILITIES-BASED CARRIER LIKE BRIGHT HOUSE, AS OPPOSED TO SOMETHING THAT IS LIMITED TO ITS RELATIONSHIP WITH UNE-BASED COMPETITORS?

A. No. While Verizon has certain obligations that apply only to ILECs, as a practical matter Bright House and Verizon stand are similarly situated in the Tampa/St. Petersburg area, each one with a very substantial base of end users and each one sending a massive amount of traffic to, and receiving a massive amount of traffic from, those end users. Verizon's position with respect to this issue seems to stem

[25] *See*, for instance, the FCC's Triennial Review Order at ¶ 273. (FCC 03-36; Released: August 21, 2003)

from a view that its network is the proverbial "800 pound gorilla" to which all other networks must defer. Even if that was true fourteen years ago when the Act was passed, it is not reasonable to take that stance now. The market has evolved to the point where, to the contrary, competing networks, such as Bright House, are sufficiently substantial and established that one can no longer simply assume that what Verizon does should be followed by, and accommodated by, other providers with which Verizon interconnects.

Q. DO YOU HAVE ANY ADDITIONAL POINTS REGARDING THIS ISSUE?

A. Yes. I find it interesting that Verizon objects to the notion that it might be called upon to spend money to modify its network to accommodate changes that Bright House might choose to make in ***its*** own operations. In fairness to Verizon, it is indeed disconcerting to think that the actions of a rival, physically distinct network, over which Verizon has no control, could nonetheless impose substantial costs on Verizon. But while Verizon recognizes that this seems odd and even unfair when ***Verizon*** might be the one required to respond, Verizon seems blind to the fact that this is exactly the burden it wants to impose on Bright House. As a result, if the Commission credits Verizon's worries that it would be unfair or unreasonable for Verizon to have to accommodate, at its own expense, changes in Bright House's network, it is equally unfair and unreasonable to expect Bright House to accommodate, at ***its*** own expense, changes in Verizon's network. In that case, the better course would be to adopt one of Bright House's alternative

proposals – either deleting the provision that deals with the assignment of cost responsibility, or deleting the entire contract section.

Q. WHICH POSITION SHOULD THE COMMISSION ADOPT WITH RESPECT TO ISSUE #20?

A. The Commission should either adopt Bright House's proposal to make proposed Section 42 of the General Terms and Conditions entirely mutual, or adopt one of Bright House's alternative suggestions noted just above.

Issue 22(a)

Issue #22: (a) Under what circumstances, if any, may Bright House use Verizon's Operations Support Systems for purposes other than the provision of telecommunications services to its customers?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #22(a)?

A. It is not clear that there is a real dispute at this time. The underlying issue relates to the fact that Bright House does not serve end user customers directly but, instead, provides wholesale telephone exchange services to its cable affiliate, BHN, which then uses those services to provide an unregulated interconnected VoIP service to end users.

Q. IS IT COMMON FOR AN INTERCONNECTED VOIP PROVIDER TO RECEIVE TELECOMMUNICATIONS SERVICES FROM A COMPANY LIKE BRIGHT HOUSE?

A. Yes. An interconnected VoIP service provider, like BHN, normally obtains telephone numbers and similar services from a wholesale provider – here, Bright House – on behalf of its end users.

Q. WHAT THEN IS THE CONCERN?

A. Bright House was concerned that Verizon might argue – based on the precise language of Verizon's draft contract – that Bright House was not entitled to have access to Verizon's Operations Support Systems (the computerized systems for handling service orders and related functions) in connection with Bright House's VoIP "end users" – the customers obtaining VoIP service from BHN. Specifically, Verizon's language provided as follows: "8.4.2: Verizon OSS Facilities may be accessed and used by [Bright House] only to provide Telecommunications Services to [Bright House] Customers." Bright House provides its telecommunications services to its affiliate – the interconnected VoIP provider – and not to individual end users directly. As a result, Bright House was concerned that Verizon might try to block Bright House's access to Verizon's OSS, on the theory that the language noted above barred the use of the OSS in connection with VoIP end users.

Q. WHY DO YOU SAY THAT THERE MAY NOT BE AN ACTUAL DISPUTE HERE?

A. As noted above, the parties have been negotiating solutions to a variety of their disputes as this arbitration has been ongoing. One of their areas of disagreement had to do with the language used to describe what kinds of traffic the parties

would exchange using their interconnection arrangements. Bright House was concerned that Verizon might take the position that the VoIP-originated traffic from its end users – the VoIP customers of Bright House's cable affiliate – was not proper for exchange under the agreement.

Q. HAVE THE PARTIES REACHED AN AGREEMENT ON THAT LANGUAGE?

A. It appears so. The parties were able to reach agreement on that language, and to agree that the fact that Bright House's end users were VoIP customers of Bright House's affiliate did not provide a basis for refusing to exchange the traffic. As a result, it does not appear that Verizon is proposing to rely on the fact that Bright House is a wholesale provider of services to its cable affiliate as a basis for trying to limit Bright House's interconnection and related rights. If all that is true, then there is almost certainly no substantive dispute here, and I would expect the parties to work out mutually acceptable language very shortly.

Q. SUPPOSE THERE ISN'T AGREEMENT?

A. In that case, the Commission should adopt Bright House's proposal. As I discussed earlier in my testimony, the way that facilities-based competition has actually developed, CLECs providing connectivity to interconnected VoIP providers are giving consumers an alternative to traditional ILEC landline service. It is essential that the terms and conditions associated with the access of a wholesale CLEC, like Bright House, to an ILEC's OSS (and other interconnection arrangements) recognize this market reality. In order for those terms and

conditions to be just and reasonable in light of the market, they must permit the wholesale CLEC to have the necessary access to the ILEC's systems, even if the underlying VoIP service is not ultimately deemed to be a telecommunications service.

Issue 4

Issue #4: (a) How should the ICA define and use the terms "Customer" and "End User"?

Q. WHAT IS THE ACTUAL DISPUTE UNDERLYING ISSUE # 4(a)?

A. As with Issue #22(a), there may not be a dispute at all. As noted, Bright House provides wholesale telephone exchange service to its cable affiliate, which provides unregulated VoIP service to end users. The ICA refers to a party's "customers" or "end users" in various ways. In order for those provisions to make sense in the case of a wholesale CLEC like Bright House, it is important that the terms "customer" and "end user" be defined in such a way that the ultimate consumer who receives the VoIP service – but who is connected to the public telephone network by means of the wholesale CLEC – gets treated as the CLEC's "customer" or end user. As discussed above, it does not appear, as of the date of filing this testimony, that there is actual disagreement between the parties on this fundamental point. As a result, I would not be surprised if the parties were to reach a resolution of this issue in the near future.

Q. WHAT ARE SOME EXAMPLES OF REFERENCES TO "CUSTOMERS" OR "END USERS" WHERE THIS ISSUE MIGHT COME UP?

A. There are several that are material to Bright House's operations. One example is the rights of Bright House's "customers" or "end users" to have listings in Verizon's telephone directories. The whole point of a directory is to allow consumers to be able to find listing information about other consumers who choose to have their information listed. Obviously it is necessary to include Bright House's ultimate VoIP "end users" in this category. Similarly, E911 service is a critical public safety concern. The FCC has obliged interconnected VoIP providers to ensure that their customers have access to E911 functionality to the extent possible, and has directed LECs to cooperate with each other to ensure that occurs. As a result, references to "customers" or "end users" in the E911 context must, obviously, refer to Bright House's ultimate VoIP "end users."

Yet another example is local number portability. The FCC has ruled that subscribers to interconnected VoIP services have the same right to retain and port their telephone numbers when they change providers – either when they transfer to VoIP service from an ILEC, or when they transfer from a VoIP service to service offered directly by a LEC. In this context as well, it is necessary that the terms "customer" or "end user" refer to the ultimate consumers who obtain VoIP service from Bright House's affiliate.

Q. DO YOU THINK THAT VERIZON DISAGREES WITH THESE POINTS?

A. Given that the parties were able to reach agreement, in the interconnection/traffic exchange context, that it doesn't matter whether a call originates on a VoIP service or with a more traditional telephone line, I would expect, as noted above,

that these issues are not problematic for Verizon. Nevertheless, this issue is so important to the efficient operation of the market that it should be resolved without any doubt.

Q. IF IT TURNS OUT THAT THERE IS A DISPUTE ABOUT THESE POINTS, WHAT SHOULD THE COMMISSION DO?

A. As described above, there is substantial competition in the market for residential customers which has developed primarily through cable-affiliated VoIP service. In order to facilitate and enable this competition, it is necessary to treat the ultimate VoIP consumers as Bright House's "customers" or "end users" within the context of the ICA. Therefore, if the parties are not able to work out this issue, the Commission should adopt Bright House's suggested language defining "Customer" and "End User" in a way that expressly includes the ultimate VoIP consumers.

Issue 22(b)

Issue #22: (b) What constraints, if any, should the ICA place on Verizon's ability to modify its OSS?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #22(b)?

A. This issue has several parts. The issue literally relates to the terms and conditions applicable to Verizon's OSS, including Verizon's right to make changes to those systems. In a broader sense it relates to Bright House's general concern that Verizon not be permitted to vary any of the material terms of the parties' contract without negotiating those changes with Bright House first.

Q. BY WAY OF BACKGROUND, WHAT IS VERIZON'S "OPERATIONS SUPPORT SYSTEM," OR "OSS"?

A. This is a computerized system used to handle a variety of administrative functions involved in managing the interconnection relationship between Bright House and Verizon. For example, when a Verizon customer chooses to take service from Bright House, Bright House submits a "Local Service Request" or "LSR" to Verizon's OSS indicating that the customer's Verizon service should be canceled, the customer's number ported to Bright House, etc. This submission is entirely automated through electronic data interchange or "EDI".[26] Specifically, Bright House has a contractor who, on Bright House's behalf, is electronically linked with Verizon's OSS. The contractor will populate the appropriate fields of an electronic, on-screen form with the relevant information and then – essentially with the push of a button – transmit the data to Verizon.

Q. WHAT IS THE SPECIFIC LANGUAGE IN DISPUTE WITH REGARD TO THIS ISSUE?

A. There are three contract provisions at issue, all in the "Additional Services Attachment" to the contract. These are:

[26] EDI is the process whereby two providers electronically exchange information for placing orders (like local service requests) billing, etc. EDI is much more efficient that manual processes, especially for large amounts of information. Further, because EDI is electronic, there is less human intervention which limits the potential for input or processing errors.

Section 8.2.1, in which Bright House proposes to ensure that Verizon will provide for electronic OSS ordering for any service provided under the interconnection agreement.

Section 8.2.3, in which Bright House has proposed language to require Verizon to provide commercial reasonable advance notice of any changes to its OSS and to ensure that Verizon cannot impose payment obligations on Bright House by unilaterally amending its OSS-related "Change Management Guidelines"

Section 8.8.2, in which Bright House has proposed language to clarify that any limitations Verizon imposes on volume of use of OSS are commercially reasonable.

Q. WHY ARE BRIGHT HOUSE'S PROPOSED CHANGES NECESSARY?

A. As a practical matter, 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. Using manual processes (such as graphical user interfaces or faxes) would be labor intensive and time consuming. In addition, human intervention results in unnecessary errors. It is therefore necessary for Bright House to make use of Verizon's electronic OSS (just as Verizon makes use of Bright House's electronic OSS).

Q. DO YOU AGREE THAT VERIZON OWNS ITS OSS AND THAT IT MAY MAKE CHANGES TO THE OSS OVER TIME?

A. Yes. Nevertheless, there must be some constraints on the degree to which Verizon can modify its OSS during the term of the contract. Bright House's proposed language is designed to impose those reasonable constraints without impairing Verizon's ability to manage its own OSS.

Q. WHAT SPECIFIC CONSTRAINTS DOES BRIGHT HOUSE SEEK TO IMPOSE ON VERIZON'S OSS?

A. First, in Section 8.2.1, Bright House proposes that the ordering of any service that Verizon provides to Bright House under the contract be handled via the OSS. As noted above, this is simple business practicality. Bright House and Verizon are both large entities, serving hundreds of thousands of end users, and things would grind to a halt if any substantial number of orders for services had to be submitted via a manual process. The Commission should direct the parties to include Bright House's proposed language in Section 8.2.1 that reflects this requirement.

Next, in Section 8.2.3, Bright House has suggested two reasonable requirements. First, while acknowledging that Verizon may modify the details of how its OSS operates, Bright House proposes to require that Verizon provide "commercially reasonable" advance notice of any such changes. Bright House proposes to use that general standard, rather than any specific deadline for advance notice, because what is commercially reasonable will vary with the circumstances. It might be commercially reasonable to implement a minor change in the information to be included in some field on an electronic form with three months notice; on the other hand, if Verizon were to undertake some major revision of the

electronic parameters for the submission of key industry forms, such as the Local Service Request, or LSR, it could be that a full year advance notice might be needed to reasonably allow Bright House to accommodate the change in its own systems.

In this regard, the real point of the "commercially reasonable" notice provision is to ensure that Verizon and Bright House have a reasonable opportunity to discuss any pending changes in the system and, if need be, to negotiate regarding how much advance notice is reasonable in the circumstances.

Second, while acknowledging that Verizon may modify its Operations and Support ***Systems*** without getting advance approval from Bright House for any changes, Bright House 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.

The Commission should approve both of these changes.

Finally, in Section 8.8.2, 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. Again, Bright House does not actually expect difficulty with Verizon on this score. But, with the contract language Verizon has proposed, it would be literally possible under the contract for Verizon to declare

that it will not accept more than (say) 10 LSRs per day transferring customers from Verizon to Bright House – thus using artificial limitations on the number of orders its OSS can process as a means to slow down the rate at which Bright House can win customers from Verizon in the marketplace. By requiring any volume limitations imposed with respect to its OSS to be commercially reasonable, Bright House's language would preclude this kind of anticompetitive situation from arising. The Commission, therefore, should approve this language as well.

Issue 23

Issue #23. (a) What description, if any, of Verizon's general obligation to provide directory listings, should be included in the ICA?

(b) What rate, if any, should apply to Verizon's inclusion and modification of Bright House directory listings?

(c) To what extent, if any, should the ICA require Verizon to facilitate Bright House's negotiating a separate agreement with Verizon's directory publishing company?

Q. WHAT IS THE TOPIC OF THE DISPUTE UNDERLYING ISSUE #23?

A. Issue #23 relates to the parties' disagreements regarding Verizon's provision of directory listings ("DLs") for Bright House's end users (that is, the subscribers to the interconnected VoIP service offered by Bright House's affiliate, who obtain network connectivity through Bright House). I note that I have been informed that the parties have reached a settlement regarding the rates that Verizon will charge for including listings for Bright House's end users in Verizon's directories and databases. Issue #23(b), therefore, is no longer in dispute. Furthermore,

because Bright House and Verizon agree on what Bright House will be charged for DLs during the term of their new ICA, Bright House no longer requires Verizon's assistance in trying to establish a separate agreement with Verizon's publisher. Issue #23(c), therefore, should be considered resolved as well.

Q. PLEASE DEFINE A DIRECTORY LISTING.

A. In simple terms, a directory listing is the customer's name, phone number, and address that are published in a directory, such as a telephone book, or included in a directory database, such as that used when a caller dials "411." The Act itself requires all LECs to provide competing providers with "*nondiscriminatory* access to ... directory listing."[27] The FCC has interpreted the term "directory listing" to mean "the act of placing a customer's listing information in a directory assistance database or in a directory compilation for external use (such as a white pages)."[28]

Q. PLEASE DESCRIBE THE POSITIONS OF VERIZON AND BRIGHT HOUSE ON DLs.

A. First, the parties disagree about how Verizon's general obligation to provide listings should be characterized. Second, they disagree about whether Verizon should be obliged to facilitate the negotiation of possible direct arrangements between Bright House and Verizon's directory publishing company. As of the

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[27] 47 U.S.C. § 251(b)(3) (emphasis added).

[28] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) ("*SLI/DA Order*").

date of this testimony, Verizon and Bright House disagree about at least the first two of these items.

Q. PLEASE DESCRIBE THE CONCERN REGARDING HOW VERIZON'S DUTY TO PROVIDE DLs IS CHARACTERIZED IN THE CONTRACT?

A. Let me first state that the parties may well be able to reach an agreement on this issue, which relates to contract language rather than rates, now that they have reached agreement on rates. So, I would not be surprised to report in my rebuttal testimony that this issue has been resolved as well. For now, however, I would note the following. As the Commission may recall, Bright House and Verizon had a substantial dispute regarding DLs under their current agreement. While Bright House is hopeful that no such disputes will arise under the agreement being established in this proceeding, it is reasonable for Bright House to be concerned about that issue. As a result, Bright House wants the new agreement to accurately state the scope of Verizon's obligation to provide DL functions to Bright House. Verizon's proposed language does not accomplish that purpose.

Q. PLEASE EXPLAIN HOW VERIZON'S PROPOSAL DEFINES ITS DL OBLIGATIONS.

A. Verizon's proposed language describing its obligation is, "To the extent required by Applicable Law, Verizon will provide directory services to [Bright House]. Such services will be provided in accordance with the terms set forth herein." Bright House, however, proposes the following: "Verizon will provide directory

and listing services to Bright House on a just, reasonable and nondiscriminatory basis as required by Applicable Law and as specified herein."

The difference between the two formulations boils down to this: Bright House wants the fact that Verizon's provision of DL services must be "just, reasonable and nondiscriminatory" to appear on the face of the contract so that, if there is any dispute about directory issues in the future, there will at least be no dispute about the relevant legal/regulatory standard to apply. At the same time, Bright House is concerned that Verizon objects to Bright House's proposed language. If Verizon takes the position that it is ***not*** obliged to offer directory listings and services "on a just, reasonable and nondiscriminatory basis," Bright House would like to understand that Verizon contention now so that it can be sorted out in advance.

Q. WHAT SHOULD THE COMMISSION DO WITH REGARD TO THIS ASPECT OF THE DIRECTORY LISTING ISSUE?

A. The Commission should direct the parties to include Bright House's proposed language into the agreement.

Issue 24

Issue #24 Is Verizon obliged to provide facilities from Bright House's network to the point of interconnection at TELRIC rates?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #24?

A. The parties agree that in order to exchange traffic, Bright House is obliged to "show up" at an appropriate point "on Verizon's network" in order to physically

link their networks so that traffic can flow between them. They also agree that Bright House may physically "get to" Verizon's network either by building its own facilities; by purchasing facilities from a third party; or by purchasing facilities from Verizon. Issue #24 relates to this third option.

I should note at the outset that I have been informed that the parties have reached a settlement regarding the charging that will apply to the specific current configuration that Bright House uses to interconnect with Verizon. However, I have also been informed that the settlement only applies as long as that specific configuration "remains materially unchanged." Obviously, Bright House may well need or want to modify its interconnection arrangements with Verizon during the term of the new ICA – for example, by establishing fiber meet points, as discussed in connection with Issue #26, Issue #27, and Issue #28. It is therefore important for the Commission to address the principles that govern the pricing of interconnection facilities at this time.

Q. PLEASE PROVIDE THE POLICY AND ECONOMIC CONTEXT IN WHICH THIS DISPUTE ARISES.[29]

A. Certainly. As I noted above, the physical interconnection of competing networks for the efficient exchange of traffic between them is an absolutely critical foundation for competition in this industry to occur. When Congress established the new competitive industry structure in the 1996 Act, therefore, it addressed

[29] This economic and policy context is relevant to a number of the issues in dispute between the parties, including, in whole or in part, Issue #20, Issue #24, Issue #26, Issue #27, Issue #28, Issue #32, Issue #33, Issue #36, Issue #37, Issue #38, and Issue #39.

both of these issues specifically. With regard to the physical linking of competing networks, Congress specified both the kinds of interconnection that a competitor would be entitled to use, and the prices that would apply to that interconnection; the FCC followed up with regulations and rulings further clarifying these matters.

Q. HOW DOES THE 1996 ACT DESCRIBE THE PHYSICAL INTERCONNECTION ARRANGEMENTS THAT ARE AVAILABLE TO COMPETING NETWORKS SUCH AS BRIGHT HOUSE?

A. The 1996 Act states that an ILEC such as Verizon must provide:

> For the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC's] network (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the [ILEC's] network; (C) that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. § 251(c)(2). I would note that the FCC has defined "interconnection" for these purposes to be the physical arrangements for linking two networks together. While the purpose of interconnection is obviously to exchange traffic, as the language above indicates, the pricing and related rules for traffic exchange itself – as opposed to the network facilities used to establish interconnection – is governed by Section 251(b)(5) of the Act, not Section 251(c)(2).[30]

[30] The parties' disagreements with respect to payments for traffic they exchange are addressed below, principally in my discussion of Issue # 28.

Q. WHAT RULES GOVERN THE PRICING OF AND/OR CHARGES FOR NETWORK INTERCONNECTION ARRANGEMENTS?

A. After decades of experience with setting rates under the generic "just and reasonable" standard that applies to tariffs, Congress concluded that the traditional ratemaking rules used to set tariffed rates should not apply to competitive interconnection arrangements under the 1996 Act. Those traditional ratemaking rules typically look at the historical or embedded costs that a carrier incurred in the past to set up its network and that are reflected on the carrier's accounting records. Those historical costs are then augmented by a reasonable rate of return on investment to produce a traditional "just and reasonable" rate. Congress concluded that to encourage efficiency in carrier-to-carrier interconnection arrangements between competing networks, a very different standard was required. It embodied this new standard in Section 252(d)(1) of the 1996 Act, stating that:

> The just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 … (A) shall be – (i) based on the cost (***determined without reference to a rate-of-return or other rate-based proceeding***) of providing the interconnection …, and (ii) nondiscriminatory and (B) may include a reasonable profit.

47 U.S.C. § 252(d)(1) (emphasis added). The emphasized language makes clear that while the "cost" of providing network interconnection arrangements is relevant, the traditional cost standard based on historical rate-base, rate-of-return regulation may not be used.

Q. WHAT ARE THE KEY POLICY AND ECONOMIC PRINCIPLES EMBODIED IN THESE RULES?

A. From a policy and economic perspective, there are several key features of the 1996 Act's rules governing network interconnection. First, interconnection must be provided at "any technically feasible point." That means that the ILEC cannot dictate to the CLEC where interconnection must occur. While technically feasible points obviously include the ILEC's actual switches, it is completely feasible to interconnect at other ILEC equipment as well, including fiber optic terminals, multiplexing equipment, DACCS (Digital Access and Cross-Connect Systems) equipment, via splicing together optical fiber (as in a fiber meet), etc.

Second, the 1996 Act obliges the ILEC to provide to the CLEC interconnection that is equal in quality to any interconnection that the ILEC provides to any other party – itself, its subsidiaries, any other affiliates, and "any other party" with which the ILEC physically interconnects. The obvious purpose of this requirement is to ensure that ILECs cannot, in effect, disadvantage CLECs by forcing them to use obsolete or inferior physical interconnection arrangements while the ILEC itself uses more modern arrangements, or supplies more modern arrangements to other carriers or to large customers. As a matter of policy, this is a critical requirement, because the standard of what constitutes "equal quality" interconnection will automatically improve and advance as the ILEC improves

and advances the technology it uses to interconnect different parts of its own network, or that it uses to connect to other carriers or large customers.[31]

Third, by expressly forbidding reliance on the traditional ratemaking methodology used to set tariffed rates, Congress was insisting that the prices that a CLEC can be charged in connection with establishing interconnection arrangements not become some sort of "profit center" or "line of business" for the ILEC. By banning reliance on the historical, rate-base, rate-of-return approach for setting prices for interconnection facilities and arrangements, Congress wanted to ensure that CLECs only pay the costs that would be incurred for the arrangements by an efficient ILEC, using the most modern technology currently available. While an ILEC and a CLEC can certainly agree that a tariffed rate might be acceptable for some facilities in some situations, an ILEC cannot require the use of traditional tariffed rates, for the simple reason that such rates are not set under, and do not reflect, the pricing rule that Congress laid out.

Q. HOW DID THE FCC INTERPRET AND APPLY THIS NEW PRICING STANDARD?

A. The FCC concluded that the prices for interconnection arrangements must be priced according to a cost standard called "TELRIC," which stands for "total element long run incremental cost." Although the details of the TELRIC

[31] I refer to connections with "customers" because the statute refers to "interconnection" with "any other party." Large, sophisticated business customers that operate private networks have traditionally been in the vanguard of adopting new and more efficient network technology. By referring to "any other party" rather than, for example, "any other ***carrier***," it is clear that Congress wanted to embrace interconnection arrangements provided to customers with private networks within the scope of the "equal in quality" rule.

methodology are complicated, at a high level, the standard asks the question, "How would an efficient ILEC, using the most efficient available technology, provide the interconnection arrangement requested by the CLEC, and how much would it cost for an efficient ILEC to do so?"[32] Specifically, in the section of its rules regarding TELRIC pricing (which the FCC specifically states applies to "interconnection," *see* 47 C.F.R. § 51.501(a), (b)), the FCC states:

> *Efficient network configuration.* The total element long-run incremental cost of an element [or interconnection arrangement] should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the [ILEC's] wire centers.

47 C.F.R. § ~~51,505(b)(1)~~ 51.505(b)(1). I should note, in case there is any concern about the point, that the FCC specifically states that when it uses the term "element" in its discussion of the TELRIC standard, that includes interconnection arrangements:

> As used in this subpart, the term "element" includes network elements, ***interconnection, and methods of obtaining interconnection*** and access to unbundled elements.

47 C.F.R. § 51.501(b) (emphasis added). So, while a great deal of discussion has arisen over the years regarding the application of the TELRIC standard to unbundled network elements, or UNEs, the FCC has been very clear from the beginning that the same efficient, forward-looking pricing methodology applies to

[32] The FCC's TELRIC definitions and guidelines are found in the *Local Competition Order* at paragraphs 674-703, and in Sections 51.501-51.513 of the FCC's rules. As discussed in the text following this note, while those rules generally refer to pricing "elements" of the ILEC's network, the exact same economic pricing principles apply to arrangements for interconnection of networks.

interconnection arrangements under Section 251(c)(2) as well as to UNEs under Section 251(c)(3).[33]

So, the answer to the question above – "What costs would be incurred by an ***efficient*** ILEC using 'the most efficient telecommunications technology currently available'?" – determines what Verizon may charge Bright House for whatever technically feasible interconnection arrangement Bright House requests from Verizon.

Q. CAN YOU SUMMARIZE THE FCC'S RULES ON HOW A TELRIC RATE IS TO BE DEVELOPED?

A. Yes. The pricing rules are designed to "produce rates for monopoly elements and services that approximate what the incumbent LEC would be able to charge if there were a competitive market for such services."[34] The economic principles identified and embodied within the TELRIC standard are summarized below. I have included the relevant paragraphs from the *Local Competition Order* supporting the conceprt:

Principle # 1: The firm should be assumed to operate in the long run. (¶ 677 and 692)

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[33] In this regard, I would note that there are a number of considerations regarding the availability of UNEs that do not arise in the context of establishing interconnection between networks. For example, before a UNE is made available, it must be established that failure to provide it would "impair the ability of the [CLEC] ... to provide the services it seeks to offer." 47 U.S.C. § 251(d)(2)(B). Similarly, if a UNE is deemed "proprietary" to the ILEC, the CLEC is only entitled to it if such access is "necessary." 47 U.S.C. § 251(d)(2)(A). These limitations have proven quite controversial over the years, leading to a great deal of litigation before the FCC and in court, with the FCC modifying its position in various ways over time. But none of that controversy has any application to the issue of efficient network interconnection under Section 251(c)(2), because interconnection for the purpose of traffic exchange is not a UNE.

[34] *Local Competition Order at* ¶ 738.

Principle # 2: The relevant increment of output should be total company demand for the unbundled network element in question. (¶ 690)

Principle # 3: Technology choices should reflect least-cost, most efficient technologies. (¶ 685 and 690)

Principle # 4: Costs should be forward-looking. (¶ 679, 682 and 692)

Principle # 5: Cost identification should follow cost causation. (¶ 622 and 691)

In summary, the use of TELRIC costing principles ensures that rates reflect a measure of the costs that would be incurred by an efficient supplier of a particular network element.

Q. DOESN'T THIS PRICING STANDARD CREATE THE POSSIBILITY THAT THE ILEC WILL "LOSE MONEY" ON THE INTERCONNECTION ARRANGEMENTS IT PROVIDES TO CLECS?

A. I suppose it does, if you start from the assumption that the ILEC is entitled to recover its historical, accounting-based costs for inefficient interconnection arrangements that it provides to CLECs. But that assumption is exactly what Congress, in the 1996 Act, explicitly rejected. The better way to look at the question is to say that the ILEC cannot choose to maintain an outmoded and inefficient network, and then impose the costs of that inefficiency on the CLEC. Section 251(c)(2)(C) of the statute requires that the ILEC actually physically provide the CLEC with any type of interconnection it provides to anyone else, so that the CLEC will be able to physically obtain the most efficient kind of interconnection the ILEC actually makes available to anyone. But if the ILEC really is a laggard technically, and only has inefficient interconnection arrangements available, the ILEC can only charge the CLEC the costs that the

ILEC ***would*** have incurred, had it used the most efficient currently available technology. This forces the ILEC to bear the costs of its own inefficiencies and thereby indirectly creates an incentive for the ILEC to become efficient.

Finally in this regard, while I am not a lawyer, I would note that ILECs challenged the constitutionality and legality of the FCC's TELRIC standard, and the United States Supreme Court rejected that challenge and upheld the FCC.[35]

Q. ARE THERE ANY OTHER GENERAL FACTORS FOR THE COMMISSION TO CONSIDER IN CONNECTION WITH THIS ISSUE?

A. Yes. Specifically, the parties may have a disagreement about what parts of a network interconnection arrangement are covered by what rates elements. This disagreement may also impact what facilities are subject to a separate charge.

Q. PLEASE EXPLAIN.

A. I mentioned above that while interconnection under Section 251(c)(2) of the 1996 Act relates to the exchange of traffic, the economic aspects of traffic exchange fall under a separate statutory provision, Section 251(b)(5). That statutory provision calls for interconnected LECs to "establish reciprocal compensation arrangements for the ***transport and termination*** of telecommunications." (Emphasis added.) As described below, the parties have agreed that they will pay each other a simple per-minute rate of $0.0007 to cover the "transport and termination" of traffic they send each other. Therefore, to the extent that an activity or arrangement is

[35] *See Verizon Communications v. FCC,* 535 U.S. 467 (2002).

embraced by the "transport and termination" functions addressed by Section 251(b)(5), any separate charge for that activity or function over and above the agreed-to $0.0007/minute rate would be, in effect, double-charging.

Q. HOW DOES THE FCC DEFINE "TRANSPORT" AND "TERMINATION"?

A. The FCC has specifically addressed this question in Section 51.701 of its rules. Section 51.701(c) states that:

> [T]ransport is the transmission and any necessary tandem switching of telecommunications traffic subject to Section 251(b)(5) of the Act ***from the interconnection point between the two carriers*** to the terminating carrier's end office switch that directly serves the calling party, or equivalent facility provided by a carrier other than an [ILEC].

47 C.F.R. § 51.701(c) (emphasis added). The emphasized language is highly significant, because it makes clear that the "transport" function begins at the instant that traffic is physically handed off from the CLEC to the ILEC (or vice versa). Once a call leaves the CLEC's network facilities on its way to the ILEC customer being called, the transport function has begun. That function is covered by the agreed ~~$0.0007~~ $0.0007/minute rate. Adding any extra charges for activities or facilities on Verizon's side of that hand-off point under the guise of charging for "interconnection facilities" or "interconnection arrangements" would be inapporpriate.

Q. WITH THAT BACKGROUND, PLEASE DESCRIBE THE SITUATION IN WHICH BRIGHT HOUSE WOULD PURCHASE OR LEASE FACILITIES

FROM VERIZON TO CONNECT ITS NETWORK TO VERIZON'S NETWORK.

A. If Verizon provides the facilities to connect the two networks, that facility is typically called an "entrance facility." In its original ruling regarding interconnection under the Act,[36] the FCC addressed the question of rates applicable to entrance facilities ("transmission facilities that are dedicated to the transmission of traffic ***between*** two networks" (emphasis added)), and ruled that the cost should be apportioned in accordance with relative use of the facility. Further, the FCC held that when purchased as a UNE, entrance facilities were to be priced based on the TELRIC standard discussed above. Also as discussed above, the FCC held that facilities provided in support of interconnection of networks and traffic exchange should also be priced using the TELRIC standard (which makes sense because the same statute – Section 252(d)(1) – establishes the general rule for both.)[37]

Q. IS AN ENTRANCE FACILITY A UNE?

A. The FCC originally treated entrance facilities as UNEs, but based on a new analysis of whether competitors would be "impaired," in its *Triennial Review*

[36] *See Local Competition Order* at ¶ 1062.

[37] The FCC has stated that TELRIC pricing applies to facilities used for interconnection, UNEs, and for the transport and termination of traffic, in the *Local Competition Order* at ¶¶ 672-690 and ¶ 1027. *See also* 47 C.F.R. §§ 51.501 – 51.513, 51.705(a).

Remand Order, the FCC held that entrance facilities were no longer to be provided as UNEs.[38]

Q. IF ENTRANCE FACILITIES ARE NOT UNES, HOW ARE THEY PRICED?

A. Following that ruling, the pricing of entrance facilities depends on how they are used. The *TRRO* stated, "We note in addition that our finding of non-impairment with respect to entrance facilities [which means that entrance facilities are not UNEs] does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network."[39]

Q. ARE "COST-BASED" RATES TELRIC RATES?

A. Yes. As discussed above, the FCC's costing standard for interconnection is TELRIC. Although much of the controversy surrounding TELRIC arose in connection with UNE pricing, the TELRIC standard – which, as noted above, was upheld by the Supreme Court – is the "cost-based pricing methodology" for "interconnection and unbundled element rates."[40]

Q. HOW SHOULD THE COMMISSION DECIDE ISSUE #24?

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[38] *See* FCC **Order on Remand** in WC Docket No. 04-313, CC Docket No. 01-338, Released February 4, 2004 at ¶ 137. ("*TRRO*")

[39] *See, TRRO* at ¶ 140.

[40] *See, Local Competition Order* at ~~¶300~~ ¶625.

A. Because an "entrance facility" used to facilitate interconnection and traffic exchange, rather than access to UNEs, is considered an interconnection arrangement, it should be priced at TELRIC rates, rather than tariffed rates. That said, this specific issue has been litigated in various courts of appeals, so I am sure that the parties will address in their briefs and other filings.

Q. LEGALITIES ASIDE, WHAT IS THE UNDERLYING CONTROVERSY HERE?

A. The dispute arises because the FCC has different rules for how entrance facilities should be priced, depending on what the CLEC is going to use them for. Suppose that at CLEC does not have its own network to reach its own customers. In that case the CLEC may well use the ILEC's loops – connections to individual customers – as UNEs. To physically connect to those unbundled loops, the CLEC will typically establish a collocation arrangement in the building containing an ILEC switch, on which the loops from individual customers converge. In such a situation, the ILEC will cross-connect the unbundled loops – which had been connected to the ILEC's own switch – over to the CLEC's collocated equipment. In this type of arrangement, the CLEC will need to connect from its network into the collocation arrangement, in order to connect the unbundled loops to its own switch (located in a different building).

Generally speaking, a CLEC can get from its network to the collocation arrangement in the same three ways noted above: it can build its own facilities; it

can buy facilities from a third party; or it can buy an entrance facility from the ILEC.

The FCC has ruled that if a CLEC uses ILEC entrance facilities ***for the purpose of connecting to unbundled network elements such as loops,*** then the ILEC may charge the CLEC the ILEC's tariffed rate for entrance facilities.

On the other hand, suppose that (like Bright House) a CLEC does not use unbundled loops or other UNEs, and that the reason it has established a collocation arrangement is to facilitate connecting its network to the ILEC's network for the exchange of traffic – not access to UNEs. The FCC ruled that if a CLEC uses ILEC entrance facilities ***for the purpose of network interconnection and traffic exchange,*** then the entrance facilities are to be priced at the lower TELRIC-based rate.

The court decisions alluded to above have affirmed this distinction and required the use of TELRIC-based pricing for entrance facilities used for purposes of interconnection.

Because Bright House does not use UNE loops, but does have collocation arrangements in order to facilitate traffic exchange, Bright House wants to ensure that its interconnection agreement with Verizon reflects the appropriate, lower rate for any entrance facilities it obtains for that purpose.

Q. WHAT SHOULD THE COMMISSION DECIDE WITH RESPECT TO ISSUE #24?

A. For the reasons discussed above, and as Bright House's lawyers will explain further, the Commission should adopt Bright House's language and require Verizon to provide entrance facilities in support of interconnection and traffic exchange at TELRIC, rather than tariffed, rates.

Issues 26, 27 and 28

Issue #26: May Bright House require Verizon to interconnect using a fiber meet arrangement?

Issue #27: How far, if at all, should Verizon be required to build out its network to accommodate a fiber meet?

Issue #28: What types of traffic may be exchanged over a fiber meet, and what terms should govern the exchange of that traffic?

Q. WHAT IS THE NATURE OF THE DISPUTE UNDERLYING ISSUES 26, 27, AND 28?

A. Each of these issues relate to a method of interconnection for traffic exchange known as a "fiber meet." Although it appears that the parties generally agree that a fiber meet is an appropriate means of interconnection – which is logical, because the FCC recognized that fiber meets were such a means in its very first decision under the Act – they disagree as to some of the particulars of how such arrangements may be established.

Q. WHAT IS A "FIBER MEET" ARRANGEMENT?

A. A fiber meet arrangement is a means of network interconnection in which the two networks each build out optical fiber facilities to an agreed-upon point, and then splice the two fibers together, creating an integrated link, provided jointly by the

two of them, for exchanging traffic between two networks. The agreed-on point may be on a particular pole where both parties have (or build) fiber, or it may be in a manhole or conduit outside a building that houses one of the parties' switches – or any other location on which they might agree. Each party is responsible for its own costs on its side of the agreed meet point.

The FCC's rules make this very clear, defining both the term "meet point" and "meet point interconnection arrangement," as follows:

> *Meet point.* A *meet point* is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.
>
> *Meet point interconnection arrangement.* A *meet point interconnection arrangement* is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.[41]

Each party is responsible for building and maintaining its own network out to the meet point, and a carrier sending traffic over a meet point is responsible for that traffic up to the meet point, but not beyond it.

In practical, physical terms, these definitions mean that, in addition to each party's share of the optical fiber itself, each party will also provide, at its own expense, a device known generally as a "fiber optic terminal." This device sends traffic outbound on the fiber, which is received the by other party's fiber optic terminal at the other end. This same device also receives traffic coming in on the fiber from the other party. Depending on each party's particular network

[41] 47 C.F.R. § 51.5 (italics in original).

equipment, it may be possible to directly connect a party's switch to the "back end" of the fiber optic terminal. Or, it may be that a party needs to interpose other equipment, such as multiplexers or demultiplexers, between that party's switch and its fiber optic terminal. But whatever particular equipment is needed, each party bears its own costs in setting up the fiber meet arrangement.

Q. WHAT ARE THE ADVANTAGES OF INTERCONNECTING VIA A FIBER MEET ARRANGEMENT?

A. A fiber meet arrangement is a very efficient way to link together two networks that exchange a significant amount of traffic. This is because the capacity of optical fiber to carry traffic is truly immense. As the amount of traffic grows, therefore, it is typically not necessary to deploy any additional physical ***facilities*** – at least not outside plant (like fiber on poles or in conduit) – to carry the additional traffic. In addition, as an administrative matter, a fiber meet arrangement is extremely simple. The physical point at which the two parties' fiber is spliced together creates a clear and unambiguous line of demarcation between the two networks, with both operational and financial responsibility lying with each party on its respective side of the splice point.[42]

Q. WHERE DO THE PARTIES DISAGREE WITH RESPECT TO ESTABLISHING FIBER MEET POINTS?

[42] Of course the two parties may install a fiber facility together in which case there would be no splice.

A. There are three main points of disagreement. First is a subtle but important distinction in how the right to establish a fiber meet point is described in Section 3.1.1 of the Interconnection Attachment. In Verizon's version of the language, while either party may "request" a fiber meet arrangement, the parties have no obligation to actually establish one unless they agree on all the relevant technical details.

Q. WHY IS THIS A CONCERN TO BRIGHT HOUSE?

A. Bright House is very concerned that Verizon could use this language to avoid establishing a fiber meet arrangement, through the simple device of refusing to reach such an agreement. To correct this problem Bright House has proposed language that makes clear that a fiber meet arrangement "shall be established" at Bright House's request. The language still requires the parties to agree on the relevant technical details, but Bright House has added two important provisos: (a) Agreement on such matters "may not be unreasonably conditioned, withheld, denied or delayed;" and (b) If the parties cannot reach agreement, the dispute shall be subject to the contract's normal dispute resolution process, which provides a procedure to bring any truly irreconcilable disputes back to the Commission for determination.

Q. WHY ARE THESE MODIFICATIONS TO VERIZON'S LANGUAGE IMPORTANT?

A. As noted above, Verizon's language leaves the entire issue of whether a fiber meet shall be established in the first place up in the air, contingent on sorting out

every technical detail. This is a recipe for disputes and delays. Bright House's language, in contrast, clearly and unambiguously establishes that a fiber meet arrangement shall be established, and makes clear that there is a mechanism for resolving any disputes over technical details that might arise. Bright House's language is clearly superior and the Commission should adopt it.

Q. WHAT IS THE SECOND AREA OF DISAGREEMENT REGARDING THE ESTABLISHMENT OF FIBER MEET POINTS?

A. The second area of disagreement relates to Verizon placing arbitrary limits on the physical configuration of the meet points. Verizon proposed two such limitations. First, the actual physical meet point – where the fiber is spliced – could not be more than three (3) miles from a Verizon central office. Second, Verizon would not ever be required to build more than 500 feet of fiber cabling to reach an agreed meet point. Verizon embodied these restrictions in Section 3.1.2 of the Interconnection Attachment, and repeated the 3-mile limitation in a specific addendum to the contract setting out the form the parties would fill out to establish a fiber meet.

Q. WHY ARE THESE CONDITIONS UNREASONABLE?

A. There is no reason to say that the actual fiber splice must be within three miles of a Verizon central office. It is true that the fiber optic terminal that Verizon would deploy to receive signals from Bright House and send signals to Bright House will almost certainly be in a Verizon central office, but the laser signals on optical fiber can travel at least dozens of miles, and in some cases much more, without

the need for any regeneration or repeating equipment. As a result, there is no technical reason to say that the splice between the two parties' respective fiber must occur within any particular distance from a central office. Now, the parties have not yet tried to establish a fiber meet, so it may well be that the parties could agree on a location for a fiber meet that falls within the three-mile limit. And, certainly, if there is some technical reason of which Bright House is unaware (and that Verizon has never articulated) that would make the three-mile limit sensible in some particular case, Bright House would abide by it in that case. But as a general proposition, the three mile limit is totally arbitrary, and completely unrelated to any of the technical characteristics of exchanging traffic by means of optical fiber.[43] The Commission should reject this limitation.

Second, Verizon states that it should never be required to place more than 500 feet of new fiber to make a fiber meet work. On some level there is no specific "right" answer to this issue. At one extreme, Bright House agrees that Verizon should not be called on to construct 10 miles of new fiber in order to establish a fiber meet point across the street from Bright House's switch. But by the same token, Bright House should not be called on to construct 10 miles of new fiber in order to establish a fiber meet point across the street from Verizon's switch. As the FCC described the situation:

[43] Verizon, at least in the press, touts its technical prowess regarding optical fiber and high capacity interfaces. Verizon just this year used 100-Gbps interfaces to transmit data over a 1,520 kilometer optically amplified stretch of network in Texas. (See, "Cisco Clarifies 100-Gig AT^T Backbone Claim – AT&T Test of Vendor's CRS-3 Follows Verizon Deployment and Comcast Trials"; March 9, 2010). Obviously Verizon has the technical capability to interconnect with high capacity fiber facilities.

> In a meet point arrangement each party pays its portion of the costs to build out the facilities to the meet point. We believe that, although the Commission has authority to require incumbent LECs to provide meet point arrangements upon request, such an arrangement only makes sense for interconnection pursuant to section 251(c)(2) ... . New entrants will request interconnection pursuant to section 251(c)(2) for the purpose of exchanging traffic with incumbent LECs. In this situation, ***the incumbent and the new entrant are co-carriers and each gains value from the interconnection arrangement. Under these circumstances, it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement.*** ... Regarding the distance from an incumbent LEC's premises that an incumbent should be required to build out facilities for meet point arrangements, we believe that the parties and state commissions are in a better position than the Commission to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.[44]

Given the FCC's explicit recognition that the ILEC will benefit from the meet point arrangement along with the CLEC, and its express conclusion that "it is reasonable to require ***each party*** to bear a reasonable portion of the economic costs of the arrangement," Bright House could argue that no advance limit on how much fiber Verizon might have to build would be appropriate. Instead, it would have been appropriate for Bright House to propose that how much fiber it is "reasonable" to require Verizon to construct to establish a meet point arrangement should be determined in each individual case. Instead, in order to accommodate Verizon's concern that it could be required to build an excessive amount of fiber, Bright house has proposed a limit of about half a mile – 2,500 feet. Given the FCC's analysis of meet point arrangements quoted above, Bright House is being more than reasonable on this aspect of the issue, and the Commission should adopt Bright House's proposed language.

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[44] *See, Local Competition Order* at ¶ 553. (emphasis added)

Q. WHAT IS THE THIRD AREA OF DISAGREEMENT BETWEEN THE PARTIES, ON THE ISSUE OF MEET POINTS?

A. In section 3.1.3 of the Interconnection Attachment, Verizon proposes a variety of pointless and oppressive restrictions on the types of traffic that may be exchanged using a fiber meet point. From a technical and economic perspective, these kinds of restrictions are senseless. The key advantage of fiber optic transmission is the vast capacity of optical fiber to carry traffic. Once a fiber meet point is established, the appropriate and efficient thing to do is to use it to carry as much traffic as it efficiently can. Restricting the types of traffic that can be sent over a meet point facility is like building a new 12-lane superhighway and then randomly declaring that only Fords, Hondas, and VWs are allowed to drive on it. In light of this, Bright House has proposed to entirely eliminate Verizon's "type of traffic" restrictions and instead permit the meet point to be used for any type of traffic that the parties may lawfully exchange.

Q. WHAT ARE VERIZON'S OBLIGATIONS WITH REGARD TO THE EXCHANGE OF TRAFFIC?

A. Verizon's interconnection obligations under Section 251(c)(2) of the Act include "telephone exchange service" traffic – which is, broadly speaking, local traffic (i.e., traffic to which no toll charge applies), and also to "exchange access" traffic (i.e., traffic for which an end user has been charged a toll charge, and for which access charges are therefore appropriate). Moreover, while there has sometimes been controversy over where VoIP-originated traffic fits into the traditional ways

of categorizing calls, Verizon and Bright House have agreed that VoIP traffic will be treated like any other traffic for purposes of interconnection (see agreed language in Section 8.6 of the Interconnection attachment). And, the FCC itself has said that it is unreasonable to require a CLEC to parse its traffic into different categories, to be carried on different facilities, precisely because requiring separate facilities for different types of traffic would be "contrary to the pro-competitive spirit of the 1996 Act. By rejecting this outcome we provide competitors the opportunity to compete effectively with the incumbent by offering a full range of services to end users without having to provide some services inefficiently through distinct facilities or agreements."[45] There is simply no basis for Verizon's elaborate listing of what types of traffic would be "allowed" or "disallowed" on a fiber meet point.

Finally, there is no need for any special rules regarding compensation for traffic sent via a fiber meet point. To the contrary, the normal rules for each type of traffic would logically apply to traffic exchanged at the meet point. In this regard, it bears emphasis that the FCC has defined the "transport" function, in connection with the exchange of non-access traffic, as the delivery of the traffic from the point of physical interconnection with the other carrier, all the way to the receiving carrier's end office switch that will route the call to the specific intended recipient.[46] In a meet point arrangement, the physical interconnection

[45] *Id.* at ¶ 995.
[46] *See* 47 C.F.R. § 51.701(c).

point is the point at which the fibers are spliced together or where ownership changes.

As a result of these considerations, the Commission should reject Verizon's language regarding types of traffic to be exchanged via fiber meet points the parties may establish.

Issue 25

Issue #25: Should the ICA require the parties to exchange traffic in IP format?

Q. WHAT IS THE STATUS Of ISSUE #25?

A. I have been informed that the parties have reached a settlement regarding Issue #25 under which Bright House is withdrawing its proposed language regarding IP interconnection in this proceeding. I will therefore not discuss this issue in my direct testimony.

Issue 37

Issue #37: How should the types of traffic (e.g. local, ISP, access) that are exchanged be defined and what rates should apply?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #37?

A. It appears that the parties basically agree on how to define and classify most of the different types of traffic, with a few exceptions – some subtle, some not – that could potentially have very important consequences for intercarrier compensation payments between the parties under their new agreement. I discuss these

classification issues below. Moreover, as described below, although I have a variety of concerns with Verizon's proposed definitions, the most important one relates to the terms that control 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.

Q. PLEASE DEFINE SWITCHED ACCESS CHARGES.

A. Access charges are the rates paid by interexchange carriers ("IXCs") to the local exchange carriers ("LECs") to either originate and/or terminate toll calls. Since the IXCs generally do not own the local facilities, they pay the LECs who do own the local facilities for the access to the local networks.

Q. WHAT IS RECIPROCAL COMPENSATION?

A. Reciprocal compensation is what LECs pay one another for the transport and termination of traffic pursuant to Section 251(b)(5) of the Act.

Q. AS A MATTER OF CONTEXT, PLEASE BRIEFLY DESCRIBE THE DIFFERENCE BETWEEN ACCESS CHARGES AND RECIPROCAL COMPENSATION FOR PURPOSES OF THIS DISPUTE.

A. As noted above, IXCs pay access charges to the LECs at the beginning and end of a long distance call. In this prototypical arrangement, the IXC collects a toll charge from the calling party, but pays access charges to both the originating and terminating LECs who were involved in handling the call.

On the other hand, reciprocal compensation (generally a much lower rate than access charges) applies when two interconnected local carriers collaborate to

complete a local call. In this scenario, the calling party is served by one local carrier, and calls someone – perhaps just across the street – served by another local carrier. The local carrier originating the call hands it off directly to the local carrier terminating the call, and pays the terminating carrier a reciprocal compensation rate for its work in delivering the call. As noted above, that work generally entails transport and termination of the call on behalf of the other LEC.

Q. HOW DID THESE TWO DIFFERENT CHARGING REGIMES DEVELOP?

A. The history of access charges and reciprocal compensation (like much of the history of the telecommunications industry) is very complicated, and I will not go into all the details here. At a high level, though, before the break-up of the old Bell System in 1984, the local Bell Companies established local calling areas within which customers could make "free" calls without incurring a toll. Calls outside those areas were handled by AT&T's "Long Lines" division. AT&T collected all the money for those long distance calls and, through accounting arrangements within the old Bell System, shared some of that revenue with the local companies that were involved in handling the calls to compensate them for their work in doing so.

The break-up of the Bell System established the local Bell Companies as legally distinct from AT&T's long distance operations. Beginning at that time they couldn't use intra-company accounting to share long distance revenues. Instead, the system of tariffed "access charges" was created. When a customer made a

long distance call, the call would be carried by the customer's local carrier to the customer's preferred long distance carrier (also known as the customer's IXC); transported to the destination city by the long distance carrier; and then delivered to the called party by the called party's local carrier. The long distance carrier would bill a toll charge to the calling party, but would pay access charges to the local carriers who helped originate and terminate the call.

Local Access and Transport Areas, or "LATAs," were established at this same time. LATAs were established to distinguish calls that the local Bell Companies were allowed to carry – calls within a LATA – from pure "long distance calls" that only interexchange carriers ("IXCs") could carry. Basically, once this system was established, landline interLATA calls were carried by long distance carriers who paid access charges to the LECs for originating and terminating such calls.[47] This basic arrangement has been in place for more than 25 years – although the rates and rate structures have changed dramatically – and remains in place today.

The situation with intraLATA calls was a bit more complicated, for two resasons. First, most LATAs were big enough that at least some calls that remained entirely within a LATA might still be classified as a "long distance" call. For example, in

[47] The rare exceptions involve situations where a local community of interest existed, or developed, that crossed a LATA boundary. The federal court administering the break-up of the Bell System approved a number of so-called "LATA boundary waivers" to permit the local Bell Companies to provide "interLATA local" service in those situations. For completeness I would note that the situation is different with respect to wireless carriers, to whom LATA boundaries do not normally apply. Wireless service territories are much larger areas known as "Major Trading Areas," or MTAs. The FCC has held that calls to or from a wireless carrier that remain within an MTA are subject to "reciprocal compensation" charges, discussed below, while wireless calls that cross an MTA boundary are subject to access charges. *See Local Competition Order* at ¶ 1036; 47 C.F.R. §51.701(b)(2).

Florida, LATA 452 covers a portion of the northeastern part of the state. A call from Jacksonville to Lake City would be entirely within LATA 452 – and thus be an intraLATA call – but would also likely have been a toll call at that time. States had to sort out on an individual basis whether to treat LATAs as the monopoly "fiefdoms" of the divested local Bell Companies, or whether to permit competition in the provision of intraLATA toll calls. For those states that allowed intraLATA toll competition, when an independent long distance company provided intraLATA toll service, access charges were applied.

At the time of divestiture and for some time thereafter, however, it was almost universally thought that true "local" telephone service was a natural monopoly, and that it would not be possible for there to be effective competition for local service. That was one of the reasons that access charges included implicit subsidies to provide for the continued profitable operations of the local compaies and to ensure "universal service." Of course, the entire premise of the 1996 Act is that local competition ***is*** possible, and, as discussed above, the marketplace success of firms like Bright House shows that this more modern view is, indeed, correct.

Q. PLEASE EXPLAIN HOW THE ACT CHANGED THE INDUSTRY WITH RESPECT TO LOCAL COMPETITION AND INTERCARRIER COMPENSATION.

A. The Act sets out the basic parameters under which local competition will take place. Congress recognized that once the ILEC and one or more CLECs were

providing service in the same area and competing for the same customers, they would have to exchange traffic for competition to be viable – which is the source, as a policy matter, of the duty to interconnect contained in Section 251(c)(2) of the Act. Congress also recognized that the exchange of local traffic between two LECs was different from the traditional long distance scenario involving an IXC. So, Congress established a duty on all LECs – ILECs and CLECs alike – to enter into "reciprocal compensation" arrangements.[48]

Q. YOU NOTED ABOVE THAT SOME INTRALATA TRAFFIC WAS CONSIDERED LOCAL, BUT THAT OTHER INTRALATA TRAFFIC WAS CONSIDERED "LONG DISTANCE" AND SUBJECT TO ACCESS CHARGES. HOW DOES THAT AFFECT RECIPROCAL COMPENSATION BETWEEN TWO LECs?

A. The FCC considered this issue in the *Local Competition Order*, at ¶¶ 1033-1035. Specifically, the FCC stated that the question of what traffic interconnected LECs might exchange that would count as "local" – and thus be subject to reciprocal compensation rather than access charges – would be left up to individual states to determine on a case-by-case basis, in light of states' "historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges."[49] In other words, the FCC specifically empowered states to

[48] *See, Local Competition Order* at ¶1027.
[49] *Id.* at ¶ 1035.

determine which intraLATA traffic exchanged between LECs would be treated as "local" versus "toll" for purposes of intercarrier compensation.

Q. IS THIS ONE OF THE MATTERS IN DISPUTE BETWEEN BRIGHT HOUSE AND VERIZON?

A. Yes, it is. I describe that dispute below. However, before doing so, it is useful to discuss the specific definitions of different types of traffic contained in the agreement. This will provide contractual context for the "access charges versus reciprocal compensation" question.

Q. HOW WOULD BRIGHT HOUSE PROPOSE TO CLASSIFY TRAFFIC?

A. Bright House would define the following types of traffic: Exchange Access traffic; Internet traffic; Measured Internet traffic; Meet Point Billing traffic; Reciprocal Compensation traffic; Telephone Exchange Service traffic; and Toll traffic. I discuss these below. I note at the outset, however, that the parties agree that the term "Telephone Exchange Service" will be as defined in the Act, so there is no dispute about that term.

Q. HOW WOULD BRIGHT HOUSE DEFINE "EXCHANGE ACCESS" TRAFFIC?

A. "Exchange Access" is defined in the 1996 Act. It refers to traffic that uses local exchange facilities or services – in this case, Verizon's or Bright House's local

networks – for the origination or termination of Telephone Toll Service.[50] Verizon and Bright House agree that the basic definition of "Exchange Access" for purposes of the agreement should be the same as the statutory definition. I discuss the definition of "Telephone Toll Service" (also defined in the Act) below. But the basic idea is that if a call is a toll call – that is, if one of the parties is paying a separate toll charge over and above their basic local service charge for the call – then originating and terminating that call constitutes Exchange Access service. On the other hand, if a customer can make a call with no extra charge beyond the basic fee for local service, then it is not a toll call, and originating and terminating it is not Exchange Access service.

Q. WHERE DO VERIZON AND BRIGHT HOUSE DISAGREE REGARDING THE DEFINITION OF EXCHANGE ACCESS?

A. As just noted, under the statutory definition, "Exchange Access" is any traffic where the underlying call is a toll call. As described below, however, for purposes of intercarrier compensation, it makes a difference ***who*** is actually performing the long distance service and assessing the toll charge on the end user. Specifically, it matters whether the toll charge is being assessed by one of the parties to the ICA – Verizon or Bright House – or whether, instead, it is being assessed by some third party toll carrier that is handling the call.

Q. WHY DOES THAT DIFFERENCE MATTER?

[50] *See* 47 U.S.C. § 153(16).

A. It matters because the entity that is supposed to pay access charges on the "Exchange Access" traffic is the entity that is assessing the toll. So, for example, if Verizon itself charges one of its customers a toll charge in connection with making a call to a Bright House customer, then Bright House should charge Verizon an access charge for terminating that toll call. On the other hand, if the toll call is coming in from out of state and being carried by (say) AT&T, then AT&T is required to pay the access charges. Because both types of calls fit the definition of "Exchange Access" traffic, but the payment obligations are so different, Bright House has proposed to clearly define the two different types of traffic.

Q. WHAT HAS BRIGHT HOUSE PROPOSED?

A. Bright House has proposed to include the following language in the definition of Exchange Access: "For purposes of this Agreement, 'Exchange Access' traffic shall fall into one of two exhaustive and mutually exclusive categories: 'Toll Traffic,' as defined herein, in which one of the Parties is the IXC; and 'Meet Point Billing Traffic' as defined herein in which the Parties jointly provide exchange access service to a third-party IXC."

In other words, Bright House proposes to include language that clearly delineates Exchange Access traffic where Bright House or Verizon might owe each other access charges ("Toll Traffic") from Exchange Access traffic where neither Bright House nor Verizon owes each other, but, rather, they would both assess

access charges on a third-party interexchange carrier, or IXC ("Meet Point Billing" traffic).

Q. WHAT IS "MEET POINT BILLING" TRAFFIC?

A. Meet point billing refers to a situation in which a third-party IXC uses ***both*** Bright House and Verizon to connect to an end user being called. For example, suppose that a long distance carrier like AT&T connects to Verizon's tandem switch in Tampa, but does not have any direct connections to Bright House. If an AT&T long distance customer in (say) Chicago calls a Bright House customer in Tampa, AT&T can get the call from Chicago to Tampa, but then still has to find a way to get it to Bright House. In such a situation AT&T will hand the call off to Verizon at Verizon's tandem, and Verizon will route the call to Bright House. In that arrangement, AT&T has received terminating exchange access service – that is, the service of terminating its incoming toll call – jointly from Verizon (which provided the tandem switching service, and delivered the call to Bright House), and from Bright House as well (which ensured that the call got the rest of the way to the actual called party).

There are two industry-standard documents, known as MECAB (Multiple Exchange Carrier Access Billing) and MECOD (Multiple Exchange Carrier Ordering Document) that explain how meet point billing is supposed to work. The basic idea is simply that the two carriers involved in providing the access service to the third party IXC will establish a "meet point" which serves as the demarcation point between the services, network, and responsibility of the two

carriers. Each carrier will bill the third party IXC for the services it provides on its side of that "meet point." Neither carrier will bill each other anything in connection with a meet point billing arrangement, because they are not providing any services to each other; instead, they are jointly providing access services to the third party IXC.[51]

Q. WHAT IS THE PARTIES' DISPUTE ABOUT THIS DEFINITION?

A. Verizon's proposed contract does not contain any definition of Meet Point Billing traffic at all. As a result, there is significant ambiguity in its definitions of "Exchange Access" and "Telephone Toll" traffic, because in a Meet Point Billing situation, neither party should charge the other anything for handling the traffic, whereas in the situation where a party's own customer is making a toll call, it is appropriate to impose access charges on the party that is acting as an IXC by charging its customer a toll. So the separate identification of, and definition for, Meet Point Billing traffic is very important as a practical matter.

That said, Verizon has never, to my knowledge, explained its objection to including the distinction between Toll Traffic (where one of the parties would pay access charges to the other one) and Meet Point Billing traffic (where the parties would not charge each other, but would, instead, each charge the third-party IXC) in the ICA. As noted, however, under long-established industry practice, Meet Point Billing traffic is routed and billed differently from toll calls exchanged

[51] Of course, one carrier may obtain facilities from the other (or from a third party) in order to augment or establish its own network on its side of the meet point. Bright House is not suggesting that one carrier can simultaneously rely on the other carrier for part of the first carrier's own network and then not pay for that service.

directly between two interconnected local carriers. Clearly defining these two different situations in the parties' agreement would clarify the two different situations and eliminate the possibility of disputes about who should be paying access charges.

Q. WHAT SHOULD THE COMMISSION DO ON THIS POINT?

A. The Commission should adopt Bright House's proposed definition of "Exchange Access," including not only the reference to the term's definition in the Act, but also the clear distinction between Toll Traffic, where one of the parties is charging the end user a toll fee, and Meet Point Billing Traffic, where a third-party IXC is involved. The Commission should also adopt Bright House's proposed definition of "Meet Point Billing" traffic.

Q. HOW DOES BRIGHT HOUSE PROPOSE TO DEFINE "TOLL TRAFFIC"?

A. Consistent with the discussion above, Bright House would define "Toll Traffic" as follows:

> Traffic that meets the definition set forth in the Act for the term "Telephone Toll Service" and as to which one of the Parties is providing the service to the affected End User(s) and imposing on such End User(s) the separate charge referred to in that definition. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic," depending on whether the originating and terminating points are within the same LATA. For avoidance of doubt, traffic that meets the definition set forth in the Act for the term "Telephone Toll Service" but as to which a third party carrier provides the service to the affected End User(s) and imposes on such End User(s) the separate charge referred to in that definition

shall be treated as Meet Point Billing Traffic for purposes of this Agreement.

So, as with Exchange Access traffic, Bright House would conform the definition of Toll Traffic in the agreement to the definition of that term in the Act. Again, however, Bright House would clearly distinguish between the situation in which one of the parties – Bright House or Verizon – is providing the toll service, and the situation in which a third party IXC is doing so. And, again, the reason for making this distinction clearly is that the rules governing which entity is supposed to pay access charges are very different in those two situations.[52]

Q. WHAT IS THE DEFINITION OF "TELEPHONE TOLL SERVICE" IN THE ACT?

A. The Act defines "Telephone Toll" service as a call that is "long distance," in the basic sense of going between two different telephone exchange areas (areas served by different switches), and as to which the end user is also assessed a toll charge. Specifically, the statute provides: "The term ''telephone toll service' means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

Q. DOES VERIZON'S PROPOSED DEFINITION CONFORM TO THE TERMS OF THE ACT?

A. Not very well. Here is Verizon's proposed definition of "Toll" traffic:

[52] Bright House would also distinguish "intraLATA" toll from "interLATA" toll. Verizon would make this distinction as well, which is not controversial.

> Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Measured Internet Traffic, or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA

There are three revealing features about this proposed definition. First, even though the point is to define "toll" traffic, there is no requirement that the underlying traffic actually involve anybody paying a "toll." Second, even though the Act expressly defines "Telephone Toll Service" – and, indeed, ***refers to*** that definition in the earlier-discussed definition of "Exchange Access" – Verizon's proposed definition of "Toll Traffic" makes no reference to the definitions in the Act at all. Third, Verizon is clearly setting up "Toll Traffic" as a catch-all category by saying that any traffic that does ***not*** fall into one of three other categories is deemed to be toll traffic.

It appears that Verizon has crated its proposed definition of Toll Traffic in such a manner as to maximize the situations in which Verizon can impose (relatively high) access charges on Bright House.

Q. WHAT IS THE PRACTICAL, COMPETITIVE SIGNIFICANCE OF THIS DEFINITION OF "TELEPHONE TOLL" TRAFFIC AS BETWEEN BRIGHT HOUSE AND VERIZON?

A. Verizon's proposed definition should be rejected because it directly interferes with healthy competition as between Verizon and Bright House.

Q. PLEASE EXPLAIN WHAT YOU MEAN.

A. The point of the 1996 Act is to enable and facilitate direct, head-to-head competition among local exchange carriers. And, as noted above, the policy of the Act is to specifically encourage full facilities-based competition of the sort that now exists between Verizon and Bright House in the Tampa/St. Petersburg area. In that situation, in the residential areas where Bright House's cable affiliate has facilities, consumers will have a choice of which network to use for their phone service.

In that kind of head-to-head competitive environment, an important way to compete is by offering more attractive, simpler, and larger local calling areas. Offering a larger local calling area is competing both on the features of the services being offered (since the service is simpler to understand) 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). From this perspective, the problem with Verizon's proposal is that it imposes a penalty on Bright House for offering a larger and more attractive calling area than Verizon offers.

Specifically, under Verizon's language, its own local calling areas are used to determine when access charges apply, not only for calls its own customers make, but also for calls that ***Bright House's*** customers make. While Bright House can (and does) offer larger local calling areas than Verizon, the effect of Verizon's language is that Bright House has to effectively pay a "tax" – in the form of access charges – on every call that Bright House has chosen to make a "free" local call, but for which Verizon would charge a toll. It is as if Verizon is able to collect tolls even on calls made by Bright House's customers.

Q. HOW SHOULD THIS DISPUTE BE RESOLVED WITHOUT HARMING BRIGHT HOUSE'S ABILITY TO OFFER IMPROVED HIGH VALUE SERVICES TO ITS CUSTOMERS?

A. The proper way to resolve this problem is to adopt the language that Bright House has proposed. Under that language, when a Bright House customer calls a Verizon customer, Bright House will only pay the reciprocal compensation rate to which the parties have agreed, because it is a local call to that customer. On the other hand, if a Verizon customer makes a toll call to a Bright House customer, Verizon would pay access charges to Bright House. This is completely appropriate, however, because Verizon will be collecting toll revenues from its customers.

Q. HOW DOES YOUR PROPOSAL RELATE TO THE UNDERLYING DEFINITIONS OF "TOLL SERVICE" AND "EXCHANGE ACCESS" IN THE ACT?

A. 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, which is just what the definitions in the Act contemplate. If one of the parties charges its own customers a toll charge to make a call that is terminated on the other party's network, then access charges would apply, and the party imposing the toll charge would pay them to the terminating party. On the other hand, if the party whose customer is initiating the call is not charged a toll charge, then the call is simply

not "telephone toll service" traffic. When that call is delivered to the other party, the originating party would pay reciprocal compensation, not access.

Q. HOW DOES THIS APPROACH COMPORT WITH PRIOR COMMISSION DECISIONS ON THIS TOPIC?

A. It is in complete harmony with this Commission's decisions. Some years ago, the Commission conducted a generic investigation of certain intercarrier compensation questions, and concluded that the application of access charges to calls between competing LECs should depend on the local calling areas established by the originating carrier. In other words, if the originating carrier charged its customer a toll (because the call crossed that carrier's local calling zone boundary), then the originating carrier should pay access charges to the terminating carrier. But if the call did not incur a toll (because it stayed within the originating carrier's local calling zone), then the originating carrier should pay reciprocal compensation, not access. The basis for this ruling was that using the originating carrier's calling area for this purpose was competitively neutral. On appeal, however, the court found that the Commission did not have enough evidence in that case to reach that conclusion to apply in all situations as a default rule. As a result, the Commission decided to eliminate the default rule and instead to decide the question on a case-by-case basis in individual arbitration proceedings.[53]

[53] *See* Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, Docket No. 000075-TP, Order No. PSC-05-0092-FOF-TP Order Eliminating the Default Local Calling Area (January 24, 2005).

Q. HOW DOES THIS RULING APPLY TO THE DISPUTE AT HAND?

A. It applies in several ways. First, by referring the question to individual "arbitration" proceedings, the Commission properly recognized that this issue relates primarily to arrangements between a CLEC and an ILEC – exactly the situation we have here.[54] Second, by focusing on a case-by-case determination of competitive neutrality, the Commission has properly focused on direct facilities-based competition between the ILEC and a CLEC.

Thus, and for the reasons discussed above, using the originating carrier's calling area to determine the application of reciprocal compensation in an ILEC-to-CLEC interconnection agreement is indeed competitively neutral. This is particularly true where, as in the case of Verizon and Bright House, the parties are actively exchanging very large amounts of traffic, roughly balanced in each direction, and generated from customers in the same geographic area. In this factual setting, using the ILEC's calling zones would have the effect of affirmatively suppressing competition from a facilities-based CLEC by imposing extra costs any time the CLEC tries to compete by establishing larger local calling zones. And, as discussed above, by tying the obligation to pay terminating access charges to the actual receipt by the originating carrier of toll charges, this approach not only

[54] The situation between, for example, two CLECs involves some very different policy considerations. For example, neither one has the advantage of incumbency, and even if two CLECs are certificated to serve the same geographic area, the degree of actual head-to-head, network-to-network competitive overlap may be much different than exists between a CLEC and an ILEC. As a result, the approach that makes the most sense to achieve competitive neutrality between an ILEC and a CLEC may or may not make sense in the case of arrangements between two CLECs.

makes sense from a basic economic perspective, it also complies with the relevant definitions ("Exchange Access" and "Telephone Toll Service") in the Act.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THE DEFINITION OF "TOLL TRAFFIC"?

A. The Commission should reject Verizon's proposed definition, which is not properly tethered to the relevant definitions in the Act, and instead adopt Bright House's proposed definition.

Q. HOW DOES BRIGHT HOUSE PROPOSE TO DEFINE "RECIPROCAL COMPENSATION TRAFFIC"?

A. Bright House proposes to define "Reciprocal Compensation Traffic" as follows:

> Telecommunications traffic exchanged between the Parties and subject to Reciprocal Compensation under Applicable Law. For avoidance of doubt, the Parties expressly acknowledge that in the November 5, 2008 FCC Internet Order, the FCC ruled that Internet Traffic is subject to Reciprocal Compensation and that, as a result, Reciprocal Compensation Traffic includes Internet Traffic, subject to the FCC's rules and rulings regarding intercarrier compensation applicable to such traffic.

Focusing for a moment on the first sentence of this definition, note that Bright House proposes to define reciprocal compensation traffic with reference to whether reciprocal compensation itself actually applies to the traffic under applicable law. This is, obviously, completely logical. In this regard, in the ruling referred to in the second sentence, the FCC clarified that reciprocal compensation is, the "default" mode of compensation between local exchange carriers.

Q. PLEASE EXPLAIN WHAT YOU MEAN.

A. The idea of reciprocal compensation between two interconnected carriers was established by the Act. The new law, in Section 251(b)(5), simply states that every local exchange carrier has the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Nothing in this definition suggests that any type of traffic at all is exempt from reciprocal compensation. However, another section of the law, Section 251(g), states that traditional access charge arrangements would remain in place until changed by the FCC. The courts have made clear, however, that Section 251(g) is a "transitional" mechanism that "grandfathers" in arrangements that existed prior to the Act. So, essentially, reciprocal compensation applies to all traffic except true "Telephone Toll Service" traffic, to which access charges apply.

Q. HOW DOES THIS COMPARE WITH VERIZON'S PROPOSED DEFINITION OF RECIPROCAL COMPENSATION TRAFFIC?

A. Verizon's proposed definition of Reciprocal Compensation traffic is extremely complicated and confusing. This reflects Verizon's desire to maximize the traffic as to which it can impose (relatively high) access charges, and to minimize the traffic as to which it can only impose (relatively low) reciprocal compensation charges. Here is how Verizon proposes to define this term:

> Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange

> Access or Information Access. The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon Verizon's local calling areas as defined by Verizon. Reciprocal Compensation Traffic does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation Traffic): (1) any Internet Traffic; (2) traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon, and based on the actual originating and terminating points of the complete end-to-end communication; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or, (8) Virtual Foreign Exchange Traffic (or V/FX Traffic) (as defined in the Interconnection Attachment). For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.

(emphasis in original.)

Q. DO YOU HAVE ANY COMMENT ON VERIZON'S PROPOSED DEFINITION?

A. Yes, I do. Aside from its sheer length and complexity, the recurring theme of the explicit exclusions that Verizon wants to impose is that any traffic that crosses a Verizon local calling area boundary is ***not,*** in Verizon's view, Reciprocal Compensation traffic. By the same token, nothing in Verizon's definition reflects the fact that in order to actually constitute Telephone Toll Service traffic or Exchange Access traffic under the definitions in the Act, there has to be a separate charge for the traffic. In other words, Verizon is trying to make its own retail marketing decisions about where its own customers can make free calls binding

on ***Bright House*** when the question is how much Bright House has to pay to send traffic to Verizon.

This approach is anticompetitive and wrong, and the Commission should reject it. Putting aside the language of the relevant definitions, in practical economic terms, the requirement that Verizon proposes – under which Bright House would have to pay access charges on any call that ***Verizon*** would treat as a toll call for a ***Verizon*** customer – has the effect of imposing an economic penalty of Bright House for competing with Verizon by means of offering its customers a wider local calling area. This is not remotely "competitively neutral." There is no conceivable public policy reason to permit Verizon to impose such an economic penalty, and the Commission should, therefore, reject Verizon's proposed definition of Reciprocal Compensation traffic, and adopt Bright House's.

Q. WHAT SHOULD THE COMMISSION DO WITH REGARD TO THIS ISSUE?

A. The Commission should adopt Bright House's proposed definition of Reciprocal Compensation Traffic, and reject Verizon's definition. That said, I look forward to reviewing Verizon's testimony purporting to justify and explain its definition of this term, and I expect to have additional comments to make on this issue in rebuttal.

Q. WHAT ARE THE DIFFERENCES BETWEEN THE PARTIES WITH RESPECT TO THE DEFINITIONS OF "INTERNET TRAFFIC" AND "MEASURED INTERNET TRAFFIC"?

A. As the Commission is aware, there has been controversy over the years regarding compensation for calls to dial-up Internet Service Providers. Verizon's definition of "Internet Traffic" is apparently designed to address that problem (which does not exist as between Bright House and Verizon), but is vague and uncertain. Bright House's proposed definition, however, focuses directly on the type of traffic that has been controversial:

Bright House: "Traffic in which a Customer or End User of a Party establishes a dial-up connection to the modems or functionally equivalent equipment or facilities of an Internet Service Provider by means of connections to the public switched telephone network provided to the Internet Service Provider by the other Party."

Verizon: "Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission."

Bright House's definition is much clearer and should be adopted.[55]

Q. DO YOU HAVE ANY CONCERNS WITH VERIZON'S DEFINITION OF "MEASURED INTERNET TRAFFIC"?

A. Yes. But with respect to "Measured Internet Traffic," the definitions are closer. Bright House has proposed some modifications to Verizon's language to

[55] In addition, Verizon's definition could be misconstrued to cover VoIP traffic, which is completely distinct from the kind of one-way, dial-up ISP-bound calling that Verizon seems to be concerned about in general but has no bearing on its relationship with Bright House. Even though the parties have agreed on the treatment of VoIP traffic in the Interconnection Attachment, the ambiguity created by Verizon's proposed definition should be corrected.

eliminate the presumption that Verizon's local calling areas should control for rating purposes (see discussion above), and has proposed a clarifying reference to a recent FCC ruling that, in the course of clarifying the general application of reciprocal compensation, also ruled on the topic of calls to ISPs. Here is Verizon's proposed definition, marked to show Bright House's proposed changes:

> ~~Dial-up, switched~~ Internet Traffic originated by a Customer of one Party on that Party's network at a point in ~~Verizon's~~ **that Party's** local calling area, and delivered to ~~a Customer or~~ **the modems or functionally equivalent equipment or facilities of** an Internet Service Provider served by the other Party ~~on that other Party's network~~ at a point in the same ~~Verizon~~ local calling area. For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement. Calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis, are not considered Measured Internet Traffic. For the avoidance of any doubt, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic) (as defined in the Interconnection Attachment) does not constitute Measured Internet Traffic. **For avoidance of doubt, the Parties expressly acknowledge that in the November 5, 2008 FCC Internet Order, the FCC ruled that Internet Traffic is subject to Reciprocal Compensation and that, as a result, Reciprocal Compensation Traffic includes Internet Traffic, subject to the FCC's rules and rulings regarding intercarrier compensation applicable to such traffic.**

Bright House's proposed changes are completely reasonable and should be adopted.

Issue 3

Issue #3: Should traffic not specifically addressed in the ICA be treated as required under the Parties' respective tariffs or on a bill-and-keep basis?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #3?

A. Despite the issues noted above regarding the definitions of different types of traffic, the parties in fact generally agree on how traffic should be compensated.

Q. PLEASE PROVIDE YOUR UNDERSTANDING OF THE AGREEMENT ON PRICING.

A. Bright House and Verizon have agreed that local traffic should be subject to a rate of $0.0007 per minute of use, toll traffic should be subject to tariffed access charges, and (unless I misunderstand where things stand), meet point billing traffic should be billed to the third party IXC. In addition, the parties have agreed that they will treat traffic as local, toll, etc., without regard to whether it is originated or terminated as VoIP traffic. They have agreed on the classification and treatment of some other, more minor types of traffic as well. So it is a bit hard to see what other types of traffic they might end up exchanging.[56]

Q. IF YOU CAN'T IDENTIFY ANY TRAFFIC THAT IS NOT ALREADY ADDRESSED IN THE PROPOSED ICA, WHY IS THIS LANGUAGE NECESSARY?

A. As regulatory definitions and technology change, it is possible that some as-yet-unidentified type of traffic might arise. The question then is what the agreement should say about it.

Q. WHAT DO THE TWO PARTIES PROPOSE?

[56] Note that the dispute regarding what traffic counts as toll versus what traffic counts as local has no bearing on Issue #3. Whichever way that traffic is classified, it will fall into one "bucket" or the other, and so will not be unclassified.

A. Verizon proposes that any traffic for which a classification does not exist should be assessed access charges. Thus, it would provide, in Section 8.4 of the Interconnection Attachment, as follows: "Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic."

This, of course, is consistent with the point I made earlier, which is that ILECs such as Verizon typically want their access charges – the highest rate in the intercarrier compensation scheme -- to be the "default" rate for intercarrier compensation. Bright House, however, proposes a more reasonable approach: an initial small amount of "new" traffic will be exchanged on a bill-and-keep basis (i.e., neither carrier charges the other one). Once the amount of such traffic exceeds a certain low level, however, either party may initiate negotiations to determine what the appropriate compensation for that traffic should be, with the Commission available to resolve the dispute if the parties cannot agree. Specifically, here is Bright House's proposed language:

> Any traffic not specifically addressed in this Agreement shall be exchanged on a "bill-and-keep" basis, with no intercarrier compensation as between the Parties with respect to it. Either Party may request negotiation of an amendment to this Attachment to specify intercarrier compensation other than bill-and-keep for any type of traffic not specifically addressed in this Agreement and of which the Parties exchange at least a DS1's worth of traffic for a period of no less than three (3) consecutive months. If the Parties cannot agree on such an amendment either Party may invoke the Dispute Resolution procedures of Section 14 of the General Terms and Conditions of this Agreement.

In short, unless the parties are exchanging a DS1's worth of this undefined traffic each month for three consecutive months, the traffic is exchanged

on a bill and keep basis. If and when that level is reached, the parties will negotiate the appropriate intercarrier compensation for the traffic.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THIS ISSUE?

A. The Commission should adopt Bright House's proposal, which provides a more balanced and sensible way to deal with the unlikely scenario that any significant amount of presently unclassified traffic will flow between the parties' networks. If it turns out that in some particular case, Verizon's preferred outcome – tariffed rates – is appropriate, that is the result that will eventually be reached. But there is no reason to assume in advance that the highest possible tariffed rates, as opposed to a reciprocal compensation rate, some other negotiated rate, or a bill-and-keep arrangement, is the right way to bill for this presently unknown type of traffic.

Issue 29

Issue #29: To what extent, if any, should parties be required to establish separate trunk groups for different types of traffic?

Q. WHAT IS THE UNDERLYING DISPUTE REGARDING ISSUE #29?

A. I am not certain that there actually is a dispute. In the industry generally, sometimes carriers find it convenient to isolate traffic that has particular routing or billing characteristics onto separate trunk groups. This traffic will typically be carried on the same physical facilities as any other traffic, but will be, in effect,

electronically separated into its own grouping to make it easier to route it properly, or apply special billing requirements to it properly. This is sometimes referred to as logical assignment of trunks. Bright House has suggested language that would permit either party to request that such separate trunk groups be established, followed by good faith discussions between the parties, and resolution by the Commission if the parties cannot agree.

Q. PLEASE PROVIDE BRIGHT HOUSE'S PROPOSED LANGUAGE.

A. Here is Bright House's specific proposed language, added to the end of Section 2.2.2 of the Interconnection Attachment:

> Other types of trunk groups may be used by the Parties as provided in other Attachments to this Agreement (e.g., 911/E-911 Trunks) or in other separate agreements between the Parties (e.g., directory assistance trunks, operator services trunks, BLV/BLVI trunks or trunks for 500/555 traffic). **In addition, either Party may request the establishment of a separate trunk group for the exchange of any type of traffic whose technical or billing requirements make such a separate trunk group commercially reasonable. If the Parties cannot agree within a period not to exceed sixty (60) days on the establishment of a requested separate trunk group, then either Party may invoke the Dispute Resolution provisions of Section 14 of the General Terms.**

I cannot imagine why Verizon would object to this provision, which simply embodies standard industry practices for managing multiple types of traffic carried on the same physical facility. I will await a review of Verizon's testimony in order to see if Verizon in fact objects to this language. But even if it does, the Commission should nevertheless approve Bright House's proposal.

Issue 31

Issue #31: Which party has administrative control over which interconnection trunks, and what responsibilities, if any, flow from that control?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #31?

A. As far as I am aware, the dispute regarding this issue is actually very narrow. While they have not yet settled on final language, the parties are agreed that Bright House shall always have administrative control with respect to two-way trunk groups (that is, trunk groups where traffic can go in either direction between the parties). I understand that the parties also agree that administrative control over one-way trunk groups (trunks where traffic only flows in one direction) rests with the party who is originating the traffic over the trunk group.

Q. IS THERE AN AGREEMENT ON WHAT "ADMINISTRATIVE CONTROL" MEANS FROM AN OPERATIONAL PERSPECTIVE?

A. Yes. The party with "administrative control" is responsible for monitoring the usage on the trunk group and sending orders to the other party to either expand the capacity (number of trunks) in the trunk group (if growing traffic warrants the expansion) or decrease the number of trunks (if traffic is declining sufficiently to warrant such a decrease).

Q. ON WHAT ISSUE DO THE PARTIES DISAGREE?

A. The one area of disagreement relates to language that Verizon has proposed to deal with what it considers to be improper control of a trunk group. For instance,

Verizon suggests a situation in which Bright House has administrative control of a trunk group; traffic on the trunk group is sufficiently low that the total number of trunks should (based on standard engineering practices) be reduced; but for some reason Bright House has not sent orders to take down some of the trunks. In that case, Verizon proposes that it can ***either*** simply disconnect its end of those trunks – thereby freeing up its network resources for other uses – ***or*** start billing Bright House Verizon's tariffed rate for the underused trunks and trunk ports.

Q. PLEASE EXPLAIN WHY VERIZON'S PROPOSAL IN INAPPROPRIATE.

A. To leave the unused trunks in place, but bill Bright House for them, is inappropriate and, in fact, an invitation to disputes and abuse. The chance that the situation addressed by this issue will actually arise is relatively small. But if it does, and for some reason Bright House fails to submit orders to turn down an appropriate number of trunks, that should not become a potential profit center for Verizon. The only legitimate reason that Verizon would be concerned is that the (by hypothesis, here) underused trunks could be put to a better use within Verizon's network. The appropriate solution, therefore, is to permit Verizon to free up the unused trunks for its own use.

Q. HOW DO YOU PROPOSE TO RESOLVE THIS DISPUTE?

A. The specific language at issue is set out below, with Bright House's proposed changes shown against Verizon's initial proposal.

2.3.2 For each Tandem or End Office One-Way Interconnection Trunk group for delivery of traffic from ~~[CLEC]~~ **one Party** to the ~~Verizon~~ **other Party** with a utilization level of less than sixty percent (60%) for final trunk groups and eighty-five percent (85%) for high usage trunk groups, unless the Parties agree otherwise, ~~[CLEC]~~ **the Party with administrative responsibility for the trunk group** will promptly submit ASRs **to the other Party** to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%) for all final trunk groups and eighty-five percent (85%) for all high usage trunk groups. ~~In the event [CLEC]~~ **If the Party with administrative responsibility for the trunk group** fails to submit an ASR to disconnect One-Way Interconnection Trunks as required by this section, ~~Verizon~~ **then, on no less than thirty (30) days written notice, the other Party** may disconnect the excess Interconnection Trunks. ~~or bill (and ***CLEC Acronym TE*** shall pay) for the excess Interconnection Trunks at the rates set forth in the Pricing Attachment~~

For the reasons discussed above, Bright House's proposed language – and, specifically, its deletion of the option for Verizon to bill for unused trunks – should be adopted.

Issue 34

Issue #34: Should performance measures apply to two-way trunks that are outside of Verizon's administrative control?

Q. WHAT IS THE UNDERLYING DISPUTE WITH RESPECT TO ISSUE #34?

A. As with other issues relating to trunking, it is not clear to me that there is an actual dispute. As a general matter, if Verizon does not have administrative control over a trunk group, it should not be held responsible for problems on that trunk group, such as excessive traffic blocking caused by a failure to properly groom the group as traffic grows. On the other hand, every trunk group under the agreement has two ends – one on Verizon's network, and one on Bright House's. As a result,

even for trunk groups for which Bright House has administrative responsibility, Verizon will still have a role to play. Specifically, when Bright House identifies a need to add trunks to a trunk group, it must advise Verizon of the need to add trunks, by means of an industry-standard form known as an "access service request," or ASR. Verizon must then respond to the ASR and coordinate with Bright House to activate the additional trunks on the trunk group. If Verizon fails to do this, performance on the trunk group will degrade, blockage will increase, etc. So even where Bright House has administrative control, it is still possible for Verizon to create a situation in which Verizon's own actions degrade the performance on the trunk group. It is not appropriate to include language in the contract that would absolve Verizon of any consequences, under the contract, for its own failures to perform.

That said, as I understand it, Verizon does not seek to escape responsibility for responding to Bright House's requests to modify a trunk group in an appropriate and timely fashion. As a result, while the parties have not yet settled on final language on this point, it is very likely that it will be resolved in the near future.

If it turns out that this is not the case, I will address this issue again in my rebuttal testimony.

Issue 30

Issue #30: May Bright House unilaterally determine whether the Parties will use one-way or two-way interconnection trunks?

Q. WHAT IS THE UNDERLYING DISPUTE WITH RESPECT TO ISSUE #30?

A. The FCC has ruled that the interconnecting CLEC gets to decide whether the trunk groups it establishes to exchange traffic with Verizon are one-way trunk groups or two-way trunk groups.[57] Indeed, FCC Rule 51.305(f) specifically and unequivocally states: "If technically feasible, an incumbent LEC ***shall provide*** two-way trunking ***upon request.***" 47 C.F.R. § 51.305(f) (emphasis added). I am not a lawyer, but this language does not seem to provide much room for doubt. Assuming that two-way trunks between Verizon and Bright House are technically feasible – and they clearly are (and are in service today) – then Verizon must provide that type of trunking to Bright House "upon request" – that is, at Bright House's unilateral option.

Bright House's language simply implements this clear regulatory command into the language of the ICA, in order to avoid any disputes. Despite this language, Verizon apparently does not believe that Bright House has that right, and so wants the matter to be subject to negotiation and discussion between the parties.

Q. BY WAY OF BACKGROUND, WHAT ARE TWO-WAY TRUNK GROUPS, AS OPPOSED TO ONE-WAY TRUNK GROUPS?

A. A one-way trunk is a trunk between two switching centers (either on one carrier's network, or as in the case of interest in this arbitration, between two carriers' interconnected networks), over which traffic may be originated from only one of

[57] *See, Local Competition Order* at ¶ 219.

the two switching centers. The traffic carried on a one-way trunk, of course, will likely consist of two-way communications once a call is established, so the "one-way" label refers only to the origin of the demand for connection. The originating end of a one-way trunk is referred to as the "outgoing trunk" while the other end is known as the "incoming trunk." By comparison, a two-way trunk allows calls to originate from both ends of the trunk. In this arrangement, depending upon where the call originates, both ends of the trunk can serve as an "incoming trunk" and "outgoing trunk," and both parties can send traffic originated from either of the two carriers' networks back and forth on the facility.

Q. WHY DOES IT MATTER WHETHER TRUNK GROUPS ARE ONE-WAY OR TWO-WAY?

A. Depending on the engineering details of the traffic between the two networks, using two-way trunks can be more efficient than using one-way trunks. The most efficient type of trunk can depend on traffic patterns at a particular location. For instance, if the traffic being exchanged between the parties at a particular location is almost all initiated in one direction, one-way trunks could be the most efficient option, and if the traffic is less lopsided, two-way trunks would likely be more efficient. Bright House wants to be sure that it has the right to direct when two-way trunks will be used in order to ensure that it can obtain those efficiencies.

Q. WHY WOULD TWO-WAY TRUNKS BE MORE EFFICIENT THAN ONE-WAY TRUNKS?

A. It is probably best to explain this using an analogy. Imagine that a new, multi-lane freeway is going to be built between a large city and a "bedroom community" where people who work in the city live. One question the road planners will need to decide is how wide to make the new freeway – that is, to decide on the maximum number of physical lanes of traffic that the freeway can accommodate. The physical, concrete freeway in this example is analogous to the physical transmission facility that will be set up between the two networks – ranging, in theory, from a single copper wire that could only carry one call (this would be a single "trunk") to a dense wave-division-multiplexed optical fiber connection that could carry millions of calls.

But the raw size of the facility isn't the only consideration. Suppose that during the morning rush hour, traffic into the city will fill six lanes of the freeway, while outbound traffic will only take two lanes. And suppose that during the afternoon rush hour, the situation is reversed – six lanes' worth of traffic outbound, and only two inbound.

One way to deal with this type of traffic flow would be to simply build a 12-lane freeway, with six lanes in each direction. But if the highway planners did that, most of the lanes on the freeway would be unused, most of the time. So the planners might well choose instead to build an 8-lane freeway with the middle lanes "reversible." In this configuration, during the morning rush hour, there would be six lanes going in and two coming out; during the evening rush hour, there would be six lanes going out and two going in; and at other times, there would be four lanes in each direction. With this type of arrangement, traffic that

would take 12 lanes to accommodate if each lane was always "one-way" can be handled on only 8 lanes if the traffic can flow in both directions.

The same potential for savings exists in using two-way trunks instead of one-way trunks. As long as the heaviest calling volumes outbound from Verizon to Bright House occur at a different hour of the day than the heaviest calling volumes inbound to Verizon from Bright House (analogous to the inbound and outbound morning and evening rush hours), the total number of trunks needed in a two-way trunk group will be less than the total number of trunks needed using one-way trunks.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #30?

A. The Commission should adopt Bright House's proposed language that permits it to choose when to use 2-way trunks. Putting aside the fact that Bright House's position seems to be literally compelled by the FCC's rules on this topic, as a policy matter, Bright House has every incentive to engineer its network in the most efficient manner. Verizon should not be allowed to control the type of trucks that Bright House needs for traffic exchange.

Issue 32

Issue #32: May Bright House require Verizon to accept trunking at DS-3 level or above?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #32?

A. As network technology has advanced over the last thirty to forty years, it has become easier and more efficient to transmit traffic at higher and higher data rates. The basic unit of voice data transmission in digital format is known as a "DS-0," which refers to a single voice path. Starting in the 1960s, telephone company engineers figured out how to "multiplex" together a number of separate voice signals onto a more efficient facility. The first step up from a DS-0 – a technical achievement in its time, but now roughly forty years old – is to multiplex 24 separate DS-0 signals together to create a "DS-1" signal. By the early 1980s, even higher data transmission rates were common. Apparently for historical reasons, there is no "DS-2" in use; the next signal level is the "DS-3," which is the equivalent of 28 DS-1s, or 672 individual DS-0 voice signals. Again, this was an impressive achievement in its time, but the deployment of this level of signal multiplexing in commercial applications is on the order of 30 years old.

The 1980s saw the widespread deployment of optical fiber in communications networks. Optical signals can carry vastly more information than electrical signals on copper. There is an established set of standard optical signal levels, the smallest of which is the OC-3, which is equivalent to three DS-3s. For large networks, interconnection at the OC-12, OC-48, OC-192, or even higher levels are common.

Q. VERIZON WANTS TO USE DS-1 LEVEL INTERFACES FOR EXCHANGING TRAFFIC WITH BRIGHT HOUSE. IS THAT A REASONABLE PROPOSAL?

A. No. Despite the fact that the DS-1-level interface is a nearly forty-year-old technology, Verizon insists that Bright House is obliged to deliver traffic to Verizon at this extremely low data rate. This is an unjust and unreasonable restriction on Bright House's ability to interconnect "efficiently" with Verizon.

As noted above, Bright House has hundreds of thousands of customers in the Tampa/St. Petersburg area, and Verizon has, we believe, even more. At the busiest time of the day, therefore, there will be thousands and thousands of simultaneous conversations ongoing between Verizon customers and Bright House customers. A requirement that interconnection occur at the DS-1 level means that those thousands and thousands of simultaneous calls have to be broken down into groups of 24, for no reason at all other than to accommodate Verizon's (apparently) obsolete switching equipment.

In this regard, as I noted above in connection with the discussion of TELRIC pricing for entrance facilities, Verizon is obliged to offer interconnection to Bright House that is at least equal in quality to that which Verizon provides to itself or to any other interconnector or third party.

Q. WOULD YOU EXPECT VERIZON TO USE DS-3 OR HIGHER CONNECTIVITY GIVEN THE COMMON AVAILABILITY OF THAT TECHNOLOGY?

A. Yes. I would expect Verizon to seek to reduce costs by using the highest possible capacity connections for the traffic in question. For instance, I would expect

Verizon to use DS-3 or even higher connectivity for itself for intermachine trunking or for exchanging traffic with affiliates or third parties.

Q. IF VERIZON DOES USE DS-3 CONNECTIVITY OR HIGHER FOR ITSELF OR FOR AFFILIATES, IS IT YOUR UNDERSTANDING THE IT MUST OFFER THAT SAME CAPABILITY TO BRIGHT HOUSE?

A. Yes. Indeed, even if it does not today provide higher-data-rate interconnection to others, in light of how far transmission and switching technology has evolved since the DS-1 interface was created, it is not reasonable for Verizon to sit on its hands and expect a more modern network like Bright House to pay to slow its transmissions down to the level that Verizon demands. At some point – which, I submit, has long passed – Verizon has to take steps to ensure that its network is capable of interconnecting on reasonable terms – and at reasonable data rates – with other carriers like Bright House.

Q. ARE THERE ANY OTHER CONSIDERATIONS THAT LEAD TO THIS SAME CONCLUSION?

A. Yes. Although the disputes about interconnection costs between Bright House and Verizon appear to be relatively minor, it is worth noting that the FCC has long held that an ILEC can only charge a CLEC the "TELRIC"-based costs of interconnection arrangements. TELRIC stands for "Total Element Long Run Incremental Cost," and refers to the cost that would be incurred, in the future and over the long run, by an efficient carrier, to perform a particular function. In economic policy terms, TELRIC is a "forward looking" cost standard.

Q. DOES THE TELRIC METHODOLOGY ALSO ASSUME THE MOST EFFICIENT AVAILABLE TECHNOLOGY?

A. Yes. As discussed above, the FCC has specifically noted that "Costs must be based on the incumbent LEC's existing wire center locations and most efficient technology available."[58] An efficient network interconnection arrangement today and in the future would not occur at a signal level as low as DS-1. The standard would be DS-3, OC-3, or higher. As a result, the appropriate forward-looking cost associated with taking in the DS-3 or OC-3 signal that Bright House would like to send to Verizon and stepping it down to DS-1 is zero. This is because, in an efficient network today and in the future, those costs would never be incurred at all.

From this perspective, Verizon can be viewed as having a choice – either provide direct DS-3 or higher level interfaces to Bright House, or incur, itself, whatever costs might be involved in demultiplexing the DS-3 or higher level signals down to the DS-1 level. If Verizon chooses to maintain obsolete switches that can only accept DS-1 level inputs, I suppose it may do so, but under the TELRIC pricing standard Verizon is barred from imposing any of the costs associated with that obsolete, inefficient choice on Bright House.

Q. DO ANY OTHER FACETS OF THE 1996 ACT SUPPORT THE VIEW THAT VERIZON SHOULD BE REQUIRED TO PROVIDE INTERCONNECTION AT DS-3 OR HIGHER LEVELS?

[58] *See*, *Local Competition Order* at ¶¶ 685, 690. *See* also the FCC's Rules §51.505(b)(1) regarding "efficient network configuration."

A. Yes. I would note that federal law expressly empowers states to impose state-specific interconnection requirements that go beyond what federal law requires.[59] It is possible that Verizon could argue that there is no specific federal requirement that it provide DS-3 or OC-level interfaces. If it makes that argument, I would note that if DS-3 or OC-level interconnection is a good idea – and it is – then there is no reason for Florida or any other state to sit on its hands when the issue comes up in an arbitration, as it has here.

Q. ARE THERE OTHER REASONS WHY VERIZON SHOULD NOT BE ALLOWED TO CHARGE BRIGHT HOUSE FOR DEMULTIPLEXING THE SIGNAL DOWN TO THE VERIZON LEVEL?

A. Yes. As discussed above, the FCC's rules define the "transport" component of the "transport and termination" of traffic as, essentially, everything that needs to be done to get the traffic from the physical point of interconnection between the two networks out to the end office switch serving the called party. See 47 C.F.R. § 51.701(c). Here, Bright House and Verizon have agreed that the combined per-minute rate for all transport and termination functions shall be $0.0007 per minute. To the extent that Verizon needs to demultiplex a signal from Bright House in order to put that signal into an acceptable format for Verizon's switches, that demultiplexing is simply part of the transport function. Verizon cannot charge separately for that function, beyond the $0.0007/minute already agreed to.

[59] *See, Local Competition Order*, ¶¶ 133-137.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #32?

A. The Commission should adopt Bright House's proposed language in Section 2.4.6 of the Interconnection Attachment, and require Verizon to interconnect at DS-3 or OC-3 levels, upon Bright House's request. Further, Verizon should not be able to charge Bright House in those cases where its technology requires demultiplexing the traffic from Bright House.

Issue 33

Issue #33: May charges be assessed for the establishment or provision of local interconnection trunks or trunk groups?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #33?

A. As part of making arrangements to exchange traffic, Verizon and Bright House have to establish trunks and trunk groups to carry that traffic. Every trunk will have two ends that have to be established at the same time, and coordinated – one end on Bright House's network and one end on Verizon's network. Verizon proposed language that indicates that when an interconnection trunk group is established, it can charge Bright House a non-recurring (one-time) set-up charge for the trunk.

Q. WILL VERIZON AGREE TO PAY BRIGHT HOUSE A SIMILAR NRC FOR SETTING UP THE BRIGHT HOUSE TRUNKS?

A. No. Verizon has stated that it will not agree to pay Bright House any similar or offsetting set-up charge for the essentially identical work that Bright House has to

do for each trunk. Particularly with two-way trunks, the trunks will be used by Verizon to send traffic to Bright House, just as they will be used by Bright House to send traffic to Verizon. There is no reason that Bright House should be charged for setting up those trunks, and yet be unable to charge Verizon for its work on the same trunks.

But the same result is also appropriate for any one-way trunks the parties may establish. It is true that Bright House may establish one-way trunks to Verizon because Bright House customers want to call Verizon customers, but it is equally true that Verizon's customers want to receive those calls. The same is true for one-way trunks from Verizon to Bright House. The fact is that with customer bases for both parties that number in the hundreds of thousands, simply providing good service to their own customers requires both Verizon and Bright House to undertake a variety of efforts to ensure that traffic flows smoothly between the networks. For this reason, Bright House has proposed language that ensures that there will be no charges between the parties for establishing interconnection trunks.

Q. ARE THERE ANY OTHER CONSIDERATIONS RELEVANT TO THIS ISSUE?

A. Yes. Verizon's work in setting up "trunks" for the exchange of traffic occurs entirely on its network, and entirely on its side of the point of physical interconnection between the two networks. And, in practical terms, setting up a trunk is part of what Verizon has to do to properly get the traffic from the point of

interconnection between the networks to the end office switch serving the called party. As a result, setting up a trunk is part of the "transport" function for which the parties have already agreed to a $0.0007/minute rate. Since this function is already embraced by that rate, neither party should charge the other for it.

Q. WHAT POSITION SHOULD THE COMMISSION ADOPT WITH RESPECT TO ISSUE #33?

A. The Commission should adopt Bright House's language and forbid the parties from charging each other for establishing interconnection trunks.

Issue 36

Issue #36: What terms should apply to meet-point billing, including Bright House's provision of tandem functionality for exchange access services?

(a) Should Bright House remain financially responsible for the traffic of its affiliates or other third parties when it delivers that traffic for termination by Verizon?

(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?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #36?

A. There are a few interrelated disputes. First, though, it does not appear that the parties disagree about the basic idea of how meet point billing works. As described above, when a third-party IXC sends traffic to Verizon's tandem and then to Bright House for termination, they agree that Verizon should bill the IXC for the services that Verizon provides, and that Bright House should bill the IXC

for the services that Bright House provides. 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 THE DISPUTE REGARDING THE DETAILS OF IMPLEMENTING MEET POINT BILLING WHERE VERIZON PROVIDES TANDEM SWITCHING?

A. The key to a meet point billing arrangement is identifying a specific point at which one carrier's responsibility begins and the other carrier's responsibility ends. Once that point is established, it is the responsibility of each carrier to build, or purchase, facilities to "meet" the other carrier at that "point."

Q. DOES IT MAKE SENSE FOR THE MEET POINT TO BE THE SAME AS THE POINT WHERE OTHER TRAFFIC IS EXCHANGED?

A. Yes. Logically, in an interconnection arrangement where the parties will have established a point for the exchange of local traffic, it would seem to make sense to use that same point as the meet point for purposes of third-party IXC traffic.

At least in the past, however, it appears that Verizon has insisted that the "meet point" for purposes of exchanging third-party IXC traffic would be at a different location than the local interconnection "meet point." Specifically, while the interconnection point for local traffic might exist at a Verizon end office convenient to Bright House's facilities, Verizon has insisted that the meet point

for IXC traffic be a port on Verizon's tandem switch. On this theory, Verizon has charged Bright House for the connection from the physical point where the parties exchange traffic, up to the tandem switch.

Q. WHAT DOES BRIGHT HOUSE PROPOSE AS A WAY OF DEALING WITH THIS ISSUE?

A. While Bright House and Verizon can of course agree that the meet point for purposes of billing IXCs can be anywhere they want, the "default" case should be 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. After all, the basic statutory provision setting out the parties' interconnection rights and duties – Section 251(c)(2) of the Act – says that the interconnection arrangements established under it are for the "transmission and routing" of telephone exchange service traffic (that is, broadly speaking, "local" traffic), ***and*** "exchange access" – which, as discussed above, is any traffic associated with toll calls. The statute does not make any distinction between "exchange access" associated with a party's own toll services provided to its own end users, and "exchange access" associated with toll services provided to third-party IXCs.[60]

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THIS ASPECT OF ISSUE #36?

[60] Indeed, when the Act was being debated and passed, so-called "competitive access providers," or CAPs, were a significant force in the industry. These entities provided competitive connections between long distance carriers and either large customers or ILEC switches. So, the traffic that they would have been exchanging with ILECs, and that the statute was intended to cover, would have been third-party IXC traffic.

A. The Commission should approve Bright House's proposed language, and confirm that unless the parties expressly agree otherwise, that the physical point of connection between their networks established under the ICA for the exchange of local traffic is also the "meet point" between them for purposes of implementing the meet point billing rules.

Q. WHAT IS THE DISPUTE SET OUT IN ISSUE 36(b), REGARDING BRIGHT HOUSE REMAINING "FINANCIALLY RESPONSIBLE" FOR THIRD-PARTY OR AFFILIATED TRAFFIC DELIVERED TO VERIZON?

A. I am not entirely sure what Verizon is concerned about with this aspect of this issue. If Bright House sends its own intraLATA toll traffic to Verizon, then Bright House agrees that it should pay access charges to Verizon to terminate that traffic. On the other hand, if a third party, including an IXC affiliated with Bright House, sends toll traffic to Verizon by way of Bright House's network, then that would be a simple meet point billing situation, in which Bright House, rather than Verizon, is providing the tandem switching functionality. To that extent, this aspect of the issue seems to be identical to the main question of Bright House providing tandem functionality, which I discuss below. If there is more to Verizon's concern that this, hopefully their testimony will explain it, and I can respond in my rebuttal testimony.

Q. WHAT IS THE DISPUTE REGARDING BRIGHT HOUSE ACTING AS A PROVIDER OF TANDEM FUNCTIONALITY?

A. Much like several other issues, I do not fully understand Verizon's objection here. The basic situation is this: the trunk groups that the parties have established for the exchange of local traffic run directly between Bright House's network and Verizon's end office switches. (The parties have some trunks that go to Verizon's tandem to handle overflow traffic, but the volume of traffic that the parties exchange makes it economical for there to be direct end office trunks, sometimes called DEOTs, between the two networks.)

Bright House would like the opportunity to compete with Verizon for the provision of "tandem" functionality to third-party IXCs. That is, today, a long distance carrier that wants to connect at a single point in the Tampa/St. Petersburg area to reach essentially all end offices in the area will connect to Verizon's access tandem. That switch is connected not only to Verizon's end offices, but also to Bright House. But, as noted, Bright House's network is also connected to Verizon's end offices. Bright House, therefore, would like to be able to use those connections – the DEOTs noted above – to carry third-party IXC traffic bound for Verizon end offices.

This would be handled as a typical meet point billing arrangement: Bright House would bill the IXC for tandem switching and transport to the hand-off point with Verizon, and Verizon would bill the IXC for transport from that point to the end office, end office switching, etc.

For reasons that Verizon has never adequately explained, it has refused to accept various proposals that Bright House has made that would acknowledge in the

interconnection agreement that this type of arrangement – where Bright House, rather than Verizon, provides tandem switching – could occur. Yet Verizon's own contract language expressly deals with the situation in which Verizon itself provides tandem switching.

Q. IS THERE ANY REASON TO EXCLUDE TRAFFIC HANDLED VIA BRIGHT-HOUSE-PROVIDED TANDEM SWITCHING FROM THE AGREEMENT?

A. No, none at all. As noted above, the basic statute calling for the establishment of interconnection arrangements states that those arrangements may be used for the exchange of "exchange access" traffic. A meet point billing situation where Bright House provides tandem functionality and Verizon provides end office functionality falls squarely within that category. Again, I do not understand the basis for Verizon's refusal to agree with this suggestion.

Q. IN THESE CIRCUMSTANCES, WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #36?

A. The Commission should accept Bright House's language that would clearly establish that the parties may use the interconnection arrangements established under the agreement for meet point billing traffic where Bright House, not Verizon, provides the tandem functionality.

Issues 38 and 39

Issue #38: Should there be a limit on the amount and type of traffic that Bright House can exchange with third parties when it uses Verizon's network to transit that traffic?

Issue #39: Does Bright House remain financially responsible for traffic that it terminates to third parties when it uses Verizon's network to transit the traffic?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE NOS. 38 AND 39?

A. 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.

I expect that Verizon's testimony on this point will reflect these points, and that, in any event, the parties will work out agreed language on this point in the near future. If I am mistaken about that, then Bright House's position – even if Verizon does not agree with it – is that the basic structure outlined above is

reasonable, and that the parties' agreement should contain language that implements it.

Issue 40

Issue #40: To what extent, if any, should the ICA require Verizon to facilitate negotiations for direct interconnection between Bright House and Verizon's affiliates?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #40?

A. Verizon's basic position regarding transit traffic, as evidenced by its stance on Issue Nos. 38 and 39, is that it does not want to be involved in providing transit service between Bright House and third parties. Yet among the third parties with whom Bright House exchanges a great deal of traffic are Verizon Wireless and Verizon's long distance affiliate. Bright House has proposed language that would oblige Verizon to provide commercially reasonable efforts to facilitate Bright House being able to establish direct connections to Verizon's affiliates, thereby eliminating the load on Verizon's tandem switch and other facilities associated with providing tandem transit service. If Verizon fails to provide such cooperation, it cannot charge for transiting traffic between Bright House and its affiliates. Verizon objects to this language.

Q. WHY IS BRIGHT HOUSE'S PROPOSAL APPROPRIATE?

A. Bright House's proposal essentially calls on Verizon to "put its money where its mouth is" regarding transit service. If Verizon's rates for transit service are adequate – and Verizon has not suggested that they are not – then there is no need

for any concern about how much traffic that Bright House might send, via Verizon, to third parties. Yet in connection with Issue Nos. 38 and 39, Verizon has insisted on these limits. At least when the third party is affiliated with Verizon, it should be a straightforward matter to help work out a direct connection arrangement between Bright House and the affiliate. If Bright House refuses to do so, that strongly suggests that Verizon is actually profiting from the transiting arrangement. This would mean that that Verizon is inappropriately trying to retain the status of a "middleman" between Bright House and Verizon's affiliates. Bright House's proposed language does not permit Verizon to exploit its middleman status unless it at least makes commercially reasonable efforts to allow Bright House to avoid paying Verizon for that role.

Q. HAVE ANY OTHER REGULATORS ADOPTED THIS APPROACH?

A. Yes. In an arbitration in Puerto Rico (conducted under the Act, which applies fully in that jurisdiction), the local ILEC there was simultaneously charging the CLEC for transiting calls to the ILEC's wireless affiliate, but refusing to cooperate with the CLEC in establishing direct connections to that wireless affiliate. The CLEC presented a proposal similar to that proposed by Bright House here, and the regulator accepted it.[61] While the matter was on appeal to federal court, the necessary direct connections were established. Later, the federal

[61] *See* Report and Order, Case No. JRT-2008-AR-0001 (Telecommunications Regulatory Board of Puerto Rico, August 11, 2008); *Centennial Puerto Rico License Corp. v. Telecommunications Regulatory Board,* Civ. Nos. 08-cv-2436, 09-cv-1002 (D.P.R. 2009). As I understand it, the ILEC in that case has appealed the matter to the federal court of appeals with jurisdiction over Puerto Rico. But whatever its exact legal status, in my view the logic of the regulators' decision on this issue is entirely sound.

district court approved the regulator's decision. The Puerto Rico ILEC has now appealed the matter to the 1st Circuit, so it technically remains pending. However, the ease with which the direct connections were established once the incentive to do so was established in an interconnection agreement shows that this is an effective and reasonable way to prevent the ILEC from exploiting its position as the "middleman" between a CLEC and the ILEC's own carrier affiliates.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS DISPUTE?

A. The Commission should reject Verizon's position as self-serving and not in the public interest. Bright House's language should be adopted as consistent with the Act's pro-competitive policies.

Issue 41

Issue #41: Should the ICA contain specific procedures to govern the process of transferring a customer between the parties and the process of LNP provisioning? If so, what should those procedures be?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #41?

A. A key aspect of facilities-based competition between separate networks, such as that which exists between Bright House and Verizon, 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. Over the past several years, Bright House has had at least two significant disputes with Verizon regarding such issues. One dispute involved Verizon refusing to port the telephone numbers of customers who were buying Verizon's DSL service on their telephone lines; the other was

the dispute regarding Verizon's retention marketing activities based on the use of confidential information Bright House provided to Verizon in connection with arranging for number porting, etc.

In these circumstances, Bright House has concluded 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. Such a set of procedures will provide a convenient contractual point of reference for the parties' operational personnel. In addition, Bright House has expressly provided that either party may convene negotiations to discuss any issue regarding how to "reasonably, efficiently and safely transfer a Customer/End User" from one party to the other. This sets up a reasonable contractual mechanism for identifying and resolving any disputes or issue that might arise over time.

Q. HAS VERIZON REJECTED BRIGHT HOUSE'S PROPOSAL?

A. Verizon has not objected to any particular element of Bright House's proposal, but has taken the position that the overall idea of a consolidated statement of customer transfer procedures is unnecessary.

Q. CAN YOU GIVE AN EXAMPLE OF WHY THIS TYPE OF "CHOREOGRAPHY" OF CUSTOMER TRANSFERS IS IMPORTANT?

A. Certainly. Suppose a customer decides to switch service from Verizon to Bright House and that the service is supposed to be transferred on a Friday. In advance

of the installation date, Verizon and Bright House will have coordinated the "porting" of the customer's number to Bright House. One aspect of that coordination is to establish what is known as a "10-digit trigger" so that the customer will continue to be able to receive calls on their Verizon line, until the porting is actually completed.

This matters because sometimes, at the last minute, a customer is unavailable or has to change the install date and so the installation of service by Bright House has to be put off. In that case, the 10-digit-trigger has to remain in place until the installation can be rescheduled.

Q. HOW DOES BRIGHT HOUSE'S LANGUAGE ACCOMMODATE THAT NECESSITY?

A. Bright House has proposed language in Section 15.2.4 of the Interconnection Attachment that ensures in those circumstances that the customer's service will not be disrupted during the period that the installation is rescheduled. Unfortunately, as I understand it, some customers have complained about service disruptions in these circumstances.

The attachment regarding the transfer of customers explicitly requires the parties to follow those procedures, but also contains a mechanism by which they can both discuss any issues, and bring any unresolved matters to the Commission for resolution.

This is simply one example of why it is important for the parties' ICA to explicitly address the issues surrounding the transfer of customers. This is an important part of the new agreement, and the Commission should accept Bright House's proposal.

Q. WHAT SHOULD THE COMMISSION DO WITH REGARD TO ISSUE #41?

A. The Commission should approve Bright House's proposals because they are key to a smooth and transparent transfer of customers between competitors. It seems clear that both parties, as well as consumers, will benefit from having these procedures fully laid out in a single, convenient portion of the parties' agreement.

Issue 42

Issue #42: Is Bright House entitled to open a Verizon NID and remove wiring from the customer side?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #42?

A. The situation at issue is this: when a customer chooses to take VoIP service from Bright House's cable affiliate, that VoIP service "appears" in the customer's premises in the coaxial cable that would also deliver video, Internet service, etc. A connection is made between that coaxial cable and the preexisting (unregulated) premises telephone wire at that location. That makes the VoIP service "live" on that premises wire. However, unless it is disconnected, that premises wire is ***also*** connected to Verizon's network, by means of the "Network Interface Device," or NID, typically a small gray box on the side of a home.

Q. IS IT NECESSARY TO DISCONNECT THE VERIZON NETWORK WHEN BRIGHT HOUSE IS PROVIDING SERVICE?

A. Yes. As a matter of good engineering practice, it is necessary to disconnect the premises wire from the NID so that there can be no electrical interference or other problems with having two different voice services connected simultaneously to the same premises wire. The way to do this is to open up the NID and, depending on the configuration of the NID itself, either unplug a standard jack that connects the premises wire to Verizon's network or, in some cases, to unscrew two screws per phone line, on the customer's side of the NID. The NID would then be closed.

Q. SINCE THE BRIGHT HOUSE TECHNICIAN WOULD BE DISCONNECTING THE VERIZON NETWORK AT THE CUSTOMER SIDE OF THE NID, IS THERE ANY PROBLEM WITH THIS APPROACH?

A. No. There is no need for any authorization from Verizon or anyone else to perform these functions. The customer already has access to the portions of the NID that can be reached simply by opening up the NID. The customer, therefore, can (and does) authorize Bright House's cable affiliate to perform these functions as part of the installation of service (or performs them him- or herself). Moreover, no part of Verizon's network per se is being used or affected by these actions; they are simply necessary to disconnect deregulated inside wire from the NID.

The purpose of Bright House's language on this point is simply to clarify that Bright House or its affiliate may perform these functions without charge. This language will, therefore, eliminate any possibility of dispute on this topic. Bright House's language is as follows:

> 9.8 Due to the wide variety of NIDs utilized by Verizon (based on Customer size and environmental considerations), Bright House may access the Customer's Inside Wiring, acting as the agent of the Customer by any of the following means:
>
> 9.8.1 Where an adequate length of Inside Wiring is present and environmental conditions permit, Bright House **or, at Bright House's direction and on its behalf, a Bright House affiliate providing facilities used to provide Bright House End Users with interconnected VoIP services (for purposes of this Section 9 of this Attachment, "Bright House")** may**, without contacting Verizon and without charge** remove the Inside Wiring from the Customer's side of the Verizon NID and connect that Inside Wiring to Bright House's NID.
>
> 9.8.2 Where an adequate length of Inside Wiring is not present or environmental conditions do not permit, Bright House may, **without contacting Verizon and without charge,** enter the Customer side of the Verizon NID enclosure for the purpose of removing the Inside Wiring from the terminals of Verizon's NID and connecting a connectorized or spliced jumper wire from a suitable "punch out" hole of such NID enclosure to the Inside Wiring within the space of the Customer side of the Verizon NID. Such connection shall be electrically insulated and shall not make any contact with the connection points or terminals within the Customer side of the Verizon NID.

As can be seen, this clarifying language will eliminate the possibility of disputes about this topic.

Q. WHAT IS VERIZON'S POSITION ON THIS ISSUE?

A. Verizon has not accepted Bright House's proposal, but I do not understand the basis for their disagreement. Perhaps they will agree to this proposal in their testimony. If not, I will address their position on rebuttal.

Issue 46

Issue #46: Should Verizon be required to make available to Bright House access to house and riser cable that Verizon does not own or control but to which it has a legal right of access? If so, under what terms?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #46?

A. "House and riser cable" refers to wiring on the premises of a multi-tenant building, such as an apartment building, that is (usually) on the customer's side of the demarcation point (and therefore unregulated), that runs between floors and in walls, to reach individual units in the building. Although this wiring is normally considered deregulated, and under the control of the building owner, many building owners do not feel comfortable managing any but the most basic telephone wiring. As a result, they sometimes enter into contracts with a phone company, such as Verizon, giving the phone company the authority to manage, repair, etc. the deregulated house and riser cable, even though the ownership of the cable remains with the building owner.

Verizon's language regarding this topic appears in Section 7.1 and 7.1.1 of the Network Elements Attachment. Verizon states in Section 7.1.1 that it will provide access to house and riser cable "only if Verizon owns, operates, maintains and controls" it. Bright House proposes to amend that language to cover

situations in which Verizon "otherwise has the legal right to provide access to control" the house/riser cable. Moreover, as with the situation regarding NIDs, in Section 7.1 Bright House proposes to make clear that its cable affiliate, providing VoIP service, would be able to make use of this cable.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept Bright House's proposed changes. Without these changes, Verizon will be encouraged to enter into arrangements with building owners in which the house and riser cable is confirmed as unregulated and the property of the owner, but with Verizon delegated by the owner to manager and maintain the wiring. Because Verizon's original language only obliges it to provide access to wiring that it "owns," this would create a situation in which Verizon could interfere with its competitors' access to customers in apartment buildings, condominiums, and similar structures. This would not serve the public interest.

Issue 49

Issue #49: Are special access circuits that Verizon sells to end users at retail subject to resale at a discounted rate?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #49?

A. Under FCC rules and the terms of the Act, Verizon is required to allow CLECs to purchase, at wholesale (that is, discounted) rates, any telecommunications service that Verizon sells "at retail." Broadly speaking, exchange access services are not provided "at retail" because they are used as an input to Telephone Toll service.

That is, the toll carrier sells a finished, end-to-end service to its customer, but to do so the toll carrier buys exchange access service at the originating and terminating ends of the call. In this scenario the toll service is a retail service, but the exchange access service is not.

Verizon (and other ILECs as well) offers a large number of services out of its "access" tariff that are not involved in the origination or termination of toll service, and that therefore do not constitute "exchange access" service as that term is defined in the statute. It is therefore quite possible that an "access" service (that is, a service that a customer would buy out of Verizon's "access" tariff) is, nonetheless, a retail service subject to resale, which Verizon must sell to the CLEC at a discounted rate.

Q. IS SPECIAL ACCESS ONE OF THE "ACCESS " SERVICES THAT IS A SERVICE SUBJECT TO RESALE?

A. Yes. One such service is point-to-point data services, or special access services, often provided to banks, insurance companies, and others for transmitting data between locations. These point-to-point data services are also used by businesses to obtain direct connections to a provider of Internet access. These special access services are offered at retail and are not used in support of telephone toll service. Again, these services should be available to CLECs at discounted rates, for resale. Bright House has proposed language to modify Section 2.1.5.2 of the pricing attachment to clarify this situation. That section identifies services not subject to the wholesale discount as including:

> Except as otherwise provided by Applicable Law, Exchange Access services, **it being understood and agreed to by the Parties that the provision of point-to-point "Special Access" services to End Users for purposes of data transmission do not constitute "Exchange Access" services for this purpose.**

This language would clarify that point-to-point data circuits are, indeed available for resale.

Verizon has objected to this proposed change.

Q. WHY IS BRIGHT HOUSE'S PROPOSAL REASONABLE?

A. The FCC's rules regarding resale are very clear on this point. 47 C.F.R. § 51.605 provides:

> § 51.605 Additional obligations of incumbent local exchange carriers.
>
> (a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates ...
>
> (b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

I earlier discussed the definition of "exchange access services" under the Act, noting that "exchange access" refers to the use of local facilities for the origination and termination of telephone toll services. That is precisely the definition being referred to in the rule quoted above. It follows that the exclusion of "exchange access" services from the resale obligation does not apply to services that are (a) sold at retail, and (b) not used for the origination or

termination of toll services. Point-to-point data services, even if they are called "special access" services, are not covered by the exclusion, and are therefore subject to resale, and Verizon must provide these services to Bright House, for that purpose, at discounted rates.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #49?

A. The Commission should adopt Bright House's proposal.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry Court, Trinity, Florida 34655. I provided direct testimony in this matter on March 26, 2010. My background and qualifications are stated there.

Q. WHAT HAVE YOU BEEN ASKED TO DO IN THIS REBUTTAL TESTIMONY?

A. I have been asked to review, and respond to, Verizon's direct testimony, filed by Mr. D'Amico, Mr. Munsell, and Mr. Vasington.

Q. HAVE YOU PROVIDED YOUR RESPONSES TO THEIR TESTIMONY BELOW?

A. Yes, I have. At the outset, however, I would note that between the time of the filing of direct testimony and this rebuttal testimony, the parties have continued to discuss open issues and, as I note below, they have settled a large number of them. In addition, the parties have made proposals to each other to resolve certain issues that were not reflected in the direct testimony. As a result, it is at times necessary in this rebuttal testimony to either briefly summarize certain points made in my direct, or to provide some additional analysis and discussion, in order to properly frame the context of, and explain, the issues as they actually exist between the parties with respect to the remaining open issues.

II. ISSUES IN DISPUTE

A. Recently Settled Issues.

Q. HAVE THE PARTIES BEEN ABLE TO NARROW THE ISSUES IN DISPUTE SINCE THE TIME OF YOUR DIRECT TESTIMONY?

A. Yes. Although the parties have not completely finalized the ICA language for all of these issues, Bright House informs me that the parties have reached either agreement, or agreement in principle, with respect to the following issues:

- Issue #5 (Verizon access to Bright House poles, conduits, etc.);
- Issue #6 (negotiation of further terms for services under the ICA);
- Issue #8 (sale of Verizon territory);
- Issue #11 ("ordering" a service does not imply that a charge applies)
- Issue #12 (implementation of rate modifications by the PSC or the FCC);
- Issue #23(a) (description of Verizon's obligation to provide directory listings);
- Issue #26 (Verizon's obligation to provide fiber meet interconnection);
- Issue #27 (how far Verizon must build out to establish a fiber meet);
- Issue #30 (availability of two-way trunks);
- Issue #31 (administrative control over trunk ordering);
- Issue #33 (one-time charges for trunk establishment);
- Issue #34 (application of performance measurements to two-way trunks);
- Issue #40 (facilitation of direct connection with Verizon affiliates);
- Issue #42 (Bright House access to NIDs);

- Issue #43 (procedures for removing PIC freezes); and
- Issue #46 (Bright House access to Verizon-controlled house/riser cable).

In light of this substantial progress, I will organize my discussion of the open issues in this rebuttal testimony in a different manner than in my direct.

Q. HOW IS YOUR DISCUSSION OF THE ISSUES ORGANIZED IN THIS REBUTTAL TESTIMONY?

A. I divide the remaining open issues into two "tiers." The first tier includes those issues where adopting one party's view over the other's would have a direct and important financial, operational, or legal/contractual impact on the parties. The second tier are those issues where – while Bright House views them as important, and certainly believes that its position rather than Verizon's is correct – the result is not as immediately critical to the parties' ongoing interconnection relationship.

B. <u>"Tier 1" Open Issues.</u>

Q. WHAT ARE THE "TIER 1" ISSUES THAT REMAIN OPEN?

A. There are five or six remaining "Tier 1" issues. I note them below in the order in which I will discuss them in my testimony:

- ***Issue #41,*** relating to the establishment of specific procedures to govern the process of transferring a customer between the parties.
- ***Issue #32,*** relating to Verizon's obligation to accept trunking at the DS-3 level or above.
- ***Issue #36,*** relating to the terms that apply to "meet point billing" situations, *i.e.,* situations where Verizon and Bright House jointly provide

originating or terminating access service to third-party long distance carriers;

- ***Issue #24,*** relating to Verizon's obligation to charge cost-based, "TELRIC" rates for facilities used to connect Bright House's network to Verizon's when those facilities are used "for the transmission and routing of telephone exchange service and exchange access." (*See* 47 U.S.C. § 251(c)(2).)
- ***Issue #37,*** relating to the definition of what calls from Bright House to Verizon (and vice versa) are treated as toll calls (subject to access charges) versus local calls (subject to lower reciprocal compensation rates).
- ***Issue #7,*** relating to Verizon's asserted right to unilaterally choose to cease performing any contract duty that in its opinion is not literally required by applicable law.

In regard to Issue #36 and Issue #24, given the specific network architecture that Bright House has established to interconnect with Verizon, these two issues are very closely related, and will be discussed together. As a result, it is fair to say that there are now only five key "Tier 1" issues that remain unresolved.

Q. WHAT ARE THE REMAINING "TIER 2" ISSUES?

A. There are about a dozen of these "Tier 2" issues: Issue #1 (role of tariffs in the ICA); Issue #2 (definitive prices); Issue #3 (treatment of traffic not specifically identified in the ICA); Issue #4(a) (treatment of the terms "customer" and "end user"); Issue #13 (time limits on back-billing, and raising billing disputes); Issue #16 (terms regarding assurance of payment); Issue #20 (parties' obligations to

reconcile their network architectures); Issue #22 (terms regarding use of Verizon's OSS); Issue #28 (types of traffic that may be sent via a fiber meet arrangement); Issue #29 (establishing separate trunk groups for different traffic types); Issues #38 and #39 (relating to transit traffic); Issue #44 (unlocking 911 records); Issue #45 (inclusion of collocation terms in the ICA); and Issue #49 (resale of special access circuits sold at retail).

I should note that the parties continue to discuss potential settlement of all of these issues – both Tier 1 and Tier 2. While reaching settlement on the Tier 1 issues may prove challenging, Bright House indicates that it is very likely that additional settlements regarding many of the remaining Tier 2 issues will occur. I would also note that according to the procedural schedule established by the Commission, the parties must file "position statements" on all open issues by Monday, May 3, 2010. Bright House has informed me that they are hopeful that there will be additional settlements to report at that time.

Issue 41 (Customer Transfer Procedures)

Issue #41: Should the ICA contain specific procedures to govern the process of transferring a customer between the parties and the process of LNP provisioning? If so, what should those procedures be?

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #41?

A. Bright House and Verizon operate separate but interconnected networks. As a result, when one of them wins a customer from the other, that customer's service has to be transferred from the losing carrier to the winning carrier. This process involves a number of different steps that need to happen during a relatively short, but competitively sensitive, time frame. In that process there are a number of different ways that the customer's telephone service can be disrupted if things do not go smoothly. It is therefore critically important that the parties' ICA lay out specifically how this customer transfer process will occur. Bright House has proposed to include these procedures as a separate and easily referenced attachment to the ICA. Verizon opposes including this attachment at all, and, in addition, takes issue with a number of the specific provisions Bright House has proposed.[1]

Q. BROADLY SPEAKING, DO YOU SEE ANY BASIS FOR VERIZON'S OBJECTION TO INCLUDING A SPECIFIC ATTACHMENT DEALING WITH CUSTOMER TRANSFER PROCEDURES?

[1] *See* the Direct Testimony of Mr. Munsell on behalf of Verizon at pages 42-52.

A. No, I do not. I discuss Verizon's individual objections below, and I believe that the Commission should reject Verizon's assertions and adopt the specific proposals Bright House has made. But, no matter how the Commission rules on the various specific items to which Verizon objects, I believe it would be a substantial improvement for the ICA to contain, in a single, concise attachment, a statement of the procedures that the parties will follow when a customer is transferred from one to the other. As I noted in my direct testimony, Verizon and Bright House are engaged in direct, head-to-head, facilities-based competition. This is extremely beneficial to telephone consumers in the Tampa area. But because Bright House has its own network and does not (aside from traffic exchange) rely on Verizon to provide its own services, Verizon's key opportunity to interfere with competition is during the critical period when a customer is being transferred from Verizon over to Bright House. Ultimately, problems with the customer transfer process disrupt the competitive process and harm consumers.

Q. ARE YOU AWARE OF PROBLEMS WITH TRANSFERRING CUSTOMERS BETWEEN BRIGHT HOUSE AND VERIZON?

A. Yes. Some years ago, Verizon imposed unreasonable delays in porting to Bright House the telephone numbers of customers who purchased unrelated "digital subscriber line," or DSL, services from Verizon. Later, Verizon interpreted the current ICA to supposedly permit it to charge Bright House millions of dollars to establish directory listings for Bright House's end users, even though the ICA says those listings would be established at "no charge." Still later, Verizon started using confidential information from Bright House about which specific customers

would be leaving Verizon on which days to engage in illegal "retention marketing" to try to hold on to those customers.[2] In light of this history of substantial disputes surrounding the customer transfer process, it is both reasonable and prudent to include a specific section of the new ICA that lays out customer transfer procedures.

So, again, while Bright House's specific proposals are reasonable and should be adopted, no matter how the Commission rules on the specific disputed provisions, it is very important that the Commission accept Bright House's basic proposal to have a separate section of the ICA that lays out what procedures apply to customer transfers.

Q. WHICH VERIZON WITNESS DEALS WITH ISSUE #41 IN HIS DIRECT TESTIMONY?

A. Verizon witness William Munsell states Verizon's position with respect to Issue #41, at pages 42-52 of his direct testimony. I respond below to Mr. Munsell's claims.

Q. AT PAGES 44-45 OF HIS TESTIMONY, MR. MUNSELL OBJECTS TO BRIGHT HOUSE'S PROPOSED LANGUAGE ENSURING THAT VERIZON WILL PROMPTLY PORT TELEPHONE NUMBERS EVEN IF THE CUSTOMER MOVING FROM VERIZON TO BRIGHT HOUSE HAS DSL SERVICE OR SIMILAR SERVICE ON THE CUSTOMER'S LINE. IS THERE ANY BASIS FOR MR. MUNSELL'S OBJECTIONS?

[2] *See,* Gates Direct at 46-48 and 143-144.

A. No. To explain why, I will first briefly explain what "local number portability" is, then explain why past disputes with Verizon and other incumbent carriers show that Bright House's language is necessary.

Q. WHAT IS LOCAL NUMBER PORTABILITY?

A. Very briefly, when Congress mandated local telephone competition in the 1996 Act, it realized that customers would be very reluctant to switch from one carrier to another unless they could keep their same phone numbers even though they were changing carriers. Congress, therefore, required local carriers to provide "local number portability" in accordance with regulations to be established by the FCC. 47 U.S.C. §251(b)(2). Based on input from the industry, the FCC required the establishment of a system where a carrier bringing in a call to a particular customer will automatically check with a database of local telephone numbers to find out whether the customer is still served by his original carrier, or whether, instead, the customer has moved to a new carrier and "ported" his number to that new carrier. By now, this is a highly automated process: the FCC recently adopted rules that require ports to be processed by the "losing" carrier within one business day of receiving the porting request from the "winning" carrier.[3]

Q. WHAT IS A "SIMPLE" PORT AS OPPOSED TO A "COMPLEX" PORT?

A. A "simple" port is the most common type of porting activity. A simple port is usually the transfer of one or two numbers with no special circumstances associated with the porting process. A complex port is one that includes multiple

[3] *See* 47 C.F.R. § 52.35(a).

numbers (perhaps ten or more) or unique provisioning requirements that might result in the need for coordination between the providers

Q. WHY DOES BRIGHT HOUSE PROPOSE TO INCLUDE LANGUAGE THAT SPECIFICALLY STATES THAT THE PRESENCE OF DSL OR SIMILAR SERVICE ON A LINE DOES NOT JUSTIFY TREATING THE PORT AS "COMPLEX" RATHER THAN "SIMPLE"?

A. DSL service is a means of providing high-speed data service, typically for high-speed Internet access, on a traditional copper telephone line. DSL service, therefore, is part of a traditional telephone company's way of competing with cable-system delivered services, which nowadays typically include not only traditional video service and VoIP service, but also high-speed Internet access. Several years ago, Verizon and other incumbent carriers took the position that if a cable-based competitor won a customer who had DSL service on his or her phone line, Verizon would not simply port the customer's telephone number. Instead – to the annoyance of the customers – Verizon said that DSL on the line created a "complex" port, permitting Verizon to delay transferring the customer for days or even weeks.

Q, DID BRIGHT HOUSE FILE A COMPLAINT AGAINST VERIZON ON THIS ISSUE WITH THE FLORIDA COMMISSION?

A. Yes. Bright House filed a complaint against Verizon with this Commission.[4] In addition, the matter was presented to the FCC, by Bright House and others, in a proceeding involving BellSouth (now AT&T). Ultimately, the FCC ruled that ILEC delays in porting based on the presence of "non-porting related complications or requirements such as the presence of DSL service" were not consistent with the LNP guidelines. Specifically, the FCC stated:

> *Number Portability*. Comcast Phone, Time Warner, and Bright House Networks raise arguments that incumbent LECs have unlawful internal policies of delaying number porting requests when competing voice service providers win a voice customer that also subscribes to DSL. Specifically, Comcast Phone and Time Warner assert that incumbent LECs refuse to port the telephone number for the voice line until the customer cancels its DSL service. We take this opportunity to remind carriers that the Act requires, and we intend to enforce, non-discriminatory number porting between LECs, including our previous conclusion "that carriers may not impose non-porting related restrictions on the porting out process." Because of these requirements, when an incumbent LEC receives a request for number portability, it is required to observe the same rules, including provisioning intervals, as any other LEC and ***cannot avoid its obligations by pleading non-porting related complications or requirements such as the presence of DSL service on a customer's line***. We also retain the authority to evaluate specific objections to incumbent LEC's porting policies in proceedings seeking enforcement action.[5]

Q. DOES THIS FCC LANGUAGE SUPPORT BRIGHT HOUSE'S PROPOSED LANGUAGE TO WHICH MR. MUNSELL OBJECTS?

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[4] Florida Public Service Commission Docket No. 041170-TP (complaint filed Sept. 30, 2004).

[5] In the Matter of BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers, Memorandum Opinion And Order And Notice Of Inquiry, 20 FCC Rcd 6830 (2005) at ¶ 36 (footnotes omitted, emphasis added).

A. Yes, it does. First, Verizon's initial language, which Mr. Munsell defends, states only that Verizon will follow local number portability requirements "recommended by" certain industry groups "and adopted by the FCC." While that is good as far as it goes, it does not appear to address the situation noted above, where the FCC issued a specific ruling about specific ILEC practices in response to complaints from cable-affiliated voice competitors, as opposed to as a result of recommendations by industry groups.[6] Second, in the quoted ruling, the FCC emphasized that ILECs cannot avoid number portability obligations based on ***any*** "non-porting related complications ... ***such as*** the presence of DSL service on the customer's line." Bright House's proposed language reasonably reflects this FCC ruling by stating that simple ports are not converted into complex ports by virtue of the presence of "DSL or similar service" on a customer line. In sum, Mr. Munsell's objection to Bright House's proposed language is, in light of this specific FCC ruling, entirely unfounded.

Q. AT PAGES 45-48 OF HIS TESTIMONY, MR. MUNSELL ALSO OBJECTS TO BRIGHT HOUSE'S PROPOSED REQUIREMENT THAT LNP-RELATED FUNCTIONS BE PROVIDED BY THE PARTIES TO EACH OTHER AT NO CHARGE, INCLUDING COORDINATION BETWEEN

[6] Mr. Munsell specifically objects to Verizon being asked to agree to anything "different than what is spelled out in FCC ***rules*** (or [industry group] guidelines)." Munsell Direct at page 45, lines 2-3 (emphasis added). As Mr. Munsell is surely aware, however, the FCC's practice is not to codify all of its rulings into its formal "rules." Instead, while carriers are certainly bound by the FCC's formally codified rules, carriers must also abide by the pronouncements and rulings of the FCC, such as that quoted above, that do not get formally codified. I cannot say whether Mr. Munsell's testimony was consciously intended to try to permit Verizon to avoid complying with FCC rulings regarding number portability that have not been formally codified, but that does seem to be the effect of his recommendation – and it should be rejected for that reason, among others.

THE PARTIES WHERE A SINGLE CUSTOMER HAS A LARGE NUMBER OF LINES TO BE PORTED. ARE MR. MUNSELL'S OBJECTIONS WELL-FOUNDED?

A. No, they are not. With regard to cost, the FCC established specific rules for the recovery by LECs of the costs they incur in providing number portability.[7] Those rules do not permit one LEC to charge another LEC for performing number portability functions, except under limited circumstances that do not apply to facilities-based providers like Bright House. Bright House's proposal makes that prohibition clear in the language of the ICA.

In several orders implementing Section 251(e)(2), the FCC held that carriers are required to recover their costs of implementing LNP through federally tariffed end-user charges.[8] In these orders the FCC determined that ILECs may recover through ***end-user charges*** their carrier-specific costs directly related to providing number portability. The FCC concluded that this framework for cost recovery (from end users rather than other carriers) best serves the statutory goal of competitive neutrality.[9]

Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC'S RULES?

A. Yes, upon implementation of the *Cost Recovery Order* the FCC promulgated its

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[7] *See* 47 C.F.R. §§ 52.32 & 52.33.

[8] The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "*Cost Recovery Order*"), 13 FCC Rcd 11701 (1998), *aff'd, Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "*Cost Recovery Reconsideration Order*"), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

[9] *See*, 47 U.S.C. § 251(e)(2).

current rule, codified at 47 C.F.R. § 52.33, entitled "Recovery of carrier specific costs directly related to providing long-term number portability."

Q. WHAT DOES THAT RULE PROVIDE?

A. The rule states that ILECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing charges in tariffs filed with the FCC. Those tariffed charges were to be in place and assessed to end users over a five (5) year term beginning in February of 1999.[10] In other words, to recover their costs associated with number porting, ILECs were allowed to assess charges on their end users.

Q. DOES THE RULE PERMIT ILECS TO ASSESS *ANY* CHARGES UPON OTHER CARRIERS?

A. Yes. Rule 52.33(a)(1)(ii) allows ILECs to assess charges on carriers that purchase switching ports as UNEs, or resell the ILECs' local exchange services, "as if the incumbent local exchange carrier were serving those carriers' end users." In addition, the number portability "query service" charge described in 47 C.F.R. § 52.33(a)(2) may also be assessed against carriers.

Q. DOES BRIGHT HOUSE PURCHASE SWITCHING PORTS FROM VERIZON?

A. No. Bright House is a facilities-based provider with its own switching and other network facilities. It therefore does not need to purchase switching ports from other providers, including Verizon.

[10] *See* 47 C.F.R. § 52.33(a)(1)(i) & (a)(iv).

Q. DOES BRIGHT HOUSE RESELL VERIZON LOCAL SERVICES?

A. No. Again, because Bright House is a facilities-based provider with its own network facilities, it does not need to resell local services.

Q. AT PAGES 45-46 OF HIS DIRECT, MR. MUNSELL ARGUES THAT "COORDINATION" IS NOT A PART OF LNP AND THAT VERIZON SHOULD BE ALLOWED TO CHARGE FOR THAT ACTIVITY. HOW DO YOU RESPOND?

A. Coordination is not required for most ports, but where it is required, it is a necessary LNP activity and intercarrier charges are not allowed. It is indisputable that the coordination efforts that both parties engage in for complex ports is directly related to local number portability.

Q. YOU SEEM TO SUGGEST THAT COORDINATION IS NOT ALWAYS REQUIRED. IS THAT CORRECT?

A. Yes. Most residential customers have one or at most a few active telephone numbers that need to be ported when the customer switches from one carrier to another, and no special procedures or processes are needed to handle such ports. On the other hand, many medium- and large-sized business customers have many active telephone numbers. At some point, it is not prudent to simply assume that the normal automated processes will properly capture the dozens or, in some cases, hundreds of lines serving a single large customer. Instead, in those limited circumstances it is prudent to have some actual human involvement to ensure that on the day the service is being cut over from one carrier to the other, all of the

numbers are properly ported, and that any problems or concerns can be dealt with immediately. Otherwise, the customer's actual telephone service may well be affected, which should never occur during a switch from one carrier to another. To the contrary, for competition to work effectively for the benefit of consumers, number porting and other carrier-to-carrier processes involved in transferring service should be transparent to the customer and entirely "behind the scenes." Bright House's coordination language – requiring coordination for customers with 12 or more lines – is designed to achieve that goal.

Q. WHAT ABOUT BRIGHT HOUSE'S PROPOSAL THAT COORDINATION SHOULD BE PROVIDED AT NO CHARGE? WHY IS THAT APPROPRIATE?

A. The requirement that coordination of number porting be provided at no charge is appropriate for three reasons. First, as noted above, the FCC has established rules for the recovery of number portability costs that contain no exception of which I am aware for coordination. Instead, Verizon can't charge Bright House when Verizon ports a number to Bright House, and Bright House can't charge Verizon to port a number to Verizon. And this same logic is the second reason that Bright House's proposal is appropriate: it goes both ways. When Bright House loses a multi-line customer (12 or more numbers) to Verizon, Bright House will be required to coordinate with Verizon, just as Verizon will be required to coordinate with Bright House when Verizon is the losing carrier. Third, from an economic perspective it makes no sense to permit charges for coordination. The effect of such charges would be, in effect, a penalty on the carrier for winning a

sufficiently large business customer from the other carrier. This is specifically why the FCC found that its LNP cost recovery rules are consistent with the competitive neutrality goals of the Act.

Q. HAS THE FCC COMMENTED ON IMPOSING LNP CHARGES ON COMPETITORS IN AN INTERCONNECTION ARRANGEMENT?

A. Yes. The FCC has made it clear that recovery of costs through other carriers would ***not*** be consistent with the principles of competitive neutrality. For example, the FCC explained that if the Commission did not use a competitive neutrality standard, or only used that standard for the distribution (but not recovery) of costs, then "carriers could effectively undo this competitively neutral distribution by recovering from other carriers."[11] That is why the FCC reaffirmed this finding in its 2002 Reconsideration Order, when it ruled that carriers "may not recover number portability costs from other carriers through interconnection charges."[12]

Competition is enhanced, and customers benefit, when the process of transferring customers between carriers is low-cost and efficient. The Commission, therefore, should be highly suspicious of any effort by a carrier to impose fees and costs on other carriers with respect to anything having to do with transferring customers from one to the other.

[11] *Cost Recovery Order*, at ¶ 39.

[12] *Cost Recovery Reconsideration Order* at ¶ 7.

Q. PLEASE COMMENT ON MR. MUNSELL'S DISCUSSION OF "EXPEDITED" TREATMENT OF PORTING, AT PAGES 46-47 OF HIS TESTIMONY.

A. It appears that Mr. Munsell does not understand Bright House's proposal. Nowhere in Bright House's proposed contract language is there any suggestion that Bright House is trying to obtain "expedited" porting of multi-number business accounts under its proposed contract language, either at all or for free. Bright House understands and agrees that if it wants Verizon to "expedite" a porting request, it may be subject to additional fees. Bright House's proposed language simply requires that when a single customer with a large number of lines/phone numbers is being transferred, that the parties coordinate that activity within the normal schedule for accomplishing the multi-line port.

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Q. PLEASE COMMENT ON MR. MUNSELL'S OBSERVATION, AT PAGES 47-48 OF HIS TESTIMONY, THAT BRIGHT HOUSE'S PROPOSED LANGUAGE IN SECTION 15.2 OF THE INTERCONNECTION ATTACHMENT, REGARDING PORTING RESERVED TELEPHONE NUMBERS, IS UNNECESSARY IN LIGHT OF THE LANGUAGE IN SECTION 15.2.3 ADDRESSING THAT ISSUE?

A. Mr. Munsell is correct. As a result, Bright House has told me that it will withdraw its proposed language in Section 15.2 dealing with that topic.

Q. AT PAGES 48-50 OF HIS TESTIMONY, MR. MUNSELL OBJECTS TO BRIGHT HOUSE'S PROPOSAL THAT THE "10-DIGIT TRIGGER" REMAIN IN PLACE FOR 10 DAYS FOLLOWING A SCHEDULED PORT. ARE HIS OBJECTIONS VALID?

A. No. As I explained in my direct testimony at pages 144-145, while most customer transfers proceed as scheduled, in some cases the cutover has to be delayed because, for example, the customer is not present at his residence to allow the new service to be installed. In that situation the installation has to be rescheduled, and as a practical matter it will rarely take place the very next day. If Verizon goes ahead and treats the number as ported, and does not keep the 10-digit trigger in place, the customer's service may well be impaired in the interim. Keeping the 10-digit trigger in place for a more extended period, as Bright House has suggested, will avoid those customer problems. This is an example of the situation I alluded to earlier, in which an incumbent carrier in particular will have an incentive to make the process of transferring a telephone customer to a competitor more cumbersome, inconvenient, or expensive than it needs to be.

Q. DOES MR. MUNSELL'S TESTIMONY SUPPORT BRIGHT HOUSE'S POSITION ON THE TRIGGER?

A. Yes. Mr. Munsell's testimony (at page 48, lines 16-23) does a good job of explaining why, in general, the 10-digit trigger is needed to ensure that the departing customer will continue to properly receive calls. However, he ignores the point made above, and in my direct testimony, that the need for the 10-digit

trigger will extend for some number of days beyond the original date for transferring the customer in many cases.

Q. MR. MUNSELL CLAIMS (MUNSELL DIRECT AT PAGE 49, LINES 15-24) THAT VERIZON SHOULD BE ABLE TO AVOID BRIGHT HOUSE'S PROPOSED EXTENDED 10-DIGIT TRIGGER BECAUSE BRIGHT HOUSE'S PROPOSAL GOES BEYOND CURRENT INDUSTRY PRACTICES AND WOULD BE "UNIQUE TO BRIGHT HOUSE." ARE THESE CLAIMS VALID?

A. No. It may well be that the industry has not generally agreed on how to handle the problem of rescheduling customer transfers – even though we have many years of experience with the task -- but that is no reason for the Commission to ignore the problem here in Florida. As I mentioned in my direct testimony, the 1996 Act very clearly empowers the Commission to establish pro-competitive, pro-consumer requirements relating to interconnection and customer service that go beyond whatever minimum obligations may be established by federal law. *See* 47 U.S.C. §§ 251(d)(3), 252(e)(3), 261(b), & 261(c). Indeed, Mr. Munsell himself at least implicitly recognizes that states have the power to impose requirements beyond those imposed by federal law when (in connection with Issue #5) he points to Florida law – not federal law – that requires CLECs to make their poles and conduits available to ILECs under certain conditions.[13] In light of that Florida law, the parties have settled Issue #5. It is odd that Mr. Munsell does not recognize the Commission's authority to establish requirements beyond the

[13] *See* Munsell Direct at 6-7.

federal or industry minimum standards in the number porting context (or other contexts).

With regard to the claim that Bright House is looking for some "unique" or special arrangement, Mr. Munsell is simply wrong. Bright House is seeking terms and conditions in its new ICA with Verizon that are just and reasonable. As Mr. Munsell is undoubtedly aware, under Section 252(i) of the Act, once the new ICA is established and approved, any other carrier may "opt into" or "adopt" the ICA for its own use.[14] This requirement literally guarantees that ***no*** provision in ***any*** approved ICA constitutes any sort of "unique" or "special" deal for any particular competing carrier. To the contrary, precisely because any ICA is available for adoption by other carriers no discriminatory "unique" or "special" treatment is even possible.

This claim, therefore, is completely wrong. The only question really before the Commission – on this or any other issue – is whether Bright House's specific proposal is just and reasonable, considering the circumstances – including the need to encourage competition, and protect consumers, by making the customer transfer process easy and efficient. For the reasons described above and in my direct testimony, Bright House's proposal regarding an extended 10-digit trigger meets that standard, and should be adopted.

[14] Indeed, Verizon witness Vasington flatly states that "Verizon is required to make available all of its section 251(c) agreements for adoption by other carriers." Vasington Direct at page 14, lines 6-8.

Q. MR. MUNSELL ALSO OBJECTS (MUNSELL DIRECT AT 50) TO BRIGHT HOUSE'S PROPOSAL BECAUSE IT WOULD ENTAIL A CHANGE IN VERIZON'S CURRENT PROCESSES AND SYSTEMS. IS THAT A VALID REASON FOR FAILING TO ACCEPT BRIGHT HOUSE'S PROPOSAL?

A. No, not at all. Consider what Mr. Munsell is suggesting: if we take his claim seriously, it would mean that no matter how inefficient, technically inadequate, or damaging to consumers and competition Verizon's current processes and systems might be, this Commission is completely powerless to establish ICA obligations on Verizon that require Verizon to correct those problems. This notion is completely without legal or regulatory foundation, is not in the public interest, and the Commission should reject it.

Q. ON WHAT DO YOU BASE YOUR CONCLUSION THAT THE COMMISSION HAS THE AUTHORITY TO IMPOSE OBLIGATIONS ON VERIZON THAT WOULD INVOLVE VERIZON CHANGING ITS SYSTEMS AND PROCESSES?

A. This is the only reasonable conclusion to draw from any number of provisions in the Act. First, Section 251(c) requires the terms and conditions associated with interconnection, access to unbundled network elements, etc., to be "just" and "reasonable." Nothing in that language suggests that if, in the circumstances, "just" and "reasonable" terms require the ILEC to change its present operations, a state commission is powerless to require those changes.

Second, Section 251(d)(3) states that nothing in Section 251 can be construed to prevent a state regulator from imposing additional obligations relating to interconnection as long as those additional obligations are not inconsistent with the obligations already present in Section 251.

Third, Section 252(e)(3) states that, in establishing an ICA in an arbitration proceeding such as this one, a state regulator like this Commission is not barred from "establishing and enforcing other requirements of state law ... including compliance with intrastate telecommunications service quality standards or requirements."

Fourth, Section 261(b) states that Sections 251-261 of the 1996 Act shall not be construed to "prohibit any state commission ... from prescribing regulations after [passage of the Act] in fulfilling the requirements of" Sections 251-261 of the Act.

Fifth, Section 261(c) states that nothing in sections 251-261 of the Act "precludes a state from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access," as long as the requirements are not inconsistent with those provisions, or FCC regulations implementing them.

Although I am not a lawyer, in my view, the claim that a state commission cannot require an ILEC to modify or improve its operations in the course of establishing an ICA is extremely pernicious and anticompetitive, and the Commission should totally reject it.

Q. WHY IS VERIZON'S CLAIM ABOUT THE LIMITS OF THE COMMISSION'S AUTHORITY PERNICIOUS AND ANTICOMPETITIVE?

A. If Verizon's view were adopted, it would mean that the ILEC itself could slow down the pace of competition by the simple expedient of never taking steps to upgrade its network, its systems, or its processes in ways that are necessary in order for competition to flourish and in order for consumers to benefit. Here we see this problem with Verizon claiming that even if consumers would benefit from keeping the 10-digit trigger in place for longer than the one day period Verizon has established, there is nothing the Commission can do to correct that problem. As noted in my direct testimony, and below, we see the same problem with Verizon insisting on maintaining obsolete and inefficient DS-1 level interconnection ports on its switches, and then charging CLECs like Bright House for the "service" of down-grading higher speed, more efficient DS-3 or OC-3 (or higher) connections to the old DS-1 level. Verizon wants to stay in the driver's seat regarding the pace of competition any way it can. But the 1996 Act, as indicated by the provisions noted above, puts this Commission in charge of ensuring the growth and development of local telephone competition in Florida, in order to benefit Florida's telephone consumers. The Commission needs to expressly reject Verizon's effort to deprive this Commission of its appropriate authority.

Q. MR. MUNSELL CLAIMS (MUNSELL DIRECT AT 51 & NOTE 9) THAT BRIGHT HOUSE'S PROPOSED CUSTOMER TRANSFER

PROCEDURES INAPPROPRIATELY SEEK TO REOPEN ISSUES THE COMMISSION HAS ALREADY DECIDED, SUCH AS THE PROBLEM OF VERIZON FAILING TO PROPERLY GROUND THE ELECTRICALLY "LIVE" CABLE PLANT USED TO PROVIDE VOIP SERVICES WHEN VERIZON DISCONNECTS THAT PLANT TO SERVE A CUSTOMER. IS THAT CLAIM ACCURATE?

A. No. It is true that the Commission ruled last year that it lacks stand-alone jurisdiction over the dangerous and inappropriate procedures that Verizon uses when it cuts a customer's cable drop as part of transferring a customer from Bright House to Verizon. But that decision was not made in the context of an interconnection arbitration between Verizon and Bright House. I will leave the legalities to the lawyers, but on a simple, practical level, what the parties physically do in the process of transferring one customer to another is simply one aspect of the terms and conditions that apply to interconnecting their networks and exchanging traffic. As a result, the Commission's authority, based on the statutory provisions noted above, to impose pro-competitive, pro-consumer obligations on carriers – including Verizon – in the course of establishing an ICA seem clearly to empower the Commission to include responsible grounding procedures within the new ICA here, whether or not the Commission considers itself to have such authority on a stand-alone basis.

Q. IN SUM, WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #41?

A. First, no matter how the Commission rules on the individual terms to which Verizon has objected, it is very important that the new ICA contain a specific attachment, along the lines proposed by Bright House, that lays out the procedures the parties will follow when transferring a customer. Having those procedures clearly and simply laid out can only help minimize disputes and benefit consumers by making the transfer process more efficient. I would note in this regard that an important part of Bright House's proposal, to which Verizon does not seem to specifically object, is the requirement that the parties negotiate regarding any problems or situations that arise regarding customer transfers, with the Commission available to resolve any disputes the parties cannot work out for themselves.

Second, without rehashing the details I have discussed above, with the exception of Mr. Munsell's objection to Bright House's proposed language regarding the porting of "reserved" numbers – which is well-taken – none of his objections to Bright House's specific proposals has any merit. As a result, the Commission should adopt Bright House's proposed customer transfer procedures, as Bright House has suggested.

Issue 32 (DS-3 And Higher Level Trunking)

Issue #32: May Bright House require Verizon to accept trunking at DS-3 level or above?

Q. WHAT IS STATUS OF THE DISPUTE UNDERLYING ISSUE #32?

A. I explained in my direct testimony that Verizon has apparently chosen to maintain its network with switches using the now ancient (in technology terms) DS-1 level interface, even though any modern network would provide for interconnection at DS-3 or higher levels. And, I explained why, if Verizon persists in maintaining its low-bandwidth, inefficient DS-1 ports on its switches, it may not properly charge Bright House for the "demultiplexing" needed to break down Bright House's higher-speed signals into the lower-speed DS-1s that Verizon wants (or for "multiplexing" Verizon's low-speed signals up to DS-3 or higher levels). The need for demultiplexing exists only because Verizon refuses to interconnect at a higher level.

Moreover, the discussion above in connection with customer transfer procedures explains why the Commission is fully empowered to require Verizon to upgrade its network to accommodate modern, higher-speed interconnection rates. That is, not only should the Commission ban Verizon from charging Bright House for "extra" services needed to accommodate Bright House's slow interconnection rates; it can actually require Verizon to improve its network in order to enhance competition and consumer welfare, if doing so is "just" and "reasonable" and otherwise pro-competitive – which it is.

Q. WHICH VERIZON WITNESS ADDRESSES ISSUE #32?

A. Verizon witness Mr. D'Amico addresses this issue at pages 12-13 of his testimony. I note that Mr. D'Amico frankly confesses that "Verizon's switches typically have lower-capacity, DS1 ports." So there is no dispute that Verizon's

network is, in this respect, old and inefficient. The only question is what to do about that fact in the context of this ICA arbitration.

Q. WHAT IS MR. D'AMICO'S BASIC POSITION ON THIS ISSUE?

A. On page 12 of his testimony, at lines 19-21, he acknowledges that Bright House can interconnect at higher data transmission rates, but, as noted above, says that if Bright House does so "it must arrange for multiplexing" – that is, pay extra – in order to lower the data rates back to the old DS-1 level.

Q. DOES MR. D'AMICO TRY TO EXPLAIN *WHY* BRIGHT HOUSE SHOULD HAVE TO BEAR THAT EXPENSE?

A. As far as I can tell, at no point does he try to justify imposing that cost of Verizon's inefficiency on Bright House. As I explained in my direct testimony, however, interconnection arrangements are to be priced using the "TELRIC" standard, which sets prices based not on the ILEC's actual existing network configuration – which may well be obsolete and inefficient – but rather on the network arrangements that an efficient ILEC would deploy in the future, over the long run.[15] As the FCC states, the TELRIC cost of an interconnection arrangement:

> should be measured based on the use of the ***most efficient telecommunications technology currently available and the lowest cost network configuration,*** given the existing location of the [ILEC's] wire centers.[16]

[15] *See* Gates Direct at 67-82.

[16] 47 C.F.R. § 51,505(b)(1) (emphasis added).

There is no possible grounds for disputing that, for traffic volumes of the sort that Bright House and Verizon routinely exchange (in excess of 30,000,000 minutes of traffic every month of local traffic, without even considering exchange access traffic), the "most efficient telecommunications technology currently available" and the "lowest cost network configuration" is at least DS-3 level interconnection, and probably OC-3 or OC-12 level interconnection. With that type of interconnection, Bright House would never have to pay to step its data rate down to the DS-1 level that Verizon currently uses. In short, the FCC's rules are completely inconsistent with Mr. D'Amico's position.

Q. MR. D'AMICO SUGGESTS (PAGE 13, LINES 1-4) THAT THIS IS NOT A PROBLEM BECAUSE UNDER VERIZON'S PROPOSED LANGUAGE THE PARTIES COULD, BY MUTUAL AGREEMENT, EXCHANGE TRAFFIC AT DS-3 OR HIGHER DATA RATES. DO YOU AGREE?

A. I certainly agree that the parties should be, and are, free to agree to use higher data rates than DS-1 for purposes of interconnection. But for the reasons described above, I strongly disagree that in the meantime Verizon can shift the costs of its own inefficiency by requiring Bright House to pay for multiplexing and demultiplexing its native higher-data-rate signals. In this regard, as long as Verizon can force Bright House to pay for multiplexing and demultiplexing, Verizon will have scant incentive to actually establish the more efficient, higher data rate connections that are justified by the traffic volumes the parties exchange. On the other hand, once Verizon itself is forced to bear the costs of its own

inefficiency, it may finally have an appropriate incentive to voluntarily upgrade its own network to modern standards.

Q. MR. D'AMICO ALSO OBJECTS TO BRIGHT HOUSE'S PROPOSED LANGUAGE GIVING BRIGHT HOUSE THE OPTION TO ESTABLISH DS-3 CONNECTIONS OVER EITHER COPPER OR OPTICAL FIBER. (D'AMICO DIRECT AT PAGE 13, LINES 6-12.) IS HIS CONCERN VALID?

A. No, not at all. Mr. D'Amico seems to be suggesting that, because Bright House has the "option" to establish DS3 trunks on fiber or copper, that Bright House could randomly choose to switch from one to the other. Thus, he claims that if Verizon establishes DS-3 facilities using copper, "Bright House could require Verizon to establish new, fiber interconnection facilities, which would be wasteful and inefficient."[17] But this is not the intent of Bright House's proposed language. That language provides:

> The Parties shall utilize, at Bright House's option, B8ZS and Extended Super Frame (ESF) trunking at the DS3 level or above (including OC-3, OC-12, or OC-48, as traffic levels dictate), using, at Bright House's option, copper or fiber physical transport facilities for DS3-level connections.

Aside from the fact that it would be inefficient and wasteful for Bright House itself to randomly switch from copper DS-3 to fiber DS-3 and back, that is not the point of this language. Rather, the point of the language is that, when a DS-3 interconnection is being first established, Bright House, rather than Verizon, can

[17] *See,* D'Amico Direct at page 13, lines 9-11.

choose whether copper or fiber will be used. If Bright House later wants to change an existing DS-3 interconnection from copper to fiber or vice versa, for its own purposes, it would not expect to obtain that change-out of facilities, for its convenience, for free – unless, of course, Verizon agreed to do so for its own purposes. Bright House would have no objection to including language clarifying this point if Verizon is truly concerned about it.

Q. DO YOU HAVE ANY FURTHER COMMENTS ON THIS ISSUE?

A. Yes. Under Section 251(c)(2), Bright House is entitled to interconnect with Verizon at "***any*** technically feasible point" that is "within" Verizon's network. Verizon seems to assume that such "technically feasible points" are somehow limited to ports on its switches (which, in Verizon's case, can apparently only handle DS-1-level inputs). While it is true that the FCC's rules list switch ports as examples of "technically feasible" interconnection points,[18] the FCC specifically states that those points include, "at a ***minimum***" the listed items, including switch ports. But "interconnection" refers simply to the physical linking of networks to exchange traffic.[19] There are any number of "points" that are "within" Verizon's network at which DS-3, OC-3, OC-12 and higher data rate signals can be exchanged. These include, for example, fiber ports on Verizon's fiber optic terminals, the DS-3 or higher ports on the very multiplexing equipment that Verizon improperly seeks to charge Bright House for, and ports on common

[18] *See* 47 C.F.R. § 51.305(a)(2).
[19] 47 C.F.R. § 51.5.

devices in networks known as Digital Access Cross-Connect Systems, or DACCS.[20]

Q. CAN YOU PROVIDE AN EXAMPLE?

A. Yes. It is technically feasible for Bright House to connect with Verizon at the DS-3 level on Bright House's "side" of the multiplexing/demultiplexing equipment that the parties are using today. Those DS-3 ports, therefore, are "technically feasible points" at which the parties' two networks can be physically linked to exchange traffic. It is only Verizon's unstated – and, under Section 251(c)(2) and the FCC's rules, completely unwarranted – assumption that its switch ports are the ***only*** "technically feasible points" of interconnection that allows it to claim that it is somehow Bright House's responsibility to pay for the multiplexing and demultiplexing needed to get the traffic the parties exchange from that actual point of physical interconnection the rest of the way to Verizon's switches.

Q. IN SUM, WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #32?

A. The Commission should adopt Bright House's suggested language on this issue. In addition, the Commission should clarify that even if Verizon does not upgrade its switching equipment to permit DS3 or higher-level interconnection rates, the

[20] Bright House either has, or shortly will have, sent data requests to Verizon to confirm that Verizon in fact has these types of equipment within its network. That said, I would be truly shocked if it did not, in fact, already have such equipment in place.

TELRIC pricing standard does not permit Verizon to charge for the tasks involved in bringing the signals down to the DS-1 level.

Issue 36 and Issue 24 (Meet Point Billing/TELRIC Rating Of Facilities)

Issue #36: What terms should apply to meet-point billing, including Bright House's provision of tandem functionality for exchange access services?

(a) Should Bright House remain financially responsible for the traffic of its affiliates or other third parties when it delivers that traffic for termination by Verizon?

(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?

Issue #24 Is Verizon obliged to provide facilities from Bright House's network to the point of interconnection at TELRIC rates?

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #36 AND ISSUE #24?

A. Based on ongoing discussions between the parties and a review of Verizon's direct testimony, it is necessary to restate and clarify some of the points regarding these issues that I raised in my direct testimony.

In my direct testimony, I discussed in some detail the rules regarding meet point billing, which is the industry term for a situation where two local carriers – here, Verizon and Bright House – jointly provide access service to third-party long distance carriers.[21] A typical situation would involve a call that comes in from a long distance carrier, goes through Verizon's tandem, and then is routed to Bright

[21] *See*, for example, Gates Direct at 99-102.

House's network for delivery to a Bright House end user. In that situation Bright House and Verizon jointly provide "terminating switched access" service to the long distance carrier. As between the two of them, they physically interconnect at an appropriate point "within Verizon's network" in order to permit the "transmission and routing" of this "exchange access" traffic.[22]

In my direct testimony I also discussed the fact that the FCC's rules and rulings plainly require that if a competitor, such as Bright House, purchases facilities from an ILEC, such as Verizon, for purposes of reaching the interconnection point "within Verizon's network" for purposes of traffic exchange, those facilities must be priced using the cost-based "TELRIC" standard, and not the (almost universally) higher rates that the ILEC will have in its tariffs.

It turns out that the way that Bright House has configured its network in the Tampa area, including its interconnections with Verizon, the only inter-network facilities that are actually at issue between the parties are facilities that Verizon is providing Bright House for purposes of handling the very large amount of meet point billing traffic that the parties exchange with each other. Consequently, it makes sense to discuss Issue #36, regarding meet point billing, and Issue #24, regarding TELRIC pricing of interconnection facilities, at the same time.

Q. PLEASE DESCRIBE THE INTERCONNECTION ARRANGEMENTS THAT EXIST TODAY BETWEEN BRIGHT HOUSE AND VERIZON IN THE TAMPA AREA.

[22] *See* 47 U.S.C. § 251(c)(2).

A. Bright House has a facility in the Tampa area that contains its switching and associated network gear. Bright House's wholesale customer, its cable affiliate, provides its own facilities to reach that location and receive wholesale telephone exchange service and other telecommunications functions from Bright House. Connecting with Bright House's customer, therefore, is fairly straightforward.

Connecting with Verizon, however, is more complicated. To accomplish that purpose, Bright House has established optical fiber "rings" that run from Bright House's facility all the way over to three different physical Verizon locations. Two of these locations house Verizon "end office" switches, that is, switches that serve Verizon end user customers. The third location contains a Verizon end office switch, as well as two Verizon "tandem" switches. Tandem switches do not typically provide service directly to end users. Instead, tandem switches provide links between other ***switches***.[23]

At those three Verizon buildings, Bright House has literally already built its optical fiber to "Manhole 0" – that is, the nearest manhole that exists outside the Verizon building. In addition, Bright House has established physical collocation arrangements in each of those buildings, which contain Bright House's own network gear – including equipment to terminate the fiber optic connections from its own network, as well as ports on which it can either send traffic to, or receive

[23] In the typical case, an ILEC such as Verizon will connect each of its end offices to one or more tandem switches, so that calls between end offices can go through the tandem, either because there is no direct connection between two particular end offices, or because any direct connections that do exist are full. In addition, by connecting every end office to a tandem switch, the ILEC provides a single point within a LATA where long distance carriers can pick up outgoing traffic and drop off incoming traffic. It is this latter function that is most relevant here.

traffic from, Verizon. The connection from "Manhole 0" up to the collocation space is provided by means of Verizon-supplied "inner duct" running from the manhole up to the collocation area. Bright House runs a short length of its own optical fiber through the inner duct to its collocated equipment.[24]

Bright House has configured its network, and its connections with Verizon, in a conservative fashion in order to provide redundancy – that is, back-up arrangements so that calls will continue to go through even if some part of the system fails. One aspect of this redundancy is having collocations – and interconnection points – at more than one Verizon location. If one location goes down, traffic can still flow through the others. Another is the fact that Bright House uses "self-healing" fiber ring technology. Basically this means that if (for example) the fiber running directly from Bright House's switch to one of its collocations is cut, the system will automatically and nearly instantaneously send all the traffic around the ring in the direction away from the cut, so that traffic will still go through.

Still another aspect of redundancy relates specifically to meet point billing traffic. Under its current agreement with Verizon, Bright House has agreed to pick up that traffic literally at the switch ports on Verizon's tandem switch. (This is

[24] The fact that Bright House has already built optical fiber all the way to the doorstep (almost literally) of three different Verizon central office buildings means that in practical terms, even if Bright House does choose to convert to one or more "fiber meet" interconnections with Verizon, (a) Verizon will not need to construct hardly any fiber at all, much less 500 or more feet; and (b) any fiber meet will occur within a few hundred feet of a Verizon central office. As a result, while Bright House continues to believe that Verizon's limitations on the location of fiber meets are unduly restrictive as a general matter, Bright House itself is not affected by them, and so is dropping its proposals to modify them. This is why it was possible to settle Issue #27.

perfectly acceptable under Section 251(c)(2), the governing statute, as I discuss in more detail below.) But Bright House then buys interconnection facilities from Verizon to connect those switch ports back to its two collocations located at the Verizon end offices. This ensures that even if some Verizon tandem switch ports cease functioning, traffic will still flow through the others; and even if the connection between those switch ports and one of Bright House's collocations goes down, traffic will still flow to the other one. I am attaching a diagram, Exhibit TJG-4, that illustrates this arrangement.

As can be seen from the description above, and the diagram, in this arrangement the only interconnection facilities that Bright House is presently purchasing from Verizon are the links between Bright House's collocation facilities at the Verizon end offices, running to the switch ports on Verizon's tandem switch. At present, Verizon is charging Bright House high "special access" rates for these facilities, with bills of approximately $60,000 per ***month***. As I describe below, this is a mistake. These facilities should be billed at lower cost-based TELRIC rates.[25]

Q. WHICH VERIZON WITNESS ADDRESSES ISSUE #24?

A. Verizon witness Mr. Paul Vasington deals with Issue No. 24, at pages 21-23 of his testimony.

Q. WHAT IS THE GIST OF MR. VASINGTON'S ARGUMENT?

[25] As part of the parties' earlier discussions in this case, they have agreed to settle their dispute under their existing ICA with respect to the billing for these facilities. The issue, therefore, is how they should be priced under the new ICA.

A. Mr. Vasington claims that the FCC has ruled that ILECs like Verizon do not have to provide facilities to support interconnection and traffic exchange at TELRIC rates.

Q. IS MR. VASINGTON CORRECT?

A. No. As I explained in my direct testimony, the FCC ruling on which Verizon is relying addressed a completely different question. Briefly, Section 251(c)(2) of the Act deals with the interconnection of networks in order to exchange either telephone exchange service (local) traffic, or exchange access traffic. A different section of the Act, Section 251(c)(3), deals with a CLEC obtaining "access" to "unbundled network elements," or UNEs, from the ILEC. An ILEC's obligation to provide UNEs is conditioned in various ways. Most notably, Section 251(d)(2) of the Act says that a CLEC is not entitled to access to a UNE unless the CLEC would be "impaired" in its ability to offer services without it. Based on that provision and other considerations, the FCC held that if a CLEC wants to use ILEC-supplied facilities to connect to an ILEC's network ***in order to access UNEs,*** such as unbundled local loops, the CLEC is not entitled to those facilities at low, cost-based TELRIC rates. However, the FCC specifically stated that its ruling limiting the availability of TELRIC-priced facilities used to access UNEs ***does not affect*** its long-standing rule that TELRIC-priced facilities must be provided for purposes of interconnection to exchange traffic.

As I noted in my direct testimony, not only is the FCC's ruling on this point very clear, but as I understand it (and as Bright House's lawyers will explain in more

detail), the majority of courts that have looked at this issue have concluded that my understanding of the FCC's ruling is correct.

Q. DOES BRIGHT HOUSE BUY UNES FROM VERIZON?

A. As far as I know, it does not. Bright House serves its wholesale customer using its own network facilities, and its wholesale customer has its own means of connecting to end user VoIP subscribers. The only facilities Bright House buys from Verizon are used in support of interconnection for the exchange of traffic. As a result, TELRIC pricing, not tariff pricing, applies to those facilities.

Q. ARE THE FACILITIES THAT CONNECT BRIGHT HOUSE'S COLLOCATIONS IN VERIZON END OFFICES BACK TO VERIZON'S TANDEM SUBJECT TO THIS RULE?

A. Yes.

Q. PLEASE EXPLAIN.

A. Section 251(c)(2) of the Act calls for interconnection between two networks "at any technically feasible point" for the "transmission and routing" of two specified types of traffic: "telephone exchange service" and "exchange access." "Telephone exchange service" is defined in Section 153(47) of the Act and essentially means normal local telephone service.[26] "Exchange access" is defined

[26] The definition of this term was actually broadened in the 1996 Act to include not only traditional local telephone service, but also any "comparable" service. As I understand it, the parties do not have any significant dispute about this term. For the record, however, I would note that even if Bright House's wholesale service is not strictly identical to traditional local telephone service, without question it is "comparable" to traditional local service. I note this because Mr.

in Section 153(16) of the Act, and essentially means providing long distance carriers with the use of local services and facilities to originate or terminate toll calls. And, if there were any doubt that these are the two critical types of traffic addressed by Section 251(c)(2)'s interconnection obligation, the point is driven home by the definition of "local exchange carrier" in Section 153(26) of the Act. That provision defines a "local exchange carrier" as any entity that provides ***either*** "telephone exchange service" ***or*** "exchange access." So, the Act clearly views the provision of originating and terminating access service to long distance carriers as one of the essential attributes of being a local exchange carrier.

Q. WHEN BRIGHT HOUSE BUYS FACILITIES FROM VERIZON TO LINK ITS COLLOCATIONS AT VERIZON'S END OFFICES TO VERIZON'S TANDEM SWITCH FOR PURPOSES OF SENDING TRAFFIC TO OR FROM LONG DISTANCE CARRIERS, IS THAT PART OF PROVIDING "EXCHANGE ACCESS" TO THOSE LONG DISTANCE CARRIERS?

A. Absolutely. I do not understand there to be any dispute about this point. Basically, when a long distance carrier has a call to deliver to an end user, one typical configuration is for the call to go from the long distance carrier to an

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Munsell suggests (Munsell Direct at page 2, line 19, through page 3, line 2) that Verizon is somehow trying to preserve some claim that Bright House isn't "really" a competing carrier with interconnection rights. Bright House's lawyers will address this issue from a legal perspective if needed. From a practical policy perspective, the Commission should utterly reject any such argument. As noted in my direct testimony, competition from cable-affiliated CLECs, working with affiliated cable entities providing unregulated VoIP service, is far and away the most effective form of local telephone competition that has ever arisen under the Act. Indeed, Mr. Munsell himself bemoans the effectiveness of that competition by reciting how many customers Verizon has lost since Bright House entered the market. *See* Munsell Direct at page 4, line 24, through page 5, line 13. From my perspective, a claim that Bright House is not entitled to interconnection with Verizon is simply an anticompetitive ploy by Verizon to try to hobble its most effective competitor.

ILEC's tandem switch; then from that tandem switch to the end office switch serving the end user; then from that end office switch out to the end user. The portion of that service running from the tandem switch to the end office is generally known as "tandem switched transport." Both Verizon's access tariff and Bright House's access tariff contain specific rate elements charging for that function.[27] So, the facilities that Bright House is obtaining from Verizon are without question facilities that are used in support of the provision of access service to long distance carriers.

Q. ARE THOSE FACILITIES, THEREFORE, FACILITIES IN SUPPORT OF INTERCONNECTION UNDER SECTION 251(C)(2)?

A. Again, absolutely yes. As noted above, Verizon's obligation to interconnect with Bright House at "any technically feasible point" specifically extends to interconnection "for the transmission and routing of ... exchange access." 47 U.S.C. § 251(c)(2)(A). The primary, if not sole, function of the facilities in question is so that long distance calls to or from third party long distance carriers can be "transmitted" and "routed" to or from Bright House's ultimate end users.[28] As a result, without question these facilities are being provided in order to support interconnection under Section 251(c)(2). They are therefore subject to cost-based

[27] Verizon's FCC Tariff No. 14, § 4.2.3(D), describes "Tandem Switched Transport" functions. Bright House's FCC Tariff No. 1 addresses this function at § 4.1.1

[28] Based on information provided by Bright House, my understanding is that the majority of traffic transmitted over these facilities – in excess of 300 million minutes of traffic per month – is traffic from third-party long distance carrier networks bound for Bright House end users. In addition, however, Bright House uses these facilities to send 8YY "toll free" calls from its end users to the third party long distance carriers that handle those calls, in cases where Bright House does not have a direct connection to the applicable long distance carrier.

TELRIC pricing, not – as Verizon has been charging under the parties' old ICA – high special access tariff prices.

Q. ISN'T IT TRUE THAT A TYPICAL FACILITIES CONFIGURATION SUBJECT TO TELRIC PRICING IS A SO-CALLED "ENTRANCE FACILITY" RUNNING FROM A CLEC'S SWITCH LOCATION TO A NEARBY ILEC END OFFICE?

A. Yes, that is the example most often used in discussions of this point. But that does not mean that the facilities I have been discussing are not also facilities in support of interconnection. To the contrary, that is plainly what they are, for the reasons described above. Consider the following: if Bright House had not invested in the extensive fiber optic ring network to connect from its own switch location out to Verizon's network, it could clearly buy TELRIC-rated entrance facilities from its switch location to the Verizon tandem where it picks up and hands off the "exchange access" traffic at issue here. It would make no sense whatsoever to penalize Bright House (or any other CLEC) in the form of having to pay higher, tariffed special access rates when it makes the considerable investment to get at least part of the way from its own switching location to the ILEC's tandem. Such a rule would create a significant disincentive on CLECs to invest in their own facilities, which is exactly the opposite incentive that the Act is trying to establish.

Q. YOU NOTED EARLIER THAT BRIGHT HOUSE HAS FACILITIES THAT RUN TO THE VERIZON TANDEM LOCATION, BUT STILL

ROUTES THE ACCESS TRAFFIC AT ISSUE HERE TO ITS MORE DISTANT COLLOCATIONS IN VERIZON'S END OFFICES. COULDN'T BRIGHT HOUSE AVOID THESE TARIFFED CHARGES ENTIRELY BY PICKING UP AND HANDING OFF THIS ACCESS TRAFFIC DIRECTLY AT VERIZON'S TANDEM?

A. It certainly could, and may indeed reconfigure its network, in the future, to do so. But it may choose to leave some or all of its existing facilities in place in order to preserve the network redundancy that is needed to ensure high-quality service to long distance carriers and its own ultimate end users. Under the current configuration, other than Verizon's tandem switch itself, there is no "single point of failure" that could interfere with Bright House's ability to send and receive traffic between its own network and long distance carriers. If Bright House reconfigured its network to receive all this access traffic directly at its collocation in the building housing Verizon's tandems, the equipment at that collocation would become such a "single point of failure." As a result, it is very possible that at least some of the facilities at issue will remain in place, simply to provide appropriate network redundancy. Moreover, as noted above, the current price of these facilities is approximately $60,000 per month. Even if Bright House chooses to reconfigure its network to exchange all this access traffic at its collocation at Verizon's tandem building, planning and implementing that reconfiguration will take a number of months. The new ICA should reflect proper TELRIC pricing for the facilities under discussion whether they remain in service only for a period of months while the network is reconfigured, or whether, for

reasons of network security and redundancy, Bright House chooses to keep them in place for the entire duration of the new ICA.

Q. IN YOUR DIRECT TESTIMONY YOU SUGGESTED THAT BRIGHT HOUSE CANNOT BE REQUIRED BY VERIZON TO EXCHANGE THIS ACCESS TRAFFIC AT VERIZON'S TANDEM SWITCH AT ALL, AND THAT, INSTEAD, BRIGHT HOUSE SHOULD BE ABLE TO DESIGNATE THE COLLOCATIONS AT VERIZON'S END OFFICES AS THE POINT OF INTERCONNECTION FOR PURPOSES OF EXCHANGING ACCESS TRAFFIC. HOW DOES THE DISCUSSION ABOVE RELATE TO THAT POINT?

A. As noted above, interconnection for the "transmission and routing of ... exchange access" traffic is a core, integral part of interconnection under Section 251(c)(2). As a result, Bright House is entitled to interconnect with Verizon for that purpose "at any technically feasible point." It is clearly technically feasible for Verizon to deliver traffic to Bright House from third-party long distance carriers at Bright House's end office collocations with Verizon. (In practical physical terms, that is what is happening today, in that Verizon-provided facilities are handling the transport of this access traffic between the tandem and the end office collocations.) This would be another option for Bright House to consider as it manages its network arrangements with Verizon.

Q. WOULDN'T THAT BE UNFAIR TO VERIZON, SINCE IT IS TODAY CHARGING BRIGHT HOUSE FOR THE FACILITIES LINKING

BRIGHT HOUSE'S END OFFICE COLLOCATIONS TO VERIZON'S TANDEMS, AND IT WOULD NOT BE ABLE TO DO SO IF THE INTERCONNECTION POINT WERE DEEMED TO BE AT THE END OFFICE COLLOCATIONS?

A. No, not at all. The reason is that while Verizon would no longer charge Bright House for those facilities, it would be able to charge the long distance carriers for them.

Q. PLEASE EXPLAIN.

A. The industry standard rules for meet point billing establish that the carrier or carriers that provide the connection from an ILEC tandem out to a CLEC end office get to charge the long distance carrier for that transport function, in direct proportion to how much of it each of them performs. Under today's arrangement, Bright House buys facilities from Verizon (again, paying too much for them today) that run from Verizon's tandem to Bright House's collocations, and then uses its own fiber facilities to get the traffic the rest of the way to its own switch. As a result, Bright House today gets to bill the long distance carriers for 100% of the transport function between Verizon's tandem and Bright House's switch. If Bright House exercised its right under Section 251(c)(2) to establish its interconnection point for the exchange of this access traffic at its end office collocations instead, then ***Verizon*** would be responsible for providing some of the transport (specifically, the transport from its tandem to Bright House's collocations), while Bright House would be responsible only for some of that

transport (from its collocations back to its own switch). Under this scenario, Verizon would indeed "pick up" the cost and the responsibility for part of the transport, but under the industry-standard rules for jointly provided access, it would then be entitled to bill the long distance carriers for the portion of the transport it actually provides.[29] There would, therefore, be no unfairness to Verizon if Bright House were to choose to configure its interconnection with Verizon that way. (Obviously, under this potential configuration, Bright House would end up billing the long distance carriers less than it bills them today.)

Q. PLEASE SUMMARIZE YOUR DISCUSSION OF THESE ISSUES SO FAR.

A. The discussion above boils down to a few essential points. First, the facilities linking Bright House's end office collocations to Verizon's tandem are clearly interconnection facilities in support of the "transmission and routing" of exchange access traffic within the meaning of Section 251(c)(2). Second, for that reason, Verizon is not permitted to charge high tariffed special access rates for those facilities; instead, those facilities must be rated using the efficient, cost-based TELRIC standard. Third, because these facilities are in support of Section

[29] For the reference of the Commission and its Staff, I am attaching as exhibits the industry documents that lay out the meet point billing rules. These are the so-called MECAB document (which stands for "Multiple Exchange Carrier Access Billing") and the MECOD document (which stands for "Multiple Exchange Carrier Ordering Document"). Those documents note that, in general two carriers jointly providing access service to long distance carriers will negotiate to establish the specific hand-off point at which one carrier's responsibility ends and the other's begins. As a purely general statement that is true. However, for the reasons discussed above, when the specific arrangement relates to an ILEC and a CLEC operating in the same physical territory, Section 251(c)(2) of the Act empowers the CLEC to designate "any technically feasible point" within the ILEC's network as the location where the handoff will occur.

251(c)(2) interconnection, Bright House may deem the point of interconnection for purposes of the transmission and routing of this traffic to be any technically feasible point within Verizon's network, including, if it so chooses, its existing end office collocations. Fourth, if it exercises that choice, Verizon would no longer be able to charge Bright House anything at all for those facilities. This would be perfectly reasonable, however, because in that event, under standard industry rules for meet point billing (a) Verizon would be able to charge the long distance carriers for the use of those facilities, which it is not doing today and (b) Bright House would have to stop billing the long distance carriers for using those facilities, which it is doing today.

Q. THE DISCUSSION ABOVE COVERS ARRANGEMENTS FOR MEET POINT BILLING OF THIRD PARTY LONG DISTANCE CARRIERS WHEN VERIZON PROVIDES TANDEM SWITCHING TO THOSE CARRIERS, AND THE QUESTION IS HOW TO GET TRAFFIC, VIA VERIZON'S TANDEM, TO AND FROM BRIGHT HOUSE'S NETWORK. IS THERE ANOTHER MEET POINT BILLING SCENARIO IN DISPUTE BETWEEN THE PARTIES?

A. Yes, there is.

Q. PLEASE DESCRIBE THAT OTHER SCENARIO.

A. As far as I can tell, Verizon is taking the position that it has, and is entitled to maintain, what amounts to a complete, 100% monopoly in the Tampa LATA with respect to the provision of tandem switching used to reach Verizon's own end

offices. That is, even though it is entirely technically and operationally feasible for Bright House to use its switch and fiber optic connections to Verizon to provide long distance carriers with tandem switching that would route their incoming long distance traffic to the ***Verizon*** end office serving a ***Verizon*** end user, Verizon is taking the position that it will simply refuse to establish such an arrangement under the new ICA. In my opinion that is directly contrary to Verizon's obligation to interconnect for the "transmission and routing of ... exchange access traffic." It is also plainly anti-competitive. The Commission should reject Verizon's position on this point entirely.

Q. PLEASE EXPLAIN THE PHYSICAL NETWORK ARRANGEMENTS THAT BRIGHT HOUSE WOULD LIKE TO BE ABLE TO USE UNDER THIS SCENARIO.

A. As noted above, Bright House has high-capacity optical fiber connections running from its own network switch to three different collocations in three different Verizon switch buildings. Given the volume of traffic that Verizon and Bright House exchange, the parties have established direct trunks -- that is, connections that do not run through Verizon's tandem switch at all – from those collocations out to all or essentially all of Verizon's end office switches within the Tampa LATA. In physical terms, these trunks start at Bright House's switch, get carried to one of Bright House's collocations using Bright House's own fiber facilities, and then get handed off to Verizon's facilities (which may be fiber, copper, or some combination), which carry the trunks directly to the Verizon end office

where the traffic is going to (or coming from; traffic flows in both directions over these trunks).

Today, these direct trunks are used only for traffic that begins with a Bright House end user and goes directly to a Verizon end user, or vice versa. (That is, for traffic that is mainly "local" or "telephone exchange service" traffic.) However, it would be technically and operationally simple for (a) long distance carriers with terminating access traffic bound for ***Verizon's*** end users to deliver that traffic to ***Bright House's*** switch, and then (b) for Bright House to switch that inbound long distance traffic out onto the very same trunks, using the very same facilities, that the parties already have in place to carry local traffic directly from Bright House's switch to Verizon's end office switches.[30]

Note that this proposed arrangement is simply the converse of what exists today, discussed above, for handling inbound long distance traffic that first hits Verizon's tandem switch and then is routed, over jointly provided facilities, to Bright House's switch. Bright House wants the new ICA to clearly specify that it is equally permissible for inbound long distance traffic coming in from other

[30] If Verizon wanted to do so, in order to facilitate billing or for other reasons, it would also be a simple matter to establish logically separate "trunks" to carry this inbound long distance traffic over the same physical facilities used today for local traffic. As noted in my direct testimony, the physical facilities linking the two networks are analogous to a new, wide concrete highway without any lane lines drawn onto it, while "trunks" are analogous to lanes for traffic painted onto the physical concrete highway. While it is common in some contexts to talk about "trunks" linking two networks and "facilities" linking two networks somewhat interchangeably, in some contexts – including the discussion of meet point billing – it is important to keep the two concepts separate. So, to be clear, when I speak of "facilities" linking two switches, I am talking about the physical equipment – the optical fiber or copper wiring – that links two switches. But when I speak of "trunks" between two switches, I am referring to a flow of traffic, electronically or optically broken down into large or small amounts (OC-48 or OC-12 at the high end, DS-3 or DS-1 at the low end), that is handled as a separate group of traffic by the electronic or optical equipment at either end of the physical facility.

LATAs to first hit ***Bright House's*** switch – which would provide the tandem switching function – and then be routed over jointly provided facilities to ***Verizon's*** end offices.

Q. IS THIS PROPOSED ARRANGEMENT CONSISTENT WITH THE INDUSTRY'S MECOD AND MECAB RULES REGARDING MEET POINT BILLING?

A. Absolutely. Those rules do not require that an ILEC like Verizon be the entity that performs tandem switching for inbound long distance traffic bound for its own end offices. To the contrary, a key point of the MECOD and MECAB rules is to deal with situations where a carrier receives long distance traffic at its end offices that was tandem-switched by another carrier.

Q. WHICH VERIZON WITNESS ADDRESSES ISSUE #36, RELATING TO MEET POINT BILLING?

A. Mr. Munsell addresses meet point billing issues at pages 22-31 of his direct testimony.

Q. BASED ON MR. MUNSELL'S TESTIMONY, DOES VERIZON DISAGREE WITH YOUR DISCUSSION ABOVE?

A. It is hard to say. On the one hand, some of his words suggest that Verizon is perfectly happy to recognize that Bright House is entitled to provide tandem switching functions in competition with Verizon. On the other hand, when the

actual details of his testimony are considered, he actually seems to oppose arrangements under which Bright House could actually compete.

Q. PLEASE EXPLAIN WHAT YOU MEAN.

A. To start with, Mr. Munsell states (at page 22, lines 19-22), that "Verizon has no objection to Bright House operating as a competitive tandem provider," and suggests that the only problem is that Bright House's specific proposed language to accomplish that purpose is the only issue. But then his discussion is focused on Bright House providing ***originating*** access service to third-party long distance carriers. *See, e.g.*, Munsell Direct at page 24, lines 17-20.[31] However, as just explained in the footnote, Bright House's actual concern at this point is to be able to compete with Verizon for tandem switching and transmission with respect to ***inbound*** long distance traffic.

Q. DO YOU AGREE WITH MR. MUNSELL THAT IF BRIGHT HOUSE WANTS TO PROVIDE ORIGINATING ACCESS SERVICE FROM VERIZON'S END OFFICE SWITCHES TO BRIGHT HOUSE'S OWN

[31] He states: "My understanding of Bright House's proposal is that Bright House would set itself up as an alternative access tandem provider, ***and that the parties would attempt to route 1+ dialed calls, destined to IXCs, to each other over local interconnection trunks.***" (Emphasis added). This is wrong, in part, in that Bright House does not in any way insist on using local interconnection trunks to handle jointly provided access traffic. If it is feasible to use local trunks for this purpose, that's fine, but if it isn't, Bright House is completely amenable to establishing separate trunks for third-party access traffic over the existing physical facilities linking Bright House's switch with Verizon's switches. But Mr. Munsell's fundamental misunderstanding is that Bright House's initial competitive concern is the ability to provide ***terminating*** tandem switching to third-party IXCs. That is, Bright House believes that it may be able to interest IXCs in routing their inbound traffic, coming from distant LATAs, to Bright House for switching and routing to Verizon end offices. Yet Mr. Munsell seems focused on outbound traffic.

SWITCH, THAT IT CAN OBTAIN THE REQUISITE FUNCTIONALITY FROM VERIZON'S TARIFF?

A. My understanding is that the referenced material in Verizon's FCC Tariff No. 14 indeed relates to the functionality required. Basically, in that tariff material, as I understand it, Verizon indicates that it can configure a switch so that if a customer has indicated that "XYZ Long Distance" is his preferred carrier, then any time that customer makes a "1+" call, the call will be routed to a particular outbound switch port – to which "XYZ Long Distance" will have attached a trunk to receive the calls.

Importantly, however, that is not the configuration that Bright House is interested in.

Q. WHAT CONFIGURATION IS OF INTEREST TO BRIGHT HOUSE?

A. Bright House is interested in competing with Verizon to provide ***terminating*** tandem-switched access to third party long distance carriers. Mr. Munsell, in the cited testimony, is talking about ***originating*** access.

Q. WHAT DOES MR., MUNSELL HAVE TO SAY ABOUT BRIGHT HOUSE'S INTEREST IN COMPETING WITH VERIZON FOR *TERMINATING* ACCESS SERVICE?

A. Mr. Munsell, with no technical explanation, simply makes the conclusory assertion that Verizon cannot handle that arrangement. His entire discussion of this point is set out below:

> Another issue with Bright House's proposal, as I understand it, is that it appears to contemplate that Verizon would, in some instances, subtend the Bright House competitive tandem. For the routing of inbound interexchange traffic, it would appear that Bright House is proposing that traffic routed from the IXCs that use Bright House's competitive tandem service should route through Bright House's tandem and then to the appropriate Verizon end office, such that the Verizon end offices would, in at least some circumstances, subtend the Bright House switch. I believe that this could not work from a network routing perspective, as a switch can only subtend a single tandem for any given NPA/NXX.
>
> Because Verizon cannot operate in the way Bright House proposes, Bright House's proposed changes should be rejected. Verizon can and will accommodate Bright House's desire to operate as a competitive tandem provider through the existing ICA provisions and through the TSS provisions in Verizon's tariff, which already spell out the manner in which Bright House can obtain what it needs to provide tandem functionality for exchange access services.[32]

In other words, Mr. Munsell baldly states that "this could not work from a network perspective" because "a switch" (that is, Verizon's end office switch) "can only subtend a single tandem" (that is, ***Verizon's*** tandem) "for any given NPA/NXX." As a result, Mr. Munsell states without explanation, "Verizon cannot operate in the way Bright House proposes."

Q. IS MR. MUNSELL CORRECT FROM A POLICY OR TECHNICAL PERSPECTIVE?

A. No. This statement is breathtaking in both its technical inaccuracy and if accepted, its pure, blatant, anticompetitive and monopolistic effect.

Q. PLEASE EXPLAIN THE TECHNICAL INACCURACY OF MR. MUNSELL'S STATEMENT.

[32] *See,* Munsell Direct at page 24, line 25 through page 25, line 17.

A. There is no technical impediment at all to Verizon advertising to the industry, through normal means (the Local Exchange Routing Guide, or LERG) that its end offices can be reached through its own tandem (that is, that they "subtend" its own tandem), while Bright House also announces to the industry, either via the LERG or via private arrangements with long distance carriers, that Verizon's end offices can ***also*** be reached through ***Bright House's*** switch. That way, third-party long distance carriers with traffic to deliver to Verizon's end offices would be able to choose which tandem switching service to use – Bright House's or Verizon's.

Q. IS THE ARRANGEMENT YOU SUGGEST A NOVEL OR NEW APPROACH?

A. No. This is not some new or obscure technical arrangement that Bright House has just invented. To the contrary, for roughly 20 years – two decades – the FCC has required ILECs to make arrangements for what is known as "expanded interconnection" in its end offices. The entire purpose of these "expanded interconnection" arrangements was to allow entities known as "competitive access providers," or CAPs, to use their own switching and optical fiber facilities to compete with the ILEC in the provision of access services – including terminating switched access. These "expanded interconnection" arrangements are described in the FCC's rules at 47 C.F.R. § 64.1401, § 64.1402, and § 69.121. They clearly contemplate linking a CAP's collocated transport facilities with the ILEC's switched access service – that is, in the context, the use of the ILEC's

switches for either originating or terminating switched access. These FCC rules were originally promulgated in ***1992*** – nearly 20 years ago.

So, not only is Mr. Munsell wrong to suggest that there is something technically infeasible about Bright House linking its own switch (functioning as a tandem) via direct trunks into Verizon's end office for purposes of terminating access, this type of arrangement has been contemplated in the FCC's rules for a long, long time.

Q. PLEASE EXPLAIN THE ANTICOMPETITIVE IMPACT OF MR. MUNSELLS' POSITION.

A. The anticompetitive impact is obvious. Mr. Munsell is declaring that Verizon's control of the terminating tandem switched access market is absolute, and that the market is "off limits" to any competition. Any long distance carrier that wants to get traffic to Verizon's end offices without buying a direct connection to that office simply ***must*** use Verizon's tandem for that purpose. No matter that Bright House might offer a tandem switching service that is less expensive, or more technically advanced (such as allowing inbound traffic to be in IP format) than Verizon's offering. According to Mr. Munsell, those long distance carriers are just stuck.

As noted above, the FCC established procedures nearly 20 years ago to facilitate competition between CAPs and ILECs for the provision of access, including tandem switched transport on both originating and terminating traffic. Furthermore, the entire point of the 1996 Act is to open up local exchange

markets to competition and, as noted above, local exchange service – what local exchange carriers ~~provider~~ provides – consists of ***either*** "telephone exchange service" (local service) ***or*** "exchange access" service.

Q. IS IT "TECHNICALLY FEASIBLE" FOR VERIZON AND BRIGHT HOUSE TO INTERCONNECT THEIR NETWORKS TO EXCHANGE TERMINATING SWITCHED ACCESS TRAFFIC BOUND FOR VERIZON'S END OFFICE SWITCHES?

A. Yes. Bright House is capable of receiving traffic from third party long distance carriers bound for a Verizon end office and properly switching that traffic onto a trunk that connects directly to the desired Verizon end office. As I understand it, there is no reason that this traffic could not be sent on the very same trunks that carry any other traffic – including local and intraLATA toll traffic – from Bright House to Verizon today. In such an arrangement, Bright House would be responsible for generating the data needed both for Bright House to bill the long distance carrier for the tandem switching it provides, and for Verizon to bill the long distance carrier for the end office switching that Verizon would provide.[33]

Finally in this regard, because we are talking about the "transmission and routing" of "exchange access" service – that is, because we are talking about

[33] This is the converse of the situation that exists when a long distance carrier today sends traffic to Bright House via Verizon's tandem. For such traffic, Verizon records the required billing information at its tandem and sends that information to Bright House. Were Bright House to provide tandem switching for traffic bound for a Verizon end office, Bright House would undertake that same recording and data-sharing function. The fact that this is a responsibility of the tandem provider in a meet point billing arrangement is noted in the MECOD/MECAB documents noted above.

interconnection arrangements that fall squarely within the ambit of Section 251(c)(2) – Bright House is entitled to interconnect with Verizon to exchange this traffic "at any technically feasible point." There is simply no basis for Verizon's claim that it cannot handle this kind of interconnection or that it should not be required to do so.

Q. PLEASE SUMMARIZE YOUR DISCUSSION OF THIS POINT.

A. Mr. Munsell is completely wrong in his bald assertion that there is any technical impediment to Bright House providing ***terminating*** tandem switching services to third party long distance carriers. Either he is misinformed about the relevant technical arrangements or he is trying to obscure, behind inaccurate technical claims, Verizon's desire to maintain a monopoly grip on the terminating tandem switching and transport market in the Tampa LATA. Either way, the Commission should totally reject Mr. Munsell's assertions and direct the parties to include Bright House's meet point billing language in their final ICA.[34]

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #36(A)?

A. Mr. Munsell discusses Issue #36(a) on pages 25-28 of his direct testimony. Although this issue falls under the general heading of the "meet point billing" Issue – that is, Issue #36 – in fact it largely relates to a different question, which is

[34] It is possible that Mr. Munsell based his testimony on an earlier, superseded version of Bright House's proposals. I am attaching, as Exhibit TJG-7, a copy of Bright House's most recent proposal regarding meet point billing (which would replace Verizon's proposed Section 10 of the Interconnection Attachment).

how to handle so-called "transit" traffic where some third party LEC or other carrier chooses to use Bright House's network to reach Verizon.

Obviously, on some level, that situation literally applies to meet point billing, in that in a meet point billing situation a third-party IXC would deliver traffic to Bright House for further delivery to Verizon. But the industry and FCC rules and guidelines are absolutely clear that in the meet point billing situation, the two LECs providing access service do not bill each other at all; instead, they each bill the IXC for the portion of the access services that they provide. I do not understand Mr. Munsell or any other witness to be taking issue with that rule as it applies to terminating access services.

Given this, I will defer further discussion of Mr. Munsell's testimony on this point to the discussion of Issue #38 and Issue #39, relating to transit traffic.

Q. WHAT IS THE STATUS OF THE DISPUTE REGARDING ISSUE #36(B)?

A. Mr. Munsell discusses Issue #36(b) on pages 29-31 of his testimony. At this point it is fair to say that this dispute is based on a misunderstanding. Specifically, Bright House understands and agrees that ***if*** it establishes a port on Verizon's tandem switch as the interconnection point for the exchange of meet point billing traffic where Verizon provides the tandem function, ***then*** it is Bright House's financial responsibility to establish facilities and trunks from Bright House's network to that tandem switch port. I think it is also undisputed that ***if*** Bright House chooses to obtain those connections from Verizon, it has to pay Verizon

for them – and then, in turn, it gets to bill the IXCs who send traffic to Bright House using those facilities.[35]

Q. DO YOU HAVE ANY ADDITIONAL COMMENTS ON MR. MUNSELL'S DISCUSSION AT PAGES 29-31 OF HIS DIRECT TESTIMONY ON THIS POINT?

A. Yes, I have a few observations. First, as discussed above, Bright House is not trying to avoid paying for facilities it obtains from Verizon to reach an agreed interconnection point, which Mr. Munsell assumes to be a port on Verizon's tandem switch.[36] Mr. Munsell states that "I don't know why Bright House would expect Verizon to provide these facilities for free," and, indeed, Bright House does not expect that. The question is not whether Bright House is entitled to facilities for free – it isn't. The question is ***where*** Verizon's responsibility ends and Bright House's begins, so that each of them can properly bill the IXC for the facilities that fall under each one's respective responsibility. As discussed above, Bright House is entitled (under Section 251(c)(2)) to designate its collocations at Verizon's end offices as the points at which the interconnection for the exchange of this access traffic occurs. In that event, as discussed above, Bright House would not pay Verizon for the links between Verizon's tandem and the collocations. That would not be because Verizon would be "provid[ing] these

[35] Obviously the parties disagree, as discussed above, about whether those facilities are to be priced out of Verizon's special access tariff or whether, as Bright House has explained above, they should be priced at cost-based TELRIC rates. But there is no dispute that ***if*** the interconnection point is at Verizon's tandem switch port and uses Verizon-supplied facilities to get there, ***then*** Bright House has to pay Verizon ***something*** for those facilities.

[36] *See* Munsell Direct at page 29, lines 9-13, and page 30, line 21 through page 31, line 2.

facilities [to Bright House] for free." It would be because Verizon would no longer be providing the facilities ***to Bright House*** at all. Instead, Verizon would be deemed to be providing the use of those facilities ***to the IXCs,*** and Verizon would be made whole by being permitted, under normal meet point billing rules, to charge the IXCs for the use of them.

Second, I note that from page 29, line 15 through page 30, line 4, Mr. Munsell again focuses on outbound long distance calls that might use the meet point billing arrangement to get to the IXC that will handle the outbound calls. As discussed above, however, the real issue has to do with ***inbound*** long distance calls.

Finally, I note that I generally agree with Mr. Munsell's point, at page 30, lines 8-10, that "the cost of facilities used to carry traffic to and from IXCs is borne indirectly by the IXCs themselves, as the local exchange carriers levy access charges to the IXC." As should now be clear, there is no dispute about that. The only issues are (a) What is the demarcation point between those facilities for which Verizon will bill the IXC, and those for which Bright House will bill the IXC? And (b) Whether TELRIC or tariffed rates apply when Bright House buys facilities from Verizon to interconnect their networks for the "transmission and routing" of this third-party "exchange access" traffic.

Issue 37 (Defining What Calls Are "Local")7

Issue #37: How should the types of traffic (e.g. local, ISP, access) that are exchanged be defined and what rates should apply?

Q. WHAT IS THE CURRENT STATUS OF THE DISPUTE UNDERLYING ISSUE #37?

A. As I understand it, there is really only one disagreement. Verizon's witness Mr. Munsell at pages 31-37 of his direct testimony, however, identified three areas of disagreement.[37]

Q. PLEASE EXPLAIN.

A. Mr. Munsell's first noted area of disagreement is, as he puts it, "what should define the local calling area for purposes of intercarrier compensation." This is, indeed, a real disagreement that I discussed in detail in my direct testimony, and also discuss below.

Second, Mr. Munsell states that the parties disagree as to "which party bears financial responsibility for which facilities used in connection with local call termination." He also discusses this at pages 34-36 of his testimony. As I understand the state of discussion between the parties, however, there is no longer any disagreement about this. Specifically, my understanding is that Verizon agrees that once Bright House has handed local traffic off to Verizon for termination, Verizon will get paid the agreed rate of $0.0007 per minute of use for the entire "transport" and "termination" function. That is, Verizon is ***not*** claiming – as Bright House understands it and has informed me – that it should get to charge any "trunking" fees to carry the traffic from the point of interconnection to the end office. Again, that is covered by the $0.0007/minute rate. That said, the

[37] *See* Munsell Direct at page 31, lines 13-20

parties ***did*** have a disagreement about whether Bright House should be required to pay Verizon's non-recurring charges to set up a new trunk for the exchange of traffic, but Bright House has chosen to withdraw its argument that even those non-recurring fees should be deemed covered by the $0.0007/minute rate. Because Verizon agrees that the $0.0007 per minute rate covers the ***use of*** its facilities and trunks on its side of the interconnection point, and because Bright House agrees that it will pay non-recurring charges for establishing new trunks, this dispute has been resolved.

Third, Mr. Munsell states that the parties disagree about "how the use of local interconnection facilities should be treated when they are used to carry interexchange traffic." Later, at page 37 of his direct testimony (lines 3-8) he states that "the standard practice is to determine the pro-rata part of [a] facility that is used for the carriage of access traffic, and then to re-rate the facility accordingly. If ten percent of the facility is used to carry access traffic, for example, ten percent of it would become chargeable at the access rate." While I understand why Mr. Munsell might think Bright House is disputing this "standard practice" based on Bright House's original filing, in fact since the time of that filing the parties have agreed that the "standard practice" will indeed apply as between them.

As a result, the only significant dispute between the parties under Issue #37 (aside from some semantic/wording matters that the parties should be able to work out, discussed in my direct testimony), is the question of what traffic ***is*** to be treated as

access traffic for purposes of their intercarrier compensation arrangements. I now turn to a discussion of that issue.

Q. PLEASE SUMMARIZE BRIGHT HOUSE'S POSITION WITH RESPECT TO TREATING TRAFFIC EXCHANGED BETWEEN THE PARTIES AS SUBJECT TO ACCESS VERSUS RECIPROCAL COMPENSATION.

A. I discuss this in detail in my direct testimony. Very briefly, Bright House's proposal is consistent with the Commission's conclusion when it looked at this issue a few years ago. As noted in my direct testimony, the Commission earlier concluded that the competitively neutral, fair solution is that, when an ILEC and a CLEC are interconnected and competing head-to-head for the same customers, the application of reciprocal compensation, as opposed to access charges, should depend on the local calling areas established by the ***originating*** carrier. That is, if one of the carriers offers its customers a large local calling area, then when its customer make calls within that area, the carrier should not be penalized by having to pay its competitive rival a "penalty" in the form of high access charges. On the other hand, if one of the carriers would treat a call between the same two points as a toll call, it is perfectly reasonable to allow the terminating carrier to charge terminating access rates when that call is terminated. In that case the originating carrier views the call as a toll call, effectively acts as a long distance carrier, and collects a toll that makes it economically reasonable to require it to pay access. This proposal facilitates and encourages head-to-head competition between ILECs and CLECs.

Q. WHAT DO YOU UNDERSTAND TO BE VERIZON'S OBJECTION TO THIS STRAIGHTFORWARD AND PRO-COMPETITIVE PROPOSAL?

A. Verizon explains its position on this issue at pages 32-34 of Mr. Munsell's testimony. Basically he says that (a) the Commission should determine the status of calls as toll or local for purposes of intercarrier compensation based entirely on a fixed set of local calling zones, and (b) those calling zones should be the ones established by the ILEC. Bright House's proposal, according to Mr. Munsell, is "unworkable" because carriers might offer a variety of local calling plans, and "millions of minutes" would have to be rated differently.[38]

Q. ARE MR. MUNSELL'S OBJECTIONS VALID?

A. No. At the outset, I would note that under the regime in place under the parties' current ICA – which Mr. Munsell thinks should continue – Bright House ends up paying Verizon in the range of $70,000 ***per month*** in access charges in connection with calls that are, purely and simply, local calls to Bright House's end users. So it is highly convenient for Verizon to declare that it is "unworkable" to establish a billing regime that would have the effect of depriving Verizon of that unjustified, multi-million-dollar windfall. That said, there is nothing remotely "unworkable" about Bright House's proposal.

Q. PLEASE EXPLAIN HOW INTERCARRIER BILLING WORKS.

[38] *See* Munsell Direct at page 33, line 3 through page 34, line 4.

A. Basically there are two ways to handle it. One is to individually rate each call that comes in as either an access call or a reciprocal compensation call. The other is to do traffic studies from time to time to identify a factor that identifies what portion of total incoming minutes are access and what portion are reciprocal compensation. Either one can work in this situation.

Q. HOW WOULD BILLING ON A CALL-BY-CALL BASIS WORK UNDER BRIGHT HOUSE'S PROPOSAL?

A. Each carrier records key information about incoming calls, including the originating number (including both the "directory" number and, if the number has been ported, the actual internal network number the originating carrier has assigned to the end user, called the "local routing number," or LRN), the terminating number (again, including both the "directory" number and the LRN), and the number of minutes the call lasts. A carrier's billing computers (or those of its billing vendor) decide whether a call is subject to access or reciprocal compensation by comparing the originating "exchange" (identified by the first six digits of a ten digit number) and the terminating "exchange." So all that Verizon would have to do to implement Bright House's proposal would be to update its billing tables to reflect that calls from any Bright House exchange to any Verizon exchange in the Tampa LATA are to be rated as local.[39] Mr. Munsell makes this sound difficult, but in fact it is a straightforward process of updating a computer database from time to time. There is nothing "unworkable" about it.

[39] If and to the extent that other carriers, in the future, were to adopt the ICA containing this arrangement, Verizon would simply update its billing tables to reflect those other carriers' calling arrangements as well.

Q. HOW WOULD BILLING WORK ON A "FACTOR" BASIS UNDER BRIGHT HOUSE'S PROPOSAL?

A. If updating its billing tables really was too hard for Verizon to manage, it does not have to undertake that effort. In that event, the parties would simply take a detailed sample of the traffic they send each other for some representative period (say, a full week of traffic) and subject that traffic to a special study (outside the normal monthly billing process) to determine, based on each carrier's originating local calling areas, what portion of the traffic is "local" and what portion is "toll." Then, for the next six months (or other reasonable period), the parties would simply count the total number of minutes they send each other, and apply the relevant factor to those minutes. Again, in Bright House's case this would be extremely easy, because 100% of Bright House's end users get local calling to the entire Tampa LATA. As a result, Verizon would have no trouble at all billing traffic from Bright House properly. But Bright House, under this option, would base its charges to Verizon on the results of periodic "off-line" detailed reviews of the traffic Verizon sends to Bright House.[40]

In this regard, I note that the use of factors based on "off-line" studies to determine how to rate traffic between carriers is a very old, established, and well-understood practice in the industry. It dates, at least, back to the original access tariffs established by the FCC in 1984, and is contained (although I have not literally counted them) in hundreds of interconnection agreements around the

[40] Again, if other carriers were later to adopt the ICA containing this arrangement, off-line studies with respect to traffic between Verizon and those other carriers could easily be undertaken and used for billing.

country under the 1996 Act. Using billing factors is straightforward, standard industry practice. There is nothing even very hard – much less "unworkable" about it.

Q. WHAT ABOUT MR. MUNSELL'S CONCERN THAT DIFFERENT CARRIERS HAVE DIFFERENT LOCAL CALLING PLANS, SO THAT CALLS THAT ARE SUPPOSEDLY "LOCAL" TO SOME CUSTOMERS ARE "TOLL" TO OTHERS?

A. First, I would note that in Bright House's case that proposal is entirely theoretical, in that all of Bright House's end users get local calling to the entire Tampa LATA (and, actually, beyond). But I recognize that Verizon itself has a number of so-called local calling plans, and that other carriers may as well.

That said, this issue, as well, is not complicated. I noted in my direct testimony that the Act defines "toll" calls as those for which there is a charge over and above the basic local exchange service charge. This presents a simple and straightforward rule for dealing with carriers who have multiple "local" calling plans. Specifically, the carrier's "local" calling area for purposes of intercarrier compensation would be the smallest calling zone available to a customer in a given exchange. If the carrier allows customers to avoid per-minute toll charges by paying an extra flat rate to treat certain calls as "local," that extra payment would be treated, for purposes of intercarrier compensation, as a "toll" charge warranting the imposition of access charges.

This rule would allow the carrier receiving traffic to either update its billing computers to appropriately assess access charges on a call-by-call basis, or to conduct an "off-line" study to develop a factor to apply to all incoming minutes.

Note, however, that this problem simply does not exist with respect to ***Verizon's*** billings to ***Bright House***, because Bright House end users have single calling plan that includes local calling to the entire LATA, including all of Verizon's customers. And, it again bears emphasis that it is extremely convenient for Verizon to find these straightforward solutions to be obscure and complicated, for the simple reason that, if Verizon acknowledges how straightforward this process actually is, it will lose millions of dollars in unwarranted and inappropriate access charge payments it is now receiving from Bright House.

For these reasons, the Commission should reject Mr. Munsell's objections to Bright House's fair and simple proposal for determining when access charges, as opposed to reciprocal compensation, applies between the parties, and adopt Bright House's proposal. Given Verizon's objections, the Commission should specifically rule that (a) the parties will use either call-by-call billing, or a billing factor based on a periodic study, at each party's discretion, and that (b) in the case of a carrier with multiple "local" calling plans, the treatment of calls from that carrier as "toll" or "local" will be based on the carrier's smallest local calling areas, as described above.

Issue 7 (Can Verizon Unilaterally Cease Performance?)

Issue #7: Should Verizon be allowed to cease performing duties provided for in this agreement that are not required by applicable law?

Q. PLEASE DESCRIBE THE CURRENT STATUS OF THE DISPUTE UNDERLYING ISSUE #7.

A. As I described in my direct testimony, Verizon has proposed contract language that appears to give it a "get out of jail free" card with respect to a broad array of the obligations it purports to accept under the new ICA, and that is almost certain to lead to numerous acrimonious disputes. Specifically, Verizon wants the contract to include language (General Terms and Conditions, Section 50) that says that – notwithstanding Verizon's agreement to numerous terms and conditions in the contract that have not been arbitrated by the Commission – Verizon isn't really "bound" by those terms and conditions if Verizon, in its sole discretion, later concludes that it was not compelled to agree to them by applicable law. This takes the whole idea of a binding, negotiated agreement and turns it on its head. In practical terms, it makes it impossible for Bright House to actually plan its business, or have any assurance that Verizon's contractual commitments are worth the paper they are printed on.

Q. WHAT DO VERIZON'S WITNESSES SAY ABOUT ISSUE #7?

A. Mr. Munsell addresses Issue #7 at pages 7-9 of his testimony. His discussion makes very little sense to me. His first contention is that under applicable law, ***factual circumstances*** can change in such a way that a Verizon obligation that exists today to provide some service will disappear. His only example, however, is totally irrelevant to Bright House – he cites the FCC's rule that when market

conditions change in certain ways, Verizon can withdraw the offering of certain UNEs from the affected markets. Bright House does not dispute that aspect of applicable law, but as far as I am aware, and as far as Bright House is aware, the example Verizon gives is the only one of its kind. If Verizon wants to include language in the UNE attachment that clarifies that it can stop offering specific UNEs on 30 days' notice if that is appropriate under the FCC's rulings regarding "impairment," Bright House would have no objection. But it makes no sense to take that specific and unusual legal situation regarding certain UNEs, turn it into a general principle applicable to everything in the ICA, and place it in the General Terms and Conditions Section.

Second, Mr. Munsell wants Verizon to have the right to unilaterally stop paying compensation to Bright House if applicable law changes so that certain compensation is no longer required. At a high level this is completely inappropriate: if applicable law changes in a way that materially affects Verizon's (or Bright House's) payment obligations, then the parties will invoke the "change in law" provisions of the contract and negotiate an appropriate change.

Q. WHAT IS VERIZON REALLY WORRIED ABOUT IN CONNECTION WITH THE "STOP PAYMENT" ASPECT OF ISSUE #7?

A. Starting about a dozen years ago, there was a lot of controversy in the industry over whether calls from end users of an ILEC, to dial-up ISPs served by a CLEC, were subject to intercarrier compensation of any sort. This was back in the hey-day of dial-up access to the Internet, so the volume of such calls was huge.

CLECs demanded payment, and frequently received it, while ILECs fought in a variety of forums to get their payment obligations lowered or eliminated. My understanding is that in some cases, Verizon had difficulty getting CLECs to agree to accept reduced per-minute payments for ISP-bound calls even after the FCC established those reduced payments in an order in April 2001.[41] I strongly suspect that Verizon's assertion of a general right to automatically stop paying if the law changes reflects its problems following that 2001 FCC Order.

Q. AS FAR AS YOU ARE AWARE, IS THERE ANY OTHER "COMPENSATION OBLIGATION" WITH A SIMILAR HISTORY IN THE INDUSTRY?

A. No.

Q. DOES THE CONTROVERSY ABOUT PAYING FOR CALLS TO DIAL-UP ISPS HAVE ANYTHING TO DO WITH BRIGHT HOUSE AND ITS ICA WITH VERIZON?

A. No. Bright House has informed me that it does not have any dial-up ISPs as customers and its cable affiliate does not provide VoIP services to any dial-up ISPs. This is simply not an issue between Bright House and Verizon.

Given that, Bright House would be willing to include language in the Interconnection Attachment that states that if the FCC were to issue a ruling that

[41] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

no compensation is required for ISP-bound calls, Verizon could immediately stop paying Bright House compensation for such calls. As noted, as far as Bright House is aware, there is no such traffic being exchanged between Verizon and Bright House today.[42] But this is not a general problem, and Verizon's concern about it does not establish a general principle that it should be able to stop paying Bright House in response to a change in law, without invoking the normal change-in-law negotiation process.

Q. WHAT SHOULD THE COMMISSION DO IN REGARD TO ISSUE #7?

A. As noted above, Bright House would not object to moving the "stop providing services" language, properly clarified, to the UNE attachment, and would not object to moving the "stop paying for ISP-bound calls" language, properly clarified, to the Interconnection Attachment. Neither of these provisions – when limited to the specific context giving rise to Verizon's concern – is of any concern to Bright House. But it is completely inappropriate to include these provisions as generally applicable terms in the "General Terms and Conditions" of the ICA, and the Commission should reject Verizon's proposal to include this language there.

Q. DOES THIS CONCLUDE YOUR DISCUSSION OF THE "TIER 1" ISSUES YOU IDENTIFIED EARLIER IN YOUR TESTIMONY?

A. Yes, it does.

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[42] I would note, for the record, that the chance of the FCC issuing such an order is negligible. The FCC's most recent ruling on this topic, from November 2008, confirms that calls to ISPs are subject to reciprocal compensation under Section 251(b)(5) of the Act, and reaffirms the FCC's special $0.0007 rate applicable to such traffic (if it applies to all traffic the parties exchange).

C. **"Tier 2" Open Issues.**

Q. WHAT ARE THE REMAINING, "TIER 2" ISSUES?

A. As noted above, there are about a dozen "Tier 2" issues. These are:

- Issue #1 (role of tariffs in the ICA) and Issue #2 (definitive prices);
- Issue #3 (treatment of traffic not specifically identified in the ICA);
- Issue #4(a) (treatment of the terms "customer" and "end user");
- Issue #13 (time limits on back-billing, and raising billing disputes);
- Issue #16 (terms regarding assurance of payment);
- Issue #20 (parties' obligations to reconcile their network architectures);
- Issue #22 (terms regarding use of Verizon's OSS);
- Issue #28 (types of traffic that may be sent via a fiber meet arrangement);
- Issue #29 (establishing separate trunk groups for different traffic types);
- Issues #38 and #39 (relating to transit traffic, which also includes a discussion of Issue #36(a));
- Issue #44 (unlocking 911 records);
- Issue #45 (inclusion of collocation terms in the ICA); and
- Issue #49 (resale of special access circuits sold at retail).

I discuss each of these issues below. I would emphasize that, while these issues are not as critical to the parties' interconnection relationship as the "Tier 1" issues discussed earlier, it is still important for the Commission to reach the correct conclusion with respect to them. For the reasons discussed in my direct testimony, and below, in each case the Commission should adopt Bright House's proposed resolution of these issues.

Issue 1 and Issue 2 (Role of Tariffs/Definitive Rates)

Issue #1: Should tariffed rates and associated terms apply to services ordered under or provided in accordance with the ICA?

Issue #2: Should all charges under the ICA be expressly stated? If not, what payment obligations arise when a party renders a service to the other party for which the ICA does not specify a particular rate?

Q. WHAT IS THE STATUS OF ISSUE #1 AND ISSUE #2?

A. As I noted in my direct testimony, Bright House and Verizon have a philosophical disagreement about the role of tariffs in interconnection agreements.[43] In addition, Bright House and Verizon probably disagree, in the abstract, about how important it is, or is not, for all rates under the ICA to be expressly stated in the ICA. However, as a result of the parties undertaking a detailed review of the actual charges between Bright House and Verizon, it appears that the parties are in a position such that essentially all of the significant rates they charge each other are either (a) clear as between the parties or (b) clearly in dispute under some specific issue, with the parties asking this Commission to determine what rate applies. As a result, the practical impact of the parties' abstract/philosophical disputes is likely to be minimal.

Q. PLEASE DESCRIBE THE STATUS OF THE PARTIES' AGREEMENTS AND DISAGREEMENTS WITH RESPECT TO PRICING ISSUES.

A. I summarize the status of those agreements and disagreements below:

[43] *See e.g.*, Gates Direct at 21-22.

- ***Directory Listing Fees***. The parties have agreed on non-recurring charges for setting up directory listings; they have agreed that certain directory listing situations will have no charge to Bright House; and they have agreed that Verizon's tariffed rates for special or extra directory listing services will apply in other cases. These rates are no longer in dispute.

- ***Per minute call termination fees***. The parties agree that the minutes they send each other will either be rated at $0.0007 per minute (for "local" or "reciprocal compensation" traffic) or at the terminating party's per-minute tariffed access rates. They disagree about which minutes fall into which category, but are asking the Commission to resolve that dispute in Issue #37, discussed above.

- ***Collocation Fees***. Bright House understands that the collocation rates that Verizon has included in its Florida collocation tariff were established by this Commission in a proceeding specifically designed to set collocation rates, terms and conditions. While the parties still have to sort out the question of whether collocation terms and conditions should be included in the body of the agreement, Bright House accepts Verizon's Commission-established collocation prices, and will address any Verizon attempt to modify those rates in an appropriate proceeding before the Commission.

- ***Facilities charges***. As described above, Verizon wants to impose its tariffed special access rates for interconnection-related facilities obtained

by Bright House, and Bright House maintains that those facilities must be provided at much lower cost-based TELRIC rates. They are asking the Commission to resolve that question in connection with Issue #36 and Issue #24, above.[44]

In light of this improved clarity with respect to the prices that Bright House will actually be charged, the dispute about the role of tariffs is less critical than before, in practical terms.[45]

That said, for the reasons described in my direct testimony, Bright House continues to believe that it is confusing and impractical to treat Verizon's tariffs as being "incorporated by reference" into an ICA. In those cases where the parties have agreed to apply a tariffed rate (such as for "extra" directory listing services, as noted above), it is a simple enough matter to state, for those functions, that specific tariffed rates apply.

Q. WHAT DOES VERIZON SAY ABOUT ISSUE #1?

A. Based on the parties' extensive efforts to narrow this issue prior to the filing of direct testimony, Verizon chose not to address the issue in direct testimony.[46] While (as indicated by the discussion above) the practical impact of this issue is

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[44] Bright House and Verizon have not reached any agreement as to the ***specific rate levels*** that would apply to these facilities once it is established that TELRIC, rather than tariffed, rates apply. I am informed that the parties have agreed that if the Commission so rules, they will first attempt to negotiate appropriate TELRIC rates, and bring the matter to the Commission only if they are unable to do so.

[45] I should note that I would not necessarily agree with the settlement terms and conditions that the parties have agreed to. Nevertheless, the settlement is a reasonable way to proceed and to get this litigation behind us so the parties can focus on serving customers.

[46] *See* Vasington Direct at page 2, line 9.

less than it might first have appeared, and while the parties may indeed be able to settle it entirely, at the moment there is no agreement about what the contract should actually say in connection with tariffs. We will review Verizon's rebuttal testimony on this point with interest.

Q. WHAT IS THE STATUS OF THE PARTIES' DISPUTE REGARDING ISSUE #2?

A. It is essentially the same as regards Issue #1. Bright House proposed language to require every rate that would be charged under the contract to be clearly stated in the contract. That is necessary for the reasons stated in my direct testimony. But because the parties either have, or following rulings by the Commission will have, clarity with respect to the rates that govern the overwhelming majority of their payments to each other, the practical significance of Issue #2 is also diminished.

Issue 3 (Billing Of Traffic Not Addressed In ICA)

Issue #3: Should traffic not specifically addressed in the ICA be treated as required under the Parties' respective tariffs or on a bill-and-keep basis?

Q. WHAT IS THE CURRENT STATUS OF THE DISPUTE UNDERLYING ISSUE #3?

A. As I explained in my direct testimony, it is possible that some "type" of traffic might arise or evolve during the term of the agreement that does not fit within any of the various categories of traffic the parties have defined.[47] To avoid disputes,

[47] *See,* Gates Direct at 114-117.

Bright House proposed to exchange such traffic on a "bill and keep" basis until it becomes significant, and then, at either party's option, to negotiate an appropriate rate. Verizon simply wants the parties' tariffed rates to apply to any such traffic.

Q. WHAT IS VERIZON'S POSITION ON THIS ISSUE?

A. Mr. Vasington addresses this issue on pages 2-3 of his testimony. He claims that Bright House is trying to "avoid tariffed intercarrier compensation rates that other carriers are required to pay." He also claims that Bright House wants the traffic to be exchanged for free "unless Verizon can unerringly divine (and provide a rate for) every conceivable type of traffic the parties might exchange in the future."

Q. ARE MR. VASINGTON'S CONCERNS VALID?

A. No. As I noted in my direct testimony, the parties have agreed to include definitions of a wide array of traffic types. It is not at all clear which Verizon tariffs might apply to as-yet unknown traffic. And since we are talking here about hypothetical types of traffic that have not yet appeared, there are no "other carriers" that are "required to pay" for this traffic today.

Q. COULD YOU CLARIFY WHAT BRIGHT HOUSE IS SEEKING HERE?

A. Yes. In those rare occasions when new types of traffic arise in the industry there tend to be disputes about the intercarrier compensation applicable to them. The industry has struggled for more than a decade about how to handle ISP-bound calls, and even the FCC's most recent ruling on that topic leaves some matters unresolved, at least in the mind of some carriers. The industry has also struggled

more recently with how to handle VoIP traffic. Bright House and Verizon were able to reach agreement on both those types of traffic.

If and when some new type of traffic arises, Bright House's proposal would create a smooth and straightforward way to work out how to handle it. Assuming the amount of the traffic remains low enough, the parties would effectively ignore it. But once it reached a relatively low threshold of volume (a DS1's worth of traffic for three months), the parties would sit down and negotiate how to handle it – just as they have done in this ICA with ISP-bound traffic, VoIP traffic, and other traffic types. If they cannot agree, they would bring the question to the Commission for resolution.

Q. IN YOUR OPINION, IS THIS A REASONABLE WAY TO DEAL WITH THE POTENTIAL FOR "NEW TRAFFIC"?

A. Yes. This is a fair, reasonable, and straightforward way to handle the issue of "new" traffic without unnecessary contention. The Bright House proposal provides correct incentives for both parties to resolve any issues with such traffic.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO THIS ISSUE?

A. For the reasons stated here and in my direct testimony, the Commission should adopt Bright House's proposal.

Issue 4 (Definitions of "Customer" And "End User")

Issue #4: (a) How should the ICA define and use the terms "Customer" and "End User"?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE # 4(a)?

A. As explained in my direct testimony, Bright House wants to be sure that when the ICA refers to a party's "customer" or "end user," those terms are properly construed to include consumers who get interconnected VoIP service from Bright House's cable affiliate.[48] For example, references to a "customer" or "end user" being included in an E911 database, or a directory listing, logically refer to the consumer receiving VoIP service, not Bright House's direct wholesale customer.

Bright House's initial proposal to Verizon was to include specific definitions of "customer" and "end user" that would guarantee this result. More recently, Bright House has proposed that language along the following lines be included at an appropriate place in the ICA: "Where this Agreement refers to a Party's 'customer' or 'end user,' such term shall be construed to include an end user subscriber to an interconnected VoIP service that obtains PSTN connectivity through a Party's network where the context reasonably so requires." Verizon continues to reject this suggestion.

Q. WHAT DOES VERIZON SAY ABOUT THIS ISSUE?

A. Mr. Vasington addresses this issue at pages 3-6 of his testimony. He interprets Bright House's proposed definitions as creating a variety of contractual issues involving not only Bright House, but also its cable affiliate and possibly others.

[48] *See,* Gates Direct at 57-59.

While I do not agree that Bright House's proposed language would have those effects, as just discussed Bright House's purpose in raising the issue was much more limited. I will await Verizon's rebuttal testimony to see its reaction to Bright House's latest proposal.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE 4(A)?

A. The Commission should adopt Bright House's revised proposal, as described above.

Issue 13 (Time Limits On Back-Billing And Bill Protests)

Issue #13: What time limits should apply to the Parties' right to bill for services and dispute charges for billed services?

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #13?

A. As I explained in my direct testimony, Bright House proposes to impose a reasonable time limitation that would apply to bills rendered under the agreement, and to disputes arising about those bills.[49] Specifically, Bright House has proposed that if a party doesn't render a bill for a service for more than a year after the service was provided, then the party's right to bill for the service is waived. Similarly, if a party has a dispute it wants to raise about a bill that it has received (and already paid), the party must raise the dispute within a year after the bill is received. Verizon continues to object to these proposals.

[49] *See,* Gates Direct at 48-50.

Q. WHAT ARE VERIZON'S OBJECTIONS?

A. This issue is addressed by Mr. Munsell at pages 12-16 of his testimony. He basically claims that billing is complicated and that sometimes mistakes are made. As a result, he argues, it is appropriate for there to be no limit at all on the time during which a party can protest a bill, or back-bill for previously rendered services, other than Florida's general statute of limitation. He also cites to a 2003 decision from this Commission in which the Commission rejected a claim similar to that put forward by Bright House here.[50]

Q. SHOULD THE COMMISSION ADOPT BRIGHT HOUSE'S PROPOSAL NOTWITHSTANDING THE EARLIER ORDER?

A. Yes. I expect Bright House's attorneys to deal with the literal legal significance of the earlier case, which is not, as I understand it, binding on the Commission in subsequent arbitrations such as the one now underway. I would simply note the following points:

- One would expect that Verizon's billing systems and procedures would have improved over the seven years since that case was decided, so that whatever problems Verizon might have had with billing in the past, they should be fixed now.

- The competitive carrier involved in the other case – COVAD – was a "data CLEC" that relied mainly on Verizon's unbundled network elements

[50] *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").

to provide high-speed Internet access services to end users. For a carrier with such a business model, Verizon would likely be sending the carrier large bills every month, whereas the carrier would be providing few if any services to Verizon. As a result, even if the one-year limitation that COVAD had proposed nominally applied to both parties, in fact the real risk in not being able to back-bill fell almost entirely on Verizon. Here, with the parties exchanging hundreds of millions of minutes of traffic each year, the time limitation on back-billing (and bill protests) truly is mutual in a way that probably was not true in the COVAD situation.

- In the COVAD case, the Commission noted that COVAD had apparently failed to provide any legal authority for the Commission to impose a requirement that differed from Florida's normal statute of limitations. Without attempting to get into a legal discussion, I would simply note that Sections 251 and 252 of the Act expressly empower the Commission to impose "just and reasonable" terms and conditions with respect to interconnection agreements. For the reasons described in my direct testimony, it seems clearly "just and reasonable" to impose a one-year limit on back-billing and bill protests.

For all of these reasons, the Commission should set aside Verizon's objections and accept Bright House's proposed limitation on back-billing and bill protests.

Issue 16 (Assurance Of Payment)

Issue #16: Should Bright House be required to provide assurance of payment? If so, under what circumstances, and what remedies are available to Verizon if assurance of payment is not forthcoming?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #16?

A. Verizon has proposed to include language in the agreement, supposedly to protect Verizon in the case of Bright House encountering financial difficulties, in General Terms and Conditions Section 6. The terms, however, are one-sided and potentially oppressive. In light of the actual interconnection relationship between the parties – that is, their actual situation in the marketplace – Bright House has proposed to delete these provisions. As an alternative, Bright House has proposed to make them mutual, that is, have them apply to Verizon as well as Bright House. Verizon has refused.

Q. WHAT IS VERIZON'S POSITION REGARDING ISSUE #16?

A. Mr. Vasington addresses this issue at pages 12-15 of his testimony. He basically argues that Verizon has to deal with a lot of different CLECs who might get into financial difficulties, so Verizon needs to have ***some*** assurance of payment language in the contract. But he makes no effort to justify the specific, and oppressive, terms that Verizon is proposing.

Q. WHAT ARE BRIGHT HOUSE'S SPECIFIC CONCERNS WITH VERIZON'S "ASSURANCE OF PAYMENT" LANGUAGE?

A. As I noted in my direct testimony, Bright House's key concerns are that Verizon might invoke the "assurance of payment" provisions without an appropriate and objective justification, and that it might use the draconian terms of its proposed provision to cut off the provision of service – potentially disrupting the telephone service of hundreds of thousands of Florida consumers – because of a dispute about whether any "assurance of payment" was actually needed. In this regard, it is significant that, even though Verizon pays Bright House very substantial sums under their ICA, Verizon refused to make the assurance of payment provision mutual. That seems to me to be a strong indication that even Verizon recognizes that its proposed language is too oppressive.

Q. ARE THE PARTIES CONTINUING TO DISCUSS THIS ISSUE?

A. I am informed that even though the issue has not yet been resolved, discussions regarding it are ongoing.

Q. IF THE PARTIES ARE UNABLE TO RESOLVE THIS ISSUE, WHAT SHOULD THE COMMISSION DO?

A. As stated in my direct testimony, Bright House's proposal would be to delete this provision entirely. If the Commission is not so inclined, then at a minimum Verizon's language should be modified to require that Verizon may not require any assurance of payment unless reasonable and objective information, such as a failure by Bright House to pay undisputed portions of its bills on time for two or three consecutive months, justifies doing so. In addition, the Commission should strike proposed General Terms and Conditions Section 6.8, which is the provision

that permits Verizon to simply stop providing services if it demands assurances of payment and they are not immediately forthcoming. That provision is an invitation to abuse, and the Commission should not tolerate it.

Issue 20 (Network Reconciliation Costs)

Issue #20: **(a) What obligations, if any, does Verizon have to reconcile its network architecture with Bright House's?**

(b) What obligations, if any, does Bright House have to reconcile its network architecture with Verizon's?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #20?

A. Verizon proposes in Section 42 of the General Terms and Conditions, that Verizon retains the right to modify and upgrade its network over time. This is a reasonable provision. But Verizon then demands (unreasonably) that no matter what Verizon does to its network, or why, Bright House is completely responsible for absorbing any costs Verizon's actions might impose on Bright House. Bright House recommended that the language either be deleted, or be made mutual.

To be very clear, while Bright House proposed originally in its arbitration petition that the entirety of Section 42 be made mutual, as matters have evolved, Bright House's specific concern is not that Verizon be required, as a general matter, to modify its network to accommodate Bright House. Rather, Bright House's specific concern is that Bright House not be automatically required to absorb any and all costs that might arise as a result of a unilateral Verizon decision to modify its network. In the abstract, sometimes Verizon can reasonably expect Bright House to absorb those costs, and sometimes it cannot. Bright House's current

proposal, therefore, is that the last sentence of Verizon's proposed Section 42 – the sentence that states that Bright House will bear all costs occasioned by any Verizon network changes – be deleted. The point of this proposed change is to simply leave until another day the question of what cost responsibility, if any, arises when Verizon modifies its network. If nothing else, the Commission should adopt this minimal change to avoid potential unfairness to Bright House in the future.

Q. WHAT IS VERIZON'S POSITION WITH REGARD TO ISSUE #20?

A. Mr. Vasington addresses Issue #20 at pages 16-17 of his testimony. Mr. Vasington only addresses Bright House's proposal to make the provisions of Section 42 mutual. I do not believe his objections are well-founded, but as they relate to Issue #20, they have become moot.

Q. DO YOU HAVE ANY COMMENTS ABOUT MR. VASINGTON'S TESTIMONY ON THIS POINT?

A. Yes. On both page 16 (at lines 22-24 and footnote 6) and on page 17 (at lines 9-11), Mr. Vasington asserts that CLECs are not entitled to "superior" interconnection from an ILEC like Verizon, that is, that a CLEC cannot demand interconnection of a higher quality than Verizon provides to itself. In support of that contention he cites an 8th Circuit case indicating that language in Section 251(c) stating that interconnection and access to network elements shall be "at least equal in quality" does not authorize the ***FCC*** to require "superior" interconnection. I would simply note that, for the reasons I have described in my

direct testimony and elsewhere here, Section 251(d)(3), Section 252(e)(3), Section 261(b), and Section 261(c) of the Act all authorize ***this Commission*** to interpret the "just and reasonable" standard in Sections 251(c) to require that the ILEC do more than sit on its hands when a CLEC requests interconnection. In other words, it appears that Mr. Vasington is taking a specific court ruling relating to the scope of the ***rules*** that the ***FCC*** can establish under Sections 251 and 252 of the Act, and broadening it, with no policy (or, as far as I can tell, even legal) justification to the quite different question of what ***contract terms and conditions*** that ***a state regulator, such as this Commission,*** can impose in the course of an arbitration.

I expect that Bright House's lawyers will have more to say about this point in the briefing in this case.

Issue 22(a) (Use Of Operations & Support System)

Issue #22: **(a) Under what circumstances, if any, may Bright House use Verizon's Operations Support Systems for purposes other than the provision of telecommunications services to its customers?**

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #22(a)?

A. As noted in my direct testimony, the core underlying issue here relates to the fact that Bright House does not serve end user customers directly but, instead, provides wholesale telephone exchange services to its cable affiliate, BHN, which then uses those services to provide an unregulated interconnected VoIP service to

end users. In his direct testimony, however, Mr. Munsell states (at page 17, line 18, through page 18, line 2):

> If Bright House has legitimate concerns about its ability to continue providing service under this language, then Verizon can try to address them. In particular, Verizon has no objection to Bright House continuing to use Verizon's OSS to place orders for voice service for customers of Bright House Cable, just as it always has under the existing ICA. Verizon is not interested in interfering with service to those VoIP customers. If that indeed is Bright House's concern (and it is difficult to tell because Bright House hasn't explained its position), Verizon would be willing to accommodate it by excepting this traffic from any prohibitions under § 8.4.2 of the Additional Services Attachment.

While the parties have not yet finalized language to implement this Verizon position statement, this dispute seems, in practical terms, to be resolved.

Issue 22(b) (Volume Of Orders Using OSS)

Issue #22: (b) What constraints, if any, should the ICA place on Verizon's ability to modify its OSS?

Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #22(b)?

A. As I noted in my direct testimony, Bright House was concerned with three issues under this heading: potentially requiring Verizon to provide electronic OSS ordering for everything under the ICA; ensuring that Bright House receive commercially reasonable advance notice of changes to Verizon's OSS; and ensuring that Verizon not be able to use purported "volume" limitations on use of its OSS to stifle competition.

At this time, I am advised that Bright House is withdrawing its proposals with regard to the first two issues. After a careful review, it has determined that the

services that it actually uses or is likely to use appear to be available via Verizon's OSS, and has determined that its ability to participate with Verizon as part of its "change management" process should adequately protect its interest in notice of impending changes.

Q. WHAT IS VERIZON'S POSITION ON THE REMAINING ISSUE?

A. Mr. Munsell addresses all of these issues on pages 18-22 of his testimony. As far as I can tell, his only discussion of the problem of unreasonable restrictions on the volume of permissible orders occurs on page 20. There he states:

> Bright House would modify § 8.8.2 to remove any obligation it has to avoid using OSS in such a manner that would exceed the system's capacity or capability - effectively substituting Bright House's 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, not just any particular user.

This ignores Bright House's real concern and, indeed, Bright House's proposed language.[51]

Q. WHAT IS BRIGHT HOUSE'S REAL CONCERN HERE?

A. As I explained in my direct, Section 8.8.2 of the Additional Services Attachment could be read to give Verizon an unconstrained right to impose limitations on how many orders Bright House can submit, via the OSS, during any given day, week, etc. In order to eliminate the obvious possibility that language creates for

[51] I note that in his discussion of these issues, Mr. Munsell also tries to promote the idea that Bright House always has to accept Verizon's network, systems, etc., in an "as is" condition. As I have discussed above, for a variety of reasons this is simply not true.

competitive abuse, Bright House suggested that any volume limitations be "commercially reasonable."

Q. DOES THAT LIMITATION GIVE BRIGHT HOUSE THE UNILATERAL RIGHT TO DECIDE WHAT IS AND IS NOT "COMMERCIALLY REASONABLE"?

A. I am not a lawyer, but that is not how I understand Bright House's proposed language. Bright House's language simply imposes a general standard on Verizon's conduct. If Verizon and Bright House disagree about whether Verizon's conduct meets that standard, they will presumably discuss it, and, if they cannot agree, they will bring the matter to the Commission for resolution. Including the "commercially reasonable" language gives the Commission a standard to apply in deciding whether Verizon's conduct was appropriate.

Q. WHAT SHOULD THE COMMISSION DO WITH REGARD TO THIS ISSUE?

A. The Commission should adopt Bright House's proposed modification to Section 8.8.2 of the Additional Services Attachment.

Issue 28 (Types Of Traffic On Fiber Meets)

Issue #28: What types of traffic may be exchanged over a fiber meet, and what terms should govern the exchange of that traffic?

Q. WHAT IS THE STATUS OF THE DISPUTE UNDERLYING ISSUE #28?

A. This issue relates to Verizon's attempt to put restrictions on the "types" of traffic that may be exchanged over a fiber meet arrangement. I discuss fiber meet arrangements in my direct testimony.[52] Also, I note that the parties have agreed in principle how to handle the process for requesting, negotiating, and establishing a fiber meet (Issue #26) and some proposed Verizon restrictions on the possible locations of fiber meets (Issue #27). So Issue #28 is the only open issue regarding fiber meets that is still unresolved.

Q. WHAT IS THE STATUS OF THE PARTIES' DISAGREEMENT REGARDING THE USE OF FIBER MEET POINTS?

A. In section 3.1.3 of the Interconnection Attachment, Verizon proposes a variety of oppressive restrictions on the types of traffic that may be exchanged using a fiber meet point. None of these restrictions should be permitted. Verizon essentially concedes this point in its direct testimony.

Q. WHAT SUPPORT DO YOU HAVE THAT SHOWS THAT VERIZON ESSENTIALLY CONCEDES THIS POINT?

A. The only Verizon witness to address this issue is Mr. D'Amico, who discusses it on pages 5-8 of his testimony. He raises only a single objection to Bright House's proposal – the idea that fiber meet points might be used to exchange "special access" traffic. By this he means, as I understand it, that unswitched, point-to-point data communications (of the type often carried on a "special access" circuit) have technical and billing characteristics that make it impractical to handle on a

[52] *See, e.g.*, Gates Direct at 82-91.

fiber meet arrangement. Whatever the merits of Mr. D'Amico's concerns, the fact is that Bright House is not seeking to use fiber meets for the purpose of provisioning end user point-to-point data circuits. So that should resolve Verizon's objection.

That said, I would emphasize that fiber meet arrangements are entirely appropriate for handling traffic that might be carried on a special access ***facility.*** For example, Bright House is today buying special access ***facilities*** from Verizon's tandem switch to Bright House's collocations at two Verizon end offices. But what is being carried on those ***facilities*** is simple switched exchange access traffic. There is no reason at all that a fiber meet arrangement could not be used for switched access traffic.

To resolve this concern, Bright House would agree that its proposed language should be modified to state that a fiber meet arrangement may be used to carry "any lawful ***switched*** traffic that they may lawfully exchange." I believe that this minor change – which is what Bright House intended all along – will fully address Verizon's only specific concern with Bright House's proposal.

Issue 29 (Separate Trunk Groups)

Issue #29: To what extent, if any, should parties be required to establish separate trunk groups for different types of traffic?

Q. WHAT IS THE CURRENT STATUS OF THE DISPUTE REGARDING ISSUE #29?

A. As I explained in my direct testimony, in the telecommunications industry generally, sometimes carriers find it convenient to isolate traffic that has particular routing or billing characteristics onto separate trunk groups. This traffic will be carried on the same physical facilities as other traffic, but will be electronically separated to make it easier to route it properly, or apply special billing requirements to it. In Issue #29, Bright House is not proposing to impose any particular separate trunking arrangements on itself or Verizon. Instead, it is proposing to require discussions, in good faith, as to whether separate trunking would be appropriate for any particular type of traffic. If those discussions do not result in agreement, then the parties could bring their dispute to the Commission for resolution.

Q. DIDN'T BRIGHT HOUSE ORIGINALLY ASK VERIZON TO PLACE ALL TRANSIT TRAFFIC ON SEPARATE TRUNK GROUPS?

A. Yes. Bright House did originally propose a flat requirement that Verizon establish separate trunking for so-called "transit traffic" inbound from Verizon to Bright House. However, in discussions between the parties, Bright House agreed to withdraw that specific proposal. Its reasoning is that if the general obligation to discuss separate trunking is established, it can decide later whether separate

trunking for inbound transit traffic from Verizon is required and attempt to resolve the matter with Verizon.

Q. WHAT IS VERIZON'S POSITION WITH RESPECT TO ISSUE #29?

A. Verizon addresses this issue though the testimony of Mr. D'Amico at pages 8-12. Mr. D'Amico specifically objects to the proposal (now withdrawn, as just discussed) that Verizon must establish separate trunks for inbound transit traffic. Mr. D'Amico's comments on that issue are moot and I will not discuss them, beyond some observations in a footnote.[53]

However, Mr. D'Amico specifically objects even to Bright House's proposal to require the parties to discuss separate trunking arrangements. He states:[54]

> The agreement should not establish a process that would enable Bright House to bring a dispute to the Commission every time it wants Verizon to create separate trunk groups for another traffic type. The better approach is for any additional, separate trunks groups to be established by mutual agreement, as Verizon has proposed.

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[53] I should note that on page 10, lines 11-15 of his testimony, Mr. D'Amico makes the claim that since Verizon has apparently not made separate trunking arrangements for any other carrier in the past, meeting Bright House's request "would discriminate in favor of Bright House." As I have explained elsewhere in this testimony, all such claims are completely wrong. If it is "just and reasonable" to require Verizon to establish (or, under Bright House's current proposal, to negotiate with respect to establishing) separate trunks, then Verizon may and should be required to do so. Once that obligation is contained in the new Verizon-Bright House ICA to be established in this proceeding, it would be available to any other carrier that wants to "adopt" it, so there would be no discrimination. Mr. D'Amico also claims that Verizon "has no legal obligation" to arrange traffic onto separate trunk groups. D'Amico Direct at page 10, line 12. But the basic point of this proceeding is to establish what constitutes "just and reasonable" interconnection and traffic exchange arrangements between Verizon and Bright House. That is, as I have explained elsewhere, this Commission is fully empowered to direct Verizon to establish separate trunking, etc., under the "just and reasonable" standard. Once the Commission does so, Verizon will indeed face a "legal obligation" to do so.

[54] D'Amico Direct, page 12, lines 1-6.

If find this comment remarkable for the unreasonable and intransigent attitude it displays. First, Bright House has not said that it would bring a dispute to the Commission "every time it wants Verizon to establish a separate trunk group." Bright House is proposing the requirement for both parties to negotiate in good faith regarding either party's suggestion that a separate trunk group might be appropriate. Mr. D'Amico seems to think that it will always be Bright House suggesting separate trunking and that, moreover, Bright House will be oblivious to any legitimate technical or operational concerns that Verizon might raise to any Bright House suggestion.

Q. DO YOU BELIEVE MR. D'AMICO'S CONCERNS ARE REASONABLE?

A. No. If Bright House suggests separate trunking for some class of traffic, but Verizon has valid technical or operational reasons that separate trunking cannot or should not be established, Bright House will have no reason to bring a dispute to the Commission. On the other hand, if there are legitimate technical or other disagreements between the parties about establishing separate trunking, Mr. D'Amico never explains why bringing the matter to the Commission would be inappropriate or burdensome.

Q. ON PAGE 11, LINES 10-19, MR. D'AMICO OBJECTS TO A WORDING CHANGE REGARDING "ACCESS TOLL CONNECTING TRUNKS" THAT BRIGHT HOUSE HAD EARLIER PROPOSED. IS THAT DISCUSSION STILL RELEVANT?

A. No. Bright House had proposed that change (to Section 2.2.1.2 of the Interconnection Attachment) as part of a much-earlier version of its effort to deal with meet point billing traffic (discussed above in connection with Issue #36). As Bright House has continued to modify its proposal to try to deal with Verizon's stated concerns, it has withdrawn the suggested change to that portion of the Interconnection Attachment. Mr. D'Amico's comments on that issue are therefore moot.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #29?

A. The Commission should adopt Bright House's proposal to require the parties to discuss separate trunking arrangements in good faith and to provide that in situations where they cannot agree, they can bring the dispute to the Commission for resolution.

Issues 38 and 39 (Transit Traffic Issues)

Issue #38: **Should there be a limit on the amount and type of traffic that Bright House can exchange with third parties when it uses Verizon's network to transit that traffic?**

Issue #39: **Does Bright House remain financially responsible for traffic that it terminates to third parties when it uses Verizon's network to transit the traffic?**

Q. WHAT IS THE CURRENT STATUS OF THE DISPUTE UNDERLYING ISSUE #38 AND ISSUE #39?

A. As I noted in my direct testimony, my understanding is that this dispute has been almost entirely settled in principle, even though the parties have not yet settled on final language. As I explained, Verizon and Bright House appear to 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.

Q. AS YOU UNDERSTAND IT, WHERE DO THE PARTIES STILL DISAGREE REGARDING TRANSIT TRAFFIC?

A. First, the parties do not yet agree about how to handle so-called "phantom" traffic that Verizon might send to Bright House in transit from a third party carrier. This is traffic that Verizon sends to Bright House but that for some reason lacks the information needed to allow Bright House to identify and bill the third party carrier that sent it. Verizon asserts the right to send Bright House such traffic for free. Bright House asserts that if Verizon sends traffic to Bright House, and Bright House cannot establish that a third party should be billed for it, then Verizon should pay for the services that Bright House provided. Indeed, Bright House's view would appear to be consistent with (for example) Verizon's position under Issue #3 that unidentified or unclassified traffic be rated under the terminating party's tariff. Interestingly, Verizon also proposes that if Bright House itself provides transiting service to third party carriers, that Bright House be responsible for paying Verizon for the traffic it transits.[55] Bright House disagrees; but it is hard to see why it is fair or reasonable for Verizon to expect ***Bright House*** to be "on the hook" for any transit traffic Bright House might send to Verizon, and for Verizon to deny any liability to third parties to which it might send ***Bright House's*** transited traffic, but for Verizon to be entirely "off the hook' for any transit traffic that it might send to Bright House. To the contrary, consistency would suggest that Verizon would be willing to step up to take

[55] *See* Mr. Munsell's testimony at pages 25-28.

responsibility for any traffic it sends to Bright House that cannot be reliably billed to someone else.

Q. WHAT DOES VERIZON SAY ABOUT ISSUE #38 AND ISSUE #39?

A. Mr. Munsell addresses Issue #39, at pages 37-41 of his testimony. Mr. D'Amico addresses Issue #38, at pages 15-16 of his testimony. Mr. D'Amico's testimony appears to predate the parties' agreement in principle to use the indemnification procedure for transit disputes described above. Under that procedure, Verizon would not actually pay any third-party bills it receives for transit traffic originating with Bright House. Instead, it would forward such bills to Bright House, which would then decide whether to pay or challenge them. Mr. D'Amico's testimony on this point, therefore, should be disregarded.

Similarly, Mr. Munsell's discussion at pages 38-39 of his testimony seems to contemplate an arrangement under which Verizon would be free to pay third party bills for which Bright House is responsible, and then expect Bright House to simply reimburse Verizon. The problem with that arrangement (which, as I understand it, the parties have agreed not to use) is that it deprives Bright House of the ability to dispute or even audit, rather than pay, an erroneous or unjustified third party bill.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #38 AND ISSUE #39?

A. I strongly expect that this issue will be settled by the time the parties file their "position statements" in early May. If the matter remains open for Commission resolution, however, the Commission should direct the parties to establish an indemnification arrangement for handling third parties who bill Verizon for Bright House-originated traffic. The Commission should also require Verizon to pay Bright House for any "phantom" traffic Verizon sends to Bright House, since otherwise Bright House will not get paid for it. Finally, the Commission should direct the parties to include in their ICA precisely parallel provisions that would apply when a third party carrier uses Bright House to transit its traffic to Verizon. That is, Verizon should be called upon to bill the third party originating the traffic, not Bright House, for transit traffic Bright House delivers, ***unless*** Bright House delivers unidentifiable traffic, in which case Bright House should have to pay.

Issue 44 (Unlocking 911 Records)

Issue #44: What terms should apply to locking and unlocking E911 records?

Q. WHAT IS THE CURRENT STATE OF THE DISPUTE UNDERLYING ISSUE #44?

A. The parties have been unable to agree on the precise language to describe their obligations to each other in connection with "unlocking" the 911 records associated with a customer who changes from one party to another. I am informed that Bright House has made a number of proposals to Verizon, but that Verizon has failed to accept them.

Q. WHAT IS BRIGHT HOUSE'S CURRENT PROPOSAL?

A. There is a group focused on dealing with issues surrounding emergency numbers and calls to emergency authorities, called NENA. Bright House has proposed that the parties agree in their ICA to follow the procedures and time frames that NENA has established regarding the transfer of customers between two carriers. This would be superior to Verizon's original language, in that it would oblige both parties to follow the objectively established requirements of the expert industry group that is concerned with these issues.

Q. WHAT IS VERIZON'S POSITION ON THIS ISSUE?

A. In his testimony (at pages 54-56), Mr. Munsell correctly points out that Bright House had erroneously suggested that a different industry group, NANC, had promulgated standards for handling this issue. Bright House agrees with Mr. Munsell that the relevant industry group is NENA, not NANC. However, contrary to the suggestion in Mr. Munsell's testimony, Verizon's proposed language (at least as I read it) does not actually require Verizon to follow the NENA guidelines. Bright House has proposed that the language be amended to make clear that both parties will do so.

Q. WHAT IS VERIZON'S RESPONSE TO THIS BRIGHT HOUSE PROPOSAL?

A. As of the time this rebuttal testimony is being finalized, my understanding is that Verizon has Bright House's latest proposal under consideration. It would not

surprise me at all if this issue were to be resolved between the parties in the near future.

Issue 45 (Including Collocation Terms In The ICA)

Issue #45: Should Verizon's collocation terms be included in the ICA or should the ICA refer to Verizon's collocation tariffs?

Q. PLEASE DESCRIBE THE CURRENT STATE OF THE DISPUTE UNDERLYING ISSUE #45.

A. This issue has not yet settled, but my understanding is that it is on the verge of doing so. Bright House understands that Verizon's Florida collocation tariff contains rates and terms that were considered and approved by the Commission in an earlier proceeding.[56] Bright House therefore is less concerned than it was originally with regard to the content of Verizon's tariff or its ability to unilaterally impose unjust or unreasonable rates or terms.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. If the parties do not settle it, then the Commission should direct the parties to include the material terms of Verizon's state and federal collocation tariffs (including rates) within the ICA, but with a reference to the fact that the terms and rates of the Florida tariff were established following a specific PSC proceeding for that purpose.

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[56] In Re Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory, Docket No. 981834-TP-/990321, Order No. PSC-04-0895-FOF-TP (FL PSC Sept. 14, 2004); *amendatory order including rate table at* Order No. PSC-04-0895A-FOF-TP (FL PSC Nov. 4, 2004).

Issue 49 (Discounted Resale Of Retail "Special Access" Offerings)

Issue #49: Are special access circuits that Verizon sells to end users at retail subject to resale at a discounted rate?

Q. WHAT IS THE CURRENT STATUS OF THE DISPUTE UNDERLYING ISSUE #49?

A. As I explained in my direct testimony, federal law requires Verizon to allow CLECs to purchase, at discounted rates, any telecommunications service that Verizon sells "at retail."[57] This includes so-called "special access" services sold at retail, because such circuits normally are used to carry data traffic, not long distance traffic, and the FCC's rules are very clear that ***only*** services involved in originating or terminating toll traffic are exempt from the resale obligation.

Q. WHAT IS VERIZON'S POSITION ON ISSUE #49?

A. Verizon relies on an FCC observation back in 1996 that retail end users only "occasionally" purchase special access services to conclude that in 2010 such services remain immune from the resale obligation. *See* Vasington Direct at pages 26-27. The problem with Verizon's position is that the telecommunications market has changed dramatically in the last 14 years. Notably, more and more business customers purchase direct connections from their premises for purposes of carrying data traffic, either among their own business locations, or to an Internet access provider. These are plainly "retail" services sold to non-carrier customers, and are equally plainly not related to the provision of "telephone toll" services and so are not exempt from resale as "exchange access" services. My understanding is that Bright House will be filing discovery requests with Verizon

[57] *See*, Gates Direct at 150-153.

to demonstrate just how prominent retail, non-exchange access "special access" services are in the market today.

Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE #49?

A. The Commission should disregard Mr. Vasington's outdated objections and approve Bright House's proposal on this issue.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

BY MR. SAVAGE:

Q. Thank you. I believe we've agreed that the witness, each witness will have approximately five minutes to summarize their testimony. So, Mr. Gates, if you could please give us a summary of your testimony, I'd appreciate it.

A. Okay. Thank you. Good morning, Madam Chairman, Commissioners. We almost avoided this hearing. When we started this case a long, long time ago, we had over 100 issues. I think now we're down to eight. So I guess we're like unruly kids who are coming to you to settle this matter.

In five minutes I really can't adequately describe the disputes over these issues, so I won't attempt to do that. You've seen the direct, you've had the rebuttal, you've probably seen the deposition transcripts and the prehearing statements, so I know you're aware of the issues and the positions we're taking. And at the end of the day, you'll have yet another transcript to review.

But I want you to know that I think this is a fascinating case. That may be a reflection on my personality, I don't know, but this really is fascinating in that it gives you an opportunity to glimpse into one of the, one of the few areas in our

industry where we really do have competition, where we have cable companies actually building and investing their, in their own alternative network. This is very different than the CLEC issues we've dealt with in the past. So they're providing a real competitive alternative to Floridians.

Now you heard Mr. O'Roark say how successful Bright House has been, and they really have been. I mean, it's, it's truly amazing how many customers they've achieved in the last few years. But I'm here to tell you that's a good thing. I mean, they shouldn't apologize for their success and I hope they continue. It's providing great benefits for consumers, and we've seen Verizon responding to that competitive alternative, which is good. So they shouldn't apologize and hopefully it will continue.

Bright House, unlike a lot of CLECs, is a family-owned company. It's a cable company. They've invested to expand their facilities so that they can offer telecommunications products and they're doing a very good job. They are completely focused on quality of service for their network and for their consumers. And you may hear Verizon complaining about how Bright House is, you know, building out trunks to all of these end offices. Well, Bright House does do that. They

don't want any chance that a call will fail. They want their consumers to be sure and be confident that their services will be of the highest quality.

But today, as you heard Mr. Savage say, even though they're having success in the Tampa area where I live, we need a tune-up. They adopted this interconnection agreement years ago before they knew much about how technology was going to evolve, how their market was going to evolve and how their customers were going to react, so they adopted an ICA. Now we need to change it a little bit now that we know how technology is changing and consumer demands are changing.

But to be clear, Bright House is a CLEC in Florida, certificated by this Commission with interconnection rights. And the issues that we're going to talk about today that you'll find in our testimonies deal with those rights under the Act and under Florida law. And they're very important so that we have certainty between these two companies so that they can go forward for the next three or four years and just worry about competing on a retail basis and not have to worry about their business relationship. But obviously since both carriers are doing very well in the market, whatever you decide is going to affect both carriers directly.

Now when you evaluate these positions, I would simply ask two things. First, remember that this agreement is going to be in place for a few years. We're not talking about just fixing things for today. The industry is going to evolve, technology is going to evolve, consumer demands will change. So when you consider the positions, please think about which position, Bright House's position or Verizon's position, is going to encourage the investment, the deployment of new technology in Florida. Okay? Which position is going to result in new and better services at lower prices, Bright House's proposal or Verizon's proposal? And which of these positions on each of these issues is going to create a stable business environment between the parties?

And then secondly, and perhaps most importantly, ask yourself, as I know you will, which of these positions on each of the issues is going to benefit consumers?

CHAIRMAN ARGENZIANO: And you are out of time.

THE WITNESS: Am I? I'm sorry.

CHAIRMAN ARGENZIANO: Sorry.

THE WITNESS: Well, that's a good place to end actually because I wanted to focus on the consumer aspect of this because there is a bright line

distinction between Bright House and Verizon as to which party provides consumer benefits and which one does not. Thank you.

CHAIRMAN ARGENZIANO: Thank you.

MR. SAVAGE: And just a procedural note. Mr. Gates has offered direct and rebuttal testimony on all of the issues that are, that remain in play. Ms. Johnson has offered testimony on some, but not all of them. That said, Mr. Gates is an outside consultant and Ms. Johnson works for the company. So to the extent that there are any questions that come up that relate more to the company, we -- Ms. Johnson is available to answer them, if Mr. Gates isn't in possession of that knowledge. Just so that's clear. And with that, Mr. Gates is available for cross.

CHAIRMAN ARGENZIANO: For cross?

MR. HAGA: Thank you, Madam Chairman.

CHAIRMAN ARGENZIANO: Yes.

MR. HAGA: Thank you, Madam Chairman.

CROSS EXAMINATION

BY MR. HAGA:

Q. Good morning, Mr. Gates.

A. Good morning.

Q. I know it's a little difficult to see me from down there, but I'm David Haga and I'm counsel for

Verizon. And I thought we might start this morning by going through a couple of terms just so that we're speaking the same language this morning.

And, first of all, when I refer to Verizon, I'm referring to the respondent in this case, the ILEC, Verizon Florida LLC. Okay?

A. Okay.

Q. And if we need to refer to some other Verizon entity specifically, we'll do that.

And I'm going to refer to the petitioner in this case, Bright House Networks Information Services (Florida), LLC, as Bright House. Okay?

A. Okay.

Q. And if we need to refer to the Bright House Cable affiliate for some reason, we can call that Bright House Cable. Okay?

A. Okay. And to be fair, I'm not really up on all the distinctions, the legal distinctions amongst the affiliates. So when I refer to Bright House, I'm referring to the CLEC who is, of course, a party to the case.

Q. I appreciate that. And I doubt we'll need to make the distinctions. But if we do, we can, we can try and do it as it comes.

A. Okay.

Q. And generally speaking, Mr. Gates, when we're talking about interconnection, we're talking about two local exchange carriers, an ILEC and a CLEC, that are linking up to exchange traffic between their networks; right?

A. Generally, yes.

Q. Okay. And in your testimony you also refer to something called meet point billing. And just so we're sort of oriented on that, when we're talking about meet point billing, we're talking about the situation where a long distance carrier is trying to get traffic to a local exchange carrier, and for part of the way, at least part of the way that traffic is going to go over the network of another local exchange carrier; right?

A. Yes. Or perhaps traffic going from one local exchange carrier to an IXC that might also go over a shared facility.

Q. In other words, it could go both directions.

A. Yes.

Q. Okay. And in your testimony, at least in your rebuttal testimony, you referred to meet point billing under your discussion, your combined discussion of Issues 24 and 36; right?

A. Yes. Well, in my direct as well. I also referred to the meet point billing issues and certainly

the TELRIC pricing of interconnection facilities.

Q. Okay. I see you have your testimony there in front of you.

A. I do.

Q. Okay. Great. If you could turn in your direct testimony, please, to Page 68. If you could let me know when you're there.

A. I'm there.

Q. Okay. And here on Page 68, again, just to orient ourselves, here on Page 68 you're referring to Issue 24; correct?

A. Yes.

Q. Okay. And if you could look with me on Page 68 at Line 5, Lines 5 through 7, there you say, "I should note at the outset that I have been informed that the parties have reached a settlement regarding the charging that will apply to the specific current configuration that Bright House uses to interconnect with Verizon." Is that right?

A. Yes. That's what it says.

Q. Okay. And this is with respect again to Issue 24?

A. Yes. This is in my, my section that deals with 24. Of course, as we noted in the testimony, a lot of these issues are interrelated.

Q. Correct.

A. And so it's not solely related to 24 since the meet point issues also relate to interconnection.

Q. Okay. And with respect to this statement here about the settlement with respect to the specific current configuration, is your understanding of that the same today as it was here in this testimony?

A. I'm not sure I understand your point. If Bright House decides to change its configuration based on its right to select the point of interconnection, which 251(c)(2) allows, then these issues become very, very important as to prices and the terms and conditions between the parties.

You're right that this, this statement, this reference here, this one page does talk about the current configuration that Bright House and Verizon have. But as I've said from the get-go, I mean, it does make sense to have -- it might make sense from a financial perspective to have those points of interconnection at those collocations at the end offices instead of the tandem. So knowing what the prices would be for those facilities is critical to that business decision of deciding whether to change that network arrangement.

Q. Okay. Mr. Gates, let's talk about Issue 36,

if we could. And with respect to Issue 36, the facilities that are in dispute there are those that carry the meet point traffic between Bright House's end office locations in Carollwood and North Gulf Beach and the Verizon tandem; right?

A. Well, can you point me to my testimony where you'd like to discuss, and then I can perhaps give you a more specific response?

Q. Sure. If you could look -- and this -- maybe your rebuttal testimony is the place to look. In your rebuttal testimony, Page 34, and I'm looking here at, on Page 34 of your rebuttal at Lines 12 through 16. And there the phrase, picking up with the phrase on Line 13, "the only inter-network facilities that are actually at issue between the parties are the facilities that Verizon is providing Bright House for purposes of handling the very large amount of meet point billing traffic that the parties exchange with each other."

A. Yes. That's what it says.

Q. Okay. And if you could actually flip over to Page 36 of your rebuttal. If you look down at the sentence that's on Line 17 and 18, there you say that, "Under its current agreement with Verizon, Bright House has agreed to pick up that traffic literally at the switch ports on Verizon's tandem switch." Right?

A. Yes. That's correct.

Q. And when we're referring to that traffic there, we're referring to, if you look at Line 16, we're again referring to the meet point billing traffic; correct?

A. Yes. That's correct. We're basically setting up the problem, describing the current situation and addressing the pricing issue.

Q. Right. And there in, in Line 17 you use the word "agreed." And typically in the industry, the location of the meet point is determined by agreement of the parties, isn't it?

A. Well, yes. But I think that's really two points. I mean, we do have these MECAB and MECOD documents which define pursuant to federal tariffs, the NECA tariffs, Number 4, how we manage meet point arrangements. This reference to agreement is based on the fact that Bright House adopted an interconnection agreement. So for purposes of the current agreement, they've agreed to pick up that traffic literally at the tandem, and I really don't think that was a reference to meet point billing agreement guidelines.

Q. Okay. Well, let me pick up on what you just mentioned about the MECAB and the MECOD documents. Those are sort of the industry documents or industry

guidelines that lay out the meet point billing rules; right?

A. Yes. Yes. They help two carriers coordinate their activities. They determine how to bill for those jointly provided facilities, who's responsible for managing and coordinating them, billing, et cetera.

Q. And those industry documents, generally speaking, those industry documents provide that two local exchange carriers that are jointly providing access service to long distance carriers, that they'll negotiate and jointly agree on a specific meet point for handling meet point billing traffic, don't they?

A. Yes. Generally that's correct.

Q. Okay. Now let me talk a little bit more about the parties' existing arrangement. And, Mr. Gates, you would agree that under the parties' current arrangement, Bright House is financially responsible for the facilities from Bright House's network to the meet point on Verizon's tandem.

A. Under the current arrangement?

Q. Correct.

A. Yes. They're responsible for those facilities, and then, of course, they can charge the IXCs for those facilities.

Q. And Bright House could get from its network to

the Verizon tandem in a few different ways, couldn't it?

A. Of course.

Q. Okay. Well, one example is Bright House has a collocation in the same office as the Verizon tandems; correct?

A. It does. It has three collocations.

Q. Okay. And one of those is there in the Tampa office; correct?

A. At the tandem. Yes.

Q. Okay. And you would agree that Bright House could send and receive meet point IXC traffic through that collocation located there next to the tandem in the Tampa office?

A. Oh, it technically could. I mean, we spend a lot of time in our testimonies talking about what's technically feasible. But one thing is clear, Bright House has the right to determine where the point of interconnection will be. So if Bright House wants to do it at the end office instead of the tandem, that's its right as long as it's technically feasible, which it is.

Q. Well, rather though than pick up the meet point billing traffic there, Bright House has it go down to the two collocations in Carollwood and North Gulf Beach; correct?

A. Yes. And, frankly, if we got the pricing

correct on those facilities, this probably wouldn't be an issue. But given the high special access rates you're charging Bright House for those facilities, that's created the dispute.

Q. And these aren't --

A. I'm sorry.

Q. No. Please.

A. I just wanted to state that, I mean, clearly these are interconnection facilities used to exchange, exchange access, which is specifically identified in 251(c)(2). So, I mean, there's no dispute, I don't believe, technically or legally that these are interconnection facilities. So I do believe that Bright House has the right to pick the point of interconnection.

Q. Well, actually there is a dispute here.

A. Really? Okay.

Q. And that's why we're here is because there's a dispute.

A. Well, not, not on, not on that point. I think there's a dispute on how we, you know, the pricing that would apply to those facilities. But hopefully there's no dispute on the fact that these are interconnection facilities.

Q. Well, obviously Verizon will have some

witnesses --

A. Okay.

Q. -- up on the stand to talk about that. But your, your statement that these are interconnection facilities, this is based on Bright House's reading of the Act; correct?

A. It's based on my understanding of the Act over the last 14 or 15 years, and I think it is very straightforward. I've cited it in my testimony, both in my direct and in my rebuttal, that it says that interconnection facilities can be used for both telephone exchange service and exchange access.

Q. Well, let's be clear about what we're talking about here. Your, your position is, based on the reading of the Act that what is currently today special access facilities from the Verizon tandem to the two Bright House collocations, it's your reading of the Act that those should be treated as interconnection facilities and that Bright House can pick where the meet point would be?

A. Those facilities between the collos at the end offices and the tandem are interconnection facilities. Bright House does have the ability to pick the interconnection point, which could be at the tandem or it could be at the end office.

Q. The FCC has never said that is the correct reading, has it?

A. Of course it has in many, many cases. I mean, just look at the FCC's rules on interconnection. I mean, the FCC defines interconnection at 51.5 as the physical linking of networks. And then in the FCC's rules at 51.305 it talks about technical feasibility. And then in 251(c)(2) of the Act, the FCC also incorporates that into its definition of what traffic may go over these interconnection facilities, which is both telephone exchange and exchange access traffic. So, yeah, I mean, we've been in hundreds of these proceedings over the last 14 years, and I think the FCC has been very clear on this.

In fact, it's ironic that we're talking about extending the POIs out into the network because, you know, historically CLECs have come to you and said we just want one POI per LATA. Here we've got Bright House saying we want more POIs. And it's ironic that now Verizon is saying, no, we want you to bring it all to the tandem, and historically they've said that causes tandem exhaust, et cetera, et cetera. So I think this is very different from what we've seen from Verizon in the past.

Q. Well, let's be clear, Mr. Gates. Again,

you're talking about your reading of FCC rules, but I'm talking about in any FCC order has the FCC ever said that the reading that Bright House is offering here, the facilities arrangement that Bright House wants to do here, yes, that's the way it's supposed to be done under the Act, has the FCC ever said that in an order?

A. I believe it has. I, I can't point to a specific order, but I think it's common knowledge in the industry that a CLEC can pick the point of interconnection as long as it's technically feasible. And if Bright House says it wants that point of interconnection at those collos at the end offices, then that's where that will occur.

Q. Mr. Gates, do you have a copy of Bright House's interrogatory responses to Verizon's second and third set of interrogatories there?

A. I don't.

MR. HAGA: Okay. May I approach the witness?

MR. SAVAGE: Which one do you want?

MR. HAGA: It's the second and third set, and we're going to be looking at question 29.

MR. SAVAGE: These are our responses to staff or --

MR. HAGA: No, to us. Bright House's responses to Verizon's. I believe this has already been

premarked as Exhibit 4C, I believe.

CHAIRMAN ARGENZIANO: Is that, is that correct?

MR. HAGA: Is this 4C, Bright House's responses to our second and third set of interrogatories?

MS. BROOKS: On the staff exhibit, on the exhibit list?

CHAIRMAN ARGENZIANO: Correct. Okay. We got the nod. It's correct.

MS. BROOKS: Yes.

CHAIRMAN ARGENZIANO: Thank you.

MR. HAGA: Thank you.

BY MR. HAGA:

Q. And, Mr. Gates, this is, this is Interrogatory 29 and that's -- and in this question Verizon is asking, "Has the FCC ruled that transport facilities a CLEC buys from an ILEC to carry third party interexchange carrier's traffic to or from the CLEC's end users are interconnection facilities under Section 251(c)(2)? If so, please provide a complete citation to the order." Do you see that question?

A. Yes, I do.

Q. And then in the response, the first paragraph there basically tracks the reading you were just giving

of the statute, and we can read it, if necessary, but I think that basically tracks what you just said.

A. Yes. I'm glad to see I was consistent with that, so that's good.

Q. Well, let's talk about the consistency in the second paragraph.

A. Okay.

Q. Because there at the beginning of that paragraph it reads, "Bright House is not at this time aware of an FCC ruling addressing the specific facility arrangement"; correct?

A. Yes. That's what it says. And I think that's consistent with what I just said. I'm not aware of any specific FCC ruling that addresses what Bright House is asking for in Tampa.

Q. Well --

A. But the principles are obvious and straightforward.

Q. Well, again, and that's what I'm trying to get at, has the FCC ever specifically said what, what Bright House is specifically proposing here, yes, that's right? And I take it from this interrogatory response that, no, the FCC hasn't said that and, no, you're not disputing that.

A. Yeah. I was just reading the rest of this

answer.

MR. SAVAGE: Before you answer further, kind of a procedural question. I'm happy to have my witness be asked about what the FCC says and why they say it because I think that's part and parcel of what's going on, although it kind of merges off into the world of what's legal and what's not. If this is going to be permitted, I'd like to sort of know in advance that I'll have the same courtesy to be able to ask their own witnesses questions about what the FCC has said and what the law means without getting an objection, oh, well, that's a legal conclusion. If I can't have that agreement now, I'm going to have to object to this line of questioning and say the FCC orders speak for themselves.

MR. HAGA: Well, if I could respond to that.

CHAIRMAN ARGENZIANO: Yes.

MR. HAGA: I think where this went is is he aware of anything from the FCC? And I appreciate that Mr. Gates is not a lawyer. And if he's not aware, that's fine. But I don't think this is interpreting legal issues, and I don't want Mr. Gates or any other nonlawyer witness to be trying to do, interpret legal issues. So if he is aware of something in his capacity as someone who's been in the industry for many years and

deals with interconnection agreements, great. If he's not aware, that's fine. But I'm not trying to ask him a legal question.

CHAIRMAN ARGENZIANO: Mr. Gates, do you understand he's not asking you a legal question? And let me ask staff, would this present a problem if Mr. Savage --

MS. HELTON: Excuse me. Madam Chairman, the way I took the question was the way that Mr. -- I'm sorry --

MR. HAGA: Haga.

MS. HELTON: -- Haga suggested that -- he asked him if he was aware, and I think that is an appropriate question whether or not the witness is an attorney. I don't -- I didn't hear him ask for a legal opinion.

CHAIRMAN ARGENZIANO: Okay. Did you -- Mr. Savage?

MR. SAVAGE: Why don't we just let it lie for now and we'll take it a step at a time.

CHAIRMAN ARGENZIANO: Okay. Mr. Haga, did he answer your question for you?

MR. HAGA: Well, let me just pose it the way we just framed it to the witness so the record is clear.

CHAIRMAN ARGENZIANO: Okay.

BY MR. HAGA:

Q. Are you aware of any FCC order saying that the particular facility arrangement that Bright House proposes here in this arbitration is correct?

A. I'm not aware of any order that specifically addresses what Bright House is asking for here, and that doesn't surprise me given the unique circumstances in Tampa and the large market share that Bright House has there. But, but the Bright House position is absolutely consistent with the FCC rules as we've been implementing them over the last 15 years or so.

Q. Let me, Mr. Gates, go back to the facility arrangements that are in place today. And to link up the collocations that Bright House has at Carollwood and North Gulf Beach with the Verizon tandem, Bright House could do that a couple of different ways. One, it could put those facilities in itself; right?

A. Well, it has fiber facilities that go from all of the, from the Bright House switching center to its collos at those end offices and to the collo at the, at the tandem. So it's put in really the most efficient technology currently available to route that traffic not only to Verizon but, you know, to its own facilities in its own year.

Q. Right. So it, it has in some cases put in

facilities. It could do that here. Another option would be it could, it could have a third party install them or also it could have Verizon provide facilities; right?

A. Well, again, I would refer the Commission to the Act, 251(c)(2) says that Bright House can select the point of interconnection. And when it, when it selects it there at that end office, then Bright House has to pick up that -- excuse me -- Verizon has to pick up that traffic there.

Now, again, it's not like this is imposing any costs on Verizon because then it just turns around and imposes those costs on the IXCs instead of Bright House imposing those costs on the IXCs. So really all we're talking about here is who's going to charge the IXCs for this traffic and for these facilities? Excuse me. It's not, it's not changing really -- it's just changing who sends the bill to the IXCs.

Q. Well, you'd agree with me, wouldn't you, that if Bright House chooses to obtain facilities from Verizon linking the two end office collocations to the Verizon tandem, that Bright House would pay Verizon for those?

A. If Bright House were to purchase facilities to get to the tandem, yes, of course. I mean, if they were

to order those facilities for purposes of interconnection, they would pay for them. They should be priced at TELRIC rates because they are specifically for interconnection.

Q. Well, the way the parties do it today is they do purchase them from Verizon, correct, but just under the access tariff; right?

A. Yes. Under the much higher rates.

Q. And, and the way the parties are operating today, when Bright House purchases those facilities from Verizon, Bright House bills the interexchange carriers for that meet point traffic that's going to them; isn't that correct?

A. Bills them for the traffic, is that what you said, or for the facilities?

Q. It's billing the IXC for the traffic that's going to Bright House; correct?

A. Yes.

Q. Okay. And for those facilities that are linking up the two Bright House collocations at the end offices with the Verizon tandem, Bright House's proposal here is that Bright House would no longer be paying Verizon for those facilities; correct?

A. They would no longer be purchasing those facilities out of the special access tariff. If, if

they were to purchase those facilities, they would be at the TELRIC rates.

Q. Okay. Mr. Gates, let's talk about Issue 37, if we could. And Issue 37, that includes the question of how to determine whether a call is local and therefore subject to reciprocal compensation rates, or interexchange and therefore subject to access charges; right?

A. I think generally that's correct.

Q. Okay.

A. I think it embodies many more policy issues that this Commission should be concerned with, but that's generally a fair way to describe the dispute.

Q. And that's, that's a fair point. I'm just trying to sort of orient us as we move into another issue.

And under this Issue 37, Verizon proposes that the determination of whether a call is local or whether it's interexchange, that should be based on the ILEC local calling area that the Commission has approved, or in this case that's the Verizon local calling area; right?

A. Yes. That's the Verizon position. Correct.

Q. And that's how the parties handle it today; correct?

A. I believe that is correct. But it's the wrong result and it just increases costs for consumers.

Q. And the reason why you say that is that Bright House has a proposal to rate traffic based on the originating carrier's calling area, retail local calling area; right?

A. Well, the originating carrier and the smallest local calling area.

Q. Okay. So -- excuse me.

A. And to be clear, if I may, what we're trying to accomplish here is to match up the compensation with the call.

For instance, if you pick up your phone and make a toll call, you know it's a toll call and maybe you dial one plus a number, you know it's going to go to an interexchange carrier, there's usually an additional charge for that. Okay? In that case, if it's a toll call, the proper compensation, intercarrier compensation between the two carriers is switched access.

If it's a local call, you just pick up your phone and call your neighbor across the street. There is no toll charge, it doesn't going to the IXC. There is no special routing or a kit code look-up. So the compensation, intercarrier compensation should be reciprocal compensation, which is specific to local or

all calls other than toll calls.

So we're trying to match up the way we treat these calls in the Tampa area with the way that consumers are actually dialing the calls. If they dial a toll call, then the intercarrier compensation be switched -- should be switched access. If they dial a local call, it should be reciprocal compensation. So that's the goal. I mean, it gets kind of complicated in the way we tried to word it, but that's the goal.

Q. And, Mr. Gates, you referred there to the effect on compensation and the effect of Bright House's proposal here to use the originating carrier approach. The effect of that on compensation is that Bright House is going to not pay access charges on any intraLATA calls to Verizon; correct?

A. Can you point me to my testimony specifically where we're addressing this just so that I make sure I'm referring to the same language that you are?

Q. Well, the testimony on Issue 37 starts at Page 60, and you're welcome to look at any of your testimony there. But I'm sort of leaping off the testimony because you had mentioned the effect on compensation and, and I wanted to hit that. And, and -- well, let me, let me get at it.

A. So when you said Page 60, did you mean of my

direct or my rebuttal?

Q. I'm sorry. I was looking at your rebuttal.

A. Okay.

Q. That's where your discussion of 37 is. And, again, you're welcome to look at anything there, but let me try to get at it maybe a different way.

Bright House currently has an, an all LATA local calling plan; right?

A. Yes. For, for Bright House any call within a LATA is a local call. There is no, there is no toll. And Verizon could do that too, by the way. I mean, that would be a good way to fix this issue is just provide local, free local calling LATA-wide, which I would appreciate since I'm a Verizon customer and I hate having to dial one plus and, for some calls, and others are -- you know, it's just very frustrating. So it would be, it would be a good change, it would be good for consumers.

Q. Well, I appreciate the customer feedback and Verizon appreciates your business.

But you mentioned Verizon could change their --

MR. SAVAGE: My witness and I are going to have to talk.

(Laughter.)

BY MR. HAGA:

Q. You mentioned Verizon could, could change, but other CLECs could change their local calling area too; right?

A. Yes, and most do. Because that's a huge value proposition for consumers. I mean, if you provide a big local calling area, I mean, that's a wonderful thing. I mean, look at wireless. I mean, we hardly have toll anymore with wireless and people love that. You know, it's hard to know where those, you know, local calling boundaries are. So, yeah, any -- most CLECs are expanding their local calling areas. And even since the '80s and '90s we've had, you know, EAS and extended local calling areas. That's what consumers want. So certainly Verizon could do the same thing as Bright House and this dispute would go away.

Q. And today you mentioned what, what is sort of some trends with, with other CLECs. But today different CLECs have different retail local calling areas today; right?

A. Some of them do. Sure.

Q. And some of them actually offer different retail packages to their customers so that, you know, different customers might have different local calling areas; right?

A. Well, we're being very vague now and I hate to make broad, vague statements. So I'd rather not speculate about what other carriers do since we have very specific proposals for these two carriers.

Q. Okay. I appreciate that.

A. I mean, generally I would agree that different carriers have different plans, but I'm not sure that helps us resolve this.

Q. Okay. Well, well, whatever arbi -- whatever interconnection agreement we come out of this arbitration with, other CLECs could adopt that; right?

A. Oh, yes. Absolutely.

Q. Well, let, let me just focus back on Bright House for a minute, and let me see if I can link up where I started to go a minute ago.

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

A. Yes.

Q. Okay.

A. Nor should it since Verizon doesn't have to do any of the toll call activities.

Q. Mr. Gates, let's, let's switch to yet another

issue. Could we move over to Issue 41? And Issue 41, again, just to orient ourselves, that's followed by, in parens, the words "customer transfer procedures"; right?

A. Yes.

Q. And in your -- I'm sorry.

MR. SAVAGE: Could we have a very brief off-the-record discussion? It may, may help clarify some of the discussion we're about to start.

CHAIRMAN ARGENZIANO: Why don't we just take a five-minute break.

MR. SAVAGE: Thank you.

(Recess taken.)

(Transcript continues in sequence with Volume 2.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of June, 2010.

Linda Boles

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