State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 28, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Bloom, Gowen, Hawkins, Trueblood)
Office of the General Counsel (Murphy)

RE: 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.

AGENDA: 11/09/10 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Edgar, Skop, Brisé

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RAD\WP\090501.RCM.DOC

Case Background

On November 3, 2009, Bright House Networks Information Services LLC, (Bright House) filed a petition to arbitrate a new interconnection agreement (ICA) with Verizon Florida, LLC (Verizon), pursuant to Section 251 and 252(b) of the Communications Act of 1934 ("the Act"), as amended[1] and Sections 364.013, 364.16, 364.161, and 364.162, Florida Statutes. In its petition, Bright House requested the Florida Public Service Commission (Commission) arbitrate unresolved issues and establish terms and conditions for an interconnection agreement between Bright House and Verizon.

Verizon filed its response to Bright House's petition on December 7, 2009. The parties initially presented 49 issues (excluding subparts) for arbitration encompassing a broad range of interests at an issue identification meeting January 13, 2010. A number of issues were resolved prior to the May 13, 2010 prehearing conference, at which time eight issues remained unresolved. An evidentiary hearing was held May 24, 2010 on the remaining issues.

The Commission has jurisdiction over the subject matter according to the provisions of Chapters 364 and 120, Florida Statutes.

[1]Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151, et seq. (1996)).

Overview

Arbitration under the Act

Part II of the Act sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act addresses interconnection between carriers.[2] Section 252 of the Act addresses the procedures for negotiation, arbitration and approval of agreements.[3]

Arbitration is available when parties are unable to reach a comprehensive negotiated agreement as contemplated by Section 252 of the Act. Once a competitive local exchange carrier (CLEC) submits a request for negotiation of an interconnection agreement, Section 252(b) permits either party to the negotiation to petition a state commission to "arbitrate any open issues" unresolved by voluntary negotiation.[4] Section 252(b)(4)(c) provides that the state commission is to resolve each issue set forth in the petition and any response by imposing the appropriate conditions as required.[5]

The Unresolved Issues between Bright House and Verizon

As noted in the Case Background, Bright House and Verizon participated in negotiations pursuant to Section 251 of the Act for the purposes of establishing an ICA. The parties were unable to execute an agreement. Therefore, pursuant to the process outlined in Section 252, Bright House and Verizon filed a petition and response, respectively, to resolve issues remaining in dispute.

There are eight issues for the Commission to decide specific to the party's ICA, the ninth issue addresses closing the docket. Staff has provided a summary of each issue and its recommendations below.

Issue 7 asks the Commission to decide if Verizon should be allowed to cease performing duties provided for in the ICA that are not required by applicable law. The dispute stems from language proposed by Verizon under the General Terms and Conditions at §50 and titled "Withdrawal of Services." The language would allow Verizon to terminate its offering and/or provision of any service, when Verizon believes it no longer has the legal obligation, upon thirty (30) days prior written notice to Bright House. Verizon asserts that an ICA is not a mutual voluntary agreement of the parties and instead is a product of regulation that imposes conditions on Verizon that it would never agree to voluntarily. Bright House asserts that the disputed language is one sided and unnecessary in light of the agreed to "Changes in Applicable Law" provision. In addition, Bright House contends that it is entitled to reasonable certainty in its

[2] *See* 47 U.S.C. §251.
[3] *Id.* §252.
[4] *Id.* §252(b) (1): Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.
[5] *Id.* §252(b) (4) (c).

contractual relationship with Verizon. Staff believes Verizon should be allowed to cease performing duties provided for in the ICA that are not required by applicable law; this would be accomplished pursuant to the Changes in Applicable Law provision. However, staff recommends that the proposed Withdrawal of Services provision is not needed because 1) it provides Verizon the option to cancel service on 30 days notice based on Verizon's unilateral determination of a change in circumstances and, 2) it creates uncertainty that is not warranted by the speculative conditions Verizon asserts it is intended to address.

Issue 13 asks the Commission to determine what time limits should apply to the party's right to bill for services and dispute charges for billed services. The timeframe established in this issue would dictate when a party may raise a dispute, not the timeframe in which disputes must be resolved. Bright House believes a one-year time limit is just, reasonable, and practical. Verizon argues that the Florida statue of limitations, which is five years, should apply. The Commission addressed this issue several years ago in an arbitration proceeding and concluded that the five-year statute of limitations in Florida Statutes § 95.11(2)(b) applied to the parties' rights to assess previously unbilled charges for services rendered.[6] While Bright House presented some of the same arguments here that were addressed by the Commission in its past decision, Bright House also raised some new arguments. Specifically, Bright House argued that the statute of limitation only determines when a party may file a lawsuit for breach of contract, not when a party may dispute a bill. In addition, Bright House noted that in Florida Department of Health and Rehabilitative Services, vs. S.A.P., 835 So. 2d 1091, 1096 (Fl. 2002), the Florida Supreme Court reasoned that the prime purpose of statutes of limitations is to protect defendants from unfair surprise and stale claims. Staff agrees with Bright House that the statute of limitations determines when a party may file a lawsuit for breach of contract, not the timeframe in which a party can render a bill. Bright House is not proposing the Commission alter the statute of limitations but instead seeks approval of a reasonable contractual timeframe for billing and for disputing bills already paid; as such, staff recommends one year as the appropriate timeframe for a party to bill for services and dispute charges for billed services.

Issue 24 is a pricing issue that asks the Commission to determine if access toll connection (ATC) trunks qualify as interconnection facilities that should be priced according to Total Element Long Run Incremental Cost (TELRIC) principles.[7] Bright House argues that because the trunks in question are used in support of its interconnections they are "interconnection facilities" and must be priced at TELRIC rates - - citing to three court decisions to support its position. Verizon strongly disagrees based upon the FCC's findings in its Triennial Review Remand Order and because the traffic traveling over ATC trunks is not traffic between Verizon and Bright House networks, but traffic between interexchange carriers and Bright House. Verizon is not opposed to provisioning the trunks, they are opposed to providing them at cost-based rates. Staff believes the facilities addressed in this issue are those that connect Bright House's network to that of an interexchange carrier, not to Verizon's network, as such they are not interconnection facilities that qualify for TELRIC pricing. Also, the three decisions Bright House cites deal specifically with pricing entrance facilities for interconnecting CLEC and ILEC

[6] Commission decisions made in two-party arbitrations are not precedential.
[7] TELRIC principles are based on the Act and the FCC's rules which specify that the rates for interconnection and unbundled network elements (UNEs) are to be cost-based. The FCC required states to set these rates based on TELRIC including a reasonable share of forward-looking joint and common costs.

networks for the mutual exchange of traffic not with the pricing of ATC trunks for the purpose of routing traffic between Bright House customers and their designated interexchange carriers. Therefore, staff believes ATC trunks should not be priced at TELRIC rates.

The dispute presented in Issue 32, whether Bright House may require Verizon to accept trunking at a DS3 level or above, has been resolved as it relates to the current physical interconnections between the parties as long as the physical arrangement does not change. During the course of the proceeding the parties entered into a stipulation that specified the terms, conditions, and rates for multiplexing of traffic from a DS3 level to a DS1. What remains in dispute is what rates, if any, Bright House should be required to pay Verizon for the multiplexing function on future network modifications. Verizon argues that the Commission should not make any decision on future interconnection with respect to the treatment of multiplexing because Bright House is asking the Commission to address this issue in the abstract without reference to any specific network configuration. Bright House contends that it should be able to interconnect with Verizon without the need for multiplexing and the Commission should decide the matter. Staff believes it would be premature to determine what, if anything, Bright House would be obligated to pay Verizon for future physical arrangements between the parties since those arrangements are nonexistent.

Issue 36 asks what terms should apply to meet-point billing, including Bright House's provision of tandem functionality for exchange access services. Meet-point billing involves an arrangement where two local exchange carriers jointly provide access services to a third-party interexchange carrier. The "meet-point" serves as the demarcation point where the responsibility of one party ends and the responsibility of the other party begins. Bright House wants to compete with Verizon for tandem switching and transmission of inbound long distance traffic by establishing separate trunks for third-party access traffic over existing facilities linking Bright House's switch with Verizon's switch. Verizon argues that this arrangement is inappropriate because the ILEC is not required to subtend any particular tandem and more importantly from a network routing perspective, cannot subtend more than one tandem from any given NPA/NXX. Currently the meet-point for the exchange of third-party IXC traffic is at a port on Verizon's tandem. Bright House contends that it should be moved from Verizon's access tandem to Bright House's collocation at Verizon's end office. Verizon argues that it should not be moved but should be mutually agreed to by both parties as outlined in the guidelines that are recognized as industry standard.[8] Staff believes the meet-point for the exchange of third-party IXC traffic should be mutually decided by the parties because 1) record evidence shows that the language Bright House proposes is problematic and it would require Verizon to divert or handle traffic in ways that Verizon is not capable of doing; 2) the direct end office trunks the parties have established are used to carry their local traffic and not meet-point billing traffic from third-party IXCs; 3) the terms proposed by Bright House are inconsistent with how the Commission addressed this issue in a previous arbitration docket;[9] 4) MECAB/MECOD guidelines recognized as the industry-standard, indicate that the parties should mutually agree to the meet-point; and 5) § 251(c)(2) of the Act does not apply to the traffic addressed in this issue, therefore,

[8] The MECAB (Multiple Exchange Carrier Access Billing) and MECOD (Multiple Exchange Carriers Ordering and Design) are the guidelines which the parties recognize as the industry standard for meet-point billing.
[9] While the prior decision does not set precedent, staff believes it is appropriate because Bright House provided no new evidence here that should lead the Commission to a different conclusion.

Bright House may not unilaterally select the point of interconnection for meet-point traffic to be exchange between the parties.

Issue 36A focuses on whether Bright House should be financially responsible for the traffic of its affiliates or other third parties when it delivers that traffic to Verizon for termination. Initially, Bright House argued that when it acts as the transit[10] provider for a third-party, including an IXC affiliate, it should be handled through the meet-point billing arrangement. However, in its initial brief Bright House clarified that the disputed issue is limited to local transit traffic, rather than meet-point billing traffic. Bright House argues that when it transits third-party local traffic to Verizon the cost causation principle should apply and the originating carrier should pay. In response to Bright House's original position, Verizon argued that meet-point billing arrangements are for a different kind of traffic, and to reduce the opportunity for arbitrage, Bright House should be financially responsible for local traffic it sends to Verizon for termination. Verizon further argued in its brief that it is important that Bright House compensate Verizon in the same amount that the originating carrier would have if it had handed off the traffic directly to Verizon because that acts as a check on potential arbitrage of intercarrier compensation rates and encourages LECs to establish a more efficient direct interconnection with Verizon. Staff was not convinced by Verizon's arguments that Bright House should be financially responsible for third-party local transit traffic that its sends to Verizon for termination. Although Bright House did not support its position that the originating carrier pay in its testimony, but only argued this in its briefs, staff believes this position is consistent with prior Commission decisions. Therefore, based on FCC Rule 47 CFR 51.703(b), Commission precedent, and the industry-accepted cost causation principle, staff recommends that Bright House should not remain financially responsible for third-party local transit traffic it sends to Verizon.

Issue 36B asks if Bright House should pay Verizon for facilities Verizon provides to Bright House to carry traffic between an IXC's network and Bright House's network. Bright House addresses this issue from the standpoint of meet-point billing. Verizon argues that Bright House should pay Verizon for facilities Bright House purchases from Verizon. Staff believes Bright House has confused the "meet-point," which Bright House and Verizon mutually designate for the exchange of access traffic from third-party IXCs, with the point of interconnection that Bright House selects to interconnect its network with Verizon's networks for the exchange of its access traffic. Staff believes if Bright House continues to use the ATC trunks instead of picking up the IXC traffic at Verizon's tandem or building the facilities itself, Bright House should pay Verizon for the facilities. Verizon should not have to recover payment for these facilities from third-party IXCs under a meet-point billing arrangement with Bright House. Moreover, staff notes if Bright House self-provisioned these facilities Verizon would not charge Bright House any facilities charges for that connection or Bright House may reconfigure its network so that all of its ATC trunk traffic is routed over it own facilities via its collocation at the Verizon access tandem office.

[10] Transit traffic is traffic that originates on the network of one carrier, transits over Bright House's network, then terminates on the network of a third carrier, in this case Verizon. The originating carrier and the terminating carrier are not directly interconnected to one another but elect to utilize the network capabilities of an intermediary carrier.

Issue 37 centers on how different types of traffic exchanged between the parties should be defined for compensation purposes. The principle disagreement relates to how the local calling area should be defined for purposes of intercarrier compensation. Bright House argues the originating carrier's local calling area should be used to determine if the traffic is local or toll and Verizon asserts that its Commission-approved basic local calling areas should be used. Bright House and Verizon agree that local traffic should be compensated at the reciprocal compensation Mirroring Rule rate of .0007 per minute and long distance traffic should be compensated at access rates. Based on the record evidence and the Commission's historical practice regarding local calling areas and reciprocal compensation, staff believes the basic local exchange area approved by the Commission for Verizon should be used to determine what traffic is local and subject to reciprocal compensation rates and what traffic is long distance and subject to access charges. Staff believes that by defining the local calling area in this manner it is more competitively neutral because both parties will pay each other access charges on all traffic that goes beyond the Commission-approved basic local exchange areas established for Verizon. Further, staff believes this method is consistent with the direction the FCC provided in the Local Competition Order at ¶¶1033-1035, when it determined that the classification of traffic as exchange versus exchange access, should be decided on a case-by-case basis based on the states' historical practice of defining local service areas for wireline LECs.

Issue 41 focuses on the procedures and processes governing local number portability (LNP), have been resolved except for whether Bright House should compensate Verizon for "coordination" in connection with customer ports. Local number portability allows an end-user customer to retain his or her phone number when switching from one carrier to another. The customer can still make and receive calls using that number with the new service provider. The transfer of a phone number to a new service provider is a "port" of that number. Bright House maintains that "coordination" between the two parties for a single customer with a large number of lines should be done at no charge. Verizon, on the other hand, believes "coordination" is a separate, additional service that requires compensation. Staff believes the parties should compensate each other for "coordination" because it requires manual, human interaction between different and multiple departments. It requires additional time and attention that standard LNP provisioning does not.

Issue 49 addresses whether special access circuits that Verizon sells to end users at retail should be subject to resale at a discounted rate. Bright House wants to purchase point-to-point services from Verizon for resale at discounted rates rather than at tariffed rates. Point-to-point services are direct lines from one point to another on a network without the need for switching. Verizon contends that point-to-point services are special access service, which is a form of exchange access and argues that based upon various FCC rules and orders exchange access services are exempt from the resale discount. The FCC's rules require an ILEC to offer any requesting telecommunications carrier any telecommunications service which the ILEC offers on a retail basis to subscribers who are not telecommunications carriers for resale at wholesale rates that are discounted.[11] The rules and the FCC's Local Competition Order also note that exchange access services are not to be considered telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers. Bright

[11] The discounts were established by this Commission as prescribed by the FCC.

House believes point-to-point services are not exchange access and must be made available at the discounted rate. However, Bright House witness Gates admits that point-to-point special access circuits could be used for calls routed through Bright House's switch which means those circuits could provide exchange access services. Since there is the opportunity for point-to-point services to provide exchange access service staff believes point-to-point services are a form of exchange access. Based on staff's reading of the FCC's rules and orders, specifically Section 47 CFR 51.605(b), the Local Competition Order, and the FCC's Triennial Review Remand Order, staff believes point-to-point services would meet the definition of exchange access service. Therefore point-to-point services are exempt from resale at discounted rates.

Issue 50 asks if the docket should be closed. Staff recommends that the parties should be required to submit a signed final interconnection agreement reflecting the Commission's decisions within 45 days of issuance of the Final Order.

Discussion of Issues

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

Recommendation: Yes. Verizon should be allowed to cease performing duties provided for in this agreement that are not required by applicable law; this should be handled pursuant to the "Applicable Law" provisions in the General Terms and Conditions of the ICA. Proposed §50 to the General Terms and Conditions entitled "Withdrawal of Services" is unwarranted and should be stricken. (Murphy)

Position of the Parties

Bright House: Verizon should not be allowed to cease performing duties it concludes are not required by applicable law. Verizon's proposal is unfair, disruptive, and creates uncertainty. The contract's "Change in Law" provision protects Verizon from performing services the law no longer requires it to perform.

Verizon: Yes. Verizon provides certain services and makes certain payments under the ICA only because they are required by applicable law. Verizon would not agree voluntarily to those terms. Accordingly, if and when Verizon is not required to provide services or make payments, Verizon should be permitted to stop doing so.

Staff Analysis:

Issue 7 is cast in terms of whether Verizon can cease providing services if not required to do so by law; however, the underlying issue, as evidenced by the record in this proceeding, is whether §50, which is opposed by Bright House, should be included in the ICA.

Under the heading "Withdrawal of Services," Verizon's Proposed §50.1 provides that: "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 Bright House." Proposed §50.2 contains similar language that is applicable to the termination of payments by Verizon to Bright House. (EXH 14, p. 272)

Bright House asserts that Verizon's Proposed §50 is one sided and unnecessary in light of language governing "Changes in Applicable Law" found at §4.6 of the General Terms and Conditions of the ICA. (TR 60-61). The latter provides that, "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." (TR 60-61; EXH 17, p.9)

PARTIES' ARGUMENTS

Bright House

In asserting that the Commission should reject Verizon's Proposed §50 to the General Terms and Conditions of the ICA, entitled "Withdrawal of Services" ("§50"), Bright House argues that the proposed language:

- is deeply flawed regarding Verizon's basic obligation to perform; (TR 58)
- eliminates certainty that is required to run a business; (TR 58)
- is vague; (TR 58)
- conflicts with other notice language in the ICA; (TR 59)
- provides Verizon with "the right to renege on the traffic compensation deal the parties have already agreed to;" (TR 60)
- is unneeded in light of §4.6 of the ICA, which establishes procedures to be followed by the parties in the event of changes in law; (TR 60-61)
- provides unilateral rights to Verizon, is one sided and unfair; (TR 61)
- provides Verizon with complete control over its obligation to pay for services it receives under the contract; (TR 62)
- is unreasonable and subject to Verizon's whim; (TR 421)
- is not the best way to serve customers; (TR 422-423)
- is disconcerting, creates uncertainty, "would deny opportunity to operate as a CLEC as it relates to providing service to [Bright House's] VoIP affiliate;" (TR 427), and
- is inappropriate as general terms and conditions of the ICA. (TR 254; 256)

While acknowledging that §50 is limited to "services," Bright House observes that the agreed definition of "service" includes "[a]ny Interconnection arrangement, Network Element, Telecommunications Service, collocation arrangement, ***or other service, facility or arrangement offered or provided by a Party under this Agreement.***" (Bright House Amended Reply BR at 18) (emphasis in original). As such, Bright House concludes that it is difficult to identify *any* contractual activities not covered by the definition. (*Id*). Bright House asserts that "Verizon can walk away from the agreement – and precipitate immediate emergency litigation – just by having its lawyers 'discover' a legal theory under which [Verizon] is not obligated to interconnect with Bright House." (Bright House BR at 44). Bright House contends that Verizon's reservation of this option, notwithstanding the remainder of the provisions in the ICA, is improper for the following reasons:

- it denies Bright House the benefit of a binding agreement under 47 U.S.C. 252(a)(1); (Bright House BR at 44)

- it is an unjust and unreasonable reservation and should be rejected under Sections 251(c) and 252(c) of the Act which require "just and reasonable" interconnection terms and conditions; (Bright House BR at 45-46; EXH 3, pp. 90-91)

- it makes a "mockery" of the negotiation and arbitration process; (Bright House BR at 45)

- Bright House has a right to interconnect pursuant to Section 364.13, Florida Statutes; (Bright House BR at 46) and,

- Bright House "is entitled to reasonable certainty in its contractual relations with Verizon." (EXH 3, pp. 90-91)

Bright House does not object to including language in the unbundled network element (UNE) attachment to address FCC rulings regarding "impairment" which Bright House asserts is the only example of a change in circumstance that would warrant Verizon withdrawing from offering certain UNEs from affected markets on 30 days' notice. (TR 254) [12]

Bright House concludes that:

> [t]he best solution to [the] problems posed by §50 is simply to strike it. At a minimum the Commission should (1) expressly rule that Bright House is entitled to full interconnection rights as a CLEC under 47 U.S.C. §§ 251(b) and 251(c); (2) require that any Verizon claim that it may stop providing a service is subject to the contract's normal dispute resolution mechanism; and (3) require that Verizon may not withdraw from services or arrangements provided for in the Interconnection Attachment, or cease providing Directory Listings in accordance with the contract, without an affirmative Commission order permitting it to do so. (Bright House Amended Reply BR at 18)

Verizon

Verizon asserts that an ICA is not a mutual voluntary agreement of the parties and instead is a product of regulation that imposes conditions on Verizon that Verizon would never agree to voluntarily. (Verizon BR at 1; TR 627) Thus, Verizon proposed §50 which "would permit Verizon to cease providing a service or paying intercarrier compensation for traffic on 30 days prior notice when Verizon no longer has the legal obligation to do these things." (TR 576; EXH 14, p. 272) Verizon contends that the proposed language clarifies that "where a change in law or

[12] Generally, an impairment standard is used by the FCC "to determine whether an ILEC is required to unbundle a specific network element. An element is deemed to be impaired if an ILEC's failure to provide access to such network elements would 'impair' the ability of competitive carriers to provide services they seek to offer." Newton's Telecom Dictionary, 22nd Edition, 2006.

facts negates Verizon's obligation to provide a service or facility, the ICA is not intended to override constraints on Verizon's legal obligation to provide such services or facilities. . . . Verizon only seeks the ability to walk away from things that it is **not obligated** to do, if and when it no longer has those obligations." (TR 629) (emphasis in original)

Verizon maintains that §50 is intended to address situations in which the duty to provide the service is eliminated entirely and nothing more needs to be negotiated because "one is simply withdrawing a service or payment." (EXH 2, p. 68) For this reason, Verizon contends that the "Change in Law" provision at §4 "does not effectively address this situation and a separate provision is needed." (*Id.*). Verizon asserts that an example of such a circumstance is the reclassification of a wire center with resulting cessation in the legal obligation to provide certain services.[13] (TR 576-577)

Verizon acknowledges that "to the best of its knowledge, it is legally obligated -- under tariff, contract, or other applicable law -- to provide all of the services it currently provides to Bright House. (EXH 3, p. 67) Verizon describes Bright House's objections to §50 as "steeped in hyperbole." (Verizon BR at 2) Verizon concludes that §50 provides adequate protection to Bright House because it:

- is limited to services and payments; (Verizon BR at 2)
- does not apply to the implementing details of the ICA; (Verizon BR at 3)
- does not apply to the FCC's requirement governing exchange of traffic ("mirroring rule"), which is required by law; (Verizon BR at 4)
- is carefully limited and appropriately protects both parties; (Verizon BR at 5)
- provides an opportunity for Bright House to seek legal relief from the Commission; (Verizon BR at 5)
- would apply when there is no duty to provide or to pay and thus, there is nothing to negotiate; (Verizon BR at 4) and,
- is consistent with Commission precedent in Order No PSC-05-0492-FOF-TP, issued on May 5, 2005, in three dockets in response to revisions to the FCC's unbundling rules. (Verizon BR at 4).

Verizon characterizes Order No. PSC-05-0492-FOF-TP as follows:

> After the FCC eliminated the ILECs' obligation to provide unbundled local switching in its Triennial Review Remand

[13] Referred to as FCC rulings on "impairment" by Bright House. (e.g., TR 254)

> Order,[14] CLECs argued that they were entitled to keep ordering such switching unless and until the ILECs negotiated new ICA language to reflect the FCC's elimination of the obligation. The Commission rejected these arguments, finding that the elimination of the ILECs' obligation to provide unbundled local switching was self-effectuating, without the need for negotiation or new contract language to prohibit the CLECs from placing new orders for such switching. (TR 634) (footnote citation to TRRO added).

In response to Bright House's concerns regarding §50, Verizon asserts that:

- "[t]here is very little in dispute under Issue 7;" (Verizon Reply BR at 1)
- Bright House has acknowledged that the ICA would need to change in the event of a "material change in law" as reflected in General Terms and Conditions §4.6; (Verizon Reply BR at 1)
- "[t]he parties have already agreed upon similar self-effectuating language in [General Terms and Conditions] §4.7;" (Verizon Reply BR at 1)
- the 30 day notice requirement protects Bright House; (Verizon Reply BR at 2)
- Bright House's fears related to Verizon walking away from the ICA are unwarranted; (Verizon Reply BR at 2) and,
- the suggestion by Bright House that the Commission make a finding that Bright House is entitled to interconnection with Verizon is improper at this stage in the proceeding. (Verizon Reply BR at 2)

ANALYSIS

Verizon argues that §50 provides adequate protection to Bright House and is needed to address the situation in which a legal obligation is eliminated entirely and nothing remains to be negotiated; nevertheless, the only actual circumstance that Verizon has identified as meeting this criterion is FCC rulings on impairment. In contrast, Bright House has argued that §50 is one sided and denies Bright House the benefit of a binding agreement. Bright House further asserts that impairment cases are unique and can be handled without the broadly applicable language in §50.

Staff believes that §50, by providing Verizon the option to cancel service on 30 days notice based on Verizon's unilateral determination of a change in circumstances, creates uncertainty that is not warranted by the speculative conditions Verizon asserts it is intended to address. Moreover, staff believes that Order No PSC-05-0492-FOF-TP, relied upon by Verizon

[14] In the Matter of Unbundling Access to Network Elements, WC Docket No. 04-313; In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand, FCC 04-290, rel, Feb 4, 2005 ("TRRO").

as legal authority for §50, reflects the Commission's interpretation of very specific language in the TRRO, and cannot reasonably be generalized to support the adoption of the language included in §50, which, when coupled with the agreed definition of "service," would apply to virtually all contractual activities. As such, staff agrees with Bright House that §50 is not "just and reasonable" as required by 47 U.S.C. 251(c)(2), and does not result in a binding agreement as required by 47 U.S.C. 252(A)(1). Therefore, staff recommends that §50 be stricken.

Bright House acknowledges that FCC rulings on impairment represent a special case which Bright House is not adverse to addressing directly; thus, staff does not believe that there is a dispute with respect to how the parties will handle impairment rulings. Staff believes that other changes in law or circumstances, that may eliminate Verizon's legal obligation to serve, should be handled in accordance with procedures established by the "Applicable Law" provisions in the General Terms and Conditions of the ICA.

Having reviewed the record, staff believes that Verizon is persuasive in its argument that the ICA is not a mutual voluntary agreement and that Verizon should thus be permitted to cease performing aspects of the ICA which it is no longer required by law to perform. However, staff does not believe that §50 is appropriate as a general term and condition to provide for such a circumstance.

CONCLUSION

Verizon should be allowed to cease performing duties provided for in this agreement that are not required by applicable law; this should be handled pursuant to the "Applicable Law" provisions in the General Terms and Conditions of the ICA. Proposed §50 to the General Terms and Conditions entitled "Withdrawal of Services" is unwarranted and should be stricken.

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

Recommendation: A one year time limit should apply for a party to render a bill for services, dispute charges for billed services, and to back-bill for services rendered but not billed. (Hawkins)

Position of the Parties

Bright House: It is just, reasonable and practical to impose a one-year time limit both on back-billing for services rendered but not billed, and for retroactively protesting bills already paid.

Verizon: Consistent with the Commission's prior decision on this issue, the Florida statute of limitations (Fl. Stat. § 95.11(2)(b) provides the appropriate time limit for the parties' right to bill for services and dispute charges for billed services.

Staff Analysis:

This issue addresses Bright House's request for a one-year limit for back-billing for services rendered but not billed, and for retroactively protesting bills already paid. It relates not to the time frame within which a billing dispute or back-billing dispute must be resolved, but rather to the time frame a billing dispute must be raised. (TR 265) Verizon witness Munsell contends that the statute of limitations which allows five years for back-billing and billing disputes should apply. (TR 583)

PARTIES' ARGUMENTS

Bright House

Witness Gates explains that if a party does not render a bill for a service for more than a year after the service has been provided, then the party's right to bill for the service is waived. Also, if a party has a dispute about a bill that it has received and already paid, the party must raise the dispute within a year after the bill is received. (TR 265)

Witness Gates acknowledges that this issue was addressed by the Commission in a previous docket. In Docket No. 020960-TP, Petition for arbitration of open issues resulting from interconnection negotiations with Verizon Florida Inc. by DIECA Communications, Inc. d/b/a Covad Communications Company (Covad/Verizon), Covad, like Bright House, requested a one year time limit to raise billing disputes. This position was rejected by the Commission; however, witness Gates asserts that the Commission should revisit this decision because:

> 1) Verizon's billing systems and procedures have improved and any problems the company might have had with billing in the past, should be fixed at this time. (TR 266)
>
> 2) In the Verizon/Covad case, the competitive carrier was a "data CLEC" that relied on Verizon's UNEs to provide high-speed

> internet access services to end users. As such, Verizon would likely be sending the carrier large bills every month, and the carrier would be providing fewer, if any, services to Verizon. Consequently, the risk in not being able to back-bill fell almost entirely on Verizon. Since Bright House and Verizon exchange millions of minutes of traffic each year, the time limitation for back-billing and bill protests is mutual which probably was not true in the COVAD situation. (TR 266-267)
>
> 3) Last, Sections 251 and 252 of the Act give the Commission power to impose "just and reasonable" terms and conditions with regard to interconnection agreements. (TR 267)

Bright House witness Johnson maintains that with a set of separate, complicated transactions, a certain amount of billing errors, failures to bill or billing disputes about rates, will occur. A reasonable time frame of one-year will allow the errors to be corrected and the bill(s) finalized and closed. Witness Johnson states that under the proposal, regardless of the issue, back billing or a billing dispute, the party has a year to raise the objection. (TR 380) Witness Johnson further asserts that Verizon wants no contractual limit on how far back a previously paid bill can be re-opened for dispute or discussion and no contractual limit on how long a party can hold a bill without sending it to the other party for payment. She contends that under Verizon's proposed language, there is no certainty or clarity. Bright House would not know for years whether Verizon would seek additional payment for services already provided or vice versa. (TR 380-381)

Witness Gates asserts that the one-year limit relates to financial accounting and current liabilities which are defined as the obligations and debts a company owes which must be paid within one year. He further states "if the window for either party to raise additional claims (obligations) extends beyond one year, it makes it difficult for either party to close its financial statements each year with any certainty." (EXH 3, p.12) In its brief, Bright House states that parties need to close their accounting books within a reasonable time. (Bright House BR at 11) Under Verizon's proposal, it could back-bill Bright House in 2015 for services rendered and paid in 2010, therefore, the contract must state when back bills and protests can be made. (Bright House Amended Reply BR 19; TR 381)

Verizon

Witness Munsell states that Bright House seeks to modify the ICA to limit the time in which parties can bill each other for services provided or dispute such charges. Witness Munsell argues that Bright House's language would require Verizon to contractually waive its rights to: 1) payments that it otherwise would be entitled to receive; or 2) challenge illegitimate charges assessed by Bright House. (TR 580)

Witness Munsell contends that the "ICA acknowledges that it is 'the intent of both parties to submit timely statements of charges,' but recognizes it is not always possible." He testifies that on occasion, complex services involve a variety of elements and charges. For example,

billing for a single circuit might involve; 1) a fixed fee; 2) a usage sensitive charge; 3) a mileage sensitive charge; 4) multiplexing charges or services; 5) various non-recurring charges that are not service-specific, and possibly; 6) an expedite or order cancellation charge. (TR 581)

According to witness Munsell, most of Verizon's systems are fully automated which reduces the chances of error and increases the billing speed, but occasionally isolated mistakes or delays may occur. For example:

> . . . there are circumstances in which billing is purposely delayed for a service, such as when maintenance charges are incurred when no trouble is found and Verizon must perform an unnecessary dispatch. To ensure that there really is no trouble, Verizon typically waits for another month to pass to confirm that there is no subsequent trouble. This delay ensures that Verizon only bills this charge when it is warranted.
>
> In addition, Verizon undertakes periodic reviews of its billings to make sure that all services were properly charged and to correct any errors – including any overbillings. (TR 582)

Witness Munsell points out that in the Covad/Verizon case, the Commission recognized that "back-billing occurs on occasion out of necessity; however, placing a time limit on back-billing can conflict with the [applicable] statute of limitations in Florida." The Commission concluded that "the current state of the law should be sufficient" rejecting the CLEC's attempts to impose a contractual back-billing limitation in its ICA with Verizon. Witness Munsell further noted that the Commission stated it was not "aware of any authority" allowing it to depart from Florida statute of limitations.[15] Verizon witness Munsell contends that the statute of limitations which allows five years for back-billing and billing disputes should apply. (TR 583-584)

ANALYSIS

This issue addresses the time limits for parties' to bill for services and dispute charges for billed services. Verizon believes Chapter 95, Florida Statutes, provides the appropriate time limit (five years). (TR 584) Specifically, § 95.11(2)(b), Florida Statutes, read, in pertinent part:

> Actions other than recovery of real property shall be commenced as follows:
>
> (2) within five years.
>
> (b) A legal or equitable action, obligation or liability founded on a written instrument, except for an action to enforce a claim against a payment bond.

[15] Order No. PSC-03-1139-FOF-TP, issued October 13, 2003 in Docket No. 020960-TP, In Re: Petition for Arbitration of Open Issues, p.14.

Bright House argues one year is ample time. Staff agrees because:

- Both parties have acknowledged that they have addressed back-billing and billing disputes within one-year. As such, it appears that a change from five-years to one-year would not harm either party. (Bright House Amended Reply BR at 19; Verizon BR at 7; EXH 5, p. 29)

- One year may provide a more reasonable timeframe regarding accounting for liabilities, obligations and debts a company owes. (EXH 3, p. 11; TR 380)

- Both parties agree that back-billing is a fact of life in the telecommunications industry and on occasion disputes may take more than a year to resolve. However, this issue is not addressing the time frame in which to resolve a dispute but the time frame in which a dispute should be raised. (Munsell TR 582; Johnson TR 380)

- Verizon acknowledges that most of its systems are fully automated from end to end which reduces errors and increases the speed for billing. The company contends that it strives for accurate and timely billing at all times; therefore, staff believes errors and billing delays, if any, should be minimal. (TR 581)

In addition, staff was not persuaded by Verizon's assertion that the Commission's prior decision in the Covad/Verizon Order must apply. First, as a decision that resulted from a two-party arbitration, it is not precedential. Second, while Bright House made many of the same arguments as Covad (i.e., financial certainty), it also made additional arguments. Specifically, in its amended reply brief, Bright House argues that the statute of limitation only determines when a party may file a lawsuit for breach of contract not the billing provisions. (Bright House Amended Reply BR at 18-19) Staff believes this argument has merit. In addition, Bright House noted that in Florida Department of Health and Rehabilitative Services, vs. S.A.P., 835 So. 2d 1091, 1096 (Fl. 2002) the Florida Supreme Court reasoned that the prime purpose of the statutes of limitation is to protect defendants from unfair surprise and stale claims. The Court stated:

> As a statute of [limitations], they afford parties needed protection against the necessity of defending claims which, because of the antiquity, would place the defendant at a grave disadvantage. In such cases how resolutely unfair it would be to award one who has willfully or carelessly slept on his legal rights an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered or faded memories, misplaced or discarded records . . .

Staff believes the statute of limitations determines when a party may file a lawsuit for breach of contract, not the timeframe in which a party can render a bill. Moreover, Bright House is not proposing the Commission alter the statute of limitations but instead seeks approval of a reasonable contractual timeframe for billing and for disputing bills already paid.

CONCLUSION

A one-year time limit should apply for a party to render a bill for services, dispute charges for billed services, and to back-bill for services rendered but not billed.

Issue 24: Is Verizon obliged to provide facilities from Bright House's network to the point of interconnection at total element long run incremental cost ("TELRIC") rates?

Recommendation: No. Bright House has failed to demonstrate that the access toll connection trunks at issue in this proceeding should be priced according to TELRIC principles. (Bloom)

Position of the Parties

Bright House: Verizon must provide facilities from Bright House's network to the technically feasible interconnection points selected by Bright House, at TELRIC rates, including facilities used to carry "Exchange Access" traffic between Bright House's collocation facilities and the networks of long distance companies.

Verizon: No. Access toll connection ("ATC") trunks interconnect Bright House with IXCs' networks, not with Verizon's network, they are not part of Verizon's § 251(c) duty to interconnect with CLECs under the Act. ATC trunks have always been priced at tariffed access, not TELRIC, rates; no law supports changing this regime.

Staff Analysis:

The issue as presented by the parties deals with the means by which Verizon is compensated for providing access toll connection trunks from its tandem switches to Bright House's collocation facilities in Verizon's tandem office, and at Verizon's North Gulf Beach and Carollwood offices. (TR 222-231; TR 488-489)

PARTIES' ARGUMENTS

Bright House

Under Bright House witness Gates' interpretation of the Act, access toll connecting trunks should be considered entrance facilities in support of interconnection and "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." (TR 99-113; TR 217-226)

Witness Gates testifies, "Whatever facilities are used to connect the Bright House facilities, whether it's from the switch or from the collos (collocations) to the tandem, those are interconnection facilities, which have historically been referred to as entrance facilities." (EXH 9, p. 68)

Integral to witness Gates' argument regarding pricing for access toll connecting trunks is an assertion that the facilities are used to provide "exchange access." Citing 251(c)(2)(A) of the Act, which imposes on ILECs an interconnection obligation, "for the transmission and routing of telephone exchange and exchange access." (TR 224-225) Witness Gates concludes:

> The primary, if not sole, function of the facilities in question is so that long distance calls to or from a third party long distance

> carriers can be "transmitted" and "routed" to or from Bright House's ultimate end users. As a result, without question these facilities are being provided in support of interconnection under Section 251(c)(2). They are therefore subject to cost-based TELRIC pricing not – as Verizon has been charging under the parties' old ICA – high special access tariff prices. (TR 225-226)

Bright House currently pays special access rates for access toll connection trunks and is apparently willing to continue the practice. However, witness Gates notes the agreement, "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." (TR 99)

In its brief, Bright House reiterates much of witness Gates' analysis of the Act and federal rules (Bright House BR at 24-29) but provides no further citations or jurisdictions where the compensatory scheme advanced by Bright House witness Gates is currently in place.

Verizon

Verizon witness Vasington testifies incumbent local exchange companies (ILECs) are not required to provide access toll connecting trunks at TELRIC rates: "The FCC found in its Triennial Review Remand Order[16] (TRRO) that alternatives to these ILEC-provided transport facilities (commonly known as "entrance facilities") are widely available, so CLECs are not impaired without unbundled access to them. ILECs therefore are not required to provide these transport facilities at TELRIC rates." (TR 461)

Specifically, witness Vasington, cites the TRRO at paragraph 137, which reads:

> The *USTA II* court did not reject our conclusion that incumbent LECs need not unbundle entrance facilities, only the analysis through which we reached that conclusion. In response to the court's remand, we reinstate the *Local Competition Order* definition of dedicated transport to the extent that it included entrance facilities, but we find that requesting carriers are not impaired without unbundled access to entrance facilities.

Witness Vasington disagrees with witness Gates' analysis of the Act that concludes access toll connecting trunks should be priced at TELRIC rates, testifying, "Verizon has no obligation to provide the facilities at issue to Bright House at TELRIC rates, and calling them 'interconnection facilities' instead of entrance facilities does not change that fact." (TR 461-462)

Witness Vasington testifies that the access toll connecting trunks can not be viewed as interconnection facilities between Bright House and Verizon because they do not link the ILEC

[16] Order on Remand, *Unbundled Access to Network Elements; Review of the 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005)

and the CLEC's networks. "They have nothing to do with interconnection between Verizon and Bright House. Instead, they enable Bright House to fulfill its duty to interconnect with long distance companies." (TR 495)

Witness Vasington also expresses concern that adoption of Bright House's language on this issue would lead other competitive local exchange companies with whom Verizon has interconnection agreements to adopt this language: "If the Commission adopts Bright House's erroneous legal theory that Section 251(c)(2) entitles CLECs to TELRIC-priced entrance facilities for interconnection and traffic exchange, CLECs that actually do take entrance facilities would likely challenge their existing entrance facilities charges." (TR 487)

The result, witness Vasington testifies, would be further litigation because Verizon would be compelled to appeal given the financial stakes, "requiring the Commission to wade into a legal dispute that has yielded competing interpretations of the law from U.S. Circuit courts, without any discernible, practical effect on the interconnection agreement between Bright House and Verizon." (TR 488)

Verizon argues the Commission should refrain from ruling on the issue of pricing for access toll interconnection trunks, citing a change in Bright House witness Gates' testimony between direct and rebuttal. Verizon contends that witness Gates originally presented the issue as one involving entrance facilities and subsequently changed the thrust of his testimony to make the issue one of pricing for access toll connecting trunks. "Because § 252(b)(4)(A) of the Act requires the Commission to 'limit its consideration...to the issues set forth in the petition and in the response,' and Bright House's issue about TELRIC pricing of ATC trunks appeared in neither, the Commission can not consider it." (Verizon BR, pp. 8-12; Verizon Reply, p.4)

In its amended reply brief, Bright House describes Verizon's request as "untimely." In support of its position, Bright House argues that Verizon had ample opportunity to object to witness Gates' testimony and Verizon's request is tantamount to a motion to strike, which should have been filed prior to May 13, 2010 prehearing. (Bright House Amended Reply BR, pp. 1-4)

ANALYSIS

Staff believes Bright House's request that toll access connecting trunks be priced at TELRIC rates instead of at the current tariffed rates is not be supported by the record evidence.

The foundation of Bright House witness Gates' request for TELRIC pricing appears to be that because the trunks in question are used "in support of interconnection" they must be priced according to TELRIC principles as though they are interconnection facilities. However, as the uncontested testimony of Verizon witness Vasington points out, traffic traveling over access toll connecting trunks is not traffic between Verizon and Bright House networks, but traffic between interexchange carriers and Bright House customers. (TR 113; TR 226; TR 516)

Further, Verizon argues, 47 C.F.R. 51.5 defines interconnection as "the linking of two networks for the mutual exchange of traffic" and "does not include the transport and termination of traffic." (Verizon Reply BR p. 5)

In addition, witness Vasington notes, the FCC ruled in its 2005 Triennial Review Remand Order that ILECs are not required to provide unbundled access to entrance facilities and neither party disputes that the trunks in question are entrance facilities. (TR 109-110; TR 479-480; TR 484)

Witness Gates' advocacy of TELRIC pricing for toll access connecting trunks is further undermined, in staff's view, by an inability to cite any ruling by the FCC, legal or jurisdictional precedent in support of his interpretation of the Act or the FCC's rules. (EXH 4, p. 253; TR 311; TR 346; TR 350)

Bright House was asked to identify any FCC rulings that support the position that transport facilities a CLEC buys from an ILEC to carry third-party interexchange carriers' traffic to or from the CLEC's end users are interconnection facilities under §251(c)(2). The company responded, "Bright House is not, at this time, aware of an FCC ruling addressing this specific arrangement." (EXH 4, p. 253)

Witness Gates was asked at the May 25th, 2010 hearing if any rulings had been identified since the filing of the discovery response:

> 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. (TR 311)

Witness Gates acknowledges that while Bright House purchases special access facilities from Verizon to transport interexchange traffic to and from its customers, Bright House, in turn, assesses special access fees on interexchange carriers out of Bright House's special access tariff. (EXH 9, pp. 69-70)

Staff notes that the effect of accepting witness Gates' TELRIC pricing recommendation for toll access connecting trunks would replace the current -- balanced -- compensatory scheme with financial asymmetries that would benefit Bright House exclusively. Witness Gates testifies that under the current agreement, Bright House purchases toll access connecting trunks from Verizon's tariff at special access rates and charges interexchange carriers special access rates from Bright House's tariff for the use of the facilities. Compelling Verizon to sell facilities at lower TELRIC rates and allowing Bright House to continue charging interexchange carriers

special access rates would introduce a competitive imbalance into the market place that does not currently exist.[17] (TR 312-313; EXH 9, pp. 69-70)

Under the current agreement, Bright House pays Verizon approximately $60,000 monthly in special access fees for the toll connecting trunks that provide links between Bright House's collocation facilities at Verizon end offices, running to the switch ports at Verizon's tandem. (TR 221)

In its amended reply brief, Bright House argues that three out of four courts of appeal that considered related questions adopted Bright House's analysis: *Pacific Bell v California Public Utilities Commission, 597 F.3d (9th Cir. 2010); Southwestern Bell v. Missouri PSC, 530 F.3d 676 (8th Cir.2008)*; and *Illinois Bell v. Box, 526 F.3d 1069 (7th Cir.2008)*. While a fourth disagreed, *Michigan Bell v. Covad, F3d 370 (6th Cir.2010)*. Bright House witness Gates testifies the cases cited relate to "this specific issue." Verizon witness Vasington disagrees, testifying "it is not clear that the previously litigated cases involve the same, 'specific issue.'" (TR 111; TR 487)

Staff notes that the decisions Bright House cites deal specifically with pricing entrance facilities for the purpose of interconnecting CLEC networks with those of the incumbents for the mutual exchange of traffic. The issue presented by the parties in this proceeding deals with the pricing of access toll connecting trunks for the purpose of routing traffic between Bright House customers and their designated interexchange carriers, not for the exchange of traffic with Verizon customers.

Staff concurs with Bright House that Verizon's request to ignore the testimony of witness Gates is untimely and tantamount to a motion to strike. The Order Establishing Procedure in this docket states "Motions to strike any portion of the prefiled testimony and related portions of exhibits of any witness shall be made in writing no later than the Prehearing Conference. Motions to strike any portion of prefiled testimony and related portions of exhibits at hearing shall be considered untimely, absent good cause shown." While staff agrees witness Gates' testimony is subject to semantic drift between direct and rebuttal, the metamorphosis of issues during arbitrations is not unusual, and does not rise to the level of "good cause shown" as prescribed in the prehearing order.

CONCLUSION

Staff believes Bright House has failed to demonstrate that the access toll connection trunks at issue in this proceeding should be priced according to TELRIC principles.

[17] Staff notes that acceptance of witness Gates' recommendation would require the development of an appropriate TELRIC rate, either through negotiations between the parties or by ordering Verizon to file a cost study from which a rate could be developed

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

Recommendation: The parties have settled Issue 32 for the current interconnections, as such, the Commission should not rule on this issue at this time. (Gowen)

Position of the Parties

Bright House: Verizon must provide interconnection using any technically feasible method Bright House requests, at TELRIC rates, DS3 and above trunking is feasible, so Verizon must provide it if so requested. Bright House has reasonably proposed that the trunking level be established based on the amount of traffic the parties exchange.

Verizon: No. Bright House's traffic must be converted to the DS1 level before it can be routed to Verizon's tandem and end office switches. Bright House should be responsible for multiplexing its own traffic, just as other carriers and Verizon are responsible for multiplexing their traffic.

Staff Analysis:

Both parties state that Issue 32 is settled regarding the current physical interconnections as long as the physical arrangement does not change. (Johnson TR 413; D'Amico TR 554; EXH 9, pp. 57-58) However, Bright House is concerned about the pricing of multiplexing for future interconnections. (EXH 9, pp. 58-59; EXH 10, pp. 41-42) Verizon argues this is asking the Commission to address this issue in the abstract without reference to any specific network configuration. (D'Amico TR 547, 551) The remaining dispute is whether the Commission should address Issue 32 in the abstract for future interconnections.

PARTIES' ARGUMENTS

Bright House

Bright House argues that it is unable to propose material changes to the interconnection arrangement with Verizon because the pricing principles are not resolved. Without the pricing principles it is impossible to determine the impact of any network rearrangement. (EXH 10, pp. 41-42) Bright House asserts that Issue 32 is about network efficiency regarding the points of failure for multiplexing[18] and the cost of multiplexing. (Johnson TR 413) Bright House wants to exchange traffic with Verizon at DS3[19] or OC3[20] levels without charges for multiplexing. (Gates TR 163) In the testimony, Bright House argues its position on TELRIC[21] pricing principles, technically feasible points, transport, and parity to eliminate the cost of multiplexing.

Bright House's positions for future interconnections are:

[18] Multiplexing is the use of a multiplexer (MUX) to change the signal level up or down, i.e. DS1 to DS3 or DS3 to DS1.
[19] DS3 is equivalent to 28 digital signal level 1s (DS1); where a digital signal level classifies the capacities of digital lines and trunks.
[20] OC3 is equivalent to 3 DS3s
[21] Total Element Long Run Incremental Cost (TELRIC)

- Based on TELRIC principles, costs should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration. Verizon's network is old and inefficient. As such, Bright House argues, there would be no cost associated with multiplexing. (Gates TR 27-28; EXH 3, pp. 86-87)

- It should be allowed to interconnect with Verizon without the need for multiplexing at a number of points that are technically feasible on Verizon's network. (Gates TR 215-216)

- Multiplexing is a part of the transmission of traffic and is a part of the transport function based on the interconnection point. (EXH 4, p. 262)

- Verizon is obliged to offer interconnection to Bright House that is at least equal in quality to which Verizon provides itself, to any other interconnector, or third party. (Gates TR 159)

Verizon

Verizon believes that the Commission should not make any decisions on future interconnection with respect to the treatment of multiplexing because Bright House is asking the Commission to address this issue in the abstract without reference to any specific network configuration. (D'Amico TR 547, 551)

Verizon's positions for future interconnections are:

- It does not have an obsolete network. (D'Amico TR 554) Verizon's network is designed to ensure network redundancy and survivability, multiplexing of DS3 traffic at Verizon's tandems is necessary. (EXH 2, p. 10) There are no industry standards, rules, regulations, or statutes identifying an efficient level of service for interconnections. (EXH 2, p. 11) In Verizon's network, DS1 ports better manage the traffic coming into a switch. (EXH 13, p. 64)

- Bright House does not deliver traffic to Verizon's end offices in sufficient quantity for use of DS3 end office switch interfaces. Bright House is currently sending DS1 levels of traffic and would be inefficient for Verizon to install DS3 interfaces to accept Bright Houses traffic due to the interfaces far exceeding Bright Houses' demand. (EXH 2, p. 10; D'Amico TR 547, 554-555)

- Dedicated multiplexing being used by Bright House to deliver traffic at the DS1 level to Verizon switches is not part of the transport function. (EXH 2 p. 12) Multiplexing is tariffed service, therefore not a part of the transport function. (EXH 13, pp. 82, 84, 85; EXH 2, p. 12)

- It uses the same switches with a DS1 interface for Bright House as it does for other ILECs, CLECs, and wireless carriers. (D'Amico TR 550, EXH 13, pp 48, 51)

ANALYSIS

Bright House is asking the Commission to address future interconnections without reference to any specific network configuration. Verizon's concern that the Commission should not make any decisions on future interconnection with respect to the treatment of multiplexing is valid. Staff believes Bright House has not presented sufficient justification to warrrant a ruling on issues that may exist at some time in the future. Staff recommends that the Commission not rule on Issue 32 at this time.[22] This does not prohibit Bright House from determining a new network configuration and coming before the Commission at a later date if necessary.

CONCLUSION

The parties have settled Issue 32 for the current interconnections, as such, the Commission should not rule on this issue at this time.

[22] If the Commission would like to rule on the requirement of trunking at DS-3 level or above for future interconnections, staff will prepare a recommendation for a future agenda.

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

Recommendation: The terms proposed by Verizon should apply to meet-point billing, including Bright House's functionality as a competitive tandem provider for exchange access services. (Trueblood)

Position of the Parties

Bright House: Section 251(c)(2) governs interconnection for meet-point traffic, so Bright House selects the interconnection points. Bright House should pay TELRIC rates for Verizon-supplied facilities on Bright House's side of the interconnection, but the long distance carrier should pay for facilities on Verizon's side.

Verizon: The parties should continue to apply the same terms to meet-point billing that they have applied successfully for years under the existing ICA. The combination of those terms and the availability to Tandem Switch Signaling under Verizon's tariff already allow Bright House to provide access tandem functionality.

Staff Analysis:

This issue asks the Commission to determine appropriate terms for meet-point billing and the terms that should apply when Bright House provides the tandem switching function that is currently provided by Verizon. Meet-point billing involves an arrangement where two local exchange carriers (LECs) jointly provide access services to a third-party interexchange carrier (IXC). (TR 131) The dispute hinges on how the meet-point arrangement should be implemented when Bright House provides the tandem switching function. (TR 165-166; TR 651-652; TR 653-657)

PARTIES' ARGUMENTS

Bright House

Bright House witness Gates describes meet-point billing as an arrangement where two LECs provide access service to a third-party IXC. Under such arrangement, traffic is exchanged at a "meet-point" that serves as the demarcation point where the responsibility of one party ends and the responsibility of the other party begins. Each LEC bills the third-party IXC for the services it provides on its side of the "meet-point." Neither LEC bills the other LEC because they are jointly providing access services to the third-party IXC, and not to each other. Bright House proposed definitions for exchange access, telephone toll, and meet-point billing traffic and asserts they should apply because they clearly delineate how the arrangement and applicable rates are different when the traffic is Verizon's traffic verses the traffic of an IXC. Witness Gates points out that there are industry-standard documents[23] that explain how meet-point billing is supposed to work. (TR 131-145)

[23] The parties state the MECAB (Multiple Exchange Carrier Access Billing) and MECOD (Multiple Exchange Carriers Ordering and Design) are two industry-standard documents for addressing meet-point billing arrangements.

The new ICA will specify a point for the exchange of local traffic. Witness Gates contends that it makes sense to use the same point for third-party IXC toll traffic. (TR 166) Bright House and Verizon have direct end office trunks (DEOTs) to handle their local traffic and Bright House wants these trunks to be used to carry third-party meet-point billing traffic destined for Verizon's end offices. (TR 169) Witness Gates argues that Verizon does not understand the meet-point billing arrangement that Bright House wants in order to provide tandem switching service to IXCs. (TR 231-235)

Bright House wants to compete with Verizon for tandem switching and transmission of inbound long distance traffic and will establish separate trunks for third-party access traffic over the existing facilities linking Bright House's switch with Verizon's switch. According to witness Gates, Verizon's contention that Bright House's proposal could not work because a switch can only subtend a single tandem for any given NPA/NXX is not correct. There is no technical impediment to Verizon notifying the industry that its end offices can be reached through its tandem, and Bright House notifying the industry that Verizon's end offices can be reached through Bright House's switch. (TR 233-238)

According to witness Gates, Verizon insists that the meet-point for exchange of local traffic should not be the same as the meet-point for the exchange of third-party IXC traffic; rather Verizon insists that a port on its tandem switch be designated as the meet-point for third-party IXC traffic. Witness Gates argues the parties can designate any point they want for the meet-point but the default meet-point for jointly provided exchange access traffic for third-party IXCs should be the same physical point where Bright House and Verizon exchange their local traffic. Regarding the location of the meet-point for the exchange of third-party traffic witness Gates argues:

> . . . the basic statutory provision setting out the parties' interconnection rights and duties – Section 251(c)(2) of the Act – says that the interconnection arrangement established under it are for the "transmission and routing" of telephone exchange service traffic (that is, broadly speaking, "local" traffic), **and** (emphasis in original) "exchange access" – which, as discussed above, is any traffic associated with toll calls.

Moreover, he contends the statute does not make any distinction between "exchange access" associated with a party's own toll traffic and exchange access associated with toll services provided to third-party IXCs. (TR 165-168; TR 217-218)

Witness Gates maintains that Bright House's proposed arrangement was contemplated by the FCC for more than a decade and would provide long distance carriers two tandem providers to choose from. FCC Rules 47 C.F.R. §64.1401, §64.1402, and §69.121 address expanded interconnection arrangements that link competitive access providers' (CAPs) collocation and transport facilities with the ILEC's switched access service for originating or terminating switched access. Bright House is capable of receiving and switching traffic from third-party IXCs onto trunks that connect directly to Verizon's end offices. Witness Gates does not

understand why the very same trunks that carry other traffic, including local and intraLATA toll traffic, can not be used for terminating switched access traffic bound for Verizon's end office switches. (TR 238-240)

Verizon

Verizon's witness Munsell argues the current language in §§ 9 and 10 of the ICA Attachment should apply to meet-point billing and the new language proposed by Bright House regarding these sections is problematic, unnecessary, and should be rejected. He argues that the language should be rejected for the same reason it was rejected when the Commission addressed this issue in its March 30, 2001, Order No. PSC-01-0824-FOF-TP, In Re: Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunication Act of 1996 (WorldCom/BellSouth Arbitration), p.81.[24] (TR 652-657; EXH 2, p.15) In that order the Commission concluded:

> We firmly believe that [the ILECs] ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group. In this case, we find that [the ILECs] established process of routing access traffic on access trunks should be continued. Therefore, we find that [the interconnecting carrier] shall not be permitted to commingle local and access on a single trunk and route access traffic directly to [the ILECs] end offices. [the interconnecting carrier] shall route its access traffic to the [the ILEC's] access tandem switches via access trunks. (EXH 2, p. 15-16)

Verizon does not object to Bright House operating as a competitive tandem provider and Bright House currently has the ability to do so under the existing ICA language and through the provision of Tandem Switch Signaling (TSS)[25] under Verizon's FCC Tariff No. 14. Contrary to Bright House witness Gates' assertion that Verizon is engaging in some sort of anticompetitive conduct regarding access tandem switching, Bright House seeks to remove competitive choice from the market. Witness Munsell asserts that a local exchange carrier is not required to subtend any particular tandem and from a network routing perspective they cannot subtend more than one tandem for any given NPA/NXX. Verizon chooses to subtend its own tandem and should not be forced to subtend Bright House's tandem and essentially give its tandem business and customers to Bright House absent any legal or policy support for what Bright House is proposing. (EXH 2, pp. 65-66; EXH 5, p. 30) Witness Munsell testifies that the new language proposed by Bright House to achieve this purpose would require Verizon to handle traffic in ways that Verizon can

[24] In the Worldcom/BellSouth Arbitration Order the Commission indicated that allowing the interconnecting carrier to terminate access traffic into the ILEC's network via non-access trunks would impair the ILEC's ability to route, deliver and bill for that traffic.

[25] Tandem Switching Signaling (TSS) is a service that can be purchased out of Verizon's FCC Tariff No. 14 that allows carriers to function as a tandem provider.

not. (TR 590-591; TR 593; EXH 5, p. 30; EXH 2, pp. 14-16; EXH 2, p. 65; EXH 14, pp. 247-263)

Local Interconnection Trunks are used to carry local traffic for a local carrier and Access Toll Connecting (ATC) Trunks are used to carry toll traffic for an IXC chosen by an end user. End users can choose a presubscribed interexchange carrier ("PIC") to carry their interexchange traffic. When the call is routed the interexchange carrier must be identified based upon the carrier identification code (CIC) that must be signaled along with the call through the network. Witness Munsell states that end users of a local carrier use only that local carrier to carry their traffic and industry standards do not require that local calls be signaled. He argues that local interconnection trunks lack the data necessary to permit the access tandem provider to route interexchange calls to the appropriate IXC. (TR 654-656; EXH 2, pp. 14-16)

Witness Munsell states that under Bright House's proposal it appears that when Bright House provides the tandem switching function it would attempt to route 1+ dialed calls destined to IXCs over local interconnection trunks, which would lose the CIC necessary to route the call to the interexchange carrier selected by the calling party. (TR 591-592; EXH 2, pp. 14-16) He asserts that Bright House seems to want to route traffic from IXCs that use Bright House's competitive tandem service 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. (TR 593; EXH 5, p.30)

Verizon's tandem allows IXCs to receive or pass off long distance calls to or from virtually all local carriers and their customers in the area. Bright House wants to be a competitive tandem provider by making its own tandem available to link IXCs with local networks in the Tampa/St. Petersburg area. (TR 651-652) Verizon objects to the changes proposed by Bright House because they are inappropriate for a § 251(c) ICA since the competitive service Bright House wants to provide is for the benefit of IXCs and not Bright House's end user customers. As witness Munsell explains, TSS is a nonchargeable optional service used in conjunction with Feature Group D[26] ("FG-D") Switched Access that allows for the CIC to be passed over FG-D trunks that would connect each of the Verizon end offices with the Bright House tandem and thereby allow Bright House to operate as a competitive tandem provider. (TR 652-653; EXH 2, p. 16-17)

Verizon argues that in order for traffic to route properly over Verizon's tandem, Bright House must elect to have its switch subtend the Verizon access tandem, which is reflected in industry traffic routing tables, the Local Exchange Routing Guide (LERG). The LERG allows IXCs to properly route long distance calls destined to Bright House end users by identifying the applicable access tandem that serves the Bright House customer. To complete the call Bright House must establish a physical meet-point at the designated Verizon access tandem to pick up that traffic. The architecture in situations where the point of interconnection is somewhere other than the access tandem would not work. (TR 656; EXH 2, p. 15)

[26] Feature Group 1, B, C and D are separate switching arrangements available from local exchange carrier (LEC) end offices to interexchange (long distance) carriers. Feature Group D (FGD) is a trunk-side connection provided by the ILECs, which allows phone users to pick up the telephone and dial 1+ to place a long distance call, with the call being handled by the preselected IXC. (16th Edition of Newton's Telecom Dictionary)

ANALYSIS

Bright House and Verizon agree that pursuant to § 251(c)(2) of the Act, Verizon is obligated to interconnect its network with Bright House's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within Verizon's network. Both parties maintain that the MECAB and MECOD meet-point billing guidelines apply to situations where two or more LECs jointly provide access services to third-party IXCs. (TR 131-145; TR 230-231; EXH 14, pp. 278-431; EXH 20) Verizon and Bright House agree that the meet-point should be mutually decided by the parties and that neither party bills the other because they are not providing services to each other but to a third-party carrier. (TR 131; EXH 14, pp. 278-408; Bright House BR at 30-31; Verizon BR at 13) Bright House and Verizon agree that meet-point billing is an arrangement where carriers use their facilities to deliver traffic to a demarcation point where that carrier hands off the traffic to the other carrier. (TR 165; Verizon BR at 13)

Bright House and Verizon disagree on some of the details of how the meet-point arrangement should be implemented and how to handle the situation when Bright House provides the tandem switching function, rather than Verizon. Currently the meet-point for the exchange of third-party IXC traffic is at a port on Verizon's tandem. Bright House contends that it should be moved from Verizon's access tandem to its collocation at Verizon's end office. Verizon argues that it should not be moved as Bright House proposes but should be mutually agreed to by both parties. (TR 130-137; TR 165-167; TR 571-574; TR 590-593)

Staff notes that the point of interconnection (POI) and the meet-point are selected differently and they are for different types of traffic. By definition the meet-point is a point of interconnection that the parties should negotiate for the exchange of third-party IXC traffic. It is not the POI for the purpose of linking two networks for the mutual exchange of local traffic. It appears Bright House views the POI that it selects pursuant to §251(c)(2) and the meet-point that the parties mutually select when they jointly provide services to a third-party IXC to have the same meaning. (Bright House Amended Reply BR at 8-11)

For the reasons listed below, staff believes the meet-point for the exchange of third-party IXC traffic should be mutually decided by the parties, and Bright House should obtain functionality as a competitive tandem provider through the provision of Tandem Switch Signaling (TSS) under Verizon's FCC Tariff No. 14.

First, Verizon does not object to Bright House operating as a competitive tandem provider and Verizon can accommodate Bright House's desire through the provision of TSS under Verizon's FCC Tariff No. 14. The record evidence shows that the language Bright House proposes is problematic and it would require Verizon to divert or handle traffic in ways that Verizon is not capable of doing. (TR 590; TR 653-657; EXH 14, pp. 263-265; Verizon Reply BR at 11-12)

Second, the DEOTs the parties have established are used to carry their local traffic and not meet-point billing traffic from third-party IXCs. (TR 169; TR 231-239)

Third, the terms proposed by Bright House are inconsistent with how the Commission addressed this issue in a previous arbitration docket. When the Commission addressed this issue in the WorldCom/BellSouth Arbitration, the Commission ruled that the ILECs established process of routing access traffic on access trunks should be continued and the interconnecting carrier shall not be permitted to commingle local and access on a single trunk and route access traffic directly to the ILECs end offices. (EXH 2, p. 15-16)

Fourth, the MECAB/MECOD guidelines, that the parties recognize as industry-standard, provide guidance for how the meet-point should be decided by both parties. Under these guidelines Bright House and Verizon should mutually agree to the demarcation point that determines their responsibilities to the third-party IXCs. In addition, each LEC should bill the IXC for the functions it provides. (TR 131-132; TR 165-167; Verizon BR at 13; Bright House Amended Reply BR at 8) Based upon the record, the parties have not agreed on a different location for the meet-point; therefore, it should remain at Verizon's tandem.

Last, the POI that Bright House wants to designate for meet-point billing traffic is not the POI § 251(c)(2) of the Act obligates Verizon to provide to Bright House to link its network to Verizon's network for the mutual exchange of traffic. Under § 251(c)(2) of the Act Bright House decides the POI for the exchange of local traffic between its network and Verizon's network, whereas both parties decide the meet-point where they exchange traffic from third-party IXCs. (TR 131; TR 652)

CONCLUSION

The terms proposed by Verizon should apply to meet-point billing including Bright House's functionality as a competitive tandem provider for exchange access services.

Issue 36A: 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?

Recommendation: No. Bright House should not remain financially responsible for the traffic of its affiliates or other third-party carriers when it delivers that traffic to Verizon for termination. The originating carrier is the party that initiates the call and under the normal industry-accepted "cost causer" concept the calling party pays. Therefore, the third-party carrier should be financially responsible. (Trueblood)

Position of the Parties

Bright House: When Bright House delivers access traffic to Verizon from a long distance carrier, that carrier should be billed. When Bright House delivers inbound local traffic to Verizon from a third-party LEC, that LEC should be billed.

Verizon: Yes. There is no dispute that Verizon is entitled to payment for terminating such traffic. The only question is whether Bright House should be responsible for that payment. It should be in order to avoid arbitraging of rates and to encourage more efficient interconnection arrangements.

Staff Analysis:

The parties' dispute is over which party should pay for third-party traffic Bright House transits to Verizon for termination. Bright House initially argued that when a third-party, including an IXC affiliate, sends traffic to Bright House's network for termination by Verizon it should be handled through the meet-point billing arrangement. (TR 168) In its brief and amended reply brief Bright House argues that when it transits third-party local traffic to Verizon the cost causation principle should apply and the originating carrier should pay. (Bright House BR at 34; Bright House Amended Reply BR at 11) Verizon has maintained that meet-point billing arrangements are for a different kind of traffic, jointly-provided Switched Exchanged Access traffic, and to reduce opportunity for arbitrage, Bright House should be financially responsible for local traffic it sends to Verizon for termination. (TR 593-595; EXH 2, p.17)

PARTIES' ARGUMENTS

Bright House

Bright House agrees that it should pay Verizon for terminating Bright House's intraLATA toll traffic; however, when a third-party, including an IXC affiliate, sends traffic to Bright House's network for termination by Verizon it should be handled as meet-point traffic because Bright House is providing tandem switching functionality for that third-party. (TR 167-169) The FCC rules and guidelines state that in a meet-point billing arrangement the LEC providing the access service should bill the IXC for the portion of access service it provides. Witness Gates asserts that he is not aware of any issue Verizon has with how industry and FCC rules say meet-point billing between two LECs should be handled. (TR 241-242) Both Bright House and Verizon should have the same responsibility for third-party traffic they transit to the

others network. When its affiliates or other third-parties deliver inbound long distance traffic to Verizon the meet-point billing rules should apply. Therefore, the remaining issue is limited to local transit traffic that Bright House might deliver to Verizon from third-party carriers. (Bright House BR at 34) Bright House believes that when it transits local traffic from a third-party carrier that carrier should be responsible for paying Verizon. This is based on the cost causation principle requiring the originating carrier to pay. (Bright House Amended Reply BR at 11)

Verizon

Verizon Witness Munsell asserts that contrary to Bright House witness Gates' contention, meet-point billing arrangements are for jointly provided switched exchange access traffic and not transit traffic from third parties. He maintains that such arrangements are not appropriate and would not work for local traffic. (TR 593-596; TR 658-659; EXH 2, p. 17) The language in §8.3 of the ICA acts as a check on potential arbitrage. It should be included in the ICA because Bright House is financially responsible for paying Verizon the same amount the third-party would have paid Verizon if the local traffic was delivered directly from the third-party. (TR 593-596; TR 658-659; EXH 2, p. 17; EXH 14, pp. 130-136; Verizon BR at 30) Bright House seeks to avoid financial responsibility for third-party local traffic that it sends Verizon for termination by suggesting that such traffic be handled through meet-point billing arrangements, under which Bright House and Verizon both would bill the originating carrier. (EXH 2, p. 17)

Under §251 of the Act a carrier is entitled to a direct interconnection with Verizon. When Bright House transits third-party local traffic to Verizon for termination it does so voluntarily and for commercial reasons because Bright House is not required to provide transit service to all parties. Bright House and Verizon are not similarly-situated as Bright House may negotiate and enter into a contractual arrangement with a third-party carrier or choose not to provide transit services. Verizon has common carrier obligations and duties pursuant to §252(i) of the Act and any requesting third-party carrier may adopt its interconnection agreements. (TR 595; EXH 2, p. 18; Verizon BR at 31-32; Verizon Reply BR at 13) Since Verizon is obligated to deliver transit traffic from any carrier to the terminating carrier, Verizon should not be required to pay Bright House for that traffic consistent with the language in Section 8.3 of the proposed ICA. (EXH 14, pp. 133-136)

Witness Munsell testifies that it is more efficient for carriers with end users in a LATA within Verizon's ILEC service area to have direct interconnection with Verizon for the exchange of traffic between the parties' end users. When a carrier transits local traffic through another carrier to Verizon, the third-party uses facilities to connect to the transiting carrier that must switch the traffic and then transport it to Verizon. A carrier might choose to use a relatively inefficient method of interconnection to take advantage of a disparity in the two intercarrier compensation rates offered by Verizon. (TR 594-597)

ANALYSIS

In Bright House's testimony it argues that meet-point billing guidelines should apply to all third-party toll traffic that Bright House sends to Verizon. In Bright House's brief and reply brief Bright House maintains that the only remaining issue deals with local transit traffic that

Bright House might send to Verizon. Bright House argues that when it transits third-party local traffic, not third-party IXC traffic, that the cost causation principle requiring the originating carrier pays should apply. (Bright House BR at 34; Bright House Amended Reply BR at 11) However, Bright House failed to provide testimony to support the position it argues in its briefs.

The Act's governing Rule 47 C.F.R. 51.5 defines meet-point as "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." It defines a meet-point interconnection arrangement as "an arrangement by which each telecommunications carrier builds and maintains its network to a meet-point." Based on these definitions and Bright House's definition of "meet-point billing" traffic,[27] staff agrees with Verizon that meet-point billing arrangements are designed to address a different kind of traffic, third-party jointly-provided switched exchanged access traffic and not local transit traffic. (TR 131) On the other hand, Verizon's argument that Bright House should pay for transit traffic it delivers from third-party carriers to Verizon for termination to reduce the opportunity for arbitrage is not convincing. Verizon made the assertion but did not provide any instances where arbitrage has resulted because of Bright House or other carriers. (EXH 14, pp. 132-136; Bright House Amended Reply BR at 11) Staff notes that if arbitrage occurs for any reason a party could petition the Commission to address the matter.

Staff notes that the originating carrier decides whether to send third-third party traffic through Bright House for delivery and termination by Verizon. The Commission addressed this issue in Docket No. 000649, Petition by MCImetro Access Transmission Service LLC and WorldCom Communication, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Order No. PSC-01-0824-FOF-TP (WorldCom Arbitration Order) and concluded:

> When BellSouth performs a transit network function, ALECs do not have to establish direct interconnection with other LECs, which eases ALECs recording and billing requirements. We do not find that Bellsouth should have to relieve WorldCom of all the associated billing and administrative activities involved in third party transit traffic, especially since BellSouth is neither the originating or terminating carrier in this arrangement. We believe that the Telecommunications Act of 1996 requires WorldCom to negotiate interconnection agreements with ALECs with whom it intends to exchange traffic. Accordingly, WorldCom should be responsible for its own bill.

As the Commission decided in the WorldCom Arbitration Order, staff believes the originating party should be financially responsible. Staff notes that the originating carrier is responsible for delivering such traffic in a manner that can be identified, routed and billed

[27] In witness Gates' direct testimony meet-point billing traffic is defined. According to witness Gates "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 call". (emphasis in original)

properly. The "cost causer" concept is generally accepted in the industry and staff believes it is supported by Rule 47 CFR 51.703(b) which states:

> . . . a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

Staff notes this issue was also addressed by the Commission In re: Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc. In re: Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC., Docket No. 050125-TP, Order No. PSC-06-0776-FOF-TP, issued September 18, 2006. In this Docket the Commission also concluded:

> . . . the originating carrier shall enter into a transit arrangement with BellSouth, and shall compensate BellSouth for providing the transit service. Additionally, the originating carrier is responsible for delivering its traffic to BellSouth in such a manner that it can be identified, routed, and billed. The originating carrier is also responsible for compensating the terminating carrier for terminating the traffic to the end user. (emphasis added)

In both of these cases, the Commission ruled that the originating party is responsible for paying for traffic it originates. Accordingly, staff believes the language in § 8.3 regarding Bright House's financial responsibility should be deleted. When Bright House transits traffic from affiliates or other third-party carriers to Verizon for termination the originating carrier should be financially responsible. The originating carrier is the "cost causer" and Verizon has failed to present record evidence to justify a shift from the general accepted industry concept that the calling party pays.

Staff was not convinced by Verizon's arguments that Bright House should be financially responsible for third-party local transit traffic that its sends to Verizon for termination. While Bright House argued that the originating carrier pays only in its briefs, staff believes that this position is consistent with prior Commission decisions. Therefore, based on FCC Rule 47 CFR 51.703(b), Commission precedent, and the industry-accepted cost causation principle, staff believes that Bright House should not remain financially responsible for third-party local transit traffic it sends to Verizon.

CONCLUSION

Bright House should not remain financially responsible for the traffic of its affiliates or other third-party carriers when it delivers that traffic to Verizon for termination. The originating

carrier is the party that initiates the call and under the normal industry-accepted "cost causer" concept the calling party pays. Therefore, the third-party carrier should be financially responsible.

Issue 36B: 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?

Recommendation: The ICA should require Bright House to pay Verizon for the access toll connecting (ATC) trunks and any other facilities that Bright House purchases from Verizon to carry traffic between interexchange carriers (IXCs) and Bright House's network. (Trueblood)

Position of the Parties

Bright House: Section 251(c)(2) governs interconnection for meet-point traffic, so Bright House selects the interconnection points. Verizon may charge long distance carriers, not Bright House, for facilities on Verizon's side of the interconnection used for such traffic. Section 251(c)(2) also fully applies to interconnection when Bright House provides tandem functionality.

Verizon: Bright House must continue to pay Verizon for the ATC trunks used to carry IXC traffic to Bright House. Bright House cannot call a meet-point for access traffic a POI for section 251(c) interconnection and then force Verizon to bill IXCs for ATC trunks carrying only Bright House traffic.

Staff Analysis:

This issue asks if Bright House should pay Verizon for facilities Verizon provides to Bright House to carry traffic between an IXC's network and Bright House's network. Bright House addresses this issue from the standpoint of meet-point billing. Verizon argues that Bright House should pay Verizon for facilities Bright House purchases from Verizon. (TR 168-169; TR 242; TR 563-564; TR 659-661) Staff notes that although Bright House argues the meet-point issue here, it is addressed in Issue 36.

PARTIES ARGUMENTS

Bright House

Witness Gates testifies that the only issues in dispute are the demarcation point where one party's financial responsibility ends and the other party's begins and the applicable pricing for facilities Bright House purchases from Verizon for the transmission and routing of third-party exchange access traffic. (TR 242-244) Bright House's network is connected with Verizon's network via trunks and switches that run to Verizon's end offices and its tandems. Bright House should be allowed to use those connections to compete with Verizon as a tandem provider. Witness Gates asserts the connections are already in place for local and overflow traffic and it is economical for Bright House to use them for tandem functionality under a meet-point billing arrangement. (Gates TR 168-170) Witness Gates asserts that if Bright House establishes a port on Verizon's network Bright House should pay for the facilities and trunks from its network to Verizon's switch port. (TR 242-243)

Bright House currently exchanges meet-point billing traffic at switch ports on Verizon's tandem by purchasing interconnection facilities[28] from Verizon to connect the switch ports to collocations in Verizon's end offices. (TR 218-221) Witness Gates argues that Bright House is not trying to avoid paying for facilities but instead is trying to have its collocations at Verizon's end offices designated as the point of interconnection for exchanging its access traffic pursuant to §251(c)(2) of the Act. If the meet-point is moved from the Verizon's tandem to the end office collocation, Bright House would not pay Verizon for the facilities because Verizon would no longer be providing these facilities to Bright House but to the IXCs that would use them. (TR 242-244)

Verizon

Verizon argues that the only question presented about ATC trunks for arbitration was whether Bright House should pay Verizon for them. (Verizon Reply BR at 4) Traffic is often exchanged between CLECs, wireless carriers, and IXCs indirectly through the ILEC's access tandem. Bright House purchases ATC trunks for transport from Bright House's network to the Verizon's tandem and these facilities may include multiplexing or other services that Bright House may build or purchase from Verizon or another carrier. These trunks do not carry any Verizon traffic. (TR 597-598; TR 659-660; EXH 5, p. 23-24; Verizon Reply BR at 13-14) The parties agree that when Bright House routes interexchange calls through Verizon's access tandem the IXCs pay Bright House for the functions it performs and pays Verizon for the functions it provides because that is the industry practice and the way Bright House and Verizon currently operate. (TR 597-598; TR 661) Under the current practice each party recovers the costs over which that party has control. If Bright House's proposal is accepted, Verizon would be forced to move the meet-point from the tandem to the end office collocation and would be placed in a situation where it would end up trying to collect facility transport charges from the IXC to recover a cost imposed by Bright House. (TR 661-662)

Verizon points out that Bright House has three options for handling this type of traffic. First, where Bright House self-provisions its own facilities Verizon would not charge Bright House any facilities charges for that connection. Second, where Bright House does not have its own facilities and purchases facilities from Verizon to connect to the Verizon access tandem, Bright House would pay for that connection. (TR 659-660) Third, if Bright House does not want to pay for Verizon-provided facilities Bright House can reconfigure its network so that all of its ATC trunk traffic is routed over it own facilities via its collocation at the Verizon access tandem office. (TR 661)

ANALYSIS

This issue asks the Commission to decide if Bright House should be required to pay Verizon for ATC trunks that Verizon provides to carry traffic between Bright House and IXCs. Although Bright House argues meet-point arrangements under this issue, staff notes that meet-point billing is addressed in Issue 36.

[28] In most instances Bright House refers to the Verizon-provided facilities in dispute as interconnection facilities, whereas Verizon refers to these interconnection facilities as access toll connecting (ATC) trunks.

Staff believes Bright House has confused the "meet-point", that Bright House and Verizon mutually designate for the exchange of access traffic from third-party IXCs, with the POI that Bright House gets to select to interconnect its network with Verizon's networks for the exchange of its access traffic. (TR 168-169; TR 242-244; TR 659-662; Bright House BR at 7-8) Under Bright House's proposal the demarcation point where one party's financial responsibility ends and the other party's begins would be at its collocation in Verizon's end office. Witness Gates argues if the demarcation point is changed from Verizon's tandem to its collocations at Verizon's end offices, Bright House would no longer need the ATC trunks at dispute, which would result in Bright House no longer having to pay for them. (TR 242-244)

Bright House currently uses ATC trunks provided by Verizon. (TR 598) Verizon argues in its brief:

> . . . the ATC trunks at issue are not used to link Verizon's network with Bright House's network "for the mutual exchange of traffic." They carry no calls between Bright House and Verizon end users; indeed, they carry no Verizon traffic at all. The ATC trunks, instead, link Bright House's network with IXC networks, to allow traffic to flow back and forth between those networks. (Verizon BR at 17)

Bright House uses ATC trunks provided by Verizon for the exchange of traffic between Bright House and IXCs. Moreover, Bright House determines the number and locations where these trunks should be. (EXH 9, pp. 63-76) If Bright House is not required to pay for these trunks the link between the party causing the ATC trunk costs and the party bearing the expense would be broken. (Verizon Reply BR at 13-15) Bright House asserts that it may reconfigure its network so that these facilities are no longer needed. Having considered the record, staff believes that Verizon is more persuasive on this issue and that if Bright House continues to use the ATC trunks instead of picking up the IXC traffic at Verizon's tandem or building these facilities itself, Bright House should continue to pay for them. As such, staff believes Verizon should not have to recover payment for these facilities from third-party IXCs under a meet-point billing arrangement with Bright House. (TR 597-598; TR 661)

CONCLUSION

The ICA should require Bright House to pay Verizon for the ATC trunks and any other facilities that Bright House purchases from Verizon to carry traffic between IXCs and Bright House's network.

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

Recommendation: The types of traffic (e.g. local, ISP, access) that are exchanged between the parties should be classified as either local traffic (compensated at reciprocal compensation rates) or interexchange traffic (compensated at access rates) based on the ILEC's basic local exchange areas. (Trueblood)

Position of the Parties

Bright House: All traffic that is not exchange access is subject to reciprocal compensation. No Bright-House-originated traffic is toll traffic, so Verizon may not charge access charges on any such traffic. The $0.0007 rate for reciprocal compensation traffic covers all "Transport" functions.

Verizon: Traffic should be classified as either local traffic (compensated at reciprocal compensation rates) or interexchange traffic (compensated at access rates) based on the ILEC's basic local exchange areas. This provides a stable, uniform, competitively neutral standard – which is why at least ten other commissions have rejected Bright House's proposed alternative approach.

Staff Analysis:

The dispute centers on how different types of traffic exchanged between Bright House and Verizon should be defined. Bright House argues the originating carrier's local calling area should be used to determine if the traffic is local or toll and Verizon asserts that its Commission-approved basic local calling areas should be used. (Gates TR 122-147; Munsell TR 662-678)

The rate aspect of this issue has been resolved. Bright House and Verizon agree that local traffic should be compensated at the reciprocal compensation Mirroring Rule rate of .0007 per minute and long distance traffic should be compensated at the access rates. (TR 245-247; Verizon BR at 37)

PARTIES' ARGUMENTS

Bright House

Bright House witness Gates testifies that Issue 37 has been resolved except for the terms that specify when Bright House must pay access charges instead of reciprocal compensation. (TR 245-247) As explained by witness Gates, when an IXC customer makes a long distance call the IXC charges the caller a toll charge and pays the LEC or LECs access charges for originating and terminating the call. On the other hand, he asserts that when a LEC customer makes a call on the local originating carrier's network that is terminated on a different local carrier's network, the originating LEC pays the terminating LEC reciprocal compensation which is usually a much lower rate than access charges. (TR 123-145)

Bright House proposes that traffic exchanged between the parties be defined and classified based upon the local calling area for the originating party. Witness Gates maintains that using the originating carrier's calling area to determine when reciprocal compensation should apply is competitively neutral when the parties exchange large amounts of traffic that is roughly balanced and generated in the same geographical area. (TR 139)

Bright House testifies that, in deciding how to define and classify traffic exchanged between the parties, several issues exist regarding the treatment of calls from Bright House customers to Verizon customers that extend beyond the boundary of Verizon's local calling area. Witness Johnson asserts that local competition allows carriers to offer services at lower rates for consumers and Bright House competes with other carriers by offering broader free local calling areas, such as the entire Tampa Local Access Transport Area (LATA). Under the parties' current ICA, access charges apply for calls that Bright House sends to Verizon that are outside of Verizon's calling area boundary. Witness Johnson argues that, when a Bright House customer makes a call within the customer's local calling plan to another local calling area, Bright House should not have to pay access charges to Verizon. She maintains that Verizon wants Bright House to continue to pay access charges to Verizon for calls that Bright House does not treat as toll calls or receive additional revenue for. (EXH 3, p. 32; TR 385-386; EXH 9, pp. 75-79)

Witnesses Johnson and Gates argue that the Commission ruled in a generic investigation[29] that whether a call is subject to access charges or reciprocal compensation depends on the calling area of the originating carrier. They assert the Commission found that it was competitively neutral to use the originating carrier's calling area to determine when access charges should apply. The decision was later vacated because the Supreme Court of Florida found that the Commission lacked sufficient evidence to set a default mechanism for all situations and concluded[30] that such designation should be made on a case-by-case basis. Witness Johnson asserts the Commission eliminated the default mechanism but it was the right decision then and the Commission should reach the same decision in this proceeding. (TR 138; TR 387)

Bright House witness Gates testifies that §251(c)(2) of the Act requires ILECs to provide interconnection to any requesting carrier for local competition. He maintains that Congress realized that once the ILEC and CLECs started providing service in the same area and completing for the same customers that they would have to exchange traffic for completion. Congress also recognized that the exchange of local traffic between two LECs was different from the traditional long distance traffic of an IXC and established a duty on all LECs to enter into reciprocal compensation arrangements.[31] (TR 127) In regards to intraLATA traffic, witness Gates argues that the FCC in the Local Competition Order at ¶¶1033-1035 ruled that the classification of traffic as exchange, rather than exchange access, should be decided on a case-

[29] 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.
[30] See Order No. PSC-05-0092-FOF-TP, Order Eliminating the Default Local Calling Area.
[31] See FCC 96-325, First Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, ¶1027, released August 8, 1996.

by-case basis based upon the states' historical practice of defining local service areas for wireline LECs. (TR 127)

Bright House asserts that, when an ILEC and a CLEC are establishing terms for intercarrier compensation, several statutory and regulatory provisions that define exchange access, telephone exchange service, and telephone toll service come into play when a state commission is asked to arbitrate terms and conditions for an ICA between parties. (TR 123-145; EXH 3, pp. 33-39) Bright House states the key interlocking statutory and regulatory materials are:

> 47 U.S.C. §153(16) (defining exchange access; 47 U.S.C. §153(47); (defining telephone exchange service); 47 U.S.C. §153(48) (defining telephone toll service); §251(b)(5) (stating that reciprocal compensation applies to all "telecommunications"); §251(g) (which temporarily exempts intercarrier compensation for "exchange access" from the general rule); and 47 C.F.R. §§703(a) and 701(a) and (b).

Witness Gates defines 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. He argues that Bright House's proposed definitions are based on those in the Act and specify where access charges are applicable to eliminate confusion about who should pay. He asserts that Verizon's proposed definitions do not include any definition for Meet-Point Billing traffic and that Verizon's definitions for Exchange Access and Telephone Toll traffic are not clear. (TR 123-145)

Witness Gates argues if a customer pays a separate toll charge, in addition to the basic local service charge for originating and terminating a call, that traffic is Exchange Access traffic and the carrier originating and terminating the call should pay access charges. He argues that, for intercarrier compensation purposes, it makes a difference who is actually providing the long distance service and assessing the toll charge. When the toll is being assessed by a party to the ICA, that party is supposed to pay access charges to the other party, whereas when the toll charge is assessed by a third-party IXC, access charges are to be paid by the third-party IXC to both parties that jointly provided the service to the IXC. (TR 129-133)

Bright House argues that Verizon's proposed definition of Toll traffic does not mention either party paying a toll, and is designed to maximize situations in which Verizon can require Bright House to pay access charges to Verizon. Witness Gates contends that Verizon's language hinders competition and penalizes Bright House for offering a larger calling area to its customers. (TR 135)

Witness Gates asserts that under its proposal each call exchanged between the parties could be classified as an access call or reciprocal compensation call, or traffic studies could be conducted periodically to identify a factor that identifies what portion of the total incoming minutes are access versus reciprocal compensation. He argues that both approaches are workable and describes how calls could be treated in either situation. Under the call-by-call method each carrier would record key information about the originating number, the terminating number and

the number of minutes the call lasts. Verizon could implement Bright House's proposal by updating its billing tables to reflect that calls from any Bright House exchange to any Verizon exchange in the Tampa LATA are to be treated as local calls. Bright House's proposal is straightforward and would require Verizon to update its computer database from time to time. (TR 249-251

If the call-by-call method is not workable, the parties could use the "factor basis". Under the factor basis traffic sent to each other would be studied over a specific time period to determine what portion of the traffic is local based upon each carrier's originating local calling areas. In Bright House's case, this approach would be extremely easy because 100% of Bright House's end users get local calling in the entire Tampa LATA. Witness Gates maintains that the use of factors based on "off line" studies to determine how to rate traffic between carriers is a very old, established, and a well understood practice in the industry. (TR 249-250; EXH 9, pp. 108-118) Bright House refutes Verizon's argument that its proposal is unworkable because different carriers have different local calling areas and some calls that are local calls to some carriers are toll calls to other carriers. Witness Gates asserts that, based upon its definition of toll traffic, the method for dealing with carriers that have multiple local calling plans is simple and straightforward. He states that the problem that might exist between Verizon and other carriers does not exist between Verizon and Bright House because Bright House customers can call anywhere within the entire Tampa LATA without incurring a toll charge. (TR 252)

Bright House argues that the payment of access charges should be determined by the smallest local calling zone within a LATA that the originating carrier offers to its end users and points out that it has §251(c) ICAs with the following ILECs in Florida: AT&T, CenturyLink, GTC/Fairpoint, Smart City, and Frontier. Bright House asserts that under the §251(c) ICA with AT&T that Bright House has a LATA-wide local calling arrangement and neither party pays the other party access charges for traffic exchanged between them. Bright House points out that under the current §251(c) ICA between Bright House and CenturyLink each party pays access charges based on Embarq/CenturyLink's local calling zones. (EXH 4, pp. 267-272) Bright House argues:

> if Verizon established a minimum, mandatory LATA-wide local calling zone for its customer in the Tampa LATA, Bright House would certainly agree not to charge Verizon interstate switch access charges for traffic its end users send directly to Bright House via the parties' interconnection facilities.

Verizon

Verizon argues that, for intercarrier compensation purposes, the parties agree that the reciprocal compensation rate should apply for all local traffic and the access charges rate should apply for all long distance traffic. (TR 600; TR 663-664) Verizon's witness Munsell testifies that most the language in dispute appears to be semantic in nature. He states that much of the disagreement between the parties stems from Bright House's rewrite of Verizon's model ICA in a way that redefines some terms in manner that renders them inappropriate to use in the new ICA. (TR 599-600)

Witness Munsell asserts that Verizon's Commission-approved local exchange area should be used to define and classify traffic because it provides a known, uniform, and competitively neutral standard with metes and bounds for determining whether a call is local or long distance. (TR 599-602) He points out that at least nine other Commissions[32] found that Verizon's proposal should be accepted and rejected Bright House's proposal that would define and classify traffic based on the local calling area of the calling party. Verizon also points out in the Global NAPs Arbitration[33], the Commission accepted Global NAPs proposal but it was never implemented because Global NAPs never provided details necessary to implement the originating carrier's plan. Witness Munsell maintains that Bright House's proposal uses a shifting standard that is unworkable and prone to manipulation. The local calling areas set by some carriers might offer their end users local calling within a city, region, state or even nationwide. Since different carriers offer different calling plans and exchange million of minutes, it would be almost impossible to determine what calls are local and what calls are long distance if Bright House's method for categorizing the calls are used. (TR 600-605; TR 670-673)

Bright House's proposal for categorizing traffic is also unworkable because Verizon's billing systems cannot determine intercarrier compensation on a caller-specific basis that varies based upon the caller's calling plan. Verizon's intrastate access tariff §6.3.3 provides for a percent interstate usage factor. Verizon's interconnection agreements also provide that, when there is not enough information to determine the jurisdiction of a call, the factor method should be used. Bright House proposes that Verizon take a giant step backwards and use factors for traffic that its systems are currently capable of determining the jurisdiction of the called party. (EXH 5, pp. 30-31)

Pursuant to § 252(i) of the Act, other carriers can adopt the ICA between Bright House and Verizon[34]. Verizon argues that Bright House's approach is competitively unbalanced because it would allow Bright House to minimize its intercarrier compensation expenses while maintaining the same level of intercarrier compensation received from Verizon. (TR 665-668) Bright House's definition of toll traffic reflects a desire to change the intercarrier compensation regime in such a way that regime would rest solely upon the originating carrier's definition of toll traffic. Witness Munsell asserts that, under Bright House's proposal, the originating carrier would only pay access charges if the originating carrier charged its customer a toll because the call crossed that carrier's local calling zone boundary. Likewise, if the originating carrier defined its local calling area as local, regardless of the distance the call transversed without paying a toll, then that carrier would only pay the reciprocal compensation rate. (TR 669-676; EXH 9, pp. 75-79) Verizon argues that Bright House's contention that Commission precedent supports its position lacks merit. To the contrary, the Florida Supreme Court's decision, which

[32] When this issue was addressed some years ago, the following nine state commissions rejected Bright House's proposal: Rhode Island, Ohio, Vermont, Massachusetts, Delaware, California, New Hampshire, New York, and Maryland.

[33] In re: Petition by Global NAPS, Inc. for arbitration pursuant to 47U.S.C. 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc. Final Order on Arbitration, Docket No. 011666-TP, Order PSC-03-0505-FOF-TP (Global NAPs Arbitration Order (July 2003)

[34] The Act requires a local exchange carrier to make available any interconnection, service, or network element provided under an ICA approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

resulted in the Commission vacating its early decision[35] does not support Bright House witnesses' argument. Witness Munsell argues that decisions by several other jurisdictions also do not support Bright House's proposal. (TR 669-676)

Under Bright House's proposal it could establish its local calling area in a manner that would preclude it from ever having to pay access charges. Witness Gates claims that its necessary to clearly distinguish toll traffic and meet-point billing, which Verizon details in §§9 and 10 of the ICA, but Bright House fails to describe why the language needs to be changed. (TR 677-679)

ANALYSIS

Bright House and Verizon generally agree on how most of the different types of traffic exchanged between them should be classified and neither party stated disagreement with the definitions provided in the Telecommunications Act of 1996 and its governing rule. (Gates TR 122-124; Munsell TR 599-600) The party's disagreement relates to how the local calling area should be defined for purposes of intercarrier compensation. Specifically, Verizon asserts that all traffic should be classified as local or long distance based on the incumbent local exchange carrier's basic local exchange areas and Bright House argues the originating carrier's local calling area should be used. (Gates TR 129-145; TR 244-247; TR 599-605) Both parties claim that their proposal is competitively neutral. Bright House claims the parties exchange large amounts of traffic that is roughly balanced and generated in the same geographical area and Verizon claims the traffic is not roughly balanced. (Gates TR 139; TR 599-605)

The Act, its governing rules, FCC orders, and the prior Commission ruling provides a basis for how the Commission should resolve this issue. As a starting point, Section 251(c)(2) of the Act provides that Incumbent LECs have a:

> . . . duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access . . . 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.

Staff believes the definitions in the current ICA and any definitions the parties have agreed to during the negotiation of the new ICA, should apply in the new ICA. The record does not reflect that either Bright House or Verizon disagree with Act's definition of the following terms: exchange access, interLATA service, local access and transport area (LATA), telephone exchange service, and telephone toll service. However, disagreement exists among the parties regarding how traffic is defined and classified relative to these terms in the proposed language for the new ICA.

[35] FPSC Order Eliminating the Default Local Calling Area.

47 C.F.R. §§51.701 and 51.703 addresses the issue of reciprocal compensation. Specifically, the language in §51.701(a) and (b)(1) of the pricing rules state:

> The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers. Telecommunications traffic is defined as traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.

47 C.F.R. §51.703(a) provides that "each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier."

The FCC included the obligations of LECs in the 1996 Local Competition Order at ¶1027. Most recently the FCC in its 2008 Order[36] ruled that reciprocal compensation under §251(b)(5) applies to all telecommunications. The specific language in ¶ 15 reads:

> We need not respond to every other variation . . . . We find that the better reading of the Act as a whole, in particular the broad language of section 251(b)(5) and the grandfather clause in section 251(g), supports our view that the transport and termination of all telecommunications exchanged with LECs is subject to the reciprocal compensation regime in Sections 251(b)(5) and 252(d)(2).

The parties presented differing arguments regarding how traffic exchanged between them should be defined and classified in the ICA. However, based on the record evidence and the Commission's historical practice regarding local calling areas and reciprocal compensation, staff believes the basic local exchange area approved by the Commission for Verizon should be used to determine what traffic is local and subject to reciprocal compensation rates and what traffic is long distance and subject to access charges. Accordingly, the .0007 reciprocal compensation rate agreed to by the parties should apply to all local traffic and the applicable access charges should apply to all long distance traffic. Staff believes that by defining the local calling area in this manner it is more competitively neutral because both parties will pay each other access charges on all traffic that goes beyond the Commission-approved basic local exchange areas established for Verizon. Further, staff believes this method is consistent with the direction the FCC provided in the Local Competition Order at ¶¶1033-1035, when it determined that the classification of

[36]See FCC 08-262, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, In the Matter of High Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services, 24 FCC Red 6475(2008 at ¶¶7, 1-16, 22.)

traffic as exchange versus exchange access, should be decided on a case-by-case basis based on the states' historical practice of defining local service areas for wireline LECs.

CONCLUSION

The types of traffic (e.g. local, ISP, access) that are exchanged between the parties should be classified as either local traffic (compensated at reciprocal compensation rates) or interexchange traffic (compensated at access rates) based on the ILEC's basic local exchange areas.

Issue 41: Should the ICA contain specific procedures to govern the process of transferring a customer between the parties and the process of local number portability ("LNP") provisioning? If so, what should those procedures be?

Recommendation: Yes. The ICA should contain specific procedures to govern the process of transferring a customer between parties and the process of number portability provisioning. In addition, staff believes the parties should be compensated for providing "coordination." (Hawkins)

Position of the Parties

Bright House: It is just, reasonable and fair to require the parties to provide coordination to each other, at no charge, in the case of the porting of telephone numbers of customers with ten or more different numbers to be ported.

Verizon: The parties' existing ICA already contains specific procedures governing the process of transferring a customer between the parties and providing LNP provisioning. It is not appropriate to include Bright House's new provision requiring that coordination services be provided free of charge in connection with customer ports.

Staff Analysis:

The parties have resolved all but one aspect of this issue. Specifically whether or not Bright House should compensate Verizon for "coordination." (Bright House BR at 12; Verizon BR at 45-46) Bright House maintains that "coordination" between the two parties for a single customer with a large number of lines should be done at no charge. (Bright House BR at 12; TR 200) Verizon, on the other hand, believes "coordination" is a separate, additional service that requires compensation. (Verizon BR at 45-46)

PARTIES ARGUMENTS

Bright House

Witness Gates states that it is necessary to include a step-by-step set of procedures in the ICA that "choreographs" what happens when a customer moves from one carrier to another. These procedures will be a contractual mechanism for identifying and resolving any issues that might occur during the "coordination" process. (TR 175) He states further that "coordination" means having operational staff involved in actual dialogue to make sure the porting process proceeds: 1) as planned; 2) to make any corrections, and if needed; 3) to reverse any steps that have been made to transfer the customer and to reschedule the transfer for another time. (EXH 3, p. 89)

Witness Gates contends "coordination" makes all the difference when porting a customer with many lines, as opposed to, the transfer of a customer with a single residential line. If a problem occurs during the porting process for a hospital, a school or government department, hundreds of people are affected. Not taking any customer lightly, witness Gates testifies that every port should transfer smoothly, but if a problem occurs with the porting of a single

residential line, it would only affect that customer and the people who call that customer. (EXH 3, p. 89)

Witness Gates states "coordination" should be done at no cost to either party for three reasons:

> 1) Regarding recovery of number portability costs, the FCC has rules that contain no exception for "coordination." (TR 200)
>
> 2) Bright House can not charge Verizon when it ports a number to Verizon and Verizon can not charge Bright House when it ports a number. It goes both ways. When either company loses a multi-line customer to the other, the companies will be required to coordinate with each other. (TR 200)
>
> 3) There should not be a charge for "coordination" because if allowed, the carrier(s) are, in effect, being penalized for gaining a large business customer from the other carrier. (TR 200)

Witness Gates maintains that cost recovery for "coordination" is not consistent with the principals of competitive neutrality and that the FCC has determined that carriers may not recover number portability costs from other carriers through interconnection charges. He further asserts that customers benefit when the process of transferring customers between carriers is low cost and efficient. (TR 201)

Witness Gates testifies that, contrary to Verizon witness Munsell's testimony, Bright House is not trying to obtain "expedited" porting of multi-number business accounts either at all or for free. Bright House understands and further agrees with Verizon that requesting to "expedite" a porting request, may be subject to additional fees. Witness Gates asserts that witness Munsell does not understand Bright House's proposal. He further explains that Bright House's proposed language simply requires that when a single customer with a large number of lines/phone numbers is being transferred, the parties should "coordinate" the activity within a normal schedule for accomplishing the multi-line port. (TR 202)

Verizon

Witness Munsell defines LNP provisioning as the process by which a customer retains his or her phone number when switching from one carrier to another. The customer can still make and receive calls using that number with the new service provider. (TR 611) The transfer of a phone number to a new service provider is a "port" of that number. He further states that LNP provisioning, most times, is an automated process that requires little time or effort to conduct. Witness Munsell contends that Verizon does not assess any charges for LNP provisioning, regardless, of how many numbers are being ported for a single customer or end user. (TR 614)

Verizon refers to "coordination" as the situation in which human involvement is required providing monitoring, staying on the line during or after the time a port is scheduled or otherwise communicating with another carrier to facilitate a port and to ensure the process takes place in a certain way or certain time. (Verizon BR at 46-47)

Verizon defines a "coordinated port" as one which a party provides additional coordination services beyond those typically associated with a simple port. (EXH 2, p. 7) A "simple port" transfer is done through an automated process that requires little time, effort or supervision by the parties' employees, whereas, a coordinated port is a different service that requires manual, human operations from several, different departments and operational staff. (EXH 2, p. 7)

Witness Munsell states that "coordination" is an ancillary service which is totally different from Bright House's interpretation. It requires time and attention that standard LNP provisioning does not. In this aspect, "coordination" does not represent LNP costs, but special handling costs. (TR 614) Verizon states that even if Bright House is entitled to free LNP ports, it is not entitled to unlimited coordination or other ancillary services free of charge. (Verizon Brief at 47-48) Verizon asserts that it will comply with the FCC rules but it should not have to agree to any unique contractual arrangements with Bright House that differ from the standard definitions used by the rest of the industry. (TR 613)

ANALYSIS

The parties have resolved all but one aspect of this issue and that is whether or not the ICA should provide that parties must "coordinate" their efforts when a single customer has a large number of lines being ported with no charge by either party. Staff notes that Bright House and Verizon agree that there should be no charges for direct LNP costs and expediting a "port" is subject to additional fees. (TR 611; TR 202)

Staff believes the parties should be compensated for "coordination" because it requires manual, human interaction between different and multiple departments. It requires time and attention that standard LNP provisioning does not.

CONCLUSION

Staff recommends that the ICA should contain specific procedures to govern the process of transferring a customer between parties and the process of local number portability provisioning. In addition, staff believes the parties should be compensated for providing "coordination."

Issue 49: Are special access circuits that Verizon sells to end users at retail subject to resale at a discounted rate?

Recommendation: No. Special access circuits that Verizon sells to end users at retail are not subject to resale at a discounted rate. (Gowen)

Position of the Parties

Bright House: All Verizon retail services sold to end users are subject to the discount. The only exception is "Exchange Access" services. Special access services sold to retail business customers for point-to-point data services are not "Exchange Access," so the discount applies to them.

Verizon: No. The FCC has ruled that special access services are not subject to the resale discount.

Staff Analysis:

Bright House wants to purchase point-to-point services from Verizon at discounted rates rather than at tariffed rates as proposed by Verizon. Point-to-point services are direct lines from one point to another on a network without the need for switching. The discount applies to services sold to end users at retail prices.

PARTIES' ARGUMENTS

Bright House

Verizon is required to allow CLECs to purchase, at wholesale (discounted rates) rates, any telecommunications service that Verizon sells at retail. (Gates TR 181) Verizon offers business private line data services out of its "special access" tariff. These are not "exchange access services" having nothing to do with the origination or termination of toll calls. (Bright House BR at 10) Bright House wants to resell the retail special access offerings that Verizon is providing. (EXH 9, pp. 82-84)

Exchange access refers to the use of local facilities for the origination and termination of telephone toll services. (Gates TR 183, 339) Exchange access services are not provided at retail because they are used as an input to telephone toll service and the FCC ruled that this discount obligation does not apply to "exchange access services as defined in section 3 of the Act." (Gates TR 181; Bright House BR at 10) An activity is not exchange access service unless the traffic originated or terminated constitutes telephone toll service. Exchange access and telephone toll services are closely connected. (EXH 3, p. 35)

All services that an ILEC offers on a retail basis to subscribers that are not telecommunications carriers are subject to the discount. (EXH 3, p. 40) There are significant applications where Verizon provides point-to-point services to companies on a retail basis. (EXH 9, p. 84) Point-to-point special access data circuits are non-switched circuits that go from one point to another in a network. (EXH 9, pp. 82-84) Point-to-point data services, or special access

service, are often provided to companies for transmitting data between locations and to construct their data networks. These special access services are offered at retail and are not used in support of telephone toll service. (Gates TR 182-184; Bright House BR at 42) There is no exception in the rule for point-to-point data services an ILEC provides to retail customers, point-to-point data transmission for business customers does not meet the exchange access definition. Therefore, there is no exception for point-to-point data services an ILEC provides to retail customers. (EXH 3, p. 40)

Verizon

Bright House is proposing to revise the Interconnection Agreement (ICA) to state that point-to-point special access services provided to end users for purposes of data transmission are not exchange access services; therefore, the wholesale discount would apply. (Vasington TR 464-465) Verizon believes that special access is not subject to the Act's resale requirements and the resale discount based on law. (EXH 12, p. 14)

Both parties agree that exchange access means the offering of access to telephone exchange services for the purpose of the origination or termination of telephone toll services. (Vasington TR 497-498; EXH 3 p. 35) Local exchange carriers originate and terminate calls for long distance companies. When it is done through a switch, it is called switched access, charged on a per-minute basis. When it is done through a direct connection, it is called special access, charged at a capacity-based rate for the facility. (Vasington TR 493, 499) Special access is designed to be sold to customers at tariffed rates, which doesn't change whether or not retail customers buy them. (EXH 12, p. 18-34)

Point-to-point special access connects two locations but does not go through a switch. (EXH 13, p. 22) Point-to-point special access service is not eligible for the resale discount because it is offered predominantly to carriers and thus is not a retail service. Those carriers are able to use the service as a wholesale input for services they provide to their own retail customers. (EXH 2, p. 21)

The FCC's rule states that retail services have to be made available for resale at an avoided cost discount. (EXH 12, p. 15) The FCC has ruled that ILECs do not have to offer exchange access services at a resale discount due to the service being offered predominantly to carriers rather than end user customers. The FCC explained that non-retail services are offered pursuant to tariffs which does not restrict their availability to end users. A small number of end users do purchase some of these services, but it does not alter the essential nature of the services. (Vasington TR 465-466; 494; Verizon BR at 48-49)

In the Triennial Review Remand Order (TRRO), the FCC has explicitly excluded special access services from the provisions of the Section 251(c)(4) which is the obligation to offer a wholesale discount. (Vasington TR 495-496; Verizon BR at 49)

ANALYSIS

Staff notes that in the testimony the terms "wholesale" and "discounted" are used interchangeably relating to retail and wholesale purchases. The dispute here is whether point-to-point services are available for purchase at discounted rates rather than at tariffed rates. The position of the parties are:

- Bright House argues that point-to-point services are sold at retail by Verizon to customers other than telecommunications carriers. Because Verizon sells point-to-point services to retail customers, Bright House reasons this makes the service eligible for discount.

- Verizon states that point-to-point services are special access service, which is a form of exchange access. Based on Section 47 CFR 51.605, TRRO paragraph 51, and the Local Competition Order (LCO) paragraphs 865 through 877 Verizon argues these provisions exempt these services from being sold at discount.

Staff believes that point-to-point services are special access service which is a form of exchange access. Exchange access is exempt from resale at discounted rates based on Section 47 CFR 51.605(b) and the LCO paragraph 873.

Section 47 CFR 51.605 states:

> (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 that are, at the election of the state commission-
>
> (1) Consistent with the avoided cost methodology described in 51.607 and 51.609; or
>
> (2) Interim wholesale rates, pursuant to 51.611.
>
> (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.

The LCO paragraph 873 states:

> Exchange access services are not subject to the resale requirements of section 251(c)(4). The vast majority of purchasers of interstate access services are telecommunications carriers, not end users. It is true that incumbent LEC interstate access tariffs do not contain any limitation that prevents end users from buying these services, and that end users do occasionally purchase some access services,

> including special access . . . for large private networks. Despite this fact, we conclude that the language and intent of section 251 clearly demonstrates that exchange access services should not be considered services an incumbent LEC "provides at retail to subscribers who are not telecommunications carriers" under Section 251(c)(4) . . . .

Special access is exempt from discounted rates based on the TRRO at paragraph 51 footnote 146 which states:

> Special access services, however, provide competitors with one wholesale input, rather than with a retail service; competitors generally combine this wholesale input with other competitively provisioned services or facilities to build a complete service, which is then offered to retail customers. Thus, the Commission has explicitly excluded special access services from the ambit of Section 251(c)(4).

Where Section 251(c)(4) of the Act states:

> (c) In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:
>
> (4) The duty-
>
> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunication carriers...

Verizon witness Vasington states point-to-point services, being a direct line from one point to another on a network without the need for switching, can carry traffic that is exclusively data. In cases where transmission of data is point-to-point and there is no need for origination or termination of telephone toll service. (TR 501) In that instance, Staff believes point-to-point services would not meet the definition of exchange access service. On the other hand, Bright House witness Gates admits that point-to-point special access circuits could be used for calls routed through Bright House's switch. (EXH 9, p. 84) This means those circuits could provide exchange access services. (Verizon Reply BR at 20) Since there is the opportunity for point-to-point services providing exchange access staff concludes that point-to-point services are a form of exchange access and are subject to Section 47 CFR 51.605(b), which states exchange access services are exempt from resale at discounted rates.

CONCLUSION

Special access circuits that Verizon sells to end users at retail are not subject to resale at a discounted rate.

Issue 50: Should this docket be closed?

Recommendation: No. The parties should be required to submit a signed final interconnection agreement. Staff recommends that the docket remain open for the parties to file the final interconnection agreement for staff approval within 45 days of issuance of the Final Order. (Murphy)

Staff Analysis:

Staff recommends that the docket remain open for the parties to file the required final interconnection agreement for staff approval within 45 days of issuance of the Final Order.