BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.	DOCKET NO. 090501-TP ORDER NO. PSC-10-0711-FOF-TP ISSUED: December 3, 2010

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FINAL ORDER

BY THE COMMISSION:

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I. BACKGROUND

On November 3, 2009, Bright House Networks Information Services (Florida), 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 that the Florida Public Service Commission (Commission) arbitrate unresolved issues and establish terms and conditions for an ICA 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 subjects. By the May 13, 2010 prehearing conference, only eight issues remained unresolved. An evidentiary hearing was held May 25, 2010, on those remaining issues. The parties filed post hearing briefs on July 9, 2010. On July 30, 2010, the parties filed reply briefs. On August 3, 2010, Bright House filed an amended reply brief.

This Commission has jurisdiction over the subject matter pursuant to Chapters 364 and 120, Florida Statutes.

II. ISSUES

A. Changes in Law or Circumstances

This issue was originally cast as 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 proposed "Withdrawal of Services" language should be included in the ICA.

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; eliminates certainty that is required to run a business; is vague; conflicts with other notice language in the ICA; provides Verizon with "the right to renege on the traffic compensation deal the parties have already agreed to;" 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; provides unilateral rights to Verizon, is one sided and unfair; provides Verizon with complete control over its obligation to pay for services it receives under the contract; is unreasonable and subject to Verizon's whim; is not the best way to serve customers; is disconcerting, creates uncertainty, "would deny opportunity to operate as a CLEC as it relates to providing service to

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

[Bright House's] VoIP affiliate;" and, is inappropriate as general terms and conditions of the ICA.

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***." (emphasis in original). As such, Bright House concludes that it is difficult to identify *any* contractual activities not covered by the definition. 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 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); 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; it makes a "mockery" of the negotiation and arbitration process; Bright House has a right to interconnect pursuant to Section 364.13, Florida Statutes; and, Bright House "is entitled to reasonable certainty in its contractual relations with Verizon."

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.

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.

<u>Verizon</u>

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. 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." Verizon contends that the proposed language

clarifies that "where a change in law or facts negates Verizon's obligation to provide a service or facility, the ICA is not intended to override constraints on Verizon's legal obligation to provide such services or facilities. . . . 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." (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." 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." 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.

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. Verizon describes Bright House's objections to §50 as "steeped in hyperbole." Verizon concludes that §50 provides adequate protection to Bright House because it: is limited to services and payments; does not apply to the implementing details of the ICA; does not apply to the FCC's requirement governing exchange of traffic ("mirroring rule"), which is required by law; is carefully limited and appropriately protects both parties; provides an opportunity for Bright House to seek legal relief from the Commission; would apply when there is no duty to provide or to pay and thus, there is nothing to negotiate; and, is consistent with Commission precedent in Order No. PSC-05-0492-FOF-TP, issued on May 5, 2005, in response to revisions to the FCC's unbundling rules.

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

In response to Bright House's concerns regarding §50, Verizon asserts that: "[t]here is very little in dispute under [the issue];" 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; "[t]he parties have already agreed upon similar self-effectuating language in [General Terms and Conditions] §4.7;" the 30 day notice requirement protects Bright House; Bright House's fears related to Verizon walking away from the ICA are unwarranted; 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.

Decision

Having reviewed the record, we find that Verizon is persuasive in its argument that the ICA is not a mutual voluntary agreement and that the "Withdrawal of Services" language 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. Thus, we find that Verizon shall be allowed to cease performing duties provided for in this agreement that are not required by applicable law; depending on the circumstances, such cessation shall be handled pursuant to either the "Applicable Law" or "Withdrawal of Services" provisions in the General Terms and Conditions of the ICA.

B. Time Limits for Bills and Disputes

We have been asked to determine the time limits for the parties to bill for services and dispute charges for billed services. Bright House favors one year; Verizon favors five years.

Bright House

Bright House asserts that this issue was addressed by this Commission in a previous docket and, nonetheless, asks that we revisit our prior decision. Bright House acknowledges that a certain amount of billing errors, failures to bill and billing disputes about rates, will occur. Bright House contends that a one year period will allow the errors to be corrected and the bill(s) finalized and closed. Bright House argues that Verizon's position results in no certainty or clarity because it will not be known for years whether Verizon would seek additional payment for services already provided or vice versa.

In support of the one year timeframe, Bright House asserts the following: 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; 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; and, the parties need to close their accounting books within a reasonable time.

Verizon

Verizon asserts that Bright House's language would require Verizon to contractually waive its rights to receive payments that it otherwise would be entitled to receive and to challenge illegitimate charges assessed by Bright House.

Verizon argues 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." Verizon asserts that 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. Moreover, Verizon contends that 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.

Verizon argues that in the Covad/Verizon case, this 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." Verizon asserts that our reasoning in that case should still apply. Specifically, Verizon contends that the statute of limitations which allows five years for back-billing and billing disputes should apply.

Decision

Verizon argues that Chapter 95, Florida Statutes, provides the appropriate time limit (five years) for parties' to bill for services and dispute charges for billed services. Bright House argues one year is ample time.

We find Bright House to be more persuasive for the following reasons. 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. One year may provide a more reasonable timeframe regarding accounting for liabilities, obligations and debts a company owes. 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, the question before us is not how long the appropriate time is to *resolve* a dispute but rather, the appropriate time in which a dispute should be *raised.* Finally, Verizon acknowledges that most of its systems are fully automated from end to end which reduces errors and increases the speed for billing and that the company strives for accurate and timely billing at all times. Thus, we find that errors and billing delays, if any, should be minimal.

We are not persuaded by Verizon's assertion that our prior decision must govern this case. First, as a decision that resulted from a two-party arbitration, it is not binding in the instant case. Second, Bright House made arguments that were not raised in the referenced proceeding. Bright House asserts that the statute of limitations determines when a party may file a lawsuit for breach of contract and does not establish contractual billing provisions. Bright House also asserts that statutes of limitations are to protect defendants from unfair surprise and stale claims. We concur and find that a one-year time limit shall 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.

C. Pricing for Facilities from Bright House's Network to the Point of Interconnection

The question before us is how 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.

Bright House

Bright House asserts that 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." It is Bright House's position that "Whatever facilities are used to connect the Bright House facilities, whether it's from the switch or from the [collocations] to the tandem, those are interconnection facilities, which have historically been referred to as entrance facilities." Integral to Bright House's argument regarding pricing for access toll connecting trunks is an assertion that the facilities are used to provide "exchange access." Bright House relies on 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." Bright House 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.

Bright House currently pays special access rates for access toll connection trunks and is apparently willing to continue the practice. However, the agreement, "only applies as long as that specific configuration 'remains materially unchanged.'"

In its brief, Bright House reiterates its analysis of the Act and federal rules but provides no further legal citations or references to jurisdictions in which the compensatory scheme it seeks to advance is currently in place.

Verizon

Verizon asserts that incumbent local exchange companies (ILECs) are not required to provide access toll connecting trunks at TELRIC rates. Verizon argues that:

> [t]he FCC found in its Triennial Review Remand Order[2] (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.

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

Specifically, Verizon relies upon 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.

Verizon disputes Bright House's assertion that access toll connecting trunks should be priced at TELRIC rates. Instead, Verizon argues that it "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." Verizon contends that access toll connecting trunks can not be viewed as interconnection facilities between Bright House and Verizon because they do not link the ILEC and the CLEC's networks: "[t]hey 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."

Verizon is concerned that "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." Verizon concludes that the result 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."

Verizon argues the we should refrain from ruling on the issue of pricing for access toll interconnection trunks, citing a change in Bright House's testimony between direct and rebuttal. Verizon contends that Bright House originally presented the issue as one involving entrance facilities and subsequently changed the thrust of its testimony to make the issue one of pricing for access toll connecting trunks. Verizon concludes that "[b]ecause § 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."

<u>Decision</u>

As a preliminary matter, we consider Verizon's argument that we should not address the issue of pricing for access toll interconnection trunks. Bright House argues that Verizon had ample opportunity to object to the Bright House testimony in question and that Verizon's position is tantamount to a motion to strike, which should have been filed prior to May 13, 2010

prehearing. We concur with Bright House that Verizon's request to ignore the testimony of witness Gates is untimely and tantamount to a motion to strike.

The foundation of Bright House's request for TELRIC pricing is that the trunks in question are used "in support of interconnection" and therefore, must be priced according to TELRIC principles as though they are interconnection facilities. However, as the uncontested testimony of Verizon demonstrates, 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.

Further, as 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." Moreover, as Verizon asserts, the FCC ruled in the TRRO that ILECs are not required to provide unbundled access to entrance facilities. Neither party disputes that the trunks in question are entrance facilities.

Bright House's argument in favor of TELRIC pricing for toll access connecting trunks is further undermined by its failure to provide legal precedents in support of its interpretation of the Act or the FCC's rules. Indeed, when asked directly 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), Bright House responded, "Bright House is not, at this time, aware of an FCC ruling addressing this specific arrangement."

Bright House acknowledges that it purchases special access facilities from Verizon to transport interexchange traffic to and from its customers, and then, in turn, assesses special access fees on interexchange carriers out of Bright House's special access tariff.

We find that the requiring TELRIC pricing for toll access connecting trunks would replace the current -- balanced -- compensatory scheme with financial asymmetries that would benefit Bright House exclusively. 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.

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 argues that the cases cited relate to "this specific issue." However, Verizon disagrees.

Upon review, we find 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. In contrast, the issue presented in the instant proceeding concerns 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. In sum, we find that Bright House has failed to demonstrate that the access toll connection trunks at issue in this proceeding should be priced according to TELRIC principles.

D. Trunking/Physical Interconnections

The parties concur that the issues related to trunking and physical interconnection signal level are settled for current physical interconnections as long as the physical arrangement does not change. However, Bright House is concerned about the pricing of multiplexing for future interconnections. Verizon contends that Bright House is asking this Commission to address the issue in the abstract without reference to any specific network configuration.

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 and that without the pricing principles it is impossible to determine the impact of any network rearrangement. Bright House is concerned about network efficiency, points of failure for multiplexing,[3] and the cost of multiplexing. Bright House wants to exchange traffic with Verizon at DS3[4] or OC3[5] levels without charges for multiplexing. Bright House makes arguments regarding TELRIC pricing principles, technically feasible points, transport, and parity to eliminate the cost of multiplexing.

Bright House's arguments related to future interconnections follow. 1) 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, there would be no cost associated with multiplexing. 2) Bright House 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. 3) Multiplexing is a part of the transmission of traffic and is a part of the transport function based on the interconnection point. 4) Verizon is obliged to offer interconnection to Bright House that is at least equal in quality to that which Verizon provides itself, to any other interconnector, or third party.

[3] 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.
[4] DS3 is equivalent to 28 digital signal level 1s (DS1); where a digital signal level classifies the capacities of digital lines and trunks.
[5] OC3 is equivalent to 3 DS3s

Verizon

Verizon argues that we should not make any decisions on future interconnection with respect to the treatment of multiplexing because Bright House is asking us to address this issue in the abstract without reference to any specific network configuration.

Verizon's arguments related to future interconnections follow. 1) Verizon does not have an obsolete network. Verizon's network is designed to ensure network redundancy and survivability; multiplexing of DS3 traffic at Verizon's tandems is necessary. There are no industry standards, rules, regulations, or statutes identifying an efficient level of service for interconnections. In Verizon's network, DS1 ports better manage the traffic coming into a switch. 2) 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 it would be inefficient for Verizon to install DS3 interfaces to accept Bright House's traffic due to the interfaces far exceeding Bright House's demand. 3) Dedicated multiplexing being used by Bright House to deliver traffic at the DS1 level to Verizon switches is not part of the transport function. Multiplexing is a tariffed service, and therefore is not a part of the transport function. 4) Verizon uses the same switches with a DS1 interface for Bright House as it does for other ILECs, CLECs, and wireless carriers.

Decision

Bright House is asking this Commission to address future interconnections without reference to any specific network configuration. Upon review, we are persuaded by Verizon that we should not make decisions at this time regarding such future interconnections and the treatment of multiplexing related thereto. Bright House has not presented sufficient justification to warrant a ruling on issues that *may* exist at some time in the future. While we refrain from deciding such issues at this time, this decision does not prohibit Bright House from determining a new network configuration and, if necessary, coming before this Commission at a later date.

E. Meet-Point Billing and Tandem Functionality

We have been asked to determine appropriate terms for meet-point billing, including how the meet-point arrangement should be implemented when Bright House provides the tandem switching function.

Bright House

Bright House describes meet-point billing as an arrangement by which two LECs provide access service to a third-party IXC. Under such an arrangement, traffic is exchanged at a "meet-point" that serves as the demarcation point at which the responsibility of one party ends and the responsibility of the other party begins. Each LEC bills the third-party IXC for the services the respective LEC 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 has proposed definitions for exchange access, telephone toll, and meet-point billing traffic and asserts these definitions clearly delineate the arrangement and applicable rates when

the traffic is Verizon's traffic verses the traffic of an IXC. Bright House references industry standards explaining the meet-point billing.

Bright House asserts that the new ICA will specify a point for the exchange of local traffic and that it makes sense to use the same point for third-party IXC toll traffic. 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. Bright House concludes that Verizon does not understand the meet-point billing arrangement that Bright House proposes. 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. While Verizon contends that Bright House's proposal could not work because a switch can only subtend a single tandem for any given NPA/NXX, Bright House disagrees.

Dismissing Verizon's arguments regarding technical limitations, Bright House argues that 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 at which Bright House and Verizon exchange their local traffic. With respect to the location of the meet-point for the exchange of third-party traffic Bright House asserts that:

> 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** "exchange access" – which . . . is any traffic associated with toll calls. (emphasis in original).

Bright House 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.

Bright House asserts that its proposed arrangement was contemplated by the FCC for more than a decade and would provide long distance carriers two tandem providers from which to choose. Bright House argues the following. 1) 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. 2) Bright House is capable of receiving and switching traffic from third-party IXCs onto trunks that connect directly to Verizon's end offices. 3) The same trunks that carry other traffic, including local and intraLATA toll traffic, can be used for terminating switched access traffic bound for Verizon's end office switches.

Verizon

Verizon argues the language in §§ 9 and 10 of the ICA Attachment should apply to meet-point billing and the language proposed by Bright House regarding these sections is problematic, unnecessary, and should be rejected for the reasons we rejected similar language in 2001.

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) under Verizon's FCC Tariff No. 14. Verizon disputes that it is engaging in anticompetitive conduct regarding access tandem switching and counters that it is Bright House which seeks to remove competitive choice from the market. Verizon argues that a local exchange carrier is not required to subtend any particular tandem and, from a network routing perspective, it cannot subtend more than one tandem for any given NPA/NXX. Verizon chooses to subtend its own tandem and asserts that it should not be forced to subtend Bright House's tandem absent any legal or policy support for what Bright House is proposing. Verizon argues that the language proposed by Bright House would require Verizon to handle traffic in ways that Verizon can not.

Verizon argues that Local Interconnection Trunks are used to carry local traffic for a local carrier and that 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 a carrier identification code (CIC) that must be signaled along with the call through the network. 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. Verizon asserts that local interconnection trunks lack the data necessary to permit the access tandem provider to route interexchange calls to the appropriate IXC.

Verizon contends that under Bright House's proposal, 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. Verizon argues 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 so that the Verizon end offices would, in at least some circumstances, subtend the Bright House switch.

Verizon argues the following. 1) Its tandem allows IXCs to receive or pass off long distance calls to (or from) virtually all local carriers and their customers in the area. 2) 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. 3) The changes proposed by Bright House are inappropriate for a § 251(c) ICA because the competitive service Bright House wants to provide is for the benefit of IXCs and not Bright House's end user customers.

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 a Bright House end user by identifying the proper 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; a contrary meet-point architecture would not work.

Decision

Bright House and Verizon agree on the following. 1) 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. 2) The MECAB and MECOD meet-point billing guidelines apply to situations in which two or more LECs jointly provide access services to third-party IXCs. 3) The meet-point should be mutually decided by the parties and neither party bills the other because they are not providing services to each other but to a third-party carrier. 4) Meet-point billing is an arrangement by which a carrier uses its facilities to route traffic to a demarcation point at which the carrier delivers traffic to another carrier.

Bright House and Verizon disagree on how the meet-point arrangement should be implemented and how to address Bright House handling the tandem switching function. Currently, the meet-point for the exchange of third-party IXC traffic is at a port on Verizon's tandem. Bright House contends that the meet-point should be moved from Verizon's access tandem to its collocation at Verizon's end office. Verizon argues that the meet-point should not be moved as Bright House proposes but should be mutually agreed to by both parties.

We observe that the point of interconnection (POI) and the meet-point are selected differently and apply to different types of traffic. The meet-point is a point of interconnection that the parties negotiate for the exchange of third-party IXC traffic. The meet-point is not the POI for the purpose of linking two networks for the mutual exchange of local traffic; however, Bright House would have us ignore this distinction. Upon review, we find the following:

1) Verizon can accommodate Bright House operating as a competitive tandem provider via provision of TSS under Verizon's FCC Tariff No. 14, and Bright House's proposal would require Verizon to divert or handle traffic in ways that Verizon is not capable of doing.

2) The DEOTs the parties have established are used to carry local traffic and not meet-point billing traffic from third-party IXCs.

3) The terms proposed by Bright House are inconsistent with how we addressed this issue in a previous arbitration docket.

4) Pursuant to the MECAB/MECOD guidelines recognized by both parties as industry-standard, Bright House and Verizon should mutually agree to the demarcation point and each LEC should bill the IXC for the functions the LEC provides. Because the parties have not

agreed on a different location for the meet-point, we find that it shall remain at Verizon's tandem.

5) 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. Pursuant to § 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 the parties mutually decide the meet-point at which they exchange traffic from third-party IXCs.

Based on the foregoing, we find that the terms proposed by Verizon shall apply to meet-point billing including Bright House's functionality as a competitive tandem provider for exchange access services. The meet-point for the exchange of third-party IXC traffic shall be mutually decided by the parties, and Bright House shall obtain functionality as a competitive tandem provider through the provision of Tandem Switch Signaling (TSS) under Verizon's FCC Tariff No. 14.

F. Financial Responsibility for Transited Third-Party Traffic

We have been asked to address the payment obligations for third-party traffic Bright House transits to Verizon for termination.

Bright House

Bright House does not dispute that it should pay Verizon for terminating Bright House's intraLATA toll traffic. However, Bright House asserts that, when a third-party, including an IXC affiliate, sends traffic to Bright House's network for termination by Verizon, such traffic should be handled as meet-point traffic because Bright House is providing tandem switching functionality for that third-party. Bright House asserts the following. 1) The FCC has established that, in a meet-point billing arrangement, the LEC providing access service bills the IXC for the portion of access service it provides. 2) Bright House is not aware of any issue Verizon has with how meet-point billing between two LECs should be handled. 3) Bright House and Verizon each should have the same responsibility for third-party traffic transited to the other's network. 4) When Bright House's affiliates or other third-parties deliver inbound long distance traffic to Verizon, the meet-point billing rules should apply. 5) The dispute between Bright House and Verizon on this subject is limited to local transit traffic that Bright House might deliver to Verizon from third-party carriers. 6) When Bright House transits local traffic from a third-party carrier, the third-party carrier should be responsible for paying Verizon based on the cost causation principle requiring the originating carrier to pay.

Verizon

Verizon asserts that (contrary to Bright House's contention) meet-point billing arrangements are for jointly provided switched exchange access traffic and not transit traffic from third parties. Verizon argues that such meet-point arrangements are not appropriate and

would not work for local traffic. Verizon contends that the language in §8.3 of the ICA acts as a check on potential arbitrage and 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. Verizon contends that Bright House is simply seeking to avoid its financial responsibility.

Verizon argues the following. 1) Pursuant to §251 of the Act, a carrier is entitled to a direct interconnection with Verizon. 2) 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. 3) 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. 4) 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. 5) 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; this conclusion is consistent with the language in Section 8.3 of the proposed ICA.

Verizon asserts 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.

Decision

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. However, in its brief and reply brief, Bright House maintains that the only remaining dispute involves local transit traffic that Bright House might send to Verizon. In this context, Bright House argues that when it transits third-party local traffic (as opposed to third-party IXC traffic) the cost causation principle requiring the originating carrier to pay should apply.

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 the foregoing definitions and Bright House's definition of "meet-point billing" traffic[6], we find Verizon to be persuasive and that meet-point billing arrangements are designed to address third-party jointly-provided switched exchanged access traffic and not local transit traffic.

[6] A situation in which a third-party IXC uses both Bright House and Verizon to connect to an end user being called.

However, we find that Verizon is unpersuasive when it argues that, in order to reduce the opportunity for arbitrage, Bright House should pay for transit traffic it delivers from third-party carriers to Verizon for termination. The originating carrier decides whether to send third-party traffic through Bright House for delivery and termination by Verizon. Moreover, it is the originating carrier which must deliver such traffic in a manner that can be identified, routed and billed properly. In this context, we find that the originating carrier is the "cost causer" and Verizon has failed to present record evidence to justify a shift from the generally accepted industry concept that the calling party pays. Upon review, and consistent with prior Commission orders, Rule 47 CFR 51.703(b), and the "cost causer" concept, we find that the originating party shall be financially responsible for local transit traffic delivered by Bright House to Verizon. Bright House shall not be financially responsible for third-party local transit traffic it sends to Verizon.

G. Verizon-Provided Facilities

We have been asked to determine whether 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.

Bright House

Bright House asserts the following. 1) The only issues in dispute are a) the demarcation point at which one party's financial responsibility ends and the other party's begins and b) the applicable pricing for facilities Bright House purchases from Verizon for the transmission and routing of third-party exchange access traffic. 2) Bright House's network is connected with Verizon's network via trunks and switches that run to Verizon's end offices and its tandems. 3) Bright House should be allowed to use those connections to compete with Verizon as a tandem provider. 4) 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. 5) 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. 6) Bright House currently exchanges meet-point billing traffic at switch ports on Verizon's tandem by purchasing interconnection facilities[7] from Verizon to connect the switch ports to collocations in Verizon's end offices. 7) 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. 8) If the meet-point is moved from the Verizon 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.

[7] 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.

Verizon

Verizon argues the following. 1) The only question presented about ATC trunks for arbitration was whether Bright House should pay Verizon for them. 2) Traffic is often exchanged between CLECs, wireless carriers, and IXCs indirectly through the ILEC's access tandem. 3) Bright House purchases ATC trunks for transport from Bright House's network to the Verizon tandem and these facilities may include multiplexing or other services that Bright House may build or purchase from Verizon or another carrier. 4) These trunks do not carry any Verizon traffic. 5) 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 pay Verizon for the functions it provides because that is the industry practice and the way Bright House and Verizon currently operate. 6) Under the current practice, each party recovers the costs over which that party has control. 7) 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 forced to collect facility transport charges from the IXC to recover a cost imposed by Bright House. 8) Bright House has three options for handling this type of traffic. a) When Bright House self-provisions its own facilities, Verizon would not charge Bright House any facilities charges for that connection. b) When 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. c) When 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.

Decision

Upon review, we find that 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 is entitled to select to interconnect its network with Verizon's network for the exchange of its access traffic. Under Bright House's proposal, the demarcation point, at which one party's financial responsibility ends and the other party's begins, would be at Bright House's collocation in Verizon's end office. Bright House contends that, 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 that are in dispute, which would result in Bright House no longer having to pay for them.

Bright House currently uses ATC trunks provided by Verizon for the exchange of traffic between Bright House and IXCs. Moreover, Bright House determines the number and locations of these trunks. 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. Bright House may reconfigure its network so that these facilities are no longer needed.

Upon review, we find Verizon to be more persuasive. If Bright House continues to use the Verizon ATC trunks instead of picking up the IXC traffic at Verizon's tandem or building these facilities itself, Bright House shall continue to pay for them. Verizon shall not be required to recover payment for these facilities from third-party IXCs under a meet-point billing

arrangement with Bright House. As such, the ICA shall 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.

H. Types of Traffic and Applicable Rates

We have been asked 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.

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.

Bright House

Bright House asserts that this issue has been resolved except for the terms that specify when Bright House must pay access charges instead of reciprocal compensation. Bright House proposes that traffic exchanged between the parties be defined and classified based upon the local calling area for the originating party. Bright House 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.

Bright House asserts the following. 1) 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 when such calls extend beyond the boundary of Verizon's local calling area. 2) 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). 3) 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. 4) 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. 5) Verizon wants Bright House to continue to pay access charges to Verizon for calls that Bright House neither treats as toll calls nor receives additional revenue.

Bright House asserts that this Commission ruled in a generic investigation that whether a call is subject to access charges or reciprocal compensation depends on the calling area of the originating carrier. Bright House acknowledges that the decision was later vacated based on the record in that proceeding but asserts that it was the correct decision and that we should reach the same decision in this proceeding.

Additionally, Bright House argues the following. 1) §251(c)(2) of the Act requires ILECs to provide interconnection to any requesting carrier for local competition. 2) Congress

realized that once the ILEC and CLECs started providing service in the same area and completing for the same customers, they would have to exchange traffic for completion. 3) 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. 4) The FCC has determined that the classification of traffic as exchange, rather than exchange access, should be decided on a case-by-case basis based upon the states' historical practice of defining local service areas for wireline LECs. 5) 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. 6) 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).

Bright House 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. Bright House argues that its proposed definitions are based on those in the Act and specify when access charges are applicable in order to eliminate confusion about who should pay. Bright House asserts that Verizon's proposal does not include any definition for Meet-Point Billing traffic and that Verizon's definitions for Exchange Access and Telephone Toll traffic are not clear.

Bright House argues the following. 1) 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. 2) For intercarrier compensation purposes, it makes a difference who is actually providing the long distance service and assessing the toll charge. 3) When the toll is being assessed by a party to the ICA, that party is supposed to pay access charges to the other party. 4) 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. 5) 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. 6) Verizon's language hinders competition and penalizes Bright House for offering a larger calling area to its customers.

Bright House argues that each call exchanged between the parties could be classified as an access call or reciprocal compensation call. In the alternative, traffic studies could be conducted periodically to identify a factor that identifies the portion of the total incoming minutes that are access versus reciprocal compensation. Bright House asserts that both approaches are workable and describes how calls could be treated in either situation. Bright House concludes that its proposal is straightforward and would merely require Verizon to update its computer database from time to time.

Bright House asserts that if the call-by-call method is not workable, the parties could use the "factor basis". Under the factor basis, traffic sent from each company to the 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). Bright House asserts that, in its case, this approach would be extremely easy because 100% of Bright House's end users get local calling in the entire Tampa LATA. Bright House 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. Bright House refutes Verizon's argument that the Bright House 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. Bright House argues that, based upon its definition of toll traffic, the method for dealing with carriers that have multiple local calling plans is simple and straightforward. Bright House contends 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.

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

<u>Verizon</u>

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. Verizon asserts 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 a manner that renders them inappropriate to use in the new ICA.

Verizon asserts that its 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. Verizon describes historic regulatory treatment of this issue, and argues 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 is used.

Verizon contends that 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. Verizon asserts that Bright House would have Verizon take a giant step backwards and use factors for traffic that Verizon's systems are currently capable of handling.

Pursuant to § 252(i) of the Act, other carriers can adopt the ICA between Bright House and Verizon. Verizon argues the following. 1) 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. 2) Bright House's definition of toll traffic reflects a desire to change the intercarrier compensation regime to rest solely upon the originating carrier's definition of toll traffic. 3) 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. 4) 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. 5) Bright House's contention that Commission precedent supports its position lacks merit. 6) The case law relied upon by Bright House does not support Bright House's position. 7) Under the Bright House proposal, Bright House could establish a local calling area in a manner that would preclude Bright House from ever having to pay access charges. 8) Bright House contends that it is necessary to clearly distinguish toll traffic and meet-point billing (which Verizon details in §§9 and 10 of the ICA) but fails to describe why the language needs to be changed.

Decision

Bright House and Verizon generally agree on how most of the different types of traffic exchanged between them should be classified and neither party expressed disagreement with the definitions provided in the Telecommunications Act of 1996 or the applicable federal rule. 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, whereas Bright House argues that the originating carrier's local calling area should be used. Each party claims that its proposal is competitively neutral. Bright House argues that the parties exchange large amounts of traffic that is roughly balanced and generated in the same geographical area while Verizon asserts that the traffic is not roughly balanced.

Upon review, we find that the Act, federal rules, FCC orders, and this Commission's prior decision provide a basis for how we shall resolve this issue. 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.

We find that the definitions in the current ICA and any definitions the parties have agreed to during the negotiation of the new ICA, shall apply in the new ICA. The record does not reflect that either Bright House or Verizon disagree with the 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 under the new ICA.

47 C.F.R. §§51.701 and 51.703 address the issue of reciprocal compensation. 47 C.F.R. §51.701 establishes that, with respect to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers, "telecommunications traffic" is "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 addressed the obligations of LECs in the 1996 Local Competition Order at ¶1027. Most recently, in its 2008 Order[8] the FCC determined that reciprocal compensation under §251(b)(5) applies to all telecommunications as follows:

> 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 this Commission's historical practice regarding local calling areas and reciprocal compensation, we find that the basic local exchange area approved by this Commission for Verizon shall be used to determine what traffic is local and subject to reciprocal compensation rates and what traffic is

[8]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 Rcd 6475(2008 at ¶¶7, 1-16, 22.)

long distance and subject to access charges. Accordingly, the .0007 reciprocal compensation rate agreed to by the parties shall apply to all local traffic and the applicable access charges shall apply to all long distance traffic. We find that defining the local calling area in this manner is more competitively neutral because each party will pay access charges on all traffic that goes beyond the Commission-approved basic local exchange areas established for Verizon. This 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. In sum, the types of traffic (e.g. local, ISP, access) that are exchanged between the parties shall 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.

I. Transferring Customers and Local Number Portability

The parties have resolved all but one aspect of customer transfers and local number portability ("LNP"). That is, whether or not Bright House should compensate Verizon for "coordination." 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, argues that coordination is a separate, additional service that requires compensation.

Bright House

Bright House asserts 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. In this context, coordination means having operational staff involved in actual dialogue. This may be needed: 1) to make sure the porting process proceeds as planned; 2) to make any needed corrections; or if needed, 3) to reverse any steps that have been made to transfer the customer and to reschedule the transfer for another time. Bright House contends that coordination is important when porting a customer with many lines.

If a problem occurs during the porting process for a hospital, a school, or government department, hundreds of people are affected. Bright House argues that coordination should be done at no cost to either party for three reasons. 1) The FCC rules regarding number portability costs contain no exception for coordination. 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. When either company loses a multi-line customer to the other, the companies will be required to coordinate with each other. 3) If charges are allowed, the carrier is, in effect, being penalized for gaining a large business customer from the other carrier.

Bright House argues 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. Bright House also asserts that customers benefit when the process of transferring customers between carriers is low cost and efficient. Contrary to Verizon's assertions, Bright House argues that it is

not attempting to obtain expedited porting of multi-number business accounts. Bright House concurs with Verizon that a request to expedite may be subject to additional fees. Bright House asserts that Verizon does not understand the Bright House proposal, which would simply require 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.

Verizon

Verizon describes 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. The transfer of a phone number to a new service provider is the port of that number. Generally, LNP provisioning is an automated process that requires little time or effort to conduct. Verizon does not assess any charges for LNP provisioning, regardless of how many numbers are being ported for a single customer or end user.

Verizon refers to coordination as human involvement in monitoring, staying on the line during or after the time a port is scheduled, communicating with another carrier to facilitate a port, or to ensure the process takes place in a certain way or at a certain time. Verizon describes a coordinated port as the provision of additional coordination services beyond those typically associated with a simple port. Verizon contrasts a simple port transfer (which is done through an automated process that requires little time, effort, or supervision by the parties' employees) with a coordinated port (which is a distinct ancillary service that requires manual, human operations from several different departments and operational staff).

Verizon concludes that coordination does not represent LNP costs, but rather, it represents special handling costs. In this context, Verizon argues that Bright House is not entitled to unlimited coordination or other ancillary services free of charge and that, while Verizon will comply with the FCC rules, 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.

Decision

The only remaining issue related to customer transfers and local number portability is whether or not the ICA should provide that parties must coordinate, at no charge, their efforts when a single customer has a large number of lines being ported. Bright House and Verizon agree that there should be no charges for direct LNP costs and also that expediting a port is subject to additional fees.

Upon review, we find that the ICA shall contain specific procedures to govern the process of transferring a customer between parties and the process of local number portability provisioning. In this context, the parties shall be compensated for providing coordination because it requires manual, human interaction between different and multiple departments and also requires time and attention that standard LNP provisioning does not.

J. Special Access Circuit Rates

Bright House would like 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.

Bright House

Bright House asserts the following.

Verizon is required to allow CLECs to purchase, at wholesale (discounted) rates, any telecommunications service that Verizon sells at retail. Verizon offers business private line data services out of its special access tariff. These are not exchange access services because they have nothing to do with the origination or termination of toll calls. Bright House wants to resell the retail special access offerings that Verizon is providing.

Exchange access refers to the use of local facilities for the origination and termination of telephone toll services. Exchange access services are not provided at retail because they are used as an input to telephone toll service. The FCC ruled that this discount obligation does not apply to exchange access services as defined Section 3 of the Act. 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.

All services that an ILEC offers on a retail basis to subscribers that are not telecommunications carriers are subject to the discount. There are significant applications in which Verizon provides point-to-point services to companies on a retail basis. Point-to-point special access data circuits are non-switched circuits that go from one point to another in a network. Point-to-point data services, or special access services, 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. 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.

Verizon

Verizon asserts the following.

Bright House proposes to revise the Interconnection Agreement to provide that point-to-point special access services offered to end users for purposes of data transmission are not exchange access services; therefore, the wholesale discount would apply. However, special access is not subject to the Act's resale requirements and the resale discount.

The 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. 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. Special access is designed to be sold to customers at tariffed rates, which do not change whether or not retail customers buy them. Point-to-point special access connects two locations but does not go through a switch. 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.

The FCC's rule provides that retail services have to be made available for resale at an avoided cost discount. 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 do 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. In the TRRO, the FCC explicitly excluded special access services from the provisions of the Section 251(c)(4) which is the obligation to offer a wholesale discount.

Decision

In the testimony the terms "wholesale" and "discounted" are used interchangeably. The dispute is whether point-to-point services are available for purchase at discounted rates rather than at tariffed rates. 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 that the service is eligible for discount. Verizon asserts 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 that these services are exempt from being sold at discount.

Upon review, we find that point-to-point service is 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 provides the following:

> (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).

Section 251(c)(4) of the Act provides that:

> (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.

Bright House acknowledges that point-to-point special access circuits could be used for calls routed through Bright House's switch. This means that those circuits could provide exchange access services. Since there is the opportunity for point-to-point services providing exchange access, we find that point-to-point services are a form of exchange access and are subject to Section 47 CFR 51.605(b), which provides that exchange access services are exempt from resale at discounted rates. We find that special access circuits that Verizon sells to end users at retail are not subject to resale at a discounted rate.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Verizon shall be allowed to cease performing duties provided for in the ICA that are not required by applicable law. It is further,

ORDERED that the Section 50, "Withdrawal of Services" provisions in the General Terms Conditions of the ICA shall be allowed. It is further,

ORDERED that a one year time limit shall apply for a party to render a bill for services, dispute charges for billed services, or to back-bill for services rendered but not billed. It is further,

ORDERED that the access toll connection trunks at issue in this proceeding shall not be priced according to TELRIC principles. It is further,

ORDERED that this Commission will not rule at this time on standards governing unknown prospective changes in physical interconnections between the parties. It is further,

ORDERED that the terms proposed by Verizon shall apply to meet-point billing, including those related to Bright House's functionality as a competitive tandem provider for exchange access services. It is further,

ORDERED that Bright House shall 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 third-party carrier shall be financially responsible. It is further,

ORDERED that the ICA shall require Bright House to pay Verizon for the access toll connecting trunks and any other facilities that Bright House purchases from Verizon to carry traffic between interexchange carriers (IXCs) and Bright House's network. It is further,

ORDERED that the types of traffic (e.g. local, ISP, access) that are exchanged between the parties shall be classified as either local traffic (compensated at reciprocal compensation

rates) or interexchange traffic (compensated at access rates) based on Verizon's local exchange areas. It is further,

ORDERED that the ICA shall contain specific procedures to govern the process of both transferring a customer between the parties and number portability provisioning. It is further,

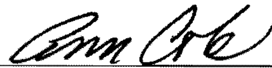
ORDERED that the parties shall be compensated for providing coordination related either to transferring a customer or to number portability. It is further,

ORDERED that special access circuits that Verizon sells to end users at retail are not subject to resale at a discounted rate. It is further,

ORDERED that the parties are required to submit a signed final interconnection agreement to this Commission within 45 days of issuance of this Order. It is further,

ORDERED that this docket shall remain open for the parties to file the final interconnection agreement for staff approval, and thereupon shall be closed.

By ORDER of the Florida Public Service Commission this 3rd day of December, 2010.



ANN COLE
Commission Clerk

(S E A L)

CWM

Commissioner Edgar dissents from the decision to include Verizon's proposed "Withdrawal of Services" language in the General Terms and Conditions of the ICA.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.