

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

DIRECT TESTIMONY OF
PAUL B. VASINGTON
ON BEHALF OF
VERIZON FLORIDA LLC

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1 Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

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

5

6 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL
7 BACKGROUND.

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

22

23 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

24 A. The purpose of my testimony on behalf of Verizon Florida LLC
25 ("Verizon") is to present evidence in support of its positions on Issues 3,

1 4(a), 6, 8, 12, 16, 20(a) and (b), 21, 23(a) and (c), 24, 45, 46, and 49 in
2 this docket, which involves the arbitration of certain terms and conditions
3 of an interconnection agreement ("ICA") between Verizon and Bright
4 House Networks Information Services (Florida), LLC ("Bright House").

5

6 Verizon and Bright House settled several issues that were originally
7 identified for arbitration and have notified Commission Staff as they
8 were resolved. In addition to those issues, the parties resolved the
9 following issues on the eve of this filing: 1, 2, 23(b), and 25.

10

11 **ISSUE 3: SHOULD TRAFFIC NOT SPECIFICALLY ADDRESSED IN THE**
12 **ICA BE TREATED AS REQUIRED UNDER THE PARTIES'**
13 **RESPECTIVE TARIFFS OR ON A BILL-AND-KEEP BASIS?**
14 (Interconnection ("Int.") Attachment ("Att.") § 8.4.)

15

16 **Q. WHAT IS THE NATURE OF THIS DISPUTE?**

17 A. This dispute concerns the intercarrier compensation that should apply to
18 traffic exchanged by the parties when the ICA does not specify a rate for
19 the type of traffic in question.

20

21 **Q. WHAT RATE DOES BRIGHT HOUSE PROPOSE FOR TRAFFIC**
22 **THAT IS NOT SPECIFICALLY ADDRESSED IN THE ICA?**

23 A. Bright House proposes that such traffic be handled on a bill-and-keep
24 basis, or in other words, that neither party will charge the other for
25 exchanging such traffic.

1 Q. HAS BRIGHT HOUSE IDENTIFIED ANY TRAFFIC TYPES NOT
2 SPECIFICALLY ADDRESSED IN THE ICA THAT IT BELIEVES
3 SHOULD BE SUBJECT TO BILL-AND-KEEP?

4 A. No.

5

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

7 A. The same pricing hierarchy should apply to intercarrier compensation
8 rates as for any other rates. In order of priority, the rates should be
9 determined by the ICA, applicable tariffs, FCC or Commission rates, or
10 mutual agreement.

11

12 Q. WHAT IS THE BASIS FOR VERIZON'S POSITION?

13 A. Bright House should not be able to use the ICA to avoid tariffed
14 intercarrier compensation rates that other carriers are required to pay.
15 On the one hand, Bright House insists that it may exchange any and all
16 types of traffic over trunks established under the ICA, while on the other
17 hand it claims that Verizon should be forced to terminate such traffic for
18 free unless Verizon can unerringly divine (and provide a rate for) every
19 conceivable type of traffic the parties might exchange in the future. This
20 approach would serve no purpose other than enabling Bright House to
21 shift costs to Verizon unfairly to gain a leg up on its competitors.

22

23 **ISSUE 4(a): HOW SHOULD THE ICA DEFINE AND USE THE TERMS**
24 **"CUSTOMER" AND "END USER"?** (General Terms and
25 Conditions ("GTC") § 5; Additional Services ("AS") Att. §§ 4.2,

1 4.3; Network Elements (“UNE”) Att. §§ 7.1, 9.8.1, 9.8.2; Glossary
2 (“Glo.”) §§ 2.30, 2.46; and all other provisions that include the
3 term “end user.”)
4

5 **Q. WHAT DOES THIS DISPUTE CONCERN?**

6 A. The parties disagree about how the term “customer” should be defined
7 in Glossary section 2.30. They also dispute whether the term “end user”
8 should be defined in Glossary section 2.46 and if so, how.
9

10 **Q. HOW DO THE PARTIES PROPOSE TO DEFINE THE TERM**
11 **“CUSTOMER”?**

12 A. Verizon proposes to define “customer” as “[a] third party residence or
13 business end-user subscriber to Telephone Exchange Services
14 provided by either of the Parties.” Bright House wants a more
15 expansive definition that would include subscribers to
16 telecommunications services or interconnected voice over Internet
17 protocol (“VoIP”) services provided directly by a party or through third
18 parties or affiliates that obtain telecommunications services from that
19 party.
20

21 **Q. WHAT IS WRONG WITH BRIGHT HOUSE’S DEFINITION OF**
22 **“CUSTOMER”?**

23 A. First, it includes not just Bright House’s own customers, but the
24 customers of those customers—in this case, the end users of Bright
25 House’s cable affiliate (“Bright House Cable”). The result of this

1 approach would be to create contractual obligations running between
2 Verizon and Bright House Cable, even though Bright House Cable is not
3 a party to the ICA. For example, Bright House has proposed customer
4 transfer provisions that would deal with the grounding of Bright House
5 Cable's wires when Verizon wins one of Bright House Cable's
6 customers and disconnects the cable wiring. This issue does not
7 concern Bright House Networks Information Services, the Bright House
8 entity that is a party to this case--and which, to Verizon's knowledge,
9 does not own, control or maintain Bright House Cable's customer wiring.
10 Moreover, the Commission has determined that it does not have
11 jurisdiction to address issues relating to the disconnection of Bright
12 House Cable's wiring.¹ Bright House thus is trying to use its "customer"
13 definition to circumvent this jurisdictional limitation and to secure
14 benefits for Bright House Cable to which it is not entitled. Bright House
15 has structured its operations to insulate Bright House Cable and its VoIP
16 services from regulation; Bright House should not be allowed to obtain
17 regulatory benefits for Bright House Cable while shielding it from
18 regulatory obligations.

19
20 Second, Bright House's "customer" definition unnecessarily raises
21 issues concerning the regulatory treatment of VoIP services. Bright
22 House and Verizon have been exchanging traffic for years and Verizon
23 will continue to exchange Bright House's traffic, which originates in VoIP

¹ *In re: Emergency Complaint and Petition Requesting Initiation of Show Cause Proceedings Against Verizon Florida, LLC*, Docket No. 080701-TP, Order No. PSC-09-0342-FOF-TP (May 21, 2009).

1 format from Bright House Cable's end users. But Bright House's
2 proposed language suggests that Bright House itself may be providing
3 VoIP services to end users--even though Bright House is a wholesale
4 provider with no end users, VoIP or otherwise, and we understand that
5 Bright House is not planning to provide retail services. There is,
6 therefore, no reason for Bright House's language that unnecessarily
7 raises potentially complex and contentious issues about the scope of an
8 ILEC's obligations to a retail VoIP service provider. These kinds of
9 VoIP-related issues are properly addressed (and are being addressed)
10 at the federal level.

11

12 **Q. WHY IS BRIGHT HOUSE'S DEFINITION OF "END USER"**
13 **UNACCEPTABLE?**

14 A. Bright House proposes to define "end user" as a person or entity that is
15 not a telecommunications carrier and that subscribes to a carrier's
16 telecommunications service or a provider's VoIP service, where the
17 service provider may or may not be a party to the ICA. In the case of
18 Bright House, an end user would include Bright House Cable's
19 customers. This definition, therefore, raises much the same issues as
20 Bright House's definition of "customer," suggesting obligations to Bright
21 House Cable, which is not a party to the ICA. In addition, Verizon
22 defines "customer" to include specified end users, so a separate
23 definition of "end user" is not necessary and would be confusing. The
24 Commission should, therefore, reject Bright House's definition of "end
25 user," as well as its "customer" definition.

1 **ISSUE 6:** IF DURING THE TERM OF THIS AGREEMENT VERIZON
2 BECOMES REQUIRED TO OFFER A SERVICE UNDER THE
3 ICA, MAY THE PARTIES BE REQUIRED TO ENTER INTO
4 GOOD FAITH NEGOTIATIONS CONCERNING THE
5 IMPLEMENTATION OF THAT SERVICE? (GTC § 18; AS Att. §
6 13; Int. Att. § 16; Res. Att. § 7; UNE Att. § 19; 911 Att. § 5.)
7

8 **Q. WHAT DOES THIS DISPUTE CONCERN?**

9 A. Verizon has proposed language that would require the negotiation of
10 reasonable terms for services that Bright House orders that Verizon has
11 not previously provided in Florida. This language would enable the
12 parties to address services that Verizon becomes obligated to provide
13 under the ICA after its commencement. Bright House opposes the
14 inclusion of this language, thus leaving open the question of how the
15 parties would determine the terms and conditions upon which a new
16 service would be provided.
17

18 **Q. WHAT LANGUAGE HAS VERIZON PROPOSED?**

19 A. Verizon has proposed the following language in GTC section 18 (and
20 similar language in the other sections noted after the issue statement
21 above), related to "good faith performance":

22 If and, to the extent that, Verizon, prior to the Effective
23 Date of this Agreement, has not provided in the State of
24 Florida a Service offered under this Agreement, Verizon
25 reserves the right to negotiate in good faith with Bright

1 House reasonable terms and conditions (including, without
2 limitation, rates and implementation timeframes) for such
3 Service; and, if the Parties cannot agree to such terms and
4 conditions (including, without limitation, rates and
5 implementation timeframes), either Party may utilize the
6 Agreement's dispute resolution procedures.

7
8 **Q. WHY IS THIS LANGUAGE NECESSARY?**

9 A. The ICA will be in effect for several years and therefore must address
10 how the parties will deal with new services that may become available
11 as technology and law change. As a practical matter, as new services
12 come on line the parties will need to negotiate the terms and conditions
13 under which they will be provided, which is why Verizon's proposed
14 language calls for such negotiations. For example, if Verizon begins
15 offering access to a UNE through newly developed equipment, the
16 parties may need to negotiate the price for access to the new equipment
17 and may need to agree on the methods and procedures for accessing it.
18 Verizon's proposal provides a fair and sensible way for the parties to
19 deal with this situation. Without any such language, Bright House might
20 claim that Verizon may not request new terms when it gives Bright
21 House access to new facilities and equipment, thus increasing the
22 likelihood of disputes.

23
24 **ISSUE 8: SHOULD THE ICA INCLUDE TERMS THAT PROHIBIT**
25 **VERIZON FROM SELLING ITS TERRITORY UNLESS THE**

1 **BUYER ASSUMES THE ICA? (GTC § 43.2.)**

2

3 **Q. WHAT DOES THIS DISPUTE CONCERN?**

4 A. It addresses whether a third party acquiring all or a part of Verizon's
5 service territory must assume the ICA with respect to the acquired
6 territory. Verizon has proposed in GTC section 43.2 that it be allowed to
7 terminate the ICA on 90 days written notice with respect to any of its
8 ILEC service territory that it sells. Bright House proposes to add
9 language that would prohibit such termination unless the buyer assumes
10 Verizon's obligations under the ICA with respect to the acquired service
11 territory.

12

13 **Q. WHY SHOULD THE COMMISSION ADOPT VERIZON'S PROPOSAL?**

14 A. Verizon cannot and should not be required to ensure that a third party
15 assumes the ICA in the event of an acquisition. Verizon's duty to
16 interconnect and provide the services under the ICA exists only to the
17 extent that Verizon is the ILEC in the territory in which such
18 interconnection and services are requested. Where Verizon ceases to
19 be the ILEC in a given territory, it cannot be required to provide the ILEC
20 services contemplated by this Agreement. Verizon's proposed language
21 reflects this conclusion.

22

23 **Q. HAS VERIZON AGREED TO LANGUAGE THAT WOULD PROTECT**
24 **BRIGHT HOUSE'S INTERESTS IN THE EVENT OF A SALE OR**
25 **ACQUISITION?**

1 A. Yes. Under Verizon's proposed language, Verizon would provide Bright
2 House 90 days advance termination notice; Bright House would, in
3 addition, receive the protections of the rules and processes of this
4 Commission and the FCC.

5

6 **Q. HAS THE COMMISSION ALREADY RULED ON THIS ISSUE?**

7 A. Yes. The Commission previously addressed the same issue raised here
8 in a 2003 arbitration between Covad and Verizon.² There, the
9 Commission ruled:

10 We are more persuaded by the position of Verizon in this
11 issue. Verizon correctly notes that, although the agreement
12 permits either party, with the prior written consent of the
13 other party, to assign the agreement to a third party, no
14 provision of federal law requires the conditioning of a sale of
15 operations on the purchaser agreeing to an assignment of
16 an agreement. Furthermore, we agree with Verizon that a
17 CLEC may be able to protect any rights and interests it has
18 by participating in a proceeding before this Commission
19 regarding the sale of an ILEC.³

20 This reasoning is sound and there is no basis for the Commission to
21 depart from it in this case. The Commission should again find that there
22 is no law or policy supporting the condition that Bright House seeks
23 here.

24

² *In re: Petition for Arbitration of Open Issues*, Docket No. 020960-TP, Order No. PSC-03-1139-FOF-TP (2003).

³ *Id.* at 24 (footnote omitted).

1 **ISSUE 12: WHEN THE RATE FOR A SERVICE IS MODIFIED BY THE**
2 **FLORIDA PUBLIC SERVICE COMMISSION OR THE FCC,**
3 **SHOULD THE NEW RATE BE IMPLEMENTED AND IF SO,**
4 **HOW? (Pricing Att. § 1.5, 1.7.)**
5

6 **Q. WHAT ARE THE PARTIES DISPUTING?**

7 A. The parties disagree about how price changes ordered by the
8 Commission or the FCC should be implemented. Verizon has proposed
9 in Pricing Attachment section 1.5 that when the Commission or the FCC
10 approves new prices for UNEs or services listed in the ICA Pricing
11 Attachment, the new prices would supersede the listed prices
12 automatically once the order becomes effective. (For tariff rates, the
13 parties would revise their tariffs to reflect any ordered changes, a point
14 Bright House does not appear to dispute.) Bright House opposes this
15 proposed language and I understand its position is that the ICA prices
16 should be frozen, and should continue to apply regardless of
17 subsequent Commission pricing orders.
18

19 **Q. WHY IS BRIGHT HOUSE'S POSITION UNREASONABLE?**

20 A. Once the Commission or the FCC determines the rate that should apply
21 for a UNE or service, there is no reason to give Bright House the unique
22 opportunity to delay or avoid implementation of the new rate. When the
23 Commission orders a given rate to change, those changes should apply
24 to all parties equally and at the same time, unless parties to an ICA
25 voluntarily agree to a price freeze for a negotiated rate (which obviously

1 is not the case here). The rates that exist in the ICA because they were
2 ordered by the Commission (as, for example, Verizon's UNE rates,
3 which were established by a Commission order after a cost case) may
4 be changed by the same process. That is, rates established by
5 Commission order may be changed by Commission order. To the
6 extent that Bright House wants Verizon to memorialize the new rates in
7 the light of any such order, Verizon has traditionally been willing to do so
8 as a courtesy. But such amendments are ministerial in nature and do
9 not require substantive negotiations; where the Commission orders a
10 new rate, the ordered rate applies automatically, without regard to the
11 existence or timing of an amendment. If the existing rates were frozen
12 in time then, if the Commission raised rates, CLECs would have an
13 incentive to opt into the ICA with the frozen, lower prices. And if the
14 Commission lowered rates, Verizon expects that, Bright House would
15 claim entitlement to those lower rates, despite standing on the price-
16 freeze language when it would work to Bright House's benefit. At the
17 least, if Bright House's language is adopted (and it should not be) it
18 would need to be clear that it applies regardless of whether the
19 Commission raised or lowered rates.

20

21 **ISSUE 16: SHOULD BRIGHT HOUSE BE REQUIRED TO PROVIDE**
22 **ASSURANCE OF PAYMENT? IF SO, UNDER WHAT**
23 **CIRCUMSTANCES AND WHAT REMEDIES ARE AVAILABLE**
24 **TO VERIZON IF ASSURANCE OF PAYMENT IS NOT**
25 **FORTHCOMING? (GTC § 6.)**

1 Q. **WHAT DOES THIS DISPUTE CONCERN?**

2 A. Verizon has proposed language in GTC section 6 that would require
3 Bright House to provide assurance of payment under specified
4 circumstances. Bright House opposes the inclusion of this language.

5

6 Q. **WHAT HAS VERIZON PROPOSED CONCERNING ASSURANCE OF
7 PAYMENT?**

8 A. Under Verizon's proposed GTC section 6, if Bright House fails to pay a
9 bill from Verizon or a affiliate on time, is unable to demonstrate its
10 creditworthiness, or admits its inability to pay its debts on time or is in
11 bankruptcy or similar proceedings, Verizon may request assurance of
12 payment in the form of a letter of credit equal to two months' anticipated
13 charges. The letter of credit, typically issued by a bank, guarantees to
14 pay the debts of a party upon proof of specific unpaid amounts, such as
15 those reflected on unpaid invoices. If Bright House fails to timely pay
16 two or more bills on time within a twelve-month period, Verizon may
17 request monthly advanced payments of estimated charges.

18

19 Q. **WHY IS VERIZON'S ASSURANCE OF PAYMENT LANGUAGE
20 NECESSARY?**

21 A. Adequate assurance of payment provisions are essential in Verizon's
22 ICAs, because Verizon is required to enter those ICAs without regard to
23 the financial condition of the CLEC requesting interconnection. As the
24 past few years in the industry demonstrate, even apparently credit-
25 worthy enterprises can quickly devolve into insolvency; Verizon's

1 extensive experience writing off as unrecoverable amounts invoiced to
2 bankrupt CLECs proves the need for assurance of payment protections.
3 Verizon's proposed provisions are commercially reasonable and
4 evenhanded. Verizon does not and cannot make assessments about a
5 CLEC's financial status—nor would this exercise mitigate the need for
6 assurance of payment provisions, because Verizon is required to make
7 available all of its section 251(c) agreements for adoption by other
8 carriers. So even if the assurance of payment provisions never come
9 into play with Bright House, they may prove essential to protecting
10 Verizon (and its end users) from default by a less stable company that
11 adopts Bright House's ICA.

12

13 **Q. DO ASSURANCE OF PAYMENT PROVISIONS BENEFIT CLECS AS**
14 **WELL?**

15 A. Yes. These provisions benefit CLECs by allowing them to continue
16 obtaining service despite financial difficulties.

17

18 **Q. HAS THE COMMISSION REQUIRED SIMILAR SECURITY**
19 **ARRANGEMENTS IN OTHER CASES?**

20 A. Yes. Aside from the numerous Commission-approved agreements
21 Verizon already has on file with the terms it has proposed here, the
22 Commission has approved even more stringent ICA provisions in other
23 companies' agreements—for instance, requiring CLECs to provide
24 security deposits for two months of charges in AT&T agreements.⁴

⁴ *Joint Petition By NewSouth Comm. Corp.*, Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP, pp. 66-68 (Oct. 11, 2005).

1 Here, Verizon is requesting assurance of payment only if one of the
2 stated conditions arises, not upon execution of the ICA. The
3 circumstances that trigger Verizon's right to request assurance of payment
4 are fair and objective; a letter of credit is the most practical form of
5 providing assurance of payment because it eliminates the need for
6 burdensome accounting procedures and cash transactions associated with
7 cash deposits; and two months' anticipated charges is the bare minimum
8 necessary to provide Verizon with assurance that it will be paid for the
9 services it provides. Verizon's proposed language therefore is
10 reasonable and consistent with the Commission's prior ruling.

11

12 **Q. HAS THE FCC ALSO RECOGNIZED THE NEED FOR ASSURANCE**
13 **OF PAYMENT PROVISIONS?**

14 A. Yes. In an arbitration between Verizon and, among others, the former
15 WorldCom, the FCC's Wireline Competition Bureau ruled that Verizon
16 "has a legitimate business interest in receiving assurances of payment"
17 from CLECs,⁵ which remains true in light of numerous CLEC
18 bankruptcies and the repeated failure of others to pay their bills in a
19 timely manner. In the FCC case, WorldCom had argued that a company
20 with its apparent financial stability at the time should not be required to
21 have assurance of payment language in its ICA. Within a week of the
22 FCC's order, WorldCom declared bankruptcy.

23

⁵ Memorandum Opinion and Order, *In re: Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act*, 17 FCC Rcd 27039 ¶ 727 (2002).

1 **ISSUE 20 (a):** **WHAT OBLIGATIONS, IF ANY, DOES VERIZON HAVE**
2 **TO RECONCILE ITS NETWORK ARCHITECTURE WITH**
3 **BRIGHT HOUSE'S? (GTC § 42.)**

4 **ISSUE 20(b):** **WHAT OBLIGATIONS, IF ANY, DOES BRIGHT HOUSE**
5 **HAVE TO RECONCILE ITS NETWORK ARCHITECTURE**
6 **WITH VERIZON'S? (GTC § 42.)**

7
8 **Q. WHAT IS THE NATURE OF THIS DISPUTE?**

9 A. Verizon has proposed language in GTC section 42 providing that
10 Verizon has the right to modify its network in its discretion and that
11 Bright House would be responsible for accommodating such
12 modifications. Bright House for the most part does not oppose Verizon's
13 proposal, but requests additional language that would force Verizon to
14 accommodate changes to Bright House's network (and the changes to
15 the network of any CLEC that opts into the ICA).

16
17 **Q. WHAT IS THE BASIS FOR VERIZON'S LANGUAGE REQUIRING**
18 **BRIGHT HOUSE TO ACCOMMODATE VERIZON'S NETWORK**
19 **CHANGES?**

20 A. Verizon has the right to modify and upgrade its network and when it
21 does so, CLECs are responsible for taking the actions and incurring the
22 costs necessary to accommodate those changes. Under the 1996 Act,
23 CLECs only are entitled to interconnection with ILECs' existing
24 networks,⁶ which obviously will change and grow over time. CLECs
25 therefore must make the changes necessary to accommodate

⁶ *Iowa Util. Bd. v. F.C.C.*, 120 F. 2d 753, 813 (8th Cir. 1997).

1 modifications in Verizon's network. Bright House does not dispute this
2 point.

3

4 **Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S**
5 **PROPOSAL TO FORCE VERIZON TO ACCOMMODATE BRIGHT**
6 **HOUSE'S NETWORK CHANGES?**

7 A. As I just noted, CLECs only are entitled to interconnection with ILECs'
8 existing networks, not superior networks. If Bright House could require
9 Verizon to change its network to accommodate Bright House, then
10 Bright House would be receiving superior interconnection to which it is
11 not entitled. Apart from the legal considerations that will be more fully
12 addressed in Verizon's briefs, a reciprocal network accommodation
13 requirement would be entirely unworkable. As an ILEC, Verizon is
14 required to interconnect with any requesting CLEC, and Verizon has
15 about 150 interconnection agreements with different carriers. If Bright
16 House's approach were adopted, Verizon would have to accommodate
17 each interconnecting CLEC's network modifications, which would not
18 only impose tremendous burdens and expense, but could result in
19 conflicting demands that could not be physically accommodated. The
20 Commission should, therefore, reject Bright House's unworkable and
21 unlawful approach.

22

23 **ISSUE 21: WHAT CONTRACTUAL LIMITS SHOULD APPLY TO THE**
24 **PARTIES' USE OF INFORMATION GAINED THROUGH THEIR**
25 **DEALINGS WITH THE OTHER PARTY? (GTC §§ 10.1.6,**

1 10.2.1; AS Att. §§ 4.5, 8.7, 8.9.)

2

3 **Q. WHAT DOES THIS DISPUTE CONCERN?**

4 A. Bright House has proposed several provisions (in GTC sections 10.1.6
5 and 10.2.1 and Additional Services Attachment sections 4.5, 8.7 and
6 8.9) that would prohibit Verizon from using customer information
7 associated with service and directory listing orders for sales and
8 marketing purposes until the information becomes publicly known.
9 Verizon opposes the inclusion of these provisions.

10

11 **Q. WHAT IS THE BASIS FOR VERIZON'S POSITION?**

12 A. The use by an ILEC of a CLEC's customer information is addressed in
13 Section 222 of the Telecommunications Act and has been the subject of
14 several rulings by this Commission, the FCC and the courts, including a
15 2009 ruling by the D.C. Circuit resolving a dispute between Verizon,
16 Bright House and others concerning a Verizon retention marketing
17 program.⁷ Verizon has no objection to including language providing that
18 the parties will comply with applicable rulings concerning the use of
19 each other's customer information, but there is no reason to attempt to
20 incorporate those rulings into the ICA in detail.

21

22 **Q. DOES BRIGHT HOUSE'S LANGUAGE ACCURATELY DESCRIBE**
23 **THE APPLICABLE RULINGS CONCERNING RETENTION**
24 **MARKETING?**

25 A. Although I am not a lawyer, from my layman's perspective it appears

⁷ *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

1 that Bright House's language may not properly distinguish between
2 retention marketing (which is intended to keep customers) and winback
3 activity (which is intended to win back former customers). For example,
4 Bright House's language would prohibit Verizon from using information it
5 receives concerning a customer's switch from Verizon to Bright House
6 until that information becomes publicly known. The phrase "publicly
7 known" is not defined and it is not clear how such language might be
8 interpreted. As a result, it could have an unfair and anticompetitive
9 chilling effect on Verizon's attempts to win back customers after they
10 have switched to Bright House, even though the Commission has never
11 limited Verizon's ability to engage in winback activity.⁸ Verizon's
12 lawyers will address this issue in more detail in Verizon's post-hearing
13 brief.

14
15 **ISSUE 23(a): WHAT DESCRIPTION, IF ANY, OF VERIZON'S**
16 **GENERAL OBLIGATION TO PROVIDE DIRECTORY**
17 **LISTINGS SHOULD BE INCLUDED IN THE ICA? (AS**
18 **Att. § 4.)**

19
20 **Q. WHAT IS THE NATURE OF THIS DISPUTE?**

21 A. Verizon has proposed introductory language stating that to the extent
22 required by applicable law, Verizon will provide directory listing services
23 to Bright House and that such services will be provided in accordance

⁸ The Commission addressed this issue in *In re: Petition for Expedited Review and Cancellation of BellSouth Telecomm., Inc.'s Key Customer Promotional Tariffs*, Docket No. 020119-TP, Order No. PSC-03-0726-FOF-TP (June 19, 2003) and *In re: Complaint by Supra Telecomm. and Information Systems, Inc.*, Docket No.030349-TP, Order No. PSC-03-1392-FOF-TP (Dec. 11, 2003).

1 with the terms of the ICA. Bright House refused to accept that language
2 and proposed instead that Verizon be required to provide directory
3 listings services “on a just, reasonable and nondiscriminatory basis as
4 required by Applicable Law” and as specified in the ICA.

5

6 **Q. SHOULD THIS INTRODUCTORY PROVISION INCLUDE LANGUAGE**
7 **PURPORTING TO DESCRIBE VERIZON’S LEGAL OBLIGATIONS**
8 **CONCERNING DIRECTORY LISTINGS?**

9 A. No. Bright House has provided no justification for including such
10 language and doing so is unnecessary because the parties’ obligations
11 are specified in the detailed directory listings terms and conditions set
12 forth in the Additional Services Attachment.

13

14 **ISSUE 23(c): TO WHAT EXTENT, IF ANY, SHOULD THE ICA**
15 **REQUIRE VERIZON TO FACILITATE BRIGHT HOUSE’S**
16 **NEGOTIATING A SEPARATE AGREEMENT WITH**
17 **VERIZON’S DIRECTORY PUBLISHING COMPANY?**
18 (AS. Att. § 4.11.)

19

20 **Q. WHAT DOES THIS DISPUTE CONCERN?**

21 A. Bright House has proposed that Verizon be required to facilitate Bright
22 House’s negotiations with Verizon’s directory publishing company. It is
23 not clear what such facilitation is supposed to include, beyond providing
24 the directory company’s contact information. Verizon opposes Bright
25 House’s proposed language.

1 Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S
2 LANGUAGE?

3 A. Verizon has no duty, under the 1996 Act, or anything else to "facilitate"
4 Bright House's negotiations with the directory company or any other
5 third parties. Verizon does not control SuperMedia LLC, the company
6 that publishes Verizon's directories and the scope of Bright House's
7 proposed "facilitation" obligation is unclear. Verizon has already gone
8 beyond its legal obligations in giving Bright House contact information
9 for the directory company, upon Bright House's request. There is
10 nothing more that Verizon could conceivably "facilitate," so this issue
11 should be moot.

12

13 Q. ARE CLECS BARRED FROM NEGOTIATING AGREEMENTS WITH
14 COMPANIES THAT PROVIDE DIRECTORIES?

15 A. No. There is nothing stopping Bright House from negotiating its own
16 agreement with Verizon's directory publisher or any other publisher. It is
17 Bright House's business decision, and its responsibility, to pursue such
18 options without involving Verizon. And as I said, Verizon has already
19 provided the name of a contact at SuperMedia LLC, so Bright House
20 could contact it directly.

21

22 **ISSUE 24: IS VERIZON OBLIGED TO PROVIDE FACILITIES FROM**
23 **BRIGHT HOUSE'S NETWORK TO THE POINT OF**
24 **INTERCONNECTION AT TELRIC RATES? (Int. Att. § 2.1.1.3.)**

25

1 **Q. WHAT DOES THIS DISPUTE CONCERN?**

2 A. Bright House has proposed language for Interconnection Attachment
3 section 2.1.1.3 that would require Verizon to provide transport facilities
4 from a Verizon wire center to a Bright House wire center at TELRIC
5 rates, instead of the tariffed rates that apply today. Verizon opposes this
6 language.

7

8 **Q. ARE ILECS REQUIRED TO PROVIDE TELRIC-PRICED ACCESS TO**
9 **THESE TRANSPORT FACILITIES?**

10 A. No. The FCC found in its Triennial Review Remand Order that
11 alternatives to these ILEC-provided transport facilities (commonly known
12 as “entrance facilities”) are widely available, so CLECs are not impaired
13 without unbundled access to them.⁹ ILECs therefore are not required to
14 provide these transport facilities at TELRIC rates.

15

16 **Q. ON WHAT BASIS DOES BRIGHT HOUSE CLAIM TO BE ENTITLED**
17 **TO ENTRANCE FACILITIES AT TELRIC RATES?**

18 A. Bright House has not explained its rationale, other than to state in the
19 Decision Point List that its proposed language “reflects Verizon’s
20 obligation to provide interconnection facilities to Bright House at
21 TELRIC-based rates.” (Petition, Ex. 2, at 67.) Again, Verizon has no
22 obligation to provide the facilities at issue to Bright House at TELRIC
23 rates, and calling them “interconnection facilities” instead of entrance

⁹ Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005).

1 facilities does not change that fact. In any event, this appears to be a
2 legal issue that is more properly addressed in the parties' briefs.

3

4 **ISSUE 45: SHOULD VERIZON'S COLLOCATION TERMS BE INCLUDED**
5 **IN THE ICA OR SHOULD THE ICA REFER TO VERIZON'S**
6 **COLLOCATION TARIFFS? (Collocation Attachment.)**

7

8 **Q. WHAT ARE THE PARTIES DISPUTING?**

9 A. Verizon has proposed in the Collocation Attachment that the ICA
10 incorporate by reference the collocation rates, terms and conditions in
11 the collocation section of the Verizon access tariff. Bright House has not
12 proposed collocation terms or stated how those terms should be
13 addressed in the ICA.

14

15 **Q. HOW SHOULD THIS ISSUE BE RESOLVED?**

16 A. The Commission should accept Verizon's proposed language that would
17 adopt its collocation tariff provisions by reference. Indeed, because
18 Bright House made no alternative proposal during the parties'
19 negotiations, there is no option other than adopting Verizon's proposal.
20 Moreover, this approach will ensure that Bright House receives the
21 same collocation rates, terms and conditions as other providers and that
22 any changes will be made the same way for Bright House as for
23 everyone else.

24

25 **ISSUE 46: SHOULD VERIZON BE REQUIRED TO MAKE AVAILABLE TO**

1 **BRIGHT HOUSE ACCESS TO HOUSE AND RISER CABLE**
2 **THAT VERIZON DOES NOT OWN OR CONTROL BUT TO**
3 **WHICH IT HAS A LEGAL RIGHT OF ACCESS? IF SO, UNDER**
4 **WHAT TERMS? (UNE Att. § 7.1.1.)**

5

6 **Q. WHAT ARE THE PARTIES DISPUTING?**

7 A. Bright House has proposed revisions to UNE Attachment section 7.1.1
8 that would require Verizon to provide Bright House access to house and
9 riser cable that Verizon does not own or control, but has the right to
10 access.

11

12 **Q. WHAT IS “HOUSE AND RISER CABLE THAT VERIZON DOES NOT**
13 **OWN OR CONTROL”?**

14 A. House and riser cable refers to the wiring used for multiple occupancy
15 buildings such as office buildings and apartment complexes, and which
16 typically runs from a telephone closet or other central location to the
17 individual offices or units. The house and riser cable in dispute would
18 be owned by a third party that has given Verizon the right to access it.
19 For example, an apartment complex owner that owns the house and
20 riser cable may have entered a contract with Verizon that gives it the
21 right to access a tenant’s house and riser cable when the tenant
22 requests Verizon’s service.

23

24 **Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE’S**
25 **PROPOSAL?**

1 A. Verizon is required to provide access to certain elements of its own
2 network on an unbundled basis, not to the facilities of third parties.
3 Where Verizon (by contract or otherwise) is permitted to *use* a third
4 party's facilities or property, it has no legal obligation—and, indeed, no
5 right—to allow an interconnecting party to use those facilities or
6 property. The property owner has entered into a contractual relationship
7 with Verizon, not Bright House. Moreover, Verizon cannot be expected
8 to expose itself to the potential liability associated with granting Bright
9 House (and others) access to facilities of third parties that have no
10 relationship with Bright House. If Bright House wants to obtain access
11 to house and riser cable owned or controlled by a third party, then Bright
12 House must seek that entity's permission for such access.

13

14 **ISSUE 49: ARE SPECIAL ACCESS CIRCUITS THAT VERIZON SELLS TO**
15 **END USERS AT RETAIL SUBJECT TO RESALE AT A**
16 **DISCOUNTED RATE? (Pricing Att. § 2.1.5.2.)**

17

18 **Q. WHAT ARE THE PARTIES DISPUTING?**

19 A. ILECs have a general obligation to provide to CLECs for resale, at a
20 wholesale discount, services the ILECs provide on a retail basis to
21 subscribers who are not telecommunications carriers. (47 U.S.C. §
22 251(c)(4).) The parties' dispute with respect to Issue 49 concerns
23 Pricing Attachment section 2.1.5.2, which provides that Verizon is not
24 required to provide the wholesale discount on exchange access
25 services. Bright House proposes to revise this provision to state that

1 point-to-point special access services to end users for purposes of data
2 transmission are not exchange access services, so that the wholesale
3 discount would apply to them. Verizon opposes the inclusion of this
4 language.

5

6 **Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S**
7 **LANGUAGE?**

8 A. Point-to-point special access service for data transmission may or may
9 not involve exchange access, but whether or not it does, such a special
10 access service is not eligible for the wholesale discount for the same
11 reasons that exchange access services are not eligible. The FCC has
12 ruled that ILECs do not have to offer exchange access services at a
13 resale discount because they are offered predominantly to carriers
14 rather than end user customers.¹⁰ The FCC explained that “[t]he mere
15 fact that fundamentally non-retail services are offered pursuant to tariffs
16 that do not restrict their availability, and that a small number of end
17 users do purchase some of these services, does not alter the essential
18 nature of the services.”¹¹

19

20 The FCC has not attempted to develop a comprehensive list of services
21 to which the wholesale discount does not apply, but its analysis of
22 exchange access in the Local Competition Order makes clear that the
23 discount does not apply to special access services. Indeed, during its

¹⁰ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶¶ 872-74 (1996) (“Local Competition Order”).

¹¹ *Id.* ¶ 874.

1 discussion of exchange access the FCC noted that end users
2 “occasionally purchase some access services, *including special access*
3 *services,*” but went on to conclude that such occasional use did not
4 require the application of the wholesale discount.¹² Verizon’s special
5 access services, including its point-to-point data transmission services,
6 are bought predominantly by other carriers. Verizon therefore is not
7 required to discount these services for Bright House.

8

9 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

10 A. Yes.

11

12

13

14

15

16

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¹² *Id.* ¶ 873 (emphasis added).