

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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

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April 16, 2010

DOCUMENT NUMBER-DATE

02974 APR 16 2010

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1 Q. ARE YOU THE SAME PAUL VASINGTON WHO SUBMITTED DIRECT
2 TESTIMONY IN THIS CASE?

3 A. Yes.
4

5 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

6 A. The purpose of my testimony on behalf of Verizon Florida LLC
7 ("Verizon") is to respond to the Direct Testimony of Bright House
8 Networks Information Services (Florida), LLC ("Bright House") witnesses
9 Marva B. Johnson and Timothy J Gates on Issues 3, 4(a), 16, 20(a) and
10 (b), 21, 24, 45, and 49 in this docket. I will refer to their testimony as
11 "Johnson DT" and "Gates DT," respectively.
12

13 Q. HAVE ANY ISSUES IN THE SCOPE OF YOUR DIRECT TESTIMONY
14 BEEN RESOLVED?

15 A. Yes, the parties have resolved Issues 6, 8, 23(a) and (c) and 46. They
16 also have reached agreement in principle on Issues 12 and 21, so I will
17 not address those issues here.
18

19 **ISSUE 3:** SHOULD TRAFFIC NOT SPECIFICALLY ADDRESSED IN THE
20 ICA BE TREATED AS REQUIRED UNDER THE PARTIES'
21 RESPECTIVE TARIFFS OR ON A BILL-AND-KEEP BASIS?
22 (Interconnection ("Int.") Attachment ("Att.") § 8.4.)
23

24 Q. DOES MR. GATES POINT TO ANY PARTICULAR TRAFFIC TYPE
25 THAT SHOULD BE HANDLED ON A BILL-AND-KEEP BASIS?

1 A. No. As Mr. Gates acknowledges, Bright House and Verizon have
2 agreed on compensation for the major and even minor types of traffic
3 that they exchange. He admits that “it is a bit hard to see what other
4 types of traffic they might end up exchanging.” (Gates DT at 115.)
5 Bright House nevertheless continues to insist on exchanging such
6 unidentifiable traffic on a bill-and-keep (that is, uncompensated) basis,
7 with an option to negotiate compensation if the traffic reaches a DS1
8 level for three consecutive months. (Gates DT at 116.)

9

10 **Q. WHY?**

11 A. The only rationale Mr. Gates offers for Bright House’s proposal to
12 exchange traffic for free is the vague notion that some as-yet-unknown
13 traffic could present itself because of changes in regulatory definitions
14 and technology, along with a unjustified suspicion that Verizon would
15 arbitrarily apply intrastate access charges to any new type of traffic.
16 (Gates DT at 115-16.)

17

18 **Q. IS BRIGHT HOUSE’S BILL-AND-KEEP PROPOSAL REASONABLE?**

19 A. No. As I explained in my Direct Testimony, there is no reason to excuse
20 Bright House from paying the same tariffed rates—access rates or
21 otherwise—that apply to all carriers, rather than using the
22 interconnection agreement (“ICA”) to gain a competitive advantage.
23 Moreover, a DS1’s worth of traffic is generally considered to be 200,000
24 minutes per month—not a *de minimis* amount, particularly when one
25 considers how long the uncompensated exchange of traffic would

1 continue under Bright House's proposal. That proposal would require
2 traffic to reach a DS1 level for three consecutive months before a party
3 could even seek dispute resolution, and then the dispute itself would
4 take months, if not a year or more, for the Commission to resolve in the
5 likely event that the parties could not negotiate a rate.

6
7 Under Bright House's proposal, it would not have to pay the tariffed
8 rates (or for that matter, *any* rate) that other companies pay for a new
9 traffic type during that time. In short, Bright House's proposal is
10 anything but the "balanced and sensible" approach Mr. Gates calls it
11 (Gates DT at 117), and the Commission should reject it.

12
13 **ISSUE 4(a): HOW SHOULD THE ICA DEFINE AND USE THE TERMS**
14 **"CUSTOMER" AND "END USER"?** (General Terms and
15 Conditions ("GTC") § 5; Additional Services ("AS") Att. §§ 4.2,
16 4.3; Network Elements ("UNE") Att. §§ 7.1, 9.8.1, 9.8.2; Glossary
17 ("Glo.") §§ 2.30, 2.46; and all other provisions that include the
18 term "end user.")

19
20 **Q. MR. GATES SAYS THAT A DEFINITION OF CUSTOMER OR END**
21 **USER MUST INCLUDE BRIGHT HOUSE CABLE'S VOIP "END**
22 **USER" BECAUSE THE ICA DEALS WITH DIRECTORY LISTINGS,**
23 **E911 AND LNP, ALL OF WHICH INVOLVE END USERS. (GATES DT**
24 **AT 58.) IS HIS POSITION JUSTIFIED?**

25 **A.** No. Verizon would not be opposed to appropriate language clarifying

1 that VoIP end users (which would receive service from Bright House's
2 cable affiliate) are encompassed within the terms of the ICA for the
3 purposes of directory listings, E-911, and LNP. But the narrow rationale
4 Mr. Gates offers for Bright House's position does not justify the way in
5 which Bright House's proposed terms would operate in the contract. As
6 I pointed out in my Direct Testimony, Verizon has two concerns about
7 Bright House's language, neither of which is addressed in its direct
8 testimony. First, Bright House's use of its "customer" and "end user"
9 definitions in the ICA would create obligations that run from Verizon to
10 Bright House's unregulated cable affiliate ("Bright House Cable"), such
11 as grounding obligations to benefit Bright House Cable, which is not a
12 party to this contract. Bright House has deliberately structured its
13 Florida operations to insulate Bright House Cable from regulation. It
14 should not be permitted to use the ICA as a way to get the benefits of
15 regulation for Bright House Cable, without the burdens.

16
17 Verizon's second concern, as stated in my Direct Testimony, is that
18 Bright House's definition would include VoIP service provided by Bright
19 House itself, even though it does not provide such services (Bright
20 House Cable does). Bright House's "customer" definition incorrectly
21 suggesting that Bright House is providing VoIP services unnecessarily
22 raises contentious and complex issues about the scope of an ILEC's
23 obligations toward a retail provider of VoIP services (which Bright
24 House, again, is not). The Commission should thus reject this
25 language, which serves no legitimate Bright House objective.

1 **ISSUE 16:** SHOULD BRIGHT HOUSE BE REQUIRED TO PROVIDE
2 ASSURANCE OF PAYMENT? IF SO, UNDER WHAT
3 CIRCUMSTANCES AND WHAT REMEDIES ARE AVAILABLE
4 TO VERIZON IF ASSURANCE OF PAYMENT IS NOT
5 FORTHCOMING? (GTC § 6.)
6

7 **Q.** MS. JOHNSON ARGUES THAT THERE IS NO REASON TO
8 INCLUDE VERIZON'S ASSURANCE OF PAYMENT LANGUAGE IN
9 THE CONTRACT, BECAUSE BRIGHT HOUSE HAS A GOOD
10 PAYMENT RECORD. (JOHNSON DT AT 20.) PLEASE RESPOND.

11 **A.** As long as Bright House pays its bills on time and can demonstrate that
12 it is a creditworthy company, the assurance of payment language should
13 be of no concern to Bright House. And as I noted in my Direct
14 Testimony, Verizon does not and cannot make assessments about a
15 CLEC's financial status; even if Verizon could do so in this case, it would
16 still need the assurance of payment provisions because Verizon is
17 required to make available all of its section 251(c) agreements for
18 adoption by other carriers. Moreover, recent industry experience has
19 shown that it is not unusual for the fortunes of even creditworthy
20 companies to change, and that companies that previously had good
21 payment records can quickly suffer financial reverses and even
22 bankruptcy. Verizon's proposed language appropriately addresses this
23 very real risk.

24

25

1 Q. MS. JOHNSON SUGGESTS THAT VERIZON SHOULD HAVE
2 AGREED TO RECIPROCAL ASSURANCE OF PAYMENT
3 LANGUAGE. (JOHNSON DT AT 20.) WHY IS THAT POSITION
4 UNREASONABLE?

5 A. Because Verizon and Bright House are not similarly situated. Verizon is
6 required to negotiate and arbitrate interconnection agreements with all
7 requesting CLECs and must include terms in those agreements that
8 provide adequate financial protection. Bright House does not have that
9 obligation or related exposure. Further, if the Bright House ICA had
10 reciprocal assurance of payment provisions, other CLECs could opt into
11 that ICA and obtain the same terms. Verizon thus had good reason to
12 reject Bright House's proposal.

13

14 Q. MS. JOHNSON AND MR. GATES CRITICIZE SOME OF THE TERMS
15 IN VERIZON'S PROPOSAL, BUT DOES EITHER WITNESS MAKE A
16 SPECIFIC, ALTERNATIVE PROPOSAL?

17 A. No.

18

19 Q. MR. GATES CRITICIZES VERIZON'S PROPOSED LANGUAGE THAT
20 WOULD PERMIT IT TO STOP PROVIDING SERVICES UNDER THE
21 ICA UNTIL BRIGHT HOUSE PROVIDED THE REQUESTED
22 ASSURANCE OF PAYMENT. (GATES DT AT 44.) IS HIS CRITICISM
23 JUSTIFIED?

24 A. No. Verizon should not be required to provide service to a company that
25 may be a credit risk if that company will not (or cannot) provide

1 assurance of payment. Although Mr. Gates expresses concern about
2 potential disruption of service, Bright House could avoid any service
3 interruption by providing the assurance of payment upon request.

4

5 **Q. MR. GATES ALSO ASSERTS THAT BRIGHT HOUSE SHOULD NOT**
6 **BE REQUIRED TO TIE UP ITS RESOURCES. (GATES DT AT 45.) IS**
7 **THAT A VALID CONCERN?**

8 A. No. If Bright House does not trigger any of the provisions that would
9 require it to provide assurance of payment, it would not have to provide
10 a letter of credit. And as I noted in my Direct Testimony, the
11 Commission has approved provisions in AT&T's interconnection
12 agreements that require CLECs to provide security deposits for two
13 months of charges.¹ Verizon's assurance of payment language does
14 not require an upfront deposit, and, when triggered, it requires a letter of
15 credit covering two months of charges, which is in line with, and even
16 more favorable, to Bright House, than the way the Commission has
17 dealt with this issue before.² In short, Verizon's proposed language is
18 reasonable and consistent with Commission precedent and should be
19 adopted.

20

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

¹ See, e.g., *Joint Petition by NewSouth Comm. Corp.*, Docket No. 040130-TP, Order No. PSC-05-0975-FOF-TP, pp. 66-68 (Oct. 11, 2005).

² See *id.*

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

5 **Q. MR. GATES CLAIMS THAT VERIZON SHOULD BE REQUIRED TO**
6 **ACCOMMODATE CHANGES TO BRIGHT HOUSE'S NETWORK**
7 **BECAUSE BRIGHT HOUSE IS MAKING NETWORK UPGRADES.**
8 **(GATES DT AT 51-53.) DOES THIS ARGUMENT MAKE SENSE?**

9 A. No. If Bright House were not going to make any network upgrades,
10 there would be no reason to arbitrate this issue, which assumes Bright
11 House will be making network changes. The fact that Bright House is
12 making such changes does not speak to the question whether Verizon
13 must change its network to accommodate them. For the reasons
14 explained in my Direct Testimony (and that will be covered in Verizon's
15 legal briefs), Verizon is not required to do so. Mr. Gates' claim that
16 Bright House is "sufficiently substantial and established," such that the
17 network accommodation provision should be mutual (Gates DT at 51-
18 53), has nothing to do with resolution of this issue. The very different
19 interconnection obligations of Verizon and Bright House are related to
20 their status as an ILEC and a CLEC, respectively, not to the size of their
21 networks or customer bases. Indeed, if the Commission adopts Bright
22 House's position, Verizon would have to accommodate the network
23 changes of any carrier adopting the Verizon/Bright House agreement,
24 including less "substantial and established" carriers.

25

1 Q. DOES THE FACT THAT BRIGHT HOUSE SERVES A LARGE
2 NUMBER OF CUSTOMERS MEAN THAT VERIZON SHOULD BE
3 REQUIRED TO RECONCILE ITS NETWORK ARCHITECTURE TO
4 BRIGHT HOUSE'S?

5 A. No. As I said, the fact that Bright House may serve a large number of
6 customers has nothing to do with the issue at hand. Again, the
7 companies are not similarly situated. As an ILEC, Verizon has the duty
8 to interconnect with requesting CLECs under section 251(c) of the
9 Telecommunications Act of 1996 (the "1996 Act"), a duty that Bright
10 House does not share. Verizon has about 150 interconnection
11 agreements with CLECs in Florida and has established physical
12 interconnection with more than 30 of them, which reflects responsibilities
13 Bright House does not have. Verizon's duties are not unlimited,
14 however. As Verizon explained in its Response to Bright House's
15 Petition, under the 1996 Act, CLECs only are entitled to interconnection
16 with ILECs' existing networks,³ not superior networks that have not been
17 built. That is true regardless of the size of the CLEC's customer base,
18 so Mr. Gates' testimony about Bright House's particular network is
19 irrelevant to the Commission's resolution of this issue.

20

21 Q. DOES MR. GATES' TESTIMONY GIVE ANY CONSIDERATION TO
22 WHETHER BRIGHT HOUSE'S PROPOSAL WOULD BE
23 WORKABLE?

24 A. No, and it wouldn't be. As I explained in my Direct Testimony, if the
25 Commission adopts Bright House's language, any carrier that adopts

³ *Iowa Util. Bd. v. F.C.C.*, 120 F. 2d 753, 813 (8th Cir. 1997).

1 the Verizon/Bright House agreement would enjoy the same right for
2 Verizon to accommodate its network as Bright House would. But Mr.
3 Gates does not explain which company's network changes would take
4 priority if they couldn't be reconciled with one another. Nor does he
5 discuss how Verizon could possibly accommodate its network to the
6 different network changes made by Bright House and CLECs that opted
7 into Bright House's ICA. As a practical matter, Verizon provides a
8 network hub used by many CLECs, and the only way that system can
9 work is if all interconnectors, including Bright House, ensure that their
10 networks are compatible with Verizon's. If Verizon were required to
11 modify its network to accommodate the changes of every CLEC, the
12 system of interconnection could not function. Because Bright House's
13 proposal is unworkable and unlawful, it should be rejected.

14
15

16 **ISSUE 24: IS VERIZON OBLIGED TO PROVIDE FACILITIES FROM**
17 **BRIGHT HOUSE'S NETWORK TO THE POINT OF**
18 **INTERCONNECTION AT TELRIC RATES?** (Int. Att., Bright
19 House proposed § 2.1.1.3.)

20

21 **Q. IS THERE AN ACTUAL DISPUTE WITH RESPECT TO THE PRICING**
22 **OF FACILITIES FROM BRIGHT HOUSE'S NETWORK TO THE POINT**
23 **OF INTERCONNECTION ("POI")?**

24

25 **A. No.** As Mr. Gates states in his Direct Testimony (at 68), "the parties

1 have reached a settlement regarding the charging that will apply to the
2 specific current configuration that Bright House uses to interconnect with
3 Verizon.”
4

5 **Q. THEN WHY IS ISSUE 24 STILL IN THE ARBITRATION?**

6 A. Mr. Gates contends that, because the settlement terms apply only as
7 long as the parties' physical interconnection arrangements remain
8 materially unchanged, the Commission still needs to “address the
9 principles that govern the pricing of interconnection facilities at this
10 time,” in case Bright House later modifies its interconnection
11 arrangements during the term of the agreement. (Gates DT at 68.) But
12 as I explain later, the Commission would be ill-advised to make a
13 generic pronouncement about the pricing of unidentified facilities that
14 Bright House may or may not buy from Verizon in the future, in
15 conjunction with a different interconnection method that Bright House
16 may or may not implement. There is no reason for the Commission to
17 arbitrate this theoretical legal dispute.
18

19 **Q. IS BRIGHT HOUSE PROPOSING ANY CONTRACT LANGUAGE FOR**
20 **RESOLUTION OF ISSUE 24?**

21 A. It is not clear that it is. In its Petition for Arbitration, Bright House
22 proposed a new section 2.3.1.1 for the Interconnection Attachment that
23 would permit Bright House to obtain transport facilities from Verizon on
24 Bright House's side of the parties' point of interconnection (“POI”) at
25 total-element-long-run incremental cost (“TELRIC”) rates. (Petition, Ex.

1 2 (DPL), at 67, § 2.3.1.3.) This language does not appear in the
2 proposed interconnection agreement Mr. Gates submitted with his Direct
3 Testimony, presumably in recognition of the parties' settlement with
4 respect to facilities charges.

5
6 At the end of his testimony on Issue 24, however, Mr. Gates advises the
7 Commission to "adopt Bright House's language and require Verizon to
8 provide entrance facilities in support of interconnection and traffic
9 exchange at TELRIC, rather than tariffed, rates." (Gates DT at 82.) But
10 Mr. Gates doesn't cite any proposed contract language, and the omitted
11 section 2.3.1.3 is the only language Bright House had proposed for
12 resolving Issue 24. If Bright House is no longer proposing contract
13 language to resolve this Issue, then there is nothing for the Commission
14 to arbitrate (even aside from the above-mentioned lack of any actual
15 dispute) and this issue necessarily drops out of the arbitration. My
16 testimony here is offered only in the event that Bright House is still
17 proposing its old section 2.3.1.3, despite the parties' settlement, and
18 despite the absence of section 2.3.1.3 from the contract Mr. Gates
19 submitted.

20

21 **Q. ASSUMING BRIGHT HOUSE IS STILL PROPOSING SECTION**
22 **2.3.1.3, WHAT WOULD IT REQUIRE?**

23 A. As Mr. Gates explains, in order for Verizon and Bright House to
24 physically link their networks so calls can flow between them, Bright
25 House must "show up" at an appropriate point on Verizon's network.

1 (Gates DT at 67-68.) The parties have agreed upon language that
2 requires each party, at its own expense, to “provide transport facilities”
3 to get to the point of interconnection on Verizon’s network in one of
4 three ways: (1) by building its own facilities; (2) by obtaining them from a
5 third party; or (3) by buying them from the other party under the terms of
6 its tariff. (See Gates DT, Ex. TJG-3, §§ 2.1.1, 2.1.1.1, 2.1.1.2.) Bright
7 House would add a fourth option for transporting its traffic to the POI:
8 “In the case of Bright House, obtain facilities from Bright House’s
9 network to the POI, provided by Verizon at TELRIC rates” (Bright House
10 Petition, Ex. 2 at 67, Bright House § 2.1.1.3). Mr. Gates describes these
11 transport facilities as “entrance facilities in support of interconnection
12 and traffic exchange.” (Gates DT at 82.) The TELRIC rates that Bright
13 House would apply to these facilities under its proposed fourth option
14 would be significantly lower than the tariffed rates that apply to the same
15 facilities under the agreed-upon third option listed above. Those tariffed
16 rates apply today to every carrier that buys entrance facilities from
17 Verizon.

18
19 **Q. WHAT ARE ENTRANCE FACILITIES?**

20 A. An entrance facility is basically a wire used to transport calls between a
21 CLEC switch and an ILEC switch. In the *Triennial Review Remand*
22 *Order* (“TRRO”), where the FCC found that CLECs were not impaired
23 without access to entrance facilities at TELRIC rates, the FCC described
24 entrance facilities as “the transmission facilities that connect competitive

1 LEC networks with incumbent LEC networks.”⁴

2

3 **Q. DOESN'T BRIGHT HOUSE PROVIDE ITS OWN TRANSPORT**
4 **BETWEEN ITS NETWORK AND VERIZON'S?**

5 A. Yes. As Mr. Gates and Ms. Johnson repeatedly emphasize in their
6 testimony, Bright House, in conjunction with its cable company affiliate,
7 provides “full facilities-based competition.” (See, e.g., Johnson DT at 7-
8 8; Gates DT at 18-19). In other words, Bright House has built its own
9 network, instead of reselling Verizon’s services or piecing together
10 services using unbundled network elements from Verizon, as many
11 other competitors do. As part of its stand-alone network, Bright House
12 built its own fiber transport facilities between its network and Verizon's.
13 It does not buy these entrance facilities from Verizon. And whether
14 Bright House keeps its existing interconnection arrangements or
15 somehow changes them in the future, it will still be a facilities-based
16 carrier with its own transport facilities to get to Verizon's network. It is,
17 therefore, difficult to understand why Bright House insists on arbitrating
18 this issue about entrance facilities.

19

20 **Q. DOES MR. GATES CLAIM THAT BRIGHT HOUSE IS BUYING ANY**
21 **ENTRANCE FACILTIES TODAY?**

22 A. No. But in a cryptic sentence, Mr. Gates suggests that he might
23 characterize something associated with collocation as an entrance

⁴ *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, 20 FCC Rcd 2533 (“Triennial Review Remand Order” or “TRRO”), ¶ 136 (2005).*

1 facility: "Because Bright House does not use UNE loops, but does have
2 collocation arrangements in order to facilitate traffic exchange, Bright
3 House wants to ensure that its interconnection agreement with Verizon
4 reflects the appropriate, lower rate for any entrance facilities it obtains
5 for that purpose." (Gates DT at 81.) Mr. Gates does not explain his
6 reference to collocation-related entrance facilities, nor does he claim
7 that Bright House is actually obtaining any such facilities, whatever they
8 may be. In any event, as Mr. Gates himself pointed out, the parties
9 have settled their dispute about charges for facilities associated with the
10 parties' existing interconnection arrangements, so Bright House's
11 characterization of those facilities is irrelevant to resolution of Issue 24.
12 Moreover, Bright House has not raised any issue about the pricing of
13 collocation elements, which are tariffed. To the extent Mr. Gates is
14 trying to have the Commission order TELRIC rates for facilities Bright
15 House is buying at different rates under the settlement terms or
16 Verizon's collocation or other tariffs, those suggestions are improper and
17 are added cause to avoid generic pricing rulings in the absence of an
18 actual dispute about the pricing of specific facilities.

19
20 **Q. DOES MR. GATES DESCRIBE ANY SITUATION IN WHICH BRIGHT**
21 **HOUSE MIGHT BUY ENTRANCE FACILITIES FROM VERIZON?**

22 **A.** No. In his Direct Testimony, Mr. Gates is asked to "describe the
23 situation in which Bright House would purchase or lease facilities from
24 Verizon to connect its network to Verizon's network." (Gates DT at 77-
25 78.) Instead of responding with a scenario in which Bright House does

1 or would buy entrance facilities, Mr. Gates makes a general observation
2 about what an entrance facility is: “If Verizon provides the facilities to
3 connect the two networks, that facility is typically called an entrance
4 facility.” (Gates DT at 78 (emphasis added).) He doesn't say Verizon
5 actually *does* provide the facilities connecting the parties' networks or
6 describe any scenario under which Bright House might ask Verizon to
7 do so in the future.

8

9 **Q. BUT WHAT ABOUT MR. GATES' SUGGESTION THAT THE**
10 **COMMISSION NEEDS TO ESTABLISH PRICING PRINCIPLES TO**
11 **GOVERN TRANSPORT FACILITIES IN THE EVENT THAT BRIGHT**
12 **HOUSE MOVES TO FIBER-MEET INTERCONNECTION? (GATES DT**
13 **AT 68.)**

14 A. Bright House has no legitimate concern about pricing of entrance
15 facilities if it moves to fiber-meet interconnection arrangements. As I
16 pointed out earlier, Mr. Gates argues that, even though there is no
17 longer a dispute about the charges for facilities on Bright House's side of
18 the POI, Bright House might change its interconnection arrangements in
19 the future, so the Commission should establish the pricing standards
20 that would apply to facilities on Bright House's side of the POI in those
21 potential future arrangements. The only example Mr. Gates offers of a
22 different interconnection arrangement is fiber meet points (Gates DT at
23 68). But entrance facilities are irrelevant to fiber-meet-point
24 interconnection, which is governed by detailed contract terms
25 embodying FCC rules governing this type of interconnection.

1 Under a fiber-meet interconnection arrangement, the ILEC and the
2 CLEC each run their own fiber optic cable to a point of physical
3 interconnection at which they splice together those two cables. The
4 detailed terms of fiber-meet arrangements cover several pages of the
5 draft agreement at section 3.1 of the Interconnection Attachment and
6 Attachment A to section 3.1 (see Ex. TCG-3, at 64-65, 135-138).
7 Although some fiber-meet language remains in dispute, the agreed-
8 upon terms clearly require each Party to bear the costs and expenses of
9 constructing, operating, using, and maintaining the fiber on its own side
10 of the fiber-meet point where the parties interconnect their respective
11 networks. (See, e.g., Ex. TCG-3, at 135-38, Att. A to Int. Att. § 3.1, §§
12 2.2, 2.3, 7.3, & 8.1). These terms do not contemplate the provision by
13 Verizon of any transport facilities, at TELRIC or otherwise, on Bright
14 House's side of the fiber-meet interconnection. So there is no reason
15 why Bright House's possible future move to fiber-meet arrangements
16 would require a decision about pricing of transport facilities on Bright
17 House's side of the interconnection point. Pricing of those facilities
18 would be governed by the fiber-meet arrangement terms in the contract,
19 not by the "Point of Interconnection" section of the Interconnection
20 Attachment where Bright House has proposed to insert its section
21 2.1.1.3. Mr. Gates' conflation of the fiber-meet and entrance facilities
22 themes again raises a concern that Bright House's proposal for Issue 24
23 is intended to undermine agreed-upon terms.

24
25

1 Q. WHY DOES MR. GATES CONTEND THAT IT WOULD BE ENTITLED
2 TO TELRIC RATES FOR ENTRANCE FACILITIES IF IT BOUGHT
3 THEM FROM VERIZON?

4 A. As I pointed out in my Direct Testimony, the FCC held in the *TRRO* that
5 the ILECs were not required to provide unbundled, TELRIC-priced
6 access to entrance facilities, because the CLECs could economically
7 provision entrance facilities themselves or buy them from third parties.
8 (See, e.g., *TRRO* ¶¶ 137-39.) Mr. Gates does not dispute that entrance
9 facilities are no longer available as unbundled network elements
10 (“UNEs”). (Gates DT at 78-79). But he claims that the “FCC has
11 different rules for how entrance facilities should be priced, depending on
12 what the CLEC is going to use them for.” (Gates DT at 80.) More
13 specifically, Mr. Gates states that the FCC has ruled that an ILEC may
14 charge tariffed rates for entrance facilities if the CLEC uses them to
15 connect to UNEs, but that the ILEC must charge lower, TELRIC rates if
16 the CLEC uses the entrance facilities “for the purpose of network
17 interconnection and traffic exchange.” (Gates DT at 81.)

18

19 Q. DOES MR. GATES CITE ANY FCC RULES REQUIRING ILECS TO
20 PROVIDE ENTRANCE FACILITIES AT TELRIC FOR NETWORK
21 INTERCONNECTION AND TRAFFIC EXCHANGE?

22 A. No. The only support Mr. Gates offers for his view that different prices
23 apply to the same facilities, depending on their use, is a statement in the
24 *TRRO* that elimination of unbundled access to entrance facilities “does
25 not alter the right of competitive LECs to obtain interconnection facilities

1 pursuant to section 251(c)(2) for the transmission and routing of
2 telephone exchange service and exchange access service. Thus,
3 competitive LECs will have access to these facilities at cost-based rates
4 to the extent that they require them to interconnect with the incumbent
5 LEC's network." (Gates DT at 79, *quoting TRRO* ¶ 140.) Based on this
6 statement, Mr. Gates concludes that the FCC simultaneously denied
7 TELRIC-priced access to entrance facilities as UNEs under section
8 251(c)(3) and granted TELRIC-priced access to exactly the same
9 facilities for interconnection and traffic exchange under section
10 251(c)(2).

11

12 **Q. IS THERE ANY BASIS FOR THIS CONCLUSION?**

13 A. No. Neither I nor Mr. Gates are lawyers, and, as he states, the legal
14 issue of whether section 251(c)(2) gives Bright House a right to TELRIC-
15 priced entrance facilities "in support of interconnection and traffic
16 exchange" is a legal issue to be briefed by the parties. (Gates DT at 80,
17 82.) But Mr. Gates' *TRRO* quote makes plain that the FCC stated only
18 that CLECs have a right to obtain "interconnection facilities," not
19 "entrance facilities." That quote also makes clear that the *TRRO* "d[id]
20 not alter" CLECs' pre-existing rights under § 251(c)(2) with respect to
21 those interconnection facilities, so the FCC did not, in this paragraph,
22 impose any new requirement for ILECs to provide any facilities under §
23 251(c)(2). To the extent Bright House is claiming that § 251(c)(2)
24 requires ILECs to provide entrance facilities "for the purpose of network
25 interconnection and traffic exchange" (*see* Gates DT at 81), therefore,

1 that requirement would have to be found in the text of § 251(c)(2) itself,
2 or in FCC regulations or orders that both pre-date the *TRRO* and were
3 not vacated by the courts on review. In its briefs, Verizon's lawyers will
4 explain that the statute and those pre-*TRRO* orders and regulations
5 confirm that the CLECs' pre-existing rights under § 251(c)(2) did *not*
6 encompass entrance facilities.

7

8 **Q. DID THE COMMISSION PREVIOUSLY RECOGNIZE THAT THE**
9 ***TRRO* DID NOT CONFER ANY NEW SECTION 251(C)(2) RIGHTS ON**
10 **CLECS?**

11 A. Yes. In Verizon's 2004-2005 arbitration to implement the terms of the
12 *Triennial Review Order*⁵ and the *TRRO* in its interconnection
13 agreements, CLECs urged the Commission to find that CLECs had a
14 section 251(c)(2) right to the same, TELRIC-priced entrance facilities
15 they had been receiving as unbundled elements (although I don't think
16 any CLEC went as far as Bright House does in claiming a section
17 251(c)(2) right to entrance facilities for "traffic exchange"). The
18 Commission rejected the CLECs' proposals, emphasizing that "[t]he
19 FCC rules regarding interconnection facilities and an ILEC's obligations
20 under §251(c)(2) did not change" as a result of the *TRRO*.⁶ Verizon,
21 therefore, provides entrance facilities to CLECs in Florida under tariffed
22 rates, not at TELRIC rates.

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003) ("*TRO*").

⁶ *Petition for Arbitration of Amendment to Interconnection Agreements with Certain Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, Order No. PSC-05-1200-FOF-TP at 106 (Dec. 5, 2005).

1 Q. WILL A COMMISSION RULING ON ISSUE 24 PREVENT FUTURE
2 DISPUTES AND LITIGATION?

3 A. No. As I've explained, there is little chance of future disputes with Bright
4 House over the pricing of entrance facilities, even if it changes its
5 existing interconnection arrangements, because Bright House is a
6 facilities-based carrier. But while a ruling on the theoretical legal issue
7 Bright House raises here would likely have no real-world effect on the
8 relationship between Verizon and Bright House, it could affect Verizon's
9 relationship with the many non-facilities-based CLECs that *do* buy
10 entrance facilities from Verizon. As noted, those facilities are priced at
11 tariffed rates. If the Commission adopts Bright House's erroneous legal
12 theory that section 251(c)(2) entitles CLECs to TELRIC-priced entrance
13 facilities for interconnection and traffic exchange, CLECs that actually do
14 take entrance facilities would likely challenge their existing entrance
15 facilities charges, even though they saw no reason to do so in the years
16 since the Commission issued its decision in Verizon's *TRO/TRRO*
17 arbitration. And given the high stakes for Verizon, it would have no
18 choice but to appeal a Commission ruling adopting Bright House's
19 incorrect position that CLECs are entitled to TELRIC-priced entrance
20 facilities for purposes of interconnection and traffic exchange. As Mr.
21 Gates points out, the issue of availability of entrance facilities under
22 section 251(c)(2) has been the subject of considerable appellate
23 litigation (although it is not clear that the previously litigated cases
24 involve the same, "specific issue" (Gates DT at 80) as this case). So the
25 principal effect of a win on this issue for Bright House would be the

1 generation of administrative and court litigation, requiring the
2 Commission to wade into a legal dispute that has yielded competing
3 interpretations of the law from U.S. Circuit Courts, without any
4 discernible practical effect on the interconnection between Bright House
5 and Verizon.

6
7 **Q. HOW SHOULD THE COMMISSION ADDRESS ISSUE 24?**

8 A. If Bright House is still proposing its section 2.3.1.3 language that would
9 give it the broad right to obtain “facilities from Bright House’s network to
10 the POI” at TELRIC rates, the Commission should reject that language,
11 along with Bright House’s unsupported legal theory that section
12 251(c)(2) of the Act entitles CLECs to TELRIC-priced entrance facilities
13 for interconnection and traffic exchange. In the alternative, the
14 Commission could refrain from ruling on this issue unless and until there
15 is an actual dispute between the parties about the pricing of specific
16 facilities. As I discussed, this is a wholly theoretical legal issue at this
17 point and will likely remain so, because Bright House is a facilities-based
18 carrier. There is no existing dispute about the pricing of any facilities
19 that would be covered by Issue 24. Nor has Bright House posited any
20 scenario under which such a dispute might arise. *If* Bright House
21 decides to change its interconnection arrangements in the future, and *if*
22 it seeks to buy entrance facilities from Verizon in conjunction with those
23 new arrangements, and *if* the parties disagree about the pricing of those
24 facilities, then the Commission can resolve that concrete pricing dispute
25 about those specific facilities in those specific interconnection

1 arrangements. Bright House would presumably know well before it
2 modifies its interconnection arrangements that it plans to do so, so it
3 could bring the dispute to the Commission before it changes those
4 arrangements. Or Bright House could modify its interconnection
5 arrangements and then dispute Verizon's pricing of facilities, thus
6 prompting Verizon to bring the dispute to the Commission. There would
7 be no prejudice to Bright House in deferring a decision on this Issue
8 unless and until there is an actual dispute, and this approach would
9 avoid the risk of needless, wasteful litigation and inadvertent conflict with
10 already agreed-upon terms.

11
12 **ISSUE 45: SHOULD VERIZON'S COLLOCATION TERMS BE INCLUDED**
13 **IN THE ICA OR SHOULD THE ICA REFER TO VERIZON'S**
14 **COLLOCATION TARIFFS? (Collocation Attachment.)**

15
16 **Q. MS. JOHNSON AND MR. GATES INSIST THAT VERIZON INCLUDE**
17 **ITS TARIFFED COLLOCATION TERMS IN THE ICA. (GATES DT AT**
18 **23; JOHNSON DT AT 17-18.) DO THEY GIVE ANY GOOD REASON**
19 **WHY?**

20 **A.** No. In fact, the root of this dispute appears to be Bright House's failure
21 to actually look at Verizon's collocation tariffs, and the related failure to
22 discern whether it has any dispute with those tariffed terms. Mr. Gates
23 states that "Bright House needs the opportunity to actually see what
24 collocation terms and conditions Verizon is seeking to impose. Only
25 then can the parties address and iron out any differences they may

1 have.” (Gates DT at 23.) Mr. Gates also claims not to know whether
2 the tariffs are the same as the terms under which Bright House is taking
3 collocation today. (Gates DT at 22-23.)

4

5 Verizon’s tariffs are, of course, publicly filed, and Bright House is taking
6 collocation today under the same tariffed terms that apply to all
7 collocators (a fact which Bright House should already know). Verizon is
8 proposing nothing different in the ICA. If Bright House wants to “actually
9 see what collocation terms Verizon is seeking to impose” here, all it
10 needs to do is look at Verizon’s readily available tariffs, like any carrier
11 receiving collocation from or contemplating collocation with Verizon
12 does.

13

14 **Q. HOW WERE VERIZON’S TARIFFED TERMS ESTABLISHED?**

15 A. Verizon’s tariffed terms, including rates, were established in a fully
16 litigated proceeding initiated by a group of CLECs,⁷ and Verizon has
17 provided Bright House with a copy of the Commission Order in that
18 proceeding.

19

20 **Q. SHOULD THE COMMISSION ACCEPT MR. GATES’ SUGGESTION**
21 **TO TREAT THE COLLOCATION TARIFF TERMS AS DISPUTED?**
22 **(GATES DT AT 23.)**

23 A. Absolutely not. Bright House has identified no disputes about Verizon’s
24 tariffed collocation terms or prices—and, in fact, could not have done so

⁷ *Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecomm. Inc.’s Service Territory*, Final Order, Order No. PSC-04-0895-FOF-TP (Sept. 14, 2004) and Amendatory Order (Nov. 4, 2004).

1 without having reviewed the tariffs. Nevertheless, Mr. Gates proposes
2 that, if the parties cannot resolve Issue 45 before the Commission's
3 ruling in the arbitration, then Verizon's entire collocation tariff, which
4 Bright House wants inserted into the contract, should be treated as
5 disputed language under the ICA's dispute resolution provisions. Under
6 these provisions, the parties would negotiate terms and bring any
7 unresolved disputes to the Commission for resolution. In other words,
8 Bright House would have the opportunity to review Verizon's collocation
9 tariff at its leisure after the arbitration is over and the contractual right to
10 bring a challenge to any term it finds that it doesn't like.

11

12 This approach would reward Bright House for failing to review Verizon's
13 tariffs to determine whether it had any problem with them *before*
14 presenting a collocation issue for arbitration. Bright House is wasting
15 the Commission's and Verizon's resources by raising this collocation
16 issue without having any reason to do so. The Commission should
17 reject Bright House's position.

18

19 **Q. MS. JOHNSON AND MR. GATES EXPRESS CONCERN THAT**
20 **VERIZON'S PROPOSAL REFERS TO BOTH ITS INTERSTATE AND**
21 **INTRASTATE TARIFFS. (JOHNSON AT 17-18; GATES AT 22-23.) IS**
22 **VERIZON WILLING TO ADDRESS THAT CONCERN?**

23 A. Yes. Verizon is willing to delete the reference to its interstate access
24 tariff, so Bright House can look to Verizon's intrastate collocation tariff
25 (Section 19 of its intrastate access tariff) to discern the terms of its

1 collocation.

2

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

6

7 **Q. MR. GATES ARGUES THAT SPECIAL ACCESS CIRCUITS THAT**
8 **VERIZON SELLS TO END USERS AT RETAIL ARE NOT EXCHANGE**
9 **ACCESS SERVICES AND THEREFORE MUST BE SUBJECT TO THE**
10 **RETAIL DISCOUNT. DID YOU ADDRESS THAT POINT IN YOUR**
11 **DIRECT TESTIMONY?**

12 **A.** Yes. As I explained in my Direct Testimony (at 25-27), the FCC's *Local*
13 *Competition Order* makes clear that services like special access
14 services are not subject to the resale discount. Mr. Gates offers no
15 testimony as to why this principle should not apply in this case.

16

17 **Q. DOES MR. GATES POINT TO ANY DECISION BY A PUBLIC**
18 **SERVICE COMMISSION DETERMINING THAT SPECIAL ACCESS**
19 **SERVICE MUST BE MADE AVAILABLE AT THE RESALE**
20 **DISCOUNT?**

21 **A.** No, and I am not aware of any such decision.

22

23 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

24 **A.** Yes.

25