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-10-0322-PHO-TP ISSUED: May 19, 2010

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 13, 2010, in Tallahassee, Florida, before Commissioner Nathan A. Skop, as Prehearing Officer.

APPEARANCES:

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On behalf of Bright House Networks Information Services (Florida), LLC (BHN).

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On behalf of Bright House Networks Information Services (Florida), LLC (BHN).
(appearing telephonically)

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PREHEARING ORDER

I. CASE BACKGROUND

On November 3, 2009, Bright House Networks Information Services (Florida), LLC ("Bright House") filed a petition for arbitration of its Interconnection Agreement ("ICA") with Verizon Florida LLC ("Verizon"). In its petition, Bright House requests that the Florida Public Service Commission ("Commission") arbitrate unresolved issues in its ICA with Verizon, and establish terms and conditions for an interconnection agreement between Bright House and Verizon. On December 7, 2009, Verizon filed its response to Bright House's petition. An issue identification meeting was held on January 13, 2010, and this matter has been scheduled for an administrative hearing to take place May 25, 2010.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 364, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-22, and 28-106, Florida Administrative Code, as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 119.07(1), F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, F.S.. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, F.S., at the hearing shall adhere to the following:

(1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears

to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

Witness	Proffered By	Issues #
Direct and Rebuttal		
Name	Utility/Staff	
+Timothy J. Gates	BHN	7, 13, 16, 24, 32, 36, 37, 41 and 49
+Marva B. Johnson	BHN	7, 16 and 37
+Paul B. Vasington	VERIZON	16, 24 and 49
+Peter J. D'Amico	VERIZON	32
+William Munsell	VERIZON	7, 13, 36(a), 36(b), 37 and 41

VII. BASIC POSITIONS

BHN: Bright House is the Petitioner in this Arbitration proceeding. About a year ago, Verizon sent Bright House Verizon's current "template" interconnection agreement. That template was different from the parties' current agreement in innumerable ways, many of which seemed to Bright House to be significantly less favorable than its existing agreement. Bright House undertook a careful review of Verizon's template, however, in order to specifically identify the provisions that were problematic and propose solutions.

At the completion of that effort, Bright House sent Verizon a detailed list of proposed changes to Verizon's template, along with an explanation for each proposed change. After extensive discussions, the parties resolved many issues, but well over fifty (50) issues and sub-issues remained by the arbitration deadline, and were raised in our petition. As the case has proceeded, however, the parties have resolved all but nine (9) open issues, although these do contain a certain number of sub-issues.

Bright House's specific position on each open issue is laid out below. Broadly speaking, as more and more issues have been settled by the parties, the remaining issues tend to involve direct disagreements between Verizon and Bright House regarding what result is required by, or most consistent with, governing law. As explained in more detail below, in such cases, Bright House's position is in accord with governing law, while Verizon's is not. In some cases, however, neither party's proposal is either literally required by, or literally banned by, governing law. In those cases, the Commission has discretion under the law to reach different possible results. In those cases, Bright House believes that our specific proposals are preferable as a matter of policy, because they would result in enhanced public benefits in the form of fairer and more robust competition among providers of voice services in the Tampa/St. Petersburg area.

VERIZON: Verizon's positions on the nine remaining issues in this arbitration are consistent with settled law and sound public policy as articulated by the Federal Communications Commission ("FCC"), the courts and this Commission in the fourteen years since the Telecommunications Act of 1996 ("Act") was passed. Bright House, in contrast, has asserted novel theories without legal or policy support in an effort to shift costs to Verizon and gain other unique competitive advantages. Bright House, apparently believing that it has nothing to lose by asking, has requested interconnection agreement ("ICA") language that departs radically from the intercarrier compensation arrangements that have been accepted throughout the industry. For the reasons summarized below, which will be addressed in detail at the hearing and in Verizon's post-hearing brief, Bright House's approach must be rejected and Verizon's proposed ICA language on each issue should be adopted.

STAFF: Staff has no position at this time. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 7: SHOULD VERIZON BE ALLOWED TO CEASE PERFORMING DUTIES PROVIDED FOR IN THIS AGREEMENT THAT ARE NOT REQUIRED BY APPLICABLE LAW?

POSITIONS

BHN: Once the terms of the parties' new interconnection agreement are established, those terms should be fully binding on both parties for the full term of the agreement, unless there is a material change in law. Without a change in law, Verizon should not be permitted to cease performing any of its duties established under the contract, even if Verizon privately believes that it agreed to perform certain obligations that it was not clearly required, or not required at all, to perform by applicable law. Any other conclusion would deprive Bright House of

the benefit of the "binding" agreement it is entitled to negotiate with Verizon under the terms of 47 U.S.C. § 252(a)(1).

Verizon has proposed a provision (General Terms & Conditions, § 50) that would permit Verizon to walk away from its contractual duties. This proposal is ***not*** based on the need to accommodate ***changes*** in applicable law: the parties have agreed that if applicable law changes, they will discuss the matter and amend the contract accordingly, with recourse to the Commission if they cannot agree on what the new legal regime requires. Verizon's proposed language would allow it to unilaterally cease providing any and all of its contractual commitments, on 30 days' notice, whether there is any change in law or not. Moreover, the provision applies "***notwithstanding anything else***" in the Agreement. This means that (a) it applies to all of Verizon's contractual obligations, and (b) the usual terms obliging Verizon to negotiate regarding disputes, etc. do not limit the operation of this provision.

Putting this all together, Verizon is asserting a unilateral right to decide what it does and does not have to do under the contract.

This provision would be bad enough if it only applied to specific, individual Verizon duties. In fact, however, it applies to Verizon's entire relationship with Bright House. Verizon has stated that it reserves its right, at any time, to object to Bright House's right to interconnection with Verizon in the first place. Under Verizon's proposed language, therefore, it would have the right to void its entire contract with Bright House on 30 days notice, any time that Verizon, unilaterally, decides that Bright House is not entitled to interconnection.

This is clearly unjust, unreasonable, and unfair. It makes a mockery of the entire negotiation and arbitration process in which Bright House and Verizon have been engaged, and indeed of the Commission's expenditure of time and effort to resolve this matter. It is also illegal. Section 252(a)(1) calls on Verizon to negotiate "a binding agreement" with requesting telecommunications carriers such as Bright House. Verizon cannot simultaneously negotiate and agree to various provisions with Bright House and then simultaneously assert that those provisions are "binding" only so long as Verizon declares them to be. Moreover, on matters as to which the parties cannot agree, Section 252(c) requires the Commission to "impos[e] conditions" on the parties that implement the requirements of Section 251. Verizon, therefore, may not coyly hide behind a generic statement that it "reserves its right" to object at some future time to Bright House's entitlement to interconnection with Bright House. Bright House has asserted that it is entitled to interconnection with Verizon; Verizon has not denied it. As a precondition to resolving the open issues between the parties, and approving the contract, as required by Section 252(c), the Commission must find that Bright House is entitled to interconnection with Verizon, under Section 251.

VERIZON: Yes. Verizon currently provides certain services and makes certain payments under the parties' ICA only because it is required to do so by applicable law. Verizon would not agree voluntarily to provide those services or make those payments. Accordingly, if and when the law does not require Verizon to provide those services or make those payments (whether because of a change in law or in circumstances), Verizon should be permitted to stop providing or stop paying, as the case may be. Unlike most changes in law, which might require the parties to negotiate new implementing terms and conditions, this situation does not create a need for further negotiation. Indeed, there is nothing to negotiate. Absent a legal obligation to provide these services or make these payments, Verizon has a right to stop providing or stop paying. Indeed, the Commission has rejected the notion that incumbents must negotiate to stop providing services they have no legal obligation to provide. *See Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecomm., Inc., etc.*, Order Denying Emergency Petitions, Order No. PSC-05-0492-FOF-TP, at 6-7 (May 25, 2005) (rejecting CLECs' arguments that ILECs must negotiate terms allowing them to stop taking orders for unbundled switching after the FCC eliminated ILECs' obligation to provide it).

STAFF: Staff has no position at this time.

ISSUE 13: WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES' RIGHT TO BILL FOR SERVICES AND DISPUTE CHARGES FOR BILLED SERVICES?

POSITIONS

BHN: The parties should be required to render a bill for a service within one year of providing the service, and to protest any bill within one year of receiving it. This provision would provide both parties with certainty, after a reasonable time, regarding their own financial position as regards the other party. In addition, it would lower both parties' business risk, and therefore lowers their overall cost of operations. It would also create a healthy incentive on both parties to ensure that their bills to the other party, as well as bills received from the other party, are accurate.

There is no evidence that either party has ever had a need to back-bill the other for services rendered more than a year ago, or to protest a bill paid more than a year ago. Moreover, an interconnection agreement established under the auspices of federal law need not conform to the generic Florida statute of limitations. That generic statute of limitations was established to apply to the general run of individual and commercial contracts. Interconnection agreements, however, are established and supervised by regulators such as the Commission precisely because they are intended to serve not merely the private interests of the parties, but also the public interest in establishing and maintaining competition in

telecommunications markets.[1] The different legal and policy context in which interconnection agreements are established authorizes and justifies a different, and shorter, limitations period than applies under generic Florida law.

VERIZON: Consistent with the Commission's prior decision on this issue, the Florida statute of limitations (Fl. Stat. § 95.11(2)(b)) provides the appropriate time limit for the parties' right to bill for services and dispute charges for billed services. Bright House's proposal to impose an arbitrary one-year time limit is not only at odds with the statute of limitations and Commission precedent, but would require Verizon to waive its rights to receive payments to which it otherwise would be entitled and to dispute charges it should not have been billed in the first place. Verizon is not willing – and should not be required – to waive those rights.

STAFF: Staff has no position at this time.

ISSUE 16: SHOULD BRIGHT HOUSE BE REQUIRED TO PROVIDE ASSURANCE OF PAYMENT? IF SO, UNDER WHAT CIRCUMSTANCES, AND WHAT REMEDIES ARE AVAILABLE TO VERIZON IF ASSURANCE OF PAYMENT IS NOT FORTHCOMING?

POSITIONS

BHN: Bright House questions the need for any assurance of payment provision as between Verizon and Bright House. If there is to be one, however, it should be fair to both parties. Verizon's proposed language is unfair, one-sided, and prone to abuse. The Commission should therefore reject Verizon's proposed assurance of payment language. If such provisions are to be included, then the Commission should impose the same terms regarding this topic that it imposed in the BellSouth-NuVox arbitration.

Verizon's proposed terms allow it to demand assurance of payment essentially at its discretion. *See* Verizon's proposed General Terms & Conditions, § 6.2. Even more troubling, Verizon asserts the right to cut off all services to Bright House unless Bright House immediately, without question, complies with Verizon's demand. *Id.*, § 6.8. This is unjust and unreasonable, and therefore violates 47 U.S.C. §§ 251 and 252. If the contract will include an assurance of payment provision, Bright House has proposed that the parties use the assurance-of-payment terms the Commission established in a case involving BellSouth and a CLEC called NuVox. These Commission-approved terms and conditions, among other things, make clear that Verizon may not demand assurances of payment from a CLEC that has a good payment history (like Bright House does).

[1] A key purpose of establishing interconnection agreements is to have "secure the public benefit of competition." *WorldNet Telecommunications, Inc. v. Puerto Rico Telephone Company, Inc.*, 497 F.3d 1, 12 (1st Cir. 2007).

VERIZON: Yes. Adequate assurance of payment provisions are essential in Verizon's interconnection agreements, because Verizon has no choice but to interconnect with CLECs, regardless of their financial condition. As the past few years in the industry demonstrate, even apparently creditworthy enterprises can quickly devolve into insolvency. Verizon does not and cannot make assessments about a CLEC's financial status as a prerequisite to interconnection—nor would this exercise mitigate the need for assurance of payment provisions, because Verizon is required to make available its interconnection agreements for adoption by other carriers.

Verizon proposes that Bright House should be required to provide assurance of payment if it fails to pay a Verizon bill on time, is unable to demonstrate its creditworthiness, admits its inability to timely pay its debts or is in bankruptcy proceedings. In such cases, Verizon would have the right to request assurance of payment in the form of a letter of credit equal to two months' anticipated charges. The Commission has approved Verizon's assurance of payment provisions in numerous other interconnection agreements and has approved even more stringent provisions in other companies' agreements.[2] The Commission should adopt Verizon's proposed language, because it is commercially reasonable, consistent with rulings of this Commission and the FCC,[3] and benefits CLECs by allowing them to continue obtaining service despite financial difficulties.

STAFF: Staff has no position at this time.

ISSUE 24: IS VERIZON OBLIGED TO PROVIDE FACILITIES FROM BRIGHT HOUSE'S NETWORK TO THE POINT OF INTERCONNECTION AT TOTAL ELEMENT LONG RUN INCREMENTAL COST ("TELRIC") RATES?

POSITIONS

BHN: Verizon is required by long-standing FCC rules to provide facilities from Bright House's network to the interconnection point within Verizon's network at which the parties exchange "telephone exchange service" and "exchange access" traffic, at TELRIC rates. Verizon's claim that it may impose tariffed special access rates for such facilities confuses the legal regime governing facilities provided to interconnect for the mutual exchange of traffic – governed by Section 251(c)(2), which clearly requires such facilities to be priced at TELRIC rates – and the very different legal regime governing what features and functions are available from Verizon as unbundled network elements ("UNEs") – governed by Sections

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

[3] 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).

251(c)(3) and 251(d)(2), and which the FCC has ruled does not require ILECs to provide such facilities at TELRIC rates for the purpose of accessing UNEs such as unbundled loops or interoffice transport.

This is the first of several issues where Verizon fails to distinguish between its obligation to provide unbundled network elements (UNEs), which is governed by Sections 251(c)(3) and 251(d)(2), and its obligation to interconnect for the exchange of traffic, which is governed by Section 251(c)(2). These two situations are quite different, whether viewed from a legal perspective (different statutory provisions apply), a technical/network perspective (different physical arrangements are involved), or a policy perspective (the competitive consequences of the two situations differ greatly). Verizon is therefore simply wrong to apply UNE-based rulings and concepts to the situation at issue between Bright House and Verizon, which relates entirely to interconnection for purposes of traffic exchange.

At a high level, a CLEC may obtain a UNE if only lack of access to it would "impair" the CLEC's ability to provide its services. 47 U.S.C. § 251(d)(2). *See generally In the Matter of Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 20 FCC Rcd 2533 (2005) ("*TRRO*"). The standard for interconnection arrangements is entirely different: a CLEC is entitled to interconnect at "any technically feasible point" within the ILEC's network. 47 U.S.C. § 251(c)(2). No "impairment" analysis applies. If a proposed point or method of interconnection is "technically feasible," Verizon must provide it. (We discuss the "technical feasibility" standard under Issue #24.)

Given that ILECs are obliged to provide facilities for purposes of interconnection under Section 251(c)(2), the key question under this issues is what pricing standard applies to those facilities. This is established in "Subpart F" of the FCC's interconnection rules, 47 C.F.R. §§ 51.501 *et seq.* These rules lay out the FCC's "TELRIC" pricing standard. Rule 51.501(a) expressly states that "the rules in this subpart apply to the pricing of network elements, ***interconnection,*** and methods of obtaining access to unbundled elements ... ." (Emphasis added.) Moreover, though most of the language in Subpart F of the rules speaks in terms of network "elements," the FCC made clear that the pricing standards established there apply fully to interconnection arrangements: "As used in this subpart, the term 'element' includes network elements, ***interconnection, and methods of obtaining interconnection*** and access to unbundled elements." 47 C.F.R. § 51.501(b) (emphasis added).[4]

[4] There is nothing new about this requirement. Rule 51.501 – which clearly states that TELRIC pricing applies to interconnection and methods to obtain interconnection – was established by the FCC in the August 1996 *Local Competition Order* and has not been amended since. *See In the Matter of Implementation of the Local Competition*

Thus, Verizon is required to provide facilities between Bright House's network and the point of interconnection within Verizon's network for the exchange of traffic, at TELRIC rates. This is true even though Verizon is ***not*** required to provide such transport facilities as an unbundled network element, or for the purpose of allowing a CLEC to obtain access to unbundled network elements.

VERIZON: No. As an initial matter, Bright House has built its own facilities from its network to Verizon's; it does not buy them from Verizon. Therefore, it is difficult to understand why Bright House presented this issue for resolution. Indeed, Mr. Gates admits in his Direct Testimony that the parties have resolved the issues of facilities charges under their current interconnection configuration. (Gates Direct Testimony at 68.) And if Bright House changes that configuration at some point in the future, it will still own these facilities connecting Bright House's network with Verizon's, so no pricing disputes could arise.

Only in Mr. Gates' Rebuttal Testimony did he, for the first time, indicate what facilities Bright House is seeking at TELRIC rates from Verizon, and they are *not* facilities connecting Bright House's network to Verizon's. They are, instead, access toll connecting trunks connecting Bright House's network with the networks of *interexchange carriers*. Bright House uses these facilities to carry interexchange carriers' traffic from Verizon's tandem switch to Bright House's cable company affiliate, ("Bright House Cable"), for termination to Bright House Cable's end users and to carry a few calls in the other direction. These access toll connecting trunks do *not* carry calls between Bright House and Verizon. In addition, Bright House does not even need them to carry calls from interexchange carriers, because – as Mr. Gates admits – Bright House is already interconnected at Verizon's tandem switch and can pick up all its interexchange carrier traffic there. (*See* Gates Rebuttal Testimony at 42-43.) And Bright House's complaints about its expenses for these facilities are misleading, because Bright House, in turn, charges the interexchange carriers for their use at Bright House's own, tariffed access rates.

The access toll connecting trunks at issue are, and always have been, provided at tariffed rates, not at TELRIC rates, whether as unbundled network elements under section 251(c)(3) or as "interconnection facilities" under section 251(c)(2). In an attempt to get these access toll connecting trunks at lower, TELRIC rates, however, Bright House makes a novel, convoluted argument. Mr. Gates correctly states that, in the *Triennial Review Remand Order*, the FCC ruled that CLECs are not impaired without TELRIC-priced access to entrance facilities under section 251(c)(3) of the Act. But he contends that the FCC simultaneously ruled that CLECs may obtain the exact same facilities at TELRIC prices under section 251(c)(2) of the Act. Aside from the fact that Mr. Gates' legal interpretation is

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Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) at Appendix B, page B-29 (showing text of rules being adopted at that time).

wrong, his contention is not relevant to any issue in this case, because *Bright House is not seeking to obtain entrance facilities from Verizon*, at TELRIC prices or otherwise. As the FCC has made clear, the entrance facilities it was discussing are transmission facilities that either carry traffic between CLEC and ILEC customers, or that enable a CLEC to access a customer served over a UNE loop. Entrance facilities thus do not include access toll connecting trunks, which a CLEC uses to route traffic to and from interexchange carriers' networks. These access toll connecting trunks, unlike the entrance facilities addressed in the *TRRO*, were *never* unbundled network elements under section 251(c)(3), they were *never* priced at TELRIC, and ILECs have *never* been required to provide them at TELRIC as part of the interconnection obligation under section 251(c)(2). They have nothing to do with interconnection between Verizon and Bright House; instead, they enable Bright House to fulfill its duty to interconnect "directly or indirectly with the facilities and equipment of other telecommunications carriers"—in this case, interexchange carriers—under section 251(a) of the Act (though they are not the only way Bright House can fulfill that duty).

In short, the debate Bright House seeks to raise, about whether the FCC requires entrance facilities to be provided at TELRIC rates for interconnection under section 251(c)(2) (and it does not), has nothing to do with the access toll connecting trunks that Bright House has long purchased from Verizon's tariffs but now seeks to obtain at TELRIC rates. Bright House, like every other CLEC that buys access toll connecting trunks, must pay tariffed rates for these facilities.

STAFF: Staff has no position at this time.

ISSUE 32: MAY BRIGHT HOUSE REQUIRE VERIZON TO ACCEPT TRUNKING AT DS-3 LEVEL OR ABOVE?

POSITIONS

BHN: Bright House may require Verizon to accept trunking at the DS-3 level or above. Bright House is entitled to interconnect with Verizon at any technically feasible point within Verizon's network. Those technically feasible points include the OC-n ports on Verizon's fiber optic terminals and the DS-3 ports on its multiplexing gear, as well as the DS-1 ports on Verizon's switches. The fact that Verizon might have to physically place multiplexing gear or fiber optic terminals to accomplish this interconnection is irrelevant; the FCC has specifically ruled that the fact that an ILEC "must modify its facilities or equipment" in order to accomplish such interconnection does not mean it is technically infeasible. Indeed, the disagreement between the parties on this issue is not really whether Verizon can technically interconnect with Bright House at DS-3 or higher levels; the disagreement is where "interconnection" is deemed to occur, which affects each party's cost and operational responsibilities.

Under the FCC's rules, the determination of technical feasibility is not limited by considerations of cost, and Verizon cannot object to an otherwise feasible arrangement on the grounds that it must modify its facilities to accomplish it.

VERIZON: This issue has been settled with respect to the parties' current arrangement for network interconnection. The Commission should not make any blanket decisions about the treatment of multiplexing under unidentified potential future interconnection arrangements that Bright House may or may not later implement. Moreover, the Commission should reject Bright House's invalid contention that it should receive dedicated multiplexing for free on the theory DS1 switch ports have become obsolete; on the contrary, switches with DS1 ports are still manufactured and in common use today and transmit traffic at the same speed as switches with DS3 ports. In any event, Bright House delivers traffic to Verizon's end offices at the DS1 level because traffic volumes do not warrant higher capacity circuits. Verizon's tandem switches have higher capacity interfaces, but for technical and network management reasons, traffic must be delivered to the tandems at the DS1 level. Verizon uses the same end office and tandem switches for its own retail traffic that it uses to provide interconnection with CLECs, and Verizon multiplexes its own DS3 traffic to the DS1 level before it is switched. It is not obligated to provide Bright House better treatment than it provides itself. Further, Verizon pays for multiplexing by purchasing the necessary equipment; a CLEC either can compensate Verizon for multiplexing equipment dedicated to the CLEC's use or buy its own equipment.

STAFF: Staff has no position at this time.

ISSUE 36: WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING, INCLUDING BRIGHT HOUSE'S PROVISION OF TANDEM FUNCTIONALITY FOR EXCHANGE ACCESS SERVICES?

POSITIONS

BHN: With the exception noted below, the parties should abide by industry standard rules, as embodied in the MECAB document, in jointly providing access services to third-party IXCs. The parties' agreement should reflect these rules, and should clearly reflect that either party may provide third-party IXCs with the function of either originating or terminating tandem switching. Under the normal meet point billing rules, the parties jointly agree on a "meet point" between their networks for purposes of billing the third-party IXC. Each party is responsible for providing the facilities and services on its side of the meet point, and each party bills the third-party IXC – not the other party – for the facilities and services it provides. The exception arises in the case of an ILEC and CLEC jointly providing access to third party IXCs. In that case the CLEC gets to choose the technically feasible point on the ILEC's network that is deemed to be the "meet point" between them for these purposes. The CLEC has this right because third-

party IXC access traffic is "exchange access" under the applicable rules. Under Section 251(c)(2), the CLEC is entitled to interconnect with the ILEC "for the transmission and routing of ... exchange access" at any technically feasible point on the ILEC's network. This means that Bright House can require Verizon to exchange this traffic at any technically feasible point.

Verizon does not recognize Bright House's right to designate the point at which the parties are deemed to be interconnected for purposes of exchanging third-party IXC access traffic. Instead, Verizon appears to believe that it can insist that such interconnection occur at the switch ports of its access tandem. To the contrary, under Section 251(c)(2), Bright House has the right to designate its end office collocations as the point of interconnection for purposes of the "transmission and routing" of this exchange access traffic. Once Bright House does so, while it would no longer pay Verizon for special access facilities linking its end office collocations with Verizon's tandem, Verizon would not be harmed because Verizon would then bill the IXCs for their use of those facilities.

In addition, Bright House wishes to be able to offer third party IXCs with traffic coming in from distant points the ability to drop that traffic off with Bright House – even if the traffic is going to a Verizon end office. Under FCC rules, Verizon bears the burden of proving that a proposed interconnection arrangement is not technically feasible. *See* 47 C.F.R. § 51.5 (definition of technical feasibility). Verizon cannot meet that standard here, so Bright House's proposal must be accepted.

VERIZON: With respect to Issue 36, the parties should continue to apply the same terms to meet-point billing that they have applied successfully for years. Bright House proposes to make several changes to these terms, purportedly to allow it to operate as a competitive tandem provider. Verizon has no objection to Bright House operating as a competitive tandem provider. But the changes Bright House claims are necessary to achieve this objective are in fact unwarranted. Bright House already can operate as a competitive tandem provider under the parties' existing arrangements and through the provision of Tandem Switch Signaling under Verizon's FCC Tariff No. 14. There is no need to modify the terms of the agreement to achieve this goal. In reality, Bright House's proposed changes are not aimed at permitting it to compete as a tandem provider. They are designed to take away the ability of one particular local exchange carrier (Verizon) to choose its tandem provider and instead force that carrier to use Bright House's tandem service. Bright House's proposal is therefore anticompetitive. It is also technically infeasible. Although it is possible (and contemplated under a Tandem Switch Signaling arrangement) for a carrier like Bright House to route third-party IXC traffic over its own access toll connecting trunks, from a network routing perspective, a local exchange carrier like Verizon cannot subtend both its own tandem and the Bright House tandem.

STAFF: Staff has no position at this time.

ISSUE 36: (A) SHOULD BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR THE TRAFFIC OF ITS AFFILIATES OR OTHER THIRD PARTIES WHEN IT DELIVERS THAT TRAFFIC FOR TERMINATION BY VERIZON?

POSITIONS

BHN: Bright House should not be responsible for third-party traffic that it delivers to Verizon. In the case of meet point billing for third-party IXC access traffic, the parties should abide by industry-standard rules under which each party bills the third-party IXC for the services that party provides to such IXC. In the case of local traffic that a third-party carrier might "transit" to Verizon by means of Bright House's network, Bright House proposes that the same terms that Verizon imposes on Bright House also be imposed on Verizon. That is, Verizon should be required to bill the third party carrier directly for any traffic that Verizon terminates for such carrier.

VERIZON: With respect to Issue 36(a), Bright House should remain financially responsible for traffic that it transits for its affiliates or third parties and delivers to Verizon for termination. There is no dispute that Verizon is entitled to payment for providing such termination services. The only question is whether Bright House should be responsible for that payment in the amount that the originating carrier would have had to pay had it delivered the traffic directly to Verizon. Bright House should bear that responsibility in order to preclude third-party carriers from engaging in the arbitrage of intercarrier compensation rates and to encourage more efficient direct interconnection between third-party carriers and Verizon.

STAFF: Staff has no position at this time.

ISSUE 36: (B) TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE BRIGHT HOUSE TO PAY VERIZON FOR VERIZON-PROVIDED FACILITIES USED TO CARRY TRAFFIC BETWEEN INTEREXCHANGE CARRIERS AND BRIGHT HOUSE'S NETWORK?

POSITIONS

BHN: This issue has two parts. First is to determine where the interconnection point between Verizon and Bright House is deemed to be for the exchange of this exchange access traffic. As described above in connection with "main" Issue #36, Bright House is entitled under Section 251(c)(2) to designate any technically feasible point within Verizon's network for this purpose. Once that point is established, then Verizon may not bill Bright House anything at all for the facilities on Verizon's side of the interconnection point, because it will be

recovering its costs for those facilities by means of bills to IXCs. If Bright House chooses to purchase facilities from Verizon in order to connect from Bright House's existing network facilities over to the interconnection point, then Verizon may charge Bright House for those facilities. Because they are facilities used to link the two networks for purposes of the transmission and routing of exchange access traffic under Section 251(c)(2), any such facilities must be priced at TELRIC rates, as discussed in connection with Issue #24.

VERIZON: With respect to Issue 36(b), Bright House should have to pay Verizon for Verizon-provided facilities that Bright House uses to carry traffic between its network and third-party IXCs. These facilities are not used for the purpose of interconnection between Verizon's network and Bright House's network under the Act. Instead, these are special access facilities, using access toll connecting trunks solely for the purpose of linking Bright House with third-party IXCs. Bright House had the choice to pick up this IXC traffic at Verizon's tandem (and avoid any facilities charges from Verizon) or build these facilities itself (and avoid any facilities charges from Verizon). But, instead, it chose to order these facilities from Verizon. It must therefore pay for them. In order to avoid this payment obligation, Bright House relies upon a novel reading of the Act that has never been recognized in any other forum, that would dramatically alter the way in which CLECs compensate ILECs for these facilities, and that would encourage network inefficiencies. The Commission should reject this radical approach and require Bright House to pay for the facilities it orders.

STAFF: Staff has no position at this time.

ISSUE 37: HOW SHOULD THE TYPES OF TRAFFIC (E.G. LOCAL, ISP, ACCESS) THAT ARE EXCHANGED BE DEFINED AND WHAT RATES SHOULD APPLY?

POSITIONS

BHN: The parties broadly agree on most aspects of this issue. There are two main points of contention. First, as alluded to above in connection with Issue #32, the parties do not agree on where the "transport" function – which is fully covered by the agreed-to rate of $0.0007/minute – begins. This leads Verizon to assert that it can charge Bright House for certain functions and facilities that are actually part of the transport function and therefore covered by the $0.0007 rate. Second, the parties disagree about how to define the scope of "local" traffic, subject to reciprocal compensation, that they will exchange.

With respect to the scope of the transport function, FCC Rule 51.701(c) expressly defines "transport" to be all functions that the terminating LEC provides that run between the physical point at which the parties' networks are connected, to the end office serving the called party. The "transport" function, therefore, clearly

begins at the point at which traffic from Bright House to Verizon physically leaves Bright House's network facilities (specifically, the equipment that Bright House has collocated in Verizon's end offices and tandem office) and is handed off to Verizon's network facilities in those locations (specifically, the cross-connect wires that link Bright House's network facilities to Verizon's multiplexing or similar equipment or, at the "latest," at the input ports of that equipment). This means that the $0.0007/minute charge already covers the costs of providing those functions, to the extent that those costs may be charged to Bright House. It may be that the $0.0007 rate does not fully cover those costs, but the FCC was well aware of that possibility when it established the rate. *See Intercarrier Compensation for ISP-Bound Traffic,* 16 FCC Rcd 9151 (2001) at ¶¶ 80, 89.[5]

With respect to the scope of calls subject to reciprocal compensation (the $0.0007 rate) rather than access charges, the Commission should require that a party pay the lower reciprocal compensation rate with respect to all traffic for which the end user is not billed an extra fee over and above the least expensive, basic local exchange service fee charged by the originating carrier. This approach is competitively neutral and, indeed, most consistent with the relevant statutory definitions of "exchange access" and "telephone toll service." *See* Bright House's Response to Staff Data Request No. 27 (filed April 26, 2010), for a detailed discussion of the legal and economic policy underlying this conclusion.

VERIZON: Traffic should be classified as either local traffic (compensated at reciprocal compensation rates) or interexchange traffic (compensated at access rates) based on the incumbent local exchange carrier's basic local exchange areas. The Commission-approved basic local exchange areas provide a stable, known, uniform, and competitively neutral standard for determining whether a call is local or interexchange and, therefore, what compensation rates should apply—which is why at least ten other Commissions have rejected the approach Bright House seeks to implement. Bright House's proposal to instead use each originating carrier's retail local calling areas to determine intercarrier compensation would create a continually shifting standard that is not workable and that would encourage arbitrage of intercarrier compensation rates. Indeed, if the Commission approves Bright House's proposal, Bright House would avoid paying intrastate access charges, while Verizon would still have to pay access charges to Bright House. And all other carriers, CLECs and IXCs, would continue to pay tariffed access rates to all other carriers for calls that cross ILECs' local exchange area boundaries. Even if Bright House's proposed approach were competitively neutral and otherwise sound from a policy standpoint (and it is not), it should not be considered in a bilateral arbitration. If the Commission wishes to

[5] Note that the only way that multiplexing and similar functions could ***not*** be part of the "transport" function is if they are part of the provision of facilities to connect Bright House's network to the point of interconnection. In that case, those functions must be priced at TELRIC rates, rather than Verizon's tariffed rates. *See* discussion under Issue # 24, above.

consider eliminating or fundamentally altering the intrastate access charge regime—which is just what Bright House seeks (but only for itself)—that is a decision to be made in a generic proceeding in which all interested carriers may participate. Bright House, like every other Florida carrier, is free to establish its own retail local calling areas. But Bright House, like every other Florida carrier, must operate under the same intercarrier compensation regime that this Commission has established.

STAFF: Staff has no position at this time

ISSUE 41: SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER BETWEEN THE PARTIES AND THE PROCESS OF LOCAL NUMBER PORTABILITY ("LNP") PROVISIONING? IF SO, WHAT SHOULD THOSE PROCEDURES BE?

POSITIONS

BHN: The new ICA should contain a separate attachment laying out the procedures that apply when transferring a customer between the parties, including LNP. Bright House does not resell Verizon services and does not use Verizon UNEs. As a result, whenever a customer switches from Verizon to Bright House or vice versa, the customer's service must be physically transferred from one set of physical facilities to the other, along with ensuring that the number is ported properly. It makes perfect sense – it is "just and reasonable" in statutory terms – to establish, within the parties' ICA, a clear and identifiable set of terms and conditions dealing with that process. Bright House's specific proposals – dealing with number portability, physical network facilities issues, and the establishment of a process for dealing with disputes – are entirely reasonable. Indeed, other than the LNP issues noted below, Verizon has not raised any specific objections "on the merits" to Bright House's proposals.

Bright House proposes that the parties "coordinate" their efforts when a single customer has a large number of numbers/lines being ported, in order to ensure that the transfer occurs smoothly. Bright House has also proposed to include language that makes clear that Verizon may not delay porting simply because of non-porting-related features it has placed on a line, including specifically DSL service. This language is based on a specific FCC ruling on this point and should be approved. Bright House has also reasonably proposed that the so-called "10-digit trigger" remain in place for an extended period in connection with customer transfers that have to be rescheduled. The Commission should approve all these proposals.

VERIZON: The parties' existing ICA already contains specific procedures to govern the process of transferring a customer between the parties and providing local number

portability provisioning. There is no need to create an additional attachment to address these issues, as the additional attachment would either (a) restate obligations already stated elsewhere or (b) insert new requirements that Bright House proposes that are unwarranted and unnecessary. Accordingly, the Commission should reject Bright House's proposed new language.

STAFF: Staff has no position at this time

ISSUE 49: ARE SPECIAL ACCESS CIRCUITS THAT VERIZON SELLS TO END USERS AT RETAIL SUBJECT TO RESALE AT A DISCOUNTED RATE?

POSITIONS

BHN: Yes. When the FCC established its rules regarding discounts available for resold services, it excluded "exchange access" services from the scope of services subject to the wholesale discount. *See* 47 C.F.R. § 51.605(a) and (b). Those rules do not exclude all "access traffic" or any or all "special access" traffic. They only exclude "exchange access," which under the applicable definition (47 U.S.C. § 153(16)) is limited to services and facilities involved in the origination and/or termination of toll calls (that is, traditional long distance calls). Verizon sells a large number of point-to-point data circuits "at retail" to businesses that need such circuits to handle data traffic. These circuits may be sold "out of" Verizon's special access tariff, but that does not make them "exchange access" services, within the meaning of the governing FCC rule.

VERIZON: No. ILECs have a general obligation to provide to CLECs for resale, at a wholesale discount, services the ILECs provide on a retail basis to subscribers who are not telecommunications carriers. (47 U.S.C. § 251(c)(4).) Here, Bright House proposes language that would apply the wholesale discount to special access services provided to end users for purposes of data transmission. The Commission should reject this language, because the FCC has made clear that ILECs need not offer exchange access services at a resale discount, because they are offered predominantly to carriers rather than end user customers.[6] In its 1996 *Local Competition Order*, the FCC recognized that end users "occasionally purchase some access services, including special access services," but concluded that such occasional use does not require the application of the wholesale discount.[7] In its 2005 *Triennial Review Remand Order*,[8] the FCC reiterated that it "has explicitly excluded special access services from the ambit of [the] section

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[6] 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").

[7] *Id.* ¶ 873 (emphasis added).

[8] *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶ 146 n.146 (2005)("*TRRO*")

251(c)(4)" obligation to offer a wholesale discount. The Commission should thus reject Bright House's unlawful proposal.

STAFF: Staff has no position at this time

IX. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct			
Name	Utility/Staff		
Timothy J. Gates	BHN	TJG – 1	Curriculum Vitae
Timothy J. Gates	BHN	TJG – 2	Issues List and Contract Provisions
Timothy J. Gates	BHN	TJG – 3	Redlined Bright House/Verizon ICA (corrected 4/20/10)
Rebuttal			
Name	Utility/Staff		
Timothy J. Gates	BHN	TJG – 4	Network Architecture Chart
Timothy J. Gates	BHN	TJG – 5	MECAB Meet Point Billing Document
Timothy J. Gates	BHN	TJG – 6	MECOD Meet Point Billing Document
Timothy J. Gates	BHN	TJG – 7	Proposed Agreement Language on Meet Point Billing

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

Parties and Staff will seek to identify additional, stipulated exhibits prior to the hearing.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

None.

XII. PENDING CONFIDENTIALITY MATTERS

None.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed by July 9, 2010, as modified by the Prehearing Officer.

XIV. RULINGS

Opening statements shall not exceed ten minutes per party.

Each party shall file a post-hearing brief, as set forth in Section XIII of this order. In addition, each party shall file a reply brief, which shall total no more than 20 pages and shall be filed by July 30, 2010.

It is therefore,

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 19th day of May, 2010.

NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

TJB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.