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May 3, 2010

Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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

Dear Ms. Cole:

Please find enclosed for filing in the above matter an original and seven copies of Verizon Florida LLC's Prehearing Statement. Also enclosed is a diskette with a copy of the Prehearing Statement in Word format. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (770) 284-3620.

Sincerely,

DLO for
Dulaney L. O'Roark III

Dulaney L. O'Roark III

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COM Enclosures
APA ____
ECR ____
GCL 2 + CD
RAD 5
SSC ____
ADM ____
OPC ____
CLK ____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on May 3, 2010 to:

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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 Filed: May 3, 2010

VERIZON FLORIDA LLC'S PREHEARING STATEMENT

In accordance with Order No. PSC-10-0081-PCO-PU, Verizon Florida LLC ("Verizon") hereby files this prehearing statement.

1. Witnesses

Verizon has prefiled the following testimony:

Direct and Rebuttal Testimony of Peter J. D'Amico (Issue 32);

Direct and Rebuttal Testimony of William Munsell (Issues 7, 13, 36, 36(a), 36(b), 37 and 41); and

Direct and Rebuttal Testimony of Paul B. Vasington (Issues 16, 24 and 49).

2. Exhibits

Verizon did not prefile any exhibits.

3. Verizon's Basic Position

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.

4. Verizon's Positions on Specific Questions of Fact, Law and Policy

Verizon addresses the following issues that involved mixed questions of fact, law and policy:

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

VERIZON'S POSITION: 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).

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

VERIZON'S POSITION: 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.

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?

VERIZON'S POSITION: 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.[1] The Commission should adopt Verizon's proposed language, because it is commercially reasonable, consistent with rulings of this Commission and the FCC,[2] and benefits CLECs by allowing them to continue obtaining service despite financial difficulties.

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

[2] 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).

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?

VERIZON'S POSITION: 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 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.

Response to Staff's Inquiry: Verizon understands that, at the depositions last week, Staff asked parties to define in their prehearing statements the terms "exchange access," "access," and "special access." "Exchange access" is defined in the Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." (47 U.S.C. § 153(a)(40)). "Access" is simply a colloquial term for a variety of tariffed services, and may be used to refer to either special access or switched access. "Special access" is a service that provides a dedicated transmission path between two points without any circuit switching; it is a direct connection that does not involve routing of individual calls. "Switched access"

provides a transmission path that involves circuit switching, and the routing of individual calls.

As explained above, access toll connecting trunks are dedicated transmission paths purchased from Verizon's special access tariff. Bright House uses these trunks to carry interexchange carrier traffic between interexchange carriers and the end users of Bright House Cable.

The concept of exchange access figures prominently in Bright House's argument that the Commission should order Verizon to provide special access facilities to Bright House at TELRIC rates, instead of tariffed rates. Bright House's argument rests upon its novel legal theory that (1) because CLECs are entitled to interconnect with ILECs "for the transmission and routing of telephone exchange service and exchange access" (47 U.S.C. § 251(c)(2)(A)); and (2) because interconnection charges under section 251(c)(2) must be cost-based, a standard Bright House contends the FCC has interpreted as TELRIC, (3) Bright House is therefore entitled to pay only TELRIC rates for access toll connecting trunks because it is using them to provide exchange access. This argument is wrong for the reasons Verizon explained in response to Issue 24, above. Even if Bright House is providing exchange access with the access toll connecting trunks, these trunks have nothing to do with the interconnection between Bright House and Verizon. They are, instead, a means for Bright House to satisfy its section 251(a) responsibility to interconnect with other carriers. Second, the FCC has never defined the facilities in dispute here as interconnection facilities available under

section 251(c)(2), and has never required them to be offered at TELRIC. Instead, section 251(c)(2) requires the ILEC to provide interconnection "***for*** the facilities and equipment of any requesting telecommunications carrier"—not to provide a CLEC with any facilities it might seek to use to interconnect its network with the ILEC's. Third, Bright House has, in any case, built its own facilities to interconnect with Verizon's network. In short, even assuming the traffic Bright House describes meets the statutory definition of "exchange access," Verizon would have no obligation under section 251(c)(2) to provide Bright House with TELRIC-priced facilities to carry that traffic.

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

VERIZON'S POSITION: 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.

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

(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?

(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?

VERIZON'S POSITION: 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.

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.

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.

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

VERIZON'S POSITION: 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 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.

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?

VERIZON'S POSITION: 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.

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

VERIZON'S POSITION: 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.[3] 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.[4] In its 2005 *Triennial Review Remand Order*,[5] the FCC reiterated that it "has explicitly excluded special access services from the ambit of [the] section 251(c)(4)" obligation to offer a wholesale discount. The Commission should thus reject Bright House's unlawful proposal.

5. Stipulated Issues

There are no stipulated issues.

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[3] 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").

[4] *Id.* ¶ 873 (emphasis added).

[5] *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*")

6. Pending Motions and Other Matters

Verizon's only pending motions are its motions for protective orders associated with its pending requests for confidential classification.

7. Pending Requests for Confidentiality

Verizon has a request for confidential classification and motion for protective order pending with respect to the Rebuttal Testimony of Peter D'Amico that Verizon plans to withdraw because Bright House has informed Verizon that it does not consider the Bright House network information at issue to be confidential. Verizon is filing another request for confidential classification and motion for protective order today concerning its response to Verizon's response to Bright House's Second Set of Interrogatories.

8. Objections to a Witness's Qualifications as an Expert

Verizon has no objections to a witness's expert qualifications at this time.

9. Procedural Requirements

Verizon is unaware of any requirements set forth in the Commission's Order Establishing Procedure that cannot be complied with at this time.

Respectfully submitted on May 3, 2010.

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