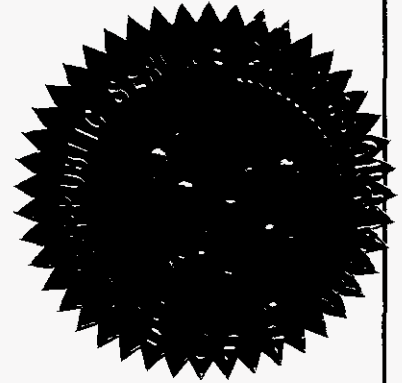


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.



VOLUME 2

Pages 322 through 433

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING:

CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER DAVID E. KLEMENT
COMMISSIONER BEN A. "STEVE" STEVENS III

DATE: Tuesday, May 25, 2010

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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APPEARANCES: (As heretofore noted.)

ACCOUNT NUMBER DATE

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CONTINUED CROSS EXAMINATION

BY MR. HAGA:

Q. Mr. Gates, we were about to address Issue 41, and Issue 41 relates to customer transfers. And one of the areas in dispute between the parties is what's called LNP, right, Local Number Portability?

A. Yes, that's correct.

Q. Okay. And Bright House has proposed language for the interconnection agreement providing that there would not be any charges between the parties for any LNP-related services or functions that they might provide to each other, correct?

A. Well, Bright House has put that language into these two pages that we proposed. But to be clear, that's what the FCC orders, the LNP implementation, the LNP cost reconsideration order, that's what they say. Unless you are buying UNEs or you're doing resale, then there is no charges between and among carriers for LNP activities.

Q. So no charges for the LNP itself, and then you mentioned a couple of exceptions there for -- let's see, what are they? Purchasing switching ports as UNEs, for

1 example?

2 **A.** Yes. Are we in my testimony somewhere, Mr.
3 Haga?

4 **Q.** Well, I was trying to pick up on what you just
5 said, but I didn't quite hear the words, so I was
6 referring back to your testimony.

7 **A.** Yes. There were two exceptions, I believe,
8 perhaps three in the FCC's orders. One was for UNEs,
9 people that buy UNE loops, and another one for resale.
10 In those situations, you are able to charge -- oh, and
11 the number query charge, if querying does occur. Those
12 are the only, I believe, three circumstances where LECs
13 may charge one another for LNP activities.

14 **Q.** Okay. And so there is those three exceptions
15 that you just mentioned, and you're correct, they were
16 mentioned in your rebuttal testimony, too, on Page 14.
17 And then you also, in your rebuttal testimony, you
18 mentioned another exception, and this is on Page 18, and
19 this is for expedites, correct?

20 **A.** Well, to be clear, Bright House isn't
21 proposing that they get expedites for free. Bright
22 House is willing to pay for expedites.

23 **Q.** Right. And that was my only point is that
24 Bright House has understood and agreed that they would
25 pay for expedites of ports?

1 **A.** Yes. And although that is an LNP activity, I
2 think it's outside the understanding from the FCC rules
3 and from the Act. So it's appropriate to pay for
4 expedites.

5 **Q.** And just so we're sort of clear on the LNP
6 process, most LNP requests are handled in an automated
7 fashion, right?

8 **A.** Through an EDI or a GUI interface, generally
9 it's automated as opposed to making a phone call or
10 sending a fax, is that what you mean?

11 **Q.** Yes.

12 **A.** Yes.

13 **Q.** And in some cases there's human involvement,
14 though, correct, and that's what the parties are
15 referring to as coordination?

16 **A.** Yes. Sometimes orders will fall out for some
17 reason, or they are very unique, we have many, many
18 lines involved, or perhaps the customer has a very
19 sensitive service that we need to make sure that there
20 is no interruption, so coordination occurs, and that's
21 pretty common.

22 **Q.** Okay. Well, you say it's pretty common, but
23 most ports don't require coordination, do they?

24 **A.** Well, not if it's -- well, I don't know. I
25 had a very difficult time porting my number in one

1 situation and required a lot of coordination. I have
2 also had problems where I have had to call this
3 Commission and get help from the consumer division.

4 **CHAIRMAN ARGENZIANO:** Mr. Gates, can I just
5 ask you, is that a yes or a no? I'm trying to figure
6 out the answer. And I don't want to be rude, I just
7 don't know what your answer was to that.

8 **THE WITNESS:** I'm sorry, I should have
9 answered yes or no and then asked if it was okay to
10 explain. I think my answer is no, they are not all
11 simple. Sometimes there are exceptions, but the vast
12 majority of ports go off without a hitch, and they are
13 automated.

14 **BY MR. HAGA:**

15 **Q.** Okay. And not to hide the ball, Mr. Gates, I
16 was just look at your testimony here at Page 15 of your
17 rebuttal at Line 8 where you said that coordination was
18 not required for most ports, and is that consistent with
19 your understanding here today?

20 **A.** Yes.

21 **Q.** Okay. And that coordination, that involvement
22 above and beyond the automated process, that's what is
23 at dispute here between the parties, and Verizon says
24 they should be paid for coordination and Bright House
25 says no, they shouldn't, right?

1 **A.** Basically, that's correct.

2 **Q.** Okay. Let's shift gears, again, Mr. Gates,
3 and talk about Issue 13. And, again, just to orient us
4 in a general sense, Issue 13 concerns the time limits in
5 which the parties would backbill each other or dispute
6 bills that they received from each other, correct?

7 **A.** Yes.

8 **Q.** And, Mr. Gates, do you know whether Bright
9 House ever back bills?

10 **A.** I would have to defer that to Ms. Johnson.

11 **Q.** Okay. Fair enough.

12 **A.** I imagine backbilling occurs, but I don't know
13 to what extent.

14 **Q.** Well, generally speaking, then, there are
15 legitimate reasons why a bill might be delayed for some
16 amount of time after a service is rendered, right?

17 **A.** There might be some legitimate reasons.
18 Usually it's a human error, a system error, or just poor
19 software, but there might be some legitimate reasons,
20 yes.

21 **Q.** In other words, not just mistakes. There
22 might be cases where they were delayed for some
23 particular reason?

24 **A.** Yes. Perhaps they wanted to add a feature,
25 for instance, and that might be a reason to do that.

1 **Q.** Okay. And in this case, under the parties'
2 current agreement, the time limit for backbilling or
3 disputing bills from the other party, that's set by the
4 state statute of limitations, right?

5 **A.** I believe it is, yes.

6 **Q.** Okay. And Bright House has proposed -- rather
7 than a statute of limitations, Bright House has proposed
8 a one-year limit, correct?

9 **A.** Yes, that's correct.

10 **Q.** And the Commission has already addressed this
11 issue in another arbitration proceeding, hasn't it?

12 **MR. SAVAGE:** I may have to interpose a legal
13 conclusion objection. I mean, the Commission has ruled
14 what it has ruled. You can ask if he is aware of the
15 Commission rulings.

16 **MR. HAGA:** And that objection is well taken.

17 **CHAIRMAN ARGENZIANO:** Can you rephrase?

18 **MR. HAGA:** Yes.

19 **BY MR. HAGA:**

20 **Q.** Mr. Gates, are you aware of whether the
21 Commission has already addressed this issue in another
22 arbitration proceeding?

23 **A.** Are you referring to the Covad?

24 **Q.** I am.

25 **A.** Yes, I addressed that in my testimony.

1 **Q.** And in that arbitration the Commission held
2 that the appropriate limit was the statute -- well, let
3 me rephrase. Excuse me.

4 Are you aware in that arbitration of whether
5 the Commission held that the appropriate limit was the
6 statute of limitation and not a one-year period?

7 **A.** Yes, I think that's true, and I think that
8 order was issued seven years ago. And the systems today
9 are much, much better. And I think Verizon's own
10 witnesses have agreed that this proposal would benefit
11 Verizon much more than Bright House.

12 **Q.** Well, Verizon's witnesses or Verizon's hasn't
13 signed off on this proposal, though, have they?

14 **A.** No, but that's what your witnesses said, so
15 hopefully we can resolve this.

16 **Q.** Well, I'm sure your Counsel can take that up
17 with our witnesses. But as the state of play is,
18 Verizon's position is the statute of limitations,
19 correct?

20 **A.** Yes, that's correct.

21 **MR. HAGA:** Okay. I have nothing further at
22 this time.

23 **CHAIRMAN ARGENZIANO:** Thank you.

24 Mr. Savage.

25 **MR. SAVAGE:** Should I do my redirect before

1 any other questions or is that --

2 **CHAIRMAN ARGENZIANO:** Let me ask
3 Commissioners. Any questions? Later? Okay.

4 Staff.

5 Mr. Savage, go ahead.

6 REDIRECT EXAMINATION

7 **BY MR. SAVAGE:**

8 **Q.** Mr. Gates, in -- well, just maybe do it in
9 reverse order.

10 With respect to the one-year cut off on
11 backbilling and bill protests -- first, do you have an
12 understanding of whether that would apply to both
13 parties equally or only to one party?

14 **A.** It would apply to both parties equally.

15 **Q.** So is there any reason to think either party
16 would be particularly advantaged or disadvantaged by
17 moving to a shorter cut off?

18 **A.** Well, we have the deposition testimony of the
19 Verizon witnesses that says that Verizon would benefit
20 more. But since it applies to both carriers, I mean, to
21 the extent there is a benefit, it would accrue to both.
22 I mean, it eliminates uncertainty. It provides more
23 certainty in the business relationship.

24 **Q.** All right. I will spare you questions about
25 the statute of limitation and its meaning and

1 legislative purpose, and move back to Local Number
2 Portability.

3 Could you briefly summarize what you
4 understand Bright House's proposal to be with respect to
5 the coordination of large number ports?

6 **A.** Yes. I think we've referred to large number
7 ports as complex number ports where there may be some
8 very unique circumstances that require the two companies
9 to talk, perhaps physically as opposed to just
10 exchanging e-mails or data. So in those situations, and
11 in situations, perhaps, where there are a large number
12 of lines involved, perhaps hundreds, maybe more, or
13 unique circumstances with respect to those lines, in
14 those situations coordination must occur. And the
15 purpose of the coordination is it's really a consumer
16 protection issue. I mean, Local Number Portability is
17 one of the most important things we can have today to
18 encourage consumers to exercise their right to choose a
19 new carrier.

20 But if LNP fails, if that process fails, and I
21 have been subject to this personally, it's very
22 frustrating for consumers. And it kind of sours your
23 opinion of your new provider if they can't get your
24 number to you quickly and on time and accurately. So
25 coordination is a common activity that parties engage

1 in. It is part of Local Number Portability for complex
2 ports, and it's distinct from, for instance, expedites.

3 Q. And with respect to Bright House's proposal
4 regarding coordination, do you understand that to apply
5 only to Verizon providing coordination to Bright House,
6 or would this also apply both ways, as you understand
7 it?

8 A. This would apply both ways.

9 Q. So if, for example, Verizon were to win or
10 win back a large business customer or a hospital that
11 had a critical need to have their numbers ported
12 properly, what would you understand Bright House to
13 provide to Verizon and at what charge, if our proposal
14 were to be adopted?

15 A. Should Bright House lose a large customer such
16 as a hospital, or a college campus, or some customer
17 like that, Bright House would cooperate with Verizon
18 under these terms and assist and coordinate with Verizon
19 in transferring those numbers from that customer to
20 Verizon.

21 Q. And as you understand Bright House's proposal,
22 would Bright House charge Verizon anything for that?

23 A. No, there would be no charge.

24 Q. Okay. Now, moving back to Issue Number 37,
25 which as we discussed it -- as you discussed with

1 Mr. Haga, it relates to the local calling area and
2 intercarrier compensation. Do you recall that Mr. Haga
3 asked you whether different CLECs who might adopt this
4 agreement might have a variety of different calling
5 plans?

6 A. Yes.

7 Q. And let's assume for purposes of this
8 discussion that indeed other CLECs with different local
9 calling plans do adopt this proposal if it were to be
10 approved, do you understand what I'm asking you to
11 assume?

12 A. I do.

13 Q. Would that be a problem?

14 A. No, I think it's the correct solution, and I
15 think it's consistent with what this Commission has
16 ordered in the past, trying to coordinate the actual
17 intercarrier compensation with the type of call that's
18 being made. I think it's absolutely appropriate. It
19 reduces costs, for instance. I mean, if it really is a
20 local call from Bright House, why should Bright House
21 have to pay these high switched access charges on that
22 call. I mean, clearly it shouldn't. So I think tying
23 the intercarrier compensation with the type of call,
24 whether it's local or toll makes good sense, and in this
25 case reduces costs, truly, to Bright House because now

1 no longer will Verizon be able to charge access charges
2 on local calls, which was inappropriate all along, but
3 it agreed to in the past. This is one of those tune-up
4 issues that we are trying to fix.

5 Q. Would this proposal cause any substantial
6 administrative or billing problems for Verizon?

7 A. No, not at all. For instance, all calls in
8 the LATA in Tampa from Bright House are local calls.
9 So, I mean, any call from Bright House is local, and
10 that's not difficult to handle administratively. A
11 person could do that at a desk, and certainly the switch
12 generics and billing tables can handle that sort of
13 situation.

14 Q. But what about if lots of different CLECs
15 adopt it and they have different calling plans, wouldn't
16 that put Verizon in a difficult billing situation?

17 A. No. I mean, that's what we do every day.
18 That's why we spent so much money on these billing
19 systems is to make them efficient and correct, and
20 that's not a problem at all.

21 Q. Okay. So let's now go back to Issues 24 and
22 36, looking at the chart. Now, do you have a little
23 copy of the chart with you?

24 A. I do not.

25 Q. If I may approach, I'll give him my little

1 copy.

2 **A.** Thank you.

3 **Q.** Then to go over here, the dispute that we were
4 talking about has to do with let's just call it for now
5 the treatment of these facilities that run from the
6 Verizon tandem switch to the collocation at Verizon end
7 offices, is that what you understood?

8 **A.** Yes.

9 **Q.** Okay. Let's first deal with the scenario in
10 which the meet point, for purposes of this meet point
11 billing, is deemed to still be at the tandem and that
12 doesn't change, okay. So let's assume for the moment
13 the meet point for picking up this traffic is still at
14 the tandem. Are you with me so far?

15 **A.** Yes. So the current situation?

16 **Q.** The current physical situation.

17 **A.** Yes.

18 **Q.** And if that physical situation remains the
19 same, what is it that Bright House wants with respect to
20 the pricing of those facilities?

21 **A.** Those interconnection facilities should be
22 priced at TELRIC and not at the tariffed special access
23 rates.

24 **Q.** And are you familiar, generally, with the
25 terms of -- I know you mentioned in your testimony

1 Section 251(c)(2) of the Act?

2 **A.** Yes.

3 **Q.** And, generally speaking, what does that
4 section of the Act say, what does it require?

5 **A.** 251(c)(2) -- and I have this on Page 69 of my
6 direct -- if the Commissioners would like to read it
7 there, but 251(c)(2) specifically deals with
8 interconnection rights and responsibilities.

9 **Q.** And what does it say with respect to the
10 location at which a CLEC may require an ILEC to
11 interconnect?

12 **A.** It says in 251(c)(2)(b) that they can
13 interconnect at any technically feasible point.

14 **Q.** And as far as you understand it, there is no
15 claim on anybody's part that it is not technically
16 feasible to interconnect at that tandem switch to
17 interexchange this traffic.

18 **A.** No, nobody has made that claim.

19 **Q.** Now, what are the kinds of traffic to which
20 that interconnection right applies under Section
21 251(c)(2)?

22 **A.** 251(c)(2)(a) says, and this refers
23 specifically to facilities and equipment, but there it
24 says for the transmission and routing of telephone
25 exchange service and exchange access.

1 **Q.** And do you have an understanding, based on
2 your years in the industry, of what exchange access is?

3 **A.** Yes.

4 **Q.** What is that understanding?

5 **A.** Exchange access, and I think I provided these
6 definitions in my testimony, but exchange access is
7 switched access that we pay for toll calls. That's
8 exactly what it is. I don't think there's any different
9 definition of exchange access.

10 **Q.** So the traffic that we are talking about here,
11 let's take it on an in-bound leg, comes from the IXC,
12 goes to the Verizon tandem, and then hits these
13 facilities. In your judgment, would that or would that
14 not be exchange access traffic?

15 **A.** That is the very definition of exchange access
16 traffic.

17 **Q.** Okay. So can you see any reason why the
18 Section 251(c)(2) interconnection rights and terms and
19 conditions would not apply to this traffic?

20 **A.** No, none.

21 **Q.** And with respect to the rating -- we can stop
22 there.

23 Let's now look at the other scenario that is
24 being talked about. The other scenario that is being
25 talked about would be to say let's not declare this

1 point at the tandem switch to be the point of
2 interconnection for purposes of this traffic. Let's
3 say, instead, that the point is down here at Verizon's
4 end office collocations. Do you understand that
5 separate scenario?

6 **A.** Yes.

7 **Q.** Okay. Looking at the Section 251(c)(2) stuff
8 we just discussed, it would still be change access
9 traffic?

10 **A.** It would.

11 **Q.** Okay. And are you aware of any contention or
12 any reason why it wouldn't be technically feasible to
13 exchange the traffic here at the collocation rather than
14 here at the tandem?

15 **A.** No, it would be technically feasible. And,
16 you know, all the equipment is basically the same.
17 There is no reason why it couldn't be done there.

18 **Q.** Okay. So if it's done there, if Bright House
19 were to say the technically feasible point at which I
20 want to interconnect to exchange this traffic is here,
21 under that scenario would Bright House still be charged
22 by Verizon for these facilities if the interconnection
23 point is down at the end office?

24 **A.** No, because it's on the Verizon side now of
25 the interconnection point. That is their

1 responsibility. By that I mean Verizon.

2 Q. Okay. So if Bright House were to say we are
3 going to interconnect here now under the rules, then
4 Verizon wouldn't charge Bright House for this. Would
5 Bright House charge anybody for the use of those
6 facilities?

7 A. Yes, it would charge the interexchange carrier
8 for the use of those facilities.

9 Q. Now, I believe you talked with Mr. Haga a
10 little bit about the MECAB or MECOD documents that
11 discuss the general rule that when you are establishing
12 a meet point billing arrangement the two carriers simply
13 have to agree on a point. Do you recall that?

14 A. Yes.

15 Q. How do you square that with Section 251(c)(2)
16 that says that the CLEC gets to pick the point? What's
17 the relationship between those two?

18 A. Well, clearly the CLEC gets to pick the point
19 of interconnection. The purpose of the MECAB and MECOD
20 documents is to select a point for developing billing
21 percentages or allocating costs and revenues. That's
22 the point of the MECOD and MECAB documents. And they're
23 not the same, a very different approach. It's simply to
24 coordinate and to ensure accurate and verifiable bills
25 for these two carriers that are cooperating and

1 providing this facility for the exchange of this meet
2 point traffic.

3 Q. And as you understand the Commission's role in
4 this proceeding, would it be more accurate to say that
5 its job is to enforce the literal terms of the MECOD and
6 MECAB industry documents or Section 251(c)(2)?

7 A. Well, certainly for purposes of this dispute,
8 251(c)(2) is why we are here. ATIS and the OBF and
9 these other industry organizations developed these other
10 guidelines which the carriers do use, which is
11 important, but clearly we're talking about 251(c)(2)
12 here in terms of interconnection rights.

13 Q. And then one final point on this. You were
14 asked a little bit about a reference in your testimony
15 to a settlement between the parties with respect to
16 certain charging for existing facilities arrangements.
17 Were you involved in the negotiation or drafting of that
18 settlement?

19 A. No, I was not.

20 Q. And do you have an understanding as to the
21 particular charges and facilities to which the
22 settlement applies?

23 A. Yes.

24 Q. What is that understanding as you have it
25 today?

1 **A.** I understand that the settlement applies only
2 to the multiplexing charges that Bright House is paying
3 today on the Verizon side of the point of
4 interconnection. It does not address any other
5 facilities or activities. It's simply that muxing, and
6 it assumes that the current arrangement of the networks,
7 as Mr. Savage was just describing up there, it assumes
8 it stays the same.

9 So if Bright House were to change the point of
10 interconnection, then, you know, we would have some
11 other issues, as well. But the settlement assumes, one,
12 just muxing; and, two, that the current facilities stay
13 where they are today.

14 **Q.** So just to be clear, as you understand it, do
15 you have any reason to think that in suggesting that the
16 facilities that run from the access tandem to the end
17 office could appropriately be priced at TELRIC rather
18 than at tariffed rates, do you have any understanding as
19 to whether that contention would be consistent or
20 inconsistent with the settlement agreement?

21 **A.** I think it's -- I think that's very important
22 for Bright House. Bright House needs to know how that
23 is going be priced in order to determine how it's going
24 to reconfigure, if at all, its network. But the
25 settlement is absolutely consistent with the TELRIC

1 principles because that multiplexing, but for, you know,
2 the age-old technology that Verizon is using, those DS-1
3 ports on its switch, but for those the multiplexing
4 would never occur.

5 So in the TELRIC study that this Commission is
6 very familiar with you would never include those costs.
7 There would never be any rates for multiplexing because
8 an efficient provider wouldn't have to do that.

9 **MR. SAVAGE:** I have nothing further. Thank
10 you.

11 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Madam Chair.
13 Just some brief questions.

14 Good morning, Mr. Gates.

15 **THE WITNESS:** Good morning.

16 **COMMISSIONER SKOP:** The chart that has been
17 placed up before us, I don't know if you have a smaller
18 chart before you.

19 **THE WITNESS:** I do.

20 **COMMISSIONER SKOP:** The three collocation
21 squares that you see on that chart --

22 **THE WITNESS:** Yes.

23 **COMMISSIONER SKOP:** Those were selected by
24 Bright House merely for redundancy, is that correct, and
25 do not represent the meet points?

1 **THE WITNESS:** The collo at the tandem, at the
2 top there is where the meet point is today. The collos
3 were selected, the locations were selected by Bright
4 House, yes.

5 **COMMISSIONER SKOP:** Okay. But with respect to
6 the pricing dispute that exists regarding the meet point
7 at the tandem switch, I guess -- let's go one-by-one on
8 the collos just so I better understand this. The collo
9 that's located at the tandem office is a connection
10 between the two tandems switches, is that correct?

11 **THE WITNESS:** Yes, evidently. Commissioner,
12 this is the first time I have seen this today, and I
13 didn't know there were two tandem switches at that
14 Verizon tandem office, which is what this appears to
15 show. I didn't know that. But there is one Bright
16 House collo, and I'm not sure how that interfaces with
17 what appears to be two tandems.

18 **COMMISSIONER SKOP:** Okay. Just what I'm
19 trying to establish, on Page 36 of your rebuttal
20 testimony you talk about redundancy and the manner in
21 which they've collocated their facilities to provide
22 that redundancy --

23 **THE WITNESS:** Yes.

24 **COMMISSIONER SKOP:** -- but at issue seems to
25 be the selection of the meet point between the two

1 carriers, Bright House and Verizon. And I think that as
2 was just explained with respect to the meet point
3 connection from the tandem switch to the VZ end office,
4 that meet point currently exists at the tandem switch?

5 **THE WITNESS:** That's correct.

6 **COMMISSIONER SKOP:** Okay. So with respect to
7 the use of the access toll connecting trunk, which I
8 think is the dark line, to connect from the meet point
9 to the collo at the end office, I guess Bright House is
10 suggesting the TELRIC rate is the appropriate charge,
11 whereas Verizon is stating that, no, that that charge
12 should be special access facility charge, is that
13 generally correct?

14 **THE WITNESS:** Generally correct, yes.

15 **COMMISSIONER SKOP:** With respect to Bright
16 House's contention and interpretation under the Act,
17 does Bright House have any precedent that they can cite
18 to that would suggest as to why the TELRIC
19 interpretation is correct over and above that what
20 Verizon is asserting, which seems to be the traditional
21 view?

22 **THE WITNESS:** Well, I disagree that it's the
23 traditional view. This is a unique case, and I will
24 admit that, because Bright House -- here we're talking
25 about Bright House putting more points of

1 interconnection in its network, whereas most CLECs are
2 trying to get fewer. But, no, I don't agree that it is
3 the traditional view. I think it is clear that Bright
4 House can pick the point of interconnection, and if it
5 did put the point of interconnection at the end office
6 there, Commissioner, at those two end offices, then the
7 traditional view would be that Verizon would be
8 responsible for that network on their side of the POI,
9 correct? So that's one option for Bright House. Or
10 Bright House could keep the point of interconnection at
11 the tandem where it is today, but recognizing that these
12 are interconnection facilities between that collo and
13 the end offices, reprice those to be TELRIC.

14 **COMMISSIONER SKOP:** Okay. But by selection of
15 the meet point has not, in fact, Bright House chosen or
16 elected to use the access toll connecting trunks that
17 are the dark lines there?

18 **THE WITNESS:** It has. But that's -- and that
19 is not an issue, those are going to say the same, right?

20 **COMMISSIONER SKOP:** Right.

21 **THE WITNESS:** All we are talking about now is
22 pricing.

23 **COMMISSIONER SKOP:** Well, not if Bright House
24 were to establish the meet point at the end office, then
25 the pricing would not be at issue, right?

1 **THE WITNESS:** Yes, that's correct. Well, I
2 think from Verizon's perspective it would because now
3 they would receive only monies from the IXCs for those
4 facilities, because it would be on their side of the
5 POI.

6 **COMMISSIONER SKOP:** Okay. But from the
7 existing configuration, Bright House has selected a meet
8 point, but by virtue of wanting to access the access
9 toll connecting trunks, I guess Bright House is
10 asserting that the character is one of that of an
11 interconnection rather than utilization of the special
12 access facility, right?

13 **THE WITNESS:** Yes.

14 **COMMISSIONER SKOP:** Okay. Again, I started my
15 question with asking whether Bright House could cite to
16 some specific precedent where, you know, this pricing
17 model has been adopted in another jurisdiction, or in
18 another jurisdiction or either by this Commission or
19 someone else, because it does -- I mean, would you --
20 I'm trying to figure out how to say this.

21 Would the Bright House proposal alter the way
22 in which CLECs compensate ILECs for these facilities if
23 your proposal is adopted by the Commission? I think you
24 said this was a unique situation, so I just wanted to
25 get your perspective.

1 **THE WITNESS:** Well, it's unique because Bright
2 House is actually putting in more points of
3 interconnection, so they're trying to get more diversity
4 and redundancy into their network. It's not unique in
5 that CLECs have always been able to choose the point of
6 interconnection. I mean, that's just a right under
7 251(c)(2).

8 The real dispute here is over if we keep that
9 point of interconnection where it is, those facilities
10 from that tandem down to that end office, I mean we
11 could call those entrance facilities, which is what
12 Verizon likes to characterize them as, and, of course,
13 that's because of the impairment argument. But, again,
14 Bright House is not using these facilities to connect to
15 UNEs, okay? That would be 251(c)(3). We are using --
16 Bright House is using these for interconnection only,
17 that's 251(c)(2). And it said in the TRRO at Paragraph
18 140 that for purposes of interconnection these
19 facilities shall be available to CLECs at cost-based
20 rates, which is TELRIC rates.

21 Now, we can -- I'm sure the lawyers will brief
22 all of that for you, but that is absolutely consistent
23 with industry practice and the FCC's rules. I think
24 what you are struggling with and kind of what we are all
25 kind of struggling with in this case is that Bright

1 House is different. Bright House has built its own
2 network. Bright House doesn't buy UNEs. It doesn't
3 resell. It's basically self-sufficient other than this,
4 you know, industry need to interconnect all of these
5 networks. So the question is, you know, do they pay
6 TELRIC? Yes, they do, because that's what the TRRO
7 said.

8 If you are buying a UNE, then, no, you don't
9 get TELRIC rates, you pay the tariffed special access
10 rates. But if you are using this facility for
11 interconnection, at Paragraph 140 it says they are to be
12 cost-based rates because they always have been.

13 **COMMISSIONER SKOP:** But just to my point, you
14 can't cite any specific precedent where somebody has
15 ruled in favor of Bright House's position on this, is
16 that correct?

17 **THE WITNESS:** I'm not sure. Bright House
18 hasn't done many of these, I don't believe, but I'm not
19 aware of any, so I guess I'll defer to the attorneys to
20 do that for us.

21 **COMMISSIONER SKOP:** Okay. And then, Madam
22 Chair, just one final question.

23 With respect to the use of the access toll
24 connecting trunk, obviously Bright House gets to choose
25 the meet point. If Bright House does not like the price

1 offering for use of the Verizon facility, being the
2 access toll connecting trunk, then why would Bright
3 House not merely just change the meet point to the end
4 office?

5 **THE WITNESS:** I think that's an option for
6 Bright House. They can pick that point as you pointed
7 out. Are you suggesting that if they don't like -- I
8 guess your point is if they don't like the tariffed
9 special access that they are paying today, can they just
10 move that point to the end office?

11 **COMMISSIONER SKOP:** And not pay it?

12 **THE WITNESS:** Yes.

13 **COMMISSIONER SKOP:** Okay.

14 **THE WITNESS:** Yes. And that is a viable
15 recommendation.

16 **COMMISSIONER SKOP:** Thank you.

17 **CHAIRMAN ARGENZIANO:** Staff.

18 **MS. BROOKS:** Staff does not believe that Mr.
19 Savage has moved the testimony into the record, and we
20 want to inquire now if he was going to go ahead and do
21 that?

22 **CHAIRMAN ARGENZIANO:** Mr. Savage?

23 **MR. SAVAGE:** If everyone is done, at this
24 point I, indeed, would like to move into the record
25 Mr. Gates' Direct and Rebuttal Testimony.

1 **MS. BROOKS:** Thank you.

2 **CHAIRMAN ARGENZIANO:** Thank you.

3 Commissioners. I think we are done. Thank
4 you, Mr. Gates, you can go.

5 **THE WITNESS:** Thank you.

6 **CHAIRMAN ARGENZIANO:** And we'll move on to Ms.
7 Johnson. Exhibits, yes, thank you.

8 Mr. Savage.

9 **MR. SAVAGE:** I had understood that the
10 exhibits to the testimony actually were stipulated in,
11 so it was only the testimony itself that needed to be
12 moved.

13 **CHAIRMAN ARGENZIANO:** Yes. No, no, no, that's
14 not correct.

15 **MR. SAVAGE:** Oh, that's not correct. Okay.

16 **CHAIRMAN ARGENZIANO:** We were going to wait
17 for his testimony, and then Ms. Helton --

18 **MS. HELTON:** (Inaudible; microphone off.) --
19 when the witness first came up to the stand. Normally
20 our language is we insert the testimony into the record
21 as though read, and I think he may have said we would
22 like you to adopt, so I think that might be part of
23 where the confusion is.

24 **MR. SAVAGE:** Then if I may substitute for all
25 those erroneous motions, first that we agree that we

1 will insert into the record as if read the Direct and
2 Rebuttal Testimony of Mr. Gates, and move into evidence
3 the various exhibits listed in the composite exhibit
4 list for Mr. Gates.

5 **CHAIRMAN ARGENZIANO:** Thank you. We've got it
6 now. Thank you.

7 **MR. SAVAGE:** I apologize.

8 **CHAIRMAN ARGENZIANO:** Show that done.

9 **MS. HELTON:** And so I take it, Madam Chairman,
10 if there are no objections then you could go ahead and
11 move into the record the exhibits.

12 **CHAIRMAN ARGENZIANO:** Are there any
13 objections? I am seeing none. Then we are fine, yes.

14 (Exhibit 15 through 21 admitted into
15 evidence.)

16 **CHAIRMAN ARGENZIANO:** Anything else? Okay.
17 Okay, Mr. Savage.

18 **MARVA B. JOHNSON**

19 was called as a witness on behalf of Verizon, and having
20 been duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 **BY MR. SAVAGE:**

23 **Q.** Good morning, Ms. Johnson.

24 **A.** Good morning.
25

1 Q. Could you please state your name, position,
2 and business address for the record.

3 A. My name is Marva Johnson. My title is
4 Vice-President for Technology, Policy, and Industry
5 Affairs, and my business address is 301 East Pine
6 Street, Suite 600, Orlando, Florida 32801.

7 **CHAIRMAN ARGENZIANO:** Might I just say what I
8 plan to do so we don't -- let's try not to cut off a
9 witness in the middle of testimony. About 12:30,
10 Commissioners, head to lunch for an hour, and then come
11 back. And if we can just be succinct with our questions
12 and answers that might help in the effort to not have to
13 break up the testimony. Thank you.

14 **BY MR. SAVAGE:**

15 Q. Ms. Johnson, did you cause to be prepared and
16 filed the Direct Testimony of Marva Johnson on
17 March 26th, and then the Rebuttal Testimony of Marva
18 Johnson on April 16th, 2010?

19 A. Yes, I did.

20 Q. And do you have any corrections, or additions,
21 or amendments you'd like to make to your testimony at
22 this time?

23 A. None at this time.

24 Q. And if I were to ask you the questions
25 contained in your written Direct Testimony and written

1 Rebuttal Testimony today, would your answers be the
2 same?

3 A. Yes, they would.

4 Q. And I don't believe you had any exhibits to
5 your testimony, so at this time if you could give a
6 brief summary of your testimony, we'd appreciate it.

7 A. Great. I first would like to thank each of
8 the Commissioners for giving us an opportunity to share
9 our thoughts here with you today. I think that there's
10 a bit of misconception in that some of the requests that
11 we have made may seem novel or coy, but I assure you
12 that they are real and they are serious and they are
13 specific.

14 I have worked in the industry in many
15 different roles and I have seen many of these issues
16 from different angles. I've worked for an IXC, I've
17 worked for an ILEC, I've worked for a couple of CLECs at
18 this point in my career. The thing that is consistent,
19 regardless of the perspective that I've approached some
20 of these issues from is that first and foremost
21 facilities-based competition is pretty much the only
22 meaningful way to compete and win and serve customers
23 while in this marketplace.

24 The second is that the interconnection
25 agreement is the lifeline of our business. We cannot

1 successfully provide high quality service to customers
2 consistently without the benefit of an interconnection
3 agreement that clearly and specifically addresses the
4 terms and conditions under which we co-exist here in the
5 market.

6 The one thing that's most important to us is
7 that we have certainty, that we have a binding
8 agreement. When we go back to our offices on Thursday,
9 I won't have the benefit of having Mr. Savage sit with
10 my engineers to place service orders, nor will I have
11 the benefit of having Mrs. Keating or Mrs. Frappier sit
12 with my billing people to review invoices. What we will
13 have is real employees who are trained engineers,
14 trained accountants, trained billing analysts, not
15 experts in telephony law or telecommunications law.

16 As such, this agreement is -- it's an MMP for
17 them, it's their method and procedure. It is the way
18 that they understanding that we do business. It is the
19 way that they understand that we procure customers from
20 Verizon, that we lose customers to Verizon, that we
21 route traffic, that we apply the rating and routing
22 provisions. So it is essential that we get this right,
23 and it's essential that we have clarity. So for Bright
24 House it's the number one reason we are here.

25 My testimony is here, and I offer it primarily

1 as it relates to Issue Number 7, and that's essentially
2 the fact that we need a binding agreement. The Telecom
3 Act doesn't contemplate that we will have an agreement,
4 that we invest to build collocations to support, that we
5 build-out fiber to support, that we arrange our OSS to
6 support, and then suddenly Verizon can turn away from
7 those things at the drop of a hat, or based on a
8 unilateral decision they have made and decide no longer
9 to provide those things. The sole purpose of being here
10 is to have a binding agreement. So any provision,
11 absent a change in law provision, which we've already
12 agreed to that subordinates our binding provisions is
13 unacceptable.

14 And the second primary focus for my testimony
15 is to talk about the definition of local traffic. One
16 of the greatest benefits of competition is to drive down
17 costs for consumers and to deliver higher quality
18 services. The way that we rate calls between our
19 networks is essential to our ability to continue to
20 compete and to continue to provide high quality service
21 and to continue to do so at a low rate.

22 **CHAIRMAN ARGENZIANO:** Thank you.

23 (REPORTER NOTE: For the convenience of the
24 record, Witness Johnson's prefiled testimonies inserted
25 in the transcript.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Bright House Networks Information
Services (Florida), LLC

Petition for Arbitration of Terms and
Conditions of An Interconnection Agreement
with Verizon Florida, LLC

Docket No. 090501

Filed: March 26, 2010

**DIRECT TESTIMONY
OF MARVA B. JOHNSON**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Marva B. Johnson. My business address is 301 East Pine Street, Suite
3 600, Orlando, Florida 32801.

4 **Q. WHAT IS YOUR POSITION WITH BRIGHT HOUSE NETWORKS**
5 **INFORMATION SERVICES (FLORIDA), LLC?**

6 **A.** I joined Bright House Networks Information Services (Florida), LLC ("Bright
7 House") in October 2006 as the Director, Carrier Relations and Vendor Services. I
8 held that position for approximately two and a half years during which time I also
9 held the same position with other Bright House entities in other states. In March
10 2009, I was promoted to my current position Vice President Technology Policy and
11 Industry Affairs with Bright House Networks, LLC ("BHN") the parent entity of
12 Bright House. My duties now include other issues, but I have retained responsibility
13 for managing Bright House's relations with other carriers in Florida, including
14 Verizon.

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
16 **EXPERIENCE.**

1 A. I received a Bachelor's of Science in Business Administration (BSBA), with a
2 concentration in Accounting from Georgetown University; a Masters in Business
3 Administration from Emory University's Goizuetta School of Business; and a Juris
4 Doctor from Georgia State University. I am an inactive member of the Georgia State
5 Bar. I have participated in the communications industry for more than fifteen years –
6 since about the time that the Telecommunications Act of 1996¹ became law and
7 opened up local markets to competition. Before working at Bright House, I was the
8 General Counsel of Supra Telecommunications and Information Services, Inc., a
9 competitive local exchange carrier ("CLEC") with operations primarily in Florida.
10 Prior to that, I was the Vice President for Legal and Regulatory at KMC
11 Telecommunications, another CLEC with operations in various states, including
12 throughout the Southeast. My telecommunications experience also includes several
13 management roles within MCI Communications ("MCI"), an interexchange carrier
14 ("IXC") now known as Verizon Business. I was a part of the team that launched
15 MCI's local service product suites when the local telecommunications market
16 opened in 1996. My telecommunications experience also includes tenure as an
17 Internal Auditor within BellSouth Telecommunications, Inc., an incumbent local
18 exchange carrier ("ILEC") now known as AT&T. Prior to joining the
19 telecommunications industry I worked as an auditor for Arthur Andersen &
20 Company.

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996)
("Telecom Act" or "Act").

1 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN PROCEEDINGS**
2 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
3 **(“COMMISSION”)?**

4 A. Yes. I filed testimony before the Commission in Docket 040130, a joint petition for
5 arbitration of certain interconnection agreement terms filed by KMC and other
6 petitioners against BellSouth in 2003. I also participated, in 2005 in Docket
7 041144-TP, a complaint brought by Sprint-Florida, Incorporated 041144-TP against
8 KMC concerning interconnection and access charge related matters.

9 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS**
10 **PROCEEDING?**

11 A. Yes. I have participated in several negotiations and arbitrations between CLECs and
12 ILECs in Florida and elsewhere. In addition, I participated in a number of the
13 negotiating sessions trying to resolve with Verizon the issues in this arbitration, and
14 have been involved in formulating Bright House’s positions in this matter. Having
15 managed the operations teams charged with implementing the terms of each of our
16 interconnection agreements, I am very familiar with Bright House’s operations in
17 Florida and the potential impact these matters will have on customers served on
18 Bright House’s network. In addition, I am familiar with the telecommunications
19 regulatory policy issues involved.

20 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

1 **A.** I am submitting this testimony on behalf of Bright House Networks Information
2 Services (Florida), LLC, the petitioner in this case, which I will refer to here as
3 “Bright House.” At times I will need to refer to Bright House’s affiliated provider of
4 cable television and Voice-over-Internet-Protocol (“VoIP”) services. That entity’s
5 *formal name* is “Bright House Networks, LLC.” I will refer to that entity as “BHN.”

6 **Q.** **WHICH OF THE OPEN ISSUES WILL YOU BE ADDRESSING IN THIS**
7 **CASE?**

8 **A.** I will be addressing certain aspects of the following issues: Issue #1, Issue #2, Issue
9 #4(a) #6, Issue #7, Issue #8, Issue #11, Issue #13, Issue #16, Issue #21, Issue #22(a),
10 Issue #22(b), Issue #37, Issue #43, Issue #44, and Issue #45. Bright House is also
11 filing the testimony of Mr. Timothy Gates, who will be addressing certain aspects of
12 some of these issues, as well as other open issues. I would note that I will be taking
13 certain issues out of order in order to discuss together issues that raise similar or
14 related underlying policy and business concerns.

15 **Q.** **WHAT OTHER TESTIMONY IS BRIGHT HOUSE SUBMITTING IN THIS**
16 **CASE?**

17 **A.** As just noted, Bright House is also filing the testimony of Timothy J Gates, an expert
18 in telecommunications policy issues.

19 **Q.** **FROM YOUR PERSPECTIVE, WHAT OVERALL CONTEXT SHOULD**
20 **THE COMMISSION CONSIDER IN EVALUATING THE PARTIES’**
21 **POSITIONS IN THIS ARBITRATION?**

1 A. To begin with, I would hope that the Commission appreciates that Bright House, by
2 providing its wholesale services to its affiliate, helps provide a true alternative
3 network for consumers in Florida, and that we have been recognized for the quality
4 of our products and customer service. We continue to invest in and grow our
5 business, and we are simply asking for basic interconnection rights on fair terms and
6 conditions.

7 I have been involved in the competitive telecommunications business for the entire
8 “competitive era” since the passage of the 1996 Act. As a result, I have seen first-
9 hand how extremely difficult it has been for competitors to break into the business
10 that was formerly a legally protected monopoly held by ILECs such as Verizon.

11 That said, in recent years I have also seen that successfully competing against the
12 ILEC is possible, using the wholesale supplier model that Bright House uses. Under
13 that approach, which has been widely adopted by firms within the cable industry, a
14 cable system operator who has upgraded its system to include high-speed Internet
15 capability is in a position to offer unregulated VoIP service as well.

16 **Q. DOES YOUR SUCCESS IN THE MARKET DEPEND, IN SIGNIFICANT**
17 **PART, ON THE TERMS AND CONDITIONS IN THE INTERCONNECTION**
18 **AGREEMENT (“ICA”)?**

19 A. To be competitively viable, our affiliate’s VoIP service has to be “interconnected”
20 with the traditional public switched telephone network. (“PSTN”) This involves
21 obtaining telephone exchange service (essentially, “local” service), along with a
22 variety of other administrative and telecommunications services, on a “wholesale”

1 basis. This wholesale telephone service is then combined with a variety of features to
2 create what is (in Florida) unregulated interconnected VoIP service.²

3 Some cable operators look to independent third parties, such as Sprint or (in the past)
4 MCI, to provide that connectivity. Bright House initially entered the market relying
5 on MCI. Eventually, however, Bright House concluded that BHN and the VoIP end
6 users would be better served by using an affiliated CLEC to provide that
7 functionality. As a result, Bright House obtained its own switching equipment and
8 other network gear, severed its relationship with MCI (which by then had been
9 purchased by Verizon), and undertook providing wholesale telephone exchange
10 services to BHN.

11 The precise figures are confidential, but I can say that we have achieved a good
12 measure of success in the marketplace with our overall approach. I am sure that in
13 part this simply reflects the fact that consumers were eager for a real choice in voice
14 service suppliers after decades of being served by a monopoly. But more
15 fundamentally, as we noted in our arbitration petition, we have succeeded in the
16 marketplace due to our unwavering commitment to deliver top-quality customer
17 service. As noted there, this resulted in BHN receiving strong positive recognition,
18 including earning national attention by the highly respected J.D. Power and
19 Associates organization for its Digital Phone service, for the fourth year in a row.

² The FCC has a formal definition of what constitutes “interconnected VoIP service.” See 47 C.F.R. § 9.5. In this arbitration, the parties have agreed to incorporate that definition into their interconnection agreement.

1 **Q. WHAT WAS THE BASIS FOR THE J.D. POWER AND ASSOCIATES**
2 **AWARD TO BRIGHT HOUSE?**

3 **A.** According to the *J.D. Power and Associates 2009 Residential Telephone Customer*
4 *Satisfaction Study* released September 16, 2009, Bright House Networks' customer
5 satisfaction scores in the South Region were highest for all five factors that comprise
6 Customer Satisfaction: Customer Service; Performance and Reliability; Cost of
7 Service; Billing, and Offerings and Promotions. This commitment to service is
8 reflected in the hundreds of thousands of end user customers who receive VoIP
9 service from BHN and their connectivity to the PSTN, indirectly, through Bright
10 House.

11 **Q. HOW DOES THIS CONTEXT RELATE TO THE ISSUES IN DISPUTE**
12 **BETWEEN BRIGHT HOUSE AND VERIZON?**

13 **A.** After a decade of watching firms trying out different competitive models struggling
14 to survive and grow, and then looking at the marketplace success of our services,
15 from my perspective, it appears that cable-based competition is one of the only,
16 viable business models for competing with an ILEC like Verizon over the long term,
17 particularly in the residential market place. Other business models, such as resale of
18 the ILEC's services, or reliance on unbundled network elements, are burdened with
19 economic and operational challenges that are difficult or impossible to overcome.
20 The basic reason is that in those other models, mission-critical inputs for the
21 competitors have to come from the ILEC itself. In contrast, full facilities-based
22 competition, of the sort provided by Bright House's wholesale service in support of

1 BHN's unregulated voice offering, is going to be more successful in the long term,
2 because facilities-based competition allows the competitor to control its own destiny
3 (and its costs, features, and quality of service) to the maximum extent possible.

4 In practical terms, that means that the Commission has to evaluate whether "terms
5 and conditions" in Bright House's agreement with Verizon are "just and reasonable"
6 not merely in light of abstract policy considerations, but in the practical sense of how
7 effectively they enable and facilitate the kind of facilities-based competition that
8 Bright House is providing today, and seeks to provide in the future. At a high level,
9 this is the kind of competition that is really working, on a day-to-day basis, to
10 provide Florida consumers with the benefits that competition brings – lower prices,
11 better customer service, and continuing improvement and innovation in the range
12 and type of services consumers have available.

13 In this regard, as the Commission is, I think, aware, we have settled a lot of open
14 issues with Verizon, and we hope to settle even more before this matter goes to
15 hearing. We like to think that we are practical business people who can find
16 reasonable compromises on a wide range of operational issues. I say this because I
17 want the Commission to understand that where we have been *unable* to agree with
18 Verizon, and have therefore been forced to bring a matter to the Commission for
19 resolution, it is because we believe that our ability to serve our customers well, today
20 and in the future, will be materially affected by getting that issue right.

21 I urge the Commission to view all the issues in this case through that lens – what
22 resolution will enable consumers in Florida to continue to receive the increasing

1 benefits of real facilities-based competition for their voice communications services.
2 It is my belief and hope that the Commission will see that the positions Bright House
3 has taken in this arbitration all make sense when viewed in that light.

4 **Issue #6: If during the term of this agreement Verizon becomes required to**
5 **offer a service under the ICA, may the parties be required to**
6 **enter into good faith negotiations concerning the implementation**
7 **of that service?**

8 **Issue #7: Should Verizon be allowed to cease performing duties provided**
9 **for in this agreement that are not required by applicable law?**

10 **Q. FROM YOUR BUSINESS PERSPECTIVE, WHAT ARE ISSUE**
11 **#6 AND ISSUE #7 ABOUT?**

12 **A.** From my perspective as a businessperson, Verizon is both a major supplier and a
13 major customer to Bright House. When my end users call Verizon end users, Bright
14 House buys call termination services from Verizon. When Verizon's customers call
15 my customers, Verizon buys call termination services from Bright House. Providing
16 those services requires both carriers to obtain and operate a variety of transmission
17 equipment and facilities (such as optical fiber running from Bright House's network
18 to Verizon's) and switching gear (to properly route individual calls), as well as to
19 perform a variety of "behind-the-scenes" administrative functions, such as
20 processing orders from the other to transfer customers who are switching carriers,
21 arrange for directory listings where requested, etc.

22 While we have achieved some real marketplace success, the fact remains that most
23 telephone service in the Tampa/St. Petersburg area (Verizon's territory) is provided
24 by Verizon. As a result, for our service to be viable, our customers need to be able to
25 call Verizon's customers. As just noted, that means I have to buy call termination

1 and related services from Verizon. Those and the other services we obtain from
2 Verizon make means that we are dependent upon Verizon as one of largest, if not our
3 largest, single supplier of inputs to our own services.

4 In that context, as a businessperson I need a clear and understandable contract that
5 lets me know specifically what Verizon is going to do for me, and how much I am
6 going to be charged for its activities. The point of the negotiation and arbitration
7 process set up in the 1996 Act, and under which we are before the Commission
8 today, is to provide a means to establish such a contract. As I understand it, the idea
9 was the real business-to-business negotiations would supplant the old style of top-
10 down, command-and-control regulation that used to govern the industry.³

11 Unfortunately, over and over throughout its draft interconnection agreement, Verizon
12 has inserted language and concepts that take away from the straightforward, definite

³ Courts have recognized that under the 1996 Act, ILECs like Verizon are supposed to really negotiate with CLECs, rather than rely on top-down regulatory mechanisms like tariffs. For example, In *Verizon v. Strand*, 367 F.3d 577, 586 (6th Cir. 2004), the court stated that tariffs cannot be used "to sidestep the negotiation and arbitration process under § 252." The court found that:

"One of the primary purposes of the Act is to increase competition in the telephony marketplace. The Act is labeled as 'An Act To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.' Pub. L. No. 104-104.110 Stat. 56, 56 (1996) (emphasis added). Part of this statutory imperative is manifested in the §252 process, which encourages private and voluntary negotiation, backed by the threat of state-commission intervention, to achieve interconnection. See H.R. Conf. Rep. No. 104-458, at 124, 1996 U.S.C.C.A.N. at 135. [State tariffs] frustrate[] Congress's intent by eviscerating its chosen mechanism for increasing competition in the local telephony market and by upsetting the intricate balance between competitors and incumbents."

1 terms that a sound contract would contain, substituting vagueness and uncertainty
2 instead. This is not what the deregulatory framework of the 1996 Act is supposed to
3 be about. And, legalities aside, it's simply bad business practice. Granting that the
4 subject matter of a carrier-to-carrier interconnection agreement can get complicated,
5 still, someone familiar with industry jargon and operations should be able to read a
6 well-written contract and figure out which party has to do what, and how much it
7 will cost. That is simply not possible with the contract Verizon has put forward.

8 **Q. WHAT ARE THE PARTICULAR PROBLEMS THAT YOU SEE WITH THE**
9 **LANGUAGE VERIZON HAS PROPOSED?**

10 **A.** Originally, the problems fell into two categories: (1) you can't tell from the face of
11 the contract what functions will result in a charge, and what won't, and you can't tell
12 how much any such charges might be or when they might be invoiced (mainly Issue
13 #1 and Issue #2); and (2) you can't tell from the face of the contract whether Verizon
14 is actually committing to *do* anything or not (mainly Issue #6 and Issue #7). As
15 noted below, we recently agreed with Verizon on a procedure to identify prices
16 (Issue #1 and Issue #2), so ideally this will not be a problem as we move forward.
17 But Verizon's lack of actual contractual commitment remains. *Without commenting*
18 *on the formal legal question of what it takes to have a valid contract, as a practical*
19 *businessperson, at some point a document becomes too vague and uncertain to*
20 *warrant being called a "contract" at all. Verizon's proposed language has, in my*
21 *view, crossed that line.*

1 **Q. PLEASE DISCUSS THE PROBLEMS ARISING FROM A LACK OF**
2 **CLARITY ABOUT WHETHER VERIZON IS MAKING A COMMITMENT**
3 **TO PERFORM UNDER THE CONTRACT.**

4 **A.** This problem is highlighted by Issue #6 and Issue #7. Issue #6 relates to Verizon
5 qualifying its commitments to perform its stated contractual duties, while Issue #7
6 relates to Verizon trying to preserve a right to weasel out of the most meaningful
7 “business” commitments the contract actually makes.

8 **Q. PLEASE EXPLAIN HOW VERIZON UNREASONABLY AND UNFAIRLY**
9 **SEEKS TO QUALIFY ITS COMMITMENTS TO PERFORM ITS**
10 **CONTRACTUAL DUTIES.**

11 **A.** The contract contains any number of provisions saying that Verizon “shall” perform
12 one or another function. But in the General Terms and Conditions, and again in
13 essentially every substantive “attachment” to the contract, Verizon totally
14 undermines those commitments with the following language:

15 *If and, to the extent that Verizon, prior to the Effective Date of this*
16 *Agreement, has not provided in the State of Florida, a Service offered*
17 *under this Agreement, Verizon reserves the right to negotiate in good*
18 *faith with Bright House reasonable terms and conditions (including,*
19 *without limitation, rates and implementation timeframes) for such*
20 *Service; and, if the Parties cannot agree to such terms and conditions*
21 *(including, without limitation, rates and implementation timeframes),*
22 *either Party may utilize the Agreement’s dispute resolution*
23 *procedures.*

24 From a business perspective, this language is stunning. No matter what Verizon may
25 say in the contract that it is committed to do, its actual commitment depends on
26 whether it has ever performed those functions before in Florida. If it has, fine. But

1 if it hasn't, then its' supposed commitment to perform its contractual duties is
2 nothing but a sham, because in that case, the only thing Verizon will agree to is to
3 *negotiate* some more, about everything – rates, terms, conditions, and timeframes for
4 implementation. Based on my experience with interconnection negotiations,
5 Verizon's loophole language is not an acceptable resolution process. It is cold
6 comfort to know that I will be faced with more negotiations for any service or
7 function that Verizon has not performed in Florida.

8 This language is particularly outrageous because the whole point of the negotiation-
9 arbitration procedures established by the 1996 Act is to establish a reasonably quick
10 time frame – nine months – to get from the start of negotiations to a complete,
11 finished contract. We are already going to end up well past that deadline in getting
12 this case resolved, on its current procedural schedule. It is almost insulting, as a
13 business matter, to have Verizon suggest that we can negotiate and arbitrate open
14 issues for what will turn out to be more than a year, and end up with a contract
15 where, on any number of important matters, all Verizon will “commit” do to is
16 negotiate some more.

17 But Verizon's position is even more unreasonable than that. Let's assume for
18 purposes of discussion that if Verizon really has never performed some particular
19 function in Florida before, that it actually makes sense to (in effect) agree in
20 principle that they will perform it when we ask them to, but that the details of the
21 performance will be worked out later. Bright House actually has no objection to that
22 approach in certain situations. But for that approach to make sense, we need to know
23 *in advance* which of Verizon's stated contractual duties are real commitments, and

1 which are really just “agreements in principle” that they will perform the function in
2 some way. From the outset of our negotiations last fall, we asked Verizon to identify
3 what functions they were supposedly offering in the contract, but that – in light of
4 the language they include in every substantive section – they were not actually yet
5 prepared to provide in Florida. They have never done so, leaving us entirely in
6 limbo as to whether *any* of their commitments are real or not.

7 In these circumstances, the only reasonable thing for the Commission to do is to
8 strike Verizon’s weasel-wording about its performance obligations, which is what
9 Bright House has suggested that the Commission do.

10 **Q. WHAT IS THE PROBLEM WITH VERIZON SEEKING TO ESCAPE FROM**
11 **ITS COMMITMENTS ENTIRELY, COVERED BY ISSUE #7?**

12 A. Issue #7 is a bit more subtle than Issue #6. It arises from Verizon’s proposed Section
13 50.1 of the General Terms and Conditions. In that provision, notwithstanding its
14 supposed commitments in the contract, and notwithstanding the parties’ agreement
15 that the contract will have a three-year term, Verizon tries to claim the right to
16 simply walk away from *any* obligation in the contract any time that, in Verizon’s its
17 unilateral view, that commitment is not “required by Applicable Law.”

18 Putting this in practical terms, what Verizon is saying is this: “We will do what
19 existing laws and regulations literally *require* us to do. Any negotiating we may
20 have done to flesh out the details of what that means, and any agreement we have
21 made to go beyond the literal requirements of the law, is not a real obligation on
22 Verizon. We can walk away from any of that, at will, on 30 days notice.”

1 **Q. WHY IS THIS A PROBLEM FROM A BUSINESS PERSPECTIVE?**

2 **A.** There are several problems. First, as suggested above, “Applicable Law” is, in many
3 cases, fairly general in nature, and does not specify in any detail precisely how the
4 general duties (such as a duty to act in a “reasonable” manner) have to be fulfilled.
5 One of the key objectives of getting specific contractual commitments nailed down is
6 precisely so that the parties will know those details. But under Verizon’s language,
7 even if we agreed on a particular way of doing something, if Bright House can’t
8 point to some statute or regulation or ruling that specifically says that Verizon has to
9 perform in that manner, Verizon can say “Well, I may have agreed with you to do it
10 that way, but *“Applicable Law”* does not *require* me to do it that way, so under
11 Section 50.1 I can change my mind and stop doing it.”

12 More fundamentally, in Section 50.1 Verizon is trying to undermine the entire
13 concept of the implementation of local competition under the 1996 Act, which,
14 again, is supposed to proceed by means of binding, business-to-business contractual
15 commitments. Verizon’s proposed language throws that out the window and says
16 that all it is really agreeing to do is what top-down, command-and-control
17 regulations tell it to do.

18 **Q. ARE YOU SUGGESTING THAT GOVERNMENT REGULATION IN THIS**
19 **FIELD IS NOT NECESSARY OR IMPORTANT?**

20 **A.** No, not at all. This is a complicated area, and as we noted in our arbitration petition,
21 even when there is a great deal of retail competition, for that competition to work,
22 the competitors have to cooperate in many important ways behind the scenes.

1 Regulation is needed to specify what that cooperation entails, which in some cases
2 will change over time as technology, law and marketplace conditions change. But
3 the basic approach of the 1996 Act is to cut back on the amount of detailed
4 regulation that would otherwise be needed, by directing the parties to negotiate
5 binding contracts that specify *how* the general obligations contained in the law will
6 be fulfilled. By claiming the right to walk away from any commitment in the
7 contract that is not, itself, literally *required* by laws and regulations cuts the heart out
8 of that process. Further, because we each rely on the key inputs from the other in our
9 delivery of services to Florida consumers, we must have a reasonable and orderly
10 process for implementing rules that will ultimately impact our delivery of services to
11 Florida consumers.

12 For these reasons, the Commission should accept Bright House's position and
13 completely delete Verizon's proposed Section 50 from the contract.

14 **Issue #1: Should tariffed rates and associated terms apply to services**
15 **ordered under or provided in accordance with the ICA?**

16 **Issue #2: Should all charges under the ICA be expressly stated? If not,**
17 **what payment obligations arise when a party renders a service to**
18 **the other party for which the ICA does not specify a particular**
19 **rate?**

20 Very recently – just before the filing of this testimony – we reached an agreement
21 with Verizon to (a) go over the contract carefully and identify what items are
22 chargeable and which are not (b) agree on specific prices (or, if mutually agreeable,
23 tariff references) where we can; and (c) present the Commission with disputes we
24 may have as of the filing of our pre-hearing statements in early May. So at this point
25 we do not have an active dispute about Issue #1 and Issue #2.

1 But we still have problems with Verizon refusing to actually commit to performing
2 the obligations set out in the contract.

3 **Issue #11: Should the ICA state that “ordering” a service does not mean a**
4 **charge will apply?**

5 **Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #11?**

6 **A.** It is very typical in the industry and in the draft ICA to refer to one party “ordering”
7 functions from the other. We are concerned that the term “order” not imply the
8 existence of a payment obligation. Ideally, the effort we are going to be undertaking
9 with Verizon to clarify the prices (if any) that apply to functions we might look to
10 Verizon to perform, will minimize any practical concerns about this. Even so, it is a
11 good idea to eliminate ambiguity in the use of the term “ordering,” and we propose
12 to do so.

13 **Issue #45: Should Verizon’s collocation terms be included in the ICA or**
14 **should the ICA refer to Verizon’s collocation tariffs?**

15 **Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #45?**

16 **A.** Our current agreement with Verizon includes reasonably detailed provisions
17 governing the collocation arrangements we have with Verizon. Verizon’s draft ICA
18 suggests that we would simply look to Verizon’s collocation tariffs for all those
19 terms. The pricing exercise we are going to go through with Verizon will, we hope,
20 eliminate our concerns about pricing of collocation. But the operational terms and
21 conditions regarding collocation should be set out in the contract as well. Otherwise
22 Verizon would be in a position to modify those terms essentially at will, which is
23 unfair. I would note also that Verizon makes reference to both its interstate and

1 intrastate tariffs, making it very difficult to know what terms would apply. For these
2 reasons, the Commission should direct the parties to include specific collocation
3 terms and conditions in the contract.

4 **Issue #8: Should the ICA include terms that prohibit Verizon from selling**
5 **its territory unless the buyer assumes the ICA?**

6 **Q. WHAT IS BRIGHT HOUSE'S CONCERN REGARDING ISSUE #8?**

7 **A.** We are investing, and have invested, considerable time and money in working out
8 our new interconnection agreement with Verizon. We understand that Verizon
9 should, in general, have the right to sell parts of its territory (assuming such a sale
10 complies with whatever other rules and regulations would apply to it). But there is
11 no reason at all to allow Verizon to sell its territory "free and clear" of the
12 obligations Verizon will have under our interconnection agreement. Anybody
13 buying Verizon's Tampa/St. Petersburg territory would not only be acquiring
14 Verizon's switches, fiber optic cables, and customer base. The buyer would also be
15 acquiring Verizon's relationship with Bright House, and its obligation to continue to
16 provide the call termination, order processing, number portability, and other
17 functions that Verizon is obliged to provide to us under our agreement.

18 Think of Verizon's contractual obligations to Bright House like a mortgage on a
19 house. The owner of a house is free to sell it, but the fact that the house can be sold
20 does not mean that the owner can simply walk away from the mortgage. Instead, the
21 owner can either pay off the mortgage, or – if the new buyer is acceptable to the
22 bank – the new buyer can assume the mortgage obligations, i.e., to buy the house
23 "subject to" the mortgage.

1 Q. HOW CAN THIS PROBLEM BE SOLVED?

2 A. For better or worse, *interconnection* agreements are a lot more complicated than
3 mortgages, so there is no easy way for Verizon to “pay off” an interconnection
4 agreement. So there are only two ways to solve this problem. One is to say that
5 Verizon cannot sell its territory at all, until the new buyer has negotiated and
6 arbitrated a completely new interconnection agreement with Bright House (and any
7 other CLECs that Verizon is interconnected with). The other is to say that before it
8 can sell its territory, Verizon has to get the buyer to agree to honor the terms of the
9 existing agreement. This latter course – which is what we have proposed – seems
10 much more reasonable, since the buyer will be acquiring Verizon’s territory as a
11 “going concern” that already includes the *physical arrangements* and day-to-day
12 business processes needed to perform its duties under the agreement.

13 But, again, what isn’t reasonable is letting Verizon simply sell its territory, cancel the
14 interconnection agreement, and leave Bright House and its end users out in the cold.
15 That would be like saying that any time I sell my house, any existing mortgage on it
16 is automatically canceled, with the bank left unpaid and holding the bag.

17 **Issue #16: Should Bright House be required to provide assurance of**
18 **payment? If so, under what circumstances, and what remedies**
19 **are available to Verizon if assurance of payment is not**
20 **forthcoming?**

21 Q. WHAT IS BRIGHT HOUSE’S PROBLEM WITH VERIZON’S PROPOSED
22 ASSURANCE OF PAYMENT REQUIREMENT?

1 A. We have several problems. First, we have been dealing with Verizon for years and,
2 while we have had our share of disputes about *what* we owe, there has never been
3 any problem with paying our legitimate bills. Second, Verizon pays us, on a
4 monthly basis, very considerable sums of money – not identical to, but very much in
5 the range of, what we pay Verizon. Yet when we asked Verizon to make the
6 assurance of payment language mutual – that is, giving *us* the right to demand
7 assurances from Verizon on the same terms that Verizon wants to demand
8 assurances from us – they said no. Third, some of the particular language Verizon
9 proposed regarding when it could demand assurances of payment was very vague,
10 yet Verizon asserts the draconian right to stop all performance under the contract if
11 its demands are not met.

12 Given all this, we have essentially thrown up our hands on this issue and proposed to
13 delete the entire provision. Verizon remains protected in that, if for some reason we
14 stopped paying our legitimate bills – which we won't – Verizon is fully entitled
15 under the contract to declare us in breach and sue us to collect the money, just like
16 under a normal contract.

17 **Q. IS THE FINANCIAL EXPOSURE MUTUAL FOR VERIZON AND BRIGHT**
18 **HOUSE?**

19 A. Yes. Verizon sends us millions of minutes of traffic every month – that is, Verizon
20 uses our services for the benefit of its customers – just as we send them millions of
21 minutes of traffic. The hundreds of thousands of customers that the two of us serve
22 would all be seriously harmed – and the public interest harmed as well – if there

1 were any actual, serious disruption in our ongoing physical interconnection
2 relationship. I don't see any good reason to give either party any sort of unilateral
3 right to interfere with that relationship – which is what Verizon's language would do.
4 (General Terms and Conditions, §6.8.)

5 Considering all this, the Commission should agree with Bright House to simply
6 delete this section of Verizon's proposed contract.

7 **Issue #21: What contractual limits should apply to the parties' use of**
8 **information gained through their dealings with the other party?**

9 **Q. WHY IS BRIGHT HOUSE INSISTING ON RESTRICTIONS ON**
10 **VERIZON'S USE OF CONFIDENTIAL INFORMATION OTHER THAN**
11 **THOSE VERIZON PROPOSED IN ITS DRAFT CONTRACT?**

12 **A.** This issue fits into the old saying, "Fool me once, shame on you; fool me twice,
13 shame on me." Starting in the summer of 2007 Verizon began a campaign of
14 blatantly misusing confidential information regarding which customers had chosen to
15 switch from Verizon to Bright House. Because we have to work with Verizon to
16 coordinate when Verizon's service will terminate and ours will begin in order to
17 transfer the customer's telephone number over to us, etc. we have no choice other
18 than to give this confidential information to them. We complained directly to
19 Verizon, who had convinced itself that somehow it had the right to abuse our
20 confidential information. We (along with other affected cable-affiliated CLECs)
21 eventually had to sue them. After some internal processes at the FCC, that body

1 condemned their behavior in a 4-1 vote; the FCC's decision was affirmed by the
2 D.C. Circuit in a 3-0 vote.⁴

3 In light of Verizon's proven willingness to take steps that harm our customers, abuse
4 our information and cause us competitive harm based on its own "creative"
5 interpretation of the scope of its duties to protect and appropriately use our
6 confidential information, the only logical and prudent thing for Bright House is to (a)
7 insist on a more detailed description of what Verizon has to do to keep our
8 information confidential, and (b) include further protections for Bright House in case
9 they fail to do so (in the form of an express agreement by Verizon that we are
10 irreparably harmed by a breach of those protections, making it easier for us to get an
11 injunction against them if we have to). Verizon needs to understand that its
12 decisions have consequences. It made the decision to invent an aggressive and
13 unreasonable interpretation of its confidentiality obligations in an attempt to obtain a
14 marketplace advantage. Its position seems to be, "oh, sorry, never mind, it won't
15 happen again." As one of the parties on the receiving end of Verizon's abusive
16 behavior, that simply isn't good enough.

17 For these reasons, the Commission should approve Bright House's proposed
18 language strengthening the protections afforded to confidential information the
19 parties might exchange under the agreement.

20 **Issue #13: What time limits should apply to the Parties' right to bill for**
21 **services and dispute charges for billed services?**

⁴ See *Bright House Networks, LLC et al. v. Verizon California, Inc., et al.*,
Memorandum Opinion and Order, 23 FCC Rcd 10704 (2008), *affirmed*, *Verizon*
California, Inc. v. FCC, 555 F.3d 270 (D.C. Cir. 2009).

1 Q. WHAT IS BRIGHT HOUSE SEEKING WITH RESPECT TO ISSUE #13?

2 A. Bright House and Verizon exchange millions of minutes of traffic each month, and
3 process thousands of orders relating to customers changing from one carrier to
4 another. They jointly link their networks with hundreds if not thousands of
5 individual “trunks” that have to be provided on a coordinated basis, both technically
6 and from an operational perspective. This situation results in a vast number of
7 separate “transactions” to which some charges might – or might not – apply.

8 On the one hand, this complicated set of transactions means that some amount of
9 errors in billing, or failures to bill, or disputes about billing rates, is inevitable. Some
10 reasonable allowance needs to be made to deal with those possibilities. But there has
11 to be some point at which these transactions are deemed final. Bright House has
12 proposed a limit of one year. If a party erroneously fails to bill for some service, it
13 has a year to submit a back-bill. If a party pays a bill but later realizes it should have
14 objected, it has a year to raise the retrospective objection. But as a practical matter,
15 that has to be enough.⁵

16 Verizon wants there to be no contractual limit at all on how far back an already-paid
17 bill can be re-opened for dispute and discussion, and no contractual limit at all on
18 how long a party can sit on a bill without sending it to the other party for payment.
19 (Verizon says that the normal “statute of limitations” would apply, but as I

⁵ Note that this issue does not affect billing disputes that are raised within the appropriate time frame. A billing dispute can indeed take more than a year to resolve. This issue relates not to the time frame within which a billing dispute must be *resolved*, but rather to the time frame within which a billing issue must be *raised*.

1 understand it those periods are actually longer than the entire term of the contract.)

2 This is unreasonable and potentially abusive.

3 **Q. IS THIS ANOTHER EXAMPLE OF BRIGHT HOUSE SEEKING**
4 **CERTAINTY AND CLARITY IN THE TERMS OF THE AGREEMENT?**

5 **A.** Yes. As noted above in connection with confidential information, Verizon has
6 proven that it is willing to pursue “creative” interpretations of its legal obligations if
7 it sees some advantage from doing so. In the context of Issue #13, this means that –
8 under Verizon’s proposed language – Bright House would not actually know for
9 years whether or not Verizon might decide to seek additional payment from Bright
10 House for services already provide, or seek to recoup moneys already paid to Bright
11 House for services that Bright House provided to Verizon. In light of Verizon’s past
12 behavior, it is not reasonable for Bright House to demand a reasonable limit on how
13 much retroactive exposure – either to back-bills or to disputes of bills already paid –
14 Bright House should be expected to bear.

15 For these reasons, the Commission should adopt Bright House’s position on Issue
16 #13.

17 **Issue #22: (a) Under what circumstances, if any, may Bright House use**
18 **Verizon’s Operations Support Systems for purposes other than**
19 **the provision of telecommunications services to its customers?**

20 **Q. WHAT IS BRIGHT HOUSE’S CONCERN REGARDING ISSUE #22(a)?**

21 **A.** As noted above, Bright House uses a wholesale business model under which it
22 provides wholesale/bulk telephone exchange services to BHN, which uses those

1 services in fashioning an unregulated “interconnected VoIP” service provided to end
2 users. As the Commission is aware, the regulatory classification of VoIP services
3 under federal law is somewhat unclear. Now, when Bright House accesses
4 Verizon’s Operations Support Systems (OSS) in connection with its wholesale
5 telephone exchange services, in Bright House’s view that use is fully in compliance
6 with Verizon’s language in Section 8.4 of the Additional Services Attachment, which
7 states: “Verizon OSS Facilities may be accessed and used by Bright House *only* to
8 provide Telecommunications Services to Bright House Customers” (emphasis
9 added). That said, we are concerned that we not be subject to abuse by Verizon.
10 Specifically, we are concerned that Verizon might decide that, when Bright House
11 makes use of Verizon’s OSS, it is doing so not “only” to “provide
12 Telecommunications Services” to our (direct) customer, our cable affiliate, but *also*
13 to support the provision of unregulated VoIP services to end users by BHN. In light
14 of Verizon’s behavior regarding our confidential information discussed above, we
15 can certainly imagine getting a letter from Verizon telling us that we no longer have
16 access to their OSS because we had not complied with Section 8.4.

17 For these reasons, we have proposed to simply delete this provision from the
18 contract, and I urge the Commission to so order.

19 **Issue #4: (a) How should the ICA define and use the terms “Customer”**
20 **and “End User”?**

21 **Q. WHAT IS BRIGHT HOUSE’S CONCERN REGARDING ISSUE # 4(a)?**

22 **A.** This concern is parallel to that just discussed. We use a wholesale business model,
23 and as of today we only have one customer for our telephone exchange services –

1 BHN, our cable affiliate that provides VoIP services to its subscribers.⁶ In various
2 places the agreement refers to a party's "Customers" and/or "end users." In context
3 – for example, in discussions of directory listings, or number portability, or E911
4 arrangements – it only makes sense to construe those references to mean the end user
5 customers who subscribe to the unregulated VoIP services offered by our cable
6 affiliate. But Verizon's originally proposed definition of "Customer" could be read
7 differently, so that Bright House's only "Customer" would be its cable affiliate. To
8 deal with this problem, we proposed to modify the definition of "Customer," and to
9 add a definition of "End User," which would make clear that the contract was
10 referring to the actual, ultimate consumer of voice services.

11 Verizon has not agreed with our proposed changes. That said, within the last few
12 weeks we *have* agreed with Verizon that there is no dispute that we will exchange
13 traffic with each other without giving any significance to whether the calls originate
14 or terminate in VoIP format or the traditional circuit-switched, time-division-
15 multiplexed format of the public switched telephone network. That may well
16 indicate that this issue will not be a problem, which would suggest that we can work
17 out language with Verizon to address our concerns.

18 That hasn't happened yet, however, so at this point I have to request that the
19 Commission adopt our proposed language regarding the definition of "Customer"
20 and "End User."

⁶ Of course, we have many customers for other services. For example, we provide call termination services to a number of entities that interconnect with us, including Verizon, and we provide originating and terminating access services to various long distance carriers.

1 about identifying specific transaction types that might be exempt from this
2 requirement. In the absence of such discussions, however, the only reasonable
3 course is to provide that all transactions will, indeed, be handled electronically.

4 **Issue #37: How should the types of traffic (e.g. local, ISP, access) that are**
5 **exchanged be defined and what rates should apply?**

6 **Q. WHAT ASPECT OF ISSUE #37 DO YOU ADDRESS?**

7 **A.** To place my answer in context, I would note that there are a number of issues
8 surrounding traffic definition and classification, the compensation appropriate to
9 different types of traffic, etc., that are addressed by Mr. Gates. I want to emphasize,
10 from a business perspective, the question of how to treat calls from our customers to
11 Verizon customers that we treat as local calls, but that geographically cross the
12 boundary of a *Verizon* local calling area.

13 **Q. WHAT IS THE UNDERLYING ISSUE ON THAT POINT?**

14 **A.** From the customer's perspective, the basic question in making a call is whether it is
15 made "for free" – that is, whether it is included in a flat-rated calling plan or (in the
16 wireless context) within the "bucket of minutes" that the customer has purchased.
17 The alternative is a toll call, where the customer not only pays the flat basic rate, but
18 is also assessed a separate charge for making that particular call.

19 Traditionally in the telephone business, there was only one monopoly phone
20 company, and the phone company determined which calls were free local calls and
21 which were toll calls on the basis of geography. Calls within some area (which

1 varied greatly from state to state) were free; “long distance” calls – calls that went
2 outside that area – were toll calls.

3 Now that there is retail telephone competition, one way that carriers can compete
4 with each other is by offering broader “free” local calling areas. Bright House does
5 this; its end users can make calls anywhere in Florida (and, in fact, anywhere in the
6 country) as part of a single, flat-rated service plan.

7 There is no possible sensible reason that Bright House should have to pay
8 terminating access charges to Verizon when a Bright House customer makes a local
9 call, included within the customer’s local calling plan, that goes to a Verizon
10 customer who happens to be in a different *Verizon* local calling area. Mr. Gates
11 discusses the policy and economic aspects of this in more detail. As a practical
12 businessperson, however, I would note the following.

13 First, Verizon seems to think that it still has a territorial monopoly, and that it gets to
14 decide, for all carriers operating in “its” territory, what calls count as local (which
15 Verizon will agree to terminate at reciprocal compensation rates), and what calls
16 count as “long distance” (for which Verizon, in its view, gets to demand access
17 charges). But one of the key points creating local competition is to allow
18 competition to create lower prices for consumers. One way to create lower prices
19 might be to match Verizon’s local calling zones, but provide service within those
20 zones at a lower rate. But a better way – at least as far as consumer acceptance is
21 concerned – is to beat Verizon’s flat rate *and* offer a larger area within which free
22 calls can be made.

1 Q. IS VERIZON ATTEMPTING TO CONTROL HOW BRIGHT HOUSE
2 DEFINES ITS LOCAL CALLING AREA?

3 A. Not directly. But Verizon's contract language tries to force Bright House to pay
4 access charges for calls Bright House's end users make that cross Verizon's local
5 calling zone boundaries, even if those calls are within *Bright House's* local calling
6 zone and Bright House is not receiving any toll revenues for them. This imposes a
7 form of "tax" on Bright House – which is necessarily included in end user rates – for
8 the benefit of Verizon, a tax on Bright House having the temerity to challenge
9 Verizon's smaller local calling zones.

10 This same basic issue came before the Commission some years ago in the context of
11 a generic investigation of something called "Virtual NXX" services. In that case the
12 Commission ruled that the determination of whether a call is subject to access
13 charges or reciprocal compensation depends on the calling zones of the carrier
14 originating the call.⁷ That specific decision was later vacated because the
15 Commission concluded that the decision should be made on a case-by-case basis in
16 individual arbitrations.⁸ That's fair enough, but on the merits, the Commission was
17 right before, and it should reach the same result here. Bright House should not have
18 to pay Verizon for the privilege of setting up a calling plan that is better for
19 consumers than the plans that Verizon is willing to offer.

⁷ See Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, Docket No. 000075-TP, Order No. PSC-05-0092-FOF-TP Order Eliminating the Default Local Calling Area (January 24, 2005) (describing earlier ruling).

⁸ *Id.*

1 **Issue #43: Should the ICA require negotiation of procedures to remove**
2 **Presubscribed Interexchange Carrier freezes?**

3 **Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #43?**

4 **A.** Customers in Florida are allowed to place so-called “PIC Freezes” on their accounts.
5 The original idea of a PIC (or “Preferred Interexchange Carrier”) freeze was to
6 prevent a customer from being “slammed” by having their long distance carrier
7 changed without proper customer authorization. However, PIC freezes also apply to
8 a customer’s local service. So, when there is a PIC freeze on a customer’s account –
9 which the customer may have forgotten about, or which may have been placed in
10 error – an order submitted by Bright House to Verizon to transfer a customer, or vice
11 versa, will be rejected due to the PIC freeze. Under the current processes, customers
12 must often make multiple attempts to coordinate PIC freeze removals between the
13 carriers and results in unreasonable delays in transitioning customer’s services
14 between our networks.

15 Bright House proposed adding language to the Additional Services attachment,
16 section 12, as follows: “Notwithstanding the foregoing” – relating to unauthorized
17 carrier changes – “the Parties agree to negotiate in good faith to establish a
18 commercially reasonable means by which a Customer of one Party who has chosen
19 to obtain service from the other Party may promptly remove any ‘PIC Freeze’ or
20 similar arrangement such Customer may have established.”

21 Verizon has refused to accept that proposal.

22 **Q. WHY IS VERIZON OPPOSED TO BRIGHT HOUSE’S SUGGESTED**
23 **LANGUAGE ABOUT PIC FREEZES?**

1 A. The existence of PIC freezes creates an operational issue that the two carriers ought
2 to be able to talk about and work out. Again, we have not asked Verizon to agree to
3 anything specific; we just want Verizon to acknowledge that there is an issue here
4 that has to be addressed. That seems to me like it should be noncontroversial.

5 While I might not have thought so before Verizon refused to even talk about the
6 issue, now I am concerned that Verizon sees some competitive advantage in leaving
7 the issue open and unresolved. Such a competitive advantage would probably exist
8 if – as I am fairly sure is the case – Verizon has many more customer with PIC
9 freezes on their accounts than Bright House has. In that case, Verizon benefits by
10 making the process of dealing with PIC freezes cumbersome and inefficient – the
11 burdens of the inefficiency fall on Bright House, and those burdens slow down the
12 pace of customer losses as well.

13 In these circumstances, the Commission should adopt Bright House's proposal.

14 **Issue #44: What terms should apply to locking and unlocking E911 records?**

15 **Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #44?**

16 A. In some cases Bright House has experienced delays by Verizon in “unlocking” a
17 customer's E911 records when the customer transfers to Bright House from Verizon.
18 These delays may impair Bright House's ability to timely activate E911 services
19 concurrent with the port. To deal with this Bright House has proposed adding
20 language to Section 2.3.5 of the E911 Attachment to state: “The Parties shall fully
21 comply with all industry guidelines regarding the processes for locking and

1 unlocking E-911 records and the intervals applicable to such processes.” Verizon
2 has not accepted this language.

3 In fairness to Verizon, I should note that this language is a slight variation from what
4 Bright House originally proposed. Bright House’s original proposal referred to “all
5 NANC guidelines” regarding the transfer process. Verizon did not believe that
6 NANC had any applicable guidelines. Rather than debate that issue in detail at this
7 time, Bright House very recently revised its proposal to refer generally to “industry
8 guidelines.” As of the date of this testimony Verizon has not responded to this
9 revised suggestion.

10 **Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE # 44?**

11 **A.** Assuming that Verizon does not accept Bright House’s proposal, the Commission
12 should adopt it. Verizon cannot have any sound objection to conforming its
13 practices regarding locking, unlocking, and transferring E911 records to industry
14 guidelines applicable to those practices.

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

16 **A.** Yes, it does.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Bright House Networks Information
Services (Florida), LLC

Petition for Arbitration of Terms and
Conditions of An Interconnection Agreement
with Verizon Florida, LLC

Docket No. 090501-TP

Filed: April 16, 2010

**REBUTTAL TESTIMONY OF MARVA B. JOHNSON
ON BEHALF OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES
(FLORIDA), LLC**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Marva B. Johnson. My business address is 301 East Pine Street, Suite
3 600, Orlando, Florida 32801. I provided direct testimony in this case on March 26,
4 2010. My background and qualifications are provided in that direct testimony.

5 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

6 **A.** I have reviewed the direct testimony filed in this matter by Mr. D'Amico, Mr.
7 Munsell, and Mr. Vasington on behalf of Verizon. Bright House witness Mr. Gates
8 responds to that Verizon testimony in detail. The purpose of my rebuttal testimony
9 is to provide some additional responses with respect to certain issues.

10 **Q. WHICH OF THE OPEN ISSUES WILL YOU BE ADDRESSING IN THIS**
11 **CASE?**

12 **A.** I will be addressing certain aspects of the Issue #7 and Issue #44. Mr. Gates also
13 addresses these issues, and our rebuttal testimony should be read together.

1 The same applies to the portion of Verizon's language dealing with payment
2 obligations. On this point, as Mr. Gates explains, Verizon seems to be "fighting the
3 last war" here, with regard to intercarrier payments for calls to dial-up ISPs – another
4 issue that has literally no relation to Verizon's contractual dealings with Bright
5 House. Again, we are willing to work with Verizon to deal with its concerns about
6 ISP-bound calling in the Interconnection Attachment to the agreement. However,
7 Verizon's special concern about that one issue is no reason to undermine the stability
8 and certainty of the entire ICA by placing broad language in the General Terms and
9 Conditions.

10 **Issue #44: What terms should apply to locking and unlocking E911 records?**

11 **Q. WHAT IS THE DISPUTE UNDERLYING ISSUE #44?**

12 **A.** As I noted in my direct testimony, Bright House has experienced some delays by
13 Verizon in "unlocking" a customer's E911 records when the customer transfers to
14 Bright House from Verizon. These delays may impair Bright House's ability to
15 timely activate E911 services concurrent with the port.

16 Based on further discussion with Verizon and reviewing industry documents, I
17 determined that the relevant industry body setting guidelines for unlocking 911
18 records is NENA, as Verizon has suggested, and not – as I had earlier thought –
19 NANC. That said, Bright House still needs assurances from Verizon that it will
20 comply with the NENA guidelines. We have therefore modified our proposal on this
21 point to suggest that the parties add language to Section 2.3.5 of the E911
22 Attachment to state: "The Parties shall fully comply with all NENA guidelines

1 regarding the processes for locking and unlocking E-911 records and the intervals
2 applicable to such processes.” Verizon has not accepted this language.

3 **Q. WHY IS THIS IMPORTANT?**

4 A. NENA guidelines require prompt “unlocking” of 911 customer records once a
5 customer transfers from one carrier to another. This is a particularly important
6 process in cases where a customer changes providers at the same time the customer
7 is moving from one address to another. This is the situation that arises when, for
8 example, a customer moves out of one apartment building and moves into a different
9 one, perhaps a block or two away. Until the 911 record is unlocked by the old
10 provider and transferred to, and updated by, the new provider, the customer’s *old*
11 address is what will appear if the customer should need to make an emergency call to
12 911.

13 We recognize that this is not a very common situation; the much more typical case is
14 a customer simply changing carriers while staying in the same place. But over the
15 years and in the aggregate, Bright House has won thousands and thousands of
16 customers from Verizon, so the situation does arise. We believe it to be critically
17 important that 911 records be unlocked and transferred within the NENA guidelines
18 to minimize the chance of any tragic situations arising because emergency authorities
19 responded to a 911 call by going to a subscriber’s former address. The way to avoid
20 that is to get the records unlocked and transferred as quickly as possible.

1 **Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE # 44?**

2 **A.** I am hopeful that Verizon will accept our revised proposal. However, if Verizon
3 fails to do so, then the Commission should adopt it. Verizon cannot have any sound
4 objection to conforming its practices regarding locking, unlocking, and transferring
5 E911 records to industry guidelines applicable to those practices.

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

7 **A.** Yes, it does.

1 **MR. SAVAGE:** With that, Ms. Johnson is
2 available for cross-examination.

3 **CHAIRMAN ARGENZIANO:** Mr. O'Roark.

4 **MR. O'ROARK:** Thank you, Madam Chair.

5 **CROSS EXAMINATION**

6 **BY MR. O'ROARK:**

7 **Q.** Good morning, Ms. Johnson. I'm De O'Roark. I
8 represent Verizon, and we've met before.

9 **A.** Good morning.

10 **Q.** Ms. Johnson, you are Vice-President of
11 Technology, Policy, and Industry Affairs with Bright
12 House Networks LLC, is that right?

13 **A.** That is correct.

14 **Q.** And that's the company that provides retail
15 cable, broadband, and VoIP phone service?

16 **A.** We are -- Bright House Networks LLC is an
17 interconnected Voice-over IP provider, correct, and they
18 provide other services in addition to being an
19 interconnected VoIP provider.

20 **Q.** Do those other services include broadband and
21 cable?

22 **A.** They do.

23 **Q.** If I refer to your company as Bright House
24 Cable, you'll understand what I'm referring to?

25 **A.** I would.

1 **Q.** Bright House Cable is not regulated by the
2 PSC, correct?

3 **MR. SAVAGE:** I think I need to object to that
4 specifically as calling for a legal conclusion.

5 **BY MR. O'ROARK**

6 **Q.** Are you aware --

7 **MR. O'ROARK:** I'll accept the objection.

8 **Q.** -- are you aware, Ms. Johnson, of whether
9 Bright House Cable is regulated by the PSC?

10 **A.** It's my understanding that interconnected VoIP
11 services are not regulated by the PSC.

12 **Q.** The same true for broadband and cable, right?

13 **A.** Correct.

14 **Q.** And Bright House Cable provides service in
15 Verizon's service territory and the service territory of
16 five other ILECs, is that right?

17 **A.** That is correct.

18 **Q.** And if I understand it correctly, Bright House
19 has more of its service area in Verizon's service
20 territory than in any other ILEC service territory?

21 **A.** It's marginally more, marginally.

22 **Q.** When did Bright House Cable start offering
23 VoIP phone service in Florida?

24 **A.** Bright House Cable began operating as an
25 interconnected VoIP provider around 2003.

1 **MR. O'ROARK:** Madam Chair, I'd like to pass
2 out an exhibit that I have placed in red folders because
3 it includes confidential information.

4 **CHAIRMAN ARGENZIANO:** Okay. We have staff to
5 come and grab that from you, and that is confidential
6 information.

7 **MR. O'ROARK:** Madam Chair, I would request
8 that we mark this exhibit as Exhibit 23.

9 **CHAIRMAN ARGENZIANO:** Twenty-three. Do we
10 have that?

11 (Exhibit Number 23 marked for identification.)

12 **BY MR. O'ROARK:**

13 **Q.** Ms. Johnson, do you have before you now what
14 has been marked as Exhibit 23? I see you're reviewing
15 it. Please let me know when you have had a chance to
16 take a look at it. And as you are, let me just explain
17 as I have to your counsel already that Exhibit 23 is a
18 composite. It shows Bright House's response to
19 Verizon's First Interrogatory Number 1, Verizon's
20 response to First Interrogatory Number 3, and it also
21 includes one page from Verizon Witness Munsell's Direct
22 Testimony, specifically Page 5 of that testimony. Each
23 of these three pages includes confidential information.

24 And, Ms. Johnson, as you are looking at it, I
25 will tell you that I'm not going to ask you to say any

1 of the confidential numbers out loud.

2 **MS. HELTON:** Madam Chairman, I'm sorry, to
3 that note, I just want to make sure that I understand
4 what is not confidential. You know, our typical
5 practice is we would have highlighted as yellow the
6 confidential information, and I see some information
7 shaded on Page 5 with the word processing program, but I
8 don't really see anything else highlighted. So is it
9 all confidential? And the only reason I'm asking, Mr.
10 O'Roark, is I just want to make sure that we don't
11 unintentionally --

12 **CHAIRMAN ARGENZIANO:** Mr. O'Roark, is it just
13 the numbers on Page 1 and 2, and the shaded area on 3,
14 or could you be more specific?

15 **MR. O'ROARK:** I'm sorry, Madam Chair. That is
16 correct. And, actually, if you look, the numbers on the
17 first two-page are shaded, it is just they have been
18 copied so many times it's light. But we'd be happy to
19 work with staff to make sure that the correct
20 information is redacted.

21 **CHAIRMAN ARGENZIANO:** So then all the numbers
22 on Page 1 and 2 are considered confidential, and the
23 shaded areas on what's labeled Page 5 at the end is also
24 confidential.

25 **MR. O'ROARK:** That's correct.

1 **CHAIRMAN ARGENZIANO:** Okay.

2 **MR. SAVAGE:** Madam Chairman, if it would help,
3 I have actually gone ahead and yellow highlighted one if
4 it would help to give to the staff in the network.

5 **MS. HELTON:** I just wanted to make sure for
6 purposes of the record that we all were on the same page
7 with respect to what's confidential and what's not
8 confidential.

9 **CHAIRMAN ARGENZIANO:** Thank you. Proceed.

10 **BY MR. O'ROARK**

11 **Q.** Ms. Johnson, have you had a chance to take a
12 look at what has been marked as Exhibit 23?

13 **A.** Yes.

14 **Q.** And response to Interrogatory Number 1, which
15 is on the first page, accurately reflects the number of
16 residential customers that Bright House had at year-end
17 2007, 2008, and 2009 in Bright House's Florida service
18 territory?

19 **A.** Correct.

20 **Q.** And then if you'll flip to the second page,
21 please. Bright House's response to Interrogatory Number
22 3 reflects a rough approximation of the number of
23 residential customers at year-end 2007, 2008, and 2009
24 in Verizon's territory, is that correct?

25 **A.** That is correct.

1 **Q.** Now, let me show you the final page, or let me
2 ask you to take a look at it. And remember, please,
3 that this is from Mr. Munsell's testimony. You can see
4 that the first highlighted portion refers to the number
5 of Bright House customers, and that number simply picks
6 up on Bright House's response to Interrogatory Number 1,
7 correct?

8 **A.** Correct.

9 **Q.** And then you will see that Mr. Munsell
10 provides some Verizon-specific information about its
11 residential customers. And, obviously, I wouldn't
12 expect you to have independent information about those
13 figures, but I gather that as a Bright House Cable
14 Vice-President you pay close attention to the Tampa Bay
15 market, is that true?

16 **A.** It's fairly significant to us.

17 **Q.** And the relative positions of Bright House and
18 Verizon reported by Mr. Munsell are consistent with your
19 general understanding of the Florida market, is that
20 fair?

21 **MR. SAVAGE:** Are you asking about the Florida
22 market or the Tampa Bay market?

23 **MR. O'ROARK:** The Tampa Bay market where
24 Verizon and Bright House are providing service.

25 **THE WITNESS:** Do you mind repeating the full

1 question? Sorry.

2 **MR. O'ROARK:** Yes.

3 **BY MR. O'ROARK:**

4 **Q.** Really, all I'm asking is based on your
5 knowledge of the Tampa Bay market, is that consistent
6 with the relative positions of Bright House and Verizon
7 that are reported by Mr. Munsell generally?

8 **A.** I don't have direct knowledge of Verizon's
9 subscriber counts. I would note that it actually
10 surprised me. It probably doesn't account for wireless,
11 nor does it -- I'm not even sure if it accounts for FiOS
12 and it definitely doesn't account for business, but the
13 number surprised me a little bit.

14 **Q.** Let me take a step back, Ms. Johnson. You
15 used to work for KMC at one point, didn't you?

16 **A.** I did.

17 **Q.** When was that?

18 **A.** 2000 through 2005.

19 **Q.** Was KMC a facilities-based provider?

20 **A.** KMC was a facilities-based provider, however
21 we still used -- in order to win business customers it
22 was important for us to have a ubiquitous footprint, so
23 we often used ILEC UNE facilities either temporarily
24 until we could justify a build or permanently if it
25 didn't -- if a bill didn't prove itself out in an IRR.

1 Q. But KMC also had its own facilities?

2 A. It did.

3 Q. Now, let's talk about the Bright House CLEC
4 for a minute. It's the Bright House CLEC that you are
5 testifying on behalf of in this case?

6 A. It is.

7 Q. That's Bright House Network Information
8 Services Florida LLC?

9 A. That is correct.

10 Q. Now, all traffic from Bright House Cable goes
11 to the Bright House CLEC, is that right?

12 A. Yes. We provide interconnected VoIP services
13 to our cable affiliate, correct.

14 Q. And the Bright House CLEC -- excuse me. The
15 Bright House CLEC only handles traffic going to or from
16 Bright House Cable customers?

17 A. That is true at this point in time.

18 Q. The Bright House CLEC interconnects with
19 Verizon and other carriers, true?

20 A. That is true.

21 Q. And it directly interconnects with multiple
22 IXCs?

23 A. That is true.

24 Q. Do you have in front of you the late-filed
25 exhibit to your deposition? If you don't, I can give it

1 to you.

2 A. I believe I do. Give me a quick sec.

3 Q. And for the record, this is part of Exhibit
4 10, which is already in the record. It is the
5 late-filed exhibit to Ms. Johnson's deposition. And if
6 it will help, Ms. Johnson, I do have a copy right here.

7 A. Actually I might be quicker. I put mine right
8 on top. Thank you.

9 Q. Do you have your late-filed exhibit in front
10 of you, Ms. Johnson?

11 A. I do. Thank you.

12 Q. Certainly. And Late-filed Exhibit MBJ-1
13 purports to show approximate monthly minutes exchanged
14 between Bright House and Verizon, correct?

15 A. That's correct.

16 Q. And let's start with the information under the
17 heading Bright House to Verizon. So this would be
18 traffic that was originated by Bright House such as when
19 a Bright House customer picks up the phone to make a
20 call, is that right?

21 A. That's correct.

22 Q. Okay. And if I understand it right you have
23 shown about 34 million minutes that are either local or
24 intraLATA toll. I'm sorry, about 34 million minutes
25 that are local. Is that right?

1 **A.** That's correct.

2 **Q.** And then 2.6 million that are intraLATA toll?

3 **A.** That is also correct.

4 **Q.** And then a little under 4 million for local
5 transit.

6 **A.** Correct.

7 **Q.** Now, you don't show here any originating
8 traffic to IXCs, is that true?

9 **A.** It's true that we don't show it. We had
10 difficulty pulling together the numbers to create the
11 late-filed exhibit, and I didn't have those numbers
12 available at that time.

13 **Q.** So as you sit here right now you don't know
14 what that number of minutes would be?

15 **A.** That is correct.

16 **Q.** But it is some positive number, it's not zero?

17 **A.** Yes, it's not zero.

18 **Q.** And in response to Staff's Interrogatory
19 Number 22A, Bright House had said that there were
20 350 million minutes being exchanged between the parties.
21 All told here you have got substantially less than that.
22 Is that because there was an error before or does that
23 just reflect the fact that you haven't captured all the
24 minutes in your chart?

25 **A.** I think it may be that the first was an

1 estimate, and to your second point, we haven't captured
2 all the minutes here.

3 Q. So if I understand correctly, let's take the
4 situation where a Bright House caller makes a long
5 distance call, and it's not an 800 number, it's a
6 regular long distance call. If Bright House is not
7 interconnected with the IXC, then Bright House might
8 send that originating traffic through the Verizon
9 tandem, is that true?

10 A. That is correct.

11 Q. And then you have the example of an 800 call
12 where the called party is the one who designates the
13 IXC, and if that IXC isn't directly interconnected with
14 Bright House, then that call might also go through the
15 Verizon tandem, is that true?

16 A. That is correct.

17 Q. Now, I gather that a Bright House customer can
18 use the IXC of its choice if it wants to?

19 A. That's correct. We support PIC choices.
20 However, because our service is bundled, most people
21 find it more effective to purchase a service and use it
22 as bundled.

23 Q. If the Bright House customer selects its own
24 IXC, does it pay Bright House less for the telephone
25 service?

1 **A.** No, it's a package.

2 **Q.** I'm sorry.

3 **A.** I should also clarify that package includes a
4 number of other services that are not offered for free
5 through other carriers, so it includes things like Easy
6 Gadget (phonetic), which is a web portal that provides
7 access to enhanced services. You can access your call
8 detail records. You can program your phone and do other
9 things from your remote desktop. So it's hard for us to
10 unbundle it and to reallocate, so we sell it as a
11 package.

12 **Q.** And just so I'm clear, then, if the customer
13 says, you know what, it's really important for me to
14 have a certain IXC, you will accommodate that request,
15 but you are not going to lower the price?

16 **A.** That's correct. It's a package price.

17 **Q.** Ms. Johnson, let me ask you now to turn to the
18 revised interrogatory responses that you recently
19 provided to Verizon to Number 32, 32A, 38A, and 38C,
20 which is already part of Exhibit 4. And I have an extra
21 copy of that, too, if that would be helpful to you.

22 **A.** This is easier. I'll take it. Thank you.

23 **Q.** Ms. Johnson, do you have the revised responses
24 in front of you?

25 **A.** I do.

1 Q. And these responses were prepared under your
2 direction?

3 A. They were.

4 Q. And you attested to their accuracy?

5 A. To the best of my knowledge, I did.

6 Q. Let me ask you to turn to the response to 38A,
7 and just let me know when you are there, please.

8 A. I'm there.

9 Q. And the response to 38A identifies five other
10 ILECs in addition to Verizon with which Bright House
11 interconnects in Florida, is that right?

12 A. That is correct.

13 Q. Now, let me ask you to turn to the next page,
14 the response to 38C. For each of these other five ILECs
15 Bright House buys special access facilities to carry
16 traffic from Bright House's network to the ILEC's tandem
17 switch, is that right?

18 A. That's correct.

19 Q. So, in other words, with the other five ILECs
20 that you interconnect with in Florida you have a similar
21 kind of arrangement that you have with Verizon with what
22 Verizon calls the access toll connecting trunks, is that
23 right?

24 A. That is correct.

25 Q. Now, Ms. Johnson, is it true that Bright House

1 recently sent an order to disconnect several DS-1 access
2 toll connecting trunks? Do you know?

3 **A.** I'm not directly aware of the orders, but I am
4 generally familiar with the fact that we are going
5 through network optimization opportunities and they
6 probably looked at some opportunities within Verizon's
7 footprint.

8 **Q.** Does that have anything to do with a network
9 reconfiguration relating to this case?

10 **A.** I'm not sure if it has anything to do directly
11 with the network reconfiguration relating to this case.
12 It probably has more to do with our engineers looking at
13 the network, its efficiency, and our needs given the
14 current traffic volumes.

15 **Q.** Let's talk about multiplexing for a minute or
16 two. You're generally familiar with the layout of
17 Bright House's network?

18 **A.** Yes.

19 **Q.** And as I think we've already heard today,
20 Bright House has collocations in two Verizon end offices
21 and at the Verizon tandem office?

22 **A.** Yes.

23 **Q.** Does Bright House bring traffic from its
24 switch to the collocations at the DS-3 level?

25 **A.** It may be DS-3 or higher, but I'm pretty sure

1 it's at least a DS-3.

2 Q. And just so everyone is clear, a DS-1 can
3 carry up to 24 voice grade trunks, right?

4 A. Correct.

5 Q. And a DS-3 can carrier up to 28 DS-1s?

6 A. Correct.

7 Q. Now, from each of the three Bright House
8 collocations that have been established, there is direct
9 end office trunking to Verizon end offices, is that
10 true?

11 A. That's my understanding, correct.

12 Q. And the acronym in the industry for Direct End
13 Office Trunking is DEOT?

14 A. Absolutely.

15 Q. And maybe just so it is clear to
16 Commissioners, you have seen the diagram that we have
17 been using which shows two Verizon end offices. In
18 fact, there are more than two in the network, correct?

19 A. That is my understanding.

20 Q. Does about 85 all told sound about right?

21 A. I'm going to take your word for that.

22 Q. Well, I think that's about right. Let's go
23 with that.

24 A. Let's go with it.

25 Q. So you've got the collocations at the tandem

1 and the two end offices, and from there Bright House is
2 able to reach the other end offices in the Verizon
3 network through this direct end office trunking, is that
4 fair?

5 **A.** That's fair. We're able to exchange traffic
6 between our networks at all points in your network and
7 mine.

8 **Q.** And as I mentioned in the opening, the way
9 Bright House has the network set up is all of these
10 collocations are on a fiber ring, correct?

11 **A.** Correct.

12 **Q.** And so that if you've got traffic going to a
13 particular end office through one of your collocations
14 and the DEOT fills up, to use a nontechnical term, the
15 traffic can then flow to another collocation and go over
16 another DEOT to that same end office, is that correct?

17 **A.** Yes. I think, though, that we would have a
18 disagreement with regard to your network diagram with
19 regard to how the redundancy is established. I believe
20 that they are each two separate rings so that they are
21 distinct. There's not a ring between the two
22 collocations, if that makes sense. It gets passed back
23 through another hub and then it would go from our
24 network to the other collo or through the tandem, even.

25 **Q.** So with that qualification, though, am I

1 correct that if a DEOT from one collo fills up, then
2 Bright House's network is configured so that the traffic
3 can then overflow over another DEOT from another
4 collocation?

5 **A.** We've definitely designed a network to allow
6 for overflow routing and also for redundancy to the
7 extent that one of our rings is cut. We just abhor
8 dropped calls, so our objective is to make sure that our
9 network will deliver a call pretty much consistently
10 with some multiple of 9's after that.

11 **Q.** Now, Issue 32 in our case concerns whether
12 Bright House may require Verizon to accept trunking from
13 Bright House at the DS-3 level. Is that your
14 understanding?

15 **A.** That is correct.

16 **Q.** And as a practical matter what is really at
17 stake in Issue 32 is who's going to bear the
18 responsibility for multiplexing that DS-3 traffic.

19 **MR. SAVAGE:** I think that actually assumes
20 facts not in evidence having to do with -- if I see
21 where you're going, what your switches are or might be
22 capable of.

23 **BY MR. O'ROARK:**

24 **Q.** But do you have an understanding, subject to
25 that objection, Ms. Johnson? Are we as a practical

1 matter and sort of business-to-business is the issue
2 that we have been talking about who pays for the
3 multiplexing?

4 **A.** Actually, as a practical matter the way we see
5 it is what is the most efficient way to route the
6 traffic between our networks. As you can imagine,
7 muxing and demuxing traffic, converting it from IP to
8 TDM, the points of failure upon -- or the points at
9 which you route it through in a network, all of that
10 causes some impact to the call service and to the call
11 delivery. So if you have a more efficient handoff we
12 believe it enhances call quality. So we don't think
13 it's just about who pays, we also think it's about the
14 efficiency of the network, which in our minds manifests
15 itself in the call quality.

16 **Q.** Now, this Issue 32 has been settled for the
17 parties' current arrangement for network interconnection
18 as long as those physical arrangements remain materially
19 unchanged, is that right?

20 **A.** Yes. As long as we don't change our network
21 we believe that we've reached terms and conditions which
22 have settled the issue as it relates to the current
23 arrangement.

24 **Q.** And if you know, the change would have to be a
25 material physical change in the network, is that right?

1 **A.** I don't recall the exact language, but subject
2 to check I'm willing to accept your representation.

3 **Q.** And Bright House has not made any specific
4 written proposal to Verizon for a materially changed
5 interconnection arrangement, has it?

6 **A.** Well, as noted, our engineers right now are
7 looking at optimizing the network. And so what they are
8 challenged with is understanding how different physical
9 arrangements would create certain costs for us or how
10 different physical arrangements would reduce certain
11 costs. And so without knowing the outcome, you know, I
12 can't project out what their proposals would cost us
13 without knowing the outcome of some of the issues at
14 play here in the context of this arbitration. So
15 they're waiting for me to give them some comfort and
16 direction.

17 **Q.** But is the answer to my question, yes, that
18 Bright House has not made such a specific proposal to
19 Verizon?

20 **A.** If you don't mind, I'd like to just tweak it
21 and say we are unable to make such a proposal because it
22 is unclear to us how those proposals would impact our
23 cost basis.

24 **Q.** But for whatever reason, Bright House has not
25 actually done that?

1 **A.** That's correct, we have not, because we don't
2 have sufficient information to make a decision with at
3 this point.

4 **Q.** Ms. Johnson, do you know whether Bright House
5 has its own multiplexers in its collocation cages?

6 **A.** We do.

7 **Q.** You do. Do you have multiplexers in each one?

8 **A.** I believe that we do. I would imagine so. I
9 know we at least have them at the collo that I visited.

10 **Q.** Is that based on information that you learned
11 since your deposition?

12 **A.** No, I think -- I believe that I reviewed it
13 prior to my deposition. I can't recall in time.

14 **Q.** What is the capacity of the multiplexers that
15 you have in your collocation?

16 **A.** Could you define what you -- could you tell me
17 what you mean by capacity?

18 **Q.** Let's take a step back. What kind of
19 multiplexers are they, 3-to-1 for example?

20 **A.** I believe they are -- I'm not sure. I'm not
21 sure specifically what type of multiplexers they are. I
22 know that we use the multiplexers that we put in to
23 convert from -- we have an all fiber network, so we
24 convert from optical to electrical. When we do so, we
25 mux down. We demux in order to get it down to a speed

1 that an electrical interface will accept.

2 Q. Do you know whether those multiplexers are
3 capable of sending traffic to Verizon at the DS-1 level?

4 A. I believe they could be configured to send
5 traffic to Verizon at the DS-1 level. The challenge
6 there is we would need so many of those multiplexers in
7 order to accommodate the volumes of traffic between our
8 network. It would require much more rack space in the
9 collocation, and so it would, A, be an additional
10 equipment burden, but it would also require that we take
11 more space out of Verizon's collocation in order to
12 house that equipment in. So, again, it would be less
13 efficient.

14 Q. Do you still have your revised responses in
15 front of you?

16 A. I do.

17 Q. Can you please turn to the revised response to
18 32A. And let me know when you're there, please.

19 A. I'm there.

20 Q. This response shows the number of Verizon end
21 offices to which Bright House sends at least five DS-1s,
22 is that right?

23 A. That's correct.

24 Q. And according to Bright House, once you reach
25 five or six DS-1s you would put them on a DS-3 circuit?

1 **A.** That's our preference for a network efficiency
2 perspective.

3 **Q.** In fact, as Bright House has configured its
4 network today, these DS-1s are going to each end office
5 from more than one Bright House collocation, isn't that
6 true?

7 **A.** I believe that's true.

8 **Q.** So the number of DS-1s going from any given
9 end office from any given collocation would be lower
10 than the numbers reflected here?

11 **A.** I'm not certain of that. The thing that this
12 flat fixed count doesn't do is it doesn't account for
13 busy hour engineering. And as you know, engineers don't
14 look at a network flat. Engineers manage the network
15 realtime. So, you know, when American Idol is on and
16 everybody is calling to vote on their favorite person,
17 this traffic mix changes and the amount of traffic that
18 our networks exchange may be different, or the amount of
19 calls outbound may be different.

20 We provision, like I said, our network to
21 ensure that calls will route and that they route to some
22 degree of four 9s. I would say that to the extent that
23 we have got the position that at five or six DS-1s we
24 would move to a DS-3, it's to ensure that calls never
25 fail, that they route even during heavy call times.

1 Q. Is the way that Bright House put this chart
2 together by adding up the DS-1s from the collocations to
3 each of these end offices?

4 A. That is correct.

5 Q. So, for example, the first one shows ten
6 DS-1s, that means that from two or three collocations
7 you've got ten DS-1s total, right?

8 A. Right. For the Brandon, Florida, switch we
9 have ten DS-1s going to that end office.

10 Q. From all the collocations combined?

11 A. Correct.

12 Q. And so from any one of those collocations the
13 number of DS-1s going from the collocation to that end
14 office is less than ten, right?

15 A. That I'm not certain of, Mr. O'Roark.

16 Q. Does Bright House have any plans to change its
17 network configuration so that all of Bright House's
18 local traffic will be routed through a single
19 collocation?

20 A. Not at this time. Routing all traffic through
21 a single collocation doesn't meet our objectives for
22 redundancy. We have gotten four J.D. Power awards for
23 VoIP, which is unusual as an incumbent -- as a
24 competitor in this marketplace. We believe it's because
25 we place such high emphasis on the quality of service

1 that we provide to the customers, and so we believe that
2 maintaining a network that has some redundancy in order
3 to ensure that we can support customers at a very high
4 quality service and delivery we would probably not ever
5 go to one single collocation.

6 Q. Let's assume just purely hypothetically for a
7 minute that for whatever reason Bright House did do
8 that, went to a single collocation. I realize you just
9 said that you don't expect that Bright House will do
10 that, but just for purposes of illustrating a point I'd
11 like you to assume that just for a moment. Can you do
12 that?

13 A. I can.

14 Q. All right. If you were to do that and you
15 were to route all of this traffic to that collocation,
16 you would expect that Bright House would route these
17 DS-1s on high capacity facilities at least DS-3 and
18 possibly higher, right?

19 A. Correct.

20 Q. In other words, you wouldn't have a DS-3 for
21 the traffic going to each of these end offices being
22 routed to your collo, that would be inefficient?

23 A. Right. We would probably do an OC interface,
24 maybe the OC-3.

25 Q. And, in fact, Bright House has other DS-1s for

1 traffic going to other end offices not reflected in this
2 chart, is that correct?

3 **A.** Yes, we do, that's correct.

4 **Q.** So if this traffic is coming in on DS-3 or
5 even higher capacity facilities, they're going to have
6 to be multiplexed so that that traffic can be
7 distributed to the 85 or so Verizon end offices, isn't
8 that true, if under the hypothetical that they all came
9 into the same collocation?

10 **A.** I would believe that within Verizon's network
11 Verizon would demux that traffic in order to distribute
12 it across the 85 end offices.

13 **Q.** One way or another that traffic is going to
14 have to be multiplexed before it can be distributed,
15 right?

16 **A.** I would assume so if Verizon doesn't change
17 anything about its network.

18 **MR. O'ROARK:** Thank you, Ms. Johnson. That's
19 all the questions I have.

20 **THE WITNESS:** Thank you.

21 **CHAIRMAN ARGENZIANO:** Thank you.

22 Commissioners? Commissioner Skop?

23 Staff.

24 **MS. BROOKS:** Staff has no questions.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop and

1 then Mr. Savage.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 Just a brief question with respect to Issue 7.
4 What basis, if any -- or actually, let me get you to
5 explain your concern with Issue 7 first.

6 **THE WITNESS:** We have established a network
7 arrangement, good, bad, or indifferent, under which we
8 operate within Verizon's footprint today. We may make
9 some changes to that network arrangement, depending on
10 the outcome of this arbitration, but nonetheless it's
11 something that is costly, and something that is
12 essential in terms of being accurate in order for us to
13 ensure our ability to deliver services going forward.

14 What concerns us is that we spent the time and
15 effort, including this Commission's time, to discuss and
16 propose terms and conditions under which we would
17 operate those networks and interoperate our networks and
18 transition customers, and that six months from now you
19 could have us before you again asking you to resolve a
20 dispute because Verizon has decided not subject to a
21 change in law, but subject to their whim that something
22 they are providing under the context of this very
23 agreement that we are using the Commission's resources
24 to decide today that they no longer want to provide.
25 And that just doesn't seem reasonable to us. It

1 certainly doesn't meet the standard required in terms of
2 a binding agreement, nor does it give us the ability
3 with certainty to serve our customers.

4 **COMMISSIONER SKOP:** Thank you.

5 And just one follow up question to that. To
6 the extent that, you know, Bright House asserts that
7 Verizon at some future point in time may cease
8 performing duties that are provided for within the
9 interconnection agreement, would not Bright House have
10 various remedies, notwithstanding, you know, equitable
11 relief to maintain the status quo while those disputes
12 are being maintained so that Verizon could not just
13 leave Bright House hanging? If you could expand on
14 that.

15 **THE WITNESS:** I could certainly leave it to
16 counsel to brief what those remedies are. The concern
17 is that what we are here to do today is decide those
18 issues, and so if we are deciding today the best way to
19 serve customers in Florida and the best way for two
20 carriers to coexist and support services for consumers
21 in Florida, it just seems inefficient and, you know,
22 risky for us to walk away from a decision today and have
23 either party -- Bright House wouldn't even want that
24 provision to be applied on its behalf -- to have either
25 party be able to put asunder all the efforts that we

1 have gone through here to agree with regard to the best
2 way to provide service in the state of Florida. So,
3 yes, we may have remedies, but we shouldn't use the
4 court's time to decide and redecide and overdecide and
5 reevaluate and change our minds about issues that we are
6 right here today, you know, to come to agreement on.

7 **COMMISSIONER SKOP:** Thank you.

8 **CHAIRMAN ARGENZIANO:** Mr. Savage.

9 **REDIRECT EXAMINATION**

10 **BY MR. SAVAGE:**

11 **Q.** Do you still have in front of you what was
12 marked, I think, as Number 23, which is the confidential
13 exhibit with the numbers?

14 **A.** I do.

15 **Q.** Okay. And I will try to do this without
16 actually getting to any particular numbers, but take a
17 look at the last page of that, which was number -- it
18 was Page 5 from one of the Verizon witnesses' testimony.

19 **A.** Oh, the other confidential. I do.

20 **Q.** Okay. Now, on Line 10 there is a number that
21 Verizon is purporting to be its approximate number of
22 residential customers in Tampa. Do you see that?

23 **A.** I do.

24 **Q.** Okay. And then on Line 9 there's a number
25 that is represented as our total number of home phone

1 customers at year-end 2009. Do you see that?

2 **A.** I do.

3 **Q.** Okay. And the dramatic impact of this, I
4 guess, is that the Bright House number is a bigger
5 number than the Verizon number, right?

6 **A.** Correct, but it's not apples-to-apples.

7 **Q.** Right, and that was my question. Does the
8 Bright House number that is bigger than the Verizon
9 number, does that relate to the Tampa area only?

10 **A.** It doesn't. It's all subscribers.

11 **Q.** So go back to the previous page. It was our
12 answer to Number 3 in this exhibit. Go back one page.
13 Are you there?

14 **A.** I'm actually on -- yes, the answer to Number
15 3.

16 **Q.** The answer to Number 3. And then over there
17 at the far right there is a number which is our
18 approximate number of Tampa area end users. Do you see
19 that?

20 **A.** I do.

21 **Q.** In Tampa, would you agree with me, again,
22 without getting into the numbers, that Verizon has
23 hundreds of thousand more customers than we do?

24 **A.** Verizon absolutely has hundreds of thousands
25 more customers than we do.

1 **Q.** So, in your view, would be it accurate to have
2 there be any suggestion in the record that as regards
3 the competition between Verizon and Bright House that
4 Bright House is the bigger company?

5 **A.** That would be a misrepresentation. We are
6 clearly not the size of Verizon, not throughout the
7 state of Florida nor within Verizon's footprint.

8 **Q.** Not to say we don't aspire to that.

9 **A.** Not to say I don't -- I'd love to be as big as
10 Verizon someday and to have my own wireless network.

11 **Q.** Now if you could take a look -- and I think
12 you had it in front of you -- the revised responses to
13 the interrogatories.

14 **A.** Yes.

15 **Q.** Was that marked as an exhibit? No, it's
16 already part of the system. Okay. And look at Number
17 38C that Mr. O'Roark asked you a bit about.

18 **A.** I'm there.

19 **Q.** And we were talking about whether and the
20 extent to which Bright House has established a similar
21 physical configuration for handling this meet point
22 billing traffic with other ILECs. Now, is Bright House
23 presently renegotiating its interconnection agreements
24 with any ILEC other than Verizon?

25 **A.** We are not.

1 **Q.** And not meaning to bind you necessarily for
2 the future, but sitting here today, do you have any
3 reason to think that when Bright House gets around to
4 renegotiating its interconnection agreements with other
5 ILECs that it would take any different positions with
6 them as compared to what it's taking with Verizon today?

7 **A.** Absolutely not. In fact, if you don't mind,
8 one of the great things is that we are allowed to adopt
9 agreements to enter into a market. As you provide
10 service and interface with other carriers you learn more
11 not only about their networks, but yours. And so we
12 would absolutely take different positions on similar
13 issues in the same agreements.

14 **Q.** And that might be because the amount of
15 traffic in one market may be different?

16 **A.** Well, we would take some positions similar to
17 the ones taken with Verizon here in our replacement
18 interconnection agreements with other carriers. I would
19 expect that -- I don't see any reason right that it
20 would be any different from carrier to carrier.

21 **Q.** If I can have just a moment to check my notes
22 here. With respect to Issue Number 7 that Commissioner
23 Skop was asking you about, Bright House Networks
24 Information Services LLC, the petitioner in this case,
25 is a competitive local exchange carrier, is that

1 correct?

2 **A.** That's absolutely correct.

3 **Q.** Now, do you understand Verizon to have fully
4 and finally accepted Bright House as a CLEC with full
5 CLEC rights on this record?

6 **A.** I don't know that I have a straight answer on
7 that. I would have to say no, I don't understand them
8 to have clearly and absolutely have accepted that point
9 for the duration of the agreement.

10 **Q.** And is Verizon's thus far either unwillingness
11 or inability to take a stand on that issue, is that a
12 source of concern to you as it relates to Section 50 of
13 the contract in Issue Number 7?

14 **A.** It's very disconcerting. It would undo
15 everything that we sought to have created through this
16 interconnection agreement in terms of certainty, and
17 that of all the issues is the one that scares us
18 probably the most if we don't get the right answer here
19 because that would deny us the opportunity to operate as
20 a CLEC as it relates to providing service to our
21 interconnected VoIP affiliate.

22 **Q.** Now, are you familiar with a previous dispute
23 that arose between Verizon and Bright House involving
24 retention marketing?

25 **A.** I am.

1 **Q.** And do you recall whether in that dispute
2 which mainly took place before the FCC, whether Verizon
3 tried to avoid liability by claiming that Bright House
4 wasn't really a CLEC?

5 **A.** That is one of several disputes in which that
6 issue has arose in that context.

7 **Q.** And does Bright House's history with Verizon
8 with respect to this specific issue contribute to your
9 concern with respect to Verizon's potential actions
10 under its proposed Section 50?

11 **A.** It absolutely does. In fact, to the extent
12 that we are concerned about certainty it is because we
13 have had interactions where we have been challenged and
14 we believe that there is nothing to make us feel
15 comfortable that we won't suffer similar interactions
16 going forward unless we resolve it correctly here today.

17 **Q.** Now, just to be clear, does Bright House have
18 any objection to including language in the agreement
19 that requires the parties to negotiate in good faith if
20 there is a material change in the law?

21 **A.** Oh, absolutely. It's Section 50, I believe it
22 is. We have a change in law provision and it is very
23 clean. We agreed on it, and we think it should work,
24 and it should work in any situation anticipated as
25 drafted.

1 Q. I think the record will reflect that
2 Section 4.6 in 50 are the ones we're fighting about.
3 Okay, that's great.

4 One last thing I would like to do, and I have
5 struggled to find a hard copy, which I can't, of one of
6 the attachments to Mr. Gates' testimony that I want
7 moved into the record. But this is focusing on this
8 issue of DS-1 versus DS-3 trunking, and what I will do,
9 if it's okay with you, is I will just read our proposed
10 language for Section 2.4.6 of the interconnection
11 attachment, which is where this exists. I just want to
12 focus on this language.

13 What I'm going to read to you is what this
14 section would look like if Bright House's proposal were
15 adopted, and then I'll ask you some questions about
16 that. It says, "Two-way interconnection trunks shall
17 have SS7 common channel signaling. The parties shall
18 utilize at Bright House's option B8ZS and extended
19 superframe ESF trunking at the DS-3 level or above
20 (including OC3, OC12, or OC48 as traffic levels dictate)
21 using Bright House's option of copper or fiber physical
22 transport facilities for DS-3 level connections."

23 Did you follow all that?

24 A. I did.

25 Q. Now, I'd like to focus for a second on the

1 language that says that we'll use these higher level
2 trunking as traffic levels dictate. Now, based on your
3 experience in the industry, is it possible that
4 telecommunications engineers might have a reasonable
5 disagreement about at precisely what traffic level it is
6 appropriate to use higher level trunking?

7 **A.** They're generally consistent, but it is highly
8 possible that they could have a disagreement.

9 **Q.** And in light of the language that refers to as
10 traffic levels dictate here, do you understand Bright
11 House to be proposing that it should be able to demand
12 an OC48 interconnection if it only has three DS-1s worth
13 of traffic?

14 **A.** Absolutely not. In fact, that's the reason
15 for the traffic level as the barometer, because that
16 makes it an objective decision not a subjective one.

17 **MR. SAVAGE:** I have nothing further.

18 **CHAIRMAN ARGENZIANO:** Staff.

19 **MS. BROOKS:** Staff has no questions.

20 **CHAIRMAN ARGENZIANO:** Commissioners. Okay.
21 Any exhibits that we need to --

22 **MR. SAVAGE:** Okay. So at this time -- let me
23 see if I get this right -- I'd like to move that the
24 Direct and Rebuttal Testimony of Ms. Johnson be deemed
25 included in the record as though read.

1 **MS. HELTON:** That works for me, Madam
2 Chairman, if it works for you.

3 **CHAIRMAN ARGENZIANO:** I think it works for me,
4 too.

5 **MR. SAVAGE:** And then I believe it is true
6 that Ms. Johnson didn't have any actual attachments to
7 her testimony, so there is no need to move those in.

8 **CHAIRMAN ARGENZIANO:** Right. Mr. O'Roark.

9 **MR. O'ROARK:** And, Madam Chair, we presented
10 Exhibit 23 on cross-examination and we would move its
11 admission in the record, please.

12 **CHAIRMAN ARGENZIANO:** Exhibit 23.

13 (Exhibit Number 23 admitted into the record.)

14 **MR. O'ROARK:** And I suppose the record should
15 reflect that's a confidential exhibit.

16 **CHAIRMAN ARGENZIANO:** And the record to
17 reflect that is confidential, yes.

18 **MR. SAVAGE:** And, again, a procedural
19 question. I think every page of Exhibit 23 was
20 independently in the record already, so I, of course,
21 have no objection.

22 **MR. O'ROARK:** Counsel is correct, Madam Chair.
23 Because it was a composite, I thought it might be
24 helpful for the record to have it as people kind of
25 looked to see what the witness was asked about.

1 **MS. HELTON:** That's fine, I think, Madam
2 Chairman, to have it marked separately, and it might
3 actually be easier to work with that way.

4 **CHAIRMAN ARGENZIANO:** So it's done. Thank
5 you.

6 Thank you, Ms. Johnson.

7 **MS. JOHNSON:** Thank you, again, for your time
8 this afternoon.

9 **CHAIRMAN ARGENZIANO:** And if we can have staff
10 collect the confidential folders. And we will go to
11 lunch and come back at 1:30.

12 (Lunch recess.)

13 (Transcript continues in sequence with
14 Volume 3.)

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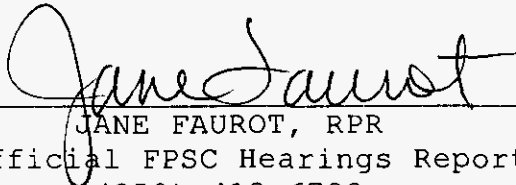
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2 STATE OF FLORIDA)
3 : CERTIFICATE OF REPORTER
4 COUNTY OF LEON)

5
6 I, JANE FAUROT, RPR, Chief, Hearing Reporter
7 Services Section, FPSC Division of Commission Clerk, do
8 hereby certify that the foregoing proceeding was heard at
9 the time and place herein stated.

10 IT IS FURTHER CERTIFIED that I
11 stenographically reported the said proceedings; that the
12 same has been transcribed under my direct supervision; and
13 that this transcript constitutes a true transcription of my
14 notes of said proceedings.

15 I FURTHER CERTIFY that I am not a relative,
16 employee, attorney or counsel of any of the parties, nor am
17 I a relative or employee of any of the parties' attorney or
18 counsel connected with the action, nor am I financially
19 interested in the action.

20 DATED THIS 11th day of June, 2010.

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23
24
25


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