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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 2.)

4 **CHAIRMAN ARGENZIANO:** Okay. I think we'll get
5 started. I'm sure Commissioner Klement will be down
6 shortly.

7 And first, staff, we need to correct -- we
8 need to enter into the record an exhibit.

9 **MS. BROOKS:** Yeah. Staff is -- believes that
10 we identified Exhibit Number 22 --

11 **CHAIRMAN ARGENZIANO:** We didn't move.

12 **MS. BROOKS:** -- but that it was not moved into
13 the record. So we would like to have that done at this
14 time.

15 **CHAIRMAN ARGENZIANO:** Okay. Do we have a
16 motion to move Exhibit 22?

17 **MR. O'ROARK:** Madam Chair, that's our exhibit,
18 so --

19 **CHAIRMAN ARGENZIANO:** I'm sorry.

20 **MR. O'ROARK:** And I thought we had moved it.
21 But if, if we, if we didn't, I move its admission.

22 **CHAIRMAN ARGENZIANO:** Okay. Move it into the
23 record.

24 (Exhibit 22 admitted into the record.)

25 Thank you. Okay. We're taking care of

1 business.

2 MS. BROOKS: Thank you.

3 CHAIRMAN ARGENZIANO: Thank you.

4 MR. O'ROARK: Okay. We call Paul Vasington.

5 PAUL B. VASINGTON

6 was called as a witness on behalf of Verizon Florida
7 LLC, and, having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 CHAIRMAN ARGENZIANO: Good morning -- or
10 afternoon. Excuse me.

11 THE WITNESS: Good afternoon.

12 BY MR. O'ROARK: :

13 Q. Mr. Vasington, you've been previously sworn?

14 A. Yes.

15 Q. Will you provide your full name for the
16 record, please?

17 A. My name is Paul B. Vasington.

18 Q. And, Mr. Vasington, by whom are you employed
19 and in what capacity?

20 A. I'm employed by Verizon as a Director of State
21 Public Policy.

22 Q. Mr. Vasington, did you cause to be prefiled 27
23 pages of direct testimony in this case?

24 A. Yes.

25 Q. Do you have any additions, corrections or

1 changes to that testimony?

2 **A.** No.

3 **Q.** Did you cause to be prefiled 26 pages of
4 rebuttal testimony in this case?

5 **A.** Yes.

6 **MR. O'ROARK:** And, Madam Chair, I'll note for
7 the record that Verizon filed a corrected version on
8 May 6th.

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

10 **Q.** Mr. Vasington, do you have any additions,
11 corrections or changes to your rebuttal testimony?

12 **A.** No, I don't.

13 **Q.** If I were to ask you the same questions today
14 that appear in your direct and rebuttal testimony, would
15 your answers be the same?

16 **A.** Yes, they would.

17 **MR. O'ROARK:** Madam Chair, Verizon moves that
18 Mr. Vasington's direct and rebuttal testimony be
19 inserted into the record as if read, subject to
20 cross-examination.

21 **CHAIRMAN ARGENZIANO:** I'm sorry. So moved.
22 Thank you.

23

24

25

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

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

5

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

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

22

23 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

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

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

5

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

10

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

15

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

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

20

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

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

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

4 A. No.

5

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

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

11

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

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

22

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

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

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

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

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

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

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

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

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

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

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

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

11
12 **Q. WHY IS BRIGHT HOUSE'S DEFINITION OF "END USER"**
13 **UNACCEPTABLE?**

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

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

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

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

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

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

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

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

7

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

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

23

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

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

2

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

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

12

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

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

22

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

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

5

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

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

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

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

24

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

³ *Id.* at 24 (footnote omitted).

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

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

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

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

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

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

20
21 **ISSUE 16: SHOULD BRIGHT HOUSE BE REQUIRED TO PROVIDE**
22 **ASSURANCE OF PAYMENT? IF SO, UNDER WHAT**
23 **CIRCUMSTANCES AND WHAT REMEDIES ARE AVAILABLE**
24 **TO VERIZON IF ASSURANCE OF PAYMENT IS NOT**
25 **FORTHCOMING? (GTC § 6.)**

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

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

5

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

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

18

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

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

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

12

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

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

17

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

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

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

1 Here, Verizon is requesting assurance of payment only if one of the
2 stated conditions arises, not upon execution of the ICA. The
3 circumstances that trigger Verizon's right to request assurance of payment
4 are fair and objective; a letter of credit is the most practical form of
5 providing assurance of payment because it eliminates the need for
6 burdensome accounting procedures and cash transactions associated with
7 cash deposits; and two months' anticipated charges is the bare minimum
8 necessary to provide Verizon with assurance that it will be paid for the
9 services it provides. Verizon's proposed language therefore is
10 reasonable and consistent with the Commission's prior ruling.
11

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

14 A. Yes. In an arbitration between Verizon and, among others, the former
15 WorldCom, the FCC's Wireline Competition Bureau ruled that Verizon
16 "has a legitimate business interest in receiving assurances of payment"
17 from CLECs,⁵ which remains true in light of numerous CLEC
18 bankruptcies and the repeated failure of others to pay their bills in a
19 timely manner. In the FCC case, WorldCom had argued that a company
20 with its apparent financial stability at the time should not be required to
21 have assurance of payment language in its ICA. Within a week of the
22 FCC's order, WorldCom declared bankruptcy.
23

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

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

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

7

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

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

16

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

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

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

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

3

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

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

22

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

1 10.2.1; AS Att. §§ 4.5, 8.7, 8.9.)

2

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

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

10

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

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

21

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

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

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

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

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

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

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

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

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

5

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

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

13

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

18 (AS. Att. § 4.11.)

19

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

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

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

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

12

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

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

21

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

25

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

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

7

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

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

15

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

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

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

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

3

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

7

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

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

14

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

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

24

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

1 **BRIGHT HOUSE ACCESS TO HOUSE AND RISER CABLE**
2 **THAT VERIZON DOES NOT OWN OR CONTROL BUT TO**
3 **WHICH IT HAS A LEGAL RIGHT OF ACCESS? IF SO, UNDER**
4 **WHAT TERMS? (UNE Att. § 7.1.1.)**
5

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

7 A. Bright House has proposed revisions to UNE Attachment section 7.1.1
8 that would require Verizon to provide Bright House access to house and
9 riser cable that Verizon does not own or control, but has the right to
10 access.
11

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

14 A. House and riser cable refers to the wiring used for multiple occupancy
15 buildings such as office buildings and apartment complexes, and which
16 typically runs from a telephone closet or other central location to the
17 individual offices or units. The house and riser cable in dispute would
18 be owned by a third party that has given Verizon the right to access it.
19 For example, an apartment complex owner that owns the house and
20 riser cable may have entered a contract with Verizon that gives it the
21 right to access a tenant’s house and riser cable when the tenant
22 requests Verizon’s service.
23

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

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

13

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

17

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

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

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

5

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

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

19

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

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

¹¹ *Id.* ¶ 874.

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

8

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

10 A. Yes.

11

12

13

14

15

16

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21

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25

¹² *Id.* ¶ 873 (emphasis added).

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

3 A. Yes.

4

5 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

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

12

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

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

18

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

23

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

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

9

10 **Q. WHY?**

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

17

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

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

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

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

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

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

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

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

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

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

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

11 **A.** As long as Bright House pays its bills on time and can demonstrate that
12 it is a creditworthy company, the assurance of payment language should
13 be of no concern to Bright House. And as I noted in my Direct
14 Testimony, Verizon does not and cannot make assessments about a
15 CLEC's financial status; even if Verizon could do so in this case, it would
16 still need the assurance of payment provisions because Verizon is
17 required to make available all of its section 251(c) agreements for
18 adoption by other carriers. Moreover, recent industry experience has
19 shown that it is not unusual for the fortunes of even creditworthy
20 companies to change, and that companies that previously had good
21 payment records can quickly suffer financial reverses and even
22 bankruptcy. Verizon's proposed language appropriately addresses this
23 very real risk.
24
25

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

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

13

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

17 A. No.

18

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

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

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

4

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

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

20

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

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

² See *id.*

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

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

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

25

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

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

20

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

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

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

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

14

15

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

20

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

24

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

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

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

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

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

21 A. *It is not clear that it is. In its Petition for Arbitration, Bright House*
22 *proposed a new section 2.1.1.3 for the Interconnection Attachment that*
23 *would permit Bright House to obtain transport facilities from Verizon on*
24 *Bright House's side of the parties' point of interconnection (“POI”) at*
25 *total-element-long-run incremental cost (“TELRIC”) rates. (Petition, Ex.*

1 2 (DPL), at 67, § 2.1.1.3.) This language does not appear in the
2 proposed interconnection agreement Mr. Gates submitted with his Direct
3 Testimony, presumably in recognition of the parties' settlement with
4 respect to facilities charges.

5
6 At the end of his testimony on Issue 24, however, Mr. Gates advises the
7 Commission to "adopt Bright House's language and require Verizon to
8 provide entrance facilities in support of interconnection and traffic
9 exchange at TELRIC, rather than tariffed, rates." (Gates DT at 82.) But
10 Mr. Gates doesn't cite any proposed contract language, and the omitted
11 section 2.1.1.3 is the only language Bright House had proposed for
12 resolving Issue 24. If Bright House is no longer proposing contract
13 language to resolve this Issue, then there is nothing for the Commission
14 to arbitrate (even aside from the above-mentioned lack of any actual
15 dispute) and this issue necessarily drops out of the arbitration. My
16 testimony here is offered only in the event that Bright House is still
17 proposing its old section 2.1.1.3, despite the parties' settlement, and
18 despite the absence of section 2.1.1.3 from the contract Mr. Gates
19 submitted.

20

21 **Q. ASSUMING BRIGHT HOUSE IS STILL PROPOSING SECTION**
22 **2.1.1.3, WHAT WOULD IT REQUIRE?**

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

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

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

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

1 LEC networks with incumbent LEC networks.”⁴

2

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

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

19

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

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

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

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

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

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

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

8
9 **Q. BUT WHAT ABOUT MR. GATES’ SUGGESTION THAT THE**
10 **COMMISSION NEEDS TO ESTABLISH PRICING PRINCIPLES TO**
11 **GOVERN TRANSPORT FACILITIES IN THE EVENT THAT BRIGHT**
12 **HOUSE MOVES TO FIBER-MEET INTERCONNECTION? (GATES DT**
13 **AT 68.)**

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

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

24

25

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

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

18
19 Q. DOES MR. GATES CITE ANY FCC RULES REQUIRING ILECS TO
20 PROVIDE ENTRANCE FACILITIES AT TELRIC FOR NETWORK
21 INTERCONNECTION AND TRAFFIC EXCHANGE?

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

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

11
12 **Q. IS THERE ANY BASIS FOR THIS CONCLUSION?**

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

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

7
8 **Q. DID THE COMMISSION PREVIOUSLY RECOGNIZE THAT THE**
9 ***TRRO* DID NOT CONFER ANY NEW SECTION 251(C)(2) RIGHTS ON**
10 **CLECS?**

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

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

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

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

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

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

6

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

8 A. If Bright House is still proposing its section 2.1.1.3 language that would
9 give it the broad right to obtain “facilities from Bright House’s network to
10 the POI” at TELRIC rates, the Commission should reject that language,
11 along with Bright House’s unsupported legal theory that section
12 251(c)(2) of the Act entitles CLECs to TELRIC-priced entrance facilities
13 for interconnection and traffic exchange. In the alternative, the
14 Commission could refrain from ruling on this issue unless and until there
15 is an actual dispute between the parties about the pricing of specific
16 facilities. As I discussed, this is a wholly theoretical legal issue at this
17 point and will likely remain so, because Bright House is a facilities-based
18 carrier. There is no existing dispute about the pricing of any facilities
19 that would be covered by Issue 24. Nor has Bright House posited any
20 scenario under which such a dispute might arise. *If* Bright House
21 *decides to change its interconnection arrangements in the future, and if*
22 *it seeks to buy entrance facilities from Verizon in conjunction with those*
23 *new arrangements, and if the parties disagree about the pricing of those*
24 *facilities, then the Commission can resolve that concrete pricing dispute*
25 *about those specific facilities in those specific interconnection*

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

11

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

15

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

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

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

4
5 Verizon’s tariffs are, of course, publicly filed, and Bright House is taking
6 collocation today under the same tariffed terms that apply to all
7 collocators (a fact which Bright House should already know). Verizon is
8 proposing nothing different in the ICA. If Bright House wants to “actually
9 see what collocation terms Verizon is seeking to impose” here, all it
10 needs to do is look at Verizon’s readily available tariffs, like any carrier
11 receiving collocation from or contemplating collocation with Verizon
12 does.

13
14 **Q. HOW WERE VERIZON’S TARIFFED TERMS ESTABLISHED?**

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

19
20 **Q. SHOULD THE COMMISSION ACCEPT MR. GATES’ SUGGESTION**
21 **TO TREAT THE COLLOCATION TARIFF TERMS AS DISPUTED?**
22 **(GATES DT AT 23.)**

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

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

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

11

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

18

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

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

1 collocation.

2

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

6

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

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

16

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

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

22

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

24 **A.** Yes.

25

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

2 Q. Mr. Vasington, have you prepared a summary of
3 your testimony?

4 A. Yes, I have.

5 Q. Will you please give it at this time?

6 A. Certainly.

7 Good afternoon, Madam Chair and Commissioners.
8 There are two issues on which I am testifying, Issue 24
9 and Issue 49. Both of these issues involve special
10 access facilities, and on both of these issues Bright
11 House is asking you to rule in a way that has not been
12 done before in Florida and to my knowledge has not been
13 done anywhere in the country.

14 Local exchange carriers originate and
15 terminate calls for long distance companies. And when
16 this is done through a switch, it's called switched
17 access and charged on a per-minute basis. When it's
18 done through a direct connection, it's called special
19 access and it's charged a capacity-based rate for the
20 facility.

21 Carrier access was created for the competitive
22 long distance industry, so it predated the
23 Telecommunications Act of 1996. Access is a wholesale
24 service, but in the Telecommunications Act the access
25 regime was preserved distinct from the interconnection

1 regime that the Act created.

2 In Issue 24, Bright House wants to pay TELRIC
3 rates where it currently pays special access rates for
4 facilities used to transport traffic from long distance
5 companies to Bright House end users.

6 In Issue 49, Bright House wants to be able to
7 resale special access facilities, even though resale is
8 limited to retail services. And the FCC has
9 specifically exempted special access from the resale
10 requirement.

11 In terms of Issue 24, this involves
12 essentially a legal argument over the classification of
13 facilities and will be fully briefed by all the parties.

14 As an, as an initial matter, it was not clear
15 until the rebuttal testimony why Bright House presented
16 this issue for resolution because it owns its own
17 facilities running from its network to Verizon's. Only
18 in Mr. Gates' rebuttal testimony did we learn for the
19 first time what facilities Bright House is seeking at
20 TELRIC rates from Verizon, and these are facilities used
21 for access toll connecting trunks connecting Bright
22 House's network with the networks of interexchange
23 carriers.

24 The facilities for the access toll connecting
25 trunks at issue are and always have been provided at

1 tariffed rates, not at TELRIC rates. They have nothing
2 to do with interconnection between Verizon and Bright
3 House. Instead, they enable Bright House to fulfill its
4 duty to interconnect with long distance companies.

5 The special access facilities are not part of
6 the interconnection regime. Bright House, like every
7 other CLEC that buys access toll connecting trunks in
8 this and every other state, must pay tariffed rates for
9 these facilities.

10 In terms of Issue 49, which is special access
11 for resale, ILECs have a general obligation to provide
12 retail services at a wholesale discount to CLECs. But
13 here Bright House proposes language that would apply
14 this wholesale, wholesale discount to special access
15 services.

16 The Commission should reject this language
17 because the FCC has made clear that ILECs need not offer
18 special access at a resale discount. The FCC, in its
19 local competition order, recognized that end users
20 occasionally purchase some access services, including
21 special access services, but concluded that such
22 occasional use does not require the application of the
23 wholesale discount.

24 In its 2005 triennial review remand order, the
25 FCC reiterated that it, quote, has explicitly excluded

1 special access services from the ambit of the Section
2 251(c)(4) obligation to offer a wholesale discount. The
3 Commission should thus reject Bright House's proposal on
4 this point.

5 And I look forward to any questions you may
6 have.

7 **CHAIRMAN ARGENZIANO:** Thank you.

8 **MR. O'ROARK:** Mr. Vasington is available for
9 cross-examination.

10 **CHAIRMAN ARGENZIANO:** Thank you.

11 Mr. Savage.

12 **CROSS EXAMINATION**

13 **BY MR. SAVAGE:**

14 **Q.** Good afternoon, Mr. Vasington.

15 **A.** Good afternoon.

16 **Q.** Where to begin?

17 You stated in your opening statement that the
18 access regime was created prior to the Act. And you're
19 referring to the divestiture of the old, breakup of the
20 old Bell system in 1984 that created a need for access
21 charges for long distance carriers?

22 **A.** Yeah. It built on what had been done even
23 before that with what they called the NFIA tariff.

24 **Q.** But it's a fact, isn't it, that when Congress
25 passed the 1996 Act, they actually legislated certain

1 terms with respect to access service; isn't that right?

2 **A.** They legislated certain terms, my
3 understanding is, by exempting the, or allowing for the
4 access charge regime to exist independent of the new
5 Section 251 interconnection and competition regime.

6 **Q.** Well, let's get there a step at a time. If
7 it's okay with you, I'd like to show the witness what
8 was Munsell deposition Exhibit Number 4, and it's in the
9 packet that's already been admitted. But what this
10 consists of is just some definitions taken directly from
11 the, the Federal Communications Act.

12 **CHAIRMAN ARGENZIANO:** Mr. O'Roark, do you need
13 a minute or --

14 **MR. O'ROARK:** Yeah. I would like to take a
15 look at it myself.

16 **MR. SAVAGE:** Oh. Sure. I'm sorry.

17 **MR. O'ROARK:** We have it. Thank you.

18 **CHAIRMAN ARGENZIANO:** Okay.

19 **BY MR. SAVAGE:** :

20 **Q.** Now, Mr. Vasington, could you please read into
21 the record the first definition on that page listed
22 Number 16?

23 **A.** Sixteen, exchange access. "The term exchange
24 access means the offering of access to telephone
25 exchange services or facilities for the purpose of the

1 origination or termination of telephone toll services."

2 Q. Would you agree with me that that definition
3 was added to the Communications Act for the very first
4 time as part of the 1996 Act, if you know?

5 A. I don't know.

6 Q. Would it surprise you to learn that that was
7 the first place and the first time that the
8 Communications Act actually contained a definition of
9 access?

10 A. No. Because there wasn't significant
11 modification to the Communications Act since 1934, and
12 the access regime in any form started after that point.

13 Q. Now you did testify that you thought that
14 somewhere in the law there was something to preserve the
15 access regime or words to that effect. Do you remember
16 that?

17 A. Yes.

18 Q. What are you talking about?

19 A. My understanding and my experience has been
20 that the switched access and special access regime of
21 how these were priced or provided was not taken into the
22 interconnection regime that was first created in the
23 Act.

24 Q. And are you aware of any specific piece of
25 legislation, any provision in the law that supposedly

1 has that effect?

2 A. I don't have the law with me here, but it's my
3 understanding that there is a part of the Act that does
4 that.

5 Q. Would you accept, subject to check, that that
6 preservation relates entirely to exchange access as
7 defined there on Number 16?

8 A. Would I accept, subject to check, what you
9 just said?

10 Q. Yes.

11 A. Sure.

12 Q. Okay. What are special access circuits used
13 for?

14 A. My general understanding is that special
15 access circuits are used for the same thing that
16 switched access is used for, the origination or
17 termination of long distance traffic. And whether,
18 whether a long distance company does it using special
19 access facilities or switched access facilities depends
20 on traffic volumes or other considerations.

21 Q. So at a high level, if I'm a long distance
22 company and I have a little bit of traffic going to some
23 end office, I'll do switched access and run it through
24 the, to a particular customer, I'll use switched access
25 to reach that customer. But if I have, for example, a

1 very large business customer with enormous volumes, I
2 may build a link directly from that customer premises to
3 my long distance network, and that would be special
4 access.

5 **A.** Yeah. I'm not sure if those are the only
6 considerations that someone would take into account.
7 But at a very high level, that sounds reasonable.

8 **Q.** If I'm a business and I need to connect to a
9 computer facility in one location with a computer
10 facility in another location simply to exchange data
11 between my computers, would you agree with me that I
12 would buy a special access service to perform that
13 function?

14 **A.** I don't know if you would or not. You'd have
15 to know a lot more about that, about that company. It
16 has a lot of different options. One option would be to
17 self provision facilities. Another is to buy from an
18 ILEC or another telecom provider. And whether or not
19 that's bought as a special access facility or something
20 else I think is a function of the particular tariffs at
21 play in whatever jurisdiction you're discussing.

22 **Q.** Suppose I'm a bank in Tampa with five
23 locations and I want to link my computers in those
24 locations together, and for some reason I'm going to buy
25 that service from Verizon, would you agree with me that

1 the service that I would buy from Verizon to link my
2 computers together would be special access circuits
3 between those facilities?

4 **A.** My understanding is that the private line
5 tariff for Verizon in Florida refers to the special
6 access tariff, so that a customer who wanted to buy
7 those facilities from Verizon would be buying them out
8 of the special access tariff.

9 **Q.** And would you agree with me that if I am a
10 bank buying facilities from Verizon to link my computers
11 together, that that has nothing to do with the
12 origination or termination of telephone toll service?

13 **A.** I don't know. It doesn't have to. Does it
14 mean that your, your traffic is exclusively between your
15 two locations? I'm not sure. I think that's up to that
16 customer.

17 **Q.** What I was asking you to assume is that the
18 traffic was entirely data traffic between my various
19 computer locations. On that assumption, you would agree
20 with me, would you not, that that has nothing to do with
21 the origination or termination of telephone toll
22 service?

23 **A.** Under the conditions you've described, yes.

24 **Q.** Now the issue of resale at a, at a discounted
25 rate, that's an obligation that rests only with ILECs;

1 isn't that correct?

2 **A.** As long as you say at a discounted rate. Yes.

3 **Q.** Right. All -- I mean, just to lay it out,
4 Section 251(b)(1) of the Act says that all LECs have to
5 offer their services for resale without restriction --
6 well, unreasonable restrictions. But it's only Section
7 251(c)(4) that requires ILECs to offer their retail
8 services at a discounted rate; is that correct?

9 **A.** That's my understanding.

10 **Q.** What's your understanding of the policy goal
11 that that section is intended to accomplish?

12 **A.** I don't think Congress laid out policy goals
13 by section. The overall policy goal of the
14 Telecommunications Act of 1996 was to promote the
15 deployment of advanced services through competitive
16 markets.

17 **Q.** Do you have any understanding of the policy
18 goal that Congress was intending to accomplish by
19 including that section? I mean, they could have just
20 taken it out; right?

21 **A.** I don't think Congress had policy goals by
22 section. I mean, the Act was passed with a preamble
23 that laid out the policy goal for the entire Act. Every
24 section of the Act was intended to achieve those, those
25 goals.

1 **Q.** And do you have any opinion or understanding
2 as to how and whether Section 251(c)(4) requiring
3 discounted resale of ILEC retail services advances the
4 policy goals of the '96 Act?

5 **A.** Yes. My general opinion is that that allowed
6 for one avenue of local exchange competition, which was
7 resale. That promoted one avenue.

8 **Q.** And how does allowing resale promote the
9 deployment of advanced services and competition?

10 **A.** Because it promotes competition, and
11 competition was, is one way to promote the efficient
12 deployment of advanced services.

13 **Q.** Now are you familiar with the requirements of
14 Section 251(c)(2) of the Act, which is the general
15 interconnection obligation on ILECs?

16 **A.** I'm familiar with the Act. If you're going to
17 ask me which particular section means what, off the top
18 of my head, I don't know.

19 **Q.** Well, Section --

20 **A.** I didn't bring an Act with me.

21 **Q.** Okay. Well, Section 251(c)(2) is the part
22 that says, "CLECs are entitled to interconnect at any
23 technically feasible point for the transmission and
24 routing of telephone exchange service and exchange
25 access."

1 Will you accept, subject to check, that that's
2 what that law requires?

3 A. Okay.

4 Q. Yes, you will accept that, subject to check?

5 A. Yes.

6 Q. Okay. Great. Do you have a copy of the
7 little chart?

8 A. I do. It's a big chart.

9 Q. Yeah. A little copy of the big chart.

10 A. A little copy of the big chart. Yes.

11 Q. All right. So let's picture a call that's
12 coming inbound from the world to an IXC eventually
13 making its way over to Bright House, the CLEC. And
14 let's assume that it hits the IXC, goes to Verizon's
15 tandem switch, goes over one of the dark lines to the
16 end office collo, and then back to Bright House. Do you
17 see what call path I'm describing?

18 A. Yes.

19 Q. Would you agree with me that that is exchange
20 access traffic?

21 A. It's not a generic term. Exchange access
22 traffic in the context of specific facilities or
23 specific services has a direct legal meaning, and I
24 think that I'm better off not trying to give a legal
25 opinion about how that term relates to specific

1 facilities or services within the context of this case.

2 Q. So to the extent that your testimony purports
3 to advise the Commission as to how it should interpret
4 the Act as it relates to these facilities in light of
5 the exchange access requirement, that testimony should
6 be disregarded because it's not legal?

7 A. Well, first of all, my testimony on Issue 24,
8 which is what this relates to, was not directly related
9 to these particular facilities because, as I said in my
10 opening statement, it wasn't clear to us until we
11 received Mr. Gates' rebuttal testimony exactly what
12 you're talking about.

13 In his, in his direct testimony, he said, we
14 have no disagreement about our current facilities. It's
15 only whether we do something in the future that might
16 affect this that we have any dispute. And I was
17 addressing that in my, in my rebuttal testimony.

18 When his rebuttal testimony came out, it was
19 something different. Now he's saying, no, we've been
20 mistakenly paying special access rates for some current
21 facilities in, in the current arrangement.

22 So on the specific question of exchange access
23 and how it relates to these facilities, I don't think
24 you'll find much in my testimony on that direct point
25 because it didn't come up until after I didn't have an

1 opportunity to file testimony.

2 Q. A lot to unpack there.

3 But my first question is, would you -- when I
4 asked you would you agree that this is exchange access
5 traffic that comes through the IXCs and travels on these
6 facilities, is it a fair characterization of your
7 testimony, I don't know, that's a legal question, I
8 can't say? Is that what you're saying today?

9 A. No, I don't think that's what you asked me.

10 Q. Then let me ask you, is that exchange access
11 traffic?

12 A. Exchange access traffic is the long distance
13 traffic. But whether that means that exchange access,
14 that these facilities are used for exchange access is a
15 different question.

16 So to the first question, exchange access is
17 long distance traffic traveling from the IXC to be
18 originated or terminated by the, by the local exchange
19 carrier.

20 Q. Okay. So we agree that it is exchange access
21 traffic. You're just not -- you're saying some other
22 stuff about what it might mean for this case?

23 A. It's exchange access traffic coming to the
24 IXCs. From what it means to this case beyond that,
25 that's a legal question.

1 **Q.** Okay. So we agree it's exchange access
2 traffic. You just don't want to commit to what it means
3 for this case. Is that -- I'm just trying to --

4 **MR. O'ROARK:** I object to the question. That
5 mischaracterizes his testimony.

6 **MR. SAVAGE:** Well, that's why I'm -- I'm not
7 trying to mischaracterize it. I'm trying to get it
8 clear.

9 **BY MR. SAVAGE:**

10 **Q.** Do we agree that this is exchange access
11 traffic?

12 **A.** The chart is showing facilities, the chart is
13 not showing traffic. There is exchange access traffic
14 that goes to IXCs, and that then comes into this network
15 diagram which shows facilities. So I'm saying nothing
16 about what these facilities show. I am saying that
17 there is exchange access traffic that goes to IXCs and
18 then is terminated to Bright House end user customers.

19 **Q.** And that exchange access traffic flows over
20 these facilities; isn't that correct?

21 **A.** In some form or other in order to get from the
22 top box IXCs down to what's represented as a cloud here,
23 end user customers, long distance traffic has to go from
24 that top box down to that cloud picture.

25 **Q.** And you're saying long distance traffic, and

1 that's not my question. We can agree that it's long
2 distance because it starts far away. As you understand
3 the term "exchange access" as used throughout your
4 testimony and in various places in this case, would you
5 agree with me that it is exchange access traffic that
6 once it hits Verizon's network goes off to the Verizon
7 end office on to the fiber ring and down to us?

8 **CHAIRMAN ARGENZIANO:** Mr. Vasington, can you
9 answer that question?

10 **THE WITNESS:** Until the point where he's
11 pointing to specific facilities on the chart and saying
12 this is how it transits on the, on the chart, no. Is it
13 exchange access traffic that goes from IXCs down to
14 Bright House end user customers? Yes.

15 **BY MR. SAVAGE:**

16 **Q.** Okay. So assuming that that traffic flows
17 over the dark lines and then over the little arrows, on
18 that assumption, then indeed exchange access traffic
19 would flow over those facilities; correct?

20 **A.** That was the part I was saying I'm not sure
21 how that traffic goes, you know, which facilities it
22 goes over in every circumstance.

23 **Q.** Right. And so I'm asking you to assume. If
24 you assume with me that the record outside of your
25 testimony establishes that this IXC traffic flows over

1 those facilities down to Bright House, that it is indeed
2 exchange access traffic that is flowing over those
3 facilities down to Bright House.

4 **A.** You've got to slow down. You had a lot of
5 pieces in there. I think the very first thing you said
6 was that I assume that in my testimony this is how it
7 works. Did you start with that?

8 **Q.** No. What I -- I'll start over again.

9 **CHAIRMAN ARGENZIANO:** Let's, let's do a really
10 specific question and a specific answer, if you can. If
11 you can't --

12 **THE WITNESS:** Okay. He's asking a lot of
13 piece parts, Madam Chair.

14 **CHAIRMAN ARGENZIANO:** Okay.

15 **THE WITNESS:** So I'm trying to keep, keep in
16 my head all the various pieces.

17 **CHAIRMAN ARGENZIANO:** I understand.

18 Mr. Savage, can you ask a specific question?

19 **MR. SAVAGE:** I will try to be as specific as
20 possible.

21 **BY MR. SAVAGE:**

22 **Q.** One, assume that other testimony in the case
23 establishes that the traffic that comes out of the IXCs
24 goes through Verizon's tandem, over these, the dark line
25 facilities, to the collocation and then onward to Bright

1 House's network. Do you understand that assumption?

2 **A.** Yes.

3 **Q.** On that assumption, would you agree with me
4 that the access toll connecting trunk facilities that
5 are the dark line on the chart carry exchange access
6 traffic?

7 **A.** Under those two assumptions, yes.

8 **Q.** Great. Are you aware of anything in the '96
9 Act that would say when we're talking about this kind of
10 exchange access traffic as compared to some other kind
11 maybe, when we're talking about this kind of exchange
12 access traffic, the Section 251(c)(2), right of CLECs to
13 interconnect for the transmission and routing of
14 exchange access traffic, would not apply?

15 **A.** I think you're asking me for a legal opinion.

16 **Q.** Well, I tried to follow the format we adopted
17 this morning, which is whether you were aware of
18 anything in the '96 Act or FCC rulings that would exempt
19 this kind of traffic, this kind of exchange access
20 traffic from the interconnection obligations established
21 in 251(c)(2). If you're not aware of anything, a no
22 answer is perfectly appropriate.

23 **A.** Well, I'm aware that it is not done that way
24 now and I'm aware that it is not done that way anywhere
25 else that way. Can I point to a specific rule or a

1 specific provision? No, I can't. But I'm aware that it
2 is not currently provided at TELRIC rates, that the
3 facilities we're describing for the purposes we're
4 describing are provided as special access facilities at
5 tariffed special access rates.

6 Q. So if I can parse that properly, the answer to
7 my question is, no, you're not aware of anything in the
8 Act that would exempt this. And then your addendum is,
9 but it hasn't been applied this way before, to your
10 knowledge. Is that a fair summary of what you just
11 said?

12 A. Sort of. All of the people who have made
13 these decisions, the way this has been done here and
14 everywhere else, have, have either blessed or
15 specifically made this arrangement to be consistent with
16 the requirements of the Act. So the fact that this is
17 the way it is currently done and has always been done
18 suggests to me strongly that it is, that it is
19 consistent with the provisions of the Act.

20 If you're asking me to point to where somebody
21 specifically cited a statement or a section, I can't do
22 that. But I do know that this is the way everybody else
23 and this -- this state and every other state, that this
24 is how these facilities are priced as special access
25 facilities.

1 (Technical difficulties with microphone.)

2 **CHAIRMAN ARGENZIANO:** And if, and if we could,
3 just for specific's sake, if, if you can't answer a
4 question yes or no, it may -- sometimes questions can't
5 be answered yes or no -- you might want to indicate
6 that. And then if you would like to ask an additional
7 question, then you probably should go forward from
8 there.

9 **MR. SAVAGE:** Okay. That's fine. Sorry about
10 the mike, whatever was wrong with it. I'm sure I did
11 something.

12 **BY MR. SAVAGE:** :

13 **Q.** Okay. Are you aware of what the Act provides
14 with respect to Commission review of terms on which
15 parties agree?

16 **A.** For a negotiated interconnection agreement?

17 **Q.** Or a negotiated portion of an interconnection
18 agreement.

19 **A.** I'm aware that there are time frames. That
20 was a big part of my life at one point as a
21 Commissioner. I don't remember what the specific
22 provisions are.

23 **Q.** Would you agree with me that under Section
24 252(a)(1) of the Act an ILEC and a CLEC are permitted to
25 agree to terms without regard to the specific

1 requirements of Section 251 as long as it's okay with
2 the two of them?

3 **A.** That's consistent with my general
4 understanding. Yes.

5 **Q.** And are you -- would you agree with me that
6 under Section 252(c)(3) of the Act, maybe (2), 252(c) of
7 the Act -- I'm sorry, I apologize -- 252(e) of the Act,
8 when a state commission approves a negotiated agreement,
9 it is not required to pass on whether the specific
10 negotiated terms meet or do not meet the specific
11 requirements of the Act?

12 **A.** That provision sounds familiar. I don't
13 remember exactly if you're correct on your citation of
14 the section, but I'd be willing to take that, subject to
15 check.

16 **Q.** Okay. So to the extent that this particular
17 facility's arrangement and the pricing of it has not
18 been competitively or economically significant to most
19 CLECs in most places, wouldn't you agree with me that an
20 ILEC and a CLEC may have simply agreed to something that
21 makes sense in the short run because it isn't
22 economically significant to the CLEC irrespective of
23 what the Act actually requires if you bear down on it?

24 **A.** I think you started out with the fact that it
25 is not competitively or economically significant, and

1 I'm not sure I can agree with, with that. The pricing
2 of access, whether it's special access or switched
3 access, is not a small matter in the telecommunications
4 industry and never has been. So the notion that CLECs
5 are paying special access rates for a facility not being
6 economically significant, I can't just accept that as a
7 premise.

8 Q. I will grant you that as a general proposition
9 CLECs and a lot of people in the industry are very
10 concerned with special access pricing. Would you agree
11 with me that it is not a common CLEC arrangement to use
12 special access facilities between a collocation and a
13 tandem office to handle exchange access traffic from
14 IXCs?

15 A. I don't know.

16 Q. Okay. Okay. With respect to this question of
17 when you learned about this -- or when we learned, I
18 think you said -- I know Verizon is a big company, but
19 have you had any role whatsoever in the actual
20 negotiation of the terms of the agreement between
21 Verizon and Bright House?

22 A. No.

23 Q. Do you have any direct knowledge of
24 conversations that may have occurred between Verizon
25 negotiators and Bright House negotiators about the

1 various issues?

2 **A.** No.

3 **Q.** So sitting here today, you have no idea when
4 Verizon's negotiator may or may not have come to
5 understand Bright House's proposals and concerns with
6 respect to these special access facilities; isn't that
7 right?

8 **A.** I'm sorry. I got lost. Try that again.

9 **Q.** Sitting here today, you have no idea, do you,
10 when Verizon's negotiator may have become aware of
11 Bright House's specific concerns with regard to the
12 pricing of these special access facilities we're talking
13 about and the legal arguments surrounding that pricing?

14 **A.** I have not talked to the Verizon negotiator
15 about any of these issues directly, so I have no
16 knowledge of when he or she or whether it's a team even,
17 when they became knowledgeable about any of these
18 issues.

19 **Q.** So when you testify that we only learned about
20 this argument or that argument in Mr. Gates' rebuttal
21 testimony, what you're really saying is you didn't see
22 it in his direct testimony. You're not talking about
23 all of Verizon's knowledge in the conduct of this
24 negotiation and discussion, are you?

25 **A.** No. I'm working with counsel to develop my

1 testimony consistent with mine and their understanding
2 of, of the issues and the positions, and my statement
3 was based on that.

4 **MR. SAVAGE:** I have nothing further for this
5 witness.

6 **CHAIRMAN ARGENZIANO:** Mr. O'Roark, redirect?

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

8 **REDIRECT EXAMINATION**

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

10 **Q.** Mr. Vasington, Bright House has suggested that
11 facilities-based interconnection of the kind we're
12 talking about today is something new. Is it?

13 **A.** No, it is not. There have been other
14 facilities-based providers interconnecting for more than
15 ten years.

16 **Q.** Does the IXC traffic that you and counsel were
17 discussing involve the exchange of traffic between
18 Bright House and Verizon customers?

19 **A.** No, it does not. It's, it's traffic that the
20 IXCs are sending to Bright House customers. It's not
21 the exchange of traffic between Verizon and Bright
22 House.

23 **Q.** Historically in the industry how have carriers
24 obtained the facilities from an ILEC going from the
25 tandem switch to the end office collo shown in the

1 diagram we've been talking about?

2 **A.** My understanding is that those are special
3 access facilities.

4 **Q.** And can you give us some of the historic
5 backdrop to that?

6 **A.** Yeah. As I mentioned, the access regime, the
7 provision of access predated the Telecom Act because
8 there was long distance competition before there was the
9 Telecom Act for local exchange competition. So prior to
10 the Act itself, there was switched access and special
11 access facilities. And the connections from the IXCs to
12 the local exchange were provided over special access
13 facilities or through the provision of switched access.

14 **Q.** Did that change after the Telecom Act?

15 **A.** No, it did not.

16 **Q.** When I say change, did it change sort of in
17 the industry as a practical matter in your experience
18 and involvement in the telecommunications industry?

19 **A.** That's correct. That's why I described it
20 earlier as having been preserved as a distinct regime,
21 not replaced by the interconnection regime but working
22 in concert with the interconnection regime.

23 **Q.** You and Mr. Savage talked about exchange
24 access. Are you here testifying as a lawyer?

25 **A.** No.

1 **Q.** Are you familiar with all the legal nuances
2 and ins and outs of what may be and what may not be
3 exchange access traffic?

4 **A.** No. Shakespeare called those the quillities
5 and quiddits, and those are things that I'm not familiar
6 with.

7 **Q.** So when it comes to what may be and what may
8 not be exchange access traffic, is it fair to say that
9 you would defer to Verizon's lawyers in briefing?

10 **A.** Absolutely.

11 **MR. O'ROARK:** No further questions. Thank
12 you.

13 **CHAIRMAN ARGENZIANO:** Staff?

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

15 **CHAIRMAN ARGENZIANO:** Commissioners?

16 Commissioner Skop.

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

18 Good afternoon, Mr. Vasington.

19 **THE WITNESS:** Good afternoon.

20 **COMMISSIONER SKOP:** Mr. Savage asked a
21 question where he had asked you to point to the Act to
22 ascertain what pricing model might apply to exchange
23 access traffic. Do you remember that question
24 generally?

25 **THE WITNESS:** Generally.

1 **COMMISSIONER SKOP:** Okay. And I think your
2 response was that you couldn't point to a specific
3 provision of the Act, but that industry custom typically
4 favors special access rate versus the TELRIC rate; is
5 that correct? Can you explain that a little bit?

6 **THE WITNESS:** Well, I can't, I can't point to
7 chapter and verse, but I think it's more than just
8 custom. I think it's been the findings and application
9 of the legal requirements done by all, by every
10 commission that these are provided as special access
11 facilities and priced as tariffed special access rates.

12 **COMMISSIONER SKOP:** Okay. All right. Thank
13 you.

14 **CHAIRMAN ARGENZIANO:** I think that's it for
15 Mr. Vasington. Thank you.

16 **THE WITNESS:** Thank you.

17 **CHAIRMAN ARGENZIANO:** Do you have any
18 exhibits? Anybody?

19 **MR. SAVAGE:** We did not, Madam Chair.

20 **CHAIRMAN ARGENZIANO:** Okay. Good. Thank you,
21 Mr. Vasington.

22 Our next witness is Peter D'Amico. Welcome.

23 **PETER J. D'AMICO**

24 was called as a witness on behalf of Verizon Florida
25 LLC, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 **BY MR. O'ROARK: :**

3 **Q.** Mr. D'Amico, have you been previously sworn?

4 **A.** Yes.

5 **Q.** Will you provide your full name for the
6 record, please?

7 **A.** Peter J. D'Amico.

8 **Q.** Mr. D'Amico, by whom are you employed and in
9 what capacity?

10 **A.** I'm a Product Manager with Verizon.

11 **Q.** Did you cause to be prefiled 16 pages of
12 direct testimony in this case?

13 **A.** Yes.

14 **Q.** Do you have any additions, corrections or
15 changes to that testimony?

16 **A.** No, I do not.

17 **Q.** Did you cause to be prefiled 15 pages of
18 rebuttal testimony on April 16th?

19 **A.** Yes.

20 **Q.** Do you have any additions, corrections or
21 changes to that testimony?

22 **A.** No, I do not.

23 **MR. O'ROARK:** And, Madam Chair, for the
24 record, initially there was some information marked as
25 confidential, I believe, in the rebuttal testimony of

1 Mr. D'Amico. The parties have since conferred. Bright
2 House has confirmed that that information was not
3 confidential and we have subsequently filed a
4 nonconfidential version. I believe that was on -- it
5 was dated May 12th.

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

7 Q. Mr. D'Amico, if I were to ask the same
8 questions today that appear in your direct and rebuttal
9 testimony, would your answers be the same?

10 A. Yes.

11 **MR. O'ROARK:** Madam Chair, Verizon moves that
12 Mr. D'Amico's direct and rebuttal testimony be inserted
13 into the record, subject to cross-examination.

14 **CHAIRMAN ARGENZIANO:** So moved. Thank you.
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25

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

2 A. My name is Peter J. D'Amico, I am a Product Manager—Domestic Voice
3 Services for Verizon. My business address is 416 7th Avenue,
4 Pittsburgh, Pennsylvania 15219.

5

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

8 A. I have a Bachelor of Science Degree in Marketing from Indiana
9 University of Pennsylvania. I have been employed at Verizon and its
10 predecessor companies for 26 years, in positions of increasing
11 responsibility, and have been in product management dealing with
12 interconnection arrangements for the last 20 years.

13

14 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT
15 POSITION?**

16 A. My responsibilities include development, implementation, and product
17 management of voice services, which includes interconnection
18 arrangements.

19

20 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

21 A. Yes. I have testified in numerous state utility commission proceedings,
22 including arbitrations and state long distance proceedings pursuant to
23 sections 252 and 271 of the Telecommunications Act of 1996 ("1996
24 Act") in Virginia, Delaware, the District of Columbia, Florida, Hawaii,
25 Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Jersey,

1 New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South
2 Carolina, Vermont, and West Virginia. I also have testified in arbitration
3 proceedings before the FCC.

4

5 **Q. PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.**

6 A. The purpose of my testimony on behalf of Verizon Florida LLC
7 ("Verizon") is to present evidence in support of its positions on Issues
8 27-29, 32, 33 and 38 in this docket.

9

10 **Q. IS VERIZON ADDRESSING ISSUES 26, 30, 31, 34 AND 42 IN ITS**
11 **DIRECT TESTIMONY?**

12 A. No. Verizon expects to be able to resolve these issues in the near term.
13 Verizon will address these issues in its rebuttal testimony in the unlikely
14 event that becomes necessary.

15

16 **ISSUE 27: HOW FAR, IF AT ALL, SHOULD VERIZON BE REQUIRED TO**
17 **BUILD OUT ITS NETWORK TO ACCOMMODATE A FIBER**
18 **MEET? (Interconnection ("Int.") Attachment ("Att.") § 3.1.2; Fiber**
19 **Meet Term Sheet § 2.1, Exh. A.)**

20

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

22 A. The parties disagree about some of the terms relating to how they will
23 establish mid-span fiber meet point arrangements, or "fiber meets."
24 Specifically, they dispute how far Verizon must extend fiber from its
25 existing network to a fiber meet point between the parties' networks, and

1 whether Verizon must establish fiber meet arrangements more than
2 three miles from its serving wire center.

3

4 **Q. WHAT IS A FIBER MEET ARRANGEMENT?**

5 A. A fiber meet is an alternate form of local interconnection architecture
6 where Verizon and the CLEC generally share equally the costs to build
7 the facility and equally split the capacity for transport. As the term “mid-
8 span fiber meet point arrangement implies, this architecture provides
9 interconnection at a point between the parties’ existing networks. To
10 create a fiber meet, each party extends fiber facilities from its existing
11 network to a point where the networks meet and traffic is exchanged.
12 Once the physical facilities are linked, the parties can establish trunks
13 between the tandems or switches connected by the fiber facilities. Mid-
14 span fiber meet interconnection differs from traditional interconnection
15 arrangements in that it requires both parties to jointly construct matching
16 and compatible facilities.

17

18 **Q. WHAT POSITIONS HAVE THE PARTIES TAKEN ON THIS ISSUE?**

19 A. Verizon has proposed its standard language that would require it to
20 extend its fiber facilities up to 500 feet to establish a fiber meet, and to
21 establish a meet point no further than 3 miles from the Verizon serving
22 wire center. In this way, the interconnection agreement (“ICA”) provides
23 two distinct limits. The first (500-foot limit) controls how far Verizon may
24 be required to build out new facilities – the distance that Verizon may be
25 required to extend new fiber cable beyond Verizon’s existing network

1 facilities. The second (3-mile limit) dictates how far the meet point may
2 be from a Verizon wire center. Bright House seeks to require Verizon to
3 extend its facilities up to 2500 feet from its network to establish a meet
4 point arrangement and that there should be no limit on the distance from
5 the serving wire center.

6

7 **Q. WHY SHOULD VERIZON'S OBLIGATION TO EXTEND ITS**
8 **FACILITIES BE LIMITED TO NO MORE THAN 500 FEET?**

9 A. The 1996 Act and the FCC's implementing rules require CLECs to
10 interconnect "within the incumbent LEC's network." (47 C.F.R. §
11 51.305; 47 U.S.C. § 251(c)(2)(B).) Within the context of this general rule,
12 CLECs are permitted to obtain meet-point arrangements as *limited*
13 accommodations of interconnection. Specifically, the FCC has stated
14 that in a meet-point arrangement, the point of interconnection remains
15 on the ILEC's network, "and the *limited* build-out of facilities from that
16 point may then constitute an accommodation of interconnection." First
17 Report and Order, *Implementation of the Local Competition Provisions*
18 *in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 553
19 (1996) (emphasis added). Meet-point arrangements are *not* an open-
20 ended opportunity for CLECs to demand extensive network build-outs
21 by the ILEC. Constructing new facilities and acquiring the access to
22 poles, ducts, conduit and rights-of-way that may be necessary in
23 conjunction with that construction require significant time and expense.
24 Given the FCC's intent for meet-point arrangements to be strictly
25 constrained, minor variations on the general rule that interconnection

1 must occur within the ILEC's existing network, Verizon's proposal to
2 extend its facilities up to 500 feet is a more than reasonable
3 accommodation of interconnection to Bright House. Bright House's
4 proposal for Verizon to build out more than half a mile--and thus impose
5 excessive costs upon Verizon--is plainly *not* reasonable.

6

7 **Q. WHAT IS THE PURPOSE OF VERIZON'S PROPOSAL TO LIMIT**
8 **MEET POINT ARRANGMENTS TO NO MORE THAN 3 MILES FROM**
9 **THE SERVING TANDEM OR END OFFICE?**

10 A. Whereas the 500-foot build-out requirement limits the amount of new
11 construction Verizon may be required to undertake, the requirement that
12 a fiber meet be within 3 miles of the serving wire center limits how much
13 of Verizon's existing facilities Bright House may be permitted to use. As
14 the distance from the serving wire center increases, of course, a greater
15 length of facilities must be used to transport the traffic back to that wire
16 center, and longer facilities lead to increased cost. The three-mile limit
17 essentially serves as a cap on the cost of the facilities that Bright House
18 may require Verizon to devote to a fiber meet. The limit is not
19 particularly strict for an interconnecting carrier: each Verizon wire center
20 is surrounded by 28 square miles of territory in which a fiber meet would
21 be appropriate.

22

23 **ISSUE 28: WHAT TYPES OF TRAFFIC MAY BE EXCHANGED OVER A**
24 **FIBER MEET, AND WHAT TERMS SHOULD GOVERN THE**
25 **EXCHANGE OF THAT TRAFFIC? (Int. Att. §§ 3.1.3, 3.1.4.)**

1 **Q. WHAT TYPES OF TRAFFIC DOES VERIZON PROPOSE TO**
2 **EXCHANGE OVER FIBER MEETS?**

3 A. Verizon's proposed language would enable the parties to exchange a
4 number of traffic types over a fiber meet, including local traffic,
5 800/888/877 traffic, intraLATA toll traffic, tandem transit traffic and
6 measured Internet traffic. Upon Bright House's written request, it also
7 would be permitted to use fiber meets for the transmission and routing of
8 operator services, directory assistance, 911 and jointly provided
9 switched exchange access service traffic. The parties could not
10 provision other access services or unbundled network elements over
11 fiber meets, unless they agreed to do so in writing.

12

13 **Q. DOES BRIGHT HOUSE'S PROPOSED LANGUAGE SPECIFY THE**
14 **TYPES OF TRAFFIC THAT COULD BE EXCHANGED OVER FIBER**
15 **MEETS?**

16 A. No. Bright House proposes that the parties be permitted to transmit and
17 route over a fiber meet "any traffic that they may lawfully exchange."

18

19 **Q. WHY WOULD BRIGHT HOUSE'S BROAD, VAGUE LANGUAGE**
20 **PRESENT A PROBLEM?**

21 A. One concrete example of the problem with Bright House's language is
22 that it might be interpreted to allow Bright House to use fiber meet
23 arrangements to circumvent Verizon's tariffed special access service.

24

25 **Q. WHAT IS SPECIAL ACCESS?**

1 A. Special access is a tariffed, point-to-point service that allows customers,
2 including companies such as Bright House, to establish a direct
3 connection using Verizon facilities from one specified location to
4 another. The transmission path for special access traffic can include
5 local channels, which connect customer-designated locations. For
6 example, a CLEC might order a special access service that provides a
7 dedicated DS1 circuit from one of its end user locations to the CLEC's
8 wire center. Such a service could include the local channel from the
9 CLEC's wire center to the Verizon wire center, interoffice transport
10 between the Verizon wire center serving the CLEC wire center and the
11 Verizon wire center serving the end user customer premises, and a local
12 channel from that wire center to the end user's premises.

13

14 **Q. WHY WOULD BRIGHT HOUSE WANT TO PROVISION SPECIAL**
15 **ACCESS SERVICE OVER FIBER MEETS?**

16 A. Bright House buys special access service out of Verizon's Florida
17 access tariff. If Bright House could provision special access service
18 over fiber meets instead, it could avoid paying special access tariffed
19 charges (or any other charges, for that matter) for a local channel.

20

21 **Q. MAY BRIGHT HOUSE USE FIBER MEETS FOR SPECIAL ACCESS**
22 **CIRCUITS?**

23 A. No. Special access circuits cannot be provisioned over fiber meets in a
24 manner that is consistent with Verizon's Florida access tariff. Under that
25 tariff, Verizon provisions transmission equipment at the end of a local

1 channel, including a local channel connecting a Bright House wire
2 center to a Verizon wire center. Verizon also uses transmission
3 equipment on its end of the local channel to transmit and route the traffic
4 on a point-to-point (non-switched) basis.

5

6 The architecture for traffic routed over trunks riding a fiber meet is
7 entirely different. These trunks are connected to a Bright House switch
8 port on one end and to a Verizon switch port on the other. Verizon does
9 not provide transmission equipment at the Bright House wire center for
10 these trunks as it does for special access traffic, and Verizon switches
11 the traffic sent over these trunks, rather than routing it from one point to
12 another as it would for special access traffic. Because fiber meets
13 should not (and indeed, cannot) be used for special access traffic, the
14 ICA should make clear that Bright House cannot use fiber meets for that
15 purpose. Verizon's language makes that clear; Bright House's does not.
16 If the Commission approves Bright House's language, and Bright House
17 then attempts to order special access circuits over fiber meets, the
18 parties will have to return to the Commission to resolve the dispute.
19 There is no reason to leave the question open in the ICA and postpone
20 its resolution to a later date. The Commission should, therefore,
21 approve Verizon's language.

22

23 **ISSUE 29: TO WHAT EXTENT, IF ANY, SHOULD PARTIES BE**
24 **REQUIRED TO ESTABLISH SEPARATE TRUNK GROUPS**
25 **FOR DIFFERENT TYPES OF TRAFFIC? (Int. Att. §§ 2.2.1.1,**

1 2.2.1.1, 2.2.1.4, 2.2.2.)

2

3 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE.**

4 A. This dispute concerns the extent to which different traffic types must be
5 carried over separate trunk groups. The most significant disagreement
6 concerns whether Verizon should be required to put on separate trunk
7 groups traffic originating from the network of another local exchange
8 carrier or wireless carrier transiting Verizon's network and terminating on
9 the network of Bright House. I will refer to this traffic as "transit traffic."

10

11 **Q. WHAT ARE THE PARTIES' POSITIONS ON WHETHER SEPARATE**
12 **TRUNK GROUPS SHOULD BE ESTABLISHED FOR TRANSIT**
13 **TRAFFIC?**

14 A. Verizon's position is that it should not be required to establish separate
15 trunk groups for transit traffic, while Bright House contends that Verizon
16 should be required to do so.

17

18 **Q. HOW DOES VERIZON HANDLE THIS TRANSIT TRAFFIC TODAY?**

19 A. Verizon routes tandem transit traffic over local interconnection groups
20 that also carry other types of traffic. In other words, no separate trunk
21 groups are designated for transit traffic today.

22

23 **Q. HAS THE CURRENT ARRANGEMENT GIVEN RISE TO ANY**
24 **DISPUTES BETWEEN THE PARTIES?**

25 A. Not to my knowledge.

1 Q. WHY DOES BRIGHT HOUSE SAY THAT IT WOULD LIKE VERIZON
2 TO PUT VERIZON-ORIGINATED TRANSIT TRAFFIC ON SEPARATE
3 TRUNK GROUPS?

4 A. Bright House asserts that separation of this traffic would enhance its
5 ability to bill properly for it. I assume this means that Bright House
6 thinks that providing separate trunk groups for this traffic would better
7 enable it to bill the originating carriers for terminating their traffic.

8

9 Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S
10 REQUEST?

11 A. Bright House's proposal should be rejected for several reasons. First,
12 Verizon does not put (and has no legal obligation to put) Verizon-
13 originated transit traffic on separate trunk groups for Bright House or any
14 other carrier today, so Bright House's request would require Verizon to
15 discriminate in favor of Bright House.

16

17 Second, Verizon's network is not configured to separate Verizon-
18 originated transit traffic in the new way Bright House proposes, and
19 Verizon would have to change its network significantly to be able to do
20 so. Verizon routes transit traffic to Bright House based on the
21 terminating number. It does not use the calling party number to route
22 the traffic, as Bright House's proposal would require it to do.
23 Specifically, Verizon would have to screen incoming calls to determine
24 where they came from in order to determine whether or not to route the
25 call over the specially designated transit trunks. This network change

1 would require unique routing programming that would have to be
2 updated each time new carriers connected to Verizon's network. This
3 process would be burdensome and difficult to maintain and likely lead to
4 the misrouting or dropping of calls.

5

6 Third, Bright House's proposal would introduce network inefficiency by
7 creating new trunk groups that would be likely to operate at less than full
8 capacity.

9

10 **Q. BRIGHT HOUSE PROPOSES TO DELETE THE PHRASE "VIA A**
11 **VERIZON ACCESS TANDEM" IN INTERCONNECTION SECTION**
12 **2.2.1.2 CONCERNING ACCESS TOLL CONNECTING TRUNKS AND**
13 **TO MAKE THE PROVISIONS OF THAT SECTION MUTUAL. ARE**
14 **THOSE CHANGES APPROPRIATE?**

15 A. No. The Verizon trunks at issue in the disputed language are connected
16 to a Verizon access tandem, so the words "via a Verizon access
17 tandem" should be retained. And contrary to Bright House's assertion, it
18 would make no sense to make this provision reciprocal, because
19 Verizon's end offices do not subtend Bright House tandems.

20

21 **Q. BRIGHT HOUSE ALSO PROPOSES A PROCESS FOR REQUESTING**
22 **THE SEPARATION OF ADDITIONAL TRAFFIC TYPES ONTO**
23 **SEPARATE TRUNKS. WHY SHOULD THE COMMISSION REJECT**
24 **THIS PROPOSAL?**

25 A. The interconnection agreement specifies the traffic types that Verizon

1 provides over separate trunk groups. The agreement should not
2 establish a process that would enable Bright House to bring a dispute to
3 the Commission every time it wants Verizon to create separate trunk
4 groups for another traffic type. The better approach is for any additional,
5 separate trunks groups to be established by mutual agreement, as
6 Verizon has proposed.

7

8 **ISSUE 32: MAY BRIGHT HOUSE REQUIRE VERIZON TO ACCEPT**
9 **TRUNKING AT DS-3 LEVEL OR ABOVE?** (Int. Att. § 2.4.6.)

10

11 **Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO THIS ISSUE?**

12 A. Bright House is seeking to force Verizon to use high-capacity (DS3 and
13 higher) interconnection trunks and, at Bright House's option, copper or
14 fiber DS3 interconnection facilities.

15

16 **Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S**
17 **PROPOSAL?**

18 A. Verizon's switches typically have lower-capacity, DS1 ports and cannot
19 accommodate higher capacity trunks. If Bright House wants to transmit
20 and route interconnection traffic to Verizon's end offices using high-
21 capacity trunks, it may do so, but it must arrange for multiplexing to put
22 that traffic on DS1 trunks that are compatible with Verizon's switches.

23

24 **Q. WOULD VERIZON'S PROPOSAL FORBID INTERCONNECTION AT A**
25 **DS3 OR HIGHER LEVEL IN ALL CASES?**

1 A. No. Verizon's proposed language would permit the parties to
2 interconnect at a DS3 or higher level by agreement. This language
3 would enable the parties to work out interconnection arrangements
4 when a Verizon switch can accommodate high capacity trunks.

5

6 **Q. WHAT IS VERIZON'S CONCERN ABOUT GIVING BRIGHT HOUSE**
7 **THE OPTION TO USE COPPER OR FIBER FOR DS3**
8 **INTERCONNECTION FACILITIES?**

9 A. Verizon's concern is that if it establishes DS3 interconnection facilities
10 using (say) copper, Bright House could require Verizon to establish new,
11 fiber interconnection facilities, which would be wasteful and inefficient.
12 Bright House should not be permitted to make such demands.

13

14 **ISSUE 33: MAY CHARGES BE ASSESSED FOR THE ESTABLISHMENT**
15 **OR PROVISION OF LOCAL INTERCONNECTION TRUNKS OR**
16 **TRUNK GROUPS? (Int. Att. § 2.3.2.)**

17

18 **Q. PLEASE DESCRIBE THE PARTIES' DISPUTE.**

19 A. The parties' dispute has two components. First, Bright House has
20 proposed new language that would forbid the assessment of charges
21 "with respect to trunks or trunk groups established under this
22 Agreement." Second, Bright House seeks to remove language that
23 would allow Verizon to bill Bright House when Bright House orders
24 excessive interconnection trunks.

25

1 **Q. WHY DOES VERIZON OPPOSE BRIGHT HOUSE’S PROPOSAL TO**
2 **PRECLUDE CHARGES FOR TRUNKS ESTABLISHED UNDER THE**
3 **AGREEMENT?**

4 A. Although Bright House generally is not required to pay for the
5 establishment of trunk groups, there are charges related to those trunk
6 groups that may apply. For example, when Bright House submits an
7 order for interconnection trunks, it must pay an ordering charge. And
8 when Bright House uses interconnection trunks to transmit and route
9 interexchange traffic (as opposed to local traffic), Bright House must
10 pay the access rate for those trunks on a prorated basis. Bright House’s
11 proposed language, which refers broadly to charges “with respect to”
12 trunks or trunk groups established under the ICA, could be read to
13 prohibit all such charges and for that reason it should be rejected.

14

15 **Q. WHAT HAS VERIZON PROPOSED CONCERNING THE PARTIES’**
16 **RESPONSIBILITIES CONCERNING UTILIZATION OF ONE-WAY**
17 **INTERCONNECTION TRUNKS?**

18 A. Verizon has proposed that Bright House be required to submit orders to
19 disconnect final trunk groups (the last trunk group used before blocking
20 occurs) and high-usage trunk groups when utilization falls below certain,
21 specified levels and that if it fails to do so, Verizon may disconnect the
22 excess interconnection trunks or bill Bright House for them at the rates
23 set forth in the agreement.

24

25 **Q. WHY IS VERIZON’S LANGUAGE NECESSARY?**

1 A. If Bright House orders excessive interconnection trunks, it ties up
2 resources in Verizon's network that could be put to more efficient use.
3 Bright House should be given an appropriate incentive to use Verizon's
4 network efficiently. Reserving the right to disconnect excessive trunks
5 or, alternatively, to charge Bright House for excessive trunks, provides
6 the necessary incentive.

7

8 **ISSUE 38: SHOULD THERE BE A LIMIT ON THE AMOUNT AND TYPE**
9 **OF TRAFFIC THAT BRIGHT HOUSE CAN EXCHANGE WITH**
10 **THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO**
11 **TRANSIT THAT TRAFFIC? (Int. Att. § 12.4.)**

12

13 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE ABOUT THIS**
14 **ISSUE?**

15 A. Verizon's proposed language would place certain limits on Bright
16 House's use of tandem transit service, which involves traffic originated
17 by Bright House that transits Verizon's network and is terminated to
18 another local exchange carrier or a wireless carrier. Specifically, Bright
19 House would not be able to use Verizon's transit tariff service if a
20 threshold volume of traffic was reached between it and another carrier,
21 unless Bright House and the other carrier established a reciprocal traffic
22 exchange arrangement providing for termination and billing of that
23 traffic. Bright House opposes this language because it does not want to
24 be required to enter into such reciprocal traffic exchange agreements.

25

1 **Q. WHY SHOULD VERIZON'S PROPOSAL BE ADOPTED?**

2 A. Verizon should not be caught in the middle between the originating and
3 terminating carriers when Verizon provides transit service. The CLEC
4 that receives transit traffic via Verizon may try to bill Verizon if is not able
5 to establish a business arrangement with Bright House, which means
6 Verizon must expend resources addressing claims that are directed to it
7 in error. When carriers begin regularly exchanging a significant level of
8 traffic, they should be required to establish a contractual relationship to
9 ensure that they address their business relationship without involving
10 Verizon.

11

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

13 A. Yes.

14

15

16

17

18

19

20

21

22

23

24

25

1 Q. ARE YOU THE SAME PETER J. D'AMICO WHO SUBMITTED
2 PREFILED DIRECT TESTIMONY IN THIS CASE?

3 A. Yes.

4

5 Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL
6 TESTIMONY.

7 A. The purpose of my Rebuttal Testimony on behalf of Verizon Florida LLC
8 ("Verizon") is to respond to the Direct Testimony of Bright House
9 Networks Information Services (Florida), LLC ("Bright House") witness
10 Timothy J Gates on Issues 28, 29, 32 and 38 in this docket.

11

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

14 A. Yes, Verizon and Bright House have resolved Issues 26, 27, 30, 34 and
15 42 and have resolved Issue 31 except as it relates to Interconnection
16 Attachment section 2.2.9. They also have reached agreement in
17 principle on the remaining portion of Issue 31 and Issue 33, so I will not
18 address those issues here.

19

20 **ISSUE 28: WHAT TYPES OF TRAFFIC MAY BE EXCHANGED OVER A**
21 **FIBER MEET, AND WHAT TERMS SHOULD GOVERN THE**
22 **EXCHANGE OF THAT TRAFFIC? (Int. Att. §§ 3.1.3, 3.1.4.)¹**

23

24

¹ ICA citations are to Exhibit 4 of Bright House's Arbitration Petition.

1 Q. DOES MR. GATES IDENTIFY ANY TYPE OF TRAFFIC THAT BRIGHT
2 HOUSE WANTS TO EXCHANGE OVER A FIBER MEET THAT
3 WOULD BE EXCLUDED BY VERIZON'S PROPOSAL?

4 A. No. As I explained in my Direct Testimony, Verizon's proposal permits a
5 number of different traffic types to travel over fiber meets, but the parties
6 could not provision access services (except for jointly provisioned
7 access traffic) or unbundled network elements over fiber meets. Mr.
8 Gates does not identify any type of traffic that Bright House wishes to
9 send over fiber meets, but that Verizon's list would exclude. His
10 argument is instead that if a fiber meet is established, it should be used
11 as much as possible. (Gates Direct Testimony ("Gates DT") at 89.)
12 While Verizon would agree that the parties should make efficient use of
13 fiber meet arrangements if they are established, nothing in Verizon's
14 proposal prevents the parties from doing that. As noted, Mr. Gates does
15 not specify any additional traffic types that should be permitted under
16 the contract, let alone any traffic that would amount to any significant
17 volume that would affect efficient use of the facility one way or the other.

18
19 Q. WHY SHOULD THE INTERCONNECTION AGREEMENT SPECIFY
20 THE TYPES OF TRAFFIC THAT MAY BE EXCHANGED?

21 A. The parties should have a clear, mutual understanding of what traffic
22 they will exchange to prevent future disputes and improper use of fiber-
23 meet arrangements. For example, Bright House should not be allowed
24 to route special access traffic over a fiber meet, for the reasons I
25 explained in my Direct Testimony (at 7-8). By dealing with that issue

1 explicitly in the interconnection agreement ("ICA"), we can prevent
2 disputes down the road that might have to be resolved by the
3 Commission. Likewise, there may be traffic types that the parties have
4 not considered that would be inappropriate to exchange over a fiber
5 meet. Under Verizon's approach, the parties could exchange a new
6 traffic type over a fiber meet by mutual agreement.

7
8 **Q. DOES THE LOCAL COMPETITION ORDER PROHIBIT VERIZON'S**
9 **PROPOSAL, AS MR. GATES SUGGESTS?**

10 A. No. Mr. Gates refers to Paragraph 995 of the FCC's *Local Competition*
11 *Order*² (Gates DT at 90), which concludes that telecommunications
12 carriers that obtain interconnection under Section 251(a)(1) or (c)(2)
13 may use their interconnection arrangements to provide information
14 services if they also use them to provide telecommunications services.
15 But, as Mr. Gates admits (DT at 89-90), Verizon is not proposing to
16 exclude transmission of Bright House's VoIP traffic over a fiber meet.
17 Paragraph 995, therefore, is not relevant to any remaining dispute.

18
19 It would be too broad, however, to simply provide that all
20 telecommunications traffic, or all information services traffic, may be
21 exchanged over a fiber meet: To take an obvious example, the fiber
22 meet may not be used to carry cable television. Verizon has included all
23 of the types of traffic the parties would likely ever exchange over a fiber

² First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) ("Local Competition Order").

1 meet. If Bright House proposes to exchange any additional types of
2 traffic a fiber meet, it should identify that traffic. To the extent there is
3 any dispute about the law relating to this Issue, those aspects will be
4 briefed. But it is clear that the FCC did *not* state, in paragraph 995 or
5 elsewhere, that every interconnection arrangement must be made
6 available for every conceivable type of traffic, without regard to the
7 ability of the parties properly to deal with each such type of traffic routed
8 over the arrangement. The reasonable limitations Verizon has proposed
9 therefore are consistent with the FCC's ruling, and Mr. Gates has raised
10 no legitimate concerns about them. Given the parties' agreement that
11 Bright House may send VoIP traffic over fiber meets, there seems to be
12 no concrete disagreement with respect to Issue 28.

13
14 **ISSUE 29: TO WHAT EXTENT, IF ANY, SHOULD PARTIES BE**
15 **REQUIRED TO ESTABLISH SEPARATE TRUNK GROUPS**
16 **FOR DIFFERENT TYPES OF TRAFFIC?** (Int. Att. §§, 2.2.1.1,
17 2.2.1.5, 2.2.2.)

18
19 **Q. MR. GATES STATES THAT HE IS NOT CERTAIN WHETHER THIS**
20 **ISSUE IS IN DISPUTE. (GATES DT AT 117.) IS IT?**

21 **A.** Yes. Mr. Gates testifies that it is common within the industry to put
22 traffic with particular routing or billing characteristics onto separate trunk
23 groups to make it easier to properly route it or apply special billing
24 requirements. (Gates DT at 117, 118.) Although that may be true for
25 certain traffic types, it is not standard practice – within Verizon or to my

1 knowledge within the industry – to separate local traffic into distinct trunk
2 groups based on the identity of the originating party.

3

4 **Q. WHY ISN'T LOCAL TRAFFIC SEPARATED ACCORDING TO**
5 **CARRIER?**

6 A. Verizon's network was set up to be agnostic as to the originating carrier
7 of local traffic. When transit traffic enters Verizon's network, it is
8 commingled with Verizon-originated traffic and with other transit traffic.
9 The switch treats all of the local traffic the same: it determines that a
10 particular local call is destined for a particular carrier, and it routes the
11 call accordingly. So when a call enters the switch destined for a Bright
12 House end user, the switch simply routes the call onto a Bright House
13 trunk. The switch does not look into whether the call came from
14 Verizon, or whether it came from a third-party carrier (or which third-
15 party carrier it might have come from).

16

17 **Q WHAT WOULD BE REQUIRED TO ROUTE TRAFFIC IN THIS WAY?**

18 A. It would require a fundamental change in how our network looks at
19 traffic. Verizon's network is configured to route transit traffic based on
20 the terminating number; that is, to ensure that it routes through Verizon's
21 network to the correct terminating carrier. From this perspective, transit
22 traffic is no different from Verizon-originated traffic that is bound for that
23 terminating carrier. Both types of traffic need to get to the same place,
24 and Verizon's network is configured to route the traffic over the trunk
25 groups in place to carry traffic to that terminating carrier.

1 For Verizon instead to route transit traffic over separate trunk groups
2 from Verizon-originated traffic, it would need to route traffic based on
3 both the originating and terminating numbers. That is because
4 Verizon's tandem switch would need to know the originating carrier so it
5 could determine whether the traffic was transit traffic or Verizon-
6 originated traffic. Requiring the switch to route local traffic based not
7 only on the called number, but also by reference to the calling number,
8 would significantly increase the processing power required to handle
9 such traffic. Likewise, it would require the establishment of those
10 additional trunk groups, with the inefficiency inherent in that.

11

12 To use a rough analogy, Verizon operates like a cab company that
13 determines the routes it will take to transport customers based on their
14 destination. If the company had to determine the route based on
15 whether the customer was coming to town from, say, Atlanta or New
16 York, it would have to develop a whole new way of doing business.

17

18 **Q. HOW WOULD VERIZON HAVE TO CHANGE ITS SYSTEMS TO PUT**
19 **BRIGHT HOUSE'S TRANSIT TRAFFIC ON SEPARATE TRUNK**
20 **GROUPS?**

21 A. Verizon would have to manually program its tandems to route traffic
22 from designated trunk groups inbound from third-party carriers to transit
23 trunk groups bound for Bright House. Thus, Verizon technicians would
24 have to identify each of the carriers sending local traffic to Bright House
25 through Verizon's tandems and develop a program instructing the

1 tandems to route that traffic over designated Bright House trunks used
2 only for non-Verizon traffic. Moreover, every time one of those third-
3 party carriers established a new trunk group that could be used to send
4 traffic to Bright House, and every time a new carrier interconnected with
5 Verizon's network, technicians would have to manually reprogram the
6 tandems. The initial and subsequent programming that would be
7 required not only would be extremely time-consuming, but would give
8 rise to the possibility of errors in traffic routing and billing, in part
9 because there are no industry standards that support this unique
10 trunking arrangement. Moreover, to the extent other CLECs opted into
11 Bright House's ICA, Verizon would have to program (and reprogram) its
12 tandems for them, too, thus multiplying the demands on Verizon's
13 technicians and the risk of errors.

14

15 **Q. DOES MR. GATES POINT TO A SIGNIFICANT PROBLEM THAT**
16 **WOULD JUSTIFY BRIGHT HOUSE'S REQUEST?**

17 **A.** No. Mr. Gates does not claim that Bright House is unable to bill for
18 terminating transit traffic under the parties' current arrangement, and I
19 am not aware that Bright House has ever claimed that it was unable to
20 do so. So this appears to be another attempt by Bright House to shift
21 costs to Verizon – in this case by asking it to make significant and
22 ongoing changes to how it runs its network in exchange for added
23 convenience to Bright House in processing its bills. Verizon should not
24 (and may not) be required to make such changes in its network to
25 accommodate Bright House's request to provide special treatment for its

1 traffic.

2

3 **Q. MR. GATES STATES THAT HE "CANNOT IMAGINE WHY VERIZON**
4 **WOULD OBJECT" TO BRIGHT HOUSE'S PROPOSAL IN**
5 **INTERCONNECTION ATTACHMENT SECTION 2.2.2 THAT EITHER**
6 **PARTY BE ENTITLED TO REQUEST THAT SEPARATE TRUNK**
7 **GROUPS BE ESTABLISHED FOR ADDITIONAL TRAFFIC TYPES.**
8 **(GATES DT AT 118.) WHY DOES VERIZON OBJECT TO THIS**
9 **PROVISION?**

10 A. Bright House's proposal seems to be a recipe for litigation because it
11 would enable Bright House to invoke the ICA's dispute resolution
12 provision any time it requested separate trunking to which Verizon did
13 not agree. Moreover, there is no reason any disputes about separate
14 trunking could not have been resolved in this proceeding. Bright House
15 has been exchanging traffic with Verizon for several years now and
16 should have been able to identify any traffic types that it wants to
17 exchange over separate trunk groups, as it in fact it has done in the
18 case of transit traffic. If there were a traffic type for which Bright House
19 wanted separate trunking, it should have identified it during the parties'
20 negotiations. Bright House should not be allowed to reserve the right to
21 bring disputes to the Commission later that it could have raised in this
22 arbitration.

23

24 **Q. IF THE PARTIES ULTIMATELY DECIDE THEY WANT TO SEPARATE**
25 **TRAFFIC IN SOME WAY THEY DON'T CURRENTLY FORESEE,**

1 **COULD THEY STILL DO THAT?**

2 A. Of course. Where there is mutual agreement, we can always amend the
3 ICA. If some new kind of traffic or new network technology comes
4 along, such that the parties both would like to establish separate trunk
5 groups for a certain traffic type, we could deal that eventuality with an
6 amendment to the ICA.

7

8 **ISSUE 32: MAY BRIGHT HOUSE REQUIRE VERIZON TO ACCEPT**
9 **TRUNKING AT DS-3 LEVEL OR ABOVE? (Int. Att. § 2.4.6.)**

10

11 **Q. HAVE THE PARTIES RESOLVED THIS ISSUE WITH RESPECT TO**
12 **THEIR CURRENT ARRANGEMENT FOR NETWORK**
13 **INTERCONNECTION?**

14 A. Yes. The parties have agreed that they will include terms in the ICA that
15 will address their current arrangement for network interconnection,
16 which resolves this dispute as long as those physical arrangements
17 remain materially unchanged.

18

19 **Q. PLEASE DESCRIBE THE PARTIES' CURRENT NETWORK**
20 **INTERCONNECTION ARRANGMENT.**

21 A. Bright House currently obtains interconnection with Verizon by
22 collocating at two Verizon end offices and in the Verizon office that
23 houses its two access tandems. Bright House uses direct trunking from
24 its collocations to many of Verizon end office switches, all at the DS1
25 level. Bright House also routes some of its traffic through Verizon's

1 tandem switches, which in turn route the traffic at the DS1 level to the
2 end offices. The only traffic that Bright House exchanges at DS3 level
3 volumes is between its collocations and Verizon's tandems.

4

5 **Q. WHAT IS THE SCOPE OF THIS DISPUTE?**

6 A. That is not clear because the settlement covers the parties' current
7 interconnection arrangement and Mr. Gates does not state what
8 material changes to the current interconnection arrangement Bright
9 House might request. Bright House thus appears to be asking the
10 Commission to address this issue in the abstract, without reference to a
11 particular network configuration, which alone is reason to reject Bright
12 House's proposed language. In any event, because the interconnection
13 arrangements in place at Verizon's tandem office have been resolved, it
14 appears that whatever theoretical disagreement the parties may have
15 concerns whether Verizon's end office switches should have DS3 switch
16 ports. Because Bright House is sending DS1 levels of traffic to
17 Verizon's end offices today, Bright House has no practical need for the
18 Commission to address this issue, but in any case Bright House is
19 wrong for the reasons I discuss below.

20

21 **Q. WHAT WOULD VERIZON BE REQUIRED TO DO IF ITS END OFFICE**
22 **SWITCHES HAD TO ACCEPT DS3 LEVEL TRAFFIC WITHOUT**
23 **MULTIPLEXING?**

24 A. Verizon would be forced to replace some of its end office switches and
25 augment the others with DS3 capable interface equipment, which would

1 be cost-prohibitive and impractical. Verizon's only alternative would be
2 to provide multiplexing to Bright House for free (Bright House's real
3 objective), rather than charging it the tariffed rates that apply today. As
4 a practical matter, therefore, this dispute boils down to whether Bright
5 House should be allowed to shift the cost of multiplexing to Verizon.

6

7 **Q. MR. GATES STATES THAT SWITCHES WITH DS1 SWITCH PORTS**
8 **ARE OBSOLETE. (GATES DT AT 128.) IS THAT TRUE?**

9 A. No. All of Verizon's end office switches in service today use DS1 switch
10 ports and switches with DS1 switch ports continue to be manufactured
11 and used throughout the country. CLECs exchange traffic with Verizon
12 at the DS1 level today (without multiplexing) or obtain multiplexing for
13 their trunking if they want to use DS3 transport. In short, switches using
14 DS1 switch ports continue to provide an efficient way for Verizon to
15 provide interconnection to Florida CLECs.

16

17 **Q. MR. GATES STATES THAT IT SHOULD NOT BE REQUIRED TO**
18 **"PAY TO SLOW ITS TRANSMISSIONS DOWN." (GATES DT AT**
19 **129.) IS THAT AN ACCURATE STATEMENT?**

20 A. No. Multiplexing from a DS3 to a DS1 level does not "slow down"
21 transmissions. Transmissions move at the same speed through the
22 network regardless of whether they are carried on DS1 or DS3 trunks.

23

24 **Q. MR. GATES ARGUES THAT USING DS1 SWITCH PORTS DOES**
25 **NOT COMPLY WITH TELRIC PRINCIPLES. (GATES DT AT 130.)**

1 **HAS THE FCC OR THIS COMMISSION EVER MADE THAT**
2 **DETERMINATION?**

3 A. No. TELRIC is a *costing* methodology; it is not a standard by which a
4 Commission can dictate an ILEC's physical network architecture or
5 equipment, let alone modifications of architecture or equipment at the
6 whim of a CLEC. And as Verizon has pointed out and will again
7 emphasize in its legal briefs, Verizon is not required to modify its
8 network to suit interconnecting parties; they take Verizon's network as it
9 is. That ILEC network, unlike Bright House's relatively new network, has
10 been constructed over decades and burdened with legacy regulatory
11 obligations that Bright House does not have.

12

13 Moreover, in the *Local Competition Order* (before the TRRO altogether
14 eliminated the mass-market local switching UNE), the FCC rejected the
15 idea of designating switch ports as TELRIC-priced, unbundled network
16 elements (*See Local Competition Order*, ¶ 422) — a conclusion at odds
17 with Bright House's argument that it is entitled to facilities (that is, DS3
18 switch ports) that provide a particular level of access to Verizon's
19 switches.

20

21 **Q. MR. GATES SUGGESTS THAT IN USING SWITCHES WITH DS1**
22 **PORTS VERIZON HAS NOT PROVIDED INTERCONNECTION TO**
23 **BRIGHT HOUSE THAT IS AT LEAST EQUAL IN QUALITY WHAT**
24 **VERIZON PROVIDES ITSELF. (GATES DT AT 128-29.) IS THAT**
25 **CORRECT?**

1 A. No. Indeed, this suggestion makes no sense. Obviously, Verizon uses
2 the same switches for its retail traffic that it uses to provide
3 interconnection with CLECs. If a Verizon switch has DS1 ports, they are
4 available to Verizon for retail use in the same manner as they are for
5 CLECs. For example, when Verizon or a CLEC routes traffic to that
6 switch at the DS3 level, both must multiplex the traffic to the DS1 level
7 before it can be switched. Verizon pays for multiplexing by purchasing
8 the necessary equipment; the CLEC pays for multiplexing by
9 compensating Verizon for the CLEC's use of the multiplexing equipment
10 (or it could buy its own equipment and install that equipment in its
11 collocation arrangements). Verizon thus provides interconnection to
12 itself in exactly the same manner that it provides it to the CLEC.

13

14 **Q. FINALLY, MR. GATES CONTENDS THAT MULTIPLEXING IS PART**
15 **OF THE TRANSPORT FUNCTION FOR WHICH VERIZON IS PAID**
16 **THROUGH RECIPROCAL COMPENSATION? (GATES DT at 131.)**
17 **IS THAT CORRECT?**

18 A. No. As I stated at the outset, the parties have resolved this issue for
19 their current interconnection arrangement, so the only remaining
20 question concerns some *other* possible arrangement that has not been
21 identified. Because I don't know how Bright House might modify its
22 interconnection arrangement in the future, I can't speculate on how or
23 whether multiplexing might be charged under those unidentified
24 arrangements—nor should the Commission make any blanket decisions
25 about the treatment of multiplexing under unidentified potential future

1 interconnection arrangements that Bright House may or may not
2 implement. I can say, however, that Verizon has a right to be paid for
3 features and functions it provides to interconnectors.

4

5 **ISSUE 38: SHOULD THERE BE A LIMIT ON THE AMOUNT AND TYPE**
6 **OF TRAFFIC THAT BRIGHT HOUSE CAN EXCHANGE WITH**
7 **THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO**
8 **TRANSIT THAT TRAFFIC? (Int. Att. § 12.4.)**

9

10 **Q. HOW DOES MR. GATES ADDRESS THIS ISSUE?**

11 A. He states that the parties are in agreement on the principles that once
12 traffic between Bright House and a third party reaches "some
13 appropriate level," Bright House should be required to make
14 "commercially reasonable" efforts to directly interconnect with the third
15 party or make alternative arrangements. (Gates DT at 140.)

16

17 **Q. DO MR. GATES' COMMENTS RESOLVE THE ISSUE?**

18 A. Not quite. Mr. Gates' comments suggest that this issue *can* be
19 resolved, but Bright House has not yet made a specific proposal in
20 response to Verizon's latest offer. I also note that Bright House appears
21 to misunderstand Verizon's proposal because it only would require
22 Bright House to enter into a reciprocal traffic exchange agreement with
23 the other carrier that addresses traffic termination and billing, and would
24 not require that the traffic in question be removed from Verizon's
25 network unless such an arrangement was not made, as Mr. Gates

1 incorrectly suggests. (Gates DT at 140.)

2

3 **Q. HOW SHOULD THE COMMISSION ADDRESS THIS ISSUE?**

4 A. If the parties are unable to reach agreement, the Commission should
5 adopt Verizon's proposed language for the reasons stated in my Direct
6 Testimony (at 15-16).

7

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

9 A. Yes.

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

2 **Q.** Mr. D'Amico, have you prepared a summary of
3 your testimony?

4 **A.** Yes.

5 **Q.** Will you provide it at this time, please?

6 **A.** Sure. Good afternoon, Madam Chair and
7 Commissioners. My prefiled testimony addresses a number
8 of issues, all of which have been resolved except for
9 Issue 32. Issue 32 addresses whether Bright House may
10 require Verizon to accept its trunking at the DS3 level
11 or above.

12 As background, a DS3, I'm sorry, a DS1 level
13 circuit can carry up to 24 voice grade trunks. A DS3
14 level circuit has a higher capacity and can carry up to
15 28 DS1 circuits or, in other words, 672 trunks. The DS1
16 circuits are said to ride the DS3.

17 Bright House delivers traffic from its switch
18 to its three collocation spaces at Verizon end offices
19 and tandem office. Bright House then multiplexes the
20 traffic, which means it converts the DS3 circuits to the
21 DS1 level before handing the traffic off to Verizon.
22 Bright House is now requesting to hand off to Verizon at
23 the DS3 level so it can force Verizon to do the
24 multiplexing.

25 Before I get into the merits of this dispute,

1 I should note that this issue has been settled with
2 respect to the parties' current arrangement for network
3 interconnection. Those settlement terms apply as long
4 as the parties' physical network arrangements do not
5 materially change. Bright House has not made a specific
6 proposal for changing the current network configuration,
7 so thus far we don't have anything concrete to evaluate.
8 That is reason alone to reject Bright House's proposed
9 language.

10 The Commission should not make a blanket
11 decision about the treatment of multiplexing under a
12 potential future interconnection arrangement that Bright
13 House has not identified and may or may not implement,
14 especially because those decisions may affect Verizon's
15 relationship with other carriers who adopt the
16 agreement, even if they never affect Verizon's
17 arrangement with Bright House.

18 Moreover, Bright House should not receive
19 dedicated multiplexing for free. Bright House claims
20 that the need to convert traffic to the DS1 level
21 somehow shows that Verizon has an obsolete network, but
22 that is not the case. Verizon's tandem switches have
23 high capacity interfaces, but for technical and network
24 management reasons traffic must be delivered to those
25 switches at the DS1 level. Verizon's end office

1 switches have DS1 ports which are still manufactured and
2 in common use today. As a practical matter, Bright
3 House does not send enough traffic to any of its
4 collocations to any single Verizon end office to justify
5 dedicated DS3 circuits, so the traffic needs to be
6 converted to the DS1 level before it is routed over
7 Verizon's interoffice transport facilities.

8 And contrary to Bright House's prefiled
9 testimony, multiplexing traffic does not slow it down or
10 otherwise affect the quality of transmission as Bright
11 House has since admitted. Verizon handles its own
12 retail traffic in the same manner as it does for Bright
13 House and other carriers. Verizon multiplexes its
14 traffic to the DS1 level before routing it to its tandem
15 and end office switches. Verizon pays for multiplexing
16 by purchasing the necessary equipment. A CLEC like
17 Bright House can either compensate Verizon for
18 multiplexing equipment dedicated to the CLEC's use or it
19 can use its own equipment. The CLEC should not be
20 allowed to shift the costs of multiplexing its traffic
21 to Verizon. That concludes my summary. Thank you.

22 **CHAIRMAN ARGENZIANO:** Thank you.

23 **MR. O'ROARK:** Mr. Vasington (sic.) is
24 available for cross-examination.

25 **CHAIRMAN ARGENZIANO:** Mr. Savage.

1 an OC12 or an OC whatever, and then interior to the
2 switch it breaks it down to the lower levels if it wants
3 to.

4 **A.** Again, none of our end offices have that
5 ability. The only exception would be our two tandem
6 switches, and that would be more of an internal Verizon
7 infrastructure. I don't believe any carriers, either
8 CLECs, wireless carriers, interexchange carriers, have
9 the ability to interface at a DS3 level right into the
10 switch.

11 **Q.** I'm asking maybe a simpler question than
12 you're answering. If I have a DS3 full of 28 DS1s, you
13 would agree with me that Verizon has equipment that it
14 owns today that could accept that DS3 input and then
15 break it down into the DS1s or however it wanted to
16 break it down. Verizon owns such equipment today.

17 **A.** That's called a 3-to-1 multiplexer.

18 **Q.** Right. And by the same token, Verizon owns
19 equipment that could accept an OC3 or an OC12 or an OC48
20 input into Verizon's network and then could do whatever
21 it wanted with them to break it down into DS1s.

22 **A.** At a facility level, yes.

23 **Q.** Okay.

24 **A.** I thought your question was dealing
25 specifically with into the specific switches.

1 **Q.** No. Maybe I asked it wrong. But just to be
2 clear, there's no technical obstacle to a company like
3 Verizon accepting input at a DS3 level, an OC12 level,
4 an OC192 level, as the, as the direct interface between
5 its network and another network. Whether that would
6 involve multiplexing or demultiplexing beyond that
7 interface point is a separate question; right?

8 **A.** At a facility level, correct.

9 **Q.** Okay. Now I'd like to hand the witness what
10 is a single page from something that's already in the
11 record. It's, it's what I had to read earlier today.
12 It's the page of the contract where, that shows Bright
13 House's proposed change that relates to this specific
14 issue. And I've got some copies, courtesy of the staff,
15 we can share with the Commission and with the witness.

16 **A.** Thank you.

17 **Q.** And for the record, this is Page 69 of 152 of
18 Exhibit TJG-3, which came in as an attachment to
19 Mr. Gates' direct.

20 And I'd like to direct your attention to
21 Section 2.4.6, which shows the proposed changes.

22 **A.** Okay.

23 **Q.** And you understand this is the, if you will,
24 the disputed contract language surrounding Issue Number
25 32; is that right?

1 **A.** Yes.

2 **Q.** Okay.

3 **A.** Part of it.

4 **Q.** Part of it. Right. There may be more. But
5 looking at this in particular, do you understand Bright
6 House to be asking for the right to demand
7 interconnection at the DS3 level or an OC12 level or an
8 OC48 level regardless of the amount of traffic the
9 parties exchange?

10 **A.** That may have been indicated in some of the
11 previous testimony, that basically, paraphrasing,
12 Verizon's network is obsolete and everything should be
13 exchanged at a minimum of a DS3 level or higher. I
14 remember reading that.

15 **Q.** The, I mean, the testimony may be what it is,
16 but looking at this specific language, what we're
17 actually proposing to include in the contract, do you
18 see anything about this language that suggests that we
19 would have the right to demand an OC48 level
20 interconnection if traffic levels didn't warrant that
21 level of interconnection?

22 **MR. O'ROARK:** I'm going to object to the
23 extent that it calls for a legal conclusion. The
24 witness is being shown contract language that he's only
25 recently seen.

1 **CHAIRMAN ARGENZIANO:** Mr. Savage.

2 **MR. SAVAGE:** Are you stipulating that his
3 testimony about this issue was not based on any review
4 of this contract language?

5 **MR. O'ROARK:** I'm not stipulating anything.

6 **MR. SAVAGE:** Okay.

7 **CHAIRMAN ARGENZIANO:** We have an objection.

8 **MR. O'ROARK:** My objection stands.

9 **MR. SAVAGE:** Well, okay. I think asking, if I
10 can respond, asking this witness to respond to the
11 contract language that relates to the issue that is the
12 only issue his testimony addresses is perfectly
13 appropriate. And if he can't answer because it goes
14 beyond his capacity, he can say so.

15 **CHAIRMAN ARGENZIANO:** Ms. Helton?

16 **MS. HELTON:** Madam Chairman, if I could have a
17 minute to look and see what Issue 32 actually says, that
18 might help me some.

19 **CHAIRMAN ARGENZIANO:** Let's take like four or
20 five minutes.

21 (Recess taken.)

22 Okay. We're back on.

23 **MR. O'ROARK:** Madam Chair, Verizon, in the
24 interest of moving things along, will withdraw the
25 objection.

1 **CHAIRMAN ARGENZIANO:** Okay. The objection is
2 withdrawn.

3 Mr. Savage.

4 **BY MR. SAVAGE:**

5 **Q.** So the question that I think drew the
6 objection or one like it was can you see anything in
7 Section 2.4.6 on the page in front of you that would
8 suggest that Bright House could demand an OC48 or some
9 high interconnection level if traffic levels did not
10 justify the higher connection?

11 **A.** Well, of course, speaking from my
12 understanding, and legally somebody could interpret this
13 language differently, a couple of things jump out at me
14 when I, when I read this. One thing is as traffic
15 levels dictate, and to me that's a little vague, but it
16 does imply that, that it would be based on traffic
17 levels.

18 But something that is even more important to
19 me at least in looking at this is it says trunking at
20 the DS3 level or above. So when you're talking
21 trunking, regardless of the traffic level, Verizon
22 doesn't have the ability to have the, the trunking into
23 our switches at a DS3 level. It can only at this point
24 interface trunking at the DS1 level. So regardless of,
25 you know, the traffic level, let's just say that there

1 was a zillion minutes, Verizon doesn't have the ability
2 to have the trunking into its switches at a DS1 level.

3 Q. Let me see if I follow you, make sure I get
4 what you're saying. Drawing the distinction between
5 facilities, the physical things that carry traffic and
6 then trunking, which is sort of how the traffic is
7 organized within those facilities, is that a fair sort
8 of a high level description of the difference?

9 A. I would also add the trunking is, is the
10 actual paths between the two switches.

11 Q. Okay. And what you're saying, if I
12 understand, is Verizon certainly has today the technical
13 capability to interface at a facilities level at a DS3,
14 OC12, whatever, Verizon is a sophisticated company with
15 a lot of big equipment, but that today Verizon's
16 switches are configured so that the ports into those
17 switches are all at the DS1 level, with the few
18 exceptions we talked about?

19 A. Correct.

20 Q. Okay. So -- and I guess you'd agree with me
21 that while it's technically possible for Verizon to
22 actually spend money to change its switches in some way
23 to add a DS3 port or potentially even change out a
24 switch, you could do that but it would be really
25 expensive and you don't want to unless there's a really

1 important reason; is that fair?

2 **A.** I've been told with an emphasis on really
3 expensive.

4 **Q.** A really, really important reason. Okay.

5 So, so again, to be clear, we're not really
6 disputing, we're not really, really disputing -- the
7 fundamental dispute between the parties isn't anything
8 about Verizon's technical capabilities. It's about
9 whether Verizon should be required to modify its
10 switches to accept higher level trunking directly or,
11 alternatively, who should pay for the multiplexing and
12 demultiplexing that needs to occur to get down to
13 Verizon's DS1 level.

14 **A.** That's my understanding, yes.

15 **Q.** Okay. Let's talk about the pay question for a
16 minute. Do you have any understanding of the term that
17 appears sometimes in the industry called the transport
18 and termination of traffic?

19 **A.** I've heard the term.

20 **Q.** But that's not something you're familiar with?

21 **A.** I wouldn't say -- I'm not prepared to kind of
22 get into all of the details. I just understand it at
23 kind of a general level.

24 **Q.** Okay. And at a general level would you agree
25 with me that when two local exchange carriers are

1 interconnected, transport refers to the process of
2 getting the traffic from that point of interconnection
3 to the end office where, where it's going and then
4 termination refers to getting it to the customer served
5 by that end office?

6 **A.** I wouldn't even say that I distinguish the
7 two. I just kind of lump them all together to say --
8 the relationship that I've always had is reciprocal
9 compensation is associated with the transport and
10 termination.

11 **Q.** Okay.

12 **A.** As far as what's actually transport or what's
13 termination or what, you know, the different piece
14 parts, I would just be speculating on that.

15 **Q.** Would it surprise you to learn that the FCC
16 has separately defined what interconnection is and what
17 transport is and what termination is?

18 **A.** I don't know that they have. I can't say that
19 I would be surprised or not surprised.

20 **Q.** But whatever it is the FCC has done, when the
21 Commission makes its ruling, it should follow what the
22 FCC has done on those points?

23 **A.** Again, that specifically sounds like, you
24 know, a legal question.

25 **Q.** That's fair enough. I'll withdraw it. I have

1 nothing further for this witness.

2 **CHAIRMAN ARGENZIANO:** Thank you.

3 Staff?

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

5 **CHAIRMAN ARGENZIANO:** Okay. Commissioners?

6 Redirect?

7 **MR. O'ROARK:** No redirect, Madam Chair.

8 **CHAIRMAN ARGENZIANO:** Okay. Thank you,
9 Mr. Vasington (sic.). Appreciate that.

10 **MR. SAVAGE:** Mr. D'Amico.

11 **THE WITNESS:** Thank you.

12 **CHAIRMAN ARGENZIANO:** I'm sorry. We got you
13 wrong again. We're just going to call everybody
14 somebody different today.

15 **MR. O'ROARK:** I'm sorry, Madam Chair. Now
16 I've got you doing it.

17 **CHAIRMAN ARGENZIANO:** You got me doing it.
18 That's okay.

19 Mr. D'Amico, thank you very much.

20 **MR. SAVAGE:** And you're not going to call
21 Mr. Vasington?

22 **CHAIRMAN ARGENZIANO:** I guess we want him
23 back.

24 (Laughter.)

25 Okay. Mr. William Munsell, welcome.

WILLIAM E. MUNSELL

1
2 was called as a witness on behalf of Verizon Florida,
3 LLC, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

4
5 **BY MR. HAGA:**

6 **Q.** Good afternoon, Mr. Munsell. Have you been
7 previously sworn?

8 **A.** I have.

9 **Q.** And could you state your name and position,
10 please?

11 **A.** William E. Munsell. I'm a Senior Consultant
12 in the policy and planning side of Verizon dealing with
13 interconnecting with CLECs primarily.

14 **Q.** And are you the same William Munsell that
15 caused to be prepared direct testimony on March 26th,
16 2010, in this proceeding?

17 **A.** I am. I am.

18 **Q.** And did you also cause to be prepared and
19 filed rebuttal testimony in this proceeding on
20 April 16th, 2010?

21 **A.** Yes.

22 **Q.** And, Mr. Munsell, do you have any additions,
23 corrections or changes to your testimony?

24 **A.** I do.

25 **Q.** And what are those?

1 **A.** On my direct testimony -- I'm sorry. That's
2 my rebuttal testimony. Page 5 --

3 **Q.** This is your rebuttal testimony?

4 **A.** Yes. Rebuttal testimony, Page 5, Line 25, the
5 last sentence should read, "Its proposed language says
6 nothing to the contrary." The word "the" was missing.

7 The next change again is in my rebuttal
8 testimony. Page 37, Line 19, the last word on Line 19
9 is "is," I-S, is, and that should be stricken so that
10 the next sentence reads, "This practice is the industry
11 practice in such situations," and so forth and so on.

12 Again on my rebuttal testimony, Page 47, Line
13 19 begins with the word "the." It should be stricken so
14 that the sentence reads, "GNAPS ultimately never was
15 able to provide those details, and Verizon and GNAPS did
16 not implement the originating carrier approach." Those
17 are my changes.

18 **Q.** Okay. And subject to those changes, if I
19 asked you the same questions that appear in here, would
20 you provide the same answers?

21 **A.** Yes.

22 **MR. HAGA:** Okay. Subject to
23 cross-examination, I'd like to insert the direct and
24 rebuttal testimony of Mr. Munsell into the record as if
25 read.

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CHAIRMAN ARGENZIANO: Yes. Thank you. Sorry.

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

2 A. My name is William Munsell. My business address is 600 Hidden
3 Ridge, Irving, Texas 75038.

4

5 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
6 **WORK EXPERIENCE.**

7 A. I have an undergraduate degree in Economics from the University of
8 Connecticut and a master's degree from Michigan State University in
9 Agricultural Economics. I joined Verizon (then GTE) Florida in 1982 and
10 have worked for the Verizon family of companies continuously since
11 then. During the course of my career with the Verizon companies, I
12 have held positions in Demand Analysis and Forecasting, Pricing,
13 Product Management, Open Market Program Office, and Contract
14 Negotiations.

15

16 **Q. WHAT ARE YOUR CURRENT POSITION AND DUTIES WITHIN**
17 **VERIZON?**

18 A. I am employed by Verizon Services Corporation and represent Verizon
19 Communications Inc.'s incumbent operating telephone company
20 subsidiaries in negotiations, arbitrations, and disputes that arise
21 between those subsidiaries (such as Verizon Florida LLC) and
22 competitive local exchange carriers ("CLECs") concerning
23 interconnection, resale, and unbundled elements pursuant to section
24 251 of the Communications Act of 1934, as amended by the
25 Telecommunications Act of 1996 ("1996 Act").

1 **Q. PLEASE DESCRIBE THE SCOPE OF YOUR EXPERIENCE WITH**
2 **RESPECT TO INTERCONNECTION AGREEMENTS AND**
3 **ARBITRATIONS UNDER THE 1996 ACT.**

4 A. Since 1996, I have been involved in the negotiation of hundreds of
5 interconnection agreements with CLECs and have testified before state
6 commissions on behalf of Verizon companies in approximately 40
7 proceedings on various issues concerning interconnection of networks.
8 As a result, I am very familiar with and fully understand the Verizon
9 companies' positions on matters that involve interconnection with the
10 networks of CLECs. Since 1996, my area of expertise has been
11 interconnection between Verizon incumbent local exchange carriers
12 ("ILECs") and facilities-based CLECs, which Bright House Networks
13 Information Services (Florida), LLC ("Bright House") claims to be.¹

14
15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. The purpose of this testimony is to present evidence supporting the
17 positions Verizon Florida LLC ("Verizon") has taken on the following
18 issues identified for resolution in this arbitration: 5, 7, 11, 13, 22(a)-(b),
19 36(a)-(b), 37, 39-41, and 43-44. My testimony (and the testimony of
20 other Verizon witnesses in this case) assumes that Bright House is
21 entitled to section 251(c) interconnection, but, as Verizon noted in its
22 Response to Bright House's Petition for Arbitration of Interconnection
23 Agreement ("Response"), Verizon does not waive any claims that it has
24 no section 251(c) obligations to Bright House because Bright House is

¹ See Petition for Arbitration of Interconnection Agreement (Nov. 3, 2009) ("Petition") at 5-6.

1 not acting as a telecommunications carrier providing telephone
2 exchange service or exchange access. See Response at 5 n. 2.

3

4 **Q. IN GENERAL, WHAT IS THE PURPOSE OF AN INTERCONNECTION**
5 **AGREEMENT UNDER § 251(c) OF THE 1996 ACT?**

6 A. The purpose of an interconnection agreement is to define the parties'
7 rights and obligations with respect to the interconnection contemplated
8 by the 1996 Act. The 1996 Act envisions that interconnection will
9 provide CLECs with certain access to the networks of more established
10 ILECs so as to facilitate the CLECs' ability to handle phone calls their
11 customers make to and receive from customers on the ILECs' (and
12 other carriers') networks. This framework is set out in 47 U.S.C. §
13 251(c)(2)(A), which addresses ILECs' obligation to provide
14 interconnection with other local exchange carriers "for the transmission
15 and routing of telephone exchange service and exchange access." But,
16 for the most part, the statute leaves the details of that interconnection to
17 be worked out contractually by the interconnecting parties.

18

19 Because an interconnecting CLEC is gaining access to and utilizing a
20 competitor's network, it is important for the interconnection agreement to
21 define how the interconnection will take place. Defining those terms
22 clearly is necessary not only to facilitate the CLEC's access and to
23 establish how the CLEC will compensate the ILEC for that access, but
24 also to protect the ILEC's network, avoid interference with the ILEC's
25 operations, and ensure that the CLEC does not exploit its access to the

1 ILEC's network for some purpose other than simply facilitating phone
2 calls to and from its customers. Accordingly, the 1996 Act provides,
3 among other things, that interconnection must be at a "technically
4 feasible point" on the ILEC's network, "on rates, terms and conditions
5 that are just [and] reasonable," and for the purpose of facilitating "the
6 transmission and routing of telephone exchange service and exchange
7 access" – not for any other purpose. 47 U.S.C. § 251(c)(2)(A)-(D).
8 Moreover, the concept of standardized treatment is important. The
9 statute requires that interconnection be provided on a
10 "nondiscriminatory" basis, such that all carriers have the same level of
11 interconnection.

12

13 The terms of the interconnection agreement should reflect these
14 statutory requirements and clearly define the parties' interconnection
15 arrangements, so that both sides can understand the rules of the game
16 and operate efficiently, within the requirements of federal law, going
17 forward.

18

19 **Q. HAS THE EXISTING INTERCONNECTION AGREEMENT BETWEEN**
20 **VERIZON AND BRIGHT HOUSE ACHIEVED THOSE PURPOSES?**

21 A. Yes. The current ICA is, in many respects, similar to the approximately
22 150 interconnection agreements Verizon has used successfully with
23 other carriers in Florida, and it has proven to work particularly well in the
24 case of Bright House. Bright House and Verizon have been
25 interconnecting for several years in a manner that has provided Bright

1 House with the access it needs to be successful, consistent with the
2 level of access Verizon has provided to other carriers and without
3 raising significant operational concerns for Verizon's network. These
4 existing arrangements have been so successful that Bright House's
5 cable affiliate ("Bright House Cable") now serves "roughly one-third of
6 the residential market" in the Tampa Bay area." (Petition at 4.) In fact,
7 XXX
8 XXX. Bright House reports
9 XXXXXXX Home Phone customers as of year-end 2009, while Verizon
10 had XXXXXXXXXXXXX residential customers. Moreover, Bright House
11 Cable has *added* XXXXXXXXXXXXXXXXXXXX subscribers every year since
12 2007, while Verizon has *lost* hundreds of thousands during the same
13 period. Bright House likewise acknowledges that the existing ICA has
14 allowed Bright House Cable "to receive recognition for customer service
15 for its products and services, recently earning national attention by the
16 highly respected J.D. Power and Associates organization for its Digital
17 Phone service, for the fourth year in a row." (Petition at 5.) In short,
18 under the current ICA, Bright House and its cable affiliate represent
19 what Bright House touts as "one of the most significant, and sustained,
20 success stories in the efforts of the State of Florida (as well as the
21 federal government) to promote local telephone competition." (Petition
22 at 6.) By any objective measure, Bright House's existing interconnection
23 arrangements with Verizon have enabled Bright House to compete
24 successfully.

25

1 Nevertheless, Bright House seeks to profoundly alter those
2 arrangements. Bright House would change hundreds of provisions in
3 the parties' existing ICA to, among other things, require Verizon to
4 provide Bright House with uniquely favorable arrangements that Verizon
5 is not required to offer, that it does not offer to other carriers and, in
6 some cases, that Verizon literally cannot provide. All of these changes
7 should be rejected.

8

9 **ISSUE 5: IS VERIZON ENTITLED TO ACCESS BRIGHT HOUSE'S**
10 **POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY?**
11 (Additional Services ("AS") Attachment ("Att.") §§ 9.1, 9.2)

12

13 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
14 **RESPECT TO ISSUE 5?**

15 A. Pursuant to the undisputed language in § 9.1 of the Additional Services
16 Attachment, Verizon would provide Bright House with "non-
17 discriminatory access to poles, ducts, conduits and rights-of-way owned
18 or controlled by Verizon." Verizon's proposed Section 9.2 contains the
19 reciprocal requirement for Bright House to "afford Verizon non-
20 discriminatory access to poles, ducts, conduits and rights-of-way owned
21 or controlled by [Bright House]." The ICA expressly contemplates parity
22 of access for each party, with the terms and conditions offered by Bright
23 House to Verizon to "be no less favorable" than those offered by Verizon
24 to Bright House. That way, neither party can be denied access to
25 customers who want its service—as has sometimes happened to

1 Verizon, for example, in multi-tenant situations where the landlord or
2 developer has signed up for service with a competitor. Bright House,
3 however, proposes to delete § 9.2, so that Verizon would have no right
4 of access to Bright House's poles, ducts, conduits and rights-of-way.

5

6 **Q. IS VERIZON ENTITLED TO ACCESS BRIGHT HOUSE'S POLES,
7 DUCTS, CONDUITS AND RIGHTS-OF-WAY?**

8 A. Yes. Section 364.16(5) of the Florida Statutes provides that "[w]hen
9 requested, each certificated telecommunications company shall provide
10 access to any poles, conduits, rights-of-way, and like facilities that it
11 owns or controls to any local exchange telecommunications company or
12 competitive local exchange telecommunications company pursuant to
13 reasonable rates and conditions mutually agreed to which do not
14 discriminate between similarly situated companies." Despite this clear
15 directive, Bright House has refused even to discuss allowing Verizon
16 access to poles, ducts, conduits and rights-of-way that Bright House
17 owns or controls. The parties have agreed upon terms of Bright
18 House's access to Verizon's facilities; it is reasonable to apply these
19 same terms to Verizon's access to Bright House's facilities.

20

21 **ISSUE 7: SHOULD VERIZON BE ALLOWED TO CEASE PERFORMING**
22 **DUTIES PROVIDED FOR IN THIS AGREEMENT THAT ARE**
23 **NOT REQUIRED BY APPLICABLE LAW? (General Terms &**
24 **Conditions ("GTC") § 50.)**

25

1 Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH
2 RESPECT TO ISSUE 7?

3 A. This dispute concerns Verizon's proposed language in § 50 of the ICA's
4 General Terms and Conditions that would permit Verizon to cease
5 providing a service or paying intercarrier compensation for traffic on 30
6 days prior written notice when Verizon no longer has the legal obligation
7 to do these things. Bright House opposes this provision.

8

9 Q. WHAT IS THE PURPOSE OF VERIZON'S PROPOSED LANGUAGE?

10 A. Verizon's language would address situations where Verizon's duty to
11 provide service is eliminated because of a change in factual
12 circumstances or a change in law. In such a situation – where all that
13 must be done is to stop providing something, or stop making some
14 payment – it is not necessary to go through the process of negotiating
15 terms and conditions to accommodate the change. All that must be
16 done is to stop providing, or stop paying. Unlike most changes in law,
17 which might require the negotiation of implementing terms and
18 conditions, there is essentially nothing more that needs to be negotiated
19 when one is simply withdrawing a service or payment. The same is true
20 when the duty to provide a service is eliminated because of a change in
21 factual circumstances. For example, Verizon has no obligation to
22 provide DS1 transport between two wire centers classified as "Tier 1"
23 under FCC indicia of competitive deployment of transport facilities.² If a
24 particular wire center becomes classified as a Tier 1 wire center during
25 the term of the ICA, Verizon will no longer have a duty to provide UNE

² See *Triennial Review Remand Order*, 20 FCC Rcd 2533, ¶¶ 111-15 (2005).

1 DS1 transport between that wire center and another Tier 1 wire center.
2 Verizon's proposed language would make clear that, in these and other
3 situations where a change in facts negates Verizon's obligation to
4 provide a service of facility, the ICA is not intended to override
5 constraints on Verizon's legal obligation to provide such services or
6 facilities. (Of course, if the parties disagree about the existence of
7 relevant facts, they may bring their dispute to the Commission for
8 resolution.)

9
10 I understand that Bright House contends that, in the course of the
11 parties' negotiations, Verizon may voluntarily agree to undertake some
12 obligation that it is not in fact required to perform, and that this language
13 might thereby deprive Bright House of the benefit of that bargain. If
14 Bright House believes that it is entitled to any particular service or
15 payment notwithstanding a change in law or facts that renders Verizon
16 no longer under an obligation to provide that service or payment,
17 Verizon would entertain a request to insulate such a service or payment
18 from the generally applicable language.

19

20 **ISSUE 11: SHOULD THE ICA STATE THAT "ORDERING" A SERVICE**
21 **DOES NOT MEAN A CHARGE WILL APPLY?** (GTC § 51;
22 Glossary ("Glo.") § 2.92; Pricing Att. §§ 1.4, 1.5, 1.6, 1.7.)

23

24 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
25 **RESPECT TO ISSUE 11?**

1 A. Bright House proposes language for various provisions of the ICA
2 (including General Terms & Conditions § 51, Glossary § 2.92 and
3 Pricing Attachment §§ 1.4-1.7) to address what it suggests is an
4 “ambiguity” regarding when payment obligations exist and when they do
5 not. See DPL 29-31, 42, 126-28. Bright House correctly notes that,
6 under the ICA, certain functions by a Party may be performed without
7 charge. But the ICA already spells out what those services are and
8 when payment is or is not required. Nonetheless, Bright House claims
9 that the ICA should include paragraph after paragraph of new language
10 broadly suggesting that the “ordering” of a whole host of services under
11 the ICA would not result in a charge. See, e.g., *id.* at 29-31 (proposing
12 an entirely new four-paragraph General Terms & Conditions § 51). But
13 these changes simply are not necessary and would introduce ambiguity
14 into the contract.

15
16 **Q. SHOULD THE ICA STATE THAT “ORDERING” A SERVICE DOES**
17 **NOT MEAN A CHARGE WILL APPLY?**

18 A. Verizon agrees that the ordering of services under the ICA does not
19 necessarily mean that a charge will apply. That much is already clear in
20 the existing ICA, which the parties have operated under for years, as
21 well as in the new ICA language to which the parties have already
22 agreed. But, to the extent it would be helpful to state as much explicitly,
23 Verizon is willing to do so – just as succinctly as it was stated in the first
24 sentence of this answer: “The ordering of a service under this
25 Agreement does not necessarily mean that a charge will apply.”

1 However, Bright House has taken a concern that could be addressed in
2 that one short sentence and instead proposed multiple paragraphs of
3 language that would tilt the scales much too far in the other direction
4 (suggesting that the default result under the agreement is that there is
5 “no charge” for services ordered and provided, unless stated explicitly
6 enough for Bright House’s liking). This would create an entirely new
7 problem – eliminating charges for services that both Parties agree
8 should be compensated.

9
10 Bright House suggests that its proposed changes are not designed to
11 change any substantive payment obligations, claiming that “[t]his
12 language is not in any way intended to deprive Verizon (or Bright
13 House) of the right to receive payment when payment is appropriate and
14 required by the contract.” DPL at 30. But that is exactly what Bright
15 House’s changes could do. For example, CLECs sometimes may wish
16 to expedite a particular order for service. When a CLEC requests
17 expedition, the tariff (Intrastate Access Tariff §5.2.2(E)) provides a
18 process by which Verizon will accommodate that request and assess a
19 fee for doing so. Under Bright House’s formulation that there be “no
20 charge” for any service unless that charge explicitly included in the ICA,
21 Verizon might be required (and Bright House likely would argue that
22 Verizon would be required) to provide such services without charge.
23 This would unfairly deprive Verizon of a legitimate recovery for
24 expenses incurred to render the service, and would unjustly provide a
25 windfall to Bright House. But perhaps equally important would be the

1 perverse incentives that such a regime would foster: if there is no
2 charge for an expedited order, for example, Bright House would have no
3 reason ever to accept a normal provisioning interval. If “expedites” are
4 free, every order would become an “expedite.”

5
6 At bottom, Bright House’s proposed language is simply too broad to
7 achieve its purported purpose. While Verizon would be amenable to
8 addressing Bright House’s claimed concern with an express recognition
9 that “ordering” a service does not mean a charge necessarily will apply,
10 the Commission should reject Bright House’s overly broad language,
11 which incorrectly suggests that the default under the ICA should be that
12 a charge won’t apply for services that Bright House orders.

13
14 **ISSUE 13: WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES’**
15 **RIGHT TO BILL FOR SERVICES AND DISPUTE CHARGED**
16 **FOR BILLED SERVICES? (GTC § 9.5)**

17
18 **Q. WHAT IS THE NATURE OF THE PARTIES’ DISPUTE WITH**
19 **RESPECT TO ISSUE 13?**

20 A. Bright House seeks to modify § 9.5 of the General Terms & Conditions
21 portion of the ICA to limit the time in which the parties can bill each other
22 for services provided under the ICA or dispute such charges. Bright
23 House’s language would require Verizon to contractually waive its right
24 to (1) payments that it otherwise would be entitled to receive or (2)
25 challenge illegitimate charges assessed by Bright House. Verizon

1 therefore objects to Bright House's proposal.

2

3 **Q. WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES' RIGHT TO**
4 **BILL FOR SERVICES AND DISPUTE CHARGES FOR BILLED**
5 **SERVICES?**

6 A. The existing ICA language acknowledges that it is "the intent of both
7 Parties to submit timely statements of charges," but recognizes that it is
8 not always possible to do so. ICA, General Terms & Conditions § 9.5.
9 Indeed, proper billing is one of the more difficult challenges in
10 telecommunications. Carriers (including CLECs) order a wide variety of
11 services from Verizon. Those services are by their nature complex, and
12 frequently involve a variety of elements and charges. For example, the
13 billing for a single circuit might involve a fixed fee, a usage sensitive
14 charge, and/or a mileage sensitive charge. It might also carry additional
15 charges for multiplexing or other services, and various non-recurring
16 charges may apply that are not service-specific, such as an expedite or
17 order cancellation charge.

18

19 Verizon nevertheless strives for accurate and timely billing at all times.
20 After all, it is in Verizon's interest to facilitate payment as quickly as
21 possible. Most of Verizon's systems are now nearly fully automated
22 from end to end, thus reducing the chances of error and increasing the
23 speed with which billing can occur. For its part, Bright House has not
24 raised any specific concerns about Verizon's billing practices under the
25 existing ICA or otherwise identified any widespread problems or delays.

1 Of course, from time to time, isolated mistakes or delays may occur.
2 For example, there are circumstances in which billing is purposely
3 delayed for a service, such as when certain maintenance charges are
4 incurred when no trouble is found and Verizon must perform an
5 unnecessary dispatch. To ensure that there really is no trouble, Verizon
6 typically waits for another month to pass to confirm that there is no
7 subsequent trouble. This delay ensures that Verizon only bills this
8 charge when it is warranted.

9
10 In addition, Verizon undertakes periodic reviews of its billings to make
11 sure that all services were properly charged and to correct any errors –
12 including any overbillings. When those reviews are completed, Verizon
13 may backbill to correct any errors. Backbilling is a fact of life in the
14 telecommunications industry. Verizon is routinely backbilled by other
15 carriers, sometimes for an extended timeframe. CLECs also file claims
16 for bills related to time periods long past.

17
18 Given this environment, Verizon's language rightly provides that failure
19 to provide timely statements shall not constitute a breach, default or
20 waiver of the right to payment unless and until "Applicable Law" provides
21 otherwise – *i.e.*, until the applicable statute of limitations has run. Using
22 the statute of limitations as the limit is the standard approach in
23 Verizon's agreements with other carriers.

24
25

1 Q. HAS THIS COMMISSION ALREADY RECOGNIZED THE STATUTE
2 OF LIMITATIONS AS THE APPROPRIATE BACK-BILLING LIMIT?

3 A. Yes. In Verizon's arbitration with Covad in 2003, the Commission
4 correctly recognized that "back-billing occurs on occasion out of
5 necessity; however, placing a time limit on back-billing can conflict with
6 the [applicable] statute of limitations in Florida."³ Accordingly, the
7 Commission rejected the CLEC's attempts to impose a contractual
8 backbilling limitation in its interconnection agreement with Verizon and
9 ordered that the applicable statute of limitations would remain the
10 standard under the parties' agreement. See Verizon/Covad Order at 14-
11 16.

12
13 Using the statute of limitations period is the best way to fully protect the
14 parties' right to payment and to dispute inappropriate charges. As the
15 Commission recognized in the Verizon/Covad Order, Verizon's own self-
16 interest will ensure that it bills and disputes charges as promptly as
17 possible: "We agree with Verizon's claim that it is in Verizon's best
18 interest to bill as promptly as possible in order to collect on amounts
19 owed." *Id.* at 14. And any "surprise" or other purported harm to Bright
20 House caused by a billing delay would be mitigated by the fact that
21 Bright House should know, based on its own records, that it ordered a
22 service for which it knows it has not yet been billed.

23
24 Verizon should not be expected to contractually waive its right to

³ See *Petition for Arbitration of Open Issues*, Order No. PSC-03-1139-FOF-TP, Docket No. 020960-TP at 14 (Oct. 13, 2003) ("Verizon/Covad Order").

1 payment, nor is it in either party's interest to contractually waive any
2 rights it otherwise may have to dispute improper billings. As the
3 Commission held in the Verizon/Covad Order (at 16) with respect to this
4 issue of using the statute of limitations versus contractual limitations,
5 "[w]e believe that the current state of the law should be sufficient."
6 Indeed, absent any voluntary contractual agreement, it is unclear that
7 there is even any legal basis on which the Commission could impose a
8 limitation that conflicts with the existing state law embodied in the statute
9 of limitations. The Commission, likewise, is not "aware of any authority"
10 allowing it to depart from Florida's statute of limitations. *Id.* Accordingly,
11 Bright House's proposed changes to § 9.5 of the General Terms and
12 Conditions should be rejected.

13

14 **ISSUE 22(a): UNDER WHAT CIRCUMSTANCES, IF ANY, MAY BRIGHT**
15 **HOUSE USE VERIZON'S OPERATIONS SUPPORT SYSTEMS**
16 **("OSS") FOR PURPOSES OTHER THAN THE PROVISION OF**
17 **TELECOMMUNICATIONS SERVICE TO ITS CUSTOMERS?**
18 **(AS Att. § 8.4.2.)**

19

20 **Q. HOW DOES BRIGHT HOUSE PROPOSE TO RESOLVE ISSUE 22(a)?**

21 A. Bright House proposes to delete § 8.4.2 of the Additional Services
22 Attachment to the ICA in its entirety. That section refers to Verizon's
23 Operations Support Systems ("OSS"), which (among other things) allow
24 interconnecting carriers to place electronic orders for various services
25 with Verizon. In particular, Section 8.4.2 provides that "Verizon OSS

1 Facilities may be accessed and used by [Bright House] only to provide
2 Telecommunications Services to [Bright House] Customers.” This
3 provision typically is not a source of controversy in Verizon’s
4 interconnection agreements, because it reflects the fact that
5 interconnection is only available to “telecommunications carriers,” as
6 defined in the 1996 Act, “for the transmission and routing of telephone
7 exchange service and exchange access” – and not for other purposes.
8 47 U.S.C. § 251(c)(2)(A). Yet, Bright House claims – without
9 explanation – that this section “is not authorized by Applicable Law” and
10 must be deleted. DPL at 58.

11

12 I am not a lawyer and Verizon can further address this issue in its briefs,
13 but I understand that there is no basis for Bright House’s position that
14 Verizon’s language—which has been approved by state commissions
15 hundreds of times in ICAs across the country—is not “authorized” by
16 applicable law.

17

18 If Bright House has legitimate concerns about its ability to continue
19 providing service under this language, then Verizon can try to address
20 them. In particular, Verizon has no objection to Bright House continuing
21 to use Verizon’s OSS to place orders for voice service for customers of
22 Bright House Cable, just as it always has under the existing ICA.
23 Verizon is not interested in interfering with service to those VoIP
24 customers. If that indeed is Bright House’s concern (and it is difficult to
25 tell because Bright House hasn’t explained its position), Verizon would

1 be willing to accommodate it by excepting this traffic from any
2 prohibitions under § 8.4.2 of the Additional Services Attachment.

3

4 **Q. WHAT IS THE PROBLEM WITH BRIGHT HOUSE'S PROPOSAL TO**
5 **DELETE SECTION 8.4.2?**

6 A. Entirely eliminating section 8.4.2 would suggest that Bright House could
7 use OSS to support any services at all, whether or not they have
8 anything to do with the purposes for which Verizon must make
9 interconnection available under federal law. Without any contractual
10 restrictions on Bright House's use of Verizon's OSS, Bright House (and
11 any company that subsequently adopts Bright House's interconnection
12 agreement) could arguably use it to support any kind of business, selling
13 any kind of good or service. Bright House's proposed, unexplained
14 change therefore must be rejected. As stated above, consistent with the
15 parties' past practice, Verizon is willing to continue to allow Bright House
16 to use OSS to place orders for customers of Bright House Cable, if that
17 is the root of Bright House's concern about this standard provision.

18

19 **ISSUE 22(b): WHAT CONSTRAINTS, IF ANY, SHOULD THE ICA PLACE**
20 **ON VERIZON'S ABILITY TO MODIFY ITS OSS? (AS Att. §§**
21 **8.2.1, 8.2.3, 8.8.2, 8.11.)**

22

23 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
24 **RESPECT TO ISSUE 22(b)?**

25 A. Issue 22(b) reflects another dispute regarding Verizon's OSS. Verizon

1 has developed its OSS to, among other things, electronically receive
2 and track orders for services provided under its interconnection
3 agreements with numerous carriers. Verizon has invested considerable
4 time and expense in developing this system and integrating it with
5 Verizon's billing and provisioning systems, thus implementing electronic
6 ordering capabilities for most services. In some instances, electronic
7 ordering capability may not yet be available for a particular service or
8 might not otherwise be appropriate due to operational or other concerns.
9 But, in developing this system, Verizon has had every incentive to
10 establish an efficient and workable system that can properly record and
11 track orders from the largest number of carriers possible. That way,
12 Verizon can better fulfill orders and, where appropriate, receive payment
13 for ordered services.

14
15 To meet those objectives, Verizon has made various changes to its OSS
16 over time and continues to modify and improve its OSS today. Verizon
17 recognizes that any such modifications will necessarily affect all the
18 carriers that use the OSS, and therefore takes all appropriate care in
19 deciding which changes to make, and in the procedures by which it
20 makes those changes. Whenever Verizon makes a change to its OSS,
21 Verizon follows the procedures set forth in its Change Management
22 Guidelines and required by applicable law – including providing notice of
23 its changes to interconnecting carriers that use Verizon's OSS. See
24 ICA, Additional Services Attachment § 8.2.3.

25

1 Bright House seeks to impose new requirements for Verizon's OSS and
2 to afford Bright House considerable individual say over when and how
3 Verizon can modify a system that is designed to also serve all
4 interconnecting parties. Among other things, Bright House would
5 change § 8.2.1 of the Additional Services Attachment to require Verizon
6 to provide Bright House with OSS electronic ordering for *all* services –
7 even those services for which Verizon does not currently have electronic
8 ordering capability. See DPL at 57. Similarly, Bright House would
9 modify § 8.8.2 to remove any obligation it has to avoid using OSS in
10 such a manner that would exceed the system's capacity or capability –
11 effectively substituting Bright House's judgment of what is "commercially
12 reasonable" for Verizon's judgment of how best to operate its own
13 system in the overall interest of all stakeholders, not just any particular
14 user. *Id.* at 61. On top of that, Bright House would impose additional
15 limitations on when Verizon could make changes to its OSS under §
16 8.2.3 – requiring Verizon to provide Bright House with additional notice
17 of any changes beyond that required by applicable law and the Change
18 Management Guidelines. *Id.* at 57. Verizon disputes all of these
19 proposals.

20
21 **Q. WHY SHOULD THE COMMISSION REJECT BRIGHT HOUSE'S**
22 **PROPOSALS?**

23 A. The ICA should not constrain Verizon's ability to modify its own OSS
24 beyond those limitations already required by the Change Management
25 Guidelines and applicable law. Indeed, those Guidelines already reflect

1 applicable legal requirements and industry standards. After all,
2 Verizon's change management process is not only used by the parties
3 to this agreement, but by all interconnecting carriers that use Verizon's
4 OSS.

5
6 Pursuant to the Guidelines, Verizon will provide Bright House (and all
7 relevant carriers) with notice of any changes to its OSS. But there is no
8 need to impose additional constraints on Verizon's ability to modify its
9 own internal ordering systems solely for Bright House's convenience.
10 Bright House has provided no support for its suggestion that the very
11 same change management process used for all other carriers is
12 somehow "commercially unreasonable" in this particular case or
13 otherwise inadequate to protect Bright House's legitimate interests.

14
15 Bright House likewise has provided no support for its position that
16 Verizon should be required to furnish Bright House with electronic
17 ordering capability for all services. As noted, Verizon already has
18 implemented electronic ordering capabilities for most services. But, to
19 the extent that OSS electronic ordering may not be available for a
20 particular service, Verizon cannot be required to develop it upon Bright
21 House's demand, regardless of the cost to Verizon or whether it is
22 efficient for a particular service. An ILEC cannot be required to upgrade
23 or otherwise modify its own internal ordering systems to suit the desires
24 of one particular interconnector for access to a superior network, rather
25 than the ILEC's existing network. As Verizon will explain in its legal

1 briefs, Bright House takes Verizon's network and systems "as is," not as
2 Bright House would like them to be. There is no basis for requiring
3 Verizon to provide Bright House with the type of ordering system it
4 wishes for all services at all times.

5

6 Accordingly, the arbitration panel should reject Bright House's proposed
7 changes to Sections 8.2.1, 8.2.3, 8.82 and 8.11 of the Additional
8 Services Attachment.

9

10 **ISSUE 36: WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING,**
11 **INCLUDING BRIGHT HOUSE NETWORK'S PROVISION OF**
12 **TANDEM FUNCTIONALITY FOR EXCHANGE ACCESS**
13 **SERVICES? (Interconnection ("Int.") Att. §§ 9-10.)**

14

15 **Q. WHAT IS THE PARTIES' DISPUTE WITH RESPECT TO ISSUE NO.**
16 **36?**

17 A. Bright House seeks to modify various provisions in Sections 9 and 10 of
18 the Interconnection Attachment to recognize expressly Bright House's
19 ability to operate as a competitive tandem provider. Verizon has no
20 objection to Bright House operating as a competitive tandem provider,
21 but the language Bright House has proposed to achieve this purpose is
22 highly problematic. Verizon can accommodate Bright House's desire to
23 operate as a competitive tandem provider under the existing ICA
24 language and through the provision of Tandem Switch Signaling ("TSS")
25 under Verizon's FCC Tariff No. 14.

1 Q. WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING,
2 INCLUDING BRIGHT HOUSE'S PROVISION OF TANDEM
3 FUNCTIONALITY FOR EXCHANGE ACCESS SERVICES?

4 A. The existing provisions in §§ 9 and 10 of the Interconnection Attachment
5 should apply to meet point billing and are sufficient (in combination with
6 TSS services under Verizon's tariff) to accommodate Bright House's
7 desire to operate as a competing tandem provider. As I have stated,
8 Verizon has no objection to Bright House providing competitive tandem
9 functionality. The problem lies in the specific language Bright House
10 has proposed to facilitate this functionality. Bright House's proposed
11 changes to §§ 9 and 10 of the Interconnection Attachment would require
12 Verizon to divert or otherwise handle traffic in ways that Verizon is not
13 capable of doing.

14

15 At the outset, I should make clear the significant difference between
16 Access Toll Connecting Trunks, and Local Interconnection Trunks. The
17 key difference stems from the fact that end users may choose a pre-
18 subscribed interexchange carrier ("PIC") to carry their interexchange
19 traffic, while the end users of a particular local carrier by definition use
20 only that local carrier to carry their traffic. So when an end user dials a
21 1+ interexchange call, that end user must be associated with the
22 appropriate interexchange carrier (by means of the carrier identification
23 code ("CIC")), and the CIC must then be signaled along with the call as
24 it is routed through the network. Thus, if an end user has subscribed to
25 AT&T long distance, the network would signal the CIC "0288" when that

1 end user dials a 1+ interexchange call. That CIC would be signaled
2 along with the call as it is routed from the end-office switch to the
3 appropriate access tandem, and then the access tandem is able to route
4 the call appropriately to any of the various interexchange carriers that
5 have interconnected their facilities at the access tandem – to AT&T in
6 this example, or to whichever other carrier the end user has
7 presubscribed.

8

9 For local telephone calls, industry standards do not provide that a CIC
10 be signaled. Local calls are routed to the terminating carrier based on
11 the called number, while interexchange calls are routed from the
12 originating carrier to the toll service provider based on the CIC. As a
13 result, local interconnection trunks would lack the data necessary to
14 permit the access tandem provider to route the call to the appropriate
15 interexchange carrier.

16

17 My understanding of Bright House's proposal is that Bright House would
18 set itself up as an alternative access tandem provider, and that the
19 parties would attempt to route 1+ dialed calls, destined to IXCs, to each
20 other over local interconnection trunks. But, as described, calls so
21 routed would lose the CIC that is necessary to route the call to the
22 interexchange carrier chosen by the calling party. Thus, it would be
23 unworkable to route calls as Bright House has proposed.

24

25 Another issue with Bright House's proposal, as I understand it, is that it

1 appears to contemplate that Verizon would, in some instances, subtend
2 the Bright House competitive tandem. For the routing of inbound
3 interexchange traffic, it would appear that Bright House is proposing that
4 traffic routed from the IXCs that use Bright House's competitive tandem
5 service should route through Bright House's tandem and then to the
6 appropriate Verizon end office, such that the Verizon end offices would,
7 in at least some circumstances, subtend the Bright House switch. I
8 believe that this could not work from a network routing perspective, as a
9 switch can only subtend a single tandem for any given NPA/NXX.

10
11 Because Verizon cannot operate in the way Bright House proposes,
12 Bright House's proposed changes should be rejected. Verizon can and
13 will accommodate Bright House's desire to operate as a competitive
14 tandem provider through the existing ICA provisions and through the
15 TSS provisions in Verizon's tariff, which already spell out the manner in
16 which Bright House can obtain what it needs to provide tandem
17 functionality for exchange access services.

18
19 **ISSUE 36(a): SHOULD BRIGHT HOUSE REMAIN FINANCIALLY**
20 **RESPONSIBLE FOR THE TRAFFIC OF ITS AFFILIATES**
21 **OR THIRD PARTIES WHEN IT DELIVERS THAT TRAFFIC**
22 **FOR TERMINATION BY VERIZON? (Int. Att. § 8.3)**

23
24 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
25 **RESPECT TO ISSUE NO. 36(a)?**

1 A. Issue 36(a) stems from what appears to be a misunderstanding on
2 Bright House's part.

3

4 Bright House proposes to delete § 8.3 from the Interconnection
5 Attachment. Section 8.3 addresses the situation in which a third party
6 carrier originates local traffic that Bright House then transits for that
7 carrier to Verizon for termination. In that scenario, there is no dispute
8 that Verizon is entitled to payment for terminating the traffic. The only
9 dispute is whether Bright House is responsible for making that payment
10 when it delivers the traffic to Verizon.

11

12 Section 8.3 of the Interconnection Attachment says that Bright House is
13 financially responsible for any traffic originating with a third party carrier
14 that Bright House delivers to Verizon in the same amount that the third
15 party would have paid had it delivered the traffic directly. Bright House
16 seeks to delete this provision, suggesting that it "is unnecessary" and
17 that "[m]eet point billing arrangements [would] cover any legitimate
18 Verizon concern on this point." DPL at 92. However, the meet point
19 billing arrangements are for a different kind of traffic (jointly provided
20 Switched Exchange Access traffic) and do not cover this point. Section
21 8.3 should, therefore, remain in the ICA.

22

23 **Q. WHY IS IT NECESSARY TO RETAIN SECTION 8.3?**

24 A. Section 8.3 of the Interconnection Attachment provides that, when Bright
25 House transits local traffic for a third party to Verizon, Bright House is

1 financially responsible to Verizon for terminating that traffic in the same
2 amount that the third party would have had to pay had it delivered the
3 traffic itself. This provision acts as an important check on potential
4 arbitrage, and it is fair to expect that a carrier that chooses to bring
5 traffic to Verizon's network should pay Verizon for the services that
6 Verizon renders.

7
8 If and when a carrier transits (and delivers to Verizon for termination) a
9 third party's traffic, it does so voluntarily, for commercial reasons.
10 Generally speaking, of course, a carrier is entitled under Section 251 to
11 direct interconnection with Verizon. To the extent that a carrier has end
12 users in a particular LATA within Verizon's ILEC footprint, one would
13 generally expect that carrier to interconnect directly with Verizon for the
14 exchange of traffic between those parties' end users. This is because,
15 in almost all cases, direct interconnection is a more efficient use of
16 network resources. By transiting through another carrier en route to
17 Verizon, a third party would necessarily use additional facilities: the
18 third party would need facilities to connect to the transiting carrier, the
19 transiting carrier would need to switch the traffic and then transport it to
20 Verizon. That adds at least two functions (connection to the transiting
21 carrier and switching), that would not need to be performed under a
22 direct interconnection. Therefore, such an arrangement generally would
23 be less efficient than direct interconnection.

24
25 Perhaps the greatest motivation for a carrier to use such a relatively

1 inefficient method of interconnection would be to take advantage of a
2 disparity in intercarrier compensation rates. Verizon offers two
3 intercarrier compensation "rate plans" for local and ISP-bound traffic: a
4 carrier may choose reciprocal compensation (with a tandem rate of
5 \$0.0040108) or the "mirroring rule" rate of \$0.0007. It would be
6 relatively easy for a carrier to send all of its outbound traffic through a
7 carrier whose ICA enables it to pay only \$0.0007 for termination, while
8 receiving inbound traffic directly at the standard reciprocal compensation
9 rate of \$.0040108. Thus, by strategically using transit, a carrier could,
10 in that scenario, collect five times more intercarrier compensation than is
11 paid on its outbound traffic. Verizon's language addresses this situation.
12 By requiring Bright House to pay the same amount that the third party
13 would have had to pay had it delivered the traffic directly, Section 8.3
14 eliminates this arbitrage opportunity.

15
16 Bright House does not address any of these issues, instead suggesting
17 that this is all covered by meet point billing arrangements and that § 8.3
18 therefore is unnecessary. But meet point billing arrangements do not
19 cover local transit traffic. Meet point billing arrangements instead
20 address the termination of Switched Exchange Access traffic. Because
21 they address different types of traffic, *both* Section 8.3 and meet point
22 billing arrangements are necessary. Accordingly, Bright House's
23 proposal to delete § 8.3 of the Interconnection Attachment as
24 unnecessary should be rejected.

25

1 **ISSUE 36(b):** TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE
2 BRIGHT HOUSE TO PAY VERIZON FOR VERIZON-
3 PROVIDED FACILITIES USED TO CARRY TRAFFIC
4 BETWEEN INTEREXCHANGE CARRIERS AND BRIGHT
5 HOUSE'S NETWORK? (Int. Att. § 9.2.5)

6

7 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
8 **RESPECT TO ISSUE NO. 36(b)?**

9 A. Issue 36(b) stems from a proposal by Bright House that would absolve
10 Bright House from paying for any facilities that are used to connect its
11 network with interexchange carriers. Verizon's position, of course, is
12 that it must be paid for the facilities that Bright House uses to connect
13 with interexchange carriers.

14

15 **Q. WHAT FACILITIES AND SERVICES ARE AT ISSUE HERE?**

16 A. Most CLECs and wireless carriers connect to interexchange carriers
17 indirectly, through the ILEC's access tandem. When a CLEC's end user
18 dials a 1+ interexchange call, that call is routed from the CLEC's
19 network to the ILEC's access tandem, where the ILEC switches the call
20 and hands it off to the appropriate IXC. A similar call flow happens in
21 reverse. When an IXC needs to deliver a call to a CLEC's end user, it
22 hands it off to the ILEC tandem, where the ILEC switches the call and
23 hands it off to the CLEC. The facilities used by the CLEC to connect its
24 network to the ILEC switch are called "access toll connecting trunks."
25 These access toll connecting trunks may be DS1 or DS3 facilities; they

1 may or may not include multiplexing or other services. Again, these are
2 the facilities that the CLEC uses to transport interexchange traffic from
3 its network to the ILEC switch, and from the ILEC switch to the CLEC's
4 network.

5

6 **Q. WHO BEARS THE COST FOR THESE FACILITIES USED TO**
7 **CONNECT TO AND FROM INTEREXCHANGE CARRIERS?**

8 A. The cost of the facilities used to carry traffic to and from IXCs is borne
9 indirectly by the IXCs themselves, as the local exchange carriers levy
10 access charges to the IXC. On a call routed from Bright House through
11 the Verizon access tandem to AT&T Long Distance, for example,
12 Verizon charges AT&T only for tandem switching, which is the only
13 function that Verizon performs. Bright House charges AT&T for end
14 office switching, and potentially for other functions, as well as the
15 transport from its network to the Verizon tandem. As discussed above,
16 that transport from Bright House's network to the Verizon tandem
17 consists of an access toll connecting trunk. Bright House pays Verizon
18 for that facility, but then it recovers that cost from IXCs through its
19 originating and terminating access charges.

20

21 **Q. SHOULD BRIGHT HOUSE RECEIVE ACCESS TOLL CONNECTING**
22 **TRUNKS FOR FREE?**

23 A. No. Verizon is absolutely entitled to charge for these facilities. I don't
24 know why Bright House would expect Verizon to provide those facilities
25 for free, but there is no legitimate basis for such an expectation.

1 Accordingly, the Commission should reject Bright House's proposed
2 Interconnection Attachment section 9.2.5.

3

4 **ISSUE 37: HOW SHOULD THE TYPES OF TRAFFIC (E.G., LOCAL, ISP,**
5 **ACCESS) THAT ARE EXCHANGED BE DEFINED AND WHAT**
6 **RATES SHOULD APPLY?** (Int. Att. §§ 6.2, 7.1, 7.2, 7.2.1-7.2.8,
7 7.3, 8.2, 8.5; Glo. §§ 2.50, 2.60, 2.63, 2.79, 2.106, 2.123)

8

9 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
10 **RESPECT TO ISSUE NO. 37?**

11 A. Much of the disputed language in the sections covered by this issue
12 appears to be essentially semantic, but there are also some substantive
13 issues encompassed within this issue. For purposes of my testimony, I
14 identify three principal sub-issues, in addition to those semantic
15 disputes. The three sub-issues involve (1) what should define the local
16 calling area for purposes of intercarrier compensation; (2) which party
17 bears financial responsibility for which facilities used in connection with
18 local call termination; and (3) how the use of local interconnection
19 facilities should be treated when they are used to carry interexchange
20 traffic.

21

22 **Q. WHY HAVE THE PARTIES NOT AGREED ON THE DEFINITION OF**
23 **VARIOUS TYPES OF TRAFFIC, AND WHEN THE RATES SHOULD**
24 **APPLY?**

25 A. As discussed above, I believe that much of the disagreement on this

1 account is essentially semantic. Verizon's model interconnection
2 agreement defines and uses terms in a particular way, but when Bright
3 House started its mark-up, it proposed to redefine some of those terms
4 in ways that rendered them inappropriate to use in the manner that they
5 are subsequently used in the agreement, or vice versa. Given some
6 time to go through and reconcile various terms to their usage in various
7 contexts, I believe that these disputes will be resolved. I believe that the
8 parties generally agree as to what traffic should be considered local
9 (with the exception noted below as to local calling areas), Internet
10 service provider ("ISP")-bound, and interexchange (again with that
11 exception), and how it should be treated by the parties.

12

13 **Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING LOCAL**
14 **CALLING AREAS?**

15 A. For intercarrier compensation purposes, interexchange traffic is
16 compensated at access rates, and local traffic is compensated at
17 reciprocal compensation (or the FCC's transitional rate for ISP-bound
18 traffic). The question here is how we should define what is
19 "interexchange" and what is "local." Bright House maintains that the
20 categorization of traffic for intercarrier compensation purposes should
21 depend on the retail local calling area provided by the calling party's
22 carrier. But such a shifting standard is prone to manipulation and is
23 unworkable. The Commission-approved basic local exchange areas, as
24 detailed (and mapped out) in Verizon's local exchange tariffs, should
25 determine what is considered "local," subject to reciprocal compensation

1 (or the ISP rate), or "interexchange," subject to access.

2

3 **Q. WHY SHOULD THE JURISDICTION OF A CALL BE DETERMINED**
4 **ACCORDING TO THE COMMISSION-APPROVED VERIZON**
5 **EXCHANGES?**

6 A. To properly categorize traffic as "local" or "interexchange," it is
7 necessary to have a knowable, uniform standard. Various carriers' retail
8 products may have vastly different local calling areas for their retail end
9 users. A carrier might offer free "local" calling within a particular city,
10 region or state, or even nationwide – Verizon itself offers a variety of
11 calling plans. So the concept of what is "local" and what is "long
12 distance" can be virtually impossible to trace if one looks at a carrier's
13 end user retail offerings. And to implement such a shifting standard on
14 the kind of scale that is necessary when dealing with millions of minutes
15 exchanged among dozens of carriers is literally unworkable. There
16 would be simply no way for the industry to discern what call would be
17 "local" and what would be "interexchange," if it were necessary to look to
18 the dozens of competing local calling areas that would exist. In order to
19 work, there must be a standard that applies to all carriers – the
20 standards and norms of the industry cannot deal with a system that
21 depends on the identity of the calling party in order to determine the
22 jurisdictionalization of a call. Verizon's local calling areas offer just such
23 a uniform and knowable standard. When I look at Verizon's Local
24 Exchange Service Tariff A200, I see detailed "metes and bounds"
25 descriptions of each of Verizon's local calling areas, along with detailed,

1 professionally drawn maps. These local calling areas are well known,
2 they have been approved by the Commission, and they are the proper
3 means by which to jurisdictionalize calls for intercarrier compensation
4 purposes.

5

6 **Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING THE**
7 **FINANCIAL RESPONSIBILITY FOR FACILITIES USED FOR CALL**
8 **TERMINATION?**

9 A. In essence, Bright House wants to avoid paying some of the costs
10 associated with terminating Bright House traffic to Verizon's network.

11

12 **Q. AREN'T CARRIERS REQUIRED TO BEAR THE COST OF**
13 **TERMINATING THEIR OWN LOCAL TRAFFIC?**

14 A. Yes. When carriers exchange traffic, the general rule is "calling party
15 pays": the originating carrier is responsible not only for the cost of
16 originating the call, it is also responsible for the cost of terminating the
17 call. There are various functions that must be performed in order to
18 carry a call all the way to termination, and the originating carrier is
19 financially responsible for those functions.

20

21 **Q. WHAT COSTS HAS BRIGHT HOUSE PROPOSED TO AVOID?**

22 A. To understand this, it's important first to review the various functions that
23 are performed in connection with a call that is originated by one carrier
24 and terminated to another carrier. When a Bright House end user calls
25 a local Verizon end user, a typical call flow would be as follows: from

1 Bright House's switch, the call is transported to the relevant Verizon
2 tandem switch, it is switched at that tandem, then transported to the
3 relevant Verizon end office, and then it is switched and delivered to the
4 Verizon end user. So there is (1) transport from the Bright House switch
5 to the Verizon tandem, (2) tandem switching, (3) transport to the
6 Verizon end office, and (4) end office switching.

7
8 Of those four costs, some can be recovered on a per-minute-of-use
9 basis and some can be recovered on a facilities basis. When an
10 interconnecting carrier chooses to hand off traffic at the end office, it
11 pays only the end office reciprocal compensation rate, which includes
12 only end office switching. But in order to hand off traffic at the end
13 office, the interconnecting carrier must, of course, bear whatever
14 facilities cost is associated with delivering traffic to the end office. If a
15 carrier delivers large volumes of traffic to a particular end office, it often
16 makes sense to pay the fixed cost of facilities directly to that end office,
17 in order to receive the lower per-minute end office rate. Conversely,
18 where traffic volumes do not justify direct end-office trunking, a carrier
19 may reasonably choose to interconnect at the tandem. When an
20 interconnecting carrier chooses to hand off traffic at the tandem, three of
21 those four costs are recovered on a minute-of-use basis in the tandem
22 reciprocal compensation rate: tandem switching, transport between the
23 tandem and the end office, and end office switching. But in any case,
24 whether the hand-off is made at the tandem or at the end office, the
25 interconnecting carrier bears the facilities cost of bringing its traffic to

1 that point.

2

3 Here, Bright House appears to propose that it should avoid the cost of
4 facilities to the tandem or the end office, as the case may be. Instead,
5 Bright House has proposed that Verizon should bear the cost of
6 transporting traffic from Bright House's switch to the relevant Verizon
7 switch.

8

9 **Q. SHOULD BRIGHT HOUSE BE PERMITTED TO AVOID THOSE**
10 **COSTS?**

11 **A.** No. The rule is that each carrier bears the cost of terminating its own
12 traffic. That includes all of the costs. Bright House's proposal to avoid
13 the facilities cost of bringing its traffic to the relevant tandem or end
14 office should be rejected.

15

16 **Q. WHAT IS THE ISSUE BETWEEN THE PARTIES REGARDING THE**
17 **USE OF LOCAL INTERCONNECTION FACILITES FOR**
18 **INTEREXCHANGE TRAFFIC?**

19 **A.** In the course of normal traffic exchange between carriers, some amount
20 of interexchange traffic will end up being exchanged over local
21 interconnection trunks. For interexchange traffic, of course, the
22 terminating carrier is entitled to collect terminating access charges for
23 that traffic. Bright House appears to propose that when interexchange
24 traffic is delivered over local interconnection trunks, that traffic should be
25 exempt from normally applicable access charges.

1 **Q. SHOULD BRIGHT HOUSE BE EXEMPT FROM ACCESS CHARGES**
2 **FOR TRAFFIC DELIVERED OVER LOCAL TRUNKS?**

3 A. No. When interexchange traffic is delivered over local interconnection
4 trunks, the standard practice is to determine the pro-rata part of that
5 facility that is used for the carriage of access traffic, and then to re-rate
6 the facility accordingly. If ten percent of a facility is used to carry access
7 traffic, for example, ten percent of it would become chargeable at the
8 access rate. Bright House claims that it should be exempt from that
9 normal practice, but there is no reason for such unique treatment. It
10 would be unfair to do so; it would deprive Verizon of revenue to which it
11 would otherwise be entitled (if the traffic had been routed normally,
12 instead of over local trunks) and it could lead to distortions and
13 arbitrage, as Bright House (or a similarly situated carrier) might
14 strategically route greater volumes of traffic over local trunks to take
15 advantage of what would effectively be a discount off normal access
16 rates.

17
18 **ISSUE 39: DOES BRIGHT HOUSE REMAIN FINANCIALLY**
19 **RESPONSIBLE FOR TRAFFIC THAT IT TERMINATES TO**
20 **THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO**
21 **TRANSIT THE TRAFFIC? (Int. Att. § 12.5)**

22
23 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE?**

24 A. Issue 39 addresses the question of whether Bright House can change
25 Section 12.5 of the Interconnection Attachment to shift the costs

1 associated with certain Bright House-originated traffic to Verizon, rather
2 than paying the associated third-party charges itself.

3

4 This situation arises when Bright House originates traffic, but either
5 cannot or chooses not to directly interconnect with the carrier to which
6 that traffic is destined, so it routes that traffic through Verizon's tandem
7 and Verizon carries the traffic to the terminating carrier for Bright House.
8 In this scenario, Verizon provides what is known as "Tandem Transit
9 Traffic Service" and both parties agree that Verizon is entitled to bill
10 Bright House for that service at the rates set forth in the Pricing
11 Attachment to the ICA. See Interconnection Attachment § 12.5; DPL at
12 100.

13

14 The carrier receiving the traffic will assess a fee for terminating that
15 traffic (generally either reciprocal compensation or "Switched Exchange
16 Access Service," depending on whether the traffic is local or Exchange
17 Access). Both parties agree that Verizon is not responsible for the third-
18 party fees associated with terminating that traffic. See DPL at 100
19 (Bright House stating that "[w]e agree that Verizon is not liable to 3rd
20 parties for Bright House originated traffic"). Accordingly, when Verizon
21 delivers the traffic to the terminating carrier, it advises the terminating
22 carrier that any charges for that traffic should be assessed on Bright
23 House, as the originating carrier. However, in some instances, the
24 terminating carrier will bill Verizon (or both Verizon and Bright House).
25 In that case, Section 12.5 of the Interconnection Attachment provides

1 that Verizon can assess Bright House for any charges or costs that the
2 terminating carrier imposes or levies on Verizon and that Bright House
3 will take steps to ensure that the carrier properly routes the bills to Bright
4 House on a going-forward basis. Bright House has deleted these
5 provisions from the ICA, signaling that it does not intend to reimburse
6 Verizon for these charges, even though Bright House agrees that
7 Verizon is not liable for them.

8

9 **Q. DOES BRIGHT HOUSE REMAIN FINANCIALLY RESPONSIBLE FOR**
10 **TRAFFIC THAT IT TERMINATES TO THIRD PARTIES WHEN IT**
11 **USES VERIZON'S NETWORK TO TRANSIT THE TRAFFIC?**

12 A. Yes. If Bright House makes the business decision to route traffic to
13 another carrier indirectly through Verizon's tandem, rather than through
14 direct interconnection, it cannot then force Verizon to accept financial
15 responsibility for any resulting billings from that terminating carrier. If
16 the third-party carrier bills Verizon instead of Bright House, Bright House
17 remains responsible for this traffic.

18

19 As noted, Bright House "agree[s] that Verizon is not liable to 3rd parties
20 for Bright House originated traffic." DPL at 100. Yet, it has deleted the
21 language from the ICA that would require Bright House to make Verizon
22 whole for any charges it is levied by third parties for such Bright House-
23 originated traffic. Bright House apparently is concerned that the
24 terminating carrier will assess unreasonable fees that it does not wish to
25 pay. *Id.* ("We cannot agree to pay whatever some 3rd party might

1 impose on Verizon, since we do not know what those charges are or
2 might be.”) However, leaving Verizon on the hook for charges Bright
3 House agrees Verizon should not have to pay is not an appropriate way
4 to address that concern. As between Verizon (which Bright House
5 agrees is not liable for any of these fees) and Bright House (which
6 admittedly is responsible for at least the reasonable and appropriate
7 portion of these fees), Verizon is not the party that should be left holding
8 the bag. Bright House should retain its financial obligations and
9 reimburse Verizon for any charges levied by the third party terminating
10 carrier. If then Bright House feels those charges were unreasonable or
11 otherwise inappropriate, it should look to recover those amounts from
12 the third party. Bright House can and should dispute any improper
13 charges, but Verizon has no liability for any of those charges and the
14 ICA should reflect as much.

15

16 **Q. HAS THE COMMISSION REACHED THIS SAME CONCLUSION?**

17 A. Yes. The Commission previously has held that the originating carrier
18 (which, in this case, would be Bright House) “shall compensate [the
19 ILEC] for providing the transit service,” “is responsible for delivering its
20 traffic ... in such a manner that it can be identified, routed, and billed,”
21 and “is also responsible for compensating the terminating carrier for
22 terminating the traffic to the end user.” *In re: Joint petition by TDS*
23 *Telecom*, Docket No. 050119-TP, Docket No. 05125-TP, Order No.
24 PSC-06-0776-FOF-TP (Sept. 18, 2006). Bright House’s proposed
25 changes to § 12.5 of the Interconnection Attachment should be rejected

1 as inconsistent with these conclusions, as well as Bright House's own
2 recognition that it is responsible for traffic it sends to third parties across
3 Verizon's network.

4

5 **ISSUE 40: TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE**
6 **VERIZON TO FACILITATE NEGOTIATIONS FOR DIRECT**
7 **INTERCONNECTION BETWEEN BRIGHT HOUSE AND**
8 **VERIZON'S AFFILIATES? (Int. Att. § 16)**

9

10 **Q. SHOULD THE ICA REQUIRE VERIZON TO FACILITATE**
11 **NEGOTIATIONS FOR DIRECT INTERCONNECTION BETWEEN**
12 **BRIGHT HOUSE AND VERIZON'S AFFILIATES?**

13 **A.** No. The ICA should not require that Verizon facilitate negotiations for
14 direct interconnection between Bright House and Verizon's affiliates.
15 This ICA and this arbitration are solely for the purpose of determining
16 the terms and conditions on which Bright House will interconnect with
17 Verizon. They are not for the purpose of facilitating Bright House's
18 interconnection with other, separate parties.

19

20 Verizon understands that Bright House may wish to interconnect directly
21 with Verizon's affiliates, rather than having to do so indirectly by
22 requesting that Verizon (or another carrier) transit traffic to Verizon's
23 affiliates. Verizon therefore is willing to provide Bright House with
24 contact information for the appropriate interconnection personnel at its
25 affiliate companies so that Bright House may pursue negotiations with

1 them. However, Bright House's proposal that Verizon somehow should
2 be required to "facilitate" those negotiations – and, if unsuccessful,
3 transit Bright House's traffic for free – is patently unreasonable and
4 unsupported by any law. See DPL at 107.

5
6 Verizon's affiliates are separate companies that enter into their own
7 interconnection arrangements. They are not parties to this agreement.
8 They are not parties to this arbitration. The mere fact that Verizon has
9 entered into an agreement to provide Bright House with interconnection
10 to its network does not mean that it is somehow obligated to ensure that
11 Bright House also is able to obtain interconnection to other carriers'
12 networks on terms Bright House deems suitable. Indeed, Verizon could
13 not fulfill such an obligation, as it does not have the authority to impose
14 any interconnection requirements on these separate affiliates.

15
16 There simply is no basis or reason to impose any requirements on
17 Verizon to facilitate Bright House's negotiations with these separate
18 companies. Bright House's proposed changes to § 16 of the
19 Interconnection Agreement therefore should be rejected.

20

21 **ISSUE 41: SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO**
22 **GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER**
23 **BETWEEN THE PARTIES AND LNP PROVISIONING? IF SO,**
24 **WHAT SHOULD THOSE PROCEDURES BE? (Int. Att. §§ 15.2,**
25 **15.2.4, 15.2.5; Proposed Transfer Procedures Att. (All).)**

1 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
2 **RESPECT TO ISSUE 41?**

3 A. Bright House seeks to make additional unwarranted changes to the ICA
4 language regarding Local Number Portability ("LNP") provisioning.⁴
5 Among other things, Bright House seeks to modify sections 15.2, 15.2.4
6 and 15.2.5 of the Interconnection Attachment to require Verizon to set
7 up certain processes and perform certain services uniquely for Bright
8 House that Verizon does not and cannot currently provide for other
9 interconnecting carriers (at no charge to Bright House). None of these
10 LNP-related changes is necessary or appropriate.

11

12 Bright House separately also proposes to add an all new "Transfer
13 Procedures Attachment" to the ICA that apparently is intended to collect
14 in one place all of the rights and procedures regarding customer
15 transfers that are spelled out in the other parts of the ICA and
16 elsewhere. However, this new "Transfer Procedures Attachment"
17 alternates between, in some cases, being redundant and unnecessary
18 and, in other cases, simply misstating the applicable rights and
19 obligations.

20

21 **Q. SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO GOVERN**
22 **THE PROCESS OF TRANSFERRING A CUSTOMER BETWEEN THE**
23 **PARTIES AND LNP PROVISIONING? IF SO, WHAT SHOULD**

⁴ LNP provisioning refers to the process by which a customer's phone number is transferred or "ported" from his or her old service provider to a new service provider, such that the customer can still make and receive calls using that number with the new service provider.

1 **THOSE PROCEDURES BE?**

2 A. Verizon has proposed its standard provisions spelling out the
3 procedures governing the wholesale relationship between the parties as
4 it relates to the transfer of a customer, including LNP provisioning.
5 Bright House's additional proposed language is unnecessary and
6 inappropriate.

7
8 With respect to the changes Bright House seeks to make to ICA
9 provisions regarding LNP provisioning, Bright House first proposes
10 modifying § 15.2 of the Interconnection Attachment, which simply
11 provides that the parties "will follow the LNP provisioning process
12 recommended by the North American Numbering Council (NANC) and
13 the Industry Numbering Council (INC), and adopted by the FCC."
14 However, Bright House is not content to have Verizon follow these
15 industry guidelines and instead seeks to impose additional requirements
16 on Verizon beyond those established by these standard-setting
17 organizations and adopted by the FCC.

18
19 For example, Bright House proposes new language that would limit the
20 instances in which a particular LNP port could be considered "complex"
21 (as opposed to a "simple" port) – suggesting that "presence of a Verizon
22 DSL or similar service on a line [should] not convert an otherwise simple
23 port into a complex port." DPL at 103. Bright House fails to define what
24 other "similar service[s]" it would sweep in with this language. But, more
25 importantly, it fails to explain why Verizon should be forced to agree to a

1 contractual limitation on what constitutes a simple versus a complex port
2 that is any different than what is spelled out in FCC rules (or NANC and
3 INC guidelines). Verizon will comply with whatever FCC rules are in
4 place; but it should not have to agree to any unique contractual
5 arrangements with Bright House that differ from the standard definitions
6 used by the rest of the industry.

7

8 **Q. DOES BRIGHT HOUSE SEEK TO DEPART FROM INDUSTRY**
9 **NORMS IN OTHER RESPECTS?**

10 A. Yes. Bright House seeks to depart from industry norms in its request
11 that § 15.2 be modified to eliminate any charges for services ancillary to
12 LNP provisioning, such as coordinated ports. See DPL at 103 (Bright
13 House proposing that “[t]here shall be no charges ... for any LNP-
14 related services or functions ... including without limitation coordinated
15 ports or ports involving multiple lines or numbers of a single
16 Customer/End User.”). Bright House proposes a similar change for §
17 15.2.5, insisting that – where a customer of Party A ports 12 or more
18 numbers to Party B – Party A should be required to coordinate that
19 cutover at no charge to Party B (or the customer). *Id.* at 105.⁵ Bright
20 House concedes that this potential situation is “relatively rare.” *Id.* But it
21 claims this language is necessary because, subject to certain federal
22 rules, “LNP costs are not to be assessed on competitors or end users”
23 and, therefore, “no charges should apply for coordinated LNP cutovers.”

⁵ Bright House's proposal is for an all new Section 15.2.5. That section previously contained information regarding the exchange of the Jurisdiction Information Parameter (“JIP”), which the parties have agreed to move to Section 5.4 of the Interconnection Attachment.

1 *Id.*

2

3 Bright House very well might be entitled to free ports under the ICA.
4 Indeed, Verizon generally does not assess any charges for LNP
5 provisioning – regardless of how many numbers are being ported for a
6 single customer or end user.⁶ However, Bright House is seeking to
7 avoid charges not just on LNP ports, but on whatever additional services
8 it seeks to include under the concept of “coordination.”

9

10 As an initial matter, it is unclear to what extent (if any) Bright House
11 would be seeking any such additional ancillary services, such as
12 coordination. But when Verizon receives a request for separate
13 ancillary services such as coordination or expedites, it does – consistent
14 with industry practice – charge for those services. The reason for this is
15 straightforward. Whereas LNP provisioning is largely an automated
16 process that requires little time or effort to conduct, ancillary services
17 such as coordination are a different animal, requiring manual human
18 operations. Indeed, such ancillary services can occupy and necessitate
19 input from multiple different departments and people, which requires an
20 allocation of time, attention and manpower that standard LNP
21 provisioning does not. In that sense, coordination and other ancillary
22 services do not represent LNP costs; they reflect the cost of special
23 handling. And those costs can be significant. So, when a company
24 such as Bright House interrupts the efficient, automated LNP process

⁶ Bright House's proposed language refers to porting of multiple lines. See DPL at 103. However, for LNP provisioning, service providers do not port lines – only telephone numbers.

1 that Verizon has developed over many years (with the input of CLECs)
2 and asks Verizon to expend time and resources on special handling
3 such as coordination, Bright House should be required to pay for that
4 special handling. Even if Bright House is entitled to free LNP ports, it is
5 not entitled to unlimited "coordination" or other ancillary services free of
6 charge. Its corresponding proposed changes to §§ 15.2 and 15.2.5
7 should be rejected.

8
9 Bright House seeks one more addition to § 15.2 of the Interconnection
10 Attachment that it claims is necessary to port reserved numbers.⁷ In
11 particular, Bright House insists that, "[u]pon request, a Party shall
12 provide the other Party with a description, in commercially reasonable
13 detail, of that Party's procedures and policies for reserving numbers for
14 customers so that such reserved numbers may be ported as
15 appropriate." DPL at 103. However, this addition to the ICA is wholly
16 unnecessary. Pursuant to § 15.2.3 of the Interconnection Attachment,
17 the parties already have agreed to port reserved telephone numbers.
18 So there is no need to exchange or examine any underlying policies or
19 procedures regarding reservation of numbers to assure that "such
20 reserved numbers may be ported." Because the parties already have
21 agreed to port such reserved numbers, the additional information sought

⁷ Bright House also proposes to add a sentence to § 15.2 to make clear that "LNP shall be available with respect to all of a Party's Customers/End Users," whether they be "a government, business, or residence customer." DPL at 103. Verizon agrees that LNP should be (and currently is) available to all customers, regardless of their status as a business, residential or government customer. However, given the differences between those different classes of customers, certain different steps may need to be taken with respect to each different class of customer in order to effectuate LNP porting for that customer. For example, LNP provisioning for government customers requires the local service provider to update its profile.

1 by this language is irrelevant. This proposed addition to § 15.2 therefore
2 should be rejected.

3

4 **Q. DOES BRIGHT HOUSE PROPOSE ANY OTHER UNREASONABLE**
5 **CHANGES WITH RESPECT TO ISSUE 41?**

6 A. Yes. Bright House also seeks inappropriate changes to Section 15.2.4
7 of the Interconnection Attachment, which addresses the process for
8 porting a customer's telephone number between the parties. Among
9 other things, § 15.2.4 provides that, when a customer of Party A ports a
10 telephone number to Party B, Party A must utilize the ten-digit trigger
11 feature when available. The ten-digit trigger is a sort of safeguard
12 mechanism to ensure that calls are properly routed to the customer
13 switching to Party B around the time that the switch is scheduled to
14 occur. During that transition period, the trigger forces Party A to check
15 whether the number has been ported yet, so that any calls can be
16 properly processed and routed. Because Party A does not know
17 precisely when Party B will activate porting, the trigger is applied to the
18 customer's number before the due date of the porting activity and, in
19 Verizon's case (consistent with industry standards), stays in place until
20 at least one day after the port is scheduled to have been completed.
21 This ensures continuity of service in the period surrounding the due
22 date. Once the port has occurred, the trigger is no longer necessary, as
23 traffic is then simply routed to Party B.

24

25 However, Bright House seeks to impose an additional set of

1 requirements *after* the due date of the porting activity – proposing that
2 the ten-digit trigger must remain in place for at least 10 days following
3 the due date and that no associated translations tear-downs (functions
4 associated removal of the ten-digit trigger) may take place in Party A's
5 network until after the port is completed. See DPL at 104. Bright House
6 does not explain its rationale for these post-due date changes. Instead,
7 Bright House cryptically asserts that “field experience” would suggest
8 that such requirements are necessary to “assure an efficient porting
9 process.” But it is unclear what, if anything, is inefficient about the
10 current porting process that the parties have been using (and that
11 Verizon has been using in its interconnection arrangements with other
12 carriers pursuant to industry guidelines) for years. But, regardless,
13 these proposed changes are both unnecessary and inappropriate.

14

15 Indeed, as noted above, Verizon *already* retains the trigger until at least
16 11:59 p.m. the day *after* the due date. Both of these practices are
17 consistent with standard industry practice – including the Local Number
18 Portability Administration Working Group (“LNPA-WG”) Guidelines – and
19 allow sufficient time after the due date to accommodate any late ports or
20 otherwise address any concerns that arise. By contrast, Bright House's
21 proposed changes are unheard of in the industry and would require
22 Verizon to create a post-due date and post-port process unique to Bright
23 House that would extend well beyond any reasonable time period that
24 Verizon currently is capable of accommodating.

25

1 For example, in order for Verizon to stop any translations tear-downs for
2 10 days after the port is completed, Verizon no longer would be able to
3 rely upon the due date. Verizon instead would have to continuously
4 monitor the Number Portability Administration Center ("NPAC"), which is
5 an industry-wide database into which carriers send data regarding
6 ported numbers, to determine when the port was complete. Verizon
7 then would have to take steps to ensure that the translations remain in
8 place for at least 10 days thereafter. Verizon's processes and systems
9 currently are not set up to allow this. Bright House's proposal therefore
10 would require internal Verizon process changes and, potentially,
11 reprogramming. This would be burdensome to Verizon, requiring
12 significant time, labor and expense. However, Verizon is under no
13 obligation to modify its own internal systems to suit Bright House's
14 desire for unique arrangements – particularly where Bright House has
15 failed to demonstrate any particular problem with the existing systems or
16 any specific benefit to a new system. Accordingly, these proposed
17 changes to § 15.2.4 of the Interconnection Attachment should be
18 rejected.

19

20 **Q. IS THERE ANY REASON TO INCLUDE BRIGHT HOUSE'S NEW**
21 **TRANSFER PROCEDURES ATTACHMENT?**

22 **A.** No. Bright House's entirely new proposed Transfer Procedures
23 Attachment is just as unwarranted as its other proposals. Bright House
24 suggests that "[e]xperience has shown that the parties' agreement
25 should expressly define what happens when a Customer/End User

1 transfers from one Part[y] to the other.” DPL at 108-111. But the
2 parties’ ICA – supplemented by existing laws and regulations – already
3 expressly defines the relevant procedures and the parties’ respective
4 rights and obligations with respect to customer transfers.

5
6 Section 15 of the Interconnection Agreement, in particular, provides
7 detailed procedures for the transfer of customers in the context of local
8 number portability. Federal rules fill in the gaps regarding other issues –
9 such as retention marketing – that previously have been a source of
10 dispute between the parties.⁸ Indeed, Bright House’s proposed Transfer
11 Procedures Attachment largely appears to be an effort to re-open
12 various prior disputes with Verizon that already have been resolved in
13 one manner or another, with both parties’ rights and duties spelled out in
14 those contexts.⁹ Bright House’s proposed new “Transfer Procedures
15 Attachment” adds little to those existing terms and legal requirements.
16 Accordingly, Bright House’s proposed additions are not only redundant
17 and unnecessary, but – in some instances – simply wrong.

⁸ Bright House’s suggestion that its proposed changes are necessitated by “experience” is an allusion to its prior dispute with Verizon regarding retention marketing practices. Indeed, Bright House’s proposed transfer procedures expressly address retention marketing. See DPL at 108. But the resolution of that prior dispute by the FCC and the U.S. Circuit Court for the D.C. Circuit established what the parties can and cannot do with respect to retention marketing. See *In the Matter of Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd 10704 (2008), *aff’d*, *Verizon Cal., Inc. v. Federal Communications Comm’n*, No. 08-1234 (D.C. Cir., Feb. 10, 2009). In light of this clear guidance, there is no need to further address the issue with additional contract language.

⁹ For example, Bright House seeks in Transfer Procedures Attachment section 2.4.1 to address Verizon’s grounding practices when it wins a customer from Bright House’s cable affiliate and disconnects the customer’s cable wiring. Not only is the cable affiliate not a party to this case, but the Commission ruled just last year that it did not have jurisdiction over the matter. See *In re: Emergency Complaint and Petition Requesting Initiation of Show Cause Proceedings Against Verizon Florida, LLC*, Docket No. 080701-TP, Order No. PSC-09-0342-FOF-TP (May 21, 2009).

1 For all these reasons, Bright House's proposed changes regarding
2 customer transfers and LNP provisioning should be rejected.

3

4 **ISSUE 43: SHOULD THE ICA REQUIRE NEGOTIATION OF**
5 **PROCEDURES TO REMOVE PRESUBSCRIBED**
6 **INTEREXCHANGE CARRIER ("PIC") FREEZES? (AS. Att. §**
7 **12)**

8

9 **Q. SHOULD THE ICA REQUIRE NEGOTIATION OF PROCEDURES TO**
10 **REMOVE PIC FREEZES?**

11 **A.** No – the ICA should not include this requirement because it is
12 unnecessary and potentially inconsistent with Commission rules.

13

14 Bright House suggests that the parties "need to work out a commercially
15 reasonable means for removing PIC freezes" and therefore has
16 proposed a change to § 12 of the Additional Services Attachment to the
17 ICA that would require the parties "to negotiate in good faith to establish
18 a commercially reasonable" set of procedures for doing so. DPL at 64.
19 In other words, Bright House proposes that the parties get together to
20 work out a set of procedures for lifting PIC freezes; it does not advance
21 any proposal for what those procedures should be. However, there is
22 no need for the parties to negotiate a whole new set of procedures. The
23 Commission already has spelled out the method for removal of PIC
24 freezes.

25

1 Just last October, the Commission adopted amendments to Rule 25-
2 4.083 of the Florida Administrative Code that address the procedure for
3 removal of PIC freezes. See *In re: Initiation of rulemaking to amend*
4 *and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to*
5 *telecommunications*, Docket No. 080641-TP, Order No. PSC-09-0659-
6 FOF-TP (Oct. 2, 2009). Among other things, those amendments
7 incorporate the procedures and requirements prescribed by the FCC in
8 Title 47, Code of Federal Regulations, Part 64, Section 64.1190. *Id.* at
9 5. Those FCC rules, entitled “Procedures for lifting preferred carrier
10 freezes,” provide for lifting of freezes through electronic, written or oral
11 authorization and they require local exchange carriers to offer a
12 mechanism that allows a submitting carrier to conduct a three-way
13 conference call with the carrier administering the freeze and the
14 subscriber in order to lift the freeze.

15
16 The combination of the Commission and FCC rules provides a more-
17 than-adequate set of procedures to govern the removal of PIC freezes.
18 Bright House offers nothing to dispute this. And, in the absence of any
19 specific additional procedural proposal from Bright House, there is no
20 need for the parties to further address this issue in the ICA.

21
22 Moreover, even if Bright House had some different procedure in mind,
23 the procedures surrounding PIC changes and PIC freezes generally are
24 (and should be) resolved on an industry-wide basis, either through FCC
25 or Commission rules or through various multilateral carrier working

1 groups. It would be inappropriate to deviate from those generally
2 established procedures in order to implement a process unique to one
3 carrier – namely, Bright House. Accordingly, Bright House’s proposed
4 changes to § 12 of the Additional Services Attachment should be
5 rejected.

6

7 **ISSUE 44: WHAT TERMS APPLY TO LOCKING AND UNLOCKING E911**
8 **RECORDS? (911 Att. § 2.3.5)**

9

10 **Q. WHAT HAS GIVEN RISE TO THE PARTIES’ DISPUTE WITH**
11 **RESPECT TO ISSUE 44?**

12 A. Bright House seeks to modify § 2.3.5 of the 911 Attachment. That
13 section addresses E-911 information stored in the Automatic Location
14 Information (“ALI”) Database, and addresses the locking, unlocking and
15 migration of a customer’s E-911 data when that customer changes
16 carriers or its local exchange carrier discontinues service. In this
17 scenario, Verizon’s interconnection agreements (including the existing
18 agreement with Bright House) require that unlocking and migration of
19 the customer’s E-911 records be done in accordance with National
20 Emergency Number Association (“NENA”) standards. However, Bright
21 House proposes to modify § 2.3.5 such that the parties must also “fully
22 comply with all North American Numbering Council (“NANC”) guidelines
23 regarding the processes for locking and unlocking E-911 records.” DPL
24 at 123. Bright House suggests that “it is important that the parties
25 comply with NANC processes,” but does not explain why it is important,

1 why compliance with the existing NENA standards is insufficient, or
2 even whether or how the NANC guidelines materially differ from the
3 NENA standards.

4

5 **Q. WHAT TERMS SHOULD APPLY TO LOCKING AND UNLOCKING**
6 **E911 RECORDS?**

7 A. The parties should maintain Verizon's standard ICA language providing
8 that E-911 records should be handled in accordance with NENA
9 standards. The NENA standards have been used successfully for years
10 not only under the parties' ICA, but in connection with numerous other
11 interconnection agreements Verizon has with other carriers. Bright
12 House has not identified any problem stemming from the use of the
13 NENA standards or otherwise identified any way in which the NENA
14 standards are inadequate. To the contrary, Bright House proposes
15 language that would have the parties continue to use the NENA
16 standards going forward – confirming both parties' agreement that those
17 standards, in fact, are appropriate.

18

19 Nevertheless, Bright House seeks to have the parties simultaneously
20 also use other guidelines in addition to the NENA standards. But Bright
21 House has not explained why additional guidelines are necessary or
22 what they would accomplish that the NENA standards do not. But,
23 perhaps more importantly, Bright House does not explain what would
24 happen in the event of a conflict between the two different standards.
25 As such, Bright House's proposed changes to § 2.3.5 of the 911

1 Attachment are an unworkable solution to a nonexistent problem. Bright
2 House's changes therefore should be rejected.

3

4 **Q. IN LIGHT OF YOUR TESTIMONY, WHAT SHOULD THE**
5 **COMMISSION DO IN THIS CASE?**

6 A. The Commission should reject Bright House's proposals for the issues I
7 addressed in this testimony. Those proposals are not "fixes" to any
8 problem with the existing interconnection arrangements, under which
9 Bright House (and its cable affiliate) have thrived. Rather, they
10 represent an effort to leverage the interconnection/arbitration process
11 into obtaining uniquely favorable arrangements that Verizon is not
12 required to and does not offer to other carriers and that, in some cases,
13 Verizon literally cannot provide. Bright House's changes should be
14 rejected.

15

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

17 A. Yes.

18

19

20

21

22

23

24

25

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

2 A. My name is William Munsell. My business address is 600 Hidden
3 Ridge, Irving, Texas 75038.

4

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Verizon Services Corporation as a Senior Consultant
7 for Product Management and Product Development, with responsibility
8 for the negotiation and arbitration of interconnection agreements
9 between various Verizon incumbent local exchange carriers ("ILECs")
10 and third party competitive local exchange carriers ("CLECs").

11

12 **Q. ARE YOU THE SAME WILLIAM MUNSELL WHO PREVIOUSLY**
13 **FILED PREPARED DIRECT TESTIMONY IN THIS PROCEEDING ON**
14 **MARCH 26, 2010?**

15 A. Yes, I am.

16

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

18 A. The purpose of my Rebuttal Testimony is to respond on behalf of
19 Verizon Florida LLC ("Verizon") to certain aspects of the prepared Direct
20 Testimony that Timothy J Gates and Marva B. Johnson submitted on
21 behalf of Bright House Networks Information Services (Florida), LLC
22 ("Bright House") in this proceeding. In particular, I will address the
23 Gates and Johnson Direct Testimony ("Gates DT" and "Johnson DT,"
24 respectively) regarding Issue Nos. 7, 13, 22(a)-(b), 36(a)-(b), 37, 39, and

1 41.¹ Since I filed direct testimony, the parties have resolved, at least in
2 principle, Issues 5, 11, 40, 43, and 44, so that no rebuttal testimony on
3 those issues is necessary.

4

5 **Q. IN YOUR DIRECT TESTIMONY, YOU OPPOSED BRIGHT HOUSE'S**
6 **POSITIONS WITH RESPECT TO EACH OF THESE ISSUES. IS**
7 **THERE ANYTHING IN MR. GATES' OR MS. JOHNSON'S DIRECT**
8 **TESTIMONY THAT HAS CAUSED YOU TO RECONSIDER THAT**
9 **OPPOSITION?**

10 **A.** No. For the reasons set forth in my Direct Testimony ("Munsell DT") and
11 below, the Commission should reject Bright House's positions and
12 proposed contract language for each of these issues.

13

14 **ISSUE 7: SHOULD VERIZON BE ALLOWED TO CEASE PERFORMING**
15 **DUTIES PROVIDED FOR IN THIS AGREEMENT THAT ARE**
16 **NOT REQUIRED BY APPLICABLE LAW? (General Terms &**
17 **Conditions ("GTC") § 50.)**

18

19 **Q. IS THERE ANYTHING IN THE DIRECT TESTIMONY OF BRIGHT**
20 **HOUSE'S WITNESSES THAT HAS CHANGED THE NATURE OF THE**
21 **PARTIES' DISPUTE WITH RESPECT TO ISSUE 7?**

¹ Both my direct and rebuttal testimony (and the direct and rebuttal testimony of other Verizon witnesses in this case) assumes that Bright House is entitled to section 251(c) interconnection. However, as Verizon noted in its Response to Bright House's Petition for Arbitration of Interconnection Agreement ("Response"), Verizon preserves (and does not waive) any claims that it has no section 251(c) obligations to Bright House because Bright House is not acting as a telecommunications carrier providing telephone exchange service or exchange access, but Verizon is not asking the Commission to decide that issue. See Response at 5 n. 2.

1 A. No. As the testimony of Bright House's witnesses confirms, the dispute
2 underlying Issue 7 concerns Verizon's proposed interconnection
3 agreement ("ICA") language for § 50 of the General Terms and
4 Conditions. See Gates DT at 27-28; Johnson DT at 14. That language
5 allows Verizon to cease providing a service or paying intercarrier
6 compensation for traffic on 30 days prior written notice when Verizon no
7 longer has the legal obligation to do these things.

8

9 Q. **WHY IS SUCH A PROVISION NECESSARY?**

10 A. Because Verizon currently is required by law to provide services and
11 make payments that it otherwise would not on a voluntary, contractual
12 basis. When those requirements are removed, by either a change in
13 law or a change in factual circumstances that would render a legal
14 requirement no longer applicable, Verizon should not have to continue
15 providing those services or making those payments.

16

17 To illustrate the point, it may be useful to take a step back and consider
18 the interconnection scheme as a theoretical matter. In the broadest
19 sense, the Act **requires** Verizon to provide interconnection with CLECs;
20 Verizon does not have a choice. So, when Verizon enters into a
21 contractual interconnection agreement, it is attempting to fix the terms of
22 the interconnection it must provide. But, if Verizon were not required to
23 provide interconnection, it might not enter into an interconnection
24 agreement with a given carrier, or it might do so on very different terms.
25 So, if that obligation theoretically were removed, Verizon would have to

1 be afforded the opportunity to withdraw from the prior interconnection
2 agreements it previously had no choice but to enter. It would be
3 patently unfair to hold Verizon to the terms of the prior interconnection
4 agreements once the interconnection obligations were removed.
5 Verizon would not have entered into those agreements with those terms
6 but for the previously existing (and now removed) legal requirements
7 and should be entitled to the benefit of any change in applicable law.

8
9 Of course, Verizon does not expect that its broader obligations to
10 provide interconnection will be removed any time in the immediate
11 future. But the same notion very well could apply to certain specific
12 services that Verizon currently provides in connection with its
13 interconnection agreements. Most provisions baked in to the
14 interconnection agreements Verizon has with Bright House and other
15 carriers are there solely because they are required by existing law or the
16 application of that law to existing fact. Verizon has included them in
17 their contracts because it has no choice. For example, Verizon currently
18 is required by law to make DS1 transport available in certain situations
19 as an unbundled network element. Verizon memorializes these and
20 other obligations in its interconnection agreements, but the only reason
21 it does so is because it is required by law. Accordingly, if those
22 requirements are removed, Verizon no longer should be required to fulfill
23 contract terms that would never have been there but for those
24 requirements.

25

1 To capture this notion, Verizon proposed language for § 50 that, upon
2 advance written notice to Bright House, would allow Verizon to cease
3 providing a service or stop paying intercarrier compensation under the
4 ICA if and when Verizon no longer has the legal obligation to do these
5 things. Verizon's proposed language would make clear that, where a
6 change in law or facts negates Verizon's obligation to provide a service
7 or facility, the ICA is not intended to override constraints on Verizon's
8 legal obligation to provide such services or facilities.

9

10 **Q. DO BRIGHT HOUSE'S WITNESSES OBJECT TO THIS LANGUAGE?**

11 A. Yes – although their objections appear to be based on a
12 misunderstanding of Verizon's proposed language and what it is
13 designed to accomplish.

14

15 Mr. Gates asserts that "Verizon's proposed Section 50.1 establishes a
16 general rule that Verizon may simply stop performing its obligations
17 under the contract, any time that Verizon unilaterally decides that the
18 particular obligation is not 'required by Applicable Law.'" Gates DT at
19 27. Ms. Johnson makes a similar claim. See Johnson DT at 14. But
20 that is *not* the purpose or effect of this language. Verizon is not trying to
21 walk away from any obligation. Just the opposite, Verizon only seeks
22 the ability to walk away from things it is *not obligated* to do, if and when
23 it no longer has those obligations. Verizon will fulfill all of its current and
24 future obligations for as long as it is so obligated by Applicable Law (or
25 factual circumstances). Its proposed language says nothing to ^{the}contrary.

1 Moreover, despite the contrary suggestion by Bright House's witnesses,
2 the determination of when those obligations cease to exist is not left
3 solely to Verizon's "unilateral view." Johnson DT at 14. Verizon's
4 language would require at least 30 days' advance written notice to
5 Bright House before Verizon ceases providing any service or payment.
6 The very point of that advance notice is to ensure that the parties are
7 agreed that whatever service or payment at issue is not longer required
8 by Applicable Law (or the application of then-current facts to that law). If
9 there is no bilateral agreement during that window, the parties can take
10 whatever steps are necessary to protect their position – including
11 seeking any necessary relief from the Commission, just as Mr. Gates
12 acknowledges they would do under the parties' existing change in law
13 provision. See Gates DT at 30. But Verizon cannot simply decide the
14 matter on its own without affording Bright House the opportunity to
15 assess for itself whether any obligations remain under the then-
16 Applicable Law.

17
18 Bright House's concerns about how this language might affect the
19 implementation of those obligations likewise is misplaced. Mr. Gates
20 notes that, while Applicable Law may impose certain obligations on
21 Verizon – "Applicable Law" does not deal with every detail of the actual
22 implementation of [those obligations]." Gates DT at 28. Accordingly, he
23 claims to be concerned that Verizon might take the position that "many
24 of the specific contractual obligations that matter to the actual
25 implementation of the parties' interconnection relationship are not

1 'required by Applicable Law'" and, therefore, not fulfill them. *Id.* Ms.
2 Johnson expresses a similar concern. See Johnson DT at 15. But,
3 again, that is not the point or scope of Verizon's language.

4
5 Verizon wants to avoid being stuck with the underlying obligation when it
6 no longer is required by law. The language that Verizon has proposed
7 does not implicate the various contractual provisions implementing
8 those obligations. Verizon's language permits it to terminate its offering
9 of a "Service," or its "payment . . . of compensation" for traffic. Mr.
10 Gates claims that Verizon's proposal would enable it to avoid the
11 "notice" requirements of the agreement, because those are not literally
12 required by applicable law. See Gates DT at 28. But Verizon's proposal
13 would not affect those notice requirements. The contractual notice
14 provisions are neither a "service" nor a "payment . . . of compensation"
15 and, therefore would not be implicated by the terms of Verizon's
16 proposed § 50. Nor is there any merit to Mr. Gates' notion that the
17 section could be used by Verizon unilaterally to set aside Bright House's
18 choice of the FCC's "mirroring rule" intercarrier compensation rate of
19 \$0.0007 for all local and ISP-bound traffic. *Id.* at 31. Among other
20 things, that choice is required by applicable law and Verizon's language
21 does nothing to alter its obligations to comply with that requirement.

22
23 Despite Mr. Gates' suggestions to the contrary, Verizon does not intend,
24 nor would it be permitted under its proposed language, to set aside the
25 administrative details of the contract – notice provisions or the like – that

1 do not constitute a "Service" or a "payment . . . of compensation." And
2 likewise Verizon could not use the proposed language to evade
3 obligations – such as the "mirroring rule" compensation structure – that
4 are in fact required by law. The fact is that Verizon will agree in this
5 contract to all sorts of obligations (such as unbundling its network to its
6 competitors) to which it would never agree except that it is required to
7 do so under applicable law. Verizon has no objection to doing so, when
8 and to the extent that it is indeed required to do so. But if Verizon is no
9 longer required under applicable law to make a payment or provide a
10 service, it must be permitted to withdraw that payment or service without
11 delay. Verizon cannot be required to make such payments or provide
12 such services if and when they are not required under applicable law.²

13
14 **Q. MR. GATES INDICATES THAT THE ICA ALREADY CONTAINS A**
15 **"CHANGE IN LAW" PROVISION THAT WOULD ADDRESS THIS**
16 **ISSUE. WHY IS THAT EXISTING PROVISION NOT SUFFICIENT?**

17 **A.** Mr. Gates correctly points out that the parties already have agreed upon
18 a "Change in Law" provision in § 4.6 of the General Terms & Conditions.
19 See Gates DT at 29. That provision provides, in pertinent part, that "[i]n
20 the event of any Change in Applicable Law, the Parties shall promptly

² In addition, as I indicated in my Direct Testimony, I understand that Bright House believes that Verizon may have voluntarily agreed to undertake some obligations that it is not required to perform by Applicable Law and that Bright House therefore is concerned that Verizon's proposed language might deprive Bright House of the benefit of those arms-length bargains. See Munsell DT at 9. If Bright House believes that it is entitled to any particular service or payment notwithstanding a change in law or facts that renders Verizon no longer under an obligation to provide that service or payment, Verizon would entertain a request to insulate such a service or payment from the generally applicable language. *Id.*

1 renegotiate in good faith and amend in writing this Agreement in order to
2 make such mutually acceptable revisions to this Agreement as may be
3 required in order to conform the Agreement to Applicable Law." As Mr.
4 Gates notes, "[i]f the parties can't agree on how to modify the contract in
5 light of a change in law, they agree to bring the matter to the
6 Commission for resolution." *Id.* at 30. That "Change in Law" provision
7 works well in most circumstances in which some further action by the
8 parties or some further revision to the agreement is required. But it is ill-
9 suited for the situation contemplated by Verizon's proposed changes for
10 § 50.

11
12 Verizon's language would address situations where Verizon's duty to
13 provide service is eliminated because of a change in factual
14 circumstances or a change in law. In such a situation – where all that
15 must be done is to stop providing something, or stop making some
16 payment – it is not necessary to go through the process of negotiating
17 terms and conditions to accommodate the change. All that must be
18 done is to stop providing, or stop paying. Unlike most changes in law,
19 which might require the negotiation of implementing terms and
20 conditions, there is essentially nothing more that needs to be negotiated
21 when one is simply withdrawing a service or payment. The same is true
22 when the duty to provide a service is eliminated because of a change in
23 factual circumstances.

1 Q. HAS THE COMMISSION PREVIOUSLY REJECTED THE NOTION
2 THAT ICA TERMS MUST BE RENEGOTIATED BEFORE AN ILEC
3 CAN STOP PERFORMING A DUTY NO LONGER REQUIRED BY
4 LAW?

5 A. Yes. After the FCC eliminated the ILECs' obligation to provide
6 unbundled local switching in its *Triennial Review Remand Order*, CLECs
7 argued that they were entitled to keep ordering such switching unless
8 and until the ILECs negotiated new ICA language to reflect the FCC's
9 elimination of the obligation. The Commission rejected these
10 arguments, finding that the elimination of the ILECs' obligation to
11 provide unbundled local switching was self-effectuating, without the
12 need for negotiation of new contract language to prohibit the CLECs
13 from placing new orders for such switching.³ This ruling is consistent
14 with Verizon's position that, when Verizon is no longer legally required to
15 perform a duty under the ICA, there is nothing to negotiate, and Verizon
16 should be permitted to cease performing the duty without amending the
17 contract.

18

19 Q. WHAT SHOULD THE COMMISSION DO TO RESOLVE ISSUE 7?

20 A. The Commission should adopt Verizon's proposed language for General
21 Terms & Conditions § 50.

22

23

³ *Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes in Law, by BellSouth Telecomm., Inc., etc., Order Denying Emergency Petitions, Order No. PSC-05-0492-FOF-TP, at 6-7 (May 25, 2005).*

1 **ISSUE 13: WHAT TIME LIMITS SHOULD APPLY TO THE PARTIES'**
2 **RIGHT TO BILL FOR SERVICES AND DISPUTE CHARGED**
3 **FOR BILLED SERVICES? (GTC § 9.5)**
4

5 **Q. DOES THE TESTIMONY OF BRIGHT HOUSE'S WITNESSES**
6 **CONFIRM THAT IT SOMETIMES MAY BE DIFFICULT FOR THE**
7 **PARTIES TO PROMPTLY SUBMIT INVOICES OR DISPUTE**
8 **CHARGES TO ONE ANOTHER?**

9 **A.** Yes. As I explained in my Direct Testimony, Verizon always strives (and
10 has every incentive) to promptly submit bills for services rendered and to
11 dispute any charges that it previously paid but should not have. But the
12 nature, number and complexity of telecommunications transactions
13 sometimes makes such rapid billing practices impossible. Bright
14 House's witnesses readily agree.

15

16 As Ms. Johnson explains:

17 Bright House and Verizon exchange millions of
18 minutes of traffic each month, and process thousands
19 of orders relating to customers changing from one
20 carrier to another. They jointly link their networks with
21 hundreds if not thousands of individual "trunks" that
22 have to be provided on a coordinated basis, both
23 technically and from an operational perspective. This
24 situation results in a vast number of separate
25 "transactions" to which some charges might – or

1 might not – apply. ... [T]his complicated set of
2 transactions means that some amount of errors in
3 billing, or failures to bill, or disputes about billing rates,
4 is inevitable. Some reasonable allowance needs to
5 be made to deal with those possibilities.

6 Johnson DT at 23.

7
8 Mr. Gates concurs, readily conceding that “[c]ompanies do sometimes
9 make legitimate mistakes and simply fail to bill for, or to protest bills for,
10 services rendered” (Gates DT at 50) – a problem only exacerbated here
11 by the fact that “Bright House and Verizon exchange massive amounts
12 of traffic every month – in excess of 25 million minutes of use.” *Id.* at 49.

13
14 The parties’ ICA therefore always has allowed either side a reasonable
15 amount of time to correct prior billing errors, bill for charges that should
16 have been billed earlier, and dispute previously paid bills.

17
18 **Q. GIVEN THIS AGREEMENT BY BRIGHT HOUSE’S WITNESSES, WHY**
19 **IS THERE A DISPUTE REGARDING WHETHER THE PARTIES CAN**
20 **SUBMIT BILLS OR DISPUTE PRIOR CHARGES AFTER THE FACT?**

21 **A.**Because, even though it acknowledges that backbilling and post-
22 payment billing disputes are “inevitable” in this industry, Bright House
23 nevertheless seeks to place an arbitrary limit on the time period in which
24 such bills or disputes may be presented.

25

1 Bright House's witnesses insist that, without "some limit on how far back
2 a party can bill for services rendered, or dispute bills already paid,
3 neither party can have any real certainty regarding where it stands,
4 financially." Gates DT at 49. Therefore, according to these witnesses,
5 "there has to be some point at which these transactions are deemed
6 final." Johnson DT at 23. But both parties track their own orders, such
7 that they already should have a good idea of whether the other party
8 has not fully billed (or otherwise misbilled) them for services received.
9 There is not nearly as much uncertainty in the process as the Bright
10 House testimony would suggest. Moreover, despite the rhetoric of
11 Bright House's witnesses, the existing ICA language does not hold
12 billing and billing disputes open indefinitely. Under the ICA language the
13 parties have been operating under for years (that Bright House now
14 seeks to modify), there already is "some limit" and "some point" at which
15 "these transactions are deemed final." Specifically, the applicable
16 Florida statute of limitations provides a definitive end point for any
17 billings or billing disputes.

18
19 Bright House claims this is not enough and, accordingly, "propose[s] a
20 limit of one year." Johnson DT at 23. But Bright House does not identify
21 any prior problems between the parties that have been caused by the
22 use of a statutory limitations period of longer than one year. And Bright
23 House otherwise fails to explain why a one-year limit would be any more
24 reasonable or appropriate than the statutory limit. Instead, Bright House
25 merely asserts its conclusion – without any further analysis at all – that

1 "[a] year is more than sufficient time" (Gates DT at 49) and "Bright
2 House's proposed one-year limit on back-billing and bill protests strikes
3 a fair and reasonable balance on this issue." *Id.* at 50. But that is not a
4 sufficient justification to impose an arbitrary one-year limit. And, without
5 some compelling justification, Verizon should not have to contractually
6 waive its right to (1) payments that it otherwise would be entitled to
7 receive under Florida law or (2) challenge illegitimate charges assessed
8 by Bright House.

9

10 **Q. DO BRIGHT HOUSE'S WITNESSES EXPLAIN HOW THE**
11 **PROPOSED ONE-YEAR LIMIT CAN BE SQUARED WITH THE**
12 **COMMISSION'S PRIOR RULING RECOGNIZING THE STATUTE OF**
13 **LIMITATIONS AS THE APPROPRIATE TIME LIMIT?**

14 **A.** No. As I stated in my Direct Testimony, the Commission already has
15 addressed this issue in the context of an interconnection arbitration and
16 held that "placing a [contractual] time limit on back-billing can conflict
17 with the [applicable] statute of limitations in Florida." *See Petition for*
18 *Arbitration of Open Issues*, Order No. PSC-03-1139-FOF-TP, Docket
19 No. 020960-TP at 14 (Oct. 13, 2003) ("Verizon/Covad Order").
20 Accordingly, the Commission rejected any attempt to impose a shorter
21 backbilling time limitation in the interconnection agreement before it and
22 ordered that the applicable statute of limitations would remain the
23 standard. *Id.* at 14-16.

24

25 Bright House's witnesses do not cite or even mention this Commission

1 order, much less attempt to square it with Bright House's proposed
2 contractual limitations period. But, consistent with the Commission's
3 prior decision on this issue, that proposed one-year limit should be
4 rejected. As the Commission held in the Verizon/Covad Order (at 16),
5 "the current state of the law should be sufficient." Indeed, absent any
6 voluntary contractual agreement, it is unclear that the Commission even
7 has the authority to impose a limitation that conflicts with the existing
8 state law embodied in the statute of limitations. Accordingly, Bright
9 House's proposed changes to § 9.5 of the General Terms and
10 Conditions should be rejected.

11
12 **ISSUE 22(a): UNDER WHAT CIRCUMSTANCES, IF ANY, MAY BRIGHT**
13 **HOUSE USE VERIZON'S OPERATIONS SUPPORT SYSTEMS**
14 **("OSS") FOR PURPOSES OTHER THAN THE PROVISION OF**
15 **TELECOMMUNICATIONS SERVICE TO ITS CUSTOMERS?**
16 **(AS Att. § 8.4.2.)**

17
18 **Q. AFTER REVIEWING THE TESTIMONY OF BRIGHT HOUSE'S**
19 **WITNESSES, DO YOU BELIEVE THE PARTIES STILL HAVE A**
20 **DISPUTE WITH RESPECT TO ISSUE 22(a)?**

21 **A.** No. Issue 22(a) arose because Bright House proposed to delete § 8.4.2
22 of the Additional Services Attachment, which provides that "Verizon
23 OSS Facilities may be accessed and used by [Bright House] only to
24 provide Telecommunications Services to [Bright House] Customers."
25 Because Bright House is a "middle man," whose only customer is its

1 cable affiliate ("Bright House Cable"), I understood Bright House to be
2 concerned that this language might preclude Bright House from using
3 Verizon's OSS to place orders for voice service for retail customers of
4 Bright House Cable. See Munsell DT at 17-18. Bright House's
5 witnesses have now confirmed that, indeed, is Bright House's concern.
6 See Gates DT at 55-56; Johnson DT at 25. However, as I indicated in
7 my testimony, Verizon is willing to accommodate that concern and allow
8 Bright House to continue to use OSS to place orders for voice services
9 for customers of Bright House Cable; just as Bright House always has
10 done under the parties' prior ICA. See Munsell DT at 17-18.

11
12 Verizon communicated as much to Bright House in negotiations, which
13 has led Bright House's witnesses to now acknowledge that "it appears"
14 the parties have reached agreement on this issue. Gates DT at 56.
15 Indeed, Mr. Gates testifies that "there is almost certainly no substantive
16 dispute here, and I would expect the parties to work out mutually
17 acceptable language very shortly." *Id.*

18
19 To that end, Verizon generally has proposed to Bright House that Bright
20 House would be permitted to use the facilities and services provided
21 under the interconnection agreement to service the VoIP customers of
22 Bright House's cable affiliate, so long as Bright House remains wholly
23 obligated for all such services and arrangements. The lawyers may
24 need to modify a few different provisions to fully document this proposal,
25 but this proposal satisfies Bright House's stated concern and should

1 resolve this issue.

2

3 **Q. WHAT IF THE PARTIES ARE UNABLE TO AGREE ON THIS**
4 **LANGUAGE AND RESOLVE ISSUE 22(a)?**

5 A. Then the Commission should reject Bright House's position. As I
6 explained in my Direct Testimony, the parties cannot simply eliminate §
7 8.4.2 (as Bright House proposed) because that would suggest that
8 Bright House could use OSS to support any services at all, regardless of
9 whether they have anything to do with the purposes for which Verizon
10 must make interconnection available under federal law. See Munsell DT
11 at 18. Without any contractual restrictions on Bright House's use of
12 Verizon's OSS, Bright House (and any company that subsequently
13 adopts Bright House's interconnection agreement) arguably could use
14 OSS to support any kind of business, selling any kind of good or service.
15 *Id.* That is not something the interconnection mechanism is designed to
16 facilitate. So, while Verizon is willing to address Bright House's concern
17 and continue to allow Bright House to use OSS to place orders for
18 customers of Bright House Cable, Verizon cannot agree to entirely
19 eliminate § 8.4.2 and remove all restrictions on Bright House's use of
20 Verizon's OSS system.

21

22 **ISSUE 22(b): WHAT CONSTRAINTS, IF ANY, SHOULD THE ICA PLACE**
23 **ON VERIZON'S ABILITY TO MODIFY ITS OSS? (AS Att. §§**
24 **8.2.1, 8.2.3, 8.8.2, 8.11.)**

25

1 Q. DOES THE DIRECT TESTIMONY OF BRIGHT HOUSE'S WITNESSES
2 PROVIDE ANY JUSTIFICATION FOR THE CONSTRAINTS BRIGHT
3 HOUSE SEEKS TO IMPOSE ON VERIZON'S ABILITY TO MODIFY
4 ITS OSS SYSTEM?

5 A. No. Their testimony only confirms that Bright House's proposed
6 changes regarding Verizon's OSS should be rejected.

7

8 As I detailed in my Direct Testimony, OSS is an electronic system that
9 Verizon developed over many years at great expense to, among other
10 things, electronically receive and track orders for services provided
11 under its interconnection agreements with numerous carriers (not just
12 Bright House). See Munsell DT at 18-19. In their direct testimony,
13 Bright House's witnesses:

- 14
- 15 • acknowledge that OSS is Verizon's system, which Verizon
developed and owns (Gates DT at 61-62);
 - 16 • "recognize that Verizon has the right, in general, to upgrade and
17 modify its own systems, including its OSS" (Johnson DT at 27);
 - 18 • "acknowledg[e] that Verizon may modify the details of how its
19 OSS operates" (Gates DT at 62);
 - 20 • "acknowledg[e] that Verizon may modify its Operations and
21 Support Systems without getting advance approval from Bright
22 House for any changes" (Gates DT at 63); and
 - 23 • "acknowledg[e] that Verizon may impose limitations on the
24 volume of orders that can be submitted via its electronic OSS"

1 (Gates DT at 63).⁴

2

3 Yet, despite these admissions, Bright House nevertheless insists that *it*
4 should be allowed to dictate significant aspects of the manner in which
5 Verizon can upgrade, modify and operate OSS, including many of the
6 very details that Mr. Gates and Ms. Johnson concede are within
7 Verizon's discretion. Giving Bright House this level of individual control
8 over Verizon's systems is entirely unnecessary for purposes of providing
9 interconnection. There simply is no basis for this position.

10

11 **Q. BROADLY SPEAKING, HAS BRIGHT HOUSE INDICATED WHY IT**
12 **BELIEVES IT SHOULD BE ABLE TO DICTATE THE MANNER IN**
13 **WHICH VERIZON OPERATES AND MODIFIES ITS OWN OSS?**

14 **A.** To an extent, yes. When asked to describe Verizon's OSS, Mr. Gates
15 testified that OSS "is a computerized system used to handle a variety of
16 administrative functions involved in managing the interconnection
17 relationship *between Bright House and Verizon.*" Gates DT at 60
18 (emphasis added). If, as Mr. Gates' statement suggests, Verizon only
19 used OSS for its interconnection with Bright House, it would at least be
20 easier to understand why Bright House would claim such significant
21 rights to dictate the manner in which that system is used and modified.
22 But what Mr. Gates fails to mention is that OSS is used for all of the
23 scores of *other carriers* with which Verizon interconnects. Verizon
24 therefore designed that system to accommodate as many different

⁴ See also Johnson DT at 27 (conceding that "there is some upper limit on the number of transactions that Verizon's OSS can process").

1 carriers as possible. In these circumstances, allowing one party, like
2 Bright House, to dictate changes to OSS on an individualized basis
3 could seriously affect the system's ability to handle other carriers.
4

5 Mr. Gates also suggests that Bright House should be given veto-like
6 power over changes that Verizon wishes to make to its OSS because
7 the details of Verizon's OSS are material terms in the ICA and "Verizon
8 [should] not be permitted to vary any of the material terms of the parties'
9 contract without negotiating those changes with Bright House first."
10 Gates DT at 59. Of course, this is inconsistent with the notion – found
11 repeatedly throughout Ms. Johnson's and Mr. Gates' own testimony –
12 that the ability to modify and administer the details of this system rests
13 with the party that owns it (*i.e.*, Verizon). But it also strains credulity to
14 suggest that the details of Verizon's OSS are somehow so "material" to
15 the parties' interconnection agreement that they could not be changed
16 without Bright House's input and consent. The point of the
17 interconnection agreement is to allow Bright House to interconnect with
18 Verizon's network. That interconnection will occur regardless of what
19 OSS details Verizon might modify; indeed, it would occur even if there
20 were no OSS at all. But these details are not as significant to Bright
21 House's operations as Mr. Gates suggests. Just because Bright House
22 desires to get into the details and tailor Verizon's systems to its own
23 unique tastes does not mean that Bright House has a right to do so.
24
25

1 Q. WHAT SPECIFIC CHANGES HAS BRIGHT HOUSE PROPOSED TO
2 MAKE TO THE AGREEMENT REGARDING VERIZON'S OSS AND
3 WHAT CONCERNS (IF ANY) DO YOU HAVE WITH EACH?

4 A. Bright House proposes to change three contract provisions regarding
5 Verizon's OSS.

6
7 First, Bright House would change § 8.2.1 of the Additional Services
8 Attachment to require Verizon to provide Bright House with "electronic
9 OSS ordering for any service provided under the interconnection
10 agreement." Gates DT at 61. Mr. Gates suggests that, "given the
11 volume of transactions between Bright House and Verizon regarding
12 customers shifting from one to the other, the only way to ensure that the
13 transactions occur smoothly is to handle them electronically," rather than
14 through "manual processes" that can be more labor-intensive, time-
15 consuming and error-prone. *Id.*⁵ Mr. Gates is correct that, in many
16 cases, electronic ordering is preferable to a manual process. For that
17 reason, Verizon already has implemented electronic ordering
18 capabilities for most services available under the interconnection
19 agreement. But, in some instances, electronic ordering capability may
20 not yet be available for a particular service or might not otherwise be
21 appropriate due to operational or other concerns.

22
23 To the extent that OSS electronic ordering may not be available for a

⁵ See also Johnson DT at 27 (asserting that "any transactions ... under the agreement be handled via [Verizon's] automated OSS" because "[t]he scale and scope of Bright House's interconnection relationship with Verizon makes manual ordering and processing simply untenable as a practical matter").

1 particular service, Verizon cannot be made to develop it solely for Bright
2 House's purposes, particularly without regard to the cost to Verizon or
3 any consideration of whether it is efficient to do so for a particular
4 service. An ILEC cannot be required to upgrade or otherwise modify its
5 own internal ordering systems to suit the desires of one particular
6 interconnector for access to a superior network, rather than the ILEC's
7 existing network. As Verizon pointed out in its Response to Bright
8 House's Petition for Arbitration and will explain further in its legal briefs,
9 Bright House takes Verizon's network and systems "as is," not as Bright
10 House would like them to be. Accordingly, there is no basis for Bright
11 House's demand that Verizon furnish it with electronic ordering for all
12 services at all times.

13
14 Second, Bright House would impose additional limitations on when
15 Verizon could make changes to its OSS under Additional Services
16 Attachment § 8.2.3. Bright House concedes that "Verizon may modify
17 its [OSS] without getting advance approval from Bright House" (Gates
18 DT at 63), but nevertheless insists that Verizon must provide Bright
19 House with "commercially reasonable" advance notice of any changes
20 so as "to allow Bright House to adjust to them." Johnson DT at 27. See
21 *also* Gates DT at 61, 62-63. Bright House does not explain how it would
22 "adjust" to such changes, but emphasizes that even minor changes
23 should require three months' advance notice and that more significant
24 changes would have to be delayed for "a full year" after notice is
25 provided while Bright House "adjusts." Gates DT at 62-63.

1 Of course, as I explained in my Direct Testimony, Verizon *already*
2 *provides notice* of OSS changes pursuant to applicable law and
3 Verizon's Change Management Guidelines. See Munsell DT at 19, 20-
4 21; Additional Services Attachment § 8.2.3. Those Guidelines not only
5 reflect applicable legal requirements, but industry standards. After all,
6 Verizon's change management process is not only used by the parties
7 to this agreement, but by all interconnecting carriers that use Verizon's
8 OSS. There is no need to impose additional notice requirements on top
9 of these existing Guidelines – particularly when Bright House has not
10 identified any problems arising under the previous notice regime.
11 Indeed, while Bright House suggests that additional “commercially
12 reasonable” notice should be required, it has failed to explain why the
13 very same change management process used for all other carriers is in
14 any way “commercially unreasonable.” Accordingly, the Commission
15 should reject this additional constraint on Verizon's ability to modify its
16 own OSS. The additional delays proposed by Bright House are
17 unnecessary and, if anything, might interfere with the efficient operation
18 of Verizon's OSS and put off needed modifications that would benefit
19 not only Bright House, but other carriers.⁶

20

⁶ Bright House also has proposed language “to make clear that Verizon's right to make such ‘systems’ changes – technical matters relating to the form and format of submissions to Verizon – cannot and does not include the right to unilaterally create chargeable events and chargeable services out of order processing or other activities that are not subject to charges today.” Gates DT at 63. But there is no need for such language. Verizon's ability (or inability) to charge for services, and the rates that it may charge, are treated elsewhere in the agreement. These OSS provisions could not reasonably be read to trump those other provisions or somehow permit charges that would not be otherwise permissible.

1 Third and finally, Bright House proposes to modify Additional Services
2 Attachment § 8.8.2, which heretofore has provided simply that "Bright
3 House shall reasonably cooperate with Verizon in submitting orders for
4 Verizon Services and otherwise using the Verizon OSS Services, in
5 order to avoid exceeding the capacity or capabilities of such Verizon
6 OSS Services." Although Bright House's witnesses concede that "there
7 is some upper limit on the number of transactions that Verizon's OSS
8 can process" (Johnson DT at 27), Bright House nevertheless proposes
9 to take that judgment out of Verizon's hands and make it subject to
10 Bright House's view of what is "commercially reasonable." *Id.* As Mr.
11 Gates states, "while Bright House acknowledges that Verizon may
12 impose limitations on the volume of orders that can be submitted via its
13 electronic OSS, Bright House proposes language that any such
14 limitations on volume be commercially reasonable." Gates DT at 63-64.
15 Both Bright House witnesses suggest this is necessary to prevent
16 Verizon from falsely claiming under § 8.8.2 that Bright House's
17 legitimate port-out requests exceed the capacity or capability of
18 Verizon's OSS in order to limit how quickly Verizon loses customers to
19 Bright House. *Id.*; Johnson DT at 27.

20
21 But this is not a realistic concern. Bright House has not cited a single
22 instance in which Verizon strategically used its control of the OSS to
23 place Bright House (or any other carrier) at a disadvantage. Moreover,
24 if any such situation arose, there would be ample chance for Bright
25 House (or another affected carrier) to challenge any such hypothetical

1 anticompetitive conduct – either before the Commission or in any other
2 proper forum. And Verizon's change management process would
3 ensure that Bright House (and other carriers) received abundant notice
4 of any such pending changes, such that they would be afforded plenty of
5 opportunity to raise their concerns to Verizon and, if necessary, bring
6 them in an appropriate proceeding. But Bright House's hypothetical
7 concern over the possibility that Verizon might sometime make strategic
8 use of the OSS is certainly not a basis to substitute its judgment of what
9 is "commercially reasonable" for Verizon's judgment of how best to
10 operate its own system in the overall interest of all stakeholders.

11

12 Indeed, given the sheer volume of transactions Verizon must handle
13 from scores of other carriers and the various competing concerns and
14 issues it must juggle with respect to OSS, it is unclear whether or how
15 Bright House would even be able to form a judgment as to what was
16 "commercially reasonable" at any given point in time. (Nor does Bright
17 House's proposed language provide sufficient comfort that it would
18 adequately consider the scores of other carriers at stake, and not just its
19 own self-interest.) But, in any event, Bright House certainly has not
20 raised any concern that would justify removing any obligation it has to
21 avoid using OSS in such a manner that would exceed the system's
22 capacity or capability. Accordingly, this change should be rejected, as
23 well.

24

25

1 Q. AS A PRACTICAL MATTER, DOES BRIGHT HOUSE HAVE ANY
2 NEED TO WORRY THAT VERIZON WILL OPERATE OR MODIFY
3 OSS IN SUCH A WAY AS TO ADVERSELY AFFECT BRIGHT
4 HOUSE?

5 A. No. In developing and operating OSS, Verizon has had every incentive
6 to establish an efficient and workable system that can properly record
7 and track orders from the largest number of carriers possible. That way,
8 Verizon can better fulfill orders and, where appropriate, receive payment
9 for ordered services. While Verizon continues to modify and improve its
10 OSS today, it recognizes that any such modifications will necessarily
11 affect all the carriers that use the OSS. Verizon therefore takes all
12 appropriate care in deciding which changes to make, and in the
13 procedures by which it makes those changes. Whenever Verizon
14 makes a change to its OSS, Verizon follows the procedures set forth in
15 its Change Management Guidelines and required by applicable law –
16 including providing notice of its changes to interconnecting carriers that
17 use Verizon's OSS. But just as it has every incentive to establish a
18 workable system in the first place, Verizon has every incentive to
19 operate that system effectively and to avoid making changes that will
20 disrupt the ordering process or delay payments to which Verizon is
21 entitled.

22

23 Accordingly, the arbitration panel should reject Bright House's proposed
24 changes to Sections 8.2.1, 8.2.3, 8.82 and 8.11 of the Additional
25 Services Attachment.

1 **ISSUE 36:** WHAT TERMS SHOULD APPLY TO MEET-POINT BILLING,
2 INCLUDING BRIGHT HOUSE NETWORK'S PROVISION OF
3 TANDEM FUNCTIONALITY FOR EXCHANGE ACCESS
4 SERVICES? (Interconnection ("Int.") Att. §§ 9-10.)
5

6 **Q. DOES THE DIRECT TESTIMONY OF BRIGHT HOUSE'S WITNESSES**
7 **JUSTIFY BRIGHT HOUSE'S PROPOSED CHANGES RELATING TO**
8 **ISSUE 36?**

9 A. No. Mr. Gates addresses Issue 36 on behalf of Bright House. See
10 Gates DT at 134-37. While his testimony explains what changes Bright
11 House seeks to make to Verizon's proposed language for Issue 36 and
12 why Bright House would like to make those changes, he never
13 addresses any of the reasons – set forth both in the parties' negotiations
14 and in my Direct Testimony – why Bright House's proposed language is
15 not technically feasible.
16

17 **Q. WHAT LANGUAGE DOES BRIGHT HOUSE PROPOSE IN**
18 **CONNECTION WITH ISSUE 36?**

19 A. Bright House seeks to modify various provisions in Sections 9 and 10 of
20 the Interconnection Attachment to (1) recognize Bright House's ability to
21 operate as a competitive tandem provider and (2) alter the parties' meet-
22 point-billing arrangements to facilitate Bright House's operation as a
23 competitive tandem provider. See Gates DT at 135 ("The disputes
24 center on some of the details of how a meet point billing arrangement
25 will be implemented, and on how to handle the situation where Bright

1 House, rather than Verizon, might provide the tandem switching
2 function.”).

3

4 **Q. WHAT IS A COMPETITIVE TANDEM PROVIDER?**

5 A. As Mr. Gates explains in his testimony, long distance or interexchange
6 carriers (“IXCs”) that want to connect at a single point to essentially
7 reach all callers or call recipients in the Tampa/St. Petersburg area
8 would typically do so through Verizon’s access tandem. See Gates DT
9 at 138. That tandem is connected not only to Verizon’s end offices, but
10 also to Bright House and most (if not all) other local exchange carriers in
11 the area. *Id.* In essence, that tandem provides IXCs with one-stop
12 shopping. They can go through Verizon’s tandem and receive or pass
13 off long distance calls to or from virtually all local carriers and their
14 customers in the area. Bright House apparently wishes to provide a
15 competitive alternative to the Verizon access tandem by making
16 available its own tandem that would link IXCs with local networks in the
17 Tampa/St. Petersburg area.

18

19 **Q. DOES VERIZON HAVE ANY OBJECTION TO BRIGHT HOUSE**
20 **OPERATING AS A COMPETITIVE TANDEM PROVIDER?**

21 A. No. Verizon has no objection to Bright House operating as a
22 competitive tandem provider. However, the specific accommodations
23 sought by Bright House are not appropriate in a Section 251
24 interconnection agreement since the competitive service it seeks to
25 provide is for the benefit of IXCs and not end user customers of Bright

1 House. See, e.g., Gates DT at 138 (“Bright House would like the
2 opportunity to compete ... for the provision of ‘tandem’ functionality to
3 third-party IXCs”). The language Bright House has proposed to alter the
4 parties’ meet-point arrangements to achieve this purpose is highly
5 problematic and not necessary for Bright House to operate as a local
6 provider of telephone exchange and exchange access services. Nor is
7 it even necessary for the offering of competitive tandem service. If
8 Bright House wishes to provide competitive tandem services to IXCs,
9 Verizon has an existing tariffed service that will facilitate Bright House’s
10 ability to make such a competitive offering available.

11

12 **Q. WHY DOES VERIZON OBJECT TO BRIGHT HOUSE’S PROPOSED**
13 **LANGUAGE?**

14 A. Because Bright House’s proposed language for §§ 9 and 10 of the
15 Interconnection Attachment would require Verizon to divert or otherwise
16 handle traffic in ways that Verizon is not capable of doing.

17

18 As I explained in my Direct Testimony, Verizon can accommodate Bright
19 House’s desire to operate as a competitive tandem provider through the
20 provision of Tandem Switch Signaling (“TSS”) under Verizon’s FCC
21 Tariff No. 14. See Munsell DT at 22, 25. TSS is a nonchargeable
22 optional service⁷ used in conjunction with Feature Group D (“FG-D”)
23 Switched Access. TSS allows for the passing of the Carrier
24 Identification Code (as described below) over the FG-D trunks that

⁷ Additional transport charges likely would apply per the tariff.

1 would connect each of the Verizon end offices with the Bright House
2 tandem and thereby allow Bright House to operate as a competitive
3 tandem provider. However, Bright House is not satisfied with this
4 approach and instead proposes that the parties change the meet point
5 at which they exchange third party IXC traffic (also known as "exchange
6 access traffic"). See Gates DT at 135-37.

7
8 In particular, Mr. Gates suggests that "the meet point for purposes of
9 jointly-provided access to IXCs should be the same physical point at
10 which they exchange their local traffic." *Id.* at 136. However, as I
11 explained in my Direct Testimony, exchange access traffic and local
12 traffic are carried over two different kinds of trunking that have very
13 different characteristics, such that one type of trunk cannot be used to
14 carry the other kind of traffic. See Munsell DT at 23-25. Accordingly,
15 the same DS-1 cannot be used to carry the two different kinds of traffic.

16
17 Exchange access traffic for IXCs is carried over Access Toll Connecting
18 Trunks, which are specially designed to handle the unique routing
19 information necessary to ensure that exchange access traffic is sent to
20 the appropriate IXC. Because end users may designate a pre-
21 subscribed interexchange carrier ("PIC") to carry all of their
22 interexchange traffic, there is a need to identify the right PIC for each
23 call to ensure that it is properly routed. This is accomplished through
24 use of the carrier identification code ("CIC"), which assigns a numerical
25 code to each different interexchange carrier. When an end user dials a

1 1+ interexchange call, that end user must be associated with the
2 appropriate interexchange carrier by means of the CIC, and the CIC
3 must then be signaled along with the call as it is routed through the
4 network. In particular, that CIC must be signaled along with the call as it
5 is routed from the end-office switch to the appropriate access tandem,
6 such that the access tandem can then route the call to the appropriate
7 IXC that has interconnected its facilities at the access tandem. Access
8 Toll Connecting Trunks are used to route the call because they have the
9 ability to signal the necessary CIC information along with each call.

10
11 Local traffic, however, represents a different story. For local calls, end
12 users have no need to choose a PIC. By definition, their local carrier is
13 the only carrier that will carry their local traffic; no designation of
14 interexchange carrier is necessary. Accordingly, for local telephone
15 calls, industry standards do not provide that a CIC be signaled. Instead,
16 local calls are routed to the terminating carrier based on the called
17 number. Because local calls do not require the same kind of data as
18 exchange access traffic, they use different kinds of trunks. In particular,
19 local traffic is sent over Local Interconnection Trunks.

20
21 By proposing that the parties use the same meet point for exchange
22 access (IXC) traffic that they currently use for local traffic, Bright House
23 would have exchange access traffic destined for IXCs routed over the
24 Local Interconnection Trunks that currently only carry local traffic. But
25 calls routed over the Local Interconnection Trunks would lose the CIC

1 that is necessary to route the call to the interexchange carrier chosen by
2 the calling party. In other words, Local Interconnection Trunks would
3 lack the data that would permit the access tandem provider to route the
4 call to the appropriate PIC. Thus, it would be unworkable to alter the
5 meet point and route calls in the manner Bright House has proposed.

6

7 **Q. IS THE PHYSICAL MEET POINT PROPOSED BY BRIGHT HOUSE**
8 **PROBLEMATIC?**

9 A. Yes, because Bright House has proposed to use the same physical
10 point to exchange local and IXC traffic. In order for traffic to route
11 properly over Verizon's tandem from an IXC to a CLEC, the CLEC – in
12 this case, Bright House – must elect to have its switch subtend the
13 Verizon access tandem, such that this election is reflected in industry
14 traffic routing tables – *i.e.*, the Local Exchange Routing Guide (“LERG”).
15 This information allows IXCs to properly route a long distance call
16 destined to a Bright House end user customer by identifying the
17 applicable access tandem that serves the Bright House customer.
18 Critically, Bright House must establish a physical meet point at the
19 designated Verizon access tandem to pick up that traffic. On the other
20 hand, the physical point of interconnection for local traffic may not be at
21 the same location. By proposing to use the same physical point(s) for
22 the hand-off of local and IXC traffic, Bright House has proposed an
23 architecture that in some cases (*i.e.*, in those cases where the point of
24 interconnection is other than at the access tandem) would not work.

25

1 Because Verizon cannot operate in the way Bright House requests,
2 Bright House's proposed changes should be rejected. However, as
3 stated above, Verizon can and will accommodate Bright House's desire
4 to operate as a competitive tandem provider through the TSS provisions
5 in Verizon's tariff, which already provide the means by which Bright
6 House can obtain what it needs to provide tandem functionality for
7 exchange access services.

8
9 **ISSUE 36(a): SHOULD BRIGHT HOUSE REMAIN FINANCIALLY**
10 **RESPONSIBLE FOR THE TRAFFIC OF ITS AFFILIATES**
11 **OR THIRD PARTIES WHEN IT DELIVERS THAT TRAFFIC**
12 **FOR TERMINATION BY VERIZON? (Int. Att. § 8.3)**

13
14 **ISSUE 36(b): TO WHAT EXTENT, IF ANY, SHOULD THE ICA REQUIRE**
15 **BRIGHT HOUSE TO PAY VERIZON FOR VERIZON-**
16 **PROVIDED FACILITIES USED TO CARRY TRAFFIC**
17 **BETWEEN INTEREXCHANGE CARRIERS AND BRIGHT**
18 **HOUSE'S NETWORK? (Int. Att. § 9.2.5)**

19
20 **Q. DO BRIGHT HOUSE'S WITNESSES ADDRESS ISSUE 36(a) IN**
21 **THEIR TESTIMONY?**

22 **A. No – not specifically. Ms. Johnson does not address any aspect of**
23 **Issue 36. Mr. Gates does, but his testimony on Issue 36 does not**
24 **specifically refer to Issue 36(a). Instead, Mr. Gates answers certain**
25 **questions purportedly regarding Issue 36(b). See Gates DT at 137-39.**

1 However, it appears that at least some (if not all) of that Issue 36(b)
2 testimony actually was intended to address Issue 36(a).

3

4 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH**
5 **RESPECT TO ISSUE 36(a)?**

6 A. Bright House proposes to delete § 8.3 from the Interconnection
7 Attachment. That section addresses the situation in which a third-party
8 carrier originates traffic that Bright House then transits for that carrier to
9 Verizon for termination. In that scenario, there is no dispute that Verizon
10 is entitled to payment for terminating such transit traffic. The only
11 dispute is whether Bright House is responsible for making that payment
12 when it delivers the traffic to Verizon, as Section 8.3 says it should be.
13 In its DPL, Bright House suggested this provision "is unnecessary"
14 because "[m]eet point billing arrangements [would] cover any legitimate
15 Verizon concern on this point." DPL at 92. But the meet point billing
16 arrangements are for a different kind of traffic (jointly provided Switched
17 Exchange Access traffic) and do not cover this point for traffic that is not
18 to or from an IXC. Section 8.3 should, therefore, remain in the ICA.

19

20 **Q. WHY IS IT NECESSARY FOR SECTION 8.3 TO REMAIN IN THE ICA?**

21 A. Section 8.3 of the Interconnection Attachment provides that, when Bright
22 House transits traffic for a third party to Verizon, Bright House is
23 financially responsible to Verizon for terminating that traffic in the same
24 amount that the third party would have had to pay had it delivered the
25 traffic itself. As I explained in great detail in my Direct Testimony, this

1 provision acts as an important check on potential arbitrage, and it is fair
2 to expect that a carrier that chooses to bring traffic to Verizon's network
3 should pay Verizon for the services that Verizon renders. See Munsell
4 DT at 25-28. Bright House's witnesses have failed to address these
5 concerns in their direct testimony, much less justify Bright House's
6 position regarding this issue. Accordingly, for the detailed reasons set
7 forth in my Direct Testimony, the Commission should reject Bright
8 House's proposal to delete § 8.3 of the Interconnection Attachment.

9

10 **Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE WITH REPECT**
11 **TO ISSUE 36(b)?**

12 A. Bright House proposes language for § 9.2.5 of the Interconnection
13 Attachment that would absolve Bright House from paying for any
14 Verizon facilities that are used to connect Bright House's network to
15 interexchange carriers. See Gates DT at 136 (expressing concern over
16 the charges Verizon assesses Bright House "for the connection from the
17 physical point where the parties exchange traffic, up to the tandem
18 switch"). In order to understand this dispute, therefore, it is important to
19 understand the charges that Verizon does (or does not) levy on Bright
20 House for the connection that Mr. Gates addresses – the connection
21 from the physical point where the parties exchange traffic up to the
22 access tandem – and it is necessary to discuss this with respect to each
23 of the three Bright House interconnection arrangements currently in
24 place.

25

1 In all cases, if Bright House elects to subtend the Verizon access
2 tandem in order to receive and hand off calls to IXCs connected at the
3 Verizon access tandem, Bright House must establish Access Toll
4 Connecting Trunks between the Bright House switch and the Verizon
5 tandem switch. These Access Toll Connecting Trunks are carried over
6 facilities that Bright House may build itself, purchase from a third party
7 provider, or purchase from Verizon. In its current network configuration,
8 for one of its arrangements Bright House has opted to self-provision its
9 own facilities to the Verizon tandem office. In that case, Verizon does
10 not charge Bright House any facilities charges (though Bright House
11 would of course incur certain collocation-related charges) for that
12 connection to the Verizon access tandem.

13

14 In its two other arrangements, however, Bright House does not have its
15 own facilities that would allow it to connect to the Verizon access
16 tandem. In those two cases, Bright House has elected to purchase
17 facilities from Verizon to connect with the Verizon access tandem.
18 Verizon therefore charges Bright House for those Verizon-provided
19 facilities. While Verizon does not question Bright House's decision to
20 configure its network in such a manner, Bright House should not be
21 allowed to dodge its financial responsibility for facilities it purchases from
22 Verizon in order to complete the transmission path for access traffic
23 delivered between its network and Verizon's access tandem. But that is
24 precisely what Bright House's proposed language would do.

25

1 Q. DOES BRIGHT HOUSE HAVE THE OPTION OF ROUTING ITS
2 TRAFFIC THROUGH THE ONE ARRANGEMENT WHERE IT HAS
3 BUILT ITS OWN FACILITIES?

4 A. Yes. Bright House has the option of reconfiguring its network such that
5 it routes all of its Access Toll Connecting Trunks over its own facilities,
6 via its collocation at the Verizon access tandem office, in which case
7 there would be no facility charges associated with those trunks. There
8 may be (and from what I know of Bright House's network engineering
9 practices, there probably are) good network reasons that drove Bright
10 House's decision to route some of its traffic over Verizon-provided
11 Access Toll Connecting Trunks, rather than through its own facilities.
12 But Bright House should not be permitted to avoid the financial
13 consequences of that decision.

14

15 As Mr. Gates notes, the parties do not disagree on the fundamental
16 concept that each party will recoup from the IXC for the switched access
17 services that it provides. In this instance, Bright House bills the IXC, as
18 part of its own access charges, Bright House's own cost of facility
19 transport, and Verizon does not bill the IXC any facility transport. This ~~is~~
20 practice is the industry standard in such situations, and is the way that
21 Bright House and Verizon currently operate. One of the advantages of
22 this practice is that it tends to require each party to recover the costs
23 over which that party has control. Only Bright House controls how
24 efficiently (or inefficiently) it sets up the facilities on its side of the
25 Verizon access tandem. If Bright House's proposal were to be

1 accepted, it would place Verizon in the situation of trying to collect
2 facility transport charges from the IXC to recover a cost (and, potentially,
3 an inefficiency) imposed by Bright House.

4

5 **Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 36(b)?**

6 A. The Commission should reject Bright House's proposed language and
7 adopt Verizon's proposed language, including Verizon's proposal to
8 establish the point of financial responsibility at the relevant Verizon
9 access tandem.

10

11 **ISSUE 37: HOW SHOULD THE TYPES OF TRAFFIC (E.G., LOCAL, ISP,**
12 **ACCESS) THAT ARE EXCHANGED BE DEFINED AND WHAT**
13 **RATES SHOULD APPLY? (Int. Att. §§ 6.2, 7.1, 7.2, 7.2.1-7.2.8,**
14 **7.3, 8.2, 8.5; Glo. §§ 2.50, 2.60, 2.63, 2.79, 2.106, 2.123)**

15

16 **Q. HAVE THE PARTIES REACHED AGREEMENT ON ANY ASPECTS**
17 **OF ISSUE 37?**

18 A. Yes. As I stated in my Direct Testimony, many of the disputes regarding
19 Issue 37 are essentially semantic, rather than substantive, and they
20 could be resolved with further discussions. See Munsell DT at 31-32.
21 Mr. Gates concurs, noting that "[i]t appears that the parties basically
22 agree on how to define and classify most of the different types of traffic."
23 Gates DT at 91. However, there remain a few substantive exceptions
24 on which the parties do disagree.

25

1 **Q. WHAT SUBSTANTIVE DISPUTES REMAIN WITH RESPECT TO**
2 **ISSUE NO. 37?**

3 A. For purposes of my Direct Testimony, I identified three principal areas of
4 substantive dispute: (1) what should define the local calling area for
5 purposes of intercarrier compensation; (2) which party bears financial
6 responsibility for which facilities used in connection with local call
7 termination; and (3) how the use of local interconnection facilities should
8 be treated when they are used to carry interexchange traffic. See
9 Munsell DT at 31. I addressed each of these three issues in detail in my
10 Direct Testimony. *Id.* at 32-37. While Mr. Gates expresses a “variety of
11 concerns with Verizon’s proposed definitions” under Issue 37, he
12 focuses on the first of the three areas I identified, which he more broadly
13 refers to as the question of “when Verizon and Bright House will have to
14 pay each other access charges, as opposed to reciprocal compensation
15 charges,” and labels that the “most important” of his concerns. Gates
16 DT at 92. Because Mr. Gates does not address the other two areas I
17 identified in my Direct Testimony, I will simply refer back to and not
18 repeat that testimony here. See Munsell DT at 34-37.

19

20 **Q. WHAT IS THE NATURE OF THE PARTIES’ DISAGREEMENT**
21 **REGARDING LOCAL CALLING AREAS?**

22 A. As Mr. Gates correctly notes, the parties need to define the local calling
23 area in order to determine “when Verizon and Bright House will have to
24 pay each other access charges, as opposed to reciprocal compensation
25 charges, with respect to traffic they send to each other.” Gates DT at

1 92. For intercarrier compensation purposes, interexchange traffic is
2 compensated at access rates and local traffic is compensated at
3 reciprocal compensation rates (or the FCC's transitional rate for ISP-
4 bound traffic). See Munsell DT 32; Gates DT at 92-93. The question
5 here is how we should define what is "interexchange" (*i.e.*, outside the
6 local calling area) and what is "local" (*i.e.*, within the local calling area)
7 for intercarrier compensation purposes. The distinction is important,
8 because the access rates applied to interexchange traffic generally are
9 higher than the reciprocal compensation rates applied to local traffic.
10 See Gates DT at 92.

11
12 **Q. HOW SHOULD THE AGREEMENT DEFINE WHAT IS**
13 **INTEREXCHANGE VERSUS LOCAL?**

14 A. The local calling areas for intercarrier compensation purposes should be
15 defined by reference to the Commission-approved basic local exchange
16 areas detailed (and mapped out) in Verizon's local exchange tariffs.
17 Anything within those Verizon basic local exchange areas should be
18 considered "local" and therefore subject to reciprocal compensation (or
19 the ISP rate). Any traffic beyond those basic local exchange areas
20 should be considered "interexchange," subject to access rates.

21
22 **Q. WHY IS THIS THE APPROPRIATE STANDARD?**

23 A. As I explained in my Direct Testimony, to properly categorize traffic as
24 "local" or "interexchange," it is necessary to have a knowable, uniform
25 standard. See Munsell DT at 33. Verizon's local calling areas offer just

1 such a uniform and knowable standard. Verizon's Local Exchange
2 Service Tariff A200 provides detailed "metes and bounds" descriptions
3 of each of Verizon's local calling areas, along with detailed maps.
4 These local calling areas are longstanding, well-known, are not subject
5 to frequent change, and have been approved by the Commission. As
6 such, they represent the best available standard by which to categorize
7 calls as "local" or "interexchange" for intercarrier compensation
8 purposes.

9
10 **Q. IS THIS THE WAY IN WHICH THE INDUSTRY TYPICALLY DEFINES**
11 **LOCAL CALLING AREAS?**

12 A. Typically, yes. The only exception of which I'm aware is New York.
13 There, the public service commission has adopted the "LATA-wide
14 calling rule," under which LATAs, rather than exchange areas,
15 determine what traffic is subject to reciprocal compensation and what is
16 subject to access. That is, calls exchanged between local exchange
17 carriers with endpoints within a single LATA are subject to reciprocal
18 compensation, calls with endpoints across LATA boundaries are subject
19 to access. New York's LATA-wide calling rule is administratively
20 workable because LATA boundaries are fixed, and they are well-known
21 and easily discernible. That is the only exception of which I'm aware to
22 the general practice that local calling areas for intercarrier compensation
23 purposes follow the ILEC exchange areas.

24
25

1 Q. IS THIS THE STANDARD THE PARTIES HAVE USED UNDER THE
2 EXISTING INTERCONNECTION AGREEMENT?

3 A. Yes. And, outside of New York (with its LATA-wide calling rule), it is the
4 standard used in all of Verizon's interconnection agreements.
5

6 Q. HOW DOES BRIGHT HOUSE PROPOSE TO CHANGE HOW
7 INTERCARRIER COMPENSATION IS DETERMINED BETWEEN
8 VERIZON AND BRIGHT HOUSE?

9 A. Bright House maintains that the categorization of traffic as
10 "interexchange" or "local" for intercarrier compensation purposes should
11 depend on the retail local calling area provided by the calling party's
12 carrier (otherwise known as the "originating" carrier). But this would put
13 in place a shifting standard that is prone to manipulation and is
14 unworkable.
15

16 Q. WHY WOULD CATEGORIZING TRAFFIC BY REFERENCE TO THE
17 ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA BE
18 "UNWORKABLE"?

19 A. As I noted above and in my Direct Testimony, to properly categorize
20 traffic as "local" or "interexchange," it is necessary to have a knowable,
21 uniform standard. Bright House's proposal to base the categorization on
22 the originating carrier's retail local calling area would not establish such
23 a standard. To the contrary, it would establish many different standards
24 that would be subject to constant change.
25

1 Local exchange carriers have different local calling areas for retail
2 purposes. In fact, each carrier may have multiple different local calling
3 areas, depending on what retail products it has offered to any given
4 retail end user. For example, a carrier might offer free "local" calling
5 within a particular city, region or state, or even nationwide. And these
6 originating carriers frequently change their local calling areas, such that
7 any given carrier may have considered a "free" local call one month may
8 not be a "free" local call the next. Therefore, the concept of what is
9 "local" and what is "interexchange" for purposes of applying intercarrier
10 compensation can be impossible to trace if one looks at the originating
11 carrier's local calling areas and end user retail offerings; it may depend
12 on what particular plan an individual caller has chosen at the particular
13 time a call is made. Obviously, Verizon's billing systems cannot
14 determine intercarrier compensation on a caller-specific basis, let alone
15 a caller-specific basis that changes with the individual caller's choice of
16 calling plans.

17

18 If the Commission adopts Bright House's position here, the new method
19 Bright House proposes cannot be limited to just Bright House and
20 Verizon. First, section 252(i) of the Act gives other carriers the right to
21 adopt the Verizon/Bright House agreement under arbitration. Second, if
22 the Commission adopts Bright House's approach in this case, other
23 carriers can be expected to propose it in arbitrations of new agreements.
24 But it would be unworkable to try to implement such a shifting standard
25 for Bright House, let alone Bright House and others, given the millions of

1 minutes exchanged among dozens of carriers. There would be simply
2 no way for Verizon to discern what call would be "local" and what would
3 be "interexchange," if it were necessary to look to the dozens or more
4 competing local calling areas that would exist. In order to work, there
5 must be a uniform standard that applies to all carriers. It would be
6 impossible to implement a system that depends on the identity of the
7 calling party in order to jurisdictionalize a call for assessing intercarrier
8 compensation.

9

10 **Q. WHY DOES BRIGHT HOUSE INSIST ON USING SUCH AN**
11 **UNWORKABLE STANDARD?**

12 **A.** So it can engage in arbitrage of intercarrier compensation rates. The
13 standard Bright House advocates likely would result in more of its
14 outbound traffic being defined as "local," rather than "interexchange," so
15 that Bright House would pay the lesser reciprocal compensation rates
16 on that traffic, rather than relatively higher access charges. At the same
17 time, Verizon would continue to pay access rates on traffic inbound to
18 Bright House. So, Bright House is attempting to craft a standard that
19 would minimize its own intercarrier compensation expenses while
20 maintaining the same level of intercarrier compensation received from
21 Verizon – regardless of whether that standard is reasonable or
22 workable. Indeed, such an approach would be competitively
23 unbalanced and would encourage gaming of the system.

24

25

1 Q. IS THIS OBJECTIVE REFLECTED IN ANY OF BRIGHT HOUSE'S
2 OTHER PROPOSED DEFINITIONS UNDER ISSUE 37?

3 A. Yes. Bright House's desire to avoid paying access charges on
4 interexchange traffic is also reflected in its proposed definition of "Toll
5 Traffic."

6
7 Q. WHAT IS THE SIGNIFICANCE OF BRIGHT HOUSE'S PROPOSAL
8 REGARDING TOLL TRAFFIC?

9 A. Bright House is attempting to limit the definition of Toll Traffic in such a
10 way as to comport with its view that access charges should be assessed
11 on as little of its traffic as possible – and, specifically, not on traffic that
12 it, as an originating carrier, has elected to treat as "local."

13

14 Typically, callers pay a toll on long distance or interexchange calls and
15 not on local calls. And, typically, long distance carriers (or IXCs) pay
16 access charges to local exchange carriers that take the toll call from the
17 IXC's network to the customer receiving the toll call. Bright House's
18 position is that access charges should be assessed only upon carriers
19 that have assessed a toll on that call. See Gates DT at 106 ("Bright
20 House's definition will have the effect of matching up the payment of
21 access charges with the collection of toll charges from end users").
22 According to Bright House, the regime should rest entirely in the
23 originating carrier's discretion. If the originating carrier charged its
24 customer a toll (because the call crossed that carrier's local calling zone
25 boundary), then the originating carrier would have to pay access

1 charges to the terminating carrier. But if the originating carrier decided
2 to define its retail local calling area in such a way that it considers a call
3 "local" (no matter the distance it travels) and does not charge a toll, then
4 the originating carrier would only have to pay reciprocal compensation,
5 not access.

6
7 However, for the same reasons outlined above, this approach is not
8 practical. Different carriers have different retail calling areas than one
9 another. And each carrier may have its own multiple different calling
10 areas that vary across different retail packages. Moreover, those calling
11 areas are subject to constant change. Originating carriers frequently
12 change their retail local calling areas to allow toll free calling to
13 customers across broader areas – often on a short-term basis – and
14 then shrink the toll-free area upon expiration of a given offer. Defining
15 traffic based on the ever-changing whims of each originating carrier is
16 not a workable system.

17

18 **Q. DOES COMMISSION PRECEDENT SUPPORT BRIGHT HOUSE'S**
19 **POSITION REGARDING TOLL TRAFFIC?**

20 A. No. Both Mr. Gates and Ms. Johnson assert that Commission
21 precedent supports Bright House's position, although they both concede
22 that the lone Commission decision they cite was vacated on appeal
23 because the reviewing court concluded it was not supported by sufficient
24 evidence. See Gates DT at 107; Johnson DT at 30. Accordingly, there
25 is no "default rule" that the local calling area should be defined by

1 reference to the originating carrier's local calling area. To the contrary,
2 the Florida Supreme Court held that there was insufficient evidence
3 demonstrating that adopting the originating carrier's local calling area as
4 the default would be competitively neutral⁸ and the Commission issued
5 an "Order Eliminating the Default Local Calling Area."⁹

6
7 Moreover, the Commission's experience in that docket and in one other
8 roughly concurrent interconnection arbitration bears out that relying
9 upon the originating carrier's calling area is not workable. In another
10 arbitration proceeding between Global NAPS, Inc. ("GNAPs") and
11 Verizon that predated the Florida Supreme Court's decision and the
12 Commission's "Order Eliminating the Default Local Calling Area," the
13 Commission had followed its since-vacated default rule and accepted
14 GNAPs' proposal to define the local calling area by reference to the
15 originating carrier's calling area.¹⁰ However, the Commission found that,
16 "much like the record in our generic docket, the record here is silent as
17 to exactly what details are necessary to implement the originating carrier
18 plan."¹¹ GNAPs ultimately never was able to provide those details, and
19 ~~the~~ Verizon and GNAPs did not implement the originating carrier

⁸ *Sprint-Florida, Inc. v. Jaber*, 2004 Fla. LEXIS 1519, Nos. SC03-235 & SC03-236 (Fla. Sept. 15, 2004)

⁹ See *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Order Eliminating the Default Local Calling Area, Docket No. 000075-TP, Order No. PSC-05-0092-FOF-TP (Jan. 2005).

¹⁰ *In re: Petition by Global NAPS, Inc. for arbitration pursuant to 47 U.S.C. 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc.*, Final Order on Arbitration, Docket No. 011666-TP, Order No. PSC-03-0805-FOF-TP (July 9, 2003).

¹¹ *Id.* at 26.

1 approach. Regardless of any theoretical appeal the originating carrier
2 approach might appear to have, as a practical matter, it does not work.

3

4 Not surprisingly, then, other jurisdictions to consider the issue rejected
5 the approach advanced by Bright House here. Indeed, other Verizon
6 local exchange carriers arbitrated this issue years ago in a number of
7 states with consistent results. For example, the Rhode Island
8 commission found that the originating carrier approach "seems to be
9 contrary to federal law," would "more likely promote arbitrage rather than
10 competition" and "will bring greater administrative confusion to the
11 competitive marketplace."¹² The Ohio commission concluded that,
12 rather than an originating carrier approach, the Verizon local exchange
13 carrier's local calling areas "shall be used to determine whether a call is
14 local for the purpose of intercarrier local traffic compensation."¹³
15 Vermont likewise held that the originating carrier's selection of the local
16 calling area "does not determine the intercarrier compensation that
17 applies (*i.e.*, whether the call is subject to reciprocal compensation or
18 access charges)."¹⁴ The public service commissions in Massachusetts,

¹² *In re: Arbitration of the Interconnection Agreement Between Global NAPs and Verizon Rhode Island*, Arbitration Decision, Docket No. 3437, at 28-31 (RI PUC Oct. 16, 2002).

¹³ *In the Matter of the Petition of Global NAPs, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award, Case No. 02-876-TP-ARB, at 8 (Ohio PUC Sept. 5, 2002).

¹⁴ *Petition of Global NAPs, Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc., d/b/a Verizon Vermont*, Order, Docket No. 6742, at 12 (Vt. PSB Dec. 26, 2002).

1 Delaware, California and New Hampshire all reached the same result.¹⁵
2 Even the New York commission, which established the LATA-wide
3 calling rule referenced above, rejected the originating carrier approach.¹⁶
4 As the Maryland Public Service Commission found some years earlier,
5 “without a consistent set of boundaries, carriers will be unable to
6 accurately rate their own calls We therefore see benefits in the use
7 of uniform exchange boundaries, and ... it is most practical to utilize the
8 [Verizon ILEC's] exchange boundaries for uniformity by all competing
9 telecommunications companies.”¹⁷ To adopt an originating carrier
10 approach or “any alternative exchange boundaries would require a
11 massive restructuring ... that is not necessary or beneficial”¹⁸
12

¹⁵ See *Petition of Global NAPs, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts*, Order, D.T.E. 02-45, at 25 (Mass. D.T.E. Dec. 12, 2002); *Petition by Global NAPs, Inc., for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Verizon Delaware, Inc.*, Arbitration Award, PSC Docket No. 02-235, at 20 (Del. PSC Dec. 18, 2002), *aff'd*, Order No. 6124 (Del. PSC March 18, 2003); *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company and Verizon California, Inc. Pursuant to Section 252(b) of Telecommunications Act of 1996*, A. 01-11-045 and A.01-12-06, Commission Decision, D. 02-06-076 (Cal. PUC June 27, 2002); and *Global NAPs, Inc. Petition for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon, NH*, Report and Recommendation of the Arbitrator Addressing Contested Issues, DT 02-107, *aff'd*, Final Order, Order No. 24,087 (NH PUC Nov. 22, 2002).

¹⁶ *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case No. 02-C-0006, Order Resolving Arbitration Issues, at 12 (NY PSC May 22, 2002).

¹⁷ *In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Interexchange Telephone Service; and Requesting the Establishment of Policies and Requirements for the Interconnection of Competing Local Exchange Networks*, Case No. 8584, Order No. 72348, 1995 Md. PSC LEXIS 261, *70-71 Md. PSC Dec. 28, 1995).

¹⁸ *Id.* at *71.

1 The Commission should take the same approach here and, recognizing
2 the problems raised by its last foray into this issue, reject Bright House's
3 proposal to define what is "local" and "interexchange" by reference to
4 the originating carrier's local calling areas.

5

6 **Q. MR. GATES INDICATES THAT VERIZON'S PROPOSED DEFINITION**
7 **OF "TOLL TRAFFIC" WOULD INTERFERE WITH HEALTHY**
8 **COMPETITION.¹⁹ DO YOU AGREE?**

9 A. No – not at all. In fact, Mr. Gates' own testimony confirms that is not the
10 case.

11

12 Mr. Gates correctly notes that one of "[t]he points of the 1996 Act is to
13 enable and facilitate direct, head-to-head competition among local
14 exchange carriers." Gates DT at 105. He suggests that one of the ways
15 a local exchange carrier can compete "is by offering more attractive,
16 simpler, and larger local calling areas." *Id.* According to Mr. Gates,
17 "[o]ffering a larger local calling area is competing both on the features of
18 the services being offered ... and on the basis of price (since a large
19 local calling area allows customers to call more individuals or
20 businesses on a flat rate basis and avoid toll charges)." *Id.* See also
21 Johnson DT at 29 ("one way that carriers can compete with each other
22 is by offering broader 'free' local calling areas"). He then concludes that
23 Verizon's proposal to determine whether access charges apply by
24 reference to its own local calling areas is somehow anticompetitive

¹⁹ See Gates DT at 104-105.

1 because “it imposes a penalty on Bright House for offering a larger and
2 more attractive calling area than Verizon offers.” Gates DT at 105. See
3 also Johnson DT at 30. But that simply is not the case.

4
5 Verizon’s position merely affects the wholesale rates at which carriers
6 compensate one another with respect to traffic they send to one
7 another. It does not preclude Bright House “from offering a larger or
8 more attractive calling area” on a retail basis. Even if Verizon’s proposal
9 results in Bright House paying access charges on some percentage of
10 traffic that Bright House considers to be local for retail purposes, that
11 can hardly be said to amount to a “penalty” that would inhibit Bright
12 House’s ability to offer larger retail local calling areas.

13
14 Indeed, using Verizon’s local calling areas has not precluded Bright
15 House from offering larger retail local calling areas or otherwise
16 adversely affected competition under its existing interconnection
17 agreement with Verizon. Quite the opposite, Ms. Johnson concedes
18 that Bright House already offers broader “free” local calling areas
19 (Johnson DT at 29). On its website, Bright House extols the virtues of
20 an “Unlimited Florida” calling plan, which includes unlimited calling to
21 anywhere within the state, as well as an “Unlimited Nationwide” plan,
22 which includes all-you-can-eat calling within the United States and
23 Canada. And Mr. Gates acknowledges that Bright House has thrived
24 competitively under this standard. Indeed, only sentences before
25 advocating for a change in the existing standard, Mr. Gates refers to the

1 "full facilities-based competition ... that now exists between Verizon and
2 Bright House in the Tampa/St. Petersburg area" under that standard and
3 to the fact that, "in the residential areas where Bright House's cable
4 affiliate has facilities, consumers ... have a choice of which network to
5 use for their phone service." Gates DT at 105. Bright House cannot
6 tout how much the current standard has boosted competition and then
7 claim that same standard is somehow anti-competitive.

8
9 If anything, it is Bright House's proposal that would be competitively
10 unbalanced. By defining its own local calling area, Bright House would
11 minimize the access charges it pays on outbound traffic to Verizon,
12 while still receiving the same level of access revenues on inbound traffic
13 from Verizon (which, after all, is not frequently changing the local calling
14 areas prescribed in its tariffs). Leaving the categorization of traffic for
15 intercarrier compensation purposes in the hands of originating carriers
16 will encourage gaming of the system, as each carrier will be incentivized
17 to alter its local calling area to produce the best possible net result from
18 the perspective of avoiding intrastate access charges, rather than
19 responding to consumer demand.

20
21 Bright House's approach would also be anticompetitive because it would
22 give Bright House (and other adopting local exchange carriers) an
23 artificial advantage over interexchange carriers. Perhaps the single
24 biggest expense incurred by a carrier in connection with a long-distance
25 call is the payment of originating and terminating access. Under its

1 proposal, Bright House could unfairly reduce its access costs by
2 reconfiguring local calling areas, thus significantly reducing its
3 expenses. But interexchange carriers, which compete with Bright
4 House (and other LECs) for any given end-user's long-distance traffic do
5 not have local calling areas. So, under Bright House's proposal, it would
6 be exempt from ever paying terminating intrastate access under its
7 "Unlimited Florida" plan, whereas the IXCs, its competitors for that
8 intrastate long distance traffic, would be stuck paying access charges.
9 The existing system, in contrast, maintains a level playing field for all
10 carriers that provide interexchange services.

11

12 For all these reasons, the Commission should reject Bright House's
13 proposed language.

14

15 **Q. MR. GATES ALSO DRAWS A DISTINCTION BETWEEN "TOLL**
16 **TRAFFIC" AND "MEET POINT BILLING TRAFFIC" IN HIS DIRECT**
17 **TESTIMONY. WHAT IS YOUR REACTION TO THAT TESTIMONY?**

18 **A.** Bright House's proposed revision of these terms is both unnecessary
19 and troublesome. Mr. Gates claims that it is necessary to draw a clear
20 distinction between interexchange traffic that is to (or from) IXCs and
21 interexchange traffic that is exchanged between the parties. That
22 distinction is fine, so far as it goes, and Verizon's proposed
23 interconnection agreement contains two entire sections – sections 9 and
24 10 – that detail how the parties will handle the former kind of traffic. But
25 Bright House has not described any way in which the ICA, including

1 those sections, is inadequate in its description of how the parties will
2 handle traffic that is destined for, or coming from, IXCs.

3

4 The troublesome part of Bright House's proposal, as reflected in Mr.
5 Gates' testimony, is his claim that, for the facilities carrying traffic
6 destined for, or coming from, IXCs (what they call "Exchange Access
7 Traffic"), Bright House would have no financial responsibility. In Mr.
8 Gates' view, which reflects the language proposed by Bright House, for
9 such arrangements, "[n]either carrier will bill each other anything . . .
10 because they are not providing services to each other; instead they are
11 jointly providing services to the third party IXC." Gates DT at 99. But,
12 as I describe elsewhere in this testimony and in my Direct Testimony,
13 Bright House does, and must continue to, have responsibility for its own
14 Access Toll Connecting Trunks. That is, where Bright House chooses to
15 use Verizon-provided facilities to carry IXC traffic between the Verizon
16 access tandem and the Bright House network, Bright House must retain
17 financial responsibility for those facilities. Bright House's attempt to
18 define a category of "Meet Point Billing Traffic," and then to provide that
19 neither party would bill the other anything in connection with that traffic,
20 is simply another way that Bright House seeks to evade financial
21 responsibility for the Access Toll Connecting Trunks that it ordered and
22 that it uses. As such, the Commission should reject this proposal.

23

24 **ISSUE 39: DOES BRIGHT HOUSE REMAIN FINANCIALLY**
25 **RESPONSIBLE FOR TRAFFIC THAT IT TERMINATES TO**

1 **THIRD PARTIES WHEN IT USES VERIZON'S NETWORK TO**
2 **TRANSIT THE TRAFFIC? (Int. Att. § 12.5)**

3

4 **Q. DOES A DISPUTE BETWEEN THE PARTIES STILL EXIST WITH**
5 **RESPECT TO ISSUE 39?**

6 **A. No – I do not believe a dispute still remains regarding this issue.**

7

8 Issue 39 arose as a result of Bright House's attempt to change Section
9 12.5 of the Interconnection Attachment to shift the costs associated with
10 certain Bright House-originated traffic to Verizon, rather than paying the
11 associated third-party charges itself. However, Mr. Gates' testimony
12 suggests that Bright House no longer maintains this position and that
13 the dispute is now resolved. In particular, Mr. Gates testified that:

14

15 This dispute has been almost entirely settled in
16 principle, even though the parties have not yet settled
17 on final language. At a high level, Verizon and Bright
18 House agree that Bright House may use Verizon's
19 network (essentially, its tandem switch) to send
20 "transit" traffic to third parties connected to Verizon's
21 tandem. They agree that as between Verizon and
22 Bright House, Verizon should not be liable to the third
23 party for termination charges associated with the
24 Bright-House originated traffic. They agree that if
25 Verizon is billed for such charges, there should be a

1 form of "indemnification" procedure where Verizon
2 would forward the bills to Bright House for Bright
3 House to deal with – that is, to pay them if
4 appropriate, dispute them where need be, etc. And
5 the parties agree that when the traffic between Bright
6 House and some particular third party reaches some
7 appropriate level, Bright House should be required to
8 make commercially reasonable efforts to either
9 directly connect with the third party or, at least, find
10 some way other than via Verizon's tandem to get the
11 traffic there.

12 Gates DT at 140-41.

13

14 Verizon agrees with this position, which is consistent with both my Direct
15 Testimony (see Munsell DT at 37-41) and the Commission's prior
16 rulings.²⁰ Verizon therefore will endeavor to work out language with
17 Bright House reflecting what appears to be an agreement in principle.
18 However, in the event that the parties are unable to work out any
19 additional language, the Commission simply should reject Bright
20 House's proposed changes to § 12.5 of the Interconnection Attachment
21 as being inconsistent with this agreement in principle and with Bright
22 House's own recognition that it is responsible for traffic it sends to third

²⁰ See *In re: Joint petition by TDS Telecom*, Docket No. 050119-TP, Docket No. 05125-TP, Order No. PSC-06-0776-FOF-TP (Sept. 18, 2006) (holding that the originating carrier (in this case, Bright House) "shall compensate [the ILEC] for providing the transit service," "is responsible for delivering its traffic ... in such a manner that it can be identified, routed, and billed," and "is also responsible for compensating the terminating carrier for terminating the traffic to the end user").

1 parties across Verizon's network.

2

3 **ISSUE 41: SHOULD THE ICA CONTAIN SPECIFIC PROCEDURES TO**
4 **GOVERN THE PROCESS OF TRANSFERRING A CUSTOMER**
5 **BETWEEN THE PARTIES AND LNP PROVISIONING? IF SO,**
6 **WHAT SHOULD THOSE PROCEDURES BE?** (Int. Att. §§ 15.2,
7 15.2.4, 15.2.5; Proposed Transfer Procedures Att. (All).)

8

9 **Q. DOES THE TESTIMONY OF BRIGHT HOUSE'S WITNESSES**
10 **SUPPORT EACH OF THE SPECIFIC BRIGHT HOUSE PROPOSALS**
11 **THAT HAVE GIVEN RISE TO ISSUE 41?**

12 **A.** No. Ms. Johnson does not address Issue 41 in her testimony and Mr.
13 Gates does so only in a vague and general sense.

14

15 Issue 41 arose in part because Bright House seeks to make a number of
16 specific changes to the ICA language regarding Local Number
17 Portability ("LNP") provisioning.²¹ Those proposed changes specifically
18 include modifications to 15.2, 15.2.4 and 15.2.5 of the Interconnection
19 Attachment that would require Verizon to set up certain LNP-related
20 processes and perform certain LNP-related services uniquely for Bright
21 House that Verizon does not and cannot currently provide for other
22 interconnecting carriers (at no charge to Bright House). For all of the
23 reasons set forth in my Direct Testimony, none of these specific LNP-

²¹ LNP provisioning refers to the process by which a customer's phone number is transferred or "ported" from his or her old service provider to a new service provider, such that the customer can still make and receive calls using that number with the new service provider.

1 related changes is necessary or appropriate. See Munsell DT at 42-50.
2 But Bright House's witnesses do not address these specific Bright
3 House proposed changes at all, other than in Mr. Gates' almost passing
4 reference to the ten-digit trigger feature at issue in § 15.2.4 as an
5 "example" of what is in dispute. Gates DT at 144-45. (He does not
6 mention § 15.2 or 15.2.5.)

7
8 Instead, Mr. Gates engages in a very high-level discussion of the
9 circumstances that prompted Bright House to propose the other set of
10 changes that have given rise to Issue 41: Bright House's proposed new
11 "Transfer Procedures Attachment." See Gates DT at 143-46. Mr. Gates
12 begins by noting that "[a] key aspect of facilities-based competition ... is
13 smoothly handling the transfer of a customer from one network to the
14 other when a customer chooses to switch carriers and keep their
15 number." *Id.* at 143. From there, he asserts that, "[o]ver the past
16 several years, Bright House has had at least two significant disputes
17 with Verizon regarding such issues" (*id.*), and therefore concludes "that
18 it is reasonable and prudent to include in the parties' interconnection
19 agreement an express set of procedures to clearly 'choreograph' what
20 happens when a customer moves from one carrier to another." *Id.* at
21 144. But, again, Mr. Gates does not delve into any of the specifics of
22 Bright House's proposals or why they are necessary.

23
24 Among other things, Mr. Gates does not describe the "two significant
25 disputes with Verizon" or disclose that they were resolved in such a way

1 that clearly spelled out the parties' rights and obligations on a going-
2 forward basis. See Munsell DT at 51. Nor does he even attempt to tie
3 those disputes in any way to the specific language Bright House
4 proposes here.

5
6 Mr. Gates likewise refers to the need to "choreograph" customer transfer
7 procedures, but fails to mention that the ICA *already* contains a host of
8 provisions spelling out the process for transferring customers. He does
9 not explain why those existing provisions are inadequate or how the
10 "Transfer Procedures Attachment" is better. Nor does he explain how
11 the two sets of procedures would work in conjunction with one another,
12 since Bright House has proposed adding a new procedures attachment
13 without deleting any of the existing processes. Indeed, Mr. Gates does
14 not discuss the specific language of Bright House's proposed
15 attachment at all. Even when asked about the language of the lone
16 proposed contractual provision he does mention, § 15.2.4 of the
17 Interconnection Attachment, Mr. Gates sticks to generalities and does
18 not quote or otherwise discuss in detail the specific language Bright
19 House has proposed. See Gates DT at 145-46.

20
21 This sort of vague and general discussion is entirely insufficient to justify
22 the multiple and significant specific changes that Bright House
23 proposes. To the contrary, those changes should be rejected for the
24 multitude of reasons I detailed in my Direct Testimony, which Bright
25 House's direct testimony does not address or rebut. See Munsell DT at

1 42-52.

2

3 Q. YOU DID MENTION THAT MR. GATES HAD SPECIFICALLY
4 REFERENCED BRIGHT HOUSE'S PROPOSED CHANGE TO § 15.2.4
5 OF THE INTERCONNECTION ATTACHMENT REGARDING THE
6 TEN-DIGIT TRIGGER. IS MR. GATES' TESTIMONY SUFFICIENT TO
7 JUSTIFY THE CHANGES BRIGHT HOUSE PROPOSES TO MAKE TO
8 § 15.2.4?

9 A. No. Although § 15.2.4 of the Interconnection Attachment is the one
10 specific provision that Bright House's witnesses mentioned in
11 connection with Issue 41, even that mention was far too cursory to
12 justify the change that Bright House seeks to make.

13

14 Section 15.2.4 addresses the situation in which a customer of Party A
15 decides to switch service to Party B. It provides, among other things,
16 that when Party A transfers or "ports" the customer's telephone number
17 to Party B, Party A must utilize the ten-digit trigger feature when
18 available. As I explained in my Direct Testimony, the ten-digit trigger is
19 a sort of safeguard mechanism to ensure that calls continue to be
20 properly routed to the customer around the time the switch in service
21 occurs. See Munsell DT at 48. Or, as Mr. Gates puts it, the ten-digit
22 trigger allows the "customer [to] continue to be able to receive calls on
23 their [Party A] line, until the porting is actually completed." Gates DT at
24 144. This provision has worked well to help ensure continuity of service
25 for customers under Verizon's interconnection agreements with Bright

1 House and numerous other carriers. Indeed, I am not aware of any
2 specific problems with respect to how § 15.2.4 has operated with
3 respect to Bright House.

4
5 It is important to emphasize, however, that it is not just the ten-digit
6 trigger, *per se*, that ensures the continuity of service for the customer.
7 The ten-digit trigger is the mechanism by which the customer's "old"
8 switch recognizes that porting activity is imminent, then determines
9 whether the port has been completed, and routes the call to the "new"
10 carrier (if the port has been completed) or keeps it on the "old" carrier's
11 network (if it has not). Implicit in this process is that the "old" carrier's
12 network must remain able to handle calls to that customer during the
13 time that the trigger is active. Thus, the "old" carrier must retain its
14 switch translations – and all of the other incidents of service to that
15 customer – during the time that the trigger is active. So, service may be
16 in place on two networks, and the customer may be double-billed, during
17 the period that the trigger and the switch translations remain active. For
18 this reason, among others, the industry standard is *not* to retain the
19 trigger and the translations for a significant period of time beyond the
20 scheduled due date. As I explained in my Direct Testimony, the industry
21 standard with which Verizon complies is to schedule the translation (and
22 trigger) removal no earlier than 11:59 pm the day after the due date.
23 See Munsell DT at 49.

24

25 Bright House nevertheless seeks to change § 15.2.4 to impose an

1 additional set of requirements *after* the porting activity is scheduled to
2 occur – proposing that the ten-digit trigger must remain in place for at
3 least 10 days following the due date and that no translations tear-downs
4 may take place in the “old” carrier’s network until after the port is
5 completed. See DPL at 104. Bright House did not explain its rationale
6 for these post-due date changes in its DPL. And Mr. Gates’ Direct
7 Testimony does not shed much further light.

8
9 The sum total of Mr. Gates’ testimony on this point is that the ten-digit
10 trigger should stay in place for at least 10 days following the due date
11 because a customer might have to put off the switch at the last minute
12 and service might be interrupted in the period of time between the due
13 date and when the port is rescheduled. See Gates DT at 145. But this
14 is unnecessary. If there is a last-minute problem with performing the
15 port, the “new” carrier can (and should) re-schedule it. There is a
16 simple, automated process for doing so, which involves issuing a
17 “supplemental” LSR (sometimes called a “supp”) using Verizon’s normal
18 carrier interface. If the port is delayed at the last minute, it can be re-
19 scheduled to the next day, or ten days later, or essentially any other
20 time of the carrier’s choosing. A carrier can submit a supplemental LSR
21 to re-schedule a port up until 7:00 pm on the due date, and the port will
22 be re-scheduled (and “old” service retained) accordingly.

23
24 There is no need to extend the trigger and to require that translations be
25 maintained for ten days after the due date. If there is a last-minute

1 problem, Bright House can re-schedule the port through a supplemental
2 LSR. Even then, Verizon *already* retains the trigger until at least 11:59
3 p.m. the day *after* the due date. These existing processes allow
4 sufficient time to address any “last minute” changes that might have
5 arisen. Extending the trigger (and translations) for ten more days is
6 entirely unnecessary. And Mr. Gates does not offer any evidence
7 otherwise.

8
9 To the contrary, as discussed above, retaining the triggers and
10 translations for a significant period beyond the due date essentially
11 requires duplicative service to be provided; it is inefficient and would
12 likely lead to customer complaints over double-billing. And, as I
13 explained in my Direct Testimony, adopting Bright House’s proposed
14 change would require Verizon to create a post-due date and post-port
15 process unique to Bright House that Verizon currently is not capable of
16 providing. See Munsell DT at 49-50. Verizon should not have to modify
17 its own internal systems to accommodate Bright House when (a) doing
18 so would require significant time, labor and expense and (b) Bright
19 House has failed to demonstrate that the existing process is inadequate
20 to address its concern. Accordingly, the proposed changes to § 15.2.4
21 of the Interconnection Attachment should be rejected.

22

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

24 **A. Yes.**

25

1 **BY MR. HAGA:**

2 Q. And, Mr. Munsell, have you prepared a summary
3 of your testimony?

4 A. I have.

5 Q. Could you please provide that?

6 A. I will.

7 Thank you very much for this opportunity.

8 Bright House has been extremely successful under the
9 existing interconnection agreement in place since 2005.
10 That agreement has enabled Bright House Cable, the only
11 customer of the Bright House Network Company in the
12 arbitration here, to become Verizon's chief competitor,
13 capturing a significant portion of the residential
14 market. So the existing arrangements have worked as
15 Congress intended. Bright House owns most of its own
16 facilities, but Bright House and Verizon need to
17 interconnect their networks so that Verizon's customers
18 and Bright House Cable's customers can call one another.

19 In the new agreement, however, Bright House is
20 trying to use interconnection with Verizon as a way to
21 shift Bright House costs to Verizon, its main rival, and
22 to gain a unique, competitive advantage over other
23 providers as well. The Commission should reject Bright
24 House's novel positions.

25 My testimony addresses five of the remaining

1 issues, Issues 7, 13, 36, 37 and 41. Of these issues,
2 36 and 37 are the most critical because accepting Bright
3 House positions on these issues has potential
4 consequences for Florida's telecommunications markets
5 that reach far beyond the agreement under arbitration.

6 Issue 36 involves access toll connecting
7 trunks that Bright House today orders from Verizon's
8 special access tariff in order to link third party long
9 distance carriers with Bright House's network. These
10 trunks are not for the exchange of traffic between
11 Bright House's and Verizon's customers. They are used
12 only for Bright House Cable's customers to send and
13 receive long distance calls from third parties. This
14 traffic is and always has been referred to as meet point
15 billing traffic.

16 Under Issue 36, Bright House has come up with
17 a novel theory to try to avoid paying Bright -- from
18 paying Verizon for these tariffed special access
19 facilities, leaving Verizon instead to bear the
20 responsibility for these facilities used only for Bright
21 House's traffic and that have nothing to do with
22 interconnecting Bright House's and Verizon's networks.

23 What's more, Bright House does not even need
24 to use these facilities to gain -- to get meet point
25 traffic to and from long distance carriers. It could

1 simply send and receive this traffic through the
2 collocation it maintains at the Verizon tandem.

3 Bright House has admitted that it's
4 considering changing its network configuration to do so.
5 So while Bright House can't avoid the charges it's
6 complaining about, and a decision adopting Bright
7 House's position might well be mute as to Bright House,
8 that decision would have substantial real world effects
9 on Verizon because all of the other carriers that buy
10 the same kind of facilities will rely on it to stop
11 paying Verizon for them. Bright House's position has no
12 legal support, as Verizon's lawyers will explain in the
13 briefs, and deserves no consideration from a policy
14 standpoint either.

15 Another aspect of Issue 36 involves Bright
16 House's proposal that it claims is designed to allow it
17 to operate as a competitive tandem provider. Verizon
18 has no objection to Bright House operating as a
19 competitive tandem provider and, indeed, Bright House
20 already has the ability to operate as a competitive
21 tandem provider under the tandem switch signaling
22 service available under Verizon's tariff. Bright
23 House's proposed language therefore is unnecessary as
24 well as problematic from billing perspectives.

25 Issue 37 centers on how the parties will

1 define what constitutes local traffic that is subject to
2 reciprocal compensation rates and what constitutes
3 interexchange traffic that is subject to the higher
4 access rates. Under the existing agreement, the parties
5 have looked to the ILECs' Commission-approved local
6 exchange areas to determine what is local and what is
7 interexchange for purposes of intercarrier compensation
8 at the wholesale level. This is an appropriate standard
9 because it provides a noble, uniform standard that can
10 be, that can be applied easily and consistently. Bright
11 House, however, proposes a change, arguing that the
12 standard should be based on how the originating party
13 has defined its local calling area for retail service.

14 But because other CLECs might adopt this
15 agreement and those CLECs have different retail calling
16 areas, basing the definition on the originating carrier
17 would mean that the definition varies from carrier to
18 carrier. Operationally it would not be feasible for
19 Verizon to maintain tables for each originating CLEC
20 that might adopt this ICA, especially when many CLECs
21 like Bright House do not file tariffs.

22 From a policy perspective, Bright House's
23 proposal, if adopted, would initiate nothing less than a
24 fundamental restructuring of the access regime in
25 Florida. Be it Bright House -- Bright House's approach

1 would allow Bright House and CLECs adopting the
2 agreement on relying on the decision here to eliminate
3 interstate (phonetic) access charges for themselves. At
4 the same --

5 **CHAIRMAN ARGENZIANO:** Mr. Munsell, you've run
6 out of time.

7 **THE WITNESS:** I'm sorry.

8 **MR. HAGA:** And Mr. Munsell is available for
9 cross.

10 **CHAIRMAN ARGENZIANO:** Mr. Savage.

11 Let me, let me just ask this of staff. With
12 the previous witness we did not have to enter because
13 that was part of -- or an exhibit that was already
14 entered; right? Okay. Thank you. Sorry, Mr. Savage.
15 Go right ahead.

16 **CROSS EXAMINATION**

17 **BY MR. SAVAGE:**

18 **Q.** Good afternoon, Mr. Munsell.

19 **A.** Good afternoon.

20 **Q.** I want to start with the Issue 36, competitive
21 tandem provider stuff, because between your testimony in
22 the deposition and your opening statement, I am
23 literally confused about precisely what Verizon's
24 position is. So let me lay out a scenario and tell me
25 if you agree with me. Actually -- well, I'll leave the

1 chart.

2 The scenario I'd like you to think about is
3 Bright House using its switch in its network to provide
4 a service to interexchange carriers who have traffic to
5 deliver to Verizon's customers, and the scenario that
6 we've been calling in the shorthand is a competitive
7 tandem provider. We would like to be able to offer to
8 IXCs the ability to come to our tandem instead of
9 Verizon's tandems and have our network get that traffic
10 out to Verizon's end offices for delivery to Verizon's
11 customers. Do you understand the scenario I'm asking
12 you to talk about?

13 A. I do.

14 Q. Okay. I'm going to hope we can do this
15 quickly. Am I correct that Verizon's position is that
16 Bright House can absolutely do that today using your
17 tandem switch signaling tariff that you referred to?

18 A. Yes.

19 Q. Okay. So that if hypothetically we could
20 offer better service, cheaper rates, redundancy,
21 anything that might be of interest to IXCs in order to
22 get their traffic to your customers, to come through us
23 first rather than your tandem, we're allowed to do that
24 under your tariff?

25 A. Yes. The traffic could be both directions.

1 **Q.** Okay. And you would agree with me that there
2 are certain aspects of your prefiled testimony that
3 might give the impression that you would be opposed to
4 us doing that.

5 **A.** Under my prefiled testimony I was under the
6 impression that you were trying to get that traffic not
7 on the facilities ordered under the TSS tariff, but on
8 the local interconnection facilities.

9 **Q.** Okay. So just to be clear, trying to narrow
10 where we might disagree, you're okay with us doing it.
11 We would just have to have separate facilities other
12 than the local interconnection facilities to do it.

13 **A.** Correct.

14 **Q.** Okay. And let me be even more specific. Do
15 you mean separate facilities, physical facilities, or do
16 you mean separate trunks?

17 **A.** The tariff provides that you would order
18 Feature Group D trunks. So it would be trunks.

19 **Q.** Okay. Now would you agree with me that your
20 tariff contains provisions with respect to meet point
21 billing when Verizon provides the tandem functionality
22 and then the traffic is handed off to Bright House or
23 another carrier for termination?

24 **A.** I'd have to see the specific section of the
25 tariff that you're talking about.

1 **Q.** It was Section 2.7 of Tariff 14 that we
2 discussed in your deposition.

3 **A.** If you have a copy of it, that would --

4 **Q.** Give me a second.

5 **A.** Thank you.

6 **Q.** Well, I mean, just to move things along, would
7 you accept today, subject to check, that Section 2.7 of
8 your tariff, FCC 14, deals with meet point billing where
9 Verizon itself provides the tandem functionality?

10 **A.** I could accept that.

11 **Q.** Now notwithstanding the fact that that topic
12 is addressed in your tariff, nonetheless in the
13 interconnection agreement, there are various provisions
14 in the agreement that lay out things like how you divide
15 the, the, establish a billing percentage and those sorts
16 of things included in the interconnection agreement,
17 even though they're also to some extent in the tariff.

18 **A.** They are in the interconnection agreement.

19 **Q.** And also to some extent in the tariff?

20 **A.** You'll have to show me the tariff. Sorry.

21 **Q.** Okay. But if I am correct that these things
22 are addressed both in your tariff and the
23 interconnection agreement, would you have any objection
24 to including in our interconnection agreement provisions
25 that clarify or restate or emphasize Bright House's

1 right to provide this terminating tandem service?

2 **A.** I believe that we would be agreeable to
3 include in the interconnection agreement a reference to
4 the FCC Tariff 14, Section, whichever it is that's the
5 TSS section, that says Bright House can order that
6 service from Verizon and whatever, you know, whatever
7 words went around it.

8 **Q.** Okay. That, with that, I think we can
9 probably leave this part of Issue 36.

10 Would you agree with me that a local exchange
11 carrier provides, may provide services not only to end
12 users but also to long distance carriers?

13 **A.** Can you ask me that again?

14 **Q.** Well, for example, Verizon, Verizon has end
15 user customers, of course.

16 **A.** Correct.

17 **Q.** Verizon also has customers that are
18 interexchange carriers that buy its access services.

19 **A.** Correct.

20 **Q.** Okay. Now in your opening statement you said
21 that Bright House Network's -- that its, its only
22 customer was this, the Bright House Cable that's the
23 interconnected VoIP provider. Do you recall saying
24 that?

25 **A.** Yes.

1 **Q.** Would you agree with me that Bright House also
2 has as customers interexchange carriers to whom it
3 provides originating and terminating exchange access?

4 **A.** I have heard that testimony today. Of course
5 I have no direct knowledge that they do.

6 **Q.** Well, assuming the testimony today, that I
7 think in this regard is uncontested, were to be accepted
8 that Verizon, that Bright House has direct connections
9 to some interexchange carriers and provides meet point
10 billing type service to other interexchange carriers
11 through the famous chart we've been discussing, if that
12 testimony is actually true, would you not agree with me
13 that Bright House, in addition to the wholesale customer
14 for purposes of the end users, also has as customers
15 interexchange carriers?

16 **A.** I'm afraid you asked me -- your end user
17 customers were wholesale?

18 **Q.** Forget everything I just said.

19 **A.** Thank you.

20 **Q.** Would you agree with me that, that Bright
21 House has, among its other customers, interexchange
22 carriers as customers?

23 **A.** As does Verizon. Yes.

24 **Q.** Yes. And many, many local exchange carriers
25 have IXCs as customers.

1 **A.** To the extent that they send and receive long
2 distance traffic, meet point billing traffic, I would
3 agree with that.

4 **Q.** So when you said earlier that the only
5 customer that Bright House has is its interconnected
6 VoIP cable affiliate, you just weren't thinking about
7 the IXCs as customers at that time?

8 **A.** I was focused on the retail side of the
9 business.

10 **Q.** Okay. Now you'd agree with me -- well, would
11 you agree with me that the Communications Act defines a
12 local exchange carrier as an entity that provides either
13 telephone exchange service or exchange access?

14 **A.** I imagine that it defined it. So are you
15 asking me to agree that there is a definition of it in
16 there?

17 **Q.** You'll agree that the definition -- that there
18 is a definition, but you don't know what it is?

19 **A.** That's right.

20 **Q.** Okay. All right. With respect to Issue
21 Number 37, which is the local calling area issue, one of
22 your objections to Bright House's proposal is that if
23 the proposal were adopted in this case and then if a
24 bunch of other CLECs were to adopt that agreement, then
25 Verizon might have a problem with a bunch of CLECs with

1 different local calling areas all trying to have things
2 work under this new proposal.

3 **A.** That is one, one aspect of the objection.

4 **Q.** Right. And I want to focus on that aspect,
5 knowing that -- at least based on your testimony, you
6 have many -- but focusing on that. Let's start with
7 Bright House itself and let's suppose that we're not yet
8 worried about what the other CLECs might or might not
9 do. You understand that Bright House itself has a
10 LATA-wide, all calls within the LATA in the Tampa area
11 would be local?

12 **A.** My understanding is that it is at least the
13 LATA.

14 **Q.** Right. And so as between Bright House and
15 Verizon, you would agree with me that there would be no
16 ambiguity or confusion whatsoever with regard to how to
17 bill the traffic we send you; right?

18 **A.** From a definitional perspective, no. From an
19 operational perspective, there might not be any
20 ambiguity, but I don't know how we would do it.

21 **Q.** You don't know how you would not bill us
22 access?

23 **A.** It isn't as simple as Mr. Gates has
24 represented that it's a simple table change. It isn't.

25 **Q.** Well, I guess I'm trying to understand what

1 the complications that are fairly prominent in your
2 testimony, what these supposed complications are. Now
3 we talked in your deposition about the fact that when
4 you normally jurisdictionalize traffic, which I admit is
5 a horrible word, but you normally divide it between
6 whether it's local, interstate or intrastate based on
7 comparing the originating and terminating phone numbers.

8 **A.** Correct.

9 **Q.** Okay. And in the case of Bright House and
10 Verizon, again, looking at us alone, what would you need
11 to know other than that it's coming from one of our
12 numbers and going to one of your numbers to know that it
13 goes into the local bucket?

14 **A.** The way that it is done today, the way Verizon
15 set it up since the Act, is you compare the telephone
16 numbers, you go to a Telcordia database to get the rate
17 centers that are associated with those telephone
18 numbers. Then you go to the Verizon retail local
19 calling area table that's used to rate local traffic
20 from Verizon end users, and that's the table that's used
21 to determine whether or not those two telephone numbers
22 of the call that the CLEC has sent us are local or
23 whether they're not local. If they're not local, is it
24 intrastate, intraLATA access or is it some other
25 jurisdiction of access. That's the only table that

1 we've got as a reference point.

2 Q. And it would be really, really hard to modify
3 that table to reflect traffic coming in from Bright
4 House should simply all be rated as local?

5 A. Well, it wouldn't be modifying that table.
6 Then we would have to set up a different process that
7 says for Bright House traffic, forget everything you
8 have done for 14 years, we've just built a new table,
9 and now take that traffic and jurisdictionalize it
10 against the new table. I can't say I'm an IT person. I
11 can definitely say I'm not an IT person, but I was in
12 the requirement sessions 14 years ago when we built
13 this, and I have talked with the IT department about
14 this. They have told me this would be difficult.

15 Q. Really, really difficult?

16 A. Yes.

17 Q. Okay. Would you agree with me that the
18 industry has experience over the years with receiving
19 traffic that for one reason or another can't be properly
20 jurisdictionalized based on looking at the originating
21 and terminating numbers?

22 A. Well, there's certainly experience in the
23 industry for 800 traffic, which you can't
24 jurisdictionalize because an 800 number is not assigned
25 to any jurisdiction. There is also a fairly prevalent

1 amount of traffic comes that we terminate or a CLEC
2 terminates where the originating number is not present,
3 either it was never signaled or is stripped. Maybe it
4 was changed. Sometimes it's just an invalid number.
5 Again, you can't jurisdictionalize the traffic.
6 Wireless traffic is another example because of wireless
7 roaming. For many carriers for wireless accounts you
8 can't jurisdictionalize the traffic.

9 Q. And would you agree that if for whatever
10 reason the originating and terminating number data is
11 not sufficient to decide how to bill traffic, the
12 fallback position is to simply establish a factor that
13 applies to traffic coming in?

14 A. Yes, to the extent that you cannot
15 jurisdictionalize the traffic based on those criteria,
16 the originating number being present, the terminating
17 number should be valid if it's a terminating call. 800
18 is always a factor, but to the extent you can't
19 jurisdictionalize that traffic or that -- what typically
20 happens today is 95 percent of the traffic comes in, and
21 you can jurisdictionalize it on a terminating call. For
22 the five percent that comes in that you can't
23 jurisdictionalize based on the originating and
24 terminating number, you do rely on factors.

25 Q. And the use of factors to handle traffic that

1 can't be -- let's just say properly rated, I'm tired of
2 saying jurisdictionized, the use of factors to handle
3 traffic that can't be properly rated based on the
4 originating and terminating numbers goes back at least
5 as far as 1984 and the original access tariffs?

6 **A.** Correct.

7 **MR. SAVAGE:** I have nothing further for this
8 witness.

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

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

11 **CHAIRMAN ARGENZIANO:** Commissioners. Okay.

12 Mr. O'Roark, when you're ready.

13 **MR. HAGA:** No redirect for this witness. I'm
14 sorry.

15 **CHAIRMAN ARGENZIANO:** Okay. Thank you very
16 much.

17 **THE WITNESS:** Thank you.

18 **CHAIRMAN ARGENZIANO:** Mr. Munsell. I wanted
19 to make sure we got it right.

20 **MR. SAVAGE:** Your Honor, I know that we are
21 officially done. I just wanted to make sure,
22 Commissioners, that both of our witnesses are still
23 here, so if in the course of Verizon's case any
24 questions arose that you really wanted to ask our folks
25 they are right here.

1 **CHAIRMAN ARGENZIANO:** That we really, really
2 wanted to ask.

3 **MR. SAVAGE:** That you really, really wanted to
4 ask them.

5 **CHAIRMAN ARGENZIANO:** I don't see any
6 questions. Commissioner Skop? No.

7 Any other matters? Time frames?

8 **MS. BROOKS:** Staff would just like to go ahead
9 and highlight the significant dates.

10 **CHAIRMAN ARGENZIANO:** Yes.

11 **MS. BROOKS:** The transcript is due on
12 June 11th. The briefs will be due July 9th and reply
13 briefs will be due on July 30th.

14 **CHAIRMAN ARGENZIANO:** Okay. With that -- do
15 we have all the exhibits entered? Are we on target with
16 everything, Mr. O'Roark, Mr. Savage?

17 **MS. BROOKS:** Yes, they have moved all of their
18 exhibits into the record. Thank you, Madam Chair.

19 **MR. O'ROARK:** It never hurts to make sure,
20 Madam Chair. I think that they are all in. I believe
21 that we just added Exhibits 22 and 23.

22 **CHAIRMAN ARGENZIANO:** Yes. Is that correct,
23 staff?

24 **MS. BROOKS:** Yes, 22 and 23 from staff's
25 understanding have been moved into the record.

1 **MR. SAVAGE:** And the only exhibit I used was
2 an excerpt from something that was already in the
3 record.

4 **CHAIRMAN ARGENZIANO:** And we have established
5 that has already been entered.

6 **MR. O'ROARK:** So we are in good shape.

7 **CHAIRMAN ARGENZIANO:** Okay. Thank you very
8 much. We're adjourned.

9 (The hearing concluded at 3:10 p.m.)

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTERS

COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

WE FURTHER CERTIFY that we are not a relative, employee, attorney or counsel of any of the parties, nor are we a relative or employee of any of the parties' attorneys or counsel connected with the action, nor are we financially interested in the action.

DATED THIS 11th DAY OF JUNE, 2010.



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