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Sent: Tuesday, February 22, 2011 4:33 PM
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Cc: Beth Salak; O'Roark, Dulaney L; David Christian; Adam Teitzman; 'Savage, Christopher'
Subject: New Filing: Complaint
Attachments: 20110222120501286.pdf

Attached for electronic filing, please find Bright House Networks Information Services (Florida), LLC's Complaint Against Verizon Florida LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for Failure to Pay Intrastate Access Charges.

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B. New Filing: **Complaint by Bright House Networks Information Services (Florida), LLC Against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for Failure to Pay Intrastate Access Charges**

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

D. Number of pages – 23

E. Complaint

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February 22, 2011

VIA ELECTRONIC FILING/ FILINGS@PSC.STATE.FL.US

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

110056-TP

**Re: Complaint by Bright House Networks Information Services (Florida), LLC Against
Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business
Services for Failure to Pay Intrastate Access Charges**

Dear Ms. Cole:

Attached for electronic filing, please find Bright House Networks Information Services (Florida), LLC's Complaint in the above-captioned matter. Service has been made in accordance with the attached Certificate.

Thank you for your assistance with this filing. Should you have any questions whatsoever, please do not hesitate to contact me.

Sincerely,

Beth Keating
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Bright House Networks Information Services
(Florida) LLC,

Complainant

v.

Verizon Florida, LLC and MCI Communications
Services, Inc. d/b/a Verizon Business Services,

Defendants

No.

110056-TP

COMPLAINT

In accordance with Rule 25-22.036, Florida Administrative Code, Bright House Networks Information Services (Florida), LLC, ("Bright House-CLEC") through its attorneys, brings the following complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services.¹ Verizon has violated and continues to violate Florida Statutes §§ 364.01(4), 364.02(13) and 364.02(14)(g), and other statutory provisions and applicable law and rules, by failing to pay Bright House's lawful intrastate access charges for the origination and termination of intrastate interexchange telecommunications service. Verizon has already unlawfully withheld more than \$2.2 million, an amount which is now growing by approximately \$500,000 per month. To remedy this violation of law, Bright House-CLEC seeks a ruling from the Commission that Verizon must pay Bright House-CLEC's intrastate access charges with respect to

¹ We refer to both entities together as "Verizon." When it is necessary to treat them separately, we will refer to "Verizon Business" and "Verizon-ILEC." Also, in order to avoid any possibility of confusion, we refer to Bright House Networks Information Services (Florida) LLC - that is, Bright-House-the-certificated-local-exchange-carrier - as "Bright House-CLEC." By contrast, we refer to Bright House Networks, LLC - that is, Bright-House-the-cable-operator-and-retail-voice-service-provider - as "Bright House-Cable." As described more fully below, it appears that Verizon's wrongful conduct addressed by this complaint is based, in part, on a deliberate confusion by Verizon of the respective roles and functions of these two different entities.

intrastate interexchange traffic Verizon sends to or receives from Bright House-CLEC; an order from the Commission directing Verizon to pay all amounts it has failed to pay for such services, plus applicable interest and late fees; and an order requiring Verizon to pay its bills for such services in the future.

LEGAL AND FACTUAL BASIS FOR COMPLAINT

1. Bright House-CLEC is a competitive local exchange carrier ("CLEC") operating in the Tampa-St. Petersburg and Orlando areas. Bright House-CLEC provides local exchange services to its affiliate, Bright House Networks, LLC, a cable operator ("Bright House-Cable"). Bright House-Cable uses our local exchange services in conjunction with its own voice services provided to its own customers.² Bright House-Cable obtains these services in order to ensure that its end user customers can not only call each other (a service it could perform on its own) but also send calls to, and receive calls from, any other customer anywhere in the world with a telephone number addressable via the public switched telephone network ("PSTN").³

2. Like other landline LECs, Bright House-CLEC provides access services to interexchange carriers ("IXCs"). That is, we permit IXCs to use our network to send calls to, and receive calls from, our local exchange service customers (in this case, our affiliate, Bright House-Cable). When those calls originate and terminate in different states, Bright House-CLEC imposes the access charges contained in its federal access tariff on file with the FCC. When those calls originate and terminate in Florida, Bright House-CLEC imposes the access charges contained in its

² In the past these have typically been residential subscribers to Bright House-Cable's cable and/or high-speed data services. Increasingly, these customers include business entities as well.

³ In regulatory terms, Bright House-Cable is a provider of interconnected Voice-over-Internet-Protocol ("VoIP") service within the meaning of applicable rules of the Federal Communications Commission ("FCC"). See 47 C.F.R. § 9.3.

Florida access service price list, the Florida intrastate equivalent of a tariff for CLECs.⁴ This case relates entirely to calls that originate and terminate in Florida, that is, to jurisdictionally intrastate calls and, therefore, relates entirely to intrastate telecommunications traffic within the jurisdiction of this Commission.⁵

3. Florida law requires intrastate IXCs to pay access charges to the ILECs and CLECs that originate and terminate the calls carried by IXCs. Specifically, Florida Statutes § 364.02(14)(g) states that, while intrastate IXCs are largely unregulated, they “*shall continue to pay* intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.”⁶

4. Florida law also expressly provides that the involvement of VoIP service at one or another end of the call does not eliminate this obligation. Specifically, Florida Statutes § 364.02(13) states that, while retail VoIP services themselves are, in general, deregulated, “[n]othing herein shall affect the rights and obligations of any entity related to the payment of switched network access rates or other intercarrier compensation, if any,” related to VoIP service.⁷

⁴ See “Telecommunications Tariffs – Frequently Asked Questions”, available online at: <http://www.psc.state.fl.us/utilities/telecomm/tariffs/faq.aspx>.

⁵ There is no issue in this case with respect to the proper identification of calls as jurisdictionally intrastate in nature. See *infra*.

⁶ In all cases in this Complaint, emphasis is added by us, unless we state that it was in the original quoted source.

⁷ Given that VoIP providers are deregulated at the retail level, this statutory provision also clarifies that the duties that an ILEC owes to such providers are “only those [duties] that the company is obligated to extend or provide under applicable federal law and regulations.” Florida Statutes, § 364.02(13). However, Bright House-Cable – our customer, the retail service provider – has no direct dealings with Verizon and, as a result, this complaint does not involve any effort by Bright House-Cable to interconnect with – or, indeed, deal in any way with – Verizon (whether Verizon-ILEC or Verizon Business). To the contrary, this case deals solely with the obligation that Verizon-ILEC and Verizon Business – two intrastate carriers – bear under the law to pay access charges to Bright House-CLEC – another intrastate carrier.

5. Reading these two statutes together compels the conclusion that IXCs like Verizon have to pay access charges for intrastate long distance calls, and that obligation is not affected by the deregulated status of the retail VoIP services that may be used to serve the end users who make or receive those intrastate long distance calls. It follows that it is a plain violation of Florida law for Verizon to fail to pay Bright House-CLEC's intrastate access charges with respect to intrastate long distance calls Verizon sends to, or receives from, Bright House-CLEC.⁸

6. Notwithstanding the clear commands of Florida law, Verizon has stopped paying access charges to Bright House-CLEC.⁹ Verizon's asserted justification for this illegal conduct is that Bright House-Cable – the purchaser of Bright House-CLEC's local exchange telecommunications services – provides VoIP service to its retail subscribers.

7. As of the bills rendered for services through January, 2011, Verizon has failed to pay Bright House-CLEC intrastate access charges in the amount of approximately \$2.2 million. Given the large amount of traffic exchanged between Bright House-CLEC and Verizon, this figure

⁸ Bright House-CLEC is able to “jurisdictionalize” the traffic that is sent to and from Bright House-Cable – that is, to properly identify it as interstate or intrastate, based on its end points – just like any other landline LEC. This is because Bright House-Cable provides a geographically *fixed* service. As a result, Bright House-Cable – and, therefore, Bright House-CLEC – know where the end user customers are when they send and receive calls. See *Universal Service Contribution Methodology*, Declaratory Ruling, WC Dkt. 06-122 (FCC Nov. 5, 2010) (“*State USF Assessment Order*”) at ¶ 14 (FCC has “recognized that some interconnected VoIP providers have the capability to track the jurisdiction of their calls”). By contrast, a nomadic VoIP provider – whose customers can use their service to make and receive calls anywhere they have access to broadband Internet connection – may have difficulty identifying which calls belong in the interstate versus intrastate jurisdiction. In addition to this practical distinction, the distinction between nomadic and fixed VoIP services is extremely significant from a legal perspective as well. See *infra*.

⁹ Verizon paid Bright House-CLEC's access charges (subject to relatively minor disputes in the normal course of business) from the time Bright House-CLEC's local switch was turned up, in early 2007, through approximately August 2010. At that time Verizon disputed a large fraction (just short of 50%) of its invoiced intrastate access charges from Bright House-CLEC. Verizon disputed 100% of our most recent bill. These are precisely the charges that, as noted above, Florida law requires that Verizon “continue” to pay.

grows by approximately \$500,000 each month that Verizon does not pay its intrastate access charge bills from Bright House-CLEC.¹⁰

8. Verizon's conduct is breathtaking in its combination of arrogance and lawlessness.¹¹ The FCC has never held that VoIP is an information service, and has made clear within the last two weeks that the question remains open.¹² The FCC has never held that it is impossible to "jurisdictionalize" traffic to or from interconnected VoIP providers, and in a November 2010 order held to the contrary.¹³ The FCC has never preempted any state authority with respect to fixed VoIP providers.¹⁴ The FCC has never held that IXCs do not owe access charges for intrastate traffic where the end users are retail customers of an interconnected VoIP provider, and state commissions considering this issue have routinely reached the opposite conclusion.¹⁵ No state or federal court in

¹⁰ As far as Bright House-CLEC is aware based on its efforts to resolve this matter with Verizon informally, there is no dispute about the number of minutes the parties have exchanged. Instead, as far as we are aware, the only material dispute is Verizon's claim that Bright House-CLEC's intrastate access charges do not apply *at all* to the traffic Verizon exchanges with Bright House-CLEC. We note that while we continue to discuss possible informal resolutions of this dispute with Verizon on a confidential basis, it appears that our disagreement about Verizon's present legal obligation to pay its access bills – particularly in light of the magnitude of these bills – will make an informal resolution very hard, if not impossible, to reach. The parties' disagreement on this fundamental point makes it necessary to bring this dispute to the Commission.

¹¹ Verizon is engaging in precisely the kind of unreasonable "unilateral action" with respect to this issue that the FCC has just condemned. See *In the Matter of Connect America Fund, et. al*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et al.*, FCC 11-13 (FCC February 9, 2011) ("*USF/Intercarrier Compensation NPRM*") at ¶ 614.

¹² *USF/Intercarrier Compensation NPRM* at ¶ 618 ("the Commission has not yet addressed the classification of interconnected VoIP services"). See also *State USF Assessment Order* at ¶ 24 n. 63 ("We have not determined whether interconnected VoIP services should be classified as telecommunications services or information services under the Communications Act").

¹³ *State USF Assessment Order* at ¶ 14.

¹⁴ To the contrary, the FCC's preemption decisions regarding VoIP relate *only* to nomadic VoIP. *Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570, 582-83 (8th Cir. 2007).

¹⁵ States that have concluded that intrastate access charges may properly apply to this traffic include Iowa, Kansas, New Hampshire, Missouri, Georgia, and Pennsylvania. See *In Re: Sprint Communications Company, L.P. v. Iowa Telecommunications Services, Inc.*, Order, Docket No. FCU-2010-0001 (Ia. Util. Bd. Feb. 4, 2011); *In the Matter of the Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas* (note continued)...

Florida, or otherwise with jurisdiction over this Commission, has ever issued any ruling that supports Verizon's views. Verizon is withholding literally millions of dollars of access charges that it owes to Bright House-CLEC simply because it thinks it can.

9. To assist the Commission and its staff in considering this matter, we set out below an overview of what we understand Verizon's legal and regulatory claims to be, and why they are wrong. We look forward to the opportunity to respond to Verizon's legal theories in more detail as this case progresses.

PARTIES

10. Bright House Networks Information Services (Florida), LLC (that is, Bright House-CLEC) is a Delaware limited liability company. Bright House-CLEC, through a predecessor company, was granted CLEC authority by this Commission in 2003. It currently provides service throughout the Tampa and Central Florida areas. Bright House-CLEC's registered address with the Commission is 12985 North Telecom Parkway, Temple Terrace, FL 33637-0907. Bright House-CLEC's representatives for this matter are:

...(note continued)

for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. and Global Crossing Telemangement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996, Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, 2010 Kan. PUC LEXIS 731 (K.C.C. Aug. 13, 2010); *Hollis Telephone, Inc. Kearsage Telephone Co., Merrimack County Tel. Co., and Wilton Telephone Co.*, 2009 N.H. PUC LEXIS 113, 277 P.U.R.4th 318 (N.H.P.U.C. Nov. 10, 2009); *Southwestern Bell Telephone Company d/b/a AT&T Missouri for Compulsory Arbitration of Unresolved Issues for an Interconnection Agreement with Global Crossing Local Services, Inc. and Global Crossing Telemangement, Inc.*, Decision, 2010 Mo. PUC LEXIS 1186 (Mo. P.U.C. Dec. 15, 2010); *In re: Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company et. al. to the Traffic Delivered to Them by Global NAPs, Inc.*, Order Adopting in Part and Modifying in Part the Hearing Officer's Initial Decision, 2009 Ga. PUC LEXIS 161 (Ga. P.U.C. July 29, 2009); *Palmerton Telephone Company v. Global NAPs South, Inc. et al.*, Opinion and Order, 2010 Pa. PUC LEXIS 245 (Pa. P.U.C. March 16, 2010). The procedural setting of these cases varies, but they uniformly reject the notion that access charges do not apply to traffic two PSTN carriers exchange, merely because there is a VoIP provider on one end of the call.

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11. On information and belief, Verizon-ILEC is a Delaware limited liability company. Verizon-ILEC is a "local exchange telecommunications company" within the meaning of Florida Statutes § 364.02(8). Verizon-ILEC is also an "intrastate interexchange telecommunications company" within the meaning of Florida Statutes § 364.02(7) because it provides its customers "intrastate interexchange telecommunications services." Verizon-ILEC's registered address with the Commission is 106 East College Avenue, Suite 710, Tallahassee, FL 32301-7721.

12. On information and belief, Verizon Business is a Delaware corporation. Verizon Business is, among other things, an "intrastate interexchange telecommunications company" within the meaning of Florida Statutes § 364.02(7) because it provides customers "intrastate interexchange telecommunications services." Verizon Business's registered address with the Commission is also 106 East College Avenue, Suite 710, Tallahassee, FL 32301-7721.

JURISDICTION

13. The Commission has jurisdiction over this matter under at least the following legal provisions: Florida Statutes § 364.01(2) (Commission has "exclusive jurisdiction in all matters ... in regulating telecommunications companies"); Florida Statutes § 364.01(4)(g) (Commission "shall exercise its exclusive jurisdiction" to ensure that all telecommunications providers "are treated fairly" and protected from anticompetitive conduct by other providers); and Florida Statutes § 364.02(14)(g) (expressly requiring intrastate IXCs (like Verizon) to pay access charges). With

respect to the Commission's jurisdiction, we note that this Complaint relates solely and entirely to communications that begin and end in the State of Florida, *i.e.*, jurisdictionally intrastate traffic.

FACTUAL AND REGULATORY BACKGROUND

14. As noted above, Bright House-CLEC provides local exchange telecommunications services to its affiliate, Bright House-Cable, which offers retail voice services to its end users. Bright House-CLEC's local exchange services allow Bright House-Cable (and indirectly, Bright House-Cable's end users) to make calls to, and receive calls from, the PSTN, including both local and long distance calls. With respect to long distance calls, Bright House-CLEC provides interstate and intrastate access services to IXCs who wish to connect to Bright House-Cable (and, indirectly, the end users). The bulk of the traffic at issue in this case falls into two categories – inbound intrastate traffic from Verizon's network to Bright House-CLEC (intended for the end user subscribers to Bright House-Cable's retail voice service), and outbound intrastate traffic that the end users dial to toll-free "8YY" numbers where Verizon has been selected (by the owner of the toll-free number) to carry that traffic.

15. All of the traffic at issue in this case is exchanged between Bright House-CLEC and Verizon using the standard "time division multiplexing" arrangements and SS7 signaling that have long been common on the PSTN. Verizon Business (the source or recipient of most of the traffic) has declined to establish direct connections with Bright House-CLEC. As a result, in most cases the inbound traffic from Verizon Business reaches Bright House-CLEC via the relevant ILEC's access tandem; between the tandem and Bright House-CLEC's switch, the traffic is routed in standard PSTN format over so-called "access toll connecting trunks" provided (in Tampa) by Verizon, and then over a Synchronous Optical Network (SONET) fiber optic network provided by Bright House-CLEC, also in TDM format. Bright House-CLEC's local exchange switch is

connected (via what amounts to a specialized loop) to Bright House-Cable's IP-based communications equipment. That equipment, connected to Bright House-Cable's cable system, sends IP-formatted traffic to, and receives it from, the ultimate end users. Outbound toll-free 8YY traffic follows the reverse of the path described above: Bright House-Cable sends Bright House-CLEC the outbound 8YY call, and Bright House-CLEC (after determining that it should go to Verizon Business) sends it out to Verizon Business via the SONET network, to the access toll connecting trunks, and then to the ILEC's tandem.

16. Key points for purposes of this dispute are that (a) Bright House-Cable, not Bright House-CLEC, provides service directly to end users; and (b) this retail end user service is provided entirely on the "customer" side of Bright House-CLEC's local exchange equipment. Put simply, Bright House-Cable is merely a *customer* of Bright House-CLEC's local exchange telecommunications services. The fact that the *customer* may provide a VoIP service is not relevant, technically or legally, to the services that Bright House-CLEC provides either to its customer (telephone exchange service) or to Verizon (exchange access service).

17. Verizon, however, evidently confounds the distinct functions of Bright House-CLEC (a LEC certificated by this Commission) and Bright House-Cable (a provider of retail video, Internet access, and voice services). Verizon's view seems to be that Verizon does not owe *Bright House-CLEC* the intrastate access rates that apply to intrastate long distance calls simply because *Bright House-Cable* provides unregulated interconnected VoIP service at retail to end users. As described below, this view is completely unfounded.

18. Before addressing what we understand to be Verizon's legal theory, we note that its current position is directly contrary to the position it advocated during the recent arbitration of an interconnection agreement between Bright House-CLEC and Verizon-ILEC. The Commission

may recall that one issue in dispute in the arbitration was whether Verizon could charge special access rates for the Verizon-supplied facilities used to carry long distance calls between Verizon's tandem switch and Bright House-CLEC's SONET network. Bright House-CLEC argued that much lower rates based on the FCC's so-called "TELRIC" standard should apply, or, in the alternative, that the interconnection point for the affected traffic should be deemed to be Bright House-CLEC's collocations at Verizon central offices, which would leave Verizon, not Bright House-CLEC, responsible for recovering the cost of the facilities from IXCs.¹⁶ In arguing against Bright House-CLEC's claims, Verizon-ILEC specifically asserted to the Commission that Bright House-CLEC should pay Verizon's high special access rates precisely *because* Bright House-CLEC "can recover [the costs of the facilities] from the IXCs" whose traffic would flow over the facilities in question.¹⁷

¹⁶ This dispute was raised within designated Issue Nos. 24 and 32 in the arbitration case. The Commission's discussion of these issues is contained at pages 6-10 and 17-19 of the Commission's ruling in that case. *See In re: Petition for arbitration of certain terms and conditions of an interconnection agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC*, Final Order, Docket No. 090501-TP, Order No. PSC-10-0711-FOF-TP (Fl. P.S.C. Dec. 3, 2010) ("*Arbitration Order*") at 6-10, 7-19.

¹⁷ In its Reply Brief in the arbitration, Verizon states that it "is fair and appropriate for Bright House[-CLEC] to bear the costs associated with the trunks (*which, again, Bright House[-CLEC] can recover from the IXCs using them*), because only Bright House[-CLEC] can control those costs." Verizon Arbitration Reply Brief (filed July 30, 2010) at 15 (emphasis added). The Commission itself relied on Verizon's argument in its decision to reject Bright House's position in the arbitration:

[R]equiring TELRIC pricing for toll access connecting trunks would replace the current – balanced – compensatory scheme with financial asymmetries that would benefit Bright House exclusively. Under the current agreement, Bright House purchases toll access connecting trunks from Verizon's tariff at special access rates *and charges interexchange carriers special access rates from Bright House's tariff for the use of the facilities*. Compelling Verizon to sell facilities at lower TELRIC rates and allowing Bright House to continue charging interexchange carriers special access rates *would introduce a competitive imbalance into the market place* that does not currently exist.

Arbitration Order at 10 (emphasis added) (We note that the costs of these facilities are actually included in Bright House's *switched* access rates charged to IXCs, not special access rates.) If it would "introduce a competitive imbalance" to permit Bright House to obtain the facilities in question at TELRIC rates while still charging IXCs access charges for using them, surely it would introduce an even *greater* "competitive imbalance" to require Bright House to pay Verizon's high special access rates, and yet permit Verizon to use those very same facilities to terminate its long distance traffic, without paying for them *at all*. Yet that is
(note continued)...

Yet after filing that claim with the Commission in July 2010, the very next month Verizon decided that its *own* IXC operations were exempt from Bright House-CLEC's access charges – the charges that would make cost recovery possible.

19. The fact that Verizon's current position is diametrically opposite to the position it took in the recent arbitration illustrates, if nothing else, the opportunistic and unprincipled nature of Verizon's approach to this issue. That said, in the current dispute we must deal with Verizon's current legal and regulatory position, opportunistically crafted thought it may be. As we understand it, therefore, Verizon's current thinking (which, as we describe below, is flawed in numerous critical respects) goes like this:

- VoIP service is an “information service,” not a “telecommunications service,” for purposes of federal law.
- The FCC has ruled that VoIP service is subject to its jurisdiction, not the jurisdiction of the states.
- Because VoIP *service* is subject to exclusive federal authority, *traffic* carried by regulated telecommunications carriers to and from providers of that service is also subject to exclusive federal authority, and, therefore, not subject to intrastate access charges.
- Any traffic that a regulated telecommunications carrier picks up from, or hands off to, an “information service” is “information service” traffic from start to finish as it traverses the PSTN.
- Therefore, any traffic bound to or from Bright House-Cable – which provides VoIP service to end users – is interstate information service traffic to which intrastate access charges do not apply.¹⁸

...(note continued)
exactly what Verizon is now doing.

¹⁸ Although we have been discussing this dispute informally with Verizon, unfortunately Verizon has not provided us with any sort of detailed explanation of the regulatory logic behind its refusal to pay its access charge bills. The discussion here is based on our best understanding of that logic, such as it is. To the extent that we have misunderstood Verizon's views, we will respond appropriately as their position is clarified.

20. It is conceivable that some day the FCC could issue a ruling that might, in some way, phase down the intrastate access charges that currently apply to the traffic at issue in this case. But not only has the FCC issued no such order to date, its actual rulings on the subject of state authority over traffic to and from interconnected VoIP services contradict Verizon's views. The FCC recognizes that it is possible to "jurisdictionalize" traffic to and from interconnected VoIP providers. Moreover, no FCC order says or implies that intrastate access charges do not apply to intrastate traffic that starts or ends on an interconnected VoIP service.¹⁹

21. A critical part of Verizon's view is the position that retail VoIP service is an information service rather than a telecommunications service. At the outset, therefore, it bears emphasis that not only has the FCC never ruled that VoIP is an information service, it has repeatedly and pointedly refused to issue such a ruling. It refused to do so in *Vonage*.²⁰ It refused to do so when it extended E911 obligations to VoIP providers.²¹ It refused to do so when it extended federal universal service contributions to VoIP providers.²² It refused to do so when it clarified the number porting obligations of VoIP providers.²³ And it refused to do so when it

¹⁹ If the FCC in the future issues a ruling that affects the issues in this case, the parties can deal with that ruling then. This speculative possibility, however, should have no impact on the Commission's handling of this complaint. See, e.g., *In Re: Sprint Communications Company, L.P. v. Iowa Telecommunications Services, Inc.*, Order, Docket No. FCU-2010-0001 (Ia. Util. Bd. Feb. 4, 2011) at 54-62 (rejecting claims that state regulator should await FCC ruling on this issue).

²⁰ *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ("Vonage") at ¶ 14, *aff'd*, *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

²¹ *IP-Enabled Services; 911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) ("*VoIP E911 Order*") at ¶ 24, *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

²² *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) ("*Federal USF Assessment Order*") at ¶ 35.

²³ *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) ("*VoIP LNP Order*") at ¶ 18 n.50.

permitted states to require VoIP providers to assess state-level universal service fees on VoIP revenues.²⁴ Given the FCC's repeated refusals to resolve this question, it is untenable for Verizon to proceed as though it has been resolved in the manner Verizon wants.

22. Even putting this critical flaw in Verizon's reasoning aside, its theory is still wrong. That is, even if interconnected VoIP service is an information service, access charges still apply to long distance traffic an IXC sends to, or picks up from, a LEC where the LEC's customer is an interconnected VoIP provider. That is because the application of access charges as between the LEC and the IXC is simply not affected by whether the LEC's *customer* is a plain old residential end user, a large business with a traditional (or VoIP-based) PBX, an Internet Service Provider, an interconnected VoIP provider, or any other category of entity that might exist. As applied here, even if we assume that Bright House-Cable's retail voice service is an information service, that has literally no impact on Verizon's obligation to pay Bright House-CLEC for the switched access services it provides in getting Verizon's calls to and from Bright House-Cable and its end users.

23. In terms of regulatory precedent, Verizon's theory reflects a misunderstanding of the long-standing FCC rule known as the "ESP Exemption." Under the ESP Exemption, a provider of information services is not required to pay the same per-minute access charges that apply to an IXC. Instead, the information service provider is permitted to buy plain old local business lines from the LEC and pay the rates applicable to those lines, even though the information service provider, in some sense, sends the traffic out into the interstate network. As the FCC explained it, the ESP Exemption is

a long-standing Commission policy that affords ... information service providers ... the option of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by

²⁴

State USF Assessment Order, supra.

IXCs. Typically, information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that *other users of interstate access* are required to pay.²⁵

The emphasized language highlights the fact that the ESP Exemption starts from the assumption that the information service provider is, in fact, a “user” of interstate access – that is, that once traffic from the PSTN gets to the information service provider’s location, the traffic continues on to other states. That assumption is simply unwarranted in the case of a fixed VoIP service. And, it is focused entirely on what a LEC may charge the information service provider, not on what the LEC may charge a third-party IXC that is sending traffic to (or receiving traffic from) that information service provider.

24. Verizon is apparently warping this FCC policy to mean that, because a LEC may not require an information service provider to interconnect using a service that entails per-minute access charges (that is, a LEC may not require an information service provider to buy Feature Group D access), the LEC may not impose such charges on third-party IXC traffic bound to, or coming from, that information service provider. That is simply not what the ESP Exemption says or means.²⁶

²⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (“ISP Remand Order”) at ¶ 27 (footnote omitted, emphasis in original). See also *USF/Intercarrier Compensation NPRM* at ¶ 618 n.939 (the ESP exemption “permits enhanced service providers to purchase local business access lines from intrastate tariffs as end-users, or to purchase special access connections, and thus avoid paying carrier-to-carrier access charges”).

²⁶ Verizon has cited two federal district court cases as supporting its view that access charges do not apply to VoIP traffic. These are *PaeTec Communications, Inc. v. CommPartners, LLC*, 2010 U.S. Dist. LEXIS 51926 (D.D.C. 2010) and *Manhattan Telecommunications Corp. v. Global NAPs, Inc.*, 2010 U.S. Dist. LEXIS 32315 (S.D.N.Y. 2010). Aside from the fact that neither of these cases is in any way binding in Florida, both are wrongly decided. Specifically, both courts concluded that the FCC had issued a generic pronouncement that “information services” are not “subject to access charges.” See *PaeTec*, 2010 U.S. Dist. LEXIS 51926 at [*6]; *Manhattan Tel.*, 2010 U.S. Dist. LEXIS 32315 at [*6]. As discussed just above, the FCC has said no such thing. It has said that information service *providers* have the *option* of connecting to the network in the same manner as a business end user, and paying the charges associated with that form of
(note continued)...

25. Verizon may think that the FCC's *Vonage* ruling supports a different result, but it does not. In *Vonage*, the FCC determined that it would preempt states from imposing traditional utility-style entry and exit regulation, tariffing requirements, etc., on nomadic VoIP providers.²⁷ The FCC expressly declined to determine whether the nomadic VoIP service offered by Vonage was an "information service" or a "telecommunications service" under federal law,²⁸ so it is not even clear that the ESP Exemption applies to interconnected VoIP. *Vonage* was entirely focused on whether states could impose regulatory obligations on nomadic VoIP providers. It said nothing at all about how *traffic* to or from such entities must or may be *rated* when an IXC and a LEC exchange such traffic.

26. In fact, to the extent that the FCC has addressed the question of traffic to or from a VoIP provider, it has recognized that such traffic may be sorted out into interstate and intrastate jurisdictions, like any other traffic. First, in the *Federal USF Assessment Order*, the FCC recognized that while much of the traffic to and from interconnected VoIP providers may be interstate in nature, clearly not all of it is, and established a "safe harbor" under which it is presumed that 64.9% of VoIP revenues relate to interstate services. The FCC observed that "it is difficult for some interconnected VoIP providers to separate their traffic on a jurisdictional basis."²⁹ However, the FCC also recognized that some VoIP providers may not need a "safe harbor" at all,

...(note continued)

network connection. Moreover, the courts in those cases appeared oblivious to the critical distinction, noted in *Minnesota Public Utilities Commission v. FCC*, *supra*, between the FCC's preemption of regulation of *nomadic* VoIP providers and its express *lack* of preemption regarding *fixed* VoIP providers. See 483 F.3d at 582-83. See notes 33-34, *infra*, and accompanying text.

²⁷ *Vonage, passim*. See also *State USF Assessment Order* at ¶¶ 5-6, 12-13. Of course, this is not an issue here in Florida, because the Legislature has already deregulated retail VoIP *providers* – even while affirming that *traffic* to or from such providers, carried on the PSTN, remains subject to access charges. See Florida Statutes §§ 364.02(13), 364.02(14)(g).

²⁸ *Vonage* at ¶ 14.

²⁹ *Federal USF Assessment Order* at ¶ 53 (footnote omitted).

because they know the “actual revenue allocation” as between intrastate and interstate traffic, or – if actual figures are not available – they may conduct a “traffic study.”³⁰ The FCC was quite clear, however, that VoIP providers that are capable of separately identifying interstate and intrastate revenues (that is, revenues derived from intrastate versus interstate traffic) may and should do so:

to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls.³¹

Clearly, the FCC recognizes that calls to and from interconnected VoIP providers may be “confine[d]” to one “jurisdiction” or another. This is fatal to Verizon’s position in this dispute.

27. The FCC’s recognition that traffic to and from interconnected VoIP providers can be reasonably identified as either interstate or intrastate in nature was most recently confirmed in November 2010 in the *State USF Assessment Order*. In that ruling the FCC again recognized that there are “interconnected VoIP providers that are able to determine the jurisdictional nature of their calls.”³² For fixed VoIP service, such as that offered by Bright House-Cable, it is not at all difficult to determine the interstate versus intrastate nature of calls to and from the end users. There is, therefore, nothing at all to Verizon’s apparent notion that intrastate long distance calls to or from those end users are or should be exempt from intrastate access charges.

28. The fact that fixed VoIP service providers can properly jurisdictionalize traffic dovetails precisely with the actual scope of the FCC’s preemption in *Vonage, supra*. In *Vonage*, the FCC only preempted regulation of *nomadic* VoIP providers. As the Court of Appeals for the 8th Circuit made clear, the FCC has *not* preempted any state authority whatsoever with respect to

³⁰ *Federal USF Assessment Order* at ¶ 54.

³¹ *Federal USF Assessment Order* at ¶ 56 (footnote omitted).

³² *State USF Assessment Order* at ¶ 7.

fixed VoIP providers.³³ Because the location of a fixed VoIP end user is known, there is no difficulty determining whether calls they make or receive are interstate or intrastate in nature. As a result, *Vonage* has literally no application Bright House-Cable, much less traffic that Bright House-CLEC and Verizon exchange that is ultimately going to and coming from Bright House-Cable.³⁴

29. In sum, there is no sound basis in regulatory law for Verizon's position. Verizon jumps to the conclusion that the FCC will hold that interconnected VoIP services are information services, then simply mis-reads the ESP Exemption, as described above. Verizon's position ignores the fact that neither the operations of, nor traffic originating or terminating with, *fixed* VoIP providers such as Bright House-Cable has ever been subject to any FCC preemption. Verizon's position cannot be squared with the fact that the FCC itself recognizes that fixed VoIP providers can easily jurisdictionalize their traffic. And Verizon's position cannot be squared with its own recent arguments to the Commission that IXCs will pay access charges to Bright House-CLEC for calls to and from Bright House-Cable's end users.

**COUNT I – VIOLATION OF FLORIDA STATUTES §§ 364.01(4)(g), 364.02(13) AND
364.02(14)(g)**

30. Bright House-CLEC restates and realleges the allegations in paragraphs 1 – 29 above, as though set forth fully herein.

31. Bright House-CLEC has duly established its intrastate access charges by means of the price list on file with this Commission.

³³ See *Minnesota PUC v. FCC*, *supra*, 483 F.3d at 582-83 (the FCC's *Vonage* order "does not purport to," in fact, "preempt fixed VoIP services").

³⁴ The various state cases cited in note 15, *supra*, recognize the distinction between leaving VoIP providers unregulated – a proposition which is generally not in dispute – and somehow exempting *traffic* flowing to or from such providers from access charges – a proposition which finds no support in *Vonage* or any other FCC ruling.

32. Verizon is required to continue to pay those duly established access charges. Florida Statutes § 364.02(13) states that, while retail VoIP services are not regulated, the deregulation of such services shall not affect the obligation to pay access charges. Florida Statutes § 364.02(14)(g) expressly provides that even though IXCs such as Verizon are largely deregulated, they remain under an obligation to continue to pay applicable access charges. Moreover, Florida Statutes § 364.01(4)(g) requires the Commission to exercise its jurisdiction to ensure that all Florida telecommunications service providers are treated fairly.

33. The FCC has recognized that some VoIP providers are capable of determining the jurisdictional nature (interstate versus intrastate) of traffic to and from their subscribers.

34. In this case, Bright House-Cable provides fixed VoIP services, *i.e.*, the services are provided to a fixed location, typically the customer's home or business. As a result, Bright House-CLEC can determine whether a call to or from those end users is jurisdictionally interstate or intrastate in nature.

35. Bright House-CLEC's intrastate access charges apply to intrastate long distance calls made to or by Bright House-Cable's end users. In addition, it would be unfair, in violation of Florida Statutes, § 364.01(4)(g), to permit Verizon to receive Bright House-CLEC's access services without paying the rates for those services stated in Bright House-CLEC's Florida access services price list.

36. As a result, Verizon owes Bright House-CLEC for the intrastate access services it receives from Bright House-CLEC. As of the end of January, 2011, the billed but unpaid amount of such access services is approximately \$2,231,000. That figure grows by approximately \$500,000 each month that Verizon fails to pay its intrastate access charges to Bright House-CLEC.

37. Bright House-CLEC respectfully requests that the Commission issue an order directing Verizon to immediately pay its outstanding intrastate access bills from Bright House-CLEC, including applicable interest and late fees, and to pay future bills when due.

COUNT II – REQUEST FOR A DETERMINATION THAT BRIGHT HOUSE-CLEC’S ACCESS CHARGES CONTAINED IN ITS PRICE LIST ARE ENFORCEABLE

38. Bright House-CLEC restates and realleges the allegations in paragraphs 1 – 37 above, as though set forth fully herein.

39. Bright House-CLEC requests a determination that its intrastate access charges contained in its price list duly filed with this Commission are enforceable against, and due from, intrastate interexchange carriers who make use of Bright House-CLEC’s local exchange network and facilities – including, specifically, Verizon Business and Verizon-ILEC – to originate or terminate intrastate long distance calls, including calls to and from Bright House-Cable’s end users.

COUNT III – REQUEST FOR A DETERMINATION THAT VERIZON’S FAILURE TO PAY BRIGHT HOUSE-CLEC’S ACCESS CHARGES IS AN UNFAIR AND UNREASONABLE PRACTICE

40. Bright House-CLEC restates and realleges the allegations in paragraphs 1 – 39 above, as though set forth fully herein.

41. Under Florida Statutes § 364.01(g), the Commission is directed to exercise its jurisdiction to “ensure that all providers of telecommunications services are treated fairly.”

42. Verizon’s conduct described above, including its unilateral pronouncement that access charges do not apply to the traffic it exchanges with Bright House-CLEC, constitutes unfair treatment of Bright House-CLEC. We note that, whatever Verizon’s purported justification for its conduct might be, the *effect* of that conduct is to deprive its principal landline competitor in Florida of substantial revenues – revenues which Verizon itself recently told the Commission that Bright House-CLEC was entitled to receive.

43. In these circumstances, Bright House-CLEC respectfully requests a finding that Verizon's actions are not fair, within the meaning of Florida Statutes § 364.01(g), and a directive to Verizon to cease that unfair and unreasonable practice.

RELIEF REQUESTED

Based on the foregoing, Bright House-CLEC respectfully requests that the Commission:

a. Issue a ruling directing Verizon to pay Bright House-CLEC the amounts billed for Bright House-CLEC's intrastate access charges that is due and outstanding as of the date of this Complaint, plus applicable interest and late payment charges in accordance with the terms of Bright House-CLEC's access price list, as well all future bills for such intrastate access services.

b. Make a determination that Bright House-CLEC's access charges contained in its price list duly filed with this Commission are enforceable against Verizon when Verizon originates or terminates intrastate long distance calls from or to Bright House-CLEC's network.

c. Make a determination that it constitutes an unfair practice, in violation of Florida Statutes, § 364.01(4)(g), for Verizon to unilaterally cease paying its access charge bills from Bright House-CLEC.

d. Such additional relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted this February 22, 2011,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via Electronic Mail and U.S. Mail on
February 22, 2011 to:

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