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November 1, 2011

claim of confidentiality
 notice of intent
 request for confidentiality
 filed by OPC

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COMMISSION
CLERK

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

Re: Docket No. 110056-TP
Complaint against Verizon Florida LLC and MCI Communications Services, Inc.
d/b/a Verizon Business Services for failure to pay intrastate access charges for
the origination and termination of intrastate interexchange telecommunications
service, by Bright House Networks Information Services (Florida), LLC

Dear Ms. Cole:

Enclosed for filing in the above matter are an original and seven copies of Verizon's
Claim of Confidentiality in connection with its Direct Testimony of Paul B. Vasington and
William Munsell. Also enclosed are one highlighted and two redacted copies of the
information for which confidential treatment is requested.

Service has been made as indicated on the Certificate of Service. If there are any
questions regarding this matter, please call me at 678-259-1657.

Sincerely,

*Demetria Clark for
D. L. O'Roark III*

Dulaney L. O'Roark III

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were sent via electronic mail on November 1, 2011 to:

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*Demetria Clark for
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against Verizon Florida LLC and) Docket No. 110056-TP
MCI Communications Services Inc. d/b/a) Filed: November 1, 2011
Verizon Business Services for failure to pay)
intrastate access charges for the origination and)
termination of intrastate interexchange)
telecommunications service, by Bright House)
Networks Information Services (Florida), LLC)
_____)

VERIZON'S CLAIM OF CONFIDENTIALITY

In accordance with Florida Administrative Code Rule 25-22.006(5), Verizon Business Services ("Verizon") asks the Commission to give confidential treatment to and protect from public disclosure certain information Verizon is providing in its Direct Testimony of Paul B. Vasington and William Munsell.

Verizon and Bright House have entered into a Protective Agreement under which Verizon has agreed to provide, in discovery, information and documents which are "proprietary confidential business information" as defined in section 364.183(3) of the Florida Statutes. Consistent with the Order Establishing Procedure in this docket (Order No. PSC-11-0417-PCO-EI), Verizon will serve Bright House with copies of Verizon's confidential direct testimony. The testimony includes information produced by Bright House in discovery and that Bright House classified as confidential, as well as information that Verizon treats as confidential, sensitive information that it has protected from public disclosure.

If it appears likely that the confidential information at issue will be used in the proceeding here (or if it becomes subject to a public records request), Verizon

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understands that it will be required to file a detailed Request for Confidential Classification before the hearing, in accordance with Rule 25-22.006(5)(c).

One highlighted and two redacted copies of the information that is subject to this claim of confidentiality are included with this filing.

Respectfully submitted on November 1, 2011.

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1 access charge regime that the FCC has just overhauled. As the FCC
2 observed in capping CLEC interstate access rates a decade ago, in a
3 competitive market, a CLEC could not successfully enter with access rates
4 higher than the ILEC rate, the prevailing market price. Higher CLEC rates
5 raise concerns that the CLEC is shifting an unjust portion of its costs to the
6 long-distance market.⁶ There is no reason to award BHNIS legacy
7 intrastate access rates with respect to the IP traffic it exchanged with
8 Verizon in the past, even if it were legally permissible to do so (and it is
9 not).

10

11 **III. BACKGROUND**

12 **Q. WHAT KIND OF ENTITY IS BHNIS?**

13 A. Although BHNIS inherited a CLEC certificate granted to predecessor
14 Time Warner in 2001,⁷ BHNIS does not provide local telephone service
15 to end users like other CLECs do. Rather, it helps **[BEGIN**
16 **CONFIDENTIAL]** XXXXXXXXXX, **[END CONFIDENTIAL]** Bright House
17 Cable,⁸ provide the VoIP telephone service that Bright House Cable
18 markets and sells to end users. BHNIS does so by interconnecting
19 Bright House Cable with the PSTN, including Verizon's network. Bright
20 House Cable sends all of its subscribers' calls through BHNIS for

⁶ See *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 59 (2001).

⁷ See BHNIS' Responses to Verizon's First Requests for Production of Documents, ("BH Resp. to VZ's First DRs"), Att. 1 (Order Acknowledging Name Change); *Application for Certificate to Provide Local Exchange Telecommunications Service by Time Warner Communications*, Notice of Proposed Agency Action Order Granting Certificates to Provide Alternative Local Exchange Telecomm. Services, Order No. PSC-01-2467 (Dec. 18, 2001); BHNIS Complaint at 6.

⁸ See BH Resp. to VZ's Int. 3.

1 introduction of new services.”¹¹ Indeed, there have been many such
2 disputes in the industry, some open for years, with some carriers paying
3 \$0.0007, some paying other rates, and some paying nothing at all for
4 handling IP traffic. And there are at least [BEGIN CONFIDENTIAL] XXX
5 [END CONFIDENTIAL]¹² companies, other than Verizon affiliates,
6 disputing BHNIS’ application of intrastate switched access charges to IP
7 traffic (although, to Verizon’s knowledge, BHNIS has not brought
8 complaints against these other companies). So Verizon’s approach was
9 nothing new or extraordinary.

10

11 **Q. EVEN IF THE COMMISSION DECIDES BHNIS’ BACK**
12 **COMPENSATION CLAIM, WILL THAT RESOLVE THE PARTIES’**
13 **ENTIRE PAST DISPUTE?**

14 **A.** No. BHNIS’ dispute here involves only IP traffic that it billed in the
15 intrastate jurisdiction. But a significant portion of the disputed IP traffic
16 was billed as interstate traffic—about [CONFIDENTIAL] XXXXXXXX [END
17 CONFIDENTIAL] of the estimated [BEGIN CONFIDENTIAL] XXXXXXXX
18 [END CONFIDENTIAL] BHNIS claims Verizon owes. Not even BHNIS
19 claims that this Commission can decide the aspect of the parties’ dispute
20 that relates to charges billed in the interstate jurisdiction. In addition, the
21 parties’ disputes cover four states other than Florida (and BHNIS has not
22 brought complaints against Verizon in any of those states). So, even if the
23 Commission mistakenly decides that it has the jurisdiction to resolve the

¹¹ ICC/USF Rulemaking, Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 604.

¹² BH Resp. to VZ’s Ints. 25 and 26.

1 Although Verizon, like the rest of the industry, has begun to implement
2 VoIP capabilities in its network, much of its telephony traffic is still
3 circuit-switched. Circuit-switched networks provide telephone service
4 using traditional TDM technology, which, in simple terms, allows
5 switches to set up circuits dedicated to each telephone call. Therefore,
6 when a Bright House Cable VoIP customer calls a Verizon TDM
7 customer, the VoIP call must be converted from IP format to TDM format
8 (and, in the other direction, from TDM to IP). BHNIS performs this
9 conversion (BH Resp. to VZ Int. 21), so that BHNIS hands off Bright
10 House Cable's customers' calls to Verizon in TDM format, and Verizon
11 hands off its customers' calls (and those of third-party carriers) to BHNIS
12 in TDM format. Without the functions that BHNIS performs, Bright
13 House Cable's end users could not receive calls from or terminate calls
14 to other networks.

15

16 **Q. DOES BHNIS PROVIDE THESE FUNCTIONS TO ANY OTHER**
17 **COMPANIES?**

18 A. No. To our knowledge, Bright House Cable is BHNIS' only "customer"
19 for these functions, which it provides to Bright House Cable under
20 contract.¹³

21

22 **Q. PLEASE DESCRIBE THE SPECIFIC FUNCTIONS BHNIS PROVIDES**
23 **TO BRIGHT HOUSE CABLE UNDER THAT CONTRACT.**

24 A. That contract, the **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXXXXXXXXXX

¹³ See BH Resp. to VZ Int. 8 and DR 1, Att. 2.

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23 CONFIDENTIAL]
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1 “Customers” with “End Users”. Because the “End User” references are
2 important to understanding what BHNIS is (or is not) providing under its
3 price list, Verizon propounded numerous requests for admissions and
4 interrogatories asking about the meaning of End User in several specific
5 price list provisions.¹⁶ After lodging objections claiming not to know what
6 “means” means or what “includes” means (BH Resp. to VZ Reqs. for Adm.
7 2, 4-13), BHNIS repeatedly denied that “End User” referred to Bright
8 House Cable end users (BH Resp. to VZ Reqs. for Adm. 2, 4,5, 6-13).
9 Despite these denials, BHNIS *also* stated that “[s]ome Bright House Cable
10 voice service subscribers may be covered by some uses of the term ‘End
11 User’ in the price list in some cases” (BH Resp. to VZ Req. for Adm. 2),
12 but declined to specify those uses or cases. Then it said “End User” could
13 be any entity that uses the retail service of “another carrier (including other
14 LECs or IXC).” (*Id.*; see also BH Resp. to VZ Int. 54.) Then it suggested
15 that even Bright House Cable might be an End User, if one accepted
16 BHNIS’ newly concocted definition of “retail” to describe the services it has
17 consistently called “wholesale”¹⁷ and that BHNIS provides to Bright House
18 Cable under [BEGIN CONFIDENTIAL] XXXXXXXXXXXXXXXXXXXXXXXXXXXX
19 XXXXXXXXXXX [END CONFIDENTIAL]. (BH Resp. to VZ Req. for Adm. 2.)
20 Finally, BHNIS proposed the theory that Bright House Cable’s voice
21 service subscribers are “‘End Users’ within the meaning of the price list,”
22 because they make calls “us[ing] the PSTN connectivity that Bright House
23 provides to Bright House Cable” (*id.*)—even though BHNIS’ Complaint

¹⁶ See generally Verizon’s First Requests for Admissions (“Reqs. for Adm.”).

¹⁷ See, e.g., Opposition at 5.

1 no right to charge Verizon (or anyone else) the switched access rates in its
2 price list (even aside from the fact that those rates never applied to IP
3 traffic).

4

5 **Q. IS BHNIS ESTABLISHING ORIGINATING AND TERMINATING**
6 **CONNECTIONS BETWEEN ANY END USERS AND CUSTOMERS**
7 **BUYING SERVICE UNDER BHNIS' PRICE LIST?**

8 A. No. BHNIS is not establishing the "originating or terminating connections
9 between an End User and a Customer" (that is, the IXC) that constitute
10 Switched Access service under BHNIS's price list. Because BHNIS does
11 not provide any local exchange service to end users, it does not connect
12 Verizon (or other carriers) with any end users. Moreover, BHNIS lacks the
13 "last-mile" facilities connecting to end users, which are the hallmark of
14 switched access. The **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXXXXX
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20 XXX **[END**
21 **CONFIDENTIAL]** but BHNIS' discovery responses indicate that Bright
22 House Cable's subscribers' calls enter BHNIS' network at a device called
23 a "Call Aggregation Router," where data packets representing calls are
24 gathered for routing to Verizon and other carriers. (BH Resp. to VZ Int.
25 21.) The facilities connecting Bright House Cable's end user to that

1 aggregation device are owned and operated by Bright House Cable—
2 including the coaxial cable from the Bright House Cable customer’s home,
3 the Cable Modem Termination System (“CMTS”), the Edge Router, the
4 Core Router, the Voice Core Router, the Master Hub, and the Broadband
5 Telephony Switch.²¹ Yet BHNIS is charging for this entire path, including
6 all of these facilities that are part of the Bright House Cable’s network
7 serving Bright House Cable’s voice subscribers. BHNIS does not lease
8 these facilities from Bright House Cable, nor does it appear that BHNIS
9 **[BEGIN CONFIDENTIAL]** XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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14 **CONFIDENTIAL]**

15
16 **Q. CAN YOU GIVE EXAMPLES OF SPECIFIC ELEMENTS IN BHNIS’**
17 **ACCESS PRICE LIST THAT IT IS CHARGING FOR, BUT NOT**
18 **PROVIDING?**

19 **A.** Yes. There are a number of examples, again due to the fact that BHNIS
20 modeled its price list on the tariffs of LECs that, unlike BHNIS, provide
21 telephone service to their own end users. The highest per-minute charge
22 in BHNIS’ price list, at almost two and half cents per minute, is the “Carrier
23 Common Line Originating and Terminating.” “Carrier Common Line” is not
24 defined or described in BHNIS’ price list. This absence of any description

²¹ See BH Resp. to VZ Ints. 21, 56 and Att. D (Network Diagram).

1 6. **Is Verizon Business required to pay the rates contained in**
2 **Bright House's access charge price list for the services that**
3 **Bright House provides to Verizon Business?**

4

5 **Q. ASSUMING THE COMMISSION HAS JURISDICTION TO RESOLVE**
6 **BHNIS's COMPLAINT, CAN VERIZON BE ORDERED TO PAY BHNIS**
7 **ITS PRICE-LISTED ACCESS RATES FOR THE SERVICES IT**
8 **PROVIDES?**

9 A. No. Even if the Commission had jurisdiction to address BHNIS' Complaint
10 (and it does not) and even if an intrastate access price list could be
11 applied to VoIP traffic (and it cannot be), BHNIS' price-listed rates would
12 not apply to the traffic at issue, for the reasons we discussed in relation to
13 Issue 2. Again, this issue has a legal component, but it stands to reason
14 that a company cannot charge for facilities and functions it is not providing.
15 As we have explained, BHNIS is not providing switched access service, as
16 described in its own price list, so it is not entitled to charge its price-listed
17 switched access rates.

18

19 **Q. HOW DO BHNIS' SWITCHED ACCESS RATES COMPARE TO**
20 **VERIZON FLORIDA'S?**

21 A. BHNIS' rates are higher than the Verizon ILEC's. On a per-minute basis
22 (measured by Verizon's cost per minute to purchase service from BHNIS'
23 price list), BHNIS's switched access rate is **[BEGIN CONFIDENTIAL]**
24 **XXXXXXX [END CONFIDENTIAL]**, compared to Verizon Florida's per-
25 minute rate of **[BEGIN CONFIDENTIAL] XXXXX [END CONFIDENTIAL]**