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May 24, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
400 North Street
Harrisburg, PA 17105-3265

RE: Bright House Networks Information Services (Florida), LLC's Response to Verizon's Answer to Armstrong's Motion for Partial Summary Judgment Docket Nos. C-2010-2216205, C-2010-2216311, C-2010-2216325 & C-2010-2216293

Dear Ms Chiavetta:

Enclosed please find a copy of the Bright House Networks Information Services (Florida), LLC's Response to Verizon's Answer to Armstrong's Motion for Partial Summary Judgment Docket Nos. C-2010-2216205, C-2010-2216311, C-2010-2216325 & C-2010-2216293 as well as the e-filing transmittal, filed today.

Very truly yours,

R. L. HICKS & ASSOCIATES

Renardo L. Hicks

Enclosure:
cc: Attached Certificate of Service.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Armstrong Telecommunications, Inc.,
Complainant,

v.

Verizon Pennsylvania Inc., *et al.*,

Respondents.

Docket Nos. C-2010-2216205
C-2010-2216311
C-20 10-2216325
C-2010-2216293

**BRIGHT HOUSE NETWORKS INFORMATION SERVICES (FLORIDA), LLC'S
RESPONSE TO VERIZON'S ANSWER TO ARMSTRONG'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Pursuant to 52 Pa. Code §5.61, Bright House Networks Information Services (Florida), LLC ("Bright House") respectfully requests that this Commission accept this response to the "Answer to Armstrong's Motion for Partial Summary Judgment" ("Verizon Answer"), filed on May 19, 2011 by Verizon Pennsylvania, Inc. and its co-Respondents in this matter ("Verizon"). Bright House is filing this response to protect itself against a serious misrepresentation of Bright House's views regarding intercarrier compensation for traffic on the Public Switched Telephone Network ("PSTN") that begins or ends with a Voice-over-Internet-Protocol ("VoIP") service ("VoIP traffic").

Bright House believes that under current law, for purposes of intercarrier compensation, VoIP traffic is and should be treated like any other traffic on the PSTN. Bright House is taking precisely that position in active litigation against certain Verizon affiliates in Florida (included within the term "Verizon" here as well). Yet Verizon claims that a recent settlement between Bright House and Verizon's Florida ILEC – a settlement that was a small part of the overhaul of an entire interconnection agreement ("Florida ICA") – shows that "the market is already moving toward a default rate of \$0.0007 for VoIP traffic that connects with the PSTN." Verizon Answer

at 9. Verizon's claim is contradicted by the facts surrounding the settlement and on the face of the Florida ICA itself.

The settlement arose as part of a lengthy interconnection negotiation and arbitration between Bright House and Verizon's Florida ILEC. The relevant facts are as follows:

1. Bright House sought the right to establish direct IP-to-IP interconnection with Verizon. Verizon refused, but in exchange for other concessions, Bright House let that issue drop.
2. Given Verizon's insistence that the parties exchange traffic in TDM rather than IP, Verizon and Bright House agreed that VoIP traffic would be treated *exactly the same as* TDM traffic for purposes of interconnection and intercarrier compensation.
3. Later, after final briefing of the Florida interconnection case, Verizon and its long distance affiliate began to withhold access charges on traffic to and from Bright House.
4. Bright House thought that the earlier settlement had resolved this issue. But Verizon reneged on the earlier deal: after the Florida PSC decided the interconnection case, Verizon refused to sign an ICA that included that earlier deal.
5. Bright House promptly sued Verizon and its long distance affiliate at the Florida PSC, seeking unpaid access charges and a declaration that access charges apply to VoIP traffic.
6. Aside from the VoIP issue, Bright House thinks traffic exchanged between an ILEC and a CLEC within a LATA should be treated as "local" traffic ("LATA-wide local"), which is the standard arrangement with the other large Florida ILEC, AT&T. Bright House had proposed LATA-wide local during negotiations, but Verizon had rejected it.
7. LATA-wide local made sense for both parties. All traffic Bright House exchanges with Verizon's Florida ILEC goes to or from a VoIP subscriber. Verizon thought that \$0.0007 should apply for that reason. But all that traffic was also intraLATA traffic, so Bright House thought \$0.0007 should apply for *that* reason.
8. This agreement on the economics permitted agreement on contract language, so Bright House and Verizon's Florida ILEC were able to avoid further litigation on this issue.

This sequence of events does not remotely support Verizon's claim that "the market is already moving toward a default rate of \$0.0007 for VoIP traffic that connects with the PSTN." "The market" has nothing to do with the situation between Bright House and Verizon. Bright House was fighting with Verizon over the scope of its statutory interconnection and compensation rights under the federal Telecommunications Act of 1996 and Florida state law.

Bright House initially sought and obtained from Verizon a deal regarding VoIP that was exactly the opposite of the way Verizon claims “the market” is moving. Then Verizon backed out of the deal. Confronted with this bad faith action, Bright House was able to strike a slightly different deal that met another Bright House goal – LATA-wide local – totally unrelated to VoIP. (Having the same rule – LATA-wide local – for all intraLATA traffic with both large ILECs in Florida creates real administrative benefits for Bright House.) Finally, Bright House’s suit against Verizon’s long distance affiliate – which is not a party to the ICA – remains in active litigation.

Moreover, Verizon’s characterization of its deal with Bright House is belied by the terms of the ICA itself. First, the ICA language embodying the settlement specifically forbids any implication with regard to these issues in any other context:

The terms of this Section 8.6 represent a negotiated compromise. ... Nothing in this Section 8.6 shall be construed by an admission by either Party that the terms of this Section 8.6 are required by Applicable Law, or that ***absent and apart from the terms of this Agreement, VoIP Traffic is or ought to be defined or treated in any particular way.*** ...

Florida ICA at § 8.6.3 (emphasis added).¹ For Verizon to suggest that Bright House supports its views about VoIP traffic violates at least the spirit, if not the letter, of this provision. Second, the language of the Florida ICA shows that \$0.0007 is not any sort of “default” rate for VoIP traffic, because it only applies to traffic that is in balance:

The rates for Local VoIP Traffic and IntraLATA VoIP Traffic stated in section 8.6 preceding shall apply ***only for such traffic that is in balance.*** [Definition of “in balance” omitted...] Any Local VoIP Traffic or IntraLATA VoIP Traffic delivered by a Party in excess of such traffic that is in balance ***shall be payable by such Party at the rates that would apply to such traffic that is not VoIP Traffic....***

Florida ICA at § 8.6.1 (emphasis added). The real “default” case is that VoIP traffic is rated “at the rates that would apply” to non-VoIP traffic – that is, for intraLATA toll calls, each party’s

¹ This document is available online at <http://www.psc.state.fl.us/library/FILINGS/11/02939-11/02939-11.pdf>. The relevant provisions appear at numbered pages 76-78 of the ICA.

full intrastate access charges. If anything, this language shows that Verizon knows that VoIP traffic will be treated like any other traffic in the absence of a specific deal to the contrary.

Finally, Bright House emphasizes that it is not seeking to intervene in this case or to urge the Commission to rule in any way on any disputed issue. Bright House's sole purpose here is to protect its own interests against the false implication that it supports Verizon's positions, either as a legal/regulatory matter or with respect to how "the market" views VoIP traffic. It would be particularly prejudicial to Bright House in other forums if this Commission issued an order that restated or gave credence to Verizon's erroneous characterization of the Florida settlement between Verizon and Bright House. We respectfully request that the Commission, in resolving this case, avoid any reliance on Verizon's mischaracterization of that settlement.

Respectfully submitted,



Marva Johnson
Corporate Vice President of
Government and Industry Affairs
Bright House Networks, LLC

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Information Services (Florida), LLC

Filed: May 24, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Armstrong Telecommunications, Inc.,
Complainant,

v.

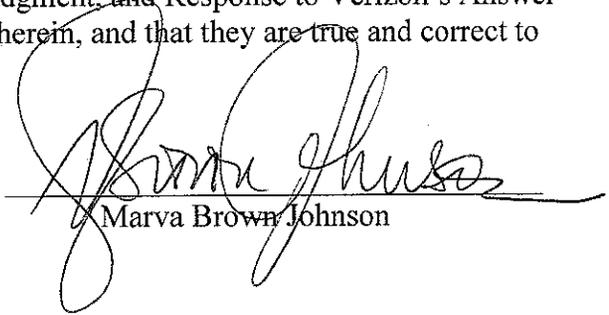
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Docket Nos. C-2010-2216205
C-2010-2216311
C-2010-2216325
C-2010-2216293

AFFIDAVIT OF MARVA BROWN JOHNSON

1. My name is Marva Brown Johnson. I am Corporate Vice President of Government and Industry Affairs for Bright House Networks, LLC. My duties include the negotiation of interconnection arrangements between Bright House's competitive local exchange carrier entities and incumbent local exchange carriers.
2. I was directly and personally involved in establishing the positions taken by Bright House Networks Information Services (Florida) LLC, our Florida CLEC, in connection with its interconnection negotiations and arbitration with Verizon Florida, LLC, Verizon's ILEC affiliate in Florida. I worked closely with our counsel in negotiations with Verizon during those matters, and was a witness in the arbitration proceedings before the Florida Public Service Commission.
3. I have read the foregoing "Motion for Leave to File Response to Verizon's Answer to Armstrong's Motion for Partial Summary Judgment, and Response to Verizon's Answer" and hereby state that the factual statements therein, and that they are true and correct to the best of my knowledge and belief.


Marva Brown Johnson

District of Columbia to wit:

S

Subscribed and sworn to before me this 23rd day of May, 2011.



Nichele Y. Rice
Notary Public, District of Columbia
My Commission Expires 6/30/2015

CERTIFICATION OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Email and First Class mail upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

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Dated: May 24, 2011



Renardo L. Hicks