Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109

COMMENTS OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC

Bright House Networks Information Services, LLC ("Bright House") submits these comments with respect to certain issues raised in the rulemaking proposal issued in these matters on February 9, 2011.[1] Bright House is a competitive local exchange carrier ("CLEC") affiliated with Bright House Networks, LLC, a provider of video, voice and data services. Bright House provides local exchange services to our cable affiliate, which uses those services in conjunction with its own Voice over Internet Protocol ("VoIP") services provided to its subscribers.[2] Bright House's local exchange services link our cable affiliate's fixed VoIP subscribers to the public switched network ("PSTN") allowing those subscribers to send calls to, and receive calls from,

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1 *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 2011 FCC LEXIS 314 (released February 9, 2011) (the "NPRM").

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.

any other customer anywhere in the world with a telephone number addressable via the PSTN.[3] The local exchange services we provide to our cable affiliate support its fixed, interconnected VoIP service for more than one million customers nationwide. For this reason, Bright House has a substantial interest in the rules for intercarrier compensation relating to interconnected VoIP services that the Commission may establish in this proceeding.

Bright House commends the commission for tackling this complex and challenging problem. We support the Commission's efforts to move forward with a sustainable long-term plan for a unified intercarrier compensation system. Moreover, we agree with and support the Commission's understanding that in order to put such a system into place will require a carefully designed, reasonable transition period that over time eliminates the hodge-podge of existing intercarrier compensation rates,[4] including for traffic that begins or ends with an interconnected VoIP service subscriber.[5]

As we believe the Commission fully appreciates, the long-run answer to intercarrier compensation issues is easy to state, but very difficult to implement. In the long run, the same intercarrier compensation regime should apply to all services offering the same functionality, so that if one carrier terminates a voice call from another carrier on the PSTN, the price for that service should be the same regardless of technology, regulatory classification, etc. That is, in the long run, the price charged for delivering PSTN voice traffic from one network to another for

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3 In regulatory terms, our cable affiliate is a provider of interconnected VoIP service within the meaning of the Commission's rules. *See* 47 C.F.R. § 9.3. As noted in the text, our affiliate's service is "fixed" rather than "nomadic," meaning that its subscribers receive their service at a known, fixed location. Bright House's relationship with its cable affiliate is described in *Bright House Networks, LLC, et al. v. Verizon California, Inc. et al.,* Memorandum Opinion and Order, 23 FCC Rcd 10704 (2008) at ¶¶ 3, 12, 17, 37-41, *affirmed, Verizon California, Inc. v. FCC*, 555 F.3d 270, 275-76 (D.C. Cir. 2009).

4 *See* NPRM at ¶¶ 14-40 (executive summary outlining long-term and transitional proposals for both universal service and intercarrier compensation reform.)

5 NPRM at ¶¶ 603-619 (discussing issues regarding intercarrier compensation for traffic that begins or ends with an interconnected VoIP subscriber).

delivery to that network's subscribers should not depend on whether the voice traffic falls into a particular legacy category such as "local" or "long distance" or "interstate" or "intrastate." In addition, in the long run, the price charged should not depend on the technology – traditional analog voice, time-division-multiplexed, wired VoIP, CDMA or GSM or VoIP-over-WiFi – that the originating or terminating network uses.

It is important that all these internetwork traffic termination rates eventually be the same in order to provide consumers with the maximum benefits of competition based on technical innovation, service quality, customer service, and price. When the intercarrier compensation rates are finally harmonized, the various technologies that can be used to provide PSTN-based voice calling, and the various business models based on those technologies, will be able to vie for acceptance by business and residential end users based on their respective cost and technical advantages. The services that offer consumers the best mix of price, quality, and features will thrive. Others may retreat to niche markets or disappear altogether.

As the Commission is well aware, the industry is a long way from such a unified compensation regime for PSTN traffic. There are different rates for traffic based on whether it can be classified as local or long distance, interstate or intrastate, etc. The existence of different prices for the same function inevitably distorts marketplace competition and provides opportunities for providers to leverage the different rates to their advantage, hiding behind vague regulatory pronouncements and, at times, halting or non-existent regulatory efforts to enforce the regime that is nominally in place.

This situation – one in which market participants have strong financial incentives to "game" the system due to the existence of different prices – arises directly from the existence of different pricing regimes, and will therefore exist as long as the different prices do. Industry players’ ***motivation*** to engage in arbitrage, therefore, will continue to exist under whatever transition plan the Commission adopts. As a result, it is critical that, in developing its transition plan, the Commission must craft that plan in a manner that makes it as efficient as possible to identify and suppress arbitrage where it occurs – as it inevitably will. Otherwise, the “cure” of the transition plan has the very real prospect of making the “disease” of arbitrage worse, not better.

Obviously there are many legal and policy considerations that affect the development of a transition plan from today’s multiplicity of intercarrier compensation rates to a rational, unified system. No matter what the details of that plan turn out to be, however, it must contain a few critical features if the arbitrage problem is to be brought under control. Specifically, Bright House submits that any viable transition mechanism must reflect the following three anti-arbitrage principles:

1. ***Technological neutrality.*** The price to terminate a call on the network of a regulated carrier that is connected to, and part of, the PSTN should not depend on whether the call originates or terminates with a VoIP provider, a wireless handset, a traditional landline telephone, or any other technology. If the presence or absence of one or another technology entitles a carrier to a better termination rate, that is absolutely guaranteed to produce profound marketplace distortions based on arbitrary regulatory rules rather than the inherent advantages of different technologies.

2. ***Make jurisdictionalizing traffic easy, not hard.*** Historically, intrastate access charges have been higher than interstate access charges. Many if not most local exchange carriers have taken account of this differential in developing their business plans and retail

prices.[6] Eventually, if the Commission moves forward with this proceeding in the way it has suggested, that divergence will disappear. But while it exists, carriers have a very strong incentive to disguise intrastate traffic as interstate. We suggest that the Commission should establish a simple set of rules to eliminate gamesmanship about which rates – interstate versus intrastate – apply during the transitional period (which will likely last for many years) that the rates are different. Specifically, during the transition period: (a) for purposes of assessing access charges, calls should be jurisdictionalized based on the calling and called number contained in the normal call detail information contained with each call; (b) calls without appropriate identifying information included in the call signaling will be rated as intrastate (on the assumption that this is the higher rate); and (c) modification of call detail information shall subject the carrier doing the modification to damages actions at this Commission, as well as forfeitures.[7]

3. ***Make anti-arbitrage enforcement speedy and simple.*** Regulatory uncertainty and delay promote arbitrage. As long as an industry player can make a vaguely plausible argument that its self-interested regulatory gamesmanship is in fact justified by, or even compelled by, the "proper" application of this or that regulatory doctrine, then – if the potential financial gains are large enough – such a player will do what is economically

[6] Note that even CLECs are subject to this phenomenon. If a CLEC's main competitor – the ILEC – obtains significant revenues from intrastate access charges associated with long distance calls to or from its subscribers, that allows the ILEC to price its basic local service at a lower rate. In order to compete, the CLEC needs to match or better that rate. This, however, means that unless the CLEC establishes intrastate access charges at or near the same level as those of its principal competitor, the CLEC will be competing against an ILEC price that is effectively subsidized by the intrastate access charge revenue. The economic pressures of competition demand that CLECs avail themselves of revenue that is lawfully available to them and that their main competitor is already receiving.

[7] We recognize that rating calls based on call detail information may not be feasible in some cases. In this regard, it is commonplace in both access tariffs and interconnection agreements to permit the parties to agree on a default "factor" to be applied to total access minutes to determine, for billing purposes, what portion are interstate and what portion are intrastate. The Commission should permit parties to agree to such factors if both choose to do so, for mutual convenience.

advantageous, regardless of any fair assessment of the actual state of regulatory law. In such a situation, the economic advantage of the gamesmanship is immediate, while the risk – of eventually being found by a court or regulatory body to have broken the rules and ordered to make corrective payments – is off in the future and may not occur at all. As long as the rules remain uncertain, industry players will find ways to "interpret" and "apply" them to their advantage. To deal with this problem, the Commission's transition plan should make clear that the Commission will (and that state regulators have the authority to and should) use summary, expedited procedures to decide claims that a carrier is violating the terms of the transition plan – including the two provisions identified above. Swift resolution of disputes of this kind will force industry players to focus on providing good service to consumers and competing in the marketplace, not playing regulatory games.[8]

The Commission should implement these principles irrespective of the specific period over which a new intercarrier compensation regime is phased in, and irrespective of the schedule on which different existing intercarrier compensation rates are phased down.[9]

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[8] In this regard, we emphasize that a transition plan does not have to be perfect in order to be a vast improvement over the current situation. In Bright House's view, much of the current paralysis surrounding these issues arises from confusion on the part of regulatory bodies – both state regulators and this Commission – about the scope of state versus federal jurisdiction over traffic that begins or ends with interconnected VoIP service. No matter what goal the Commission sets as its "end state" for intercarrier compensation associated with interconnected VoIP services, establishing ***some*** clear rule applicable to such services during the transition period will go far towards limiting arbitrage during that time.

[9] Bright House understands that the Commission, as part of its larger rulemaking effort, is considering different methods by which, and schedules on which, existing intrastate access charge rates can be phased down towards interstate levels, and then both inter- and intrastate access charge rates can be phased to very low levels or even phased out. *See* NPRM at ¶¶ 14-40 (executive summary of both short- and longer-term reform proposals for universal service and intercarrier compensation reform). Bright House is not at this time submitting specific suggestions with respect to those issues. That said, ***whatever*** phase-down is put into place, the two key principles noted above must be part of the transition plan for as long as there are different rates contained in it.

Bright House is deeply aware of the problem of arbitrage surrounding VoIP issues because we are presently being subjected to exactly the kind of regulatory arbitrage the Commission is trying to suppress. Specifically, in recent months Verizon's telecommunications companies (both its ILECs and its IXCs) have taken the position that they will not pay any access charges on PSTN traffic that either begins or ends with a VoIP subscriber (that is, where the customer of the LEC at either end of the call is an interconnected VoIP provider). As noted above, Bright House provides local exchange services and PSTN connectivity to its cable affiliate, in support of the affiliates' fixed interconnected VoIP service. The result of Verizon's new position is that it has ceased to pay access charges on any calls from, or to, Bright House. Instead, Verizon is evidently willing to pay only the lowest non-zero intercarrier compensation rate in the communications world today – $0.0007/minute – to the carriers to whom it delivers this traffic.[10]

As with any regulatory arbitrageur, the practical marketplace result of Verizon's newly-discovered approach to interconnected VoIP – that PSTN traffic is immune from any and all access charges simply because one of the end points of the call is a VoIP subscriber – is enormous and unfair financial and competitive advantage to Verizon. Verizon cannot be unaware, for example, that a principal effect of its self-declared access charge amnesty is that it no longer makes previously substantial access charge payments to its main landline competitors – carriers affiliated with cable operators. Similarly, while Verizon has in effect declared that all calls bound for interconnected VoIP subscribers are equivalent, in intercarrier compensation terms, to local calls, there is no indication that Verizon is passing the benefits of this economic

[10] Notably, Verizon does not base its unilateral decision to cease paying access charges on any claim that it is impossible or even difficult to identify the actual end points of the calls involved. (As noted above, Bright House provides ***fixed*** VoIP service.) Verizon's position has nothing to do with purported difficulties in jurisdictionalizing traffic.

windfall on to its own end users. That is, if, as Verizon claims, the proper termination rates for long distance calls to VoIP subscribers is the same as that applicable to local calls, logically Verizon should be expanding its "local" service to its end users to include all VoIP subscribers within its customers' "local" calling plans, at no extra charge.[11]

While Bright House is currently being victimized by Verizon's regulatory arbitrage, we emphasize that the problem is industry-wide.[12] As noted above, the ***motivation*** of an industry player to engage in arbitrage inevitably arises from the existence of different rates for the same functionality. And in some sense, the larger the entity involved – and Verizon is obviously very large – the greater the financial benefits from engaging in arbitrage. This is why it is critically important, in developing its transition plan, that the Commission expressly design that plan to

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[11] Verizon is completely familiar with this approach to pricing from its wireless business. And it would be a simple matter, technically, for Verizon to program its billing system to treat calls to the NPA-NXX codes assigned to its cable-based competitors, nationwide, as local rather than toll for billing purposes.

[12] Bright House is pursuing its remedies against Verizon's unilateral and lawless form of "self help" to reduce its intercarrier compensation costs and harm its principal landline competitors. *Bright House Networks Information Services (Florida) LLC, v. Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services*, Docket No. 110056-TP (Florida PSC filed Feb. 22, 2011). The issue of carriers seeking to avoid paying access charges by claiming that they are delivering VoIP traffic has arisen in a number of states. State regulators confronted with these claims (in various procedural contexts) have almost uniformly ruled that access charges do apply to this traffic. *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 for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. and Global Crossing Telemanagement, 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 Telemanagement, 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). As Bright House understands it, the number of these cases – particularly involving Verizon – appears to be increasing as a result of Verizon's roll-out of its arbitrage scheme.

make it practical to identify when arbitrage is occurring and to provide for swift and efficient means to obtain adjudications from the Commission or state regulators that it must stop.

To accomplish these goals requires clarity from this Commission. Otherwise, no matter how well-intentioned the Commission's long-run goals and transition plan might be, the transition period itself can easily degenerate into dueling regulatory abuses and increasing arbitrage as industry players realize that the only consequence of playing by the rules is being played for a chump by those who do not.

Respectfully submitted,

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