Davis Wright Tremaine LLP

Suite 800
1919 Pennsylvania Avenue NW
Washington, DC 20006-3402

Christopher W. Savage
202.973.4200 tel
202.973.4499 fax

May 27, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Permitted Ex Parte Contact In Docket Numbers: WC Docket No. 10-90 GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; and WC Docket No. 03-109

Dear Ms. Dortch:

On Thursday, May 26, 2011, undersigned counsel, on behalf of Bright House Networks, LLC, met with Mr. Zac Katz of Chairman Genachowski's office, along with Ms. Rebekah Goodheart and two other members of the Wireline Competition Bureau Staff. The purpose of the meeting was to discuss certain aspects of the pending proposals regarding intercarrier compensation in the above-referenced dockets. Several points were discussed, as described below.

1. The Transition Plan Is Critical.

Bright House believes that the critical decision facing the Commission in this matter is how to structure the transition plan to move from current rules regarding intercarrier compensation to whatever end state the Commission chooses to establish. Any transition plan will likely be in effect for an extended period of time, so businesses subject to it will need to make investment and other business decisions in accordance with it.

2. The Transition Plan Must Contain A Simple Way To Classify Traffic.

The transition plan must contain an easy way to classify traffic for purposes of intercarrier compensation. As noted in Bright House's comments, this means that, on the PSTN itself, it would be a mistake to establish a system in which compensation depends on whether the traffic is so-called "VoIP traffic" (that is, traffic on the PSTN that begins and/or ends with a subscriber to an interconnected VoIP service). Instead (as noted in Bright House's comments), on the PSTN, traffic should be classified as local (subject to reciprocal compensation), intrastate toll (subject to intrastate access charges) or intrastate toll (subject to interstate access charges) based solely on the calling and called numbers.

3. The Transition Plan Should Affirmatively Advance The Commission's Policy Goal Of Encouraging The Transition To Broadband Networks And IP-to-IP Interconnection.

One of the Commission's key goals in this proceeding is to encourage the deployment of broadband networks and direct IP-to-IP interconnection. In the realm of intercarrier compensation, as a matter of basic common sense, this requires that firms that deploy broadband and seek IP-based interconnection – that is, those firms that actually do the things that the Commission is seeking to encourage – be rewarded by the system, relative to firms that sit on their hands, refuse to upgrade legacy TDM network equipment, and refuse to interconnect in IP format.

Applying this simple principle, there is no reason to try to give "VoIP traffic" (however defined) any special treatment on a normal PSTN TDM connection between two carriers. By definition that traffic is being carried via the legacy PSTN in TDM format, not using IP format, and not transmitted via a broadband IP network. Moreover, there is every reason to afford preferential intercarrier compensation treatment to traffic that is actually exchanged on an IP-to-IP basis. Particularly since some legacy PSTN carriers appear to be resisting the move to IP format (see below), the following points constitute a reasonable and effective transition plan that will encourage the industry to move to broadband/IP interconnection, and away from the legacy PSTN, in a fair and orderly fashion.

First, any LEC above a certain size threshold should be required to establish a direct IP-to-IP interconnection with any other telecommunications carrier with which it exchanges traffic. This would apply both to LEC-to-LEC interconnection and connections between other telecommunications carriers (IXCs, wireless, etc.) and LECs as well. This would not be a burdensome requirement. As the Commission observed in the NPRM in this matter, it is increasingly common for LECs to replace their legacy TDM switches with softswitches, which are less expensive and more easily scalable to meet different traffic volume requirements.[1] Of course, one common feature of softswitches is the ability to translate traffic from TDM to IP format and back again. Deploying a softswitch or similar equipment to exchange traffic in IP format would simply not be a material financial burden for any but the very smallest LECs.[2]

Second, while the parties should be free to negotiate the intercarrier compensation (including bill-and-keep) associated with the IP-to-IP interconnection, the Commission should rule that neither party may require compensation above the equivalent of $0.0007 per minute of voice traffic exchanged.

Third, all traffic exchanged via legacy TDM connections on the PSTN would be subject to existing legacy access charge rules, completely irrespective of whether the traffic originates or terminates with an interconnected VoIP service. The financially more advantageous regulatory result – lower intercarrier compensation payments – should apply only to traffic that is handed off between carriers in IP format.

These rules would directly encourage carriers that may have been lagging in their adoption of IP technology to move forward with it. Specifically, carriers with traffic to deliver to LECs for termination would be able to avoid high legacy TDM access charges by implementing IP capability in their own networks and obtaining IP interconnection with LECs. Meanwhile, LECs that have already implemented IP capabilities will incur few additional burdens in accommodating IP connections with other carriers.[3] The key regulatory nudging accomplished by this regime would be felt by large legacy TDM LECs who for

---

[1] *See Connect America Fund, et al.,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.,* (rel. Feb. 9, 2011) ("NPRM") at ¶ 187 & n.298.

[2] The meeting did not address a specific size threshold in this connection. One possible criterion might be (for example) that any LEC that either individually or as part of its corporate family meets the "2% test" in Section 251(f)(2) would be deemed large enough to afford a softswitch in response to a request for IP interconnection. In practical terms, LECs that are much, much smaller than that size can and do deploy softswitches already, which strongly suggests that even relatively small LECs should be subject to the IP-to-IP interconnection requirement. Note that this proposal is not intended to prejudice or affect whatever conclusions the Commission might reach regarding the need of certain small, high-cost LECs to receive ongoing support, whether under the CAF or otherwise.

[3] As the Commission noted in the NPRM, one of the benefits of softswitches is their scalability. *See* NPRM at ¶187 n. 298.

whatever reason have failed as yet to accommodate IP capability in their networks. But this is precisely the nudge that is needed in order to accomplish the Commission's over-arching goals.

In this regard, while it might have made sense ten or even five years ago to consider modifying legacy access charge rules to give VoIP-originated traffic some sort of "free pass" on the PSTN, any such approach makes no sense at all now. What has changed in the interim is the enormous growth in VoIP as a successful consumer service, including both services like Vonage and Skype-Out (which rely on a third party to supply a broadband connection), and VoIP services offered by cable operators over their multifunction broadband networks. The Commission's most recent "Local Telephone Competition" report indicates that nationwide, as of June 30, 2010, there were almost ***29 million*** interconnected VoIP lines in service.[4] In the past, the relatively small number of VoIP subscribers and correspondingly low level of overall VoIP-originated or –terminated traffic could well have created a system in which it was not feasible to aggregate enough IP-originated traffic to justify IP-based interconnection with any given LEC. Now, however, with VoIP representing more than 28% of all residential lines,[5] and with the cost of softswitches and other IP-interconnection-related equipment falling, a tipping point has clearly been reached: it is sensible and feasible to permit those carriers that have substantial amounts of IP-format traffic to terminate, to require that such termination occur in IP format.

As regards the specific concern in the NPRM of avoiding regulatory arbitrage, this proposal would effectively completely remove that problem: the rating regime that applies to traffic would be determined entirely by the physical interconnection used to exchange it. Traffic sent over the legacy PSTN in TDM format would be subject to legacy PSTN TDM intercarrier compensation rules, based on the calling and called telephone numbers.[6] Traffic sent over future-oriented IP-to-IP interconnections would be exempt from those rules. It is true that under this scenario carriers would likely choose to invest in IP-capable equipment, and the establishment of IP-to-IP interconnection, as a way to avoid legacy access charges. That, however, is precisely the behavior the Commission should be trying to encourage. The problem of arbitrage as it relates to VoIP traffic on the PSTN would disappear.[7]

---

[4] Industry Analysis and Technology Division, Wireline Competition Bureau, Local Telephone Competition: Status as of June 30, 2010, at page 3, Figure 2 (28,895,000 interconnected VoIP lines as of June 30, 2010).

[5] *Id.* (25,231,000 out of 89,753,000, or 28.1%, of residential lines are interconnected VoIP).

[6] If this proposal were implemented, there would be no immediate need for the Commission to phase down any access rates, because there would be a natural incentive to shift traffic onto low-cost IP-to-IP interconnections. That said, there is nothing directly inconsistent with the proposal outlined above in ***also*** imposing a phase-down of PSTN access rates over some reasonable period.

[7] In addition to the proposal discussed in the text, counsel also briefly discussed an inferior alternative under which calls that could somehow accurately be classified as originating on a broadband IP network might be subject to reduced intercarrier compensation. This is probably technically feasible, but would require the Commission to mandate changes to the use of certain existing SS7 parameters, and/or to modify the existing LNP database so that particular lines could be certified in some way as qualifying for reduced compensation. It is far simpler to require IP-to-IP interconnection and base intercarrier compensation on the type of physical interconnection used.

4. Verizon Is Apparently Misrepresenting "The Market" With Regard To The Payment Of Access Charges On VoIP Traffic.

It was suggested at the meeting that Bright House had somehow entered into a settlement with Verizon with respect to the appropriate regulatory treatment of VoIP traffic exchanged via the PSTN. Counsel explained that any such view was mistaken. The settlement being referred to is, evidently, one that Bright House reached as a minor part of an overall Section 251/252 interconnection negotiation and arbitration with Verizon in Florida. The situation surrounding that matter is as follows:

A. In the interconnection case, 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. LATA-wide local made sense for both parties. All traffic Bright House exchanges with Verizon's Florida ILEC is exchanged in TDM via a PSTN connection between the two carriers, but ultimately begins or ends with 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.

H. 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.[8]

---

[8] Of course, the actual agreement contains language confirming that the agreed treatment of certain VoIP traffic under the agreement has no bearing on, and does not constitute any agreement with respect to, how such traffic should be treated in any other situation, or in general. In addition, the agreement regarding treating all intraLATA traffic as local ***only*** applies if the traffic is in balance. If it is not in balance, then the traffic is subject to reciprocal compensation or access charges just as though it were non-VoIP traffic. The underlying document embodying the settlement is available on the web at

(note continued)…

Verizon has evidently suggested that this settlement suggests that "the market" is moving towards a uniform $0.0007/minute rate for VoIP traffic on the PSTN. This is clearly wrong. This settlement is not a "market" result in any meaningful sense of the term. Bright House and Verizon were fighting about the scope of Bright House's statutory and regulatory rights regarding interconnection and intercarrier compensation, and found a way to settle one aspect of those disputes between Bright House and Verizon's Florida ILEC. They disagree fundamentally on the applicable legal rules, and Bright House's lawsuit against Verizon's long distance affiliate remains in active litigation.

5. Under Current Law, Access Charges Apply To VoIP Traffic On The PSTN Just Like Any Other PSTN Traffic – Irrespective Of The Regulatory Classification of VoIP.

On the question of the application of existing access charge rules to VoIP traffic on the PSTN, counsel explained that VoIP traffic on the PSTN is subject to access charges like any other PSTN traffic, completely irrespective of whether VoIP service itself is viewed as an information service or a telecommunications service. The meeting did not, however, discuss existing rules and precedents in any detail.

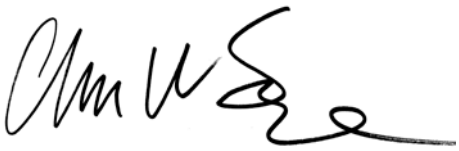
*****

Bright House respectfully requests that the Commission consider these points in its decision in the above-referenced matter.

Please contact undersigned counsel if you have any questions about this letter.

Sincerely,

Davis Wright Tremaine LLP



Christopher W. Savage

…(note continued)

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, in Section 8.6 of the "Interconnection Attachment."