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September 15, 2011

***EX PARTE***

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

On September 13, 2011, Mr. Cody Harrison, counsel to Bright House Networks (Bright House), and the undersigned met with Margaret McCarthy, Policy Advisor, Office of Commissioner Michael J. Copps. The purpose of the meeting was to discuss Bright House's views on certain aspects of the above captioned matter.

Mr. Harrison expressed his company's support for the positions laid out by the National Cable & Telecommunications Associations in response to the FCC's request for comments on universal service reform with respect to capping the size of the fund; and redirecting the fund to support broadband only in those areas which are unserved.

As to questions relating to the reform of intercarrier compensation, Mr. Harrison expressed Bright House's strong view, reflected in Bright House's several submissions<sup>1</sup>,

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<sup>1</sup> See Comments Of Bright House Networks Information Services, LLC in WC Docket No. 10-90 et al. (filed April 1, 2011); Reply Comments Of Bright House Networks Information Services, LLC in WC Docket No. WC 10-90 et al. (filed April 19, 2011); Comments Of Bright House Networks Information Services, LLC in WC Docket No. 10-90 et al. (filed Aug. 24, 2011); Reply Comments Of Bright House Networks Information Services, LLC in WC Docket No. 10-90 et al. (filed

that the FCC should treat all intrastate exchange access service the same, and not create artificial rate distinctions among otherwise indistinguishable minutes of traffic based on the technology involved in originating or terminating the call. In particular, the FCC should not adopt the proposal in the ILEC ABC Plan<sup>2</sup> that would establish a separate, much lower intercarrier compensation rule for intrastate toll traffic that originates or terminates with an interconnected Voice over Internet Protocol (“VoIP”) service during the 18-month transition period proposed to commence on January 1, 2012.

Bright House provides connectivity for its VoIP customers to the public switched telephone network (“PSTN”) through its affiliated competitive local exchange carrier Bright House Networks Information Services, LLC. These digital voice services are part of a high bandwidth, multifunction network in which Bright House has invested hundreds of millions of dollars in its service areas. These investments, including a versatile, facilities-based VoIP network, have helped to fulfill the FCC’s goal for widely deployed broadband services. During this time of massive investment – leading to the realization of the 1996 Telecommunications Act’s goal of durable facilities-based competition -- the incumbent phone companies have been slow to convert customer connections on the PSTN to VoIP.

The incumbents now maintain that their failure to update networks to IP on a faster timetable should be rewarded with continued receipt of full intrastate access fees for their calls, while Bright House and other cable operators, who have upgraded networks to provide VoIP and who have also erected CLECs by which to exchange traffic with ILECs, should see intrastate access fees *reduced* during the transition to the level of interstate access. This amounts to a 90% reduction in intrastate access, compared to what the ILECs have proposed to give themselves during the transition. For Bright House, this amounts to being deprived of millions of dollars of revenue based on a self-serving distinction by the ABC proponents.

Ms. McCarthy pointed out that this carve-out was intended to be part of a recovery mechanism during the transition. Mr. Harrison agreed that this was its intent, but that the ABC proponents have stated no *policy* basis for distinguishing between traffic that originates or terminates in VoIP but which is exchanged through TDM. Moreover, nothing in the ABC Plan would provide CLECs such as Bright House, who would bear the brunt of the reduced access payments, with any recovery of their lost revenues. Indeed, unanimous Commission policy would hardly support this unfair result: Bright House’s digital voice networks reflect new investment in innovative broadband service. Under the ABC proposal, it would be *punished* by reducing what may be collected by Bright House during the transition compared to the access fee that a legacy provider can collect.

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September 6, 2011). See also Summaries of Permitted Ex Parte Contact filed in WC Docket No. 10-90 et al., filed May 27, 2011, June 14, 2011 (attached to this letter).

<sup>2</sup> See Attachment 1, p. 10, ABC Plan, Joint filing, July 29, 2011.

Mr. Harrison pointed out that Bright House would prefer to exchange its VoIP traffic IP to IP, but ILECs, including those who have signed on to the ABC Plan, have refused to do so, in significant part because ILECs have not upgraded legacy networks to IP. As a consequence, Bright House and other cable operators have invested in facilities, including creating CLECs to maintain backward compatibility with legacy TDM-based providers to exchange traffic in a format acceptable to the ILECs and interexchange carriers, including affiliates of the ILECs. While there may be a difference in the technologies used by VoIP and circuit-switched carriers to originate or terminate calls, those differences have no effect on how they interconnect with the IXCs to whom access charges apply or on the facilities those IXCs use to deliver traffic, or pick up traffic from, ILECs and CLECs.

Differential access pricing during the 18-month transition would also encourage ILECs and their IXC affiliates to engage in efforts to characterize traffic as VoIP so as to claim a lower exchange rate. This plank of the ABC plan would invite arbitrage and disputes over the identification of traffic during a period of transition that is supposed to decrease, not inflame, the regulatory conflicts that arise in intercarrier compensation disputes.

Mr. Harrison also pointed out this possibility is far from theoretical. Bright House, along with other cable companies, find themselves in a legal dispute with Verizon, one of the ABC Plan signatories. Verizon's IXC affiliate has simply ceased paying intrastate access charges to Bright House in Florida, claiming that it is not required to do so because Bright House traffic originates or terminates as VoIP. It maintains this position despite its delivery of traffic to Bright House in TDM and Bright House's conversion of traffic to TDM when presented for exchange to Verizon.

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,

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cc: Comm'r Michael J. Copps  
Margaret McCarthy

Ms. Marlene Dortch

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