

COUNT 1

Breaches of Sections 5, 11 and 17 of the Second Interconnection Agreement And Violtion of Section 13-514(8) of the Illinois Public Utilities Act

139. Bitwise incorporates and realleges paragraphs 1 - 138 above, as if fully set forth herein.

140. Gallatin's exercise of Section 5 of the parties' Second ICA, Assurance of Payment, breaches the ICA, as there is no basis for Gallatin to require assurances of BitWise's ability to pay "undisputed charges" -- the only charges it is required to pay pursuant to Section 21.2 of the First ICA and Section 8.3 of the Second ICA, are as follows:

21.2 If any portion of an amount due to a Party ("the Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing party. The balance of the Disputed Amount shall thereafter be paid with appropriate late charges, if applicable, upon final determination of such dispute.

See Exhibit 1, First ICA at Section 21.2.

8.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts"), within ninety (90) days of the billing date and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid (but within 90 days), and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligations to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts... "

See Exhibit 2, Second ICA at Section 8.3.

141. When all facts are considered and applied in proper context to each monthly invoice cycle, including bona fide disputes, blanket disputes of unauthorized or erroneous charges, and subsequent payment arrangements or dispute resolution agreements with Gallatin's management and counsel, there can be but one conclusion: BitWise made all reasonable and lawfully required efforts

to remain current on its payment of undisputed invoiced amounts throughout its wholesale business relationship with Gallatin; and it did so in a commercially reasonable s and in compliance with its obligations under contract. BitWise makes no claims of absolute perfection, but the evidence overwhelmingly disproves Gallatin's claims that BitWise has:

- “[A] history of 14 consecutive late payments”; See Exhibit 56, May 9, 2007 Gallatin letter to BitWise re: Default: ICA Cancellation at March 7, 2007 Gallatin letter to BitWise demanding Assurance of Payment pursuant to Section 5 of the ICA;
- “[C]onsistent late payment history”; *Id*
- “[A]n egregious and long history of late payment coupled with consistently large outstanding balances since January 2006.” *Id* at May 9th Default letter;
- “[H]igh outstanding balances have been as high as approximately \$40,000...”; *Id*
- “[F]lagrant poor payment history and high outstanding balances”; *Id*
- “[C]ontinuing tardiness and default on its payment obligations”; See Exhibit 58, May 18, 2007 letter from Joseph Meyer to Jonathan S. Marashlian;
- “[T]here is a clear and unambiguous ‘basis in fact’ for Gallatin’s demand, which is the result of BitWise’s abysmal payment history... This payment history and BitWise’s continued failure to keep its accounts current is precisely why Gallatin cannot and will not withdraw its deposit demand.” *Id*

142. Each of these assertions is unsubstantiated and, in fact, false. These statements are intended to conceal Gallatin's intent to eliminate a competitor by abusing its control of the services and facilities essential to BitWise's operations and threatening termination.

143. To the extent BitWise's account fell into arrears with regard to undisputed amounts, the cause of such late payments was due to Gallatin's breaches of the parties' ICAs, including its (i) failure to properly and timely cure disputes, (ii) failure to recognize disputed charges in either its invoices or internal billing records, (iii) failure to adhere to payment arrangements and other negotiated agreements, (iv) untimely responses to BitWise's inquiries and concerns regarding questionable charges, and (v) other factors under Gallatin's exclusive control.

144. Gallatin is using its own breaches of the ICA in bad faith to make false claims against BiteWise.

145. Gallatin's multiple breaches render its March 7, 2007 Demand for Assurance unjustified and in violation of Section 5 of the Second ICA.

146. When confronted with the explanation for BitWise's refusal to comply with the March 7th Demand for Assurances letter and BitWise counsel's request that the demand be withdrawn, Gallatin's counsel stated that BitWise's "payment history and [its] continued failure to keep its accounts current is precisely why Gallatin cannot and will not withdraw its deposit demand." See Exhibit 58.

147. Because there was no chronically delinquent payment history or "failure to keep its accounts current" at the time it exercised Section 5, Gallatin's Demand for Assurances is in bad faith and in breach of its duty to deal in good faith.

148. On May 9, 2007, Gallatin began the notice process needed to exercise the Default provision, Section 11, of the Second ICA.

149. Gallatin has scheduled the cancellation of Second ICA and termination of services provided there under for June 25, 2007.

150. On June 22, 2007, out of abundance of caution and to ensure no harm was caused either to itself or the public, BitWise satisfied Gallatin's demand for assurances by delivering an irrevocable Letter of Credit in the requested amount of \$19,444.00. See Exhibit 63, Letter of Credit.

151. By exercising Section 5 of the Second ICA without adequate factual or reasonable justification and by unreasonably threatening (and possibly exercising) cancellation and termination pursuant to Section 11 without foundation or just cause, Gallatin breached the terms of the parties' Second ICA.

152. Gallatin's breaches imposed substantial costs on BitWise and has impeded its ability to make telecommunications services available to consumers, in violation of 13-514(8).

153. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare Gallatin's Demand for Assurances a willful and deliberate breach of Section 5 of the Second ICA;
- Declare Gallatin's threatened exercise and exercise of the Default provisions is a willful and deliberate breach of Section 11 of the Second ICA;
- Declare Gallatin in breach of Section 17 of the Second ICA for its failure to act in good faith in its performance of the agreement.
- Declare Gallatin's above enumerated breaches of the Second ICA to be per se violations of 13-514(8);
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's breaches and order Gallatin to pay all expenses incurred by BitWise;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 2

**Breaches of Section 21 of the First Interconnection Agreement,
Breaches of Section 8 and 17 of the Second Interconnection Agreement,
and Violations of Section 13-514(8) of the Illinois Public Utilities Act**

154. BitWise incorporates and realleges paragraphs 1 - 153 above, as if fully set forth herein.

Billing and Dispute Resolution

155. Gallatin repeatedly failed to properly and timely cure disputes.

156. Gallatin repeatedly failed to recognize disputed charges in either its invoices or internal billing records.

157. Gallatin repeatedly failed to adhere to payment arrangements and other agreements regarding payment of invoices.

158. Gallatin repeatedly failed to provide timely responses to BitWise's billing inquiries and concerns.

159. Gallatin's breaches are continuing, as it has failed to properly and timely address pending disputes regarding the application of "late fees" and/or "interest charges" to previously disputed charges that have been resolved in BitWise's favor. Despite being on notice of BitWise's good faith dispute for at least four (4) months and having a specific enumeration of the disputed amount and documentation thereof, Gallatin callously ignored the dispute and even included the disputed late fees/interest charge amounts in its calculations used to support its demand for assurances and its threatened termination if its demand was not met.

Failure to Pay or Properly Dispute Reciprocal Compensation Charges

160. In December 2006, pursuant to Attachment A, Section 5, and Attachment 1, Section 5.1, and the billing procedures set forth in Section 8 of the Second ICA, BitWise delivered invoices to Gallatin containing charges for reciprocal compensation, along with traffic data in support thereof, via e-mail.

161. Despite several follow-up requests seeking payment, Gallatin did not respond for several months and, then, only to explain it could not open the attachments to the e-mailed invoices.

162. On May 10, 2007, BitWise re-delivered the invoices and included additional invoices for the intervening months. It did so in the identical format and to the very same Gallatin employee to whom they had been previously delivered.

163. On May 18, 2007, Gallatin sought to avoid its duty to pay reciprocal compensation by having its counsel dispute BitWise's rights under contract.

164. BitWise's counsel responded on May 29, 2007 and explained that Gallatin's counsel was making up excuses, out of thin air, that could not be substantiated either by the language set forth in the four corners of the Second ICA or by credible and admissible parole evidence.

165. Soon thereafter, Gallatin's counsel admitted to basing his argument on an earlier version of the parties' Second ICA, not the ICA that was approved by the ICC that controls the parties' relationship.

166. In a June 4, 2007, memorandum, Gallatin conceded that it has a contractual obligation to pay reciprocal compensation. But Gallatin still refused to pay the invoices, claiming instead that it was analyzing them "because the volume of traffic originated by BitWise appears excessive in relation to its customer base."

167. To date, Gallatin has failed to pay the reciprocal compensation invoices.

168. Moreover, Gallatin has: (i) failed to provide proper and timely notice of its disputes, (ii) failed to adhere to the procedures for identifying disputed charges, and (iii) failed to pay the undisputed charges associated with the traffic it says it has already validated.

169. All of the aforementioned are true whether Gallatin received the invoices in December 2006 or May 10, 2007, as it is now June 25, 2007, which is either six (6) months or fifteen (15) days past due. Either way, Gallatin is delinquent.

170. To say that Gallatin's billing and dispute resolution practices have been abysmal would be a gross understatement. It goes much deeper than mere neglect or ignorance. Not a single month passed in all of BitWise's two-and-a-half year long wholesale business relationship with Gallatin that an invoice did not contain erroneous charges. And not a single disputed billing issue was ever resolved within a reasonable timeframe. And rarely, if ever, did Gallatin's management or

its agents adhere to their promises. Certainly negligence and inadequate wholesale billing and provisioning systems are parts of the problem; failure to internally communicate likely another. Because these issues have occurred over an extended period of time and affected a single customer – a customer that in furtherance of competition is constructing overbuild facilities in Gallatin’s core market of Pekin, evidences a sinister pattern of anti-competitive conduct.

171. By its repeated failures and refusal to act in good faith, as enumerated above, Gallatin has breached Section 21 of the First ICA and Sections 8 and 17 of the Second ICA. Furthermore, Gallatin’s breaches have imposed substantial costs on BitWise and impeded its ability to make telecommunications services available to consumers, in violation of 13-514(8).

172. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations and its parent corporations, and that the Commission:

- Declare Gallatin in breach of Section 21 of the First ICA;
- Declare Gallatin in breach of Section 8 of the Second ICA;
- Declare Gallatin’s in breach of Section 17 of the Second ICA;
- Declare Gallatin’s above enumerated breaches to be per se violations of 13-514(8);
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin’s unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations to pay all costs and attorney’s fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 3

Violations of Section 13-514(6) of the Illinois Public Utility Act

173. BitWise incorporates and realleges paragraphs 1 – 172 above, as if fully set forth herein.

174. Each of the four (4) instances in which Gallatin suspended BitWise's ability to order new services and facilities and ceased processing pending orders was implemented without just cause and in violation of the parties' Interconnection Agreements.

175. The June 2006 ordering suspension, initiated pursuant to Section 4.2 of the First ICA, was unsupported by the facts.

176. The purported basis for the suspension was BitWise's delinquency in payment of "undisputed" charges. However, all unpaid charges existing at the time of and prior to the June 2006 ordering suspension were subject to valid, pending and unresolved disputes for which BitWise provided adequate notice, consistent with the requirements of Section 21.2 of the First ICA.

177. Despite being provided adequate notice of the disputed charges in the invoices leading up to June 2006, Gallatin proceeded to suspend ordering to force BitWise into executing a new Interconnection Agreement.

178. Furthermore, Gallatin did not merely suspend ordering of "new or amended" orders for services, it ceased processing pending orders; in violation of Section 4.2 of the First ICA.

179. The September 2006 ordering suspension occurred in the midst of negotiations of a new Interconnection Agreement, following the expiration of the First ICA. The September 2006 ordering suspension was initiated without any advance notice. In and of itself, failure to provide reasonable advance notice of ordering suspension was in breach of the First ICA.

180. As with the June 2006 ordering suspension, all unpaid charges existing at the time of and prior to the September 2006 ordering suspension were subject to valid, pending and unresolved disputes for which BitWise provided adequate notice to Gallatin. The billing dispute pertained to the invoicing of DS-1 circuits at billed at tariff rates, as opposed to either cost-based UNE rates, as set forth in the First ICA, or the "promo" rates offered by Gallatin. This "DS-1 dispute" was the subject of dispute from the first moment Gallatin invoiced such charges. Moreover, the DS-1

dispute was specifically addressed by BitWise's counsel, Gallatin's Director of Regulatory Affairs, Stephen Murray, and President, Fred Miri, during the course of BitWise's negotiation of the Second ICA.

181. Despite being provided more than adequate notice of BitWise's disputes regarding these charges in the invoices leading up to September 2006, Gallatin nevertheless proceeded to suspend ordering to force BitWise into paying exorbitant charges that were subject to a long-standing, pending dispute; a dispute which had been previously escalated pursuant to the terms of the First ICA. Furthermore, Gallatin did not merely suspend ordering of "new or amended" orders for services it ceased processing pending orders.

182. The January and March 2007 ordering suspensions followed a similar pattern, but is even more egregious because: (1) Gallatin had full knowledge of the disputed charges prior to implementing the suspension, (2) Gallatin and BitWise had previously negotiated a mutually agreed upon resolution to the billing disputes that was merely awaiting implementation by Gallatin, and (3) Gallatin initiated the ordering suspension without providing thirty (30) days' written notice to either BitWise or its designated representative, in breach of Section 11 of the Second ICA.

183. Each of the four (4) instances in which Gallatin suspended BitWise's ability to order new services and facilities and ceased processing pending orders was implemented unreasonably, without just cause and in breach of the parties' Interconnection Agreements. Furthermore, each ordering suspension had a substantial adverse effect on BitWise's ability to provide service to its customers by causing undue delays and otherwise interfering in BitWise's ability to deliver telecommunications services ordered by its new and existing customers. Each instance therefore constitutes a per se violation of 13-514(6).

184. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare each instance in which Gallatin unlawfully suspended ordering and ceased processing pending orders a willful and deliberate violation of Section 13-514(6);
- Order Gallatin and its parent corporations and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 4

Violations of Section 13-514(8) of the Illinois Public Utility Act

185. BitWise incorporates and realleges paragraphs 1 - 184 above, as if fully set forth herein.

186. Each of the four (4) instances in which Gallatin suspended BitWise's ability to order new services and facilities and ceased processing pending orders was implemented in breach of the parties' Interconnection Agreements. These breaches had a substantial adverse effect on BitWise's ability to provide service to its customers by causing undue delays and otherwise interfering in BitWise's ability to deliver, and thereby impeding the availability of, telecommunications services ordered by new and existing customers.

187. Each breach increased BitWise's costs by diverting management and employees away from conducting day-to-day business to deal with the suspensions for several days at a time, imposing customer retention costs on BitWise, and imposing legal fees to escalate the disputes and pursue negotiated resolutions. Each instance therefore constitutes a per se violation of 13-514(8).

188. Additionally, Gallatin's refusal to honor the cost-based pricing associated with the DS-1 products listed in the First ICA and, instead, imposing "promotional" DS-1s and DS-1s at retail tariff rates breached the terms of the parties' First ICA.

189. Furthermore, Gallatin's refusal to honor the pricing in the First ICA had a substantial adverse effect on BitWise's ability to provide service to its customers by causing undue delays and otherwise interfering in BitWise's ability to deliver, and thereby impeding the availability of, telecommunications services ordered by new and existing customers. In at least one instance, these delays resulted in lost business and revenue.

190. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare each instance in which Gallatin breached the terms of the parties' Interconnection Agreements in the process of suspending BitWise's ability to order new services and suspending the processing of BitWise's pending orders a willful and deliberate violation of Section 13-514(8);
- Declare Gallatin's refusal to honor the cost-based pricing associated with the DS-1 products listed in the First ICA a willful and deliberate violation of Section 13.514(8);
- Order Gallatin and its parent corporations and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 5

Violations of Section 13-514(10) of the Illinois Public Utility Act

191. BitWise incorporates and realleges paragraphs 1 – 190 above, as if fully set forth herein.

192. DS-1s are unbundled network elements subject to cost-based pricing under both federal and state laws. On its face, Gallatin's refusal to offer DS-1s to BitWise at the cost-based rates associated with DS-1s, as expressly set forth in the First ICA, violates 13-514(10).

193. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare Gallatin's failure to offer BitWise DS-1s on an unbundled basis in a manner consistent with the ICC's and FCC's rules, which require cost-based pricing, a willful and deliberate violation of Section 13-514(10);
- Order Gallatin and its parent corporations and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 6

Violations of Sections 13-801(g) and 13-514(11) of the Illinois Public Utility Act

194. BitWise incorporates and realleges paragraphs 1 - 193 above, as if fully set forth herein.

195. DS-1s are unbundled network elements subject to cost-based pricing under state laws, specifically, 13-801(g). On its face, Gallatin's refusal to offer DS-1s to BitWise at the cost-based rates associated with DS-1s, as expressly set forth in the First ICA, violates 13-801(g).

196. Any violation of the obligations set forth in 13-801 are also violations of 13-514(11).

197. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare Gallatin's failure to offer BitWise DS-1s on an unbundled basis in a manner consistent with the ICC's and FCC's rules, which require cost-based pricing, a willful and deliberate violation of Sections 13-801(g) and 13-514(11);
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 7

Violations of Section 13-514(5) of the Illinois Public Utility Act

198. BitWise incorporates and realleges paragraphs 1 - 197 above, as if fully set forth herein.

199. Unreasonably delaying access by any person to another telecommunications carrier has been declared by the state of Illinois to be a per se impediment to the development of competition and is prohibited by 13-514(5).

Delaying Number Porting

200. As detailed in this complaint and the Shuler Declaration and Attachments thereto, on dozens of occasions, Gallatin delayed porting the telephone numbers of customers that switched service providers from Gallatin to BitWise. Under no circumstance should a number port request go without a response from the ILEC for more than 24 hours, yet Gallatin repeatedly allowed days and even weeks to lapse before even acknowledging receipt of BitWise's port requests. In many documented cases, Gallatin did not complete the number ports for three weeks, up to a month and more. Gallatin's number porting delays were excessive by any standard. Each instance in which Gallatin failed to complete a number port within a reasonable amount of time delayed a customer's access to BitWise. And in each instance Gallatin deprived BitWise of revenue and reaped a windfall by maintaining the customer on its network.

Loop Provisioning Cap

201. Gallatin's policy of imposing a "cap" on the number of loop orders provisioned on behalf of a CLEC on any given business day to two (2) loops unreasonably delays customers' access to BitWise. This policy, even though limited to loop orders requiring truck rolls, nonetheless limits BitWise to signing up a very limited number of customers each day. Indeed, BitWise has been directly harmed by this policy as it has on many occasions submitted more than two orders requiring truck rolls on one day.

202. Gallatin does not impose any such limits on its own retail operations, thereby discriminating in its own favor over its CLEC competitors by delaying services to competitors while excusing itself from similar delays.

Policy and Provisioning of Lesser Quality Loops

203. Gallatin's policy, and its imposition thereof, to provide "good clean" loops for NTS, another Gallatin CLEC customer, while ensuring BitWise is provisioned lesser quality facilities is unreasonable and discriminatory and severely limits the ability of BitWise to provision competitive telecommunications services and compete effectively. BitWise has notified Gallatin repeatedly of the poor quality and faulty service experienced providing telecommunications service to customers and Gallatin continued to provision loops with poor quality based upon a covert policy of discrimination.

204. BitWise has experienced direct harm as a result of this unreasonable and discriminatory policy. The poor quality of loops has cost BitWise customers due to the degraded quality of service BitWise was able to offer over the facilities provisioned by Gallatin, especially when compared with other LECs in the market. BitWise has also suffered harm to its reputation due to this lack of ability to provision comparably adequate telecommunications service to all customers.

Intentionally delaying and dropping trouble tickets on DS-1s

205. As detailed the Shuler Declaration and Attachments thereto, Gallatin has engaged in a repetitive and intentional campaign of delaying and dropping trouble tickets to significantly degrade BitWise's ability to offer telecommunications services to customers. Gallatin's use of its incumbent status to provide these required services to Gallatin is an unreasonable limit on BitWise's ability to compete with other telecommunications carriers and is therefore a direct violation of 13-514(5). BitWise has lost customers and suffered damages as a result of Gallatin's intentional delays and dropping of trouble tickets.

206. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare each documented instance of Gallatin's failure to port telephone numbers to BitWise within a reasonable timeframe a willful and deliberate violation of 13-514(5);
- Declare Gallatin's loop cap policy a willful and deliberate violation of 13-514(5);
- Declare Gallatin's policy of provisioning lesser quality loops a willful and deliberate violation of 13-514(5);
- Declare Gallatin's intentional delaying and dropping of trouble tickets on DS-1s a willful and deliberate violation of 13-514(5);
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 8

Violation of Section 13-514(1) of the Illinois Public Utility Act

207. BitWise incorporates and realleges paragraphs 1 - 206 above, as if fully set forth herein.

208. Unreasonably delaying collocation to another telecommunications carrier is a per se impediment to the development of competition, pursuant to 13-514(1).

209. Gallatin unreasonably delayed complying with Part C, Attachment IV, Section 2.16 of the parties First ICA, which required Gallatin to respond to BitWise's request for collocation within ten (10) days of receipt. Gallatin did not respond in a manner compliant with the First ICA for over 45 days.

210. Thereafter, Gallatin completed the collocation far beyond the 90-day interval sanctioned by the FCC. Indeed, it took Gallatin nearly eight (8) months from the time BitWise first requested collocation, in early May 2005, until BitWise was permitted to collocate equipment, December 2005. This inordinate and unreasonable delay handicapped BitWise's ability to compete and placed it at least five (5) months behind its originally expected deployment schedule. Likewise, Gallatin was able to preserve its stranglehold on customers for the same length of time as its delay.

211. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in its favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare Gallatin's delays in providing collocation to BitWise a violation of 13-514(1);
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses with all due haste;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with bringing this action;
- Order Gallatin and its parent corporations to pay all costs associated with investigating this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

COUNT 9

Violation of Section 252(a) of the Federal Communications Act

212. BitWise incorporates and realleges paragraphs 1 - 211 above, as if fully set forth herein.

213. Section 252(a) of the Act requires ILECs to file interconnection agreements arrived at through voluntary negotiations with the State commission in charge of regulating telecommunications services. Section 252(a)(1) of the FCA states:

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement ... shall be submitted to the State commission under subsection (e) of this section.

214. The FCC thoroughly addressed the application of Section 252(a) in its Notice of Apparent Liability (“NAL”) against the ILEC, Qwest Communications Corp. (“Qwest”). In the NAL, the FCC alleged that Qwest had failed to file with several state Commissions throughout its territory certain “secret side deals.” See *Qwest Corporation Notice of Apparent Liability and Forfeiture*, 19 F.C.C.R. 5169 (2004) (“Qwest NAL”). These side deals modified the interconnection obligations as between Qwest and several CLECs and, because they were never filed with the state Commissions, they remained hidden from other requesting CLECs.

215. In the *Qwest NAL*, the FCC proposed a \$9 million dollar forfeiture against Qwest for its willful and repeated violations of Section 252(a). *Id.* The FCC stressed in the *Qwest NAL* that “Section 252(a)(1) is not just a filing requirement. Compliance with section 252(a) is the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors. Accordingly, any filing delays under Section 252(a) are *extremely serious.*” *Id.* ¶ 46

(emphasis added). For this reason, the FCC imposes substantial forfeitures against ILECs who have failed to file interconnection agreements with state Commissions pursuant to Section 252(a). *Id*

216. As the FCC indicated in the *Quest NAL*, failure to file the appropriate interconnection agreement with a State commission deprives carriers of just, reasonable, and nondiscriminatory terms and allows incumbent carriers to unfairly discriminate against certain competitive carriers.

217. If Gallatin did not believe that the DS-1 facilities ordered by BitWise were the same or at least sufficiently similar to the DS-1 products in the First ICA, because it had observed for the first time since 2000 (the year BitWise's adopted Essex Telecom ICA was first approved by the ICC) that its ICA did not contain the "proper" product, then it had a decision to make when BitWise placed an order for the four (4) DS-1s in the Winter of 2006.

218. The proper course would have been to provision the requested circuits at the rates established in the First ICA, then draft an amendment to the First ICA to add the "proper" DS-1s and request negotiations thereof to deal with the provisioning and billing of such DS-1s prospectively. But in its disregard the law, and desire to "matriculate" a complete replacement ICA, Gallatin resorted to a self-serving and anti-competitive ruse.

219. Gallatin verbally proposed a side agreement. While the precise terms of the side agreement are subject to considerable and long-standing disputes, what is not disputed is that Gallatin never memorialized the agreement in writing and never filed the agreement with the ICC as either a separate Interconnection Agreement or amendment to the First ICA.

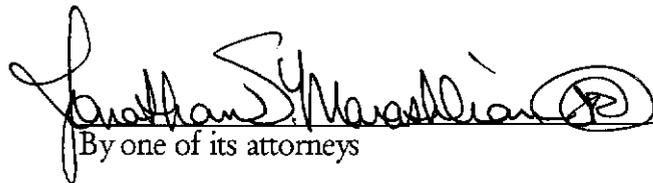
220. Gallatin's failure to file the DS-1 side agreement with the ICC is a direct violation of Section 252 of the FCA.

221. WHEREFORE, BitWise Communications, Inc. respectfully requests that the Commission enter judgment in their favor and against Gallatin River Communications, LLC and its parent corporations, and that the Commission:

- Declare that Gallatin has failed to meet its duty as an incumbent local exchange carrier to file interconnection agreements with the Illinois Commerce Commission under Federal law and therefore has violated Section 252(a) of the Federal Communications Act.
- Declare that Gallatin's failure to file an amendment or revised interconnection agreement with the Illinois Commerce Commission resulted in the unlawful discrimination against BitWise for anti-competitive purposes.
- Order Gallatin and its parent corporations to reimburse BitWise for all expenses and lost revenue resulting from Gallatin's unlawful actions and order Gallatin to pay all expenses;
- Order Gallatin and its parent corporations to pay all costs and attorney's fees associated with investigating and bringing this action; and
- Grant BitWise such other relief as the Commission shall deem appropriate.

Respectfully submitted,

BITWISE COMMUNICATIONS, INC.



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STATE OF ILLINOIS)
)
COUNTY OF ~~COOK~~) SS.
 Peoria mBS)

VERIFICATION

I, Michael Shuler, being first duly sworn and on oath state that I am President of BitWise Communications, Inc., as such, am competent to testify on the facts alleged in the Complaint, that I have read the foregoing Complaint filed by Bitwise Communications, Inc. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure and as required under Section 13-515(e) of the Illinois Public Utilities Act, the undersigned certifies that the statements set forth in the attached are true and correct to the best of my knowledge and belief except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same true.



Michael Shuler, President

SUBSCRIBED AND SWORN to
me on 6/21, 2007.



Notary Public



BEFORE THE
ILLINOIS COMMERCE COMMISSION

BITWISE COMMUNICATIONS, INC.)

Complainant,)

vs.)

Docket No. 07-_____

GALLATIN RIVER COMMUNICATIONS, LLC,)
MADISON RIVER COMMUNICATIONS CORP.,)
AND CENTURYTEL, INC.)

Respondents.)

NOTICE OF FILING

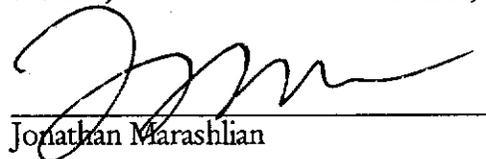
Please take notice that on June 26, 2007, the undersigned filed an original and four (4) copies of its **Verified Complaint, Exhibits and documents in support thereof**, with the Clerk of the Illinois Commerce Commission, via Federal Express overnight courier.



Jonathan S. Marshlian

CERTIFICATE OF SERVICE

I, Jonathan S. Marshlian, an attorney for BitWise Communications, Inc., on oath state that I served this Notice of Filing and its **Verified Complaint, Exhibits and documents in support thereof**, on the attached Service List, via Federal Express overnight courier, on June 26, 2007.



Jonathan Marshlian

Helein & Marshlian LLC
The *Comm*Law Group
1483 Chain Bridge Road, Suite 301
McLean, Virginia 22101
Telephone: (703) 714-1313
Email: jsm@commlawgroup.com

Service List

The Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

The General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

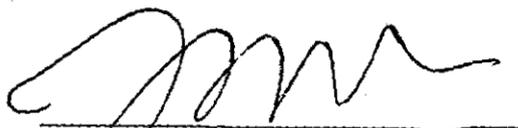
Gallatin River Communications, LLC
200 Enterprise Drive
Riverway Business Park
Pekin, IL 61554

CenturyTel, Inc.
100 CenturyTel Drive
Monroe, Louisiana 71203

The Executive Director
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Joseph D. Murphy
Mayer Capel
306 West Church St.
Champaign, IL 61826

Madison River Communications Corp.
103 South Fifth Street
Mebane, NC 27302



Jonathan S. Marashlian