

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CHARTER FIBERLINK-ILLINOIS, LLC)	
)	
vs.)	
)	
MCI COMMUNICATIONS SERVICES, INC.)	
d/b/a VERIZON BUSINESS SERVICES)	Docket No. 12-0073
)	
Complaint pursuant to § 5/10-108 and)	
§ 5/13-101)	
)	
)	
)	

**VERIZON’S REPLY IN SUPPORT OF
MOTION TO DISMISS COMPLAINT**

Pursuant to 83 Ill. Admin. Code § 200.190(e) and the briefing schedule adopted at the February 21, 2012 prehearing conference in this docket, MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”) hereby files its reply in support of its motion to dismiss¹ Charter Fiberlink-Illinois, LLC’s (“Charter”) verified complaint² for failure to state a claim upon which relief may be granted.

Introduction

The Commission should grant Verizon’s motion to dismiss, because Charter has failed to state a claim upon which the Commission may grant the requested relief. The Commission’s 2009 *Global NAPs* decision,³ upon which Charter relies heavily, is not relevant here because it involved different facts. *Global NAPs* was a dispute over the specific terms of an interconnection agreement between the parties, and this case does not involve an interconnection

¹ See “Verizon’s Motion to Dismiss Complaint” (March 13, 2012) (“Motion”).
² See Charter’s “Verified Complaint” (January 26, 2012) (“Complaint”).
³ See “Order,” *Illinois Bell Tel. Co., Inc. v. Global NAPs Illinois, Inc.*, ICC Docket No. 08-0105 (February 11, 2009), *aff’d, summary judgment granted*, 749 F. Supp.2d 804 (N.D. Ill. 2010) (“*Global NAPs*”).

agreement.⁴ Moreover, in *Global NAPs*, the parties disagreed whether Global NAPs even provided VoIP service, with the Commission ultimately determining that Global NAPs had failed to prove that it did. Here, neither party disputes that Charter provides VoIP service. The lack of an interconnection agreement and the undisputed nature of the traffic here are critical differences that distinguish *Global NAPs* from this case.

Charter also ignores that more than a year after the Commission decided *Global NAPs*, the Illinois Legislature passed PA 96-0927, which prohibits the Commission from regulating “any [] aspect of” interconnected VoIP service and information services.⁵ That purposefully expansive language necessarily encompasses intercarrier compensation for these services. Finally, Charter fails to mention that more than two years after the *Global NAPs* decision, the Federal Communications Commission (“FCC”) confirmed that it had never ruled that intrastate switched access charges apply to interconnected VoIP traffic.⁶ Nothing in Charter’s Opposition can save its Complaint from dismissal for failure to state a claim upon which relief may be granted.

Argument

I. The Complaint Must Be Dismissed Because the Commission Lacks Jurisdiction to Grant the Relief Requested.

⁴ Perhaps recognizing this critical distinction, Charter’s Complaint references an ICA between Trans National Communications International, Inc. and two incumbent local exchange carrier (“ILEC”) entities that have not been Verizon affiliates since their acquisition by Frontier Communications Inc. on July 1, 2010 (*see* April 21, 2010 Order in ICC Docket 09-0268), claiming that the ICA “confirms that the rates in Charter’s intrastate access tariff are applicable to IP-terminated calls.” Complaint, ¶ 21. But of course, an ICA among random third parties has no bearing on respective obligations of Charter and Verizon, who are not parties to the ICA in question and do not have an ICA of their own (nor could they, as Charter is a competitive local exchange carrier (“CLEC”) and Verizon is an interexchange carrier (“IXC”)). Complaint, ¶¶ 6-7.

⁵ *See* 220 ILCS 5/13-804 (PA 96-0927 became effective June 15, 2010).

⁶ *See Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (Nov. 18, 2011) (“*ICC Reform Order*”), ¶¶ 937-39; 945.

The Commission must dismiss Charter's Complaint, because it cannot grant Charter's prospective and retrospective requests for relief for an array of reasons.

A. The Commission Must Dismiss Charter's Retrospective Claims Because the Commission Lacks Jurisdiction to Address Them.

Charter's attempts to manufacture a basis for Commission jurisdiction over Charter's retrospective claims fail under state and federal law.

1. Pursuant to Section 10-108 of the PUA, the Commission May Only Address Complaints Regarding a Violation of the PUA, or of an Order or Rule of the Commission.

Charter urges the Commission to disregard both that Section 10-108 of the Public Utilities Act⁷ ("PUA") permits the Commission to consider only complaints regarding a violation of the PUA, or of an order or rule of the commission, and that the only two statutes that Charter alleges were violated have nothing to do with the subject matter of the Complaint. Opposition at 5-7. Verizon's Motion explained why these flaws are fatal to Charter's retrospective claims (*see* Motion at 10-12), and Charter's responses regarding the *Global NAPs* order and Sections 4-101 and 13-101 of the PUA cannot salvage the Complaint.

a. The Commission's *Global NAPs* Order Does Not Support Charter's Contention that Its Complaint Is Proper Under Section 10-108 of the PUA.

Charter does not dispute Verizon's argument that the Complaint fails to plead facts establishing violations of Sections 13-501(a) or 13-514 of the PUA. Charter instead shifts gears and argues that the Commission has authority to entertain the Complaint pursuant to Section 10-108 of the PUA because the Commission accepted a complaint brought under that section in the *Global NAPs* proceeding. Opposition at 6-7. What Charter fails to disclose is that the complaint in the *Global NAPs* proceeding was brought *pursuant to Section 252(e) of the Federal*

⁷ *See* 220 ILCS 5/10-108.

Telecommunications Act (47 U.S.C. § 252(e)) for a violation of the parties' ICA. See *Global NAPs* at 1. That ICA included a rate appendix that incorporated Illinois Bell's intrastate access tariff by reference (*id.* at 27), making the tariff part of the ICA. This is why the Illinois Bell tariff was relevant. *Global NAPs* was not a tariff enforcement proceeding (as is the case here), but an ICA enforcement proceeding that involved tariff interpretation because the tariff was incorporated into an ICA appendix.

In other words, ICA interpretation and enforcement were at the core of the *Global NAPs* proceeding. As the Commission found, “[o]ur role here is only to interpret and enforce ICAs,” and “in this instance, AT&T Illinois asks nothing more than to have the Commission to interpret and enforce AT&T Illinois’ ICA with *Global*, including the provisions of the ICA requiring *Global* to pay for certain services” See *Global NAPs* at 45-46. The Commission stated that “[w]hat is at issue is the compensation that applies under the parties’ ICA to the traffic delivered by *Global* to AT&T Illinois,” and held that “under the ICA, AT&T Illinois is entitled to charge local reciprocal compensation and tariffed intrastate access charges” *Id.* at 46 (emphasis added). Thus, at every turn, the Commission was very careful to explain that it was interpreting and enforcing an ICA between the parties, and nothing more. Indeed, in distinguishing an opposite result reached by the New York Public Service Commission in an analogous dispute involving *Global NAPs*, the Commission stated that the fact that “no ICA existed between the parties ... means that the issues were of a different character” than those presented in the Illinois case. *Id.* at 45 (emphasis added). In affirming that conclusion, the Northern District of Illinois likewise underscored that ICA interpretation was at issue in the *Global NAPs* proceeding in Illinois, which distinguished it from the *MetTel/Global NAPs* proceeding in New York, in which a federal court declined to apply tariffed intrastate access charges to VoIP traffic where no ICA

was involved. See *Global NAPS Illinois, Inc. v. Illinois Commerce Commission*, 749 F.Supp.2d 804, 815-16 (N.D. Ill. 2010). The Commission’s role in arbitrating, approving and enforcing ICAs entered into pursuant to the Federal Telecommunications Act is irrelevant here because there is no ICA at issue.

Another significant distinction between the *Global NAPs* proceeding and the instant one is that the Commission rejected Global NAPs’ allegations that the traffic at issue was VoIP, finding them “unsworn,” “[h]ighly questionable” and “suspicious.” *Id.* at 45. Here, Charter’s Complaint (which was verified under oath) confirms that the traffic is interconnected VoIP traffic⁸ – an undisputed allegation that must be taken as true for purposes of Verizon’s motion to dismiss.

In addition, the *Global NAPs* decision predates significant Illinois statutory changes and the FCC’s *ICC Reform Order*, both of which come to bear here. And of course, prior Commission decisions are not *res judicata* in any event. To the contrary, it is well-established that Commission decisions (let alone bilateral arbitration decisions) have *no res judicata* effect, and that the Commission has authority to address each matter before it freely, even if it involves issues *identical* to those in a prior case, much less one as different as the instant one is from the *Global NAPs* proceeding. See, e.g., *Illinois-American Water Co. v. Illinois Commerce Commission*, 322 Ill.App.3d 365, 368 (3rd Dist. 2001), *modified, reh’g denied* (July 12, 2001); *Citizens Utility Board v. Illinois Commerce Commission*, 291 Ill.App.3d 300, 307 (1st Dist. 1997); *Mississippi River Fuel Corp. v. Illinois Commerce Commission*, 1 Ill.2d 509, 513 (1953).

b. Sections 4-101 and 13-101 of the PUA Do Not Give the Commission Jurisdiction Over Charter’s Complaint.

⁸ See, e.g., Complaint, ¶¶ 9, 11, 15-16, 19- 21, 28.

Charter argues that because Verizon did not challenge the Commission’s jurisdiction under Sections 4-101 and 13-101 of the PUA, even though the Complaint cited them, Verizon “concedes by its silence that these provisions do grant the commission authority to consider and grant the relief requested.” Opposition at 7. Charter’s argument reflects a fundamental misunderstanding of the role of these statutes as relates to the Commission’s jurisdiction over *public utilities*, as opposed to its jurisdiction over *complaints brought pursuant to Section 10-108*. While it is true that Section 4-101 of the PUA gives the Commission “general supervision of all public utilities,” Charter omits the words that directly follow these: “*except as otherwise provided in this Act [the PUA].*” See 220 ILCS 5/4-101 (emphasis added). Section 10-108 of the PUA prohibits Charter’s Complaint, because the Complaint does not allege a violation of the PUA, or of any order or rule of the Commission.

Moreover, general supervisory jurisdiction over a public utility is markedly different from having jurisdiction to entertain specific types of complaints against that public utility. For example, the fact that the Commission has general supervisory authority over Verizon does not mean that the Commission has jurisdiction to entertain against Verizon a personal injury suit, defamation claim, trespass suit, breach of lease claim, or any of the other array of complaints that are barred by Section 10-108’s limitations. Section 10-108 indisputably limits the Commission’s jurisdiction to complaints for violations “of any provision of this Act [the PUA], or of any order or rule of the Commission.” See 220 ILCS 5/10-108.

Similarly, Verizon does not dispute that Section 13-101 delineates which provisions of the PUA apply to telecommunications rates and services. However, Section 13-101 does not confer jurisdiction to hear complaints that the other provisions of the PUA prohibit the Commission from considering. Despite Charter’s attempts to confuse things, Charter has not

alleged the violation of any provision of the PUA, or any order or rule of the Commission. The Commission therefore must dismiss Charter's complaint.

2. Pursuant to Section 5-201 of the PUA, the Circuit Courts of Illinois Have Exclusive Jurisdiction Over Charter's Claim for Damages.

Charter ignores the ample case law cited in the Motion confirming that under 220 ILCS 5/5-201, the circuit courts of Illinois have exclusive jurisdiction over claims for damages arising from allegedly unlawful conduct, the sole exception being claims for reparations for utility overcharges stemming from unjust or unreasonable rates (which can be brought before the Commission). Motion at 12-13. Such reparations are not at issue here: Charter is not seeking a refund from Verizon on the grounds that Charter overpaid Verizon because Verizon's rates were unjust or unreasonable.

Charter's only retort is that it has not requested that the Commission award it damages. Opposition at 20. However, the Complaint very clearly alleges that Verizon has unlawfully failed to pay amounts due under Charter's tariff, and seeks an order requiring Verizon to pay various sums of money to Charter as a result, under a variety of legal theories. *See, e.g.*, Complaint, ¶¶ 1, 5, 14, 16, 45-47, 50, 53-56. Those payments are called "damages."

3. Despite Charter's Attempt to Limit the Statute, Section 13-804 of the PUA Prohibits the Commission from Regulating Any Aspect of Interconnected VoIP Services or Information Services.

Charter attempts to downplay the amendments to Illinois law subsequent to the *Global NAPs* decision, arguing that the statute does not deprive the Commission of jurisdiction over Charter's complaint for intrastate switched access charges that Charter claims are due on interconnected VoIP traffic. Opposition at 8. However, Charter ignores the plain language of the statute, which expressly prohibits Commission regulation of "the rates, terms, conditions, quality of service, availability, classification, or any other aspect of service regarding ... (ii)

Interconnected VoIP services, [or] (iii) information services, as defined in 47 U.S.C. 153(20) on the effective date of this amendatory Act of the 96th General Assembly or as amended thereafter” See 220 ILCS 5/13-804 (emphasis added). Regulation of intercarrier compensation for interconnected VoIP services and information services is regulation of “*any other aspect*” of these services, and Section 13-804 prohibits it, rendering Charter’s arguments regarding the federal definition of “interconnected VoIP service” (which does not contain the limitations Charter claims) moot.

Charter also tries to confuse matters by claiming that it provides exchange access service, and exchange access service is not an information service under federal law. Opposition at 9-11. However, Verizon did not argue that exchange access service is an information service under federal law; Verizon noted that Charter’s *VoIP service* was an information service based on a plain reading of 47 U.S.C. § 153(24), and thus, under Section 13-804, the Commission could not regulate intercarrier compensation for it. Motion at 16-18. Charter also argues that the retail classification of a service does not bear on wholesale provider rights under federal law, but that is irrelevant as to the construction of the Illinois statute. Motion at 10-11.

4. Federal Law Also Prevents the Commission from Addressing Charter’s Retrospective Claims.

As noted in the Motion, the multiple state law grounds for dismissal of the Complaint alleviate any need for the Commission even to address federal law bases for dismissal. However, if the Commission for some reason determines that it may proceed to address Charter’s retrospective claims notwithstanding that multiple provisions of the PUA prohibit the Commission from doing so, Verizon’s Motion explained that federal law also prevents the Commission from doing so. Motion at 13-18. In response, Charter attempts to reframe

Verizon's federal law arguments as those made, unsuccessfully, by Global NAPs, hoping the Commission will reject them as a result.

a. The *Vonage Order* Confirms that VoIP Is Inherently Interstate, Making It Subject Only to Interstate Rules for Such Traffic.

Again attempting to put Global NAPs' words into Verizon's mouth, Charter describes Verizon's Motion as asserting that the FCC's *Vonage Order*⁹ preempted state regulation of access charges. Opposition at 13-15. Verizon did not make that argument. Rather, Verizon explained that the *Vonage Order* is relevant to this case because it reflects the FCC's conclusion that VoIP traffic is inseverably interstate for jurisdictional purposes (an argument not before the Commission in *Global NAPs*). Motion at 14-15. That is so regardless of whether the VoIP services at issue are "nomadic" or "fixed." Contrary to Charter's suggestion,¹⁰ the FCC did *not* limit its conclusions in *Vonage* to "nomadic" VoIP services, as opposed to "fixed" VoIP services. Rather, the FCC explicitly stated that its analysis applied not just to Vonage's service (which happened to be nomadic), but also to "other types of IP-enabled services having basic characteristics similar to" that service – a class the FCC expressly recognized included "cable companies" and other "facilities-based providers"¹¹ such as Charter. State commissions have no jurisdiction over interstate services (as underscored by Section 13-804's prohibition against state regulation of interconnected VoIP and information services).

Charter's claim that the FCC somehow stated in the *ICC Reform Order* that the *Vonage Order* has no relevance in cases such as this one is similarly unfounded. Opposition at 12. The FCC made clear in the *ICC Reform Order* that it was not making *any* findings regarding the law

⁹ See Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC. Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007) ("*Vonage Order*").

¹⁰ See, e.g., Complaint, ¶ 36; Opposition at 12-13.

¹¹ *Id.* ¶¶ 25 n.93, 32.

predating its new regime, which is the subject of this case.¹² *Id.*, ¶ 945. The FCC’s decision to base its authority to implement a new intercarrier compensation regime on Section 251(b)(5) of the Communications Act (47 U.S.C. § 251(b)(5)), rather than to rely on the inherently interstate nature of VoIP traffic for jurisdictional purposes,¹³ is not relevant to this dispute, which did not arise under that new regime.

Federal law confirms that the Commission has no jurisdiction to subject VoIP traffic to Charter’s tariff intrastate access rates, because such traffic is inseverably interstate and intrastate tariffs cannot apply to interstate traffic.

b. VoIP Is an Information Service to Which Charter’s Tariffed Intrastate Access Charges Could Not Have Applied.

Charter spends a great deal of energy attempting to refute arguments regarding an “‘ESP [enhanced service provider] exemption’” – arguments that Verizon did not make. Opposition at 13. Charter has again purposefully recharacterized Verizon’s Motion to align with arguments that Global NAPs unsuccessfully made, rather than focusing on the issues Verizon actually raised.

Verizon’s point is simple: although the FCC has not yet ruled on the regulatory classification of VoIP, at least three federal district courts have concluded that VoIP services are information services under the federal definition.¹⁴ Three federal district courts have also concluded that VoIP traffic was therefore not subject to tariffed intrastate access charges.¹⁵

¹² The FCC also rejected calls to apply the existing access charge regime – including intrastate access charges – to VoIP-PSTN traffic on a prospective basis. *ICC Reform Order*, ¶ 948.

¹³ See *ICC Reform Order*, ¶ 959.

¹⁴ See *PAETEC Commc’ns Inc. v. CommPartners*, 2010 U.S. Dist. LEXIS 51926, *5-8 (D.D.C. 2010); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1081-83 (E.D. Mo. 2006), *aff’d*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S.Ct. 971 (2009); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003), *aff’d*, 394 F.3d 568 (8th Cir. 2004). The federal definition appears at 47 U.S.C. § 153(24).

¹⁵ See *Manhattan Telecoms. Corp. v. Global NAPS, Inc.*, 2010 U.S. Dist. LEXIS 32315, *6-8 (S.D.N.Y. Mar. 31, 2010), *recon. denied, judgment entered*, 2010 U.S. Dist. LEXIS 70973 (S.D.N.Y. July 9, 2010); *PAETEC, supra*;

Verizon also explained that VoIP traffic is an information service because it offers the capability to perform a “net protocol conversion from IP to TDM protocol,¹⁶ a hallmark of information service traffic. *See* Motion at 16-18.

In response, Charter incorrectly cites the *ICC Reform Order* as “precedent” for the imposition of intrastate access charges on VoIP traffic. Opposition at 15-16. However, in its *ICC Reform Order*, the FCC actually rejected calls to impose *intrastate* access charges on VoIP traffic,¹⁷ and made clear it was not making any findings as to whether intrastate access charges applied to VoIP traffic prior to the adoption of its new regime. *ICC Reform Order*, ¶ 945.

Finally, Charter’s reliance on the *Global NAPs* decision as a general finding that intrastate access charges apply to VoIP traffic¹⁸ is misplaced. As detailed above, that case was decided under the law then in effect, and on the very specific factual grounds before the Commission – namely, the particular provisions of an ICA between the parties that required Global NAPs to pay intrastate access charges on traffic sent to Illinois Bell (which Global NAPs failed to demonstrate was VoIP traffic) – and certainly does not represent a broad finding applicable to the industry at large. As noted above, no Commission decision is *res judicata*, particularly one decided on the basis of the specific facts and agreements not present here.¹⁹

B. The Commission Must Dismiss Charter’s Claims For Prospective Relief, Despite Charter’s Denial That It Made Them.

Charter rather remarkably claims that the Complaint does not seek prospective relief. *See, e.g.*, Opposition at 3 (Charter “does not seek ‘prospective’ relief under its previously applicable tariff, but rather seeks only retrospective relief”); 16 (“[c]ontrary to Verizon’s

Southwestern Bell, supra.

¹⁶ *See Southwestern Bell*, 461 F. Supp. 2d at 1082 (explaining that VoIP “involves a net protocol conversion from the digitized packets of the IP protocol to the TDM technology used on the PSTN” and, therefore, VoIP “is an information service”).

¹⁷ *See ICC Reform Order*, ¶ 948.

¹⁸ *See* Opposition at 15.

¹⁹ *See, e.g., Illinois-American Water Co., Citizens Utility Board and Mississippi River Fuel Corp., supra.*

assertions, the Complaint does not seek ‘prospective’ relief under its pre-2012 tariff”); 17 (“Verizon’s attempts to portray the Complaint as seeking ‘prospective’ relief under Charter’s pre-2012 tariff are a smokescreen meant to distract the Commission from the actual dispute in this case.”).

Yet, Charter’s Complaint repeatedly and explicitly requests prospective relief. *See, e.g.*, Complaint, ¶ 47 (“Charter respectfully requests that the Commission issue an order directing Verizon ... to pay future bills when due.”) (emphasis added); *see also id.* at ¶¶ 5, 50 and 55. As noted in Verizon’s Motion, the tariff for which the Complaint requests *future* enforcement is, in all instances, the now-superseded tariff attached as Exhibit A to the Complaint. Motion at 3-4; 7-8. Charter accuses Verizon of “recharacterizing the relief Charter seeks” and “engaging in deliberate obfuscation” by pointing out that the allegations of the Complaint explicitly and repeatedly seek the *future* enforcement of that superseded tariff. If Charter it is not seeking future enforcement, it should have amended the Complaint to remove such references. In any event, as detailed in Verizon’s Motion,²⁰ and apparently not disputed by Charter,²¹ those prospective claims must be dismissed because the FCC has established a new, prospective federal intercarrier compensation regime for interconnected VoIP tariff in its *ICC Reform Order*, and there is no existing dispute between the parties with regard to that going-forward regime.

II. Count Two of the Complaint Seeks an Industry-Wide Declaratory Ruling, and thus Must Be Dismissed.

Charter repeatedly places the term “declaratory ruling” inside quotation marks, a convention apparently intended to underscore that Charter disputes that Count Two seeks one. Opposition at 17-20. Charter also denies that the Complaint seeks a declaratory ruling that

²⁰ *See* Motion at 7-8.

²¹ Charter states that access charges from August 2010 through December 2011 “are the only charges in dispute in this case.” Opposition at 3-4.

would apply to the whole industry, rather than simply to Verizon. *Id.* at 4 (“Charter seeks no such thing”); *see also id.* at 18 (“Charter has not sought an industry-wide declaratory ruling”); 19 (“The Complaint in this proceeding, by its clear terms, does not seek an ‘industry-wide declaratory ruling’ of general applicability”).

The plain language of the Complaint again belies Charter’s revisionist descriptions of it. Not only does Charter style this count as “Count Two – *Declaration that Tariff Is Valid and Binding*” (emphasis added), indicating that it seeks declaratory relief, Charter seeks declarations that are not limited to Verizon, but would extend to *all interexchange carriers operating in Illinois*. *See, e.g.,* Complaint, ¶ 49 (seeking finding that tariffed rates “are fully enforceable against IXCs”), ¶ 50 (seeking prohibition against “other IXCs” challenging Charter’s tariff).

Regardless of Charter’s attempt to backpedal from these allegations, they appear in the Complaint and contradict any assertion that Charter is not seeking an industry-wide ruling. Moreover, as detailed at pages 18-23 of the Motion (and all but ignored by Charter), even if the declaratory relief that Charter seeks were limited to Verizon, Count Two fails to comply with the strict limitations on the Commission’s authority to issue declaratory rulings under 83 Ill. Admin. Code § 200.220. Most fatally, Count Two does not seek a declaration as to the applicability of any statute to Charter (the requestor of the declaratory ruling), or as to whether Charter’s compliance with a federal rule will be accepted as compliance with a similar Commission rule. These are the only two situations in which the Commission may issue a declaratory ruling. *See* 83 Ill. Admin. Code § 200.220(a); *Illinois Industrial Energy Consumers Request for Declaratory Ruling Pursuant to 200.220 re: Section 16-102 of an Act Entitled “Electric Service Customer Choice and Rate Relief Act of 1997,”* 1999 Ill. PUC LEXIS 202, *10-12 (March 10, 1999).

Charter does not deny that Count Two does not satisfy the rigorous pleading requirements of 83 Ill. Admin. Code § 200.220(b)(1), and does not dispute the plentiful case law Verizon cites to support dismissal of Count Two. Charter merely cites an inapposite case for the general proposition that not every ruling interpreting the PUA constitutes a declaratory ruling. Opposition at 18. This is true, but has no relevance to the flaws of Charter’s Count Two, which cannot survive dismissal.

III. The Commission Lacks Authority to Grant Count Three of the Complaint Because It Seeks Equitable Relief.

Charter ignores – and thus concedes – Verizon’s argument that because Count Three seeks relief “[p]ursuant to the equitable doctrines of *quantum meruit* and unjust enrichment,”²² it must be dismissed, as the Commission has no power to award equitable relief. Motion at 23-24. Instead, Charter disputes that its request for relief under these equitable theories effectively amounts to a request for retroactive ratemaking, which Illinois law separately prohibits (*see, e.g., Citizens Utilities Company of Illinois v. Illinois Commerce Commission*, 124 Ill.2d 195, 207 (1988)). Charter claims that it “simply requests that this Commission . . . direct [Verizon] to compensate Charter ‘for the fair and reasonable value of the services provided.’” Opposition at 20-21.

The Complaint itself demonstrates that Verizon paid Charter a fair and reasonable amount for the services rendered. *See* Complaint, Exhibit B (Verizon paid Charter at the most generally accepted rate in the industry). Moreover, Charter’s request for equitable relief is, in fact, tantamount to retroactive ratemaking, as it asks the Commission to quantify the value of the services for which Charter seeks compensation, and to order Verizon to pay that amount under

²² Complaint, ¶ 55; Italics in original.

an equitable theory, after the fact. The Commission cannot do so any more than it can award relief under the equitable theories of *quantum meruit* and unjust enrichment.

Conclusion

For the foregoing reasons, as well as those set forth in Verizon's Motion to Dismiss, the Commission should dismiss Charter's Complaint in its entirety.

Dated: April 10, 2012

**MCI COMMUNICATIONS SERVICES, INC. d/b/a
VERIZON BUSINESS SERVICES**

By: _____

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NOTICE OF FILING

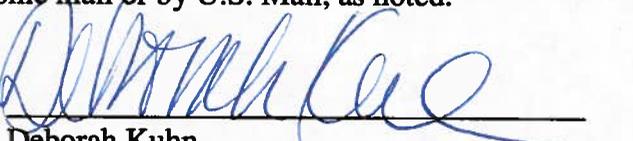
Please take notice that on April 10, 2012, I caused the foregoing “Verizon’s Motion to Dismiss Complaint” in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.



Deborah Kuhn

CERTIFICATE OF SERVICE

I, Deborah Kuhn, certify that I caused the foregoing “Verizon’s Motion to Dismiss Complaint,” together with a Notice of Filing, to be served upon all parties on the attached service list on this 10th day of April, 2012, by electronic mail or by U.S. Mail, as noted.



Deborah Kuhn

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ICC Docket No. 12-0073
(As of April 10, 2012)

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