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CHIEF CLERK'S OFFICE

Charter Fiberlink - Illinois, LLC)

v.)

MCI Communications Services, Inc. d/b/a)
Verizon Business Services)

Complaint pursuant to)
§ 5/10-108 and § 5/13-101)

No. 12-0073

VERIFIED AMENDED COMPLAINT

Comes now Charter Fiberlink - Illinois, LLC ("Charter"),¹ by and through its undersigned counsel of record, and for its Amended Complaint against MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon"), hereby states and alleges as follows:

NATURE OF THE CASE

1. Charter brings this action to recover payment from Verizon for Charter's provision of wholesale tariffed telecommunications services between August 2010 and the end of 2011. Charter and Verizon must use each other's networks to enable their customers to complete telephone calls. Pursuant to applicable telecommunications laws, Charter has filed intrastate access tariffs that establish, as a matter of law, the rates that it charges other carriers to access its network for intrastate calls. Charter for years has billed Verizon for these access charges, and Verizon for years has paid these charges, but Verizon recently has unilaterally refused to pay the applicable tariffed rates. Between August 2010 and the end of 2011 (at which time Charter filed

¹ Pursuant to Section 200.100 of the Commission's rules, 83 Ill. Admin. Code § 200.100, Charter agrees to accept service by electronic means as provided for in Section 200.1050, *id.* § 200.1050, at the e-mail addresses appearing in the signature block.

a new tariff in conformity with the FCC's adoption of new intercarrier compensation rules), Verizon used Charter's switched access services to route calls to Charter's end-user customers, imposing substantial costs on Charter without proper compensation (with one brief exception) under the tariffs on file and approved by the Illinois Commerce Commission ("Commission"). Verizon's conduct is plainly unlawful, and Charter is entitled to recovery.

2. Verizon's refusal to pay the tariffed access charges represented an abrupt reversal of course after years of paying the tariffed rates for Charter's access services. Before the August 2010 invoices, Verizon had never disputed the fact that it is required to compensate Charter for the use of its switched access services. Verizon historically remitted payment in response to Charter's invoices for such services and, through its years-long course of conduct, acknowledged that it was paying access charges because Charter's tariffs compelled it to do so as a matter of law.

3. There were no material changes in the factual circumstances or governing legal regime as of September 2010 to warrant Verizon's sudden decision to withhold payment for Charter's switched access services. Charter did not change the way it transmits or terminates the calls for which it has billed Verizon since Verizon first obtained switched access services from Charter. The long distance traffic at issue continues to be routed—as it has for years—over switched access trunks. The substantive terms and conditions of the applicable tariffs remained the same. The *only* difference was Verizon's unilateral decision to refuse payment for long distance calls that are originated or terminated in Internet Protocol ("IP") format.

4. Verizon's position is inconsistent with established law. Verizon argues that Charter's reliance on IP technology to transport and terminate telephone calls—or *other* carriers' reliance on such technology in *originating* telephone calls—somehow relieved Verizon of the

obligation to pay Charter's tariffed access rates. But that is wrong as a matter of law. While the Federal Communications Commission ("FCC") has not determined the appropriate classification of *retail* Voice-over-IP ("VoIP") services, it has made clear that the unsettled classification of retail VoIP services has no bearing on the *wholesale* relationships between telecommunications carriers such as Verizon and Charter that exchange local or long distance telephone traffic.

5. Verizon unlawfully withheld more than \$9,989 for charges incurred in Illinois between August 2010 and December 2011. To remedy this violation of law, Charter seeks a ruling from the Commission that Verizon must pay Charter's tariffed intrastate access charges with respect to intrastate long distance traffic that Verizon sent to Charter during the period in question, and an order from the Commission directing Verizon to pay its outstanding bills for services provided between August 2010 and the end of 2011 at the rates established by the tariff in force during that period, plus applicable interest and late fees. Charter also seeks a case-specific declaration that the intrastate access tariff in force during the relevant period was valid and binding on Verizon, and a determination that Verizon's conduct violated the equitable principles of *quantum meruit* and unjust enrichment.

PARTIES

6. Charter Fiberlink-Illinois, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 12405 Powerscourt Drive, St. Louis, Missouri 63131. Charter Fiberlink - Illinois, LLC holds authority to operate as a competitive local exchange carrier ("CLEC") and provides telephone exchange service and exchange access in the State of Illinois pursuant to a certificate of convenience and necessity granted by the Commission. Throughout the relevant period, Charter Fiberlink -

Illinois, LLC provided originating and terminating switched access services in Illinois pursuant to its Tariff No. 2, filed July 14, 2005, with this Commission, and FCC Tariff No. 16, filed June 28, 2007 with the FCC.

7. On information and belief, MCI Communications Services, Inc. d/b/a Verizon Business Services is a corporation organized under the laws of the State of Delaware, with its principal place of business at One Verizon Way, Basking Ridge, NJ 07920. Verizon operates as a long distance or interexchange carrier (“IXC”) throughout the United States, providing intrastate, interstate, and international interexchange services, and is certified as an IXC in Illinois.

JURISDICTION

8. The Illinois Public Utilities Act (the “Act”) provides that this Commission “shall have general supervision of all public utilities.” 220 ILCS § 5/4-101. In particular, the Act specifies that it is “the duty of the Commission to see that the provisions of the . . . statutes of this State affecting public utilities . . . are enforced and obeyed, and that violations thereof are promptly prosecuted.” *Id.* § 5/4-201. The Act authorizes the Commission to hear a “complaint . . . by any person or corporation . . . setting forth any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the Commission.” *Id.* § 5/10-108. These statutory grants of jurisdiction expressly extend to matters concerning “telecommunications rates and services and the regulation thereof.” *Id.* § 5/13-101.

FACTUAL BACKGROUND

9. Charter is a certificated CLEC providing telephone exchange service, exchange access service, and other services in the state of Illinois. At the retail level, Charter relies on

VoIP technology to provide telephone service to its end-user customers. At the wholesale level, Charter provides terminating switched access services using traditional circuit-switched technology (*i.e.*, regulated telecommunications services) to IXC's such as Verizon.

10. Charter's switched access services allow Verizon and other IXC's to complete the long distance calls placed by their customers to Charter's customers. When a customer places a long distance call by dialing a number beginning with "1" plus an area code, the local exchange carrier ("LEC") serving the customer originates the call over its local exchange facilities in the originating market and hands off the call to the IXC. The IXC then transports the call across its long distance network to the geographic area in which the called party is located, where it then hands off the call to the LEC serving the called party. The LEC serving the called party, in this case Charter, provides terminating access service by delivering the call from the IXC's long distance network to the recipient of the call.

11. As a CLEC, Charter provides originating and terminating access services to IXC's pursuant to intrastate and interstate access tariffs on file with this Commission and with the FCC. Attached as Exhibit A is the intrastate access tariff on file with this Commission during the relevant period. Because Charter's retail VoIP service is a "fixed" service, in which the customer uses the service from a single location, Charter knows the location of its customer and thus is able to determine whether a given call is intrastate or interstate in nature. When long distance calls exchanged between an IXC and Charter originate and terminate in the same state, they are governed by Charter's intrastate access tariff. When those calls originate and terminate in different states, they are governed by Charter's interstate access tariff. Charter's intrastate access tariff at issue was approved by this Commission, and Charter's interstate access tariff has

been approved by the FCC. State and federal law require that IXC's adhere to the requirements in these tariffs when receiving switched access services from Charter.

12. The wholesale carrier-to-carrier service that Charter provides to Verizon involves the exchange of traffic in Time Division Multiplexed ("TDM") format, which is used for traditional circuit-switched telephone service. Charter and Verizon exchange traffic in TDM format regardless of whether the call is a traditional circuit-switched telephone call or a call that is transmitted using VoIP technology on one or both ends.

13. The intrastate access tariff at issue set forth the rates, terms, and other conditions under which Charter provided intrastate switched access services to IXC's in Illinois through December 29, 2011. The tariff defines "Access Service" to mean any "Switched Access to the network of an intrastate Carrier for the purpose of originating or terminating communications," and defines "Switched Access" to mean "[a]ccess to or from the switched network of a Local Exchange Company for the purpose of originating or terminating communications." Charter IL C.C. Tariff No. 2 § 3. These services include switching, transport, and related features and functions that Charter performs when originating or terminating long distance calls. Charter IL C.C. Tariff No. 2 § 4.1.2. The tariff also provides the applicable rates, charges, and fees for intrastate switched access services, and enables Charter to bill IXC's "for all charges incurred, applicable taxes, and credits due the Customer for Service." Charter IL C.C. Tariff No. 2 §§ 6.4(A), 7. The tariff makes clear that an IXC receiving a bill for switched access services from Charter "shall be responsible for . . . [p]ayment of all applicable Charges and Fees pursuant to this Tariff." Charter; IL C.C. Tariff No. 2 § 4.5.1(A).

14. Verizon made use of Charter's switched access services to terminate intrastate long distance calls within Illinois pursuant to the terms of the aforementioned tariff. Charter, in

turn, billed Verizon on a monthly basis for these switched access services in accordance with the applicable tariffed rates. Verizon is required by law to pay Charter the tariffed rates for those services. And for several years preceding this dispute, Verizon did so.

15. On September 14, 2010, Verizon sent Charter a letter, attached as Exhibit B, disputing Charter's access charges for traffic exchanged between Charter and Verizon. The letter appears to take the position that, because Charter provides VoIP telephone service to *retail* customers, Verizon is not obligated to pay *wholesale* carrier-to-carrier access charges to Charter when using Charter's switched access service to terminate calls to Charter customers. Verizon takes this position even though the exchange of traffic between Charter and Verizon, in TDM format, is identical regardless of the form of retail service. On information and belief, Verizon has initiated identical disputes over access charges with multiple other CLECs that provide retail VoIP services or that provide wholesale service to affiliated or unaffiliated VoIP providers.

16. Verizon substantially underpaid the tariffed access charges to Charter between August 2010 and December 2011. The amount that Verizon underpaid is approximately \$9,989 for charges incurred in Illinois (and approximately \$6.7 million for charges incurred nationwide). Moreover, under the tariff provisions pertaining to unpaid disputed charges, Verizon also owes Charter late payment charges of approximately \$891 in Illinois, and \$330,125 for all states. *See* IL C.C. Tariff No. 2, §§ 6.6, 6.7.

REGULATORY BACKGROUND

17. Verizon's purported justifications for failing to pay the tariffed access charges to Charter lack merit. In particular, Verizon's assertion that it is exempt from paying the tariffed

access charges on traffic that is IP-originated or IP-terminated has no basis in Charter's tariffs or applicable law.

Charter's Intrastate Access Tariff

18. State law requires that an IXC that makes use of the switched access services described in a CLEC's tariff must pay the CLEC the applicable tariffed rates for those services. Under Section 13-501(a) of the Illinois Public Utilities Act, telecommunications providers offering switched access services must file a tariff with the Commission "which describes the nature of the service, applicable rates and other charges, terms and conditions of service, and the exchange, exchanges or other geographical area or areas in which the service shall be offered or provided." 220 ILCS § 5/13-501(a). As this Commission has explained, "[a] tariff is a law, not a contract, and has the force and effect of a statute." *Sage Telecom, Inc.*, Arbitration Decision, I.C.C. Docket No. 03-0570, 2003 WL 23472834, at *12 (2003) (quoting *Illinois Central Gulf Railroad Co. v. Sankey Brothers*, 67 Ill. App. 3d 435, 439 (1978), *aff'd*, 78 Ill. 2d 56 (1979)). Accordingly, Illinois law prohibits carriers from failing to pay the applicable rates for tariffed switched access services. 220 ILCS § 5/13-514.

19. Under Charter's tariff, the applicability of access charges depends not on the *technology* used to originate or terminate the call, but rather on the originating and terminating *locations* of the call. Calls that originate and terminate within the state of Illinois, and that do not terminate within the same local calling area, are subject to intrastate access charges under Charter's tariffs. Meanwhile, calls that originate in another state and terminate within Illinois are subject to interstate access charges. As a provider of fixed interconnected VoIP service, Charter is able to determine whether a given long distance call is intrastate or interstate, and it bills the applicable access charges in accordance with this jurisdictional determination.

20. The tariffs do not contain any provision that exempts calls that are originated, terminated, or transmitted in IP format from the imposition of access charges. Moreover, all traffic exchanged between Verizon and Charter was, and continues to be, exchanged in standard TDM format. Thus, although Charter terminates all calls in IP format and some of the traffic between the parties likely is originated in IP format, such traffic is invariably transmitted by Verizon on the public switched telephone network (“PSTN”) in TDM format in the exact same manner as any call that originates and/or terminates in TDM format. And Verizon makes use of Charter’s switched access services in the same manner regardless of whether a particular call originates or terminates in IP or TDM format. Accordingly, the wholesale carrier-to-carrier services that Charter provides, and the tariffs that Charter charges for those services, are unaffected by the technology used to originate those calls from, or terminate those calls to, retail customers.

21. The Interconnection Agreement between Charter and Verizon’s affiliated ILECs, attached as Exhibit C, confirms that the rates in the intrastate access tariff at issue were applicable to IP-terminated calls. Section 8.2 of the Interconnection Attachment, appearing at page 62 of the full agreement, provides that “interstate and intrastate Exchange Access, Information Access, exchange services for Exchange Access or Information Access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.” IL ICA Interconnection Attachment § 8.2. The agreement then defines “Information Access” to include switched access services relating to VoIP-terminated calls. *See* IL ICA Glossary § 2.44 (defining “Information Access” as “[t]he provision of specialized exchange telecommunications services in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a

provider of information services, including a provider of Internet access or Internet transmission services”). Accordingly, even assuming that retail VoIP constitutes an information service, as Verizon contends, the Interconnection Agreement makes clear that the access services that Charter provides to Verizon for VoIP-terminated calls in Illinois are subject to the rates, terms, and conditions of Charter’s intrastate access tariff in Illinois. (If retail VoIP service were treated as a telecommunications service, the Interconnection Agreement likewise required payment of Charter’s tariffed switched access charges. IL ICA Interconnection Attachment § 8.2).

22. To the extent that Verizon seeks to challenge the terms of the tariff itself, such a challenge is barred by the filed rate doctrine. Under this doctrine, entities that make use of tariffed services are “charged with notice of the terms and rates set out in the filed tariff and may not bring an action against a carrier that would invalidate, alter, or add to the terms of the filed tariff.” *Evanns v. AT&T Corp.*, 229 F.3d 837, 840 (9th Cir. 2000); *see also Brown v. MCI WorldCom Network Services, Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002) (“In addition to barring suits challenging filed rates and suits seeking to enforce rates that differ from the filed rates, the filed-rate doctrine also bars suits challenging services, billing or other practices when such challenges, if successful, would have the effect of changing the filed tariff.”); *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 19 (2d Cir. 1994) (holding that “the legal rights between a regulated industry and its customers with respect to rates are controlled by and limited to the rates filed with and approved by the appropriate regulatory agency”). The filed rate doctrine therefore precludes Verizon from challenging the rates set forth in Charter’s tariffs, and from seeking to “chang[e] the filed tariff” to limit the access charges payable for calls originating or terminating in IP format.

No Applicable Exemptions for Verizon

23. In its letter disputing Charter's access charges, Verizon states that it "does not believe that IP-originated or IP-terminated traffic is subject to switched access tariffs or related charges," and it cites two unpublished federal court cases that purportedly stand for this proposition—*MetTel v. GNAPs*, No. 08-cv-3829, slip op., 2010 WL 1326095, (S.D.N.Y. Mar. 31, 2010), and *Paetec v. CommPartners, LLC*, No. 08-0397, slip op., 2010 WL 1767193 (D.D.C. Feb. 18, 2010). Those cases involved the Enhanced Service Provider ("ESP") exemption from access charges for traffic that is delivered to Internet service providers. However, the ESP exemption does not apply in the context of wholesale carrier-to-carrier services, and Verizon's letter mischaracterizes the state of the law as it applies to switched access charges for IP-originated and IP-terminated calls.

24. The ESP exemption applies only to providers of information services, and only with respect to such entities' purchase of services that *originate* communications with the public switched telephone network (as opposed to the *terminating* traffic largely at issue here).² The ESP exemption historically allowed providers of "enhanced services" (also known as "information services") to purchase local business lines from a local exchange carrier at flat monthly rates, rather than paying per-minute access charges. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 ¶ 27 (2001). The

² Charter also originates traffic for Verizon, but the charges for that traffic make up only a small portion of the amount in dispute. In any event, the ESP exemption is no more applicable to the originating traffic than it is to terminating traffic in this case. As explained in greater detail below, Verizon is not an ESP and thus cannot rely on the ESP exemption to avoid paying access charges to Charter, regardless of whether those charges are assessed on originating or terminating traffic. For this reason, as well as the various other reasons set forth in this section, the ESP exemption is entirely inapplicable here.

purpose of the ESP exemption was to eliminate the opportunity for regulatory arbitrage that arose because Internet service providers generated large volumes of one-way traffic and thus created opportunities for some CLECs to operate principally in order to collect large amounts of access charges. *Id.* ¶¶ 2, 5. As the FCC has explained, the ESP exemption affords “information service providers . . . the option of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs.” *Id.* ¶ 27. The ESP exemption thus was intended only to enable a limited class of access service *end users*, *i.e.*, providers of “enhanced services,” to provide their customers with information services via telecommunications by purchasing business lines rather than paying per-minute access charges normally assessed on carriers.

25. The ESP exemption is inapposite in this context for several reasons. First, even if Charter could properly be characterized as an ESP in its retail capacity (despite its status as a certificated telecommunications carrier), the exemption addresses the obligations of *ESPs* to pay access charges to *carriers*; it says nothing at all about the obligations of a *carrier* such as Verizon to pay access charges to *ESPs* for traffic terminated to that ESP’s customers. This Commission squarely held that the ESP exemption “applies to *ESPs themselves*, exempting *ESPs* from certain interstate access charges,” and “does not apply” to an entity that is “a carrier, not an ESP.” *Illinois Bell Telephone Company, Inc. v. Global NAPs Illinois, Inc.*, I.C.C. Docket No. 08-0105, Order, at 44 (rel. Feb. 11, 2009) (“*Global NAPs Order*”) (emphasis in original), *aff’d*, *Global NAPs Illinois, Inc. v. Illinois Commerce Commission*, 749 F. Supp. 2d 804 (N.D. Ill. 2010). Neither of the cases cited by Verizon in its letter is to the contrary. Indeed, both cases dealt with the situation where a VoIP provider (or a carrier partnering with a VoIP provider) sought to avoid access charges when it terminated traffic to a traditional, TDM-based carrier.

MetTel, 2010 WL 1326095, at *1; *Paetec*, 2010 WL 1767193, at *1-2. The cases did *not* present the converse question at issue in Charter’s dispute with Verizon: the right of a CLEC to assess terminating access charges for traffic terminated to its customers by an IXC.³

26. The history of the ESP exemption further confirms that it pertains to payments from ESPs to carriers, *not* to payments from long-distance carriers to ESPs. As the FCC explained during its 1997 reform of the access charge regime, the purpose of the exemption was that ESPs “should not be subjected to [a] . . . regulatory system designed for circuit-switched interexchange voice telephone solely because [they] use incumbent LEC networks to receive calls from their customers.” *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982 ¶ 343 (1997). The FCC was concerned that this regime would impose “rate shock” on ESPs. *MTS and WATS Market Structure*, Grant of Petitions for Reconsideration, 97 FCC 2d 682 ¶ 83 (1983). The FCC has never identified any such concerns with requiring IXCs to pay certificated carriers for switched access services regardless of the underlying format used to provide their *retail* services, and has certainly never extended the ESP exemption to shield IXCs from these payments.

27. Second, to the extent that Verizon is attempting to claim that it can invoke the ESP exemption in its role as an IXC, it has the doctrine exactly backwards. This Commission has never held that IXCs are providers of “enhanced services” or “information services” subject

³ *MetTel and Paetec* also contain broad language suggesting that the FCC has recognized that “information services” are not “subject to access charges.” *MetTel*, 2010 WL 1326095, at *2; *Paetec*, 2010 WL 1767193, at *2. To the extent Verizon is relying on these vague and out-of-context statements to support its legal position, it is wrong as a matter of law. As discussed above, the FCC has said no such thing; instead, the FCC has explained that information service providers have the option of connecting to a carrier’s network in the same manner as a business end user, and paying any applicable charges associated with that form of network connection.

to the ESP exemption. And the FCC has expressly rejected the notion that wholesale intercarrier services are information services, and held instead that such services are telecommunications services irrespective of the regulatory classification of the retail services for which the IXC's services are used. *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, As Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 9 (2007) (“*TWC Declaratory Ruling*”) (holding that “the statutory classification of the end-user service, and the classification of VoIP specifically, is not dispositive of the wholesale carrier’s rights under Section 251”); *see also Petition of CRC Communications of Maine, Inc.*, Declaratory Ruling, 26 FCC Rcd 8259 ¶ 26 (2011) (“*CRC Declaratory Ruling*”).

28. Third, even if the ESP exemption somehow could be applied to access charges payable in the opposite direction—that is, from an IXC to an information services provider—the exemption still would not apply here because Verizon cannot establish that Charter’s retail VoIP service is an “information service” under applicable law. Neither this Commission nor the FCC has ever classified retail VoIP as an information service, and the FCC has repeatedly declined any invitation to do so.⁴ In any event, the FCC had made clear that, even assuming *retail* VoIP

⁴ *See, e.g., IP-Enabled Services; 911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 24 (2005), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶ 35 (2006); *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 ¶ 18 n.50 (2007); *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 14 (“*Vonage Order*”), *aff'd*, *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

is an information service, that classification “has no bearing” on intercarrier rights and obligations. *TWC Declaratory Ruling* ¶ 15; *CRC Declaratory Ruling* ¶ 27 n.96.

29. Fourth, both this Commission and the FCC have long held that that the ESP exemption does not apply to *intrastate* access charges, which are the only charges at issue here. In a recent order resolving an access charge dispute between Global NAPs and Illinois Bell, this Commission explained that “the ESP exemption has no application to the charges at issue here, which are all *intrastate* [access] charges . . . , not interstate access charges.” *Global NAPs Order* at 44 (emphasis in original). Similarly, in its *Access Charge First Report and Order*, the FCC expressly stated that, while Internet service providers and other ESPs do not pay access charges to local exchange carriers under federal interstate tariffs, “ISPs do pay for their connections to incumbent LEC networks by purchasing services under state tariffs.” *Access Charge Reform, First Report and Order*, 12 FCC Rcd 15982 ¶ 346 (1997). Likewise, in *Northwestern Bell*, the FCC explained that it has not “require[d] states to exempt enhanced service providers from intrastate access charges, or any other intrastate charges, when such enhanced service providers are using jurisdictionally intrastate basic services in their enhanced service offerings.” *Northwestern Bell Telephone Company Petition for Declaratory Ruling, Memorandum Opinion and Order*, 2 FCC Rcd 5986, 5987 (1987). Accordingly, even under Verizon’s warped version of the ESP exemption, Verizon still would be required to pay intrastate access charges to Charter.

30. Verizon’s half-hearted belief in its ability to rely on the ESP exemption is evident from its conduct before and after this dispute arose. As mentioned above, Verizon paid the tariffed rates for Charter’s access services for years before the instant dispute. The ESP exemption was in existence throughout that period, and yet until recently, Verizon never

attempted to withhold payment by claiming that the exemption applied. Verizon also resumed payment for a short time *after* it sent its September 2010 letter disputing the charges, only to cease payments once again shortly thereafter.

31. The FCC's recent *ICC Reform Order* further undermines Verizon's position. *See Connect America Fund; Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, CC Docket No. 01-92, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*ICC Reform Order*"). In the *ICC Reform Order*, the FCC expressly rejected calls to exempt carriers from paying access charges to retail VoIP providers due to the ESP exemption. *Id.* ¶ 945. And although the FCC indicated that it was not resolving disputes regarding preexisting law, *id.*, its subsequent discussion regarding the legal basis for prospectively subjecting IP-originated and IP-terminated voice traffic to interstate access charges *does* characterize preexisting law in a manner consistent with Charter's position here.

32. The FCC emphasized that the ESP exemption is aimed solely at permitting "information service providers . . . to purchase access to the exchange as end users." *Id.* ¶ 957. Given this narrow scope, the ESP exemption is not available to *carriers* (such as Verizon) seeking to avoid access charge payments, even if they attempt to cast a retail VoIP provider that originates or terminates the PSTN traffic as "information service providers." As the *ICC Reform Order* explains, while the FCC "has not broadly addressed the classification of VoIP services," *id.* ¶ 970, "[i]nterexchange VoIP-PSTN traffic is subject to the access regime regardless of whether the underlying communication contained information-service elements," *id.* ¶ 957 n.1955. This holding directly contradicts Verizon's arguments.

33. Moreover, the FCC rejected the district court's conclusion in *Paetec* that, because VoIP-PSTN traffic did not exist before the Telecommunications Act of 1996, it could not be part of the access charge regime. *See id.* ¶ 956 & n.1953 (declining to follow *Paetec*). Instead, the FCC noted that it “has already found that toll telecommunications services transmitted (although not originated or terminated) in IP were subject to the access charge regime, and the same would be true to the extent that telecommunications services originated or terminated in IP.” *Id.* ¶ 957 (citing *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 ¶¶ 14-19 (2004)). For all these reasons, the FCC concluded that “carriers may tariff charges . . . for toll VoIP-PSTN traffic in federal or state tariffs,” *id.* ¶ 960, and that “the terms of an applicable tariff would govern the process for disputing charges,” *id.* ¶ 961.

No Federal Preemption

34. Verizon has argued elsewhere that state commissions cannot resolve access charge disputes between IXCs and VoIP providers because the FCC in its *Vonage Order* supposedly preempted states from regulating VoIP traffic. These preemption arguments are misplaced and distort the FCC's rulings.

35. This Commission's enforcement of tariffed access charges payable by an IXC to a certificated CLEC in no way constitutes “VoIP regulation.” Charter is simply asking the Commission to require Verizon, in its role as a carrier, to pay the necessary charges for its use of Charter's terminating switched access services—*i.e.*, Charter's regulated telecommunications services. Charter does not seek any “regulation” of the retail VoIP service Charter provides to its end-user customers.

36. Further, the FCC's *Vonage Order* does not preempt this Commission from enforcing Charter's tariffs. The *Vonage Order* preempted only certain forms of *retail* VoIP regulation, and did not disturb this Commission's ability to regulate the *wholesale* access charges at issue here. *Vonage Order* ¶ 20. The FCC explained in the *Vonage Order* that subjecting VoIP providers to "state entry and certification requirements"—including the obligation to submit "detailed information regarding all aspects of the qualifications of the would-be service provider" and comprehensive price lists—would impede competitive entry and innovation in the *retail* market for telephone services. *Id.* These concerns have absolutely no bearing on the exchange of switched access traffic at the *wholesale* level. Accordingly, as this Commission has correctly pointed out, "[t]he *Vonage Order* says nothing about compensation between carriers for terminating traffic, including IP-enabled or enhanced services traffic." *Global NAPs Order* at 44. Indeed, the FCC has made clear that the regulatory status of retail VoIP does not affect the rights and obligations of carriers exchanging "VoIP traffic" at the wholesale level. *TWC Declaratory Ruling* ¶ 9; *ICC Reform Order* ¶ 957 & n.1955.

37. Moreover, Charter's fixed interconnected VoIP service does not present the same jurisdictional issues posed by Vonage's "jurisdictionally mixed" nomadic VoIP service. The FCC has recognized that fixed interconnected VoIP providers "are able to determine the jurisdictional nature of their calls." *See Universal Service Contribution Methodology, Declaratory Ruling*, 25 FCC Rcd 15651 ¶ 7 (2010). This is also true for Charter, which, as a fixed interconnected VoIP provider, knows the location of its end users, can easily determine whether a given call is intrastate or interstate in nature, and can thereby assess the relevant intrastate access charges for intrastate long distance calls. Accordingly, even apart from the fact that the *Vonage Order* addressed only retail regulation, the FCC did "not purport to . . . preempt

fixed VoIP services” in the *Vonage Order*. *Minn. PUC v. FCC*, 483 F.3d 570, 582-83 (8th Cir. 2007).

38. The FCC also confirmed in its recent *ICC Reform Order* that it has not preempted state commissions from resolving intrastate access charge disputes involving fixed VoIP services. The FCC explained that the *Vonage Order* addressed only “a retail VoIP service,” and that, “[b]y contrast, VoIP-PSTN intercarrier compensation typically involves the exchange of traffic between two carriers,” and “not the retail VoIP service itself.” *Id.* ¶ 959. The FCC also reiterated that fixed interconnected VoIP providers do not face the same jurisdictional challenges faced by Vonage, and “can comply with an intercarrier compensation regime with charges that differ at least to some degree based on where the calls originate and terminate.” *Id.* ¶ 959 n.1972; *see also id.* ¶ 959 n.1971 (noting that “the challenges in identifying the jurisdiction of VoIP traffic—particularly on a call-by-call basis—arise to a greater extent for nomadic VoIP, while compliance with jurisdictionalized intercarrier compensation charges is comparatively more straightforward for certain facilities-based VoIP services”). Indeed, far from preempting states from resolving such disputes, the FCC envisioned that state commissions will “continue to play an important role under our prospective intercarrier compensation framework for VoIP-PSTN traffic.” *Id.* ¶ 951. Verizon’s preemption arguments cannot be squared with the FCC’s ruling.

COUNT ONE – BREACH OF TARIFF OBLIGATIONS

39. Charter restates and incorporates by reference the allegations in paragraphs 1 through 38 above, as though set forth fully herein.

40. Throughout the relevant period, Charter had an intrastate access tariff on file with the Commission. This tariff duly established the terms, conditions, and rates of the intrastate switched access services Charter provides to IXCs such as Verizon.

41. As this Commission has explained, “[a] tariff is a law, not a contract, and has the force and effect of a statute.” *Sage Telecom, Inc.*, Arbitration Decision, I.C.C. Docket No. 03-0570, 2003 WL 23472834, at *12 (2003) (quoting *Illinois Central Gulf Railroad Co. v. Sankey Brothers*, 67 Ill. App. 3d 435, 439 (1978), *aff’d*, 78 Ill. 2d 56 (1979)).

42. Pursuant to Charter’s tariff, Verizon ordered, used, and benefited from intrastate switched access services, including Charter’s originating and terminating switched access service. Charter has provided originating and terminating access services to Verizon for customers who selected Verizon as their interexchange carrier, and it continues to provide such services today.

43. Charter billed Verizon for the intrastate switched access services that Verizon utilized based on the rates and terms set forth in the approved Charter tariff. As a fixed interconnected VoIP provider, Charter determined whether a given long distance call is intrastate or interstate in nature, and billed Verizon for the applicable intrastate access charges for long distance calls originating from or terminating to Charter’s customers in the State of Illinois.

44. State law requires Verizon to pay Charter these intrastate access charges pursuant to Charter’s intrastate access tariff. *See* 220 ILCS § 5/13-501(a).

45. Verizon refused to pay Charter the required intrastate access charges between August 2010 and December 2011, with the exception of a short period in which Verizon temporarily resumed payment.

46. The amount that Verizon has failed to pay Charter for intrastate access services in Illinois is approximately \$9,989. Verizon also owes Charter back interest and late payment charges for these unpaid access charge bills.

47. Charter respectfully requests that the Commission issue an order directing Verizon to pay its outstanding bills for intrastate access services provided between August 2010 and December 2011 at the rates established by the tariff in force during that period, including applicable interest and late fees.

COUNT TWO – DECLARATION THAT TARIFF IS VALID AND BINDING

48. Charter restates and incorporates by reference the allegations in paragraphs 1 through 47 above, as though set forth fully herein.

49. Charter requests a case-specific determination that its intrastate access tariff on file with the Commission during the relevant period was valid and binding, and that the terms, conditions, and rates set forth in the tariff are fully enforceable against Verizon for services purchased thereunder.

50. Charter also requests a determination that the filed rate doctrine prohibits Verizon from challenging the binding terms, conditions, and rates set forth in Charter's intrastate access tariff, and requires Verizon to pay the tariffed rates for any services rendered pursuant to Charter's intrastate access tariff.

COUNT THREE – UNJUST ENRICHMENT/*QUANTUM MERUIT*

51. Charter restates and incorporates by reference the allegations in paragraphs 1 through 50 above, as though set forth fully herein.

52. Charter provided intrastate switched access services to Verizon through the termination of long distance traffic. Such services conferred a benefit upon Verizon because Verizon was able to originate and/or complete calls on behalf of its customers and collect fees from its customers for the provision of long distance service.

53. Between August 2010 to December 2011, Verizon did not pay Charter the proper tariffed rates for the provision of such services, with the exception of a short period in which Verizon temporarily resumed payment.

54. It would be inequitable for Verizon to retain the benefit of the services provided by Charter without properly compensating Charter for the fair and reasonable value of the services provided.

55. Pursuant to the equitable doctrines of *quantum meruit* and unjust enrichment, Charter is entitled to payment from Verizon in the amounts set forth in Paragraph 46, plus applicable pre- and post- judgment interest, late payment fees.

REQUEST FOR RELIEF

56. Based on the foregoing, Charter respectfully requests that the Commission provide the following relief:

- a. Issue an order directing Verizon to pay its outstanding bills to Charter for intrastate access services provided between August 2010 and December 2011 at the rates established by the tariff in force during that period, plus applicable interest and late payment charges in accordance with the terms of the applicable Charter tariff.

- b. Issue a case-specific declaration that Charter's intrastate access tariff on file with this Commission between August 2010 and December 2011, along with the rates disclosed therein, are enforceable against Verizon for the intrastate access services purchased by Verizon during that period.
- c. Issue a ruling that it constitutes an unfair practice and unjust enrichment for Verizon to withhold access charges billed by Charter.
- d. Require Verizon to pay Charter's attorneys' fees and costs pursuant to 220 ILCS § 5/13-516 and Section 4.3.6 of Charter's intrastate access tariff. Charter IL C.C. Tariff No. 2 § 4.3.6.
- e. Such additional relief as the Commission considers just and reasonable in the circumstances.

Respectfully submitted,

CHARTER FIBERLINK - ILLINOIS, LLC



Matthew A. Brill
Alexander Maltas
Matthew T. Murchison
LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004
Phone: (202) 637-1095
E-mail: matthew.brill@lw.com

Daniel Glad
LATHAM & WATKINS LLP
233 South Wacker Drive
Suite 5800
Chicago, IL 60606
Phone: (312) 777-7110
E-mail: daniel.glad@lw.com

Dated: May 3, 2012

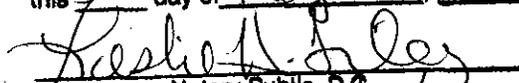
Verification

I, Matthew A. Brill, am counsel to Charter Fiberlink - Illinois, LLC. Under penalties as provided by law, and pursuant to 83 Ill. Admin. Code § 200.130, I certify that the statements set forth in the foregoing Verified Amended Complaint are true and correct to the best of my knowledge, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid the I verily believe the same to be true.



Matthew A. Brill

Dated: May 3, 2012

District of Columbia : SS
Subscribed and Sworn to before me
this 3rd day of May, 2012


Notary Public, D.C.
My commission expires 11/14/2012



Leslie H. Finley
Notary Public, District of Columbia
My Commission Expires 11/14/2012

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Charter Fiberlink - Illinois, LLC)	
)	
v.)	
)	
MCI Communications Services, Inc.)	Docket No. 12-0073
d/b/a Verizon Business Services)	
)	
Complaint pursuant to § 5/10-108 and § 5/13-)	
101)	

NOTICE OF FILING

Please take notice that on May 3, 2012, I caused the foregoing "Verified Amended Complaint" in the above-captioned matter to be filed with the Illinois Commerce Commission via Federal Express.



Matthew A. Brill

CERTIFICATE OF SERVICE

I, Matthew A. Brill, certify that on May 3, 2012, I caused the foregoing "Verified Amended Complaint," together with a Notice of Filing, to be served upon all parties on the attached service list by electronic mail.



Matthew A. Brill

Service List in ICC Docket No. 12-0073
(as of May 3, 2012)

Deborah Kuhn
Asst. General Counsel
Verizon
205 N. Michigan Ave., Ste. 700
Chicago, IL 60601
E-mail: deborah.kuhn@verizon.com

Michael A. McDermott
Executive Director
MCI Communications Services, Inc.
d/b/a Verizon Business Services
1515 Woodfield Rd., Ste. 1400
Schaumburg, IL 60173
E-mail: michael.mcdermott@verizonwireless.com

Matthew L. Harvey
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
E-mail: mharvey@icc.illinois.gov

Qin Liu
Case Manager
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601
E-mail: qliu@icc.illinois.gov

Janis Von Qualen
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
E-mail: jvonqual@icc.illinois.gov