

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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| Complaint of Charter Fiberlink, LLC Seeking |) | |
| Expedited Resolution and Enforcement of |) | |
| Interconnection Agreement Terms Between |) | <u>Case No. LC-2008-0049</u> |
| Charter Fiberlink-Missouri, LLC and CenturyTel |) | |
| of Missouri, LLC. |) | |

**MOTION TO DISMISS, ANSWER, AFFIRMATIVE
DEFENSES AND COUNTERCLAIM**

For its Motion to Dismiss, Answer, Affirmative Defenses and Counterclaim in response to the Complaint of Charter Fiberlink-Missouri, LLC ("Charter"), CenturyTel of Missouri, LLC ("CenturyTel") states as follows:

Introduction

As Charter acknowledges in paragraph 14 of its Complaint, this matter involves a question of whether Charter is obligated to pay charges associated with local service requests ("LSRs") that Charter has placed with CenturyTel. Charter asks the Commission to determine that any LSR that involves a request to port a number to Charter is a "magic" LSR for which it is somehow absolved of all financial responsibility. Charter stands alone, or in very poor company, in this belief. Most, if not all, other Carriers pay applicable LSR charges, even where the LSR requests porting of a number. The fact that Charter refuses to pay for administrative charges that other carriers pay underscores a much bigger problem—Charter's historical and improper practice of refusing to pay for services that CenturyTel and its affiliates render to it. But Charter has relied on its freeloading business practices far too long, and it is time for the Commission to put an end to that practice.

Like most local exchange carriers, CenturyTel provides certain services to other carriers in its operating area. For example, a carrier may order a line for resale, order unbundled network elements, or request changes to existing services. When a carrier requests such services from CenturyTel, it does so through an LSR. In order to process LSRs, CenturyTel must perform certain administrative tasks, and recovers its costs for doing so through fees charged to the requesting carrier, as provided for in applicable agreements and tariffs. The end result is that a carrier pays for the services that it requests CenturyTel to provide. This process of obtaining services from an ILEC through the submission of an LSR, and paying applicable administrative charges associated with that LSR, is generally uncontested within the industry.

Despite this well-established practice, however, Charter has filed a complaint with the Commission, claiming that CenturyTel should have to provide services at Charter's will, but that Charter should not have to pay for them. Charter argues that, although CenturyTel incurs administrative costs in processing local service requests related to porting numbers to Charter, Charter should not have to pay CenturyTel for those costs. In essence, Charter wants to get something for nothing. The law does not allow it to do so.

Charter incorrectly argues that the FCC's number portability cost recovery rule, 47 C.F.R. § 52.33, and the FCC's 2002 Number Portability Reconsideration Order, prohibit CenturyTel from recovering its administrative costs incurred in processing LSRs. Charter also incorrectly argues that CenturyTel's charges are not authorized by the parties' Interconnection Agreement or applicable tariffs. Charter's arguments are based on a misinterpretation of the applicable law and agreements, and are contrary to the standard procedure within the industry of recovering costs from the cost causer. Contrary to Charter's arguments, the charges that CenturyTel has imposed in connection with the services Charter ordered are both lawful, and supported by the parties'

agreements. Those charges, which currently total more than \$120,000, are thus proper, and Charter is required to pay them.

Charter's complaint in this matter is simply its latest tactic in a chronic pattern of refusing to pay lawful charges for services rendered by CenturyTel and its affiliates.¹ The Commission should not permit Charter to use it as a vehicle for Charter to delay payment for lawful charges. Instead, for the reasons set forth above, the Commission should dismiss Charter's Complaint and/or enter an order declaring that Charter is required to pay CenturyTel's lawfully imposed service charges.

Background

This is not the first time that Charter has refused to pay LSR charges relating to number porting requests. In fact, Charter and CenturyTel engaged in informal dispute resolution procedures over this identical issue in 2004. At the time, Charter owed CenturyTel approximately \$64,867.61 in past due LSR charges. Charter disputed the charges under the provisions of the parties' Interconnection Agreement, claiming that they were illegal. Prior to the completion of the dispute resolution process, Charter paid the past due charges, albeit under protest. The parties then engaged in dispute resolution culminating in a September 3, 2004 telephone conference. That conference concluded with CenturyTel sustaining its charges, and refusing to refund Charter's payment. Despite its prior threats to do so, Charter took no further action to challenge the issue, and the dispute resolution process concluded. Now, three years later, Charter asks the Commission to hold that the same 2004 dispute process is still ongoing.

¹ Charter's practice of not paying for lawful charges is a systemic problem, most recently demonstrated by CenturyTel's victory in a Wisconsin arbitration proceeding where Charter was ordered to pay LSR charges associated with Charter's use of CenturyTel's Network Interface Devices (NIDs), which Charter had challenged as not applicable despite specific NID ordering and usage terms in the agreement. After the arbitration award was entered, Charter unsuccessfully sought to reduce the charges to a fraction of what the arbitrators awarded. Despite the award, Charter has still not paid the charges.

Following the completion of the dispute resolution process, CenturyTel continued to bill Charter for services rendered pursuant to LSRs that Charter submitted to CenturyTel. As has been Charter's general practice, Charter has not paid its bills. By mid summer 2007, the balance that Charter owed to CenturyTel had grown to the point where CenturyTel was no longer willing to allow Charter to receive the benefit of CenturyTel's services without paying the growing past due balance. Because the charges incurred subsequent to the conclusion of the dispute resolution process have not been disputed, CenturyTel had the right, pursuant to the parties' Interconnection Agreement, to declare Charter in default, and to discontinue providing services to Charter. CenturyTel availed itself of that right in late summer 2007, by sending Charter a default notice. Rather than living up to its payment obligation, Charter chose to further delay the payment process by filing its unsubstantiated Complaint in this matter.

Charter's Complaint is problematic for two reasons. First, Charter's decision to invoke the Commission's jurisdiction is contrary to the terms of its Interconnection Agreement with CenturyTel. That agreement requires the parties to attempt to resolve their differences through dispute resolution, before other action (such as a complaint before the Commission) can be initiated. Here, although a prior completed dispute existed, that dispute went through dispute resolution and was resolved in 2004. Although it had the right to do so, and had repeatedly threatened that it would, Charter chose not to pursue further escalated action in that dispute. Instead, Charter voluntarily incurred LSR charges over a period of approximately three years, and chose not to pay for them. The charges Charter incurred following the conclusion of the prior dispute, being the same type of charges sustained in that dispute, are undisputed under the terms of the parties' agreements. As such, CenturyTel had the right to declare Charter in default, and Charter did not have the right to invoke the Commission's jurisdiction. Accordingly,

CenturyTel has requested that the Commission dismiss Charter's Complaint for lack of jurisdiction.

Second, notwithstanding the jurisdictional deficiencies, Charter's Complaint is problematic because its arguments are not supported by the relevant law and facts. Applicable law allows carriers to recover the administrative costs incurred in processing LSRs, including those that relate to another carrier's request to port a number. Contrary to Charter's argument, such charges simply are not amongst the category of charges that the FCC has required to be otherwise recovered through the tariffed monthly end user LNP recovery charge. The terms of the parties' agreements also demonstrate that CenturyTel had the right to impose, and Charter was obligated to pay, the applicable LSR charges.

For these reasons, CenturyTel requests that the Commission dismiss Charter's Complaint. To the extent that the Commission chooses to exercise jurisdiction in this matter, CenturyTel further requests that the Commission deny Charter the relief it has requested and dismiss its Complaint as contrary to applicable facts and law. By way of its counterclaim, CenturyTel also requests that the Commission declare CenturyTel's charges to be lawful, and due and owing by Charter. For the reasons set forth herein, the Commission should grant CenturyTel's motion to dismiss, grant CenturyTel the relief requested in its counterclaim, and deny any relief requested by Charter.

Motion to Dismiss

I. Charter's Complaint should be dismissed because the Commission does not have jurisdiction over this matter.

Section 14 of the parties' Interconnection Agreement relates to dispute resolution. That provision requires the parties to enter into good faith negotiations of all disputes, prior to pursuing remedies that would otherwise be available to them, including initiating a claim before

this Commission. Despite this provision, the amounts that Charter has failed to pay in this matter have not been subjected to the good faith negotiation process set forth in Section 14. Charter has thus failed to satisfy a condition precedent to pursuing an action before the Commission, and its Complaint should be dismissed.

Charter would have the Commission believe that the 2004 dispute resolution process referred to above continued in perpetuity, so that it could continue to request and accept LSR services from CenturyTel, without paying for them. In other words, Charter argues that the original dispute is still pending, and that it has continued to dispute CenturyTel's charges. This is simply not the case.

The 2004 dispute involved approximately \$64,867.61 in LSR charges that Charter incurred, and had refused to pay. The parties exchanged a significant amount of correspondence leading up to the dispute, and throughout the dispute resolution process. During that process, Charter agreed to pay the disputed charges, under protest. Thereafter, the parties engaged in dispute resolution that culminated in a September, 2004 telephone conference. During that phone call, Charter argued, as it does here, that LSR charges relating to requests for number porting are contrary to the law, and not authorized by the parties' agreements. The result of that phone conference was CenturyTel's sustaining of its charges, and refusal to refund Charter's payment. Charter did not take any further action with regard to that dispute, despite the fact that it had previously threatened to initiate a lawsuit or take other legal action against CenturyTel if it did not immediately refund the payment. Because Charter did not exercise its right to take further legal action to challenge the charges, the dispute over the charges that were then at issue was resolved.

Although CenturyTel had made clear its position that it was entitled to payment for the LSRs, Charter continued to submit LSRs for number porting, knowing full well that CenturyTel expected payment. Charter claims to have disputed the LSR charges on a monthly basis. But this is simply untrue. In order to dispute a charge under the agreement, the parties must take certain enumerated steps. Section 9 of the parties' Interconnection Agreement relates to billing and payment disputes. Section 9.3 makes clear that the dispute resolution process set forth in Section 14 applies to billing disputes. Section 14.1 contains a specific procedure for initiating the dispute resolution process. To do so, the disputing party must provide the other party with written notice of the dispute, including both a detailed description of the dispute and the name of the individual who will serve as the initiating party's representative in the negotiation. Although the parties eventually complied with this process in connection with the 2004 dispute, Charter never initiated a dispute with regard to the charges presently at issue in this matter.

As is noted above, Charter paid for the charges that were in dispute in 2004. Those charges are thus not part of the past due amount that CenturyTel declared Charter in default for, and are not involved in this proceeding. Charter's argument that the current charges are disputed because Charter previously disputed other charges, is unconvincing. The facts simply do not support an argument that the current charges, for which CenturyTel declared Charter in default, are "disputed." Because Charter has not complied with the dispute resolution procedure set forth in Section 14.1 and 14.2 of the Interconnection Agreement, it had no basis for requesting relief from this Commission, and the Commission does not have jurisdiction over its Complaint.

Charter also implies in its Complaint that CenturyTel was taking improper unilateral action to "discontinue service order requests from Charter," prior to Charter filing this Complaint. Charter argues that CenturyTel should have invoked the dispute resolution process

of Section 14, instead of notifying Charter of its intent to cease providing LSR services. Charter's argument is inaccurate because the parties' Interconnection Agreement gives CenturyTel the right to suspend the provision of services upon Charter's failure to make the payments required under the agreement, without invoking Section 14. Section 12 of the parties' Interconnection Agreement permits CenturyTel to suspend services under the agreement in the event that Charter fails to make a required payment. It can invoke that right simply by providing Charter with 30 days written notice of its default. CenturyTel provided such notice to Charter on July 11, 2007. Thus, contrary to Charter's allegations, CenturyTel was not attempting to take inappropriate unilateral action to resolve this matter. It was simply exercising its contractual right to stop funding Charter's business by carrying a growing debt, in excess of \$120,000. It is entirely within Charter's power to avoid a discontinuance of services, by simply paying for the administrative charges associated with the services it requests.

In short, it is Charter who has taken the inappropriate unilateral action. It has done so by seeking to invoke this Commission's jurisdiction, where such jurisdiction does not exist, and by attempting to avoid its payment obligations. The Commission should not permit Charter to continue to avoid its substantial and legitimate financial obligation to CenturyTel, especially where the Commission does not have a jurisdictional basis to resolve Charter's alleged dispute. Accordingly, CenturyTel respectfully requests that the Commission dismiss Charter's Complaint for lack of jurisdiction.

II. The Commission should dismiss Charter's Complaint because its claims are contrary to applicable law and relevant facts.

A. CenturyTel's service order charge for LSRs for number porting is lawful.

Although the main issue that Charter raises in its Complaint is that CenturyTel's service order charges for LSRs for number porting are contrary to federal law, at no point in its

Complaint does it explain this argument. Instead, Charter merely states, in paragraph 40 (and repeated in paragraph 51), that such charges are prohibited by 47 C.F.R. §52.33 and the FCC's 2002 Number Portability Reconsideration Order. Contrary to Charter's cursory and self-serving analysis, CenturyTel's service order charges are appropriate, and not contrary to federal authority.

While 47 C.F.R. §52.33 does provide that ILECs can recover carrier specific costs "directly related to providing long-term number portability" from a tariffed end user LNP charge, this provision does not free Charter from its obligation to pay for charges associated with the services it orders from CenturyTel. The administrative services that CenturyTel provides in response to Charter's LSRs do nothing to provide or further "long-term portability," and are not directly related thereto. Instead, the services that CenturyTel provides are administrative services provided any time a carrier asks CenturyTel to process an order for it, regardless of what that order may relate to.

Because the administrative services that CenturyTel provides in responding to an LSR are not directly related to long-term portability, CenturyTel has the right to recover the charges for such services from Charter, and other carriers.² With regard to costs that are not directly related to providing long-term number portability, the FCC has stated "we find no indication that Congress intended to place such costs within the scope of the competitive neutrality requirement of §251(e)(2)."³ Therefore, because the administrative charges at issue are not directly related to

² *In the Matter of Telephone No. Portability*, Memorandum Opinion & Order on Reconsideration and Order on App. for Rev, 17 FCC Rcd 2578, 2629-30 ¶104 (2002).

³ *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11724 ¶ 36 (1998) ("Third Report and Order").

providing long-term number portability, Charter is obligated to pay those charges, and 47 C.F.R. §52.33 simply does not apply.

Charter's argument that because the LSRs at issue here involve requests to port numbers, the administrative services that CenturyTel provides in connection with processing those LSRs are directly related to long-term number portability, is unavailing for two reasons. First, Charter does nothing to demonstrate how performing the administrative tasks required to allow an individual number to be ported furthers long-term number portability. Second, the administrative services that CenturyTel provides in processing LSRs for number porting are merely incidental to number portability. The FCC has made clear that costs that Carriers incur "as an incidental consequence of number portability," are not directly related to providing number portability.⁴

CenturyTel receives LSRs for a wide variety of reasons, including requests to order a line for resale, to designate a number as unpublished, to order unbundled network elements, and to make changes to existing services. Whenever it receives an LSR for any of these services, CenturyTel's employees have to perform certain administrative functions, including a review of the order to ensure that the order has been correctly completed by the ordering carrier, manually entering the order into its billing and provisioning system, providing firm order commitments (FOCs) and other such communications to the ordering carrier, and overseeing internal coordination to ensure the timely completion of the order. As to LSRs for porting a number, CenturyTel incurs those charges as an incidental consequence of the number portability requirements, but such services are not directly related to number portability.

⁴ Third Report and Order, at 11740, ¶72.

Although, as will be discussed more thoroughly below, nearly all carriers impose and pay fees to cover administrative costs associated with processing service requests for number porting, Verizon Wireless took the same position that Charter now takes, in connection with a prior FCC action.⁵ In that proceeding, Verizon argued that Bell South intended to improperly assess CMRS carrier transaction-based charges when Verizon requested the porting of telephone numbers from Bell South. Verizon asked the FCC to find that such costs are only recoverable through end user charges, as set forth in 47 C.F.R. §52.33.⁶ Bell South responded that the transaction-based fees are imposed whenever a carrier submits an LSR to Bell South, and that LSRs do not always involve the porting of a telephone number.⁷

The FCC noted that the administrative charges Bell South was attempting to impose on Verizon, which are the same type of charges at issue here, would not have qualified for recovery through a tariffed end user LNP recovery charge pursuant to 47 C.F.R. §52.33.⁸ Implicit in that finding is the fact that such charges are not directly related to long-term number portability because, if they were, the charges would be appropriate to recover through end user LNP charges. In the final analysis, the Bell South Order stands for the proposition that administrative charges associated with processing LSRs are not directly related to providing number portability, even where the LSR requests the porting of a phone number. Such charges are not recoverable through monthly end user LNP recovery fees, but may be recovered through other mechanisms.

The fact that CenturyTel cannot recover its administrative service charges through monthly end user LNP recovery fees further demonstrates that the charges Charter seeks to avoid

⁵ *In the Matter of Telephone Number Portability, Bell South Corporation Petition for Declaratory Ruling and/or Waiver*, Order, FCC 04-91 ("Bell South Order").

⁶ *Id.* at ¶8, n. 41.

⁷ *Id.* n. 49

⁸ *Id.*

paying are appropriate. If CenturyTel may not recover its administrative costs from end users, and Charter is entitled to request porting of numbers without paying for CenturyTel's administrative costs, CenturyTel is left in a position where it is forced to perform work for Charter, without the possibility of being paid for that work. Such a situation creates an unconscionable involuntary servitude that this Commission should not assume that Congress or the FCC intended to create. Simply put, if Charter wants CenturyTel to perform work for it, it needs to be prepared to pay for that work.

Finally, regular industry cost recovery procedures demonstrate that CenturyTel is entitled to be paid for administrative costs incurred in processing LSRs for number porting. The practice of charging and paying for administrative service fees associated with requests to port a number is nearly universally accepted. CenturyTel and its affiliates have ported numbers for approximately fifty-five (55) carriers, and have charged service order charges to each of them. Out of those fifty-five (55) carriers, only Charter has continually refused to pay the service charge (though Charter has paid service charges related to LSRs for number porting in Wisconsin, and previously in this state). CenturyTel and its affiliates have also been charged administrative service charges for porting numbers, and have paid such charges. This common practice of assessing and paying LSR charges that are incidental to porting demonstrates that Charter's claims are invalid, and that Charter is not raising a legitimate dispute, but is merely seeking to delay or avoid paying lawful charges.

Because the charges that CenturyTel imposes to cover its administrative cost of processing LSRs for number porting are not directly related to long-term number portability, CenturyTel has the right to charge Charter for such costs, and Charter is obligated to pay for them. As a consequence, Charter's Complaint is invalid, and should be dismissed.

B. The relevant agreements demonstrate that CenturyTel's service charges relating to LSRs for number portability are appropriate.

In its Complaint, Charter cites the parties' Interconnection Agreement. Section 1.1 of that agreement indicates that the agreement includes both the principal document and the applicable "tariffs" of each party. The word "tariff" is defined in the glossary to the Interconnection Agreement, which is expressly made a part of the agreement through Section 3. As defined in Section 2.85 of the glossary, the word "tariff" includes "any applicable federal or state tariff of a party, as amended from time to time." The term also includes "any standard agreement or other document, as amended from time to time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service." This second definition of tariff, contained in glossary Section 2.85.2, includes CenturyTel's Service Guide.

The parties' Interconnection Agreement also contains a Pricing Attachment, which is made part of the agreement through Section 3. The Pricing Attachment contains charges for certain services to be provided to Charter.⁹ The attachment makes clear that any service ordered by Charter will be subject to a service charge, and provides a mechanism for determining where the charges associated with the various services can be found. For charges not expressly set forth in Section 2 or 3 of the Pricing Attachment, Section 1.3 provides that the charge for a service shall be the charge stated in the providing party's applicable tariff. The Pricing Attachment does not contain a provision expressly relating to charges for LSRs. Accordingly, under the parties' Interconnection Agreement, the applicable service charges for LSRs are to be determined by applicable tariff.

⁹ The term service is defined in glossary section 2.78, and includes "any Interconnection arrangement, Network Element, Telecommunications Service, Collocation arrangement, or other service, facility or arrangement, offered by a party under the Agreement."

There are two "tariffs" in this matter that require Charter to pay the service charge related to LSRs for number porting. First, Section 5 of PSC Mo. No. 1 CenturyTel of Missouri, LLC General and Local Exchange Tariff provides for charges of \$23.44 and \$23.48 when a business places an initial order for a discrete service. Each LSR relating to porting of a number is Charter's initial order for a specific telephone number. Charter is the business that places the initial order, and it must pay for that charge.

Second, with regard to service order charges, CenturyTel's Service Guide contains language (on pages 20, 23, 27, 32, 35, 36, and 48), indicating that "**all orders submitted (ASRs and LSRs) are subject to application of service order charges.**" The Service Guide also states, on page 35, that:

carrier shall place order for number porting by submitting a local service request (LSR) to CenturyTel. A service order charge will be applicable in submitting a local service request (LSR) for porting. The service ordering charge covers the administrative order processing costs, and is not associated with the recovery of any technical material costs that may be recovered through other charges. The rate charged will either be the contracted rate from the Agreement or a tariffed service order charge.

The Service Guide also contains a link to the tariff service order charges, so that carriers can confirm the charges associated with the various services, before they request those services. Then, when a carrier goes to CenturyTel's LSR ordering site to place an order for a service, it receives the following message: "CenturyTel will assess a service order charge for every order submitted, as stated in our Service Order Guide." Charter receives this message every time it submits an LSR to CenturyTel, prior to placing its order. It is thus impossible for Charter, or any other carrier, to submit an LSR to CenturyTel without understanding that charges will apply to the services it is requesting.

The parties' agreement, including applicable tariffs, thus demonstrates that Charter is required to pay a service order charge when submitting LSRs for porting numbers. Therefore, Charter's argument that the charges are not supported by the parties' agreement is inaccurate, and its Complaint, which is based on that argument, should be dismissed.

C. **Even if the charges were not otherwise provided for in the parties' agreements, Charter was aware that CenturyTel imposed such charges, and continued to submit LSRs, thus acquiescing to the charges.**

Charter's argument is essentially that, even if CenturyTel's charges are lawful, and not contrary to federal law, it should still not have to pay them because they were not expressly provided for under the agreement. What Charter is attempting to do is to take advantage of the fact that the Interconnection Agreement between the parties was formed at a time when number porting was in its infancy, and thus does not contain a more specific provision for LSR charges for number porting. It wants to use this fact to try to avoid CenturyTel's lawful charges. In other words, Charter argues that, even though the charges are appropriate, and even though it knew CenturyTel would be imposing the charges, it can continue to submit LSRs for number porting and refuse to pay them. This assertion is self-serving and unjust.

There is no question that Charter was aware that CenturyTel was incurring administrative expenses in processing LSRs for number porting, and that CenturyTel charged for such services. Notwithstanding these facts, Charter continued to submit LSRs for number porting. When CenturyTel responded to those requests, Charter received a benefit that it should be required to pay for. Whether on the basis of an implied contract, quantum meruit or unjust enrichment, Charter should be required to pay for CenturyTel's services, even if they were not provided for in the parties' agreement.

To be clear, CenturyTel's charges are expressly authorized in the applicable agreements and tariffs, and Charter's argument to the contrary is unavailing. Nevertheless, even if the parties' agreements are construed in a manner that would not cover service charges for LSRs for number porting, general principles of equity, in the absence of controlling tariff or regulation, would permit CenturyTel to recover its charges.

III. Charter's Complaint is not sufficiently definite to frame any issues against CenturyTel for the other service charges alluded to in paragraph 10 of its Complaint.

Although it is clear that Charter's main claim in this matter is that it should not be required to reimburse CenturyTel for its administrative costs associated with processing LSRs for Charter's number porting requests, Charter also makes vague references to other charges that it has refused to pay. Although these categories are generally described in paragraph 10 of Charter's Complaint, nowhere in the Complaint does Charter explain why such charges are allegedly inappropriate or why it has not paid them. The reason why Charter has not made such allegations, is that there is no basis for not paying those amounts. This is but one more example of Charter's repeated and systematic refusal to pay lawful charges. In any event, CenturyTel cannot be expected to respond to Charter's vague, ambiguous, and non-specific claim that it should not have to pay for charges lawfully imposed by CenturyTel. Accordingly, to the extent that Charter requests relief for any of the categories of charges set forth in paragraph 10(b), (c) or (d), CenturyTel requests that Charter's Complaint be dismissed for failure to state a claim upon which may be granted.

Answer

For its answer to Charter's Complaint, CenturyTel states:

1. Admitted.

2. Admitted.

3. Admitted.

4. CenturyTel denies that the Commission has jurisdiction over this matter, and incorporates herein by reference its arguments set forth in Section I of its Motion to Dismiss.

5. With regard to paragraph 5 of Charter's Complaint, CenturyTel does not dispute that Charter is seeking the relief requested, but does dispute that Charter is entitled to any such relief. CenturyTel further denies Charter's implication in paragraph 5 that CenturyTel has any duty to provide number portability without Charter paying for the associated administrative service charges.

6. Admitted.

7. Admitted.

8. Admitted.

9. In response to paragraph 9 of Charter's Complaint, CenturyTel acknowledges that problems arose between CenturyTel and Charter, but states that such problems related to Charter's repeated failure to pay for lawful charges. CenturyTel denies the existence of "billing problems" and further denies that CenturyTel assessed Charter charges that were not authorized, or that were prohibited by law, or for which CenturyTel was not entitled to payment.

10. CenturyTel denies the allegations set forth in paragraph 10 of Charter's Complaint.

11. CenturyTel denies that Charter has "disputed" the charges referred to in paragraph 11. CenturyTel further denies the amount of charges that Charter claims that CenturyTel has billed to Charter.

12. CenturyTel denies the allegations set forth in paragraph 12 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section II.A. of the Motion to Dismiss.

13. CenturyTel admits the allegations set forth in the first sentence of paragraph 13 of Charter's Complaint. CenturyTel denies the allegations set forth in the second sentence of paragraph 13 of Charter's Complaint. Answering further, CenturyTel states that when Charter desires to port a number, it submits a local service request asking to port the number from CenturyTel. CenturyTel confirms receipt and releases the number through appropriate technical channels. Charter then obtains the number from CenturyTel's system, after the number has been released.

14. CenturyTel admits that it assesses Charter a service charge for all LSRs, regardless of whether the LSR is related to number portability. CenturyTel denies the remaining allegations set forth in paragraph 14 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section II of its Motion to Dismiss.¹⁰

15. With regard to the allegations set forth in paragraph 15 of Charter's Complaint, CenturyTel has not been able to confirm or deny when Charter first submitted an LSR for porting a number, and thus when Charter was first charged a service order charge. To the best of its information and belief, CenturyTel has billed Charter for every local service request it has submitted to CenturyTel, and in accordance with the parties' agreements.

16. With regard to the allegations set forth in paragraph 16 of Charter's Complaint, CenturyTel is without information to admit or deny what Charter may have done upon receipt of

¹⁰ CenturyTel also disputes that the \$19.78 charge is the applicable charge for a local service request. The applicable charge is either \$23.44 or \$23.48, depending on the location of the port. CenturyTel erroneously undercharged Charter the \$19.78 figure for approximately four (4) years. Despite having discovered its error, CenturyTel has not attempted to collect the difference between the amount paid by Charter, and what it should have paid.

bills from CenturyTel. However, to the extent that Charter determined there was no contractual basis for the charges, its conclusion in that regard is erroneous, and is denied. CenturyTel further denies Charter's alleged conclusion that charges were prohibited under federal law. Answering further, CenturyTel incorporates herein by reference Section II of its Motion to Dismiss.

17. CenturyTel denies the allegations set forth in paragraph 17 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference Section II of its Motion to Dismiss.

18. With regard to the allegations set forth in paragraph 18 of Charter's Complaint, CenturyTel admits that Charter disputed prior charges, which Charter eventually paid for, and which dispute resolution terminated in or around September of 2004. CenturyTel denies that Charter has "disputed" the current charges for which Charter was declared in default through CenturyTel's July 11, 2007 letter. Although Charter had previously raised some minor billing disputes, CenturyTel credited Charter for any erroneous charges, and those charges are not in dispute here. CenturyTel denies the remaining allegations of paragraph 18 of Charter's Complaint.

19. With regard to paragraph 19 of Charter's Complaint, CenturyTel is without sufficient information to admit or deny what Charter may have felt. CenturyTel admits that Charter paid CenturyTel approximately \$68,867.61, but denies that such payment was made under duress. Answering further, CenturyTel states that the charges paid by Charter were lawful, appropriate, and owed by Charter. Answering further, CenturyTel admits that Charter claimed to reserve a right to seek a refund of its payment. CenturyTel denies the remaining allegations set forth in paragraph 19 of Charter's Complaint.

20. With regard to the allegations set forth in paragraph 20 of Charter's Complaint, CenturyTel acknowledges that Charter eventually invoked the formal dispute resolution provisions of the agreement. CenturyTel denies the remaining allegations set forth in paragraph 20. Answering further, CenturyTel states that the formal dispute resolution process was concluded, and did not relate to any of the unpaid charges that formed the basis of CenturyTel's notice of default. CenturyTel further incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

21. CenturyTel admits the allegations set forth in paragraph 21 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

22. With regard to the allegations set forth in paragraph 22 of Charter's Complaint, CenturyTel acknowledges that Charter eventually provided CenturyTel an explanation of the basis of its dispute, but denies that such explanation was "detailed." CenturyTel further denies the validity of any of the arguments raised by Charter, and Charter's allegation that CenturyTel is not entitled to payments. Answering further, CenturyTel incorporates herein by reference the arguments set forth in its Motion to Dismiss.

23. CenturyTel denies the allegations set forth in paragraph 23 of Charter's Complaint. The parties' dispute was resolved through their September 3, 2004 phone conference, during which CenturyTel substantiated its charges, and refused to provide Charter with a refund, and through Charter's failure to take any further action to escalate the alleged dispute as provided for in the agreement. Answering further, CenturyTel incorporates herein by reference the allegations set forth in Section I of its Motion to Dismiss.

24. With regard to the allegations set forth in paragraph 24 of Charter's Complaint, CenturyTel acknowledges that it continued to bill Charter for service charges it incurred through LSRs pertaining to number portability. CenturyTel denies that such service charges constitute "number portability charges". CenturyTel further states that any charges it continued to bill Charter for were lawful and appropriate charges that Charter was obligated to pay. CenturyTel further denies that Charter continued to "dispute" CenturyTel's charges, and Charter's conclusion that such charges are invalid. CenturyTel further denies that Charter "disputed" charges by sending monthly notices of the alleged dispute. Although Charter may have sent an occasional indication that took issue with some of the charges, such statements were not monthly, and were not sufficient to constitute a good faith dispute under the parties' agreement. CenturyTel also denies that Charter initiated a further prospective "dispute" that would have complied with the terms of the parties' agreement. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

25. With regard to the allegations set forth in paragraph 25 of Charter's Complaint, CenturyTel acknowledges that it has continued to assess lawful and appropriate charges in connection with LSRs submitted by Charter. CenturyTel denies that Charter has disputed those charges pursuant to the parties' agreement and all other allegations set forth in paragraph 25 of Charter's Complaint.

26. CenturyTel denies the allegations set forth in paragraph 26 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

27. With regard to the allegations set forth in paragraph 27 of Charter's Complaint, CenturyTel acknowledges it is demanding payment from Charter, but denies that the charges that

CenturyTel demanded payment for were "disputed charges." Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

28. With regard to the allegations set forth in paragraph 28 of Charter's Complaint, CenturyTel admits that its carrier relations manager, Pam Hankins, sent an e-mail to Charter. That e-mail speaks for itself, and CenturyTel denies any allegation of paragraph 28 that is inconsistent with that e-mail. Answering further, CenturyTel states that it had a right to declare Charter in default pursuant to the terms of the parties' agreement, and incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

29. With regard to the allegations set forth in paragraph 29 of Charter's Complaint, CenturyTel denies Charter's allegation that the charges for which it was declared in default were "disputed charges." Answering further, CenturyTel states that it informed Charter that it would not continue to process local service requests until Charter paid the service charges associated with such requests. CenturyTel denies the remaining allegations set forth in paragraph 29 of Charter's Complaint.

30. In response to the allegations set forth in paragraph 30 of Charter's Complaint, CenturyTel denies that the events leading to Charter's default were "unilateral." It was Charter's failure to pay for lawful charges that left CenturyTel with no other choice than to exercise its contractual right to declare Charter in default.

31. CenturyTel denies the allegations set forth in paragraph 31 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference its response to paragraph 30 above and the arguments set forth in its Motion to Dismiss.

32. CenturyTel denies the allegations set forth in paragraph 32 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of CenturyTel's Motion to Dismiss.

33. CenturyTel admits the allegations contained in the first two sentences of paragraph 33 of Charter's Complaint, but denies the allegations set forth in the third sentence of that paragraph, and further denies that Charter has properly disputed any of the charges for which it was declared in default.

34. CenturyTel denies the allegations set forth in paragraph 34 of Charter's Complaint.

35. In response to the allegations set forth in paragraph 35 of Charter's Complaint, CenturyTel acknowledges that the appropriateness of its charges is a separate question from whether Charter disputed those charges. Answering further, CenturyTel asserts that its charges are lawful, and that Charter has not properly disputed any of the charges for which it was declared in default.

36. CenturyTel denies the allegations set forth in paragraph 36 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in its Motion to Dismiss.

37. CenturyTel denies the allegations set forth in paragraph 37 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in its Motion to Dismiss.

38. With regard to the allegations set forth in paragraph 38 of Charter's Complaint, CenturyTel denies that it has attempted to "get around the fact that the agreement does not authorize its charges." To the contrary, CenturyTel's charges are authorized and lawful.

Answering further, CenturyTel incorporates herein by reference the allegations set forth in Section II of its Motion to Dismiss. Answering further, CenturyTel denies that its alleged basis for assessing service order charges for LSRs for porting numbers relates to non-recurring charges for certain "wholesale services" associated with the purchase of unbundled network elements. Charter's argument in this regard is disingenuous. As Charter knows, it was mistakenly charged at the rate of \$19.78 for service charges related to LSRs for porting numbers. Charter should actually have been charged a greater amount, and CenturyTel has graciously agreed not to seek to collect the amounts that Charter was undercharged. In any event, Charter is aware that the basis for CenturyTel's service order charges exists in the applicable agreements and tariffs, and is supported by federal law as set forth in Section II of CenturyTel's Motion to Dismiss, which is incorporated herein by reference.

39. With regard to the allegations set forth in paragraph 39 of Charter's Complaint, CenturyTel denies that it is relying on the unbundled network provision referred to in the preceding paragraph, to support its service charges for LSRs for porting numbers, and Charter's allegations in paragraph 39 are thus irrelevant and immaterial, and are, therefore, denied.

40. CenturyTel denies the allegations set forth in paragraph 40 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section II of its Motion to Dismiss.

41. CenturyTel denies the allegations set forth in paragraph 41 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section II of its Motion to Dismiss.

42. CenturyTel incorporates by reference its responses set forth above in paragraphs 1 through 41 as though fully set forth herein.

43. CenturyTel denies the allegations set forth in paragraph 43 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

44. With regard to the allegations set forth in paragraph 44 of Charter's Complaint, CenturyTel does not deny that it billed a service order charge in the amount of \$19.78 in association with numbers ported from CenturyTel's network to Charter's network. However, the amounts billed by CenturyTel were not for "porting", but were for administrative service charges associated with LSRs submitted by Charter. Furthermore, the amount that Charter indicates is the charge associated with the LSRs is inaccurate. Although Charter was initially undercharged, resulting in charges of \$19.78 instead of tariff charges of \$23.44 and \$23.48, upon discovering this error, CenturyTel charged Charter the amount of \$23.44 and \$23.48, as is set forth in the applicable agreements. CenturyTel admits that it billed Charter certain rates for other LSRs, but denies that such charges were "disputed" by Charter. CenturyTel further denies that Charter has "disputed" the four different categories of charges it refers to in paragraph 44, and all other allegations of that paragraph. Although Charter had previously raised some minor billing disputes, CenturyTel credited Charter for any erroneous charges, and those charges are not in dispute here.

45. CenturyTel denies the allegations set forth in paragraph 45 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

46. CenturyTel denies the allegations set forth in paragraph 46 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

47. CenturyTel denies the allegations set forth in paragraph 47 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

48. CenturyTel denies the allegations set forth in paragraph 48 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

49. CenturyTel incorporates by reference its responses set forth above in paragraphs 1 through 48 as though fully set forth herein.

50. CenturyTel denies the allegations set forth in paragraph 50 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

51. In response to the allegations set forth in paragraph 51 of Charter's Complaint, CenturyTel incorporates its paragraph 38 above, as through fully set forth herein.

52. CenturyTel denies the allegations set forth in paragraph 52 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

53. CenturyTel denies the allegations set forth in paragraph 53 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

54. CenturyTel denies the allegations set forth in paragraph 54 of Charter's Complaint. Answering further, CenturyTel incorporates herein by reference the arguments set forth in Section I of its Motion to Dismiss.

55. Answering further, CenturyTel denies all other allegations not expressly admitted herein.

Affirmative Defenses

1. The Commission lacks jurisdiction to hear Charter's Complaint as set forth above in CenturyTel's Motion to Dismiss, which is incorporated herein by reference.

2. Charter's claims are barred by laches, waiver and estoppel.

3. Charter's claims are barred by applicable state and federal law.

4. CenturyTel reserves the right to assert such other and further affirmative defenses that may become known to it during the duration of this proceeding.

WHEREFORE, having fully answered Charter's Complaint, CenturyTel respectfully requests that Charter's Complaint be dismissed, and that Charter not be granted any of the relief requested in its Complaint.

Counterclaim

As set forth above in CenturyTel's Motion to Dismiss, CenturyTel denies that the Commission has jurisdiction over Charter's claims, and further asserts that it has the contractual right to payment from Charter, and the right to terminate service to Charter as a result of its non-payment. Nevertheless, to the extent that the Commission chooses to exercise jurisdiction over this matter, CenturyTel specifically asserts the following as its counterclaim against Charter:

1. CenturyTel incorporates herein by reference the allegations set forth in paragraphs 1 through 3 of Charter's Complaint in this matter.

2. Charter, by filing its Complaint in this action, has asserted the jurisdiction of this Commission, and to the extent that the Commission exercises jurisdiction over Charter's Complaint, it has jurisdiction over CenturyTel's counterclaims.

3. As is alleged in its Complaint, Charter is a local exchange carrier in Missouri. Charter is headquartered at 12405 Powerscourt Drive, St. Louis, Missouri 63131.

Count I
(Claim on open accounts)

4. CenturyTel provides services to Charter under two accounts, bearing numbers 301644892 and 405601334. The amount due and owing for CenturyTel's provision of such services on account 301644892, as of the September 10, 2007 billing statement, was \$86,359.60. The amount due and owing for CenturyTel's provision of such services on account 405601334, as of the September 6, 2007 billing statement, was \$35,715.27. As of the applicable billing statements, Charter thus owes CenturyTel a total of \$122,074.87 for services CenturyTel provided to Charter.

5. CenturyTel has made demand for payment on Charter, and Charter has refused payment.

6. The amounts charged by CenturyTel for the services it rendered on Charter's behalf were appropriate prices for such services under both the applicable law and the applicable agreements and tariffs of the parties, as more specifically set forth in Section II of CenturyTel's motion to dismiss.

WHEREFORE, CenturyTel respectfully requests that the Commission enter an order finding in favor of CenturyTel on Count I of its counterclaim, finding that Charter owes CenturyTel the amount of \$122,074.87 for services rendered.

Count II - Service Termination

1. CenturyTel incorporates herein by reference the previous allegations of its counterclaim as stated herein.

2. Charter's failure to pay CenturyTel for services rendered, in the amount of \$122,074.87 constitutes a default under the parties' Interconnection Agreement.

3. CenturyTel has provided Charter with written notice of its payment default, as required by the parties' Interconnection Agreement.

4. CenturyTel has the right to suspend the provision of any or all services under the Interconnection Agreement as a result of Charter's default.

WHEREFORE, CenturyTel respectfully requests that the Commission find in favor of CenturyTel on Count II of its counterclaim and enter an order authorizing CenturyTel to suspend any or all services to Charter as a result of Charter's payment default on account numbers 301644892 and 405601334.

PAYNE & JONES, CHARTERED

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Certificate of Service

I hereby certify that on the 26th day of September, 2007, I served the foregoing Motion to Dismiss, Answer, Affirmative Defenses and Counterclaim on the following persons via electronic mail to:

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