

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

CENTURYTEL OF MISSOURI, LLC)
d/b/a CENTURYLINK AND SPECTRA)
COMMUNICATIONS GROUP, LLC)
d/b/a CENTURYLINK)

Complainant,)

v.)

SPRINT COMMUNICATIONS COMPANY,)
LP)

Respondent.)

CASE NO. _____

**CENTURYLINK’S COMPLAINT AGAINST SPRINT
FOR VIOLATION OF INTRASTATE ACCESS TARIFFS**

COMES NOW, CenturyTel of Missouri, LLC d/b/a “CenturyLink” and Spectra Communications Group, LLC d/b/a “CenturyLink” (collectively “Complainants” or “CenturyLink”) pursuant to Sections 386.40, 386.250, 386.320.1, 386.330, 386.390, 386.400, 392.200.1 and .2, 392.410.2, 392.480, 392.550 RSMo. and 4 CSR 240-2.070(4) and other applicable authority, and for its Complaint against Sprint Communications Company, LP (“Sprint”) regarding Sprint’s refusal to pay applicable tariffed intrastate exchange access charges for intrastate interexchange voice traffic routed to and terminated by CenturyLink, respectfully states as follows to the Commission:

I.
PARTIES AND COUNSEL

1. CenturyTel of Missouri, LLC d/b/a “CenturyLink” is a limited liability corporation organized and existing under the laws of the State of Louisiana and authorized to conduct business in the state of Missouri. It is a public utility subject to the jurisdiction of the Commission and provides telecommunication services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an “incumbent local exchange carrier” (“ILEC”), a “telecommunications company” and a “public utility” as those terms are defined in § 386.020, RSMo, and, thus, is subject to the jurisdiction, supervision and control of this Commission. Its principal place of business in Missouri is located at 1151 CenturyTel Drive, Wentzville, Missouri 63385.

2. Spectra Communications Group, LLC d/b/a “CenturyLink” is a Delaware limited liability corporation that is duly authorized to do business in Missouri. It is a public utility subject to the jurisdiction of the Commission and provides telecommunication services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an “incumbent local exchange carrier” (“ILEC”), a “telecommunications company” and a “public utility” as those terms are defined in § 386.020, RSMo, and, thus, is subject to the jurisdiction, supervision and control of this Commission. Its principal place of business in Missouri is located at 1151 CenturyTel Drive, Wentzville, Missouri 63385.

3. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this matter for CenturyLink should be directed to CenturyLink’s counsel:

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4. Sprint is a limited partnership organized under the laws of Delaware with its principle place of business in Overland Park, Kansas. Sprint is a “telecommunications company,” an “interexchange telecommunications company” (“IXC”) and a “public utility” as those terms are defined in § 386.020 RSMo., and is subject to the jurisdiction, supervision and control of the Commission. Sprint is certificated with the Commission as an IXC and as a competitive local exchange company (“CLEC”). Sprint is also registered with the Commission as an interconnected Voice-over-Internet Protocol (“VoIP”) service provider.

II. JURISDICTION

5. The Commission has jurisdiction over this controversy pursuant to Commission Rule 4 C.S.R. 240-2.070(4), which authorizes formal complaints:

[M]ade by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge establish or fixed by or for any person, corporation or public utility, in violation of or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.

6. The opening paragraph to this pleading lists a number of sections of the Missouri Revised Statutes that can serve to provide the Commission with jurisdiction over this matter. That the subject matter of this complaint is within the Commission’s jurisdiction is clearly

demonstrated by at least six statutory sections: 1) Section 386.320, which grants the Commission the power of general supervision over all telephone corporations; 2) & 3) Sections 386.390 and .400, which vest the Commission with general authority to hear complaints; 4) Section 392.220, which generally requires all telecommunications companies to file “schedules” or tariffs with the Commission for all of the company’s rates and charges and all of the company’s rules and regulations applicable to such rates and charges; 5) Section 392.480, which requires that intrastate telecommunications services be offered under a tariff (a corollary to Section 392.220); and 6) Section 392.550.2 and .4(5), which subject interconnected Voice over Internet Protocol (“VoIP”) services to the same exchange access charges¹ as telecommunications services are subject to, and authorizes the Commission to resolve complaints (under Sections 386.390 and .400) regarding the payment or nonpayment for exchange access services used by interexchange interconnected VoIP providers, respectively.

III. NATURE OF COMPLAINT

7. The primary issue presented by this complaint is whether, during the timeframe prior to the implementation of the Federal Communications Commission’s (“FCC”) November 2011 *USF/ICC Transformation Order*’s² compensation scheme for VoIP traffic, CenturyLink’s

¹ "Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service. Section 386.020 (17), RSMo. In this complaint the terms “exchange access” and “access” are used interchangeably.

² *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *Order Clarifying Rules*, 27 FCC Rcd 605 (rel. Feb. 3, 2012) (*Clarification Order*), Erratum to *USF/ICC Transformation Order* (rel. Feb. 6, 2012), Application for Review pending, USCC, *et al.*, filed Mar. 5, 2012, *Further Clarification Order*, DA 12-298, 27 FCC Rcd 2142 (2012), Erratum to *Clarification Order* (rel. Mar. 30, 2012), Second Erratum to *USF/ICC Transformation Order*, DA 12-594 (rel. Apr. 16, 2012), *pets. for recon. granted in part and denied in part*, Second Order on Recon., FCC 12-47 (rel. Apr. 25, 2012), Third Order on Recon., FCC 12-52 (rel. May 14,

tariffed intrastate switched access charges were applicable to VoIP-originated interexchange traffic delivered by Sprint to CenturyLink and terminated by CenturyLink. A second issue presented is whether Sprint is entitled to withhold payment on undisputed charges in order to claw-back payments it made without dispute for two years prior to raising a dispute over access charges on VoIP-originated traffic. CenturyLink's position is that its intrastate switched access charges were applicable to interexchange VoIP-originated traffic that was routed to CenturyLink for termination. If CenturyLink's position on the primary issue prevails, then the second issue should be moot. However, if CenturyLink's position on the primary issue is rejected, then CenturyLink's position on the second issue is that Sprint is not entitled to retroactively claw-back payments that were previously made without dispute, and Sprint may certainly not accomplish that claw-back by withholding payments on other undisputed charges.

8. CenturyLink's complaint is founded upon its lawful intrastate exchange access tariffs, which were at all relevant times on file with the Commission.³ Beginning in August

2012), Erratum to *Second Order on Recon.* (rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870 (rel. June 5, 2012), Erratum to *Order Clarifying Rules* (rel. June 12, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (10th Cir. No. 11-9900, Dec. 16, 2011). (rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870 (rel. June 5, 2012), Erratum to *Order Clarifying Rules* (rel. June 12, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (10th Cir. No. 11-9900, Dec. 16, 2011).

³ Attached as Exhibit 1 are excerpts from CenturyTel of Missouri, LLC's "Facilities for Intrastate Access" tariff (with one exception, discussed below in this footnote). The entire tariff is nearly 500 pages long, so for the informational purposes of this pleading CenturyLink is only attaching a limited number of tariff pages that include portions of the following key tariff sections: Section 4.1, the first paragraph of which describes the basic service of "switched access;" Section 4.2.1, the first sentence of which links the provision of switched access services to the rates and charges in Section 4.6; Section 4.3.3, which contains provisions for the jurisdictionalization of switched access traffic (both current and superseded tariff pages are being provided, because Section 4.3.3 was updated during the period Sprint disputed CenturyLink's access charges); and Section 4.6.2, which provides the recurring rates and charges for intrastate switched access services. Only the CenturyTel of Missouri tariff is provided because the Spectra Communications Group, LLC tariff contains essentially the same language. The only exception is the inclusion in Exhibit 1 of a separate Sections 4.6.2 to 4.6.7 (4.6.8 for Spectra) for both CenturyTel of Missouri and Spectra due to different switched access rates charged by the two companies during the period Sprint disputed CenturyLink's access charges.

2009, until January 2012,⁴ Sprint refused to pay CenturyLink's tariffed charges for intrastate exchange access services provided to Sprint. Sprint's rationale for disputing CenturyLink's intrastate exchange access charges is based on Sprint's assertion that the interexchange traffic is VoIP traffic and that such traffic is exempt from intrastate exchange access charges. Rather than follow proper dispute procedures, and ignoring tariff provisions and the filed rate doctrine, Sprint unilaterally substituted a much lower rate, ultimately \$0.0007 per minute. Sprint did this without ever challenging CenturyLink's access tariffs. Nor did Sprint ever file a rate complaint with, or seek a declaratory ruling from, this Commission before suddenly disputing exchange access charges that Sprint had routinely paid on VoIP-originated traffic for years.

9. In addition, also beginning in August 2009, Sprint took the egregious step of refusing to pay CenturyLink for *undisputed* charges in an effort by Sprint to retroactively "claw back" exchange access charge payments made by Sprint prior to July 2009. Sprint claimed a credit going back 2 years for allegedly overpaying exchange access charges above Sprint's unilaterally established \$0.0007 rate on interexchange VoIP traffic. Sprint then engaged in unlawful self-help by applying its imaginary credit to offset what Sprint owed on subsequent bills from CenturyLink. The total outstanding balance of Missouri intrastate charges, both disputed and undisputed, that Sprint has refused to pay CenturyLink currently totals \$3,106,087.00, not including late payment charges that are authorized by tariff.

Background to the Complaint

10. Every time a customer of Sprint makes a long distance call to a local telephone customer using the wireline network of CenturyLink, the local telephone network facilities of CenturyLink must be used to complete, or "terminate," the call. This is true

⁴ Sprint's disputes ceased in January 2012 with the implementation of Federal Communication Commission's *USF/ICC Transformation Order* requirement that all interexchange VoIP traffic was subject to interstate access charge.

with respect to voice calls originated using Time Division Multiplexing ("TDM") technology or voice calls originated using interconnected VoIP technology. Both types of voice calls are terminated to the Public Switched Telephone Network ("PSTN"). For many decades Sprint has routed interexchange voice traffic to CenturyLink for termination, and CenturyLink duly terminates such traffic as required by law and by tariff.

11. CenturyLink determines the intrastate jurisdiction of Sprint's traffic based on the originating and terminating points of the call, which are industry-standard criteria set forth in CenturyLink's intrastate exchange access tariff, and CenturyLink then bills Sprint the appropriate intrastate exchange access charges. At all relevant times, the rates, terms and conditions of CenturyLink's intrastate exchange access tariff did not distinguish between transmission technologies. The services provided by CenturyLink under its intrastate exchange access tariff are the same regardless of the transmission technology. Regardless of whether the Sprint customer chooses to *originate* a call via VoIP or TDM, the call *enters* CenturyLink's network at the Sprint point of presence ("POP") as a TDM call and uses CenturyLink's network in exactly the same manner. Depending upon the network configuration chosen by Sprint - i.e., interconnection at the tandem or at the end office - the call may use one or more of the following network elements owned by CenturyLink for which it is entitled to compensation under its intrastate exchange access tariff:

- a. tandem switch,
- b. transport facilities,
- c. end office switch, and/or
- d. local loop.

12. For several years before August 2009, Sprint consistently paid the rates contained in CenturyLink's intrastate exchange access tariff for use of CenturyLink's local telephone network without protest and without distinction based on the transmission technology of the originating traffic. In fact, Sprint had a policy of treating VoIP traffic the same as TDM traffic for intercarrier compensation purposes, including the payment of exchange access. Sprint also consistently represented to the FCC⁵ and to various state commissions⁶ that in its business of providing wholesale telecommunications services to VoIP-based voice providers, principally cable companies, Sprint provided a "telecommunications service" and Sprint was responsible for the payment of reciprocal compensation and exchange access charges associated with those wholesale services. Beginning in August 2009, however, Sprint lodged a series of disputes and - for the very first time - refused to pay the rates contained in CenturyLink's intrastate exchange access tariff on VoIP-originated traffic terminated over CenturyLink's facilities. At that time, Sprint disputed the applicability of access rates to VoIP traffic and unilaterally re-rated the traffic and recalculated the charges to the rate that Sprint declared it was "willing" to pay, or \$.0007 per minute.

⁵ See generally *Petition of Time Warner Cable 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*, WC Docket No. 06-55 (filed Mar. 1, 2006) ("*Time Warner Petition*") and Sprint Nextel Corporation's Comments in Support of Petition for Declaratory Ruling, WC Docket No. 06-55, at 3, 5, 13 – 15 (dated Apr. 10, 2006).

⁶ See, e.g., Sprint Initial Brief, *Application of Sprint Communications Company L.P. For Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Pa. P.U.C. Docket No. A-310183F0002AMA, at 9 (filed Feb. 23, 2006); *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, NYPSC Case No. 05-C-0170, Order Resolving Arbitration Issues, at 5 (May 24, 2005); *Cambridge Telephone Company, et al., Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, Illinois CC Docket Nos. 05-0259, *et seq.*, Order, at 4 (July 13, 2005). The Illinois Commission emphasized that, in favoring Sprint's position on the right to interconnect with Petitioners, the commission "fully expect[ed] Sprint to abide by its sworn affidavits, especially its responsibility for all intercarrier compensation arrangements." Order. at 14.

13. Sprint also disputed CenturyLink's switched access charges retroactively to August 2007 on the estimated VoIP traffic that CenturyLink had previously billed and Sprint had previously paid without dispute. By Sprint's own admission, this Sprint-declared retroactive dispute was not an undetected overbilling situation, nor was it caused by a change in the law or CenturyLink's switched access tariffs. Rather, the retroactive dispute conjured up by Sprint merely reflected a corporate decision to reduce costs by unilaterally changing its position with respect to the amount it was willing to compensate other carriers for terminating VoIP-originated traffic.⁷

14. By retroactively disputing 24-months of previously paid bills, and unilaterally applying the rate it was "willing" to pay (\$0.0007 per MOU) for VoIP-originated traffic, Sprint calculated a credit it claimed to be owed by CenturyLink. In order to recover this self-proclaimed credit, Sprint ceased remitting payment for both disputed *and undisputed* charges until it had "clawed-back" the amount of the credit it had unilaterally calculated without any independent determination whatsoever that it was entitled to expropriate such amounts.⁸ In many instances, Sprint's "claw-back" strategy meant that it not only failed to pay the disputed portion of newly invoiced amounts, but paid nothing at all on its bill despite the fact that some charges were for traffic or amounts that were not in dispute. As a result, Sprint has withheld payment for "disputes" that it waited *two years* to assert and Sprint has also withheld payment for other charges, such as intrastate exchange access charges owed on TDM-originated traffic, which were not disputed at all.

⁷See the Virginia's federal district court's findings in *Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc.*, 759 F. Supp. 2d 789, 796 (E.D. Va. 2011) (*Cent. Tel. of Va.*) ("in reality, Sprint's decision to dispute access charges emanated, not from any understanding the company may have had of the ICAs' text, but from the company's decision to reduce costs"), *affirmed Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc.*, 715 F.3d 501 (4th Cir. 2013), *writ of certiorari denied* 134 S. Ct. 423 (2013). The district court's decision in *Cent. Tel. of Va.* is attached hereto as Exhibit 2.

⁸ These actions did not comply with the dispute resolution provisions in CenturyLink's intrastate exchange access tariff.

15. Sprint's new policy was also conveniently asymmetrical. Sprint did not apply its proposed lower rates to the toll traffic it terminated for CenturyLink. In other words, while Sprint would only offer to pay \$0.0007 for TDM toll traffic it claimed originated in VoIP, it charged CenturyLink full access charge rates for TDM traffic it delivered to VoIP providers.

16. Sprint is also ignoring industry practice as the large majority of carriers, including other Competitive Local Exchange Carriers ("CLECs") serving cable companies, have honored their obligation to pay exchange access charges on VoIP-to-PSTN traffic.

17. CenturyLink has made repeated requests to Sprint to pay access charges consistent with the Missouri intrastate exchange access tariffs for the use of CenturyLink's facilities. Sprint has refused to pay the billed amounts but continues to use CenturyLink's local telephone network facilities.

Related Litigation

18. Sprint's refusal to pay CenturyLink's tariffed access charges has already resulted in two law suits. The first case involved the CenturyLink ILECs that were acquired as a result of CenturyTel's 2009 merger with Embarq Corporation . In 2010 the CenturyLink/Embarq ILECs ("Embarq") filed a law suit in the U.S. District Court for the Eastern District of Virginia that consolidated all of Embarq's claims against Sprint for failure to pay appropriate access charges (both intrastate and interstate), under the terms of the interconnection agreements ("ICA") between Embarq and Sprint, as well as under the terms of the Embarq's access tariffs incorporated by those ICAs.

19. Embarq's ICAs with Sprint have explicit language requiring the intercarrier compensation for VoIP calls to be the same as for voice calls ("e.g., reciprocal compensation,

interstate access, and intrastate access.”)⁹ This language in Embarq’s ICAs generally mirrors the language in Section 392.550.2 RSMo. regarding the application of intrastate exchange access charges to VoIP traffic, i.e., VoIP traffic is subject to exchange access charges to the same extent that voice calls are subject to exchange access charges. The court found in favor of Embarq’s interpretation of the ICAs, and entered a judgment ordering Sprint to pay damages and late fees totaling approximately \$24 million.¹⁰ After an appeal by Sprint, the court’s decision was affirmed by the United States Court of Appeals in the Fourth Circuit, and the U.S. Supreme Court denied Sprint’s petition for writ of certiorari on October 15, 2013.¹¹

20. The decisions of the Virginia federal district court and the Fourth Circuit focused on language in the ICA’s between Embarq and Sprint. The ICA language is very comparable to the language of Section 392.550.2 RSMo., and in both instances the applicable access tariffs do not distinguish in any way between whether interexchange traffic originated in a VoIP format or in a TDM format. Moreover, the district court found that Sprint’s decision in 2009 to begin disputing the assessment of access charges on VoIP interexchange traffic was not based on a legitimately-held belief that VoIP traffic was suddenly no longer subject to the access charges, which Sprint had consistently paid in the past. Rather, the district court found that in 2009 Sprint broadly chose to begin disputing (with multiple carriers) the applicability of access charges to VoIP traffic as a result of economic difficulties in Sprint’s business, which resulted in a plan to simply cut costs.¹² Additionally the district court found that prior to August 2009, Sprint actually had an affirmative policy of treating VoIP traffic as subject to access charges in the

⁹ *Cen. Tel. of Va.*, 759 F. Supp. 2d at 793.

¹⁰ *Id.* at 809.

¹¹ *Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc.*, 715 F.3d 501 (4th Cir. 2013), *writ of certiorari denied* 134 S. Ct. 423 (2013).

¹² *Cen. Tel. of Va.*, 759 F. Supp. 2d at 795-797.

same manner that traditional voice or TDM traffic is subject to access charges.¹³ Consequently, while there may be no ICAs involved in the instant complaint, the district court's findings about Sprint's change in practice for paying intercarrier compensation, and its motives for changing that practice, apply equally to this complaint. Moreover, given the language of Section 392.550, no specific language regarding VoIP traffic is needed in an ICA or tariff in order for VoIP to be subject to intrastate exchange access charges.

21. The second law suit involves a number of the CenturyLink ILECs,¹⁴ including the Complainants, and Sprint, and was filed on November 23, 2009, in the United States District Court for the Western District of Louisiana.¹⁵ This law suit consolidated all of the CenturyLink ILECs' claims against Sprint for non-payment of switched access charges for termination of interexchange VoIP traffic and the claims are based on the ILECs' interstate and intrastate switched access tariffs. On January 25, 2011, the court issued a stay in the proceeding while it referred to the FCC the threshold issue of the applicability of switched access charges to VoIP traffic. As discussed below, the FCC subsequently issued the *USF/ICC Transformation Order*, which established a default intercarrier compensation rate for toll VoIP-to-PSTN traffic on a *prospective basis* only. On March 14, 2014, CenturyLink filed a Motion to Lift Stay with the court so that CenturyLink can dismiss its claims related to intrastate access switched charges from the law suit. The presence of CenturyLink's intrastate claims in the law suit, pending their ultimate dismissal by CenturyLink, do not preclude CenturyLink from initiating this complaint in order to pursue its Missouri-specific claims in front of this Commission.

¹³ *Cen. Tel. of Va*, 759 F. Supp. 2d at 793-794, 807.

¹⁴ These ILECs were part of CenturyTel prior to the merger with Embarq and the subsequent name change to CenturyLink.

¹⁵ *CenturyTel of Chatham, et al., v. Sprint Communs. Co.*, Case No. 3:09-cv-01951 (W.D. La).

The FCC's USF/ICC Transformation Order

22. No discussion of an intercarrier compensation dispute would be complete without a discussion of the FCC's *USF/ICC Transformation Order*. In the *USF/ICC Transformation Order*, the FCC set default intercarrier compensation rates for toll VoIP-to-PSTN traffic equal to interstate access rates applicable to non-VoIP traffic, on a prospective basis.¹⁶ While the FCC did not specifically address intercarrier compensation obligations for VoIP-to-PSTN traffic for prior periods, both the policies and legal conclusions reflected in the *Order* further support the applicability of access charges to Sprint's VoIP-to-PSTN traffic.

23. For example, the FCC rejected proposals for an "asymmetric approach" to intercarrier compensation, whereby different compensation rates would apply to IP-originated and IP-terminated traffic.¹⁷ In doing so, the FCC sought to avoid "marketplace distortions that give one category of providers an artificial regulatory advantage in costs and revenues relative to other market participants."¹⁸ Yet this is exactly the type of improper and unreasonable advantage that Sprint has sought to gain for itself.

24. In addition to being asymmetric, Sprint's self-imposed flash cut to a \$0.0007 compensation rate also conflicts with the *Order's* "measured transition" away from existing intercarrier compensation regimes for VoIP-to-PSTN traffic.¹⁹ The FCC found in the *Order* that an immediate adoption of bill-and-keep for this traffic would not "appropriately balance[] other competing policy objectives," because the FCC sought "a more measured transition away from

¹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 18008 ¶ 944.

¹⁷ *See id.* at 18007-08 ¶ 942. In its *Second Order on Recon.*, the FCC treated originating and terminating access somewhat differently from one another. However, the FCC still confirmed that both originating and terminating traffic are subject to tariffed access rates, just at different jurisdictional rates. *Second Order on Recon.* ¶¶ 30, 34.

¹⁸ *USF/ICC Transformation Order* 26 FCC Rcd at 18007-08 ¶ 942.

¹⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 18003 ¶ 935, 18012-13 ¶ 952.

carriers' reliance on intercarrier compensation as a significant revenue source.”²⁰ The FCC further found that approaches that would adopt reciprocal compensation charges for VoIP traffic -- as advocated by Sprint -- would be “almost as significant a departure from the intercarrier compensation payments for VoIP traffic that have been made in the recent past as a bill-and-keep approach.”²¹

25. Sprint has also argued to CenturyLink, and to the FCC, that the “Enhanced Service Provider (ESP) Exemption” shields VoIP traffic from exchange access charges. The ESP Exemption allowed *ESPs* to be treated as end users (*i.e.*, by paying business line rates and subscriber line charges, rather than carriers' carrier rates), but it did not create “an access charge exemption” for the carriers from which the ESPs purchased services.²² Sprint's reliance on the ESP Exemption also is incompatible with the FCC's conclusion in the *Order* that, “as a policy matter,” it should not “adopt the equivalent of the ESP Exemption in this context.”²³ The FCC distinguished situations where the ILEC is providing exchange access directly to an Internet Service Provider (“ISP”), and those, like here, where a telecommunications carrier is serving a VoIP provider, which furnishes VoIP service to the end user. The ESP Exemption applies only in the first scenario.²⁴

26. The logic of the *USF/ICC Transformation Order* necessarily supports a finding that exchange access charges properly applied to Sprint's traffic -- in two other important ways. *First*, the FCC found in the *Order* that it could address intercarrier compensation obligations for VoIP-to-PSTN traffic without resolving the classification of VoIP traffic as either a

²⁰ *Id.* at 18012-13 ¶ 952.

²¹ *Id.* at 18013 ¶ 953.

²² *In re Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 ¶ 21 (1987).

²³ *USF/ICC Transformation Order* at 18008-09 ¶ 945, n. 1905.

²⁴ *See id.* at 18015-17 ¶ 957.

telecommunications service or an information service, because -- as is the case here -- the exchange of VoIP-to-PSTN traffic “typically occurs between two telecommunications carriers, one or both of which are wholesale carrier partners of retail VoIP service providers.”²⁵

27. *Second*, the FCC rejected an argument of Sprint’s, which is based on an interpretation of section 251(g)²⁶ that would exempt VoIP traffic from the access charge regime on the theory that VoIP traffic did not exist prior to the passage of the federal Telecommunications Act of 1996. The FCC in the *Order* specifically rejected Sprint’s position “that VoIP-PSTN traffic did not exist prior to the 1996 Act, and thus cannot be part of the access charge regimes ‘grandfathered’ by section 251(g).”²⁷ As the FCC found, “[t]his argument flows from a mistaken interpretation of section 251(g).”²⁸ The essential question under section 251(g) is not whether VoIP existed prior to the Act, but whether there was “a pre-Act obligation relating to intercarrier compensation for particular traffic exchanged between a LEC and interexchange carriers and information service providers.”²⁹ The FCC concluded that there was, because this traffic was subject to “the overarching FCC rules governing exchange access prior to the 1996 Act.”³⁰

28. Hence, the policies and logic of the *USF/ICC Transformation Order* inevitably lead to the conclusion that Sprint’s VoIP-to-PSTN traffic was subject to access charges during the period covered by this complaint. The same conclusion follows from a review of CenturyLink’s intrastate tariffs, and from the plain language of Section 392.550.2 RSMo. (which

²⁵ *Id.* at 18013-14 ¶ 954. The FCC also noted its earlier conclusion that the telecommunications carriers involved in originating or terminating a VoIP communication via the PSTN are by definition offering telecommunications. *Id.*

²⁶ 47 USC Section 251(g).

²⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 18015 ¶ 956 (Fn 1951citing Sprint Section XV Comments at 5-6).

²⁸ *Id.* at 18015 ¶ 956.

²⁹ *Id.* (quotations omitted).

³⁰ *Id.* at 18015-17 ¶ 957.

has been in effect since 2008, before Sprint first disputed CenturyLink's exchange access charges).

IV. RELIEF REQUESTED

29. Pursuant to 4 C.S.R. 240-2.070(4) and the Commission's authority under Section 392.550.2. and 4.(5) RSMo., CenturyLink seeks a determination by this Commission that Sprint has violated CenturyLink's intrastate exchange access tariff and Section 392.550.2. RSMo. by refusing to pay intrastate exchange access charges on interexchange VoIP traffic that was routed by Sprint to CenturyLink for termination, and that Sprint is liable to pay CenturyLink for such charges and associated late payment charges.

30. Furthermore, CenturyLink seeks a determination by this Commission that all charges Sprint refused to pay CenturyLink after August 2009 in an attempt by Sprint to retroactively claw-back exchange access payments made to CenturyLink prior to August 2009, were payments unlawfully withheld under CenturyLink's tariffs and applicable law and that Sprint is liable for such payments and associated late payment charges.

WHEREFORE, based on the foregoing, CenturyLink respectfully requests that the Commission:

- (a) Issue an Order finding that Sprint has violated CenturyLink's intrastate switched access tariffs by refusing to pay CenturyLink's tariffed charges (including late payment charges) for switched access services provided to Sprint for termination of intrastate interexchange VoIP traffic, and further finding that Sprint improperly and unlawfully withheld payments on undisputed charges in an attempt to retroactively claw-back switched access payments that had already been made;

- (b) promptly set a pre-hearing conference for the purpose of establishing a procedural schedule in this case; and
- (c) grant such other and further relief to which CenturyLink is justly entitled.

Respectfully submitted,

/s/

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**ATTORNEYS FOR CENTURYTEL OF
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SPECTRA COMMUNICATIONS GROUP,
LLC D/B/A CENTURYLINK**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of March 2014, a copy of the above and foregoing CENTURYLINK'S COMPLAINT AGAINST SPRINT FOR VIOLATION OF INTRASTATE ACCESS TARIFFS was served electronically to each of the following:

Office of the Public Counsel
Missouri Public Service Commission
200 Madison Street
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