

July 9, 2015

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FILED ELECTRONICALLY AND BY HAND-DELIVERY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: ***Global Franchise Development Corp. v. AT&T Corp. and Charter Communications, Inc.***, EB Docket  
No. 15-132, File No. EB-15-MD-004

Dear Ms. Dortch:

Please find attached Defendant Charter Communications, Inc.'s Answer and supporting documents in the  
above referenced matter.

Sincerely,

*/s/ Samuel L. Feder*

Samuel L. Feder

cc: Lisa B. Griffin  
Anthony J. DeLaurentis  
Counsel of Record

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant,

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**CHARTER COMMUNICATIONS, INC.'S  
ANSWER AND RELATED MATERIALS**

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**TABLE OF CONTENTS**

	<b>TAB</b>
SUMMARY, ANSWER, AFFIRMATIVE DEFENSES, AND LEGAL ANALYSIS.....	A
CERTIFICATION OF GOOD FAITH SETTLEMENT EFFORTS.....	B
DECLARATION OF REGINA DAY.....	C
DECLARATION OF MICHAEL D. HENRY.....	D
DECLARATION OF MIKE L. CHAPMAN.....	E
EXHIBITS.....	F
INFORMATION DESIGNATION.....	G
INTERROGATORIES.....	H
PROOF OF SERVICE.....	I



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**TABLE OF CONTENTS**

INTRODUCTION AND SUMMARY .....1

COUNTER-STATEMENT OF FACTS .....3

I. The Business Relationship Between GFDC And Charter. ....3

II. GFDC’s Informal And Formal Complaints. ....11

RESPONSE TO NUMBERED ALLEGATIONS .....13

AFFIRMATIVE DEFENSES .....28

LEGAL ANALYSIS.....29

I. GFDC’s Complaint Should Be Denied Because It Abandoned Its Allegations Against Charter.....29

A. Upon filing its informal complaint, GFDC refused to provide Charter with any of the information necessary to timely investigate its allegations. ....30

B. GFDC abandoned its allegations against Charter as a result of GFDC’s substantial delay in initiating formal proceedings. ....31

C. The Commission should not allow GFDC to prejudice Charter by reopening the Complaint after GFDC declined to meaningfully participate in the informal complaint process and abandoned its allegations against Charter.....32

D. GFDC has failed to justify or provide any explanation for its delay in bringing a formal complaint against Charter. ....33

II. Charter Did Not Act Negligently.....34

A. Charter did not act negligently when it directed Level 3 to become the RespOrg and to change the CIC for GFDC’s toll free number.....34

B. Charter was not negligent for “fail[ing] to port [GFDC’s] toll-free number back to AT&T after it determined it would be unable to service the number.” .....36

C. To the extent the disconnection of GFDC’s toll free number was caused by negligence, it was negligence on the part of GFDC. ....38

III. The Relief Sought By GFDC Is Unavailable As A Matter Of Law. ....41

A. GFDC cannot recover lost profits as a matter of law.....41

B. Attorney's fees are not an appropriate form of relief in formal complaint proceedings. ....	42
CONCLUSION.....	43

**ANSWER OF CHARTER COMMUNICATIONS, INC.**

Pursuant to 47 C.F.R. § 1.724 and the Commission's June 15, 2015 Notice of Formal Complaint, Defendant Charter Communications, Inc. ("Charter"), hereby answers the Formal Complaint of Global Franchises Development Corp. d/b/a Exotic Sportz ("GFDC").

**INTRODUCTION AND SUMMARY**

1. GFDC brings the present Formal Complaint alleging that Charter negligently ported and disconnected its toll free number, 888-396-8421. The Complaint should be denied for several reasons.

2. First, the facts demonstrate that after filing its informal complaint with the Commission, GFDC repeatedly declined to provide Charter with the information necessary to timely investigate its concerns and that GFDC abandoned its allegations against Charter by waiting over one year to initiate these formal proceedings—over twice the time allowed by the Commission's rules.

3. Second, the facts demonstrate that Charter was not negligent in any way. Charter became the service provider for GFDC's toll free number pursuant to GFDC's express authorization. Charter disconnected the toll free number only after GFDC canceled its telephone services with Charter on its own accord and subsequently failed—over a period of seven-and-a-half months—to arrange for a new service provider to take control of the number. This disconnection was fully in accordance with the Commission's rules prohibiting the warehousing of toll free numbers and with industry standards governing toll free number administration.

4. Indeed, GFDC's own allegations demonstrate that this Formal Complaint flows from marked negligence and delay on the part of GFDC. Over the seven-and-a-half months between the time that GFDC canceled its telephone services with Charter—on May 14, 2013—

and the time that GFDC's toll free number was released into the pool of available toll free numbers—on December 26, 2013—GFDC received (and apparently disregarded) monthly billing statements from its previous telephone service provider, AT&T. These monthly billing statements confirm that GFDC had not received, and had not paid for, any calls to its toll free number. Over that same period, any person who called GFDC would have received dead air or a message stating, “The number that you are calling is no longer in service.” The facts show that GFDC nonetheless did not contact either AT&T or Charter until February 2014—nine months from the time it canceled its telephone services with Charter.

5. Third, all of the relief GFDC seeks from Charter is precluded as a matter of law. Specifically, GFDC seeks two forms of relief: (1) lost profits and other consequential or incidental damages—all of which are expressly barred by GFDC's agreement with Charter; and (2) attorney's fees—which are not cognizable in formal complaint proceedings.

6. In light of the foregoing, the Commission should deny GFDC's Formal Complaint with prejudice.

## COUNTER-STATEMENT OF FACTS

### **I. The Business Relationship Between GFDC And Charter.**

7. On November 21, 2002, GFDC executed a contract with Charter for the provision of Internet services, which GFDC renewed through new contracts executed on October 10, 2006, and on January 25, 2011. Day Decl. ¶¶ 2-4.

8. On March 20, 2013, a Charter representative contacted GFDC and provided a quote for Charter telephone services. Day Decl. ¶ 5; *see also* Formal Compl. Ex. 4 ¶ 11; Informal Complaint Ex. A at 2. GFDC subsequently decided to switch its telephone services to Charter from AT&T. Formal Compl. Ex. 4 ¶ 13.

9. On May 1, 2013, GFDC executed a new service contract with Charter that governed the provision of both Internet and telephone services. *See* Day Decl. ¶ 6; Ex. 1 (May 1, 2013 Business Internet, Video Music Service Agreement And Telephone Service) (the “Service Agreement”).<sup>1</sup> This Service Agreement remains the operative contract governing the relationship between GFDC and Charter. Day Decl. ¶ 6.

10. The Service Agreement provides that the provision of telephone services to GFDC is “governed by the terms and conditions contained in the applicable Tariff(s)/Service, Price and Terms Guide for the U.S. state in which the Service is provided and any applicable federal tariff.” Service Agreement at 1.

11. The Service Agreement also provides that “Charter is not responsible for the installation [or] compatibility . . . of any Customer-supplied hardware, firmware or software with the Services.” Service Agreement at 2. In addition, GFDC agreed that “in the event during a survey or assessment of any Service Location prior to or during installation of the services

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<sup>1</sup> The Service Agreement was provided in a different format as Exhibit 9 to the Formal Complaint.

Charter determines that the cost(s) to complete such Installation or to provide and maintain the Service(s) exceeds its previous assessment undertaken to extend the respective Services at the pricing presented herein, Charter shall notify [GFDC of the increased cost] and [GFDC] shall have the right to agree to pay [the increased cost] or terminate this Service Order.” Service Agreement at 5.

12. GFDC and Charter agreed that on or about May 14, 2013, a technician would visit GFDC to complete a site survey and a customer equipment analysis. The Charter technician was also prepared to install Charter telephone services. Day Decl. ¶¶ 12-13; Chapman Decl. ¶ 10.

13. On the same day that GFDC executed the Service Agreement (May 1, 2013), GFDC also executed an electronic Letter of Authorization (“LOA”). Day Decl. ¶ 7; Formal Compl. Ex. 8. In the LOA, GFDC authorized Charter to “become [its] inbound toll free service provider in place of [its] current provider” for the toll free number 888-396-8421. Formal Compl. Ex. 8 at 1. GFDC also instructed in the LOA that it had “selected a new Responsible Organization (“RespOrg”) with the Identification Number or KSW01 (L3),” Level 3. *Id.*

14. The LOA also authorized Charter to become the service provider for several of GFDC’s local telephone numbers. *See id.* It is undisputed, however, that Charter never ported any of GFDC’s local numbers, and GFDC does not allege any negligence related to its local numbers. *See* Formal Compl. ¶ 21; Chapman Decl. ¶ 12.

15. Pursuant to GFDC’s LOA, Charter sent a letter authorizing Level 3 to become the RespOrg for the toll free number 888-396-8421. Chapman Decl. ¶ 8; Formal Compl. Ex. 11.

16. On May 9, 2013, GFDC employee Terry Curry contacted Charter regarding the installation of Charter telephone services. Day Decl. ¶ 11; Ex. 2 (May 9, 2013 Call Record). Ms. Curry indicated that GFDC had its own telephone system and stated that she could not

confirm the installation of Charter services until GFDC first determined whether such installation would require the presence of the vendor of its telephone system. Day Decl. ¶ 11; Ex. 2. Ms. Curry informed Charter that she would contact Charter if the installation date needed to be changed. Day Decl. ¶ 11; Ex. 2. The installation was ultimately scheduled for May 14, 2013 at 8:00 AM to 12:00 Noon. Day Decl. ¶ 12.

17. On the scheduled installation date (May 14, 2013), Charter sent a request to Level 3 to change the Carrier Identification Code (“CIC”) for the toll free number 888-396-8421. Chapman Decl. ¶ 9.<sup>2</sup> Changing the CIC is required to cause calls made to the toll free number to be routed to the new carrier, instead of the previous carrier. Chapman Decl. ¶¶ 3-4. Changing the CIC was thus a necessary step in installing, activating, and testing Charter telephone services for GFDC’s toll free number. Chapman Decl. ¶¶ 4, 6.

18. On the morning of May 14, 2013, a Charter technician also visited GFDC’s site to complete the site survey and customer equipment analysis. Day Decl. ¶ 13; Chapman Decl. ¶ 10. The technician determined that the telephone equipment owned by GFDC was not compatible with Charter’s telephone services and informed GFDC that the telephone equipment would need to be upgraded to complete the installation. Day Decl. ¶ 13; Chapman Decl. ¶ 10.

19. On May 14, 2013, GFDC informed Charter that GFDC would not make changes to its telephone equipment. Day Decl. ¶ 14; Chapman Decl. ¶ 11; *see also* Ex. 3. GFDC proceeded to cancel the installation of its telephone services. Day Decl. ¶ 14; Chapman Decl. ¶ 11; *see also* Ex. 4 at 1 (March 31, 2015 Letter From GFDC To Charter) at 1 (“Global decided not to pursue services with Charter since the phone system could not be connected.”).

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<sup>2</sup> Given the length of time that has passed before GFDC filed the present Complaint, Charter no longer has a record of its request to Level 3 to change the CIC. Chapman Decl. ¶ 9. Charter’s knowledge that it sent such a request is based on information obtained from Level 3. *Id.*

20. Upon receiving GFDC's request to cancel Charter telephone services, Charter canceled its request to port GFDC's local numbers to Charter. Day Decl. ¶ 15; Chapman Decl. ¶ 12. It is undisputed that the local numbers were never ported to Charter, and GFDC does not allege any negligence related to its local numbers. Formal Compl. ¶ 21; Day Decl. ¶ 15; Chapman Decl. ¶ 12.

21. Upon canceling Charter as its telephone service provider, GFDC was responsible for seeking telephone service for the toll free number from an alternative service provider. *See* Industry Guidelines for Toll Free Number Administration § 2.2.1 (explaining that with few exceptions, the Toll Free Subscriber is the entity with the "ultimate right to control" all aspects regarding the use of a toll free number); *id.* at § 5 (defining "Toll Free Subscriber" as, *inter alia*, the entity which *defines and manages all final termination points for the Toll Free Service . . .*") (emphasis added); *id.* at § 3.2.2 (explaining that the Toll Free Subscriber is, among other things, responsible for "establish[ing] a business relationship with the [new] Resp Org" and for "notify[ing] its Toll Free Service Providers of any changes in service arrangements"). GFDC thus should have contacted its desired service provider, opened an account with that provider, and authorized the new service provider to take control of GFDC's toll free number. Chapman Decl. ¶ 13. The system through which toll free numbers are administered and assigned provided no mechanism through which Charter could have, on its own accord, assigned GFDC's toll free number to a new service provider or returned GFDC's toll free number to AT&T. *Id.*

22. Indeed, Charter's contemporaneous records indicate that Charter even informed GFDC at the time that it should contact its alternative service provider to reassign its toll free number to that provider in order to avoid interruptions to its toll free service. On May 14, 2013, at 4:10 PM, a Charter representative made an entry in the Charter system to "[p]lease have the

customer contact their provider to port this [toll free number] back” and that “[i]f a valid port away request is not received for this by 05/21 it will be suspended.” Day Decl. ¶ 16. This alert was brought to the attention of the Charter representative who had been acting as a liaison to GFDC. Day Decl. ¶ 17. That representative responded promptly, indicating that he had spoken with GFDC, which remained “very nonchalant about the phones,” reaffirmed that GFDC did not “want to bother getting a tech out for [its] phones,” and was “very adamant about not doing anything extra.” Day Decl. ¶ 17.

23. Following GFDC’s cancelation of telephone services, Charter never received a request to transfer GFDC’s toll free number to an alternative service provider and/or RespOrg. Chapman Decl. ¶ 22.

24. Because GFDC canceled its telephone services with Charter and made no arrangements to transfer its toll free number to another service provider, as of May 14, 2013, anyone who called GFDC’s toll free number would have received either dead air or a message stating, “The number that you are calling is no longer in service.” Chapman Decl. ¶ 16.

25. The Commission’s rules prohibiting the “warehousing”<sup>3</sup> of toll free numbers prevent a RespOrg, either directly or indirectly through an affiliate, from maintaining control of toll free numbers “without having an actual toll free subscriber for whom those numbers are being reserved.” 47 C.F.R. § 52.105(a); *see also id.* § 52.105(b) (creating a rebuttable presumption of warehousing where the RespOrg “does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved”); *see also* Industry Guidelines for Toll Free Number Administration § 2.4.3 (same).

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<sup>3</sup> “[W]arehousing is the practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved.” 47 C.F.R. § 52.105(a).

26. Because Charter continued to have no customer account associated with the toll free number 888-396-8421, on August 26, 2013, Charter submitted an order to Level 3 to assign the number to Disconnect Status. Chapman Decl. ¶ 18; Formal Complaint Ex. 10.

27. On August 26, 2013, Level 3 disconnected the toll free number and placed the number into “Transitional Status.” Chapman Decl. ¶ 19; Formal Compl. Ex. 10. While in Transitional Status, any person who called the toll free number 888-396-8421 again would not be connected to a working number; that caller would have received either dead air or a message from Level 3 stating “The number that you are calling is no longer in service.” Chapman Decl. ¶ 21; *see also* Industry Guidelines for Toll Free Number Administration § 2.4.6 (defining Transitional Status as a number that has been disconnected for less than four months, with no intercept recording).<sup>4</sup>

28. In accordance with industry standards, four months later, on December 26, 2013, Level 3 placed the toll free number into “Spare Status.” Chapman Decl. ¶ 20; 47 C.F.R. § 52.103(d) (allowing a toll free number to remain in Disconnect Status for a maximum of four months, at which point the number must go directly into Spare Status); Industry Guidelines for Toll Free Number Administration § 2.2.6 (same). The same day, another carrier reserved the toll free number at issue. Chapman Decl. ¶ 20. On January 9, 2014, Beckham Technologies activated the same toll free number on behalf of a third party customer. Formal Compl. Ex. 10.

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<sup>4</sup> In its Formal Complaint, GFDC alleges that it first discovered that the toll free number had been reassigned to a third party in January 2014. Formal Compl. ¶ 15, Ex. 4 ¶ 16. GFDC does not specifically allege in the Complaint that its toll free number was functional between August 26, 2014 and January 2014. Rather, GFDC’s allegations suggest, consistent with the above, that AT&T “hindered” GFDC from discovering that the number was not functional because AT&T erroneously continued to bill GFDC for the recurring monthly toll free service charge associated with the toll free number. Formal Compl. ¶ 28.

29. According to GFDC's own allegations and exhibits, GFDC received documentation on a monthly basis confirming that GFDC received its last toll free call on May 12, 2013, and that GFDC was not billed and did not pay any usage-based charges for toll free calls after May 12, 2013. On May 16, 2013, GFDC received a monthly statement from AT&T charging GFDC for a monthly recurring service charge of \$14.00 and for 32 calls made to its toll free number between April 3 and May 3, 2013. Formal Compl. Ex. 6 (May 16, 2013 AT&T Monthly Statement). On June 16, 2013, GFDC received a monthly statement from AT&T charging GFDC for the recurring toll free service charge and for 9 calls made to its toll free number between May 4 and May 12, 2013. Formal Compl. Ex. 12 (June 16, 2013 AT&T Monthly Statement). However, that statement did not report or charge GFDC for any calls to the toll free number after May 12, 2013. *Id.* On July 16, 2013, GFDC received a monthly statement from AT&T that included the recurring monthly service charge, but did not report or charge for *any* calls to the toll free number. Formal Compl. Ex. 12 (July 16, 2013 AT&T Monthly Statement). On August 16, 2013, GFDC again received a bill from AT&T that charged the recurring monthly service charge, but did not report or charge for *any* calls to the toll free number. Formal Compl. Ex. 12 (August 16, 2013 AT&T Monthly Statement). On September 16, 2013, GFDC again received a bill from AT&T that charged the recurring toll free service charge, but did not report or charge for *any* calls to the toll free number. Formal Compl. Ex. 12 (September 16, 2013 AT&T Monthly Statement). Then, on October 16, 2013, GFDC received a bill from AT&T that provided a credit for its toll free service charge and, again, did not report or charge for *any* calls to the toll free number. Formal Compl. Ex. 12 (October 16, 2013 AT&T Monthly Statement).<sup>5</sup>

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<sup>5</sup> GFDC alleges that it was "hindered" from "discover[ing] that its toll-free number had been

30. Had GFDC contacted Charter in the seven-and-a-half month period between the time that GFDC canceled telephone services with Charter, on May 14, 2013, and the time that the toll free number 888-396-8421 was placed in Spare Status, on December 26, 2013, Charter would have been able to provide guidance to GFDC on how to reactivate its toll free number. Chapman Decl. ¶ 23.

31. Instead, the first time that GFDC contacted Charter (or AT&T) about any issues related to the toll free number was on February 14, 2014. Day Decl. ¶ 18; Formal Compl. ¶¶ 16-17, Ex. 4 ¶ 20. In other words, GFDC knew or reasonably should have known that its toll free number was not functioning, but waited nine months from the time that it canceled its telephone services with Charter until February 14, 2014 to take action. Indeed, according to GFDC's allegations, it waited multiple weeks to call AT&T and Charter after it learned that its toll free number—allegedly its “main contact number” that it “relied heavily upon”—was directing callers to an adult hotline. Formal Compl. ¶¶ 9, 15; Day Decl. ¶ 18.

32. Because GFDC canceled telephone services prior to installation, the toll free number was never activated in Charter's system; there was no customer account to which to assign the toll free number, as required by the Commission's rules. Chapman Decl. ¶ 15; Henry Decl. ¶ 6; 47 C.F.R. § 52.105. Accordingly, Charter has previously maintained and continues to maintain that it has no records of any calls to or from the toll free number in its systems.

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disconnected” because AT&T continued to bill GFDC for a toll free service charge until October 2013. Formal Compl. ¶ 28. This allegation is belied by the fact that the same monthly invoices containing the toll free service charges confirmed that GFDC had not received or been charged for any calls to its toll free number after May 12, 2013. Moreover, as described below, even to the extent that GFDC was “hindered” by AT&T's billing statements, it would not be a legitimate basis for attributing negligence to *Charter*.

## II. GFDC's Informal And Formal Complaints.

33. On April 2, 2014, an individual named Patrick Sturdy filed an informal complaint on behalf of GFDC against AT&T, Charter, Level 3 Communications, and Beckham Telecom. The informal complaint alleged that Charter unlawfully “ported [GFDC’s] 800-number away from [GFDC] and disconnected [it] in August of 2013.” Informal Compl. No. 14-C00573456-1.

34. Upon receiving GFDC’s complaint, Charter attempted to contact Mr. Sturdy on April 21, April 23, April 24, and April 25, 2014. Henry Decl. ¶ 4; Ex. 6 (May 14, 2014 Report by Charter to FCC). Charter was unsuccessful on each occasion. Henry Decl. ¶ 4; Ex. 6. In a letter dated May 2, 2014, Charter informed Mr. Sturdy that it had been unsuccessful in its attempts to reach GFDC, provided Mr. Sturdy with direct contact information for Charter’s Executive Escalation Manager, and requested that he contact Charter at his earliest convenience so that Charter could investigate the matter. Ex. 5 (May 2, 2014 Letter from Charter to GFDC); Henry Decl. ¶ 5. Neither Mr. Sturdy nor any other representative of GFDC responded to Charter’s letter. Henry Decl. ¶ 6. Ex. 6.

35. On May 14, 2014, Charter filed its response to GFDC’s informal complaint. Charter explained that based on the information provided, it was unable to locate any records reflecting that GFDC’s toll free number was ported to Charter. Ex. 6 (Report by Charter to FCC); Henry Decl. ¶ 7. Charter also explained that Mr. Sturdy was not an authorized user on GFDC’s account and that Charter had been unable to contact Mr. Sturdy to obtain further information necessary to investigate the matter. Ex. 6.

36. Even after Charter had responded to GFDC’s informal complaint, Charter made further attempts to contact GFDC. Henry Decl. ¶ 8. Charter attempted to call GFDC twice on June 2, 2014, and left voicemails for GFDC on June 2, June 3, and June 4, 2014. Henry Decl. ¶ 8; Ex. 7 (Charter Call Log for GFDC). Charter’s records indicate that Charter reached GFDC

on June 6, 2014, but Charter no longer has any record of what transpired. Henry Decl. ¶ 8; Ex. 7. Charter attempted to call GFDC again on June 10, 2014, but the call was, again, unsuccessful. Henry Decl. ¶ 8; Ex. 7.

37. GFDC did not contact Charter again until a letter dated March 31, 2015, in which GFDC informed Charter that it “will be filing a formal complaint” against Charter and requesting \$600,000 in damages based on the “illegal porting of its toll free number.” Ex. 4 at 1-2 (March 31, 2015 Letter From GFDC To Charter); Henry Decl. ¶¶ 9-10. In response to GFDC’s letter, Charter contacted GFDC and informed GFDC that Charter had no records in its system of activating GFDC’s toll free number. Formal Compl. ¶ 5.

38. On June 9, 2015—over one year after Charter’s response to the informal complaint—GFDC filed the present Formal Complaint, alleging that Charter violated Section 201(b) of the Communications Act by porting the toll free number to Charter prior to determining that Charter could provide service and by failing to port GFDC’s toll free number back to AT&T. Formal Compl. ¶ 27. According to the Complaint, GFDC suffered a total of \$297,000 in damages from lost profits, injury to reputation, and the cost of marketing materials, and has paid \$40,000 in attorney’s fees. Formal Compl. ¶ 31.

## RESPONSE TO NUMBERED ALLEGATIONS

1. Global Franchise Development Corporation, which does business as Exotic Sportz (hereinafter referred to as "Exotic"), is corporation incorporated under the laws of the State of Michigan. The address for Exotic is P.O. BOX 977, Pinckney, Michigan 48169. Exotic's telephone number is (734) 878-2002. **[Exhibit 1, Corporate Filings for Exotic].**

**Answer to Paragraph 1:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 1.

2. Exotic is represented by the law firm of Cummings, McClorey, Davis & Acho, P.L.C., through counsels and T. Joseph Seward (P35095) and Kali M. L. Henderson (P76479). Counsels' office is located at 33900 Schoolcraft Road, Livonia, Michigan 48150. Counsels' telephone number is (734) 261-2400.

**Answer to Paragraph 2:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 2.

3. AT&T is a corporation authorized to conduct business under the laws of the State of Michigan. AT&T provides communication services. AT&T's registered office within the State of Michigan is 30600 Telegraph Road, Bingham Farms, Michigan 48025. It is believed that AT&T has offices all throughout the United States of America and has a headquarters at 208 South Akard Street, Dallas, Texas 75202. The telephone number for AT&T headquarters is believed to be (800) 291-4952. **[Exhibit 2, Corporate Documents for AT&T].**

**Answer to Paragraph 3:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 3.

4. Charter Communications, Inc. (hereinafter referred to as "Charter") is a corporation authorized to conduct business under the laws of the State of Michigan. Charter's registered office within the State of Michigan is 601 Abbott Road, East Lansing, Michigan 48823. It is believed that Charter has offices all throughout the United States of America and has a headquarters at 400 Atlantic Street, Stamford, Connecticut 06901. The telephone number for Charter's headquarters is believed to be (203) 905-7801. **[Exhibit 3, Corporate Documents for Charter].**

**Answer to Paragraph 4:** Charter admits that it is a corporation authorized to conduct business under the laws of the State of Michigan and that its registered office within the State of Michigan is 601 Abbott Road, East Lansing, Michigan 48823. Charter admits that it has a

corporate office at 400 Atlantic Street, Stamford, Connecticut 06901 with the telephone number (203) 905-7801. Charter denies that it has offices “all throughout the United States of America.”

5. Exotic hereby certifies that it has, in good faith, attempted to discuss the possibility of settlement with each defendant prior to the filing of the formal complaint. Exotic mailed a certified letter outlining the complaint on March 31, 2015, to each of the defendants. The letter requested that the defendants contact Exotic’s counsel within 22 days. The letter was sent to the addresses of those representatives who had previously responded to the informal complaint. Counsel for Exotic also reached to individuals at the Commission for assistance in reaching the defendants. Counsel was eventually able to contact an individual at Charter, Ken Port, who stated that Charter had no records of ever having Exotic’s toll-free number. Charter has continuously denied its involvement in this issue and has only frustrated the process by giving Exotic the run-around between individuals in the company who more often than not failed to return phone calls or had no information to offer. **[Exhibit 14, Certified Letter].**

**Answer to Paragraph 5:** Charter admits that it received a letter from GFDC dated March 31, 2015, in which GFDC informed Charter that GFDC “will be filing a formal complaint” and stating “[i]f you wish to engage in earnest settlement negotiations, please contact me by April 22, 2015.” Ex. 4 at 2. Charter admits that after the March 31, 2015 letter, Ken Port spoke with counsel for GFDC and informed GFDC’s counsel that Charter had no record of calls being made to or received from GFDC’s toll free number in Charter’s system. Charter denies the last sentence of Paragraph 5. Charter lacks knowledge and information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 5.

6. Exotic would be willing to participate in a form of alternative dispute resolution if the Defendants were willing. However, Exotic has had much difficulty even getting a person on the phone who has knowledge of the situation.

**Answer to Paragraph 6:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 6.

7. An informal complaint was previously filed in this matter on April 2, 2014, by Patrick Sturdy. Mr. Sturdy is an attorney at the office of Exotic’s counsel. The informal complaint number was 14-C00573456.

**Answer to Paragraph 7:** Charter admits the allegations in Paragraph 7.

8. Exotic is in the business of recreational sports, mainly paintball and airsoft. **[Exhibit 4, Affidavit of Exotic President David Massey]**. Exotic operates recreational facilities, coordinates recreational games, and sells recreational sporting equipment both online and at two retail location. **[Ex. 4]**. Exotic was formally incorporated in 1998, but has been in the paintball business for thirty years. **[Ex. 4; Exhibit 5, Articles of Incorporation]**.

**Answer to Paragraph 8:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 8.

9. Early on its operations, Exotic was assigned the toll-free number of 1-888-EXOTIC-1. **[Ex. 4]**. Exotic relied heavily upon this toll-free number for twenty (20) years in marketing its business and the number was featured as the main contact number for the multiple branches of Exotic's business. **[Ex. 4]**.

**Answer to Paragraph 9:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 9.

10. In April of 2013, the toll-free number was serviced by AT&T, while Exotic's internet services were provided by Charter. **[Ex. 4; Exhibit 6, AT&T April 2013 Invoice]**.

**Answer to Paragraph 10:** Charter admits the allegations in Paragraph 10.

11. In late April and/or early May of 2013, a representative of Charter approached Exotic about the possibility of bundling Exotic's existing internet services with phone services to be provided by Charter. **[Ex. 4]**. Exotic agreed, found the quote for services to be reasonable, and elected to switch its telephone service provider to Charter. **[Ex. 4; Exhibit 7, Affidavit of Terry Curry]**.

**Answer to Paragraph 11:** Charter admits the allegations in Paragraph 11.

12. Charter required Exotic to sign an "LOA," believed to be a letter of authority, and a Service Agreement under the representation that Charter would service Exotic's telephone system. **[Ex. 7]**.

**Answer to Paragraph 12:** Charter admits that on May 1, 2013, GFDC signed a Letter of Authorization ("LOA") with Charter, which authorized Charter to change its service provider for the toll free number 1-888-396-8421 to Charter. Charter also admits that on May 1, 2013, GFDC signed a Service Agreement with Charter, which remains the operative agreement between GFDC and Charter. Charter denies that it represented that it would be capable of servicing GFDC's telephone system. The Service Agreement between GFDC and Charter stated that

“Charter is not responsible for the installation [or] compatibility . . . of any Customer-supplied hardware, firmware or software services.” Service Agreement at 2. GFDC also represented that it “understands and agrees that in the event during a survey or assessment of any Service Location prior to or during installation of the services Charter determines that the cost(s) to complete such Installation or to provide and maintain the Service(s) exceeds its previous assessment undertaken to extend the respective Services at the pricing presented herein, Charter shall notify Customer [of the increased cost] and Customer shall have the right to agree to pay [the increased cost] or terminate this Service Order.” Service Agreement at 5.

13. After Exotic executed the LOA and Service Agreement, a representative from Charter visited Exotic’s office and determined that Exotic’s existing phone system was not compatible with Charter’s system. Exotic was told that Charter would not be able to service its telephone lines and would have to cancel the service agreement. Charter informed Exotic that it would return all of Exotic’s telephone numbers to AT&T. **[Ex. 4; Ex. 7; Exhibit 8, Executed LOA; Exhibit 9, Executed Service Agreement].**

**Answer to Paragraph 13:** Charter admits that after GFDC and Charter entered into the LOA and Service Agreement, a representative from Charter visited GFDC’s office and determined that GFDC’s existing phone system was not compatible with Charter’s system. Charter denies the remaining averments contained in Paragraph 13. On or around May 14, 2013, GFDC informed Charter that GFDC would not make the necessary changes to its telephone equipment because it was not interested in arranging for a technician to make the necessary upgrade. Day Decl. ¶ 14; Chapman Decl. ¶ 11; *see also* Ex. 3. GFDC thus instructed Charter to cancel the installation of its phone services. Day Decl. ¶ 14; Chapman Decl. ¶ 11. Upon canceling telephone services with Charter, GFDC failed to transfer its toll free number to another service provider and, pursuant to the Commission’s rules and industry guidelines, Charter requested that Level 3 place the number into Disconnect Status. Chapman Decl. ¶¶ 17, 22.

14. Unbeknownst to Exotic, all but one of Exotic's telephone numbers was returned to AT&T – all but the toll-free number. [Ex. 4].

**Answer to Paragraph 14:** Charter denies the allegations in Paragraph 14. None of GFDC's local telephone numbers were ever ported to Charter. Chapman Decl. ¶ 12; Formal Compl. ¶ 21. Pursuant to the LOA executed by GFDC and as required to install, activate and test the provision of toll free service, on May 14, 2013, Charter instructed Level 3 to change the CIC for GFDC's toll free number. Chapman Decl. ¶¶ 6-9. Upon canceling Charter as its telephone service provider, GFDC was responsible for seeking telephone service for the toll free number from an alternative service provider. *See* Industry Guidelines for Toll Free Number Administration §§ 2.2.1 (explaining that with few exceptions, the Toll Free Subscriber is the entity with the “ultimate right to control” all aspects regarding the use of a toll free number); *id.* at § 5 (defining “Toll Free Subscriber” as, *inter alia*, the entity which *defines and manages all final termination points for the Toll Free Service . . .*”) (emphasis added); *id.* at § 3.2.2 (explaining that the Toll Free Subscriber is, among other things, responsible for “establish[ing] a business relationship with the [new] Resp Org” and for “notify[ing] its Toll Free Service Providers of any changes in service arrangements”). The system through which toll free numbers are administered and assigned provided no mechanism through which Charter could have, on its own accord, assigned GFDC's toll free number to a new service provider or returned GFDC's toll free number to AT&T. Chapman Decl. ¶ 13. GFDC received documentation (i.e. billing statements) from AT&T on June 16, 2013, July 16, 2013, August 16, 2013, September 16, 2013, and October 16, 2013 notifying GFDC that GFDC had neither received nor paid for a single call to its toll free number—allegedly its “main contact number” that it “relied heavily upon”—after May 12, 2013. Formal Compl. ¶ 9, Ex. 12. Moreover, GFDC's toll free number would have been nonfunctioning as of May 14, 2013. Chapman Decl. ¶¶ 16, 19-21.

Nonetheless, GFDC did not contact another service provider to have the toll free number reassigned during the seven-and-a-half month period before the number was released by Level 3 into the pool of available numbers.

15. In January of 2014, Exotic received a telephone call from a customer informing it that the toll-free number was now directing callers to an pornography telephone service. Exotic then began to receive additional complaints from other customers regarding the phone number. [Ex. 4]. Exotic was not aware of a change in its toll-free number prior to receiving complaints from its customers in January 2014. [Ex. 4].

**Answer to Paragraph 15:** Charter lacks knowledge and information sufficient to form a belief as to when or how GFDC became aware that a third party hotline had assumed control of its toll free number. GFDC received documentation from AT&T on June 16, 2013, July 16, 2013, August 16, 2013, September 16, 2013, and October 16, 2013 notifying GFDC that GFDC had neither received nor paid for a single call to its toll free number—allegedly its “main contact number” that it “relied heavily upon”—after May 12, 2013. Formal Compl. ¶ 9, Ex. 12. Moreover, GFDC’s toll free number would have ceased being operational as of May 14, 2013. Chapman Decl. ¶¶ 16, 19-21. Thus GFDC knew or should reasonably have known that its toll free number was not operational. Even if, as GFDC claims, it first discovered that its toll free number was disconnected in January 2014, it disregarded the above monthly documentation and failed to test its toll free number over these several months. Had GFDC contacted Charter in the seven-and-a-half month period between the time that GFDC canceled telephone services with Charter on May 14, 2013, and the time that the toll free number 888-396-8421 was placed in Spare Status on December 26, 2013, Charter would have been able to provide guidance to GFDC on how to reactivate its toll free number. Chapman Decl. ¶ 23. Indeed, based on GFDC’s own allegations, after it discovered that its toll free number was calling an adult hotline in January 2014, GFDC waited multiple weeks before contacting AT&T or Charter. Formal Compl. ¶¶ 16-17, Ex. 4 ¶ 20.

16. Exotic contacted AT&T to inquire about the change in the telephone number and was informed that the number had been ported to Charter on May 8, 2013. AT&T then suggested that Exotic contact Charter for additional information. [Ex. 4; See also Exhibit 10, Number History].

**Answer to Paragraph 16:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 16.

17. Exotic then contacted Charter. Charter reported that Beckham Telecom was now servicing Exotic's toll-free number. [Ex. 4]. Since that initial contact, Charter has continually denied that the toll-free number was ever ported to it. Charter stated that it never submitted a work order to have the number ported. [Ex. 4].

**Answer to Paragraph 17:** Charter admits that it informed GFDC that Beckham Telecom was servicing the toll free number 888-396-8421. Charter admits that it has informed GFDC that the toll free number 888-396-8421 was never active in Charter's system because GFDC canceled Charter's installation and provision of telephone services. Charter denies the remaining averments contained in Paragraph 17.

18. AT&T informed Exotic that the number had been ported out to Level 3 Communications on May 8, 2013, and the number was then activated by Charter on May 14, 2013. [Ex. 4].

**Answer to Paragraph 18:** Charter lacks knowledge and information sufficient to form a belief as to what AT&T informed GFDC. Pursuant to the LOA executed by GFDC and as required to install, activate and test the provision of toll free service, on May 14, 2013, Charter instructed Level 3 to change the CIC for GFDC's toll free number. Chapman Decl. ¶¶ 6-9. Upon canceling Charter as its telephone service provider, GFDC was responsible for seeking telephone service for the toll free number from an alternative service provider. See Industry Guidelines for Toll Free Number Administration §§ 2.2.1 (explaining that with few exceptions, the Toll Free Subscriber is the entity with the "ultimate right to control" all aspects regarding the use of a toll free number); *id.* at § 5 (defining "Toll Free Subscriber" as, *inter alia*, the entity which *defines and manages all final termination points for the Toll Free Service . . .*.)

(emphasis added); *id.* at § 3.2.2 (explaining that the Toll Free Subscriber is, among other things, responsible for “establish[ing] a business relationship with the [new] Resp Org” and for “notify[ing] its Toll Free Service Providers of any changes in service arrangements”). The system through which toll free numbers are administered and assigned provided no mechanism through which Charter could have, on its own accord, assigned GFDC’s toll free number to a new service provider or returned GFDC’s toll free number to AT&T. Chapman Decl. ¶ 13. Because GFDC canceled telephone services prior to installation, the toll free number was never activated in Charter’s system. Chapman Decl. ¶ 15. Charter sent a request to Level 3 to place the toll free number in Disconnect Status on August 26, 2013, in accordance with the Commission’s rules preventing warehousing and industry guidelines governing toll free number administration. Chapman Decl. ¶¶ 17-18.

19. Level 3 Communications informed Exotic that Charter did, indeed, submit a work order to have the number ported and that the work order number was Q2679113. Level 3 Communications also provided Exotic with a copy of the Responsible Organization Letter of Authorization signed by Dana Cosgrove on May 8, 2013. **[Exhibit 11, Documents Received from Level 3 Communications].**

**Answer to Paragraph 19:** Charter lacks knowledge and information sufficient to form a belief as to the truth of Level 3 Communications’ representations to GFDC. On May 1, 2013, GFDC executed an LOA, in which GFDC confirmed that it had “selected a new Responsible Organization (“RespOrg”) with the Identification Number or KSW01 (L3),” Level 3, and that it had authorized Charter to “become [its] inbound toll free service provider in place of [its] current provider” for the toll free number 888-396-8421. Formal Compl. Ex. 8 at 1. Pursuant to GFDC’s LOA, Charter sent a letter authorizing Level 3 to become the RespOrg for and to change the CIC for GFDC’s toll free number, 888-396-8421. Chapman Decl. ¶¶ 8-9; Formal Compl. Ex. 11.

20. Despite the number being ported away from AT&T on May 8, 2013, AT&T continued to bill Exotic for the service and eventually issued a credit for the improper billing. Thus, even AT&T was unaware the number had been ported away. [Exhibit 12, AT&T Bills].

**Answer to Paragraph 20:** Charter lacks knowledge and information sufficient to form a belief as to AT&T's awareness. The AT&T statements received by GFDC did not report or charge GFDC for any calls to its toll free number after May 12, 2013. AT&T charged GFDC a recurring toll free service charge until GFDC's October 16, 2013 statement, in which AT&T provided a credit for the toll free service charge. Formal Compl. Ex. 12. Notwithstanding that GFDC received monthly documentation confirming that it was not paying for any calls to its toll free number as of May 12, 2013 and that it had received a credit for its toll free service charge in October 2013, GFDC did not contact Charter (or AT&T) until February 14, 2013. Day Decl. ¶ 18. If GFDC had contacted Charter in the seven-and-a-half month period between May 14, 2013 and December 26, 2013, Charter could have provided guidance on how to reactivate its toll free number. Chapman Decl. ¶ 23.

21. None of Exotic's other telephone lines were altered and thus remained with AT&T. [Ex. 4].

**Answer to Paragraph 21:** Charter admits that it canceled its work order to port GFDC's local numbers and that none of GFDC's local numbers were ever ported to Charter. Chapman Decl. ¶ 12.

22. Customers, including mothers and children, calling Exotic's toll-free number were led to believe that Exotic was no longer in business. And, for a period of time while the toll-free number belonged to a pornography line, anyone wearing Exotic merchandise was wearing an advertisement for a pornography service. [Ex. 4].

**Answer to Paragraph 22:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 22.

23. An investigation conducted by Exotic has revealed that after being ported to Charter on May 8, 2013, the toll-free number was disconnected on August 26, 2013, with no

notice to Exotic. Exotic was still being billed for the number by AT&T at this time. [Ex. 4; Ex. 10; Ex. 12].

**Answer to Paragraph 23:** Charter admits that after GFDC canceled Charter's installation and provision of telephone services, and after GFDC did not obtain a new service provider for the toll free number, Charter was left without a toll free subscriber for the toll free number, 888-396-8421, and was thus required to, and did, send an order to Level 3 to place the toll free number into Disconnect Status. Chapman Decl. ¶¶ 17-18. Pursuant to the Formal Complaint, AT&T charged GFDC a monthly toll free service charge until GFDC's October 16, 2013 statement, in which AT&T provided a credit for the monthly toll free service charge. AT&T did not bill GFDC for any calls to its toll free number after May 12, 2013. Formal Compl. Ex. 12. Notwithstanding that GFDC received monthly documentation confirming that it was not paying for any calls to its toll free number as of May 12, 2013 and that it had received a credit for its toll free service charge in October 2013, GFDC did not contact Charter (or AT&T) until February 14, 2013. Day Decl. ¶ 18.

24. Section 251(e)(1) of the Communications Act confers upon the Commission exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States." [47 U.S.C. § 251(e)(1)].

**Answer to Paragraph 24:** Paragraph 24 contains legal argumentation not requiring a response.

25. It is well established that telephone numbers, including toll free numbers, are a public resource they are not "owned" by either the telecommunications carriers or the subscribers. [Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995); Toll Free Service Access Codes, CC Docket No. 95-155: Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13702 (1995), Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061, n.14 (1998), Order, 20 FCC Rcd 15089, 15090-15091 (2005), Order, 21 FCC Rcd 9925, 9927 (2006), Order, 22 FCC Rcd 651, 653 (2007), Order, 24 FCC Rcd 13022, 13029 12 (2009)].

**Answer to Paragraph 25:** Paragraph 25 contains legal argumentation not requiring a response.

26. Section 201(b) of the Communications Act provides that, “All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” [47 U.S.C. § 201(b)].

**Answer to Paragraph 26:** Paragraph 26 contains legal argumentation not requiring a response.

27. Charter’s failure to port Exotic’s toll-free number back to AT&T after it determined it would be unable to service the number was clearly negligent. Charter’s porting of the number prior to determining whether it could actually provide service to Exotic was also negligent. [See *Staton Holdings, Inc. v. MCI Worldcom Communications, Inc.*, 19 F.C.C.R. 8699, 19 FCC Red 8699 (holding that the erroneous disconnection of a toll-free number was negligent)].

**Answer to Paragraph 27:** GFDC’s allegations that Charter acted negligently constitute a legal conclusion not requiring a response. Charter denies that Charter “fail[ed] to port Exotic’s toll-free number back to AT&T.” The system through which toll free numbers are administered and assigned provided no mechanism through which Charter could have, on its own accord, assigned GFDC’s toll free number to a new service provider. Chapman Decl. ¶ 13. If GFDC wished to maintain service to and control of its toll free number, it was GFDC’s responsibility to contact the desired service provider, open an account with that provider, and authorize the new service provider to take control of GFDC’s toll free number. See Industry Guidelines for Toll Free Number Administration § 2.2.1 (explaining that with few exceptions, the Toll Free Subscriber is the entity with the “ultimate right to control” all aspects regarding the use of a Toll Free Number); *id.* at § 5 (defining “Toll Free Subscriber” as, *inter alia*, “the entity which *defines and manages all final termination points for the Toll Free Service . . .*”) (emphasis added); *id.* at § 3.2.2 (explaining that, in changing the responsible organization for a toll free number, the Toll Free Subscriber is responsible for “establish[ing] a business relationship with the [new] Resp Org” and for “notify[ing] its Toll Free Service Providers of any changes in service

arrangements”). Indeed, Charter’s contemporaneous notes indicate that Charter even informed GFDC that it should contact its alternative service provider to reassign its toll free number to that provider in order to avoid interruptions to its toll free service. On May 14, 2013, at 4:10 PM, a Charter representative made an entry in the Charter system to “[p]lease have the customer contact their provider to port this back” and that “[i]f a valid port away request is not received for this by 05/21 it will be suspended.” Day Decl. ¶ 16. This alert was brought to the attention of the Charter representative who had been acting as a liaison to GFDC. That representative responded promptly, indicating that she had spoken with GFDC, which remained “very nonchalant about the phones,” reaffirmed that it did not “want to bother getting a tech out for [its] phones,” and was “very adamant about not doing anything extra.” Day Decl. ¶ 17.

28. AT&T’s conduct of continuing to bill Exotic for a service it was no longer providing also amounts to negligence. AT&T owed Exotic a duty to only bill for those services for which it was providing and violated this duty. AT&T’s conduct caused more than just an issue with over-billing, but it hindered Exotic’s ability to discover that its toll-free number had been disconnected. [See *Staton Holdings, Inc. v. MCI Worldcom Communications, Inc.*, 19 F.C.C.R. 8699, 19 FCC Red 8699].

**Answer to Paragraph 28:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 28.

29. Under Section 206 of the Communications Act, a common carrier is liable for the full amount of damages caused by their unlawful conduct. [42 U.S.C. § 206].

**Answer to Paragraph 29:** The allegations of this paragraph are legal argument not requiring a response. To the extent a response is required, Charter denies the allegations for the reasons set forth in the legal analysis below. Further answering, Charter avers that the provisions of the Communications Act provide the best evidence of their contents. Moreover, as explained, the Service Agreement that GFDC entered into on May 1, 2013 expressly provided that the relationship between GFDC and Charter would be “governed by the terms and conditions contained in the applicable Tariff(s) . . . for the U.S. state in which the Service is provided.”

Service Agreement at 1. The Tariff applicable expressly provides that “[i]n no event will [Charter] be liable for loss of profits (even if the Company has been advised of the possibility of such loss) or for any indirect, incidental, special, consequential, exemplary or punitive damages whatsoever arising, directly or indirectly, from or in connection with the provision of Services.” Ex. 9 at 6 (Excerpt of Tariff for Charter Fiberlink-Michigan, LLC, 4th Revised (Oct. 2012)); Ex. 8 at 1 (Excerpt of Tariff for Charter Fiberlink CC VIII, LLC, 2d Revised (Feb. 2012)).

30. Exotic has suffered significant damage to its business as a result of the improper disconnection of its toll-free number. Exotic’s ability to recruit new customers through its existing marketing campaign was destroyed because the campaign prominently featured the toll-free number. Exotic suffered a decrease in customers and sales. On average, Exotic experienced approximately a 2.3% sales decrease every month following the improper porting of the toll-free number. In January of 2014, the first month the number belonged to the pornographic hotline, Exotic suffered a 64% decline in sales. Exotic also suffered serious damage to its reputation by inadvertently directing customers to a pornographic hotline. **[Ex. 4; Exhibit 13, Spreadsheets of Sales].**

**Answer to Paragraph 28:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 28. As explained below, the Service Agreement that GFDC entered into on May 1, 2013 expressly provided that the relationship between GFDC and Charter would be “governed by the terms and conditions contained in the applicable Tariff(s) . . . for the U.S. state in which the Service is provided.” Service Agreement at 1. The applicable Tariff in Michigan expressly provides that “[i]n no event will [Charter] be liable for loss of profits (even if the Company has been advised of the possibility of such loss) or for any indirect, incidental, special, consequential, exemplary or punitive damages whatsoever arising, directly or indirectly, from or in connection with the provision of Services.” Ex. 9 at 6.

31. Exotic respectfully requests that Charter and AT&T be ordered to compensate Exotic fully for its damages for lost profits, injury to its reputations, and loss of its marketing materials. Based the sales figures attached as Exhibit 13, Exotic requests \$172,000.00 in lost profits, which includes expected future losses. Exotic also requests \$25,000.00 for the inventory of marketing materials that Exotic can no longer employ. Exotic also requests that it be fairly

compensated for the damage to its reputation and the interruption in Exotic's business that this improper conduct caused in the amount of \$100,000.00. Exotic also requests its costs and attorney fees, which at present time total \$40,000.00, as provided by 47 U.S. Code § 206. Thus, Exotic respectfully requests an award of in the amount of \$337,000.00. [Ex. 4; Ex. 13].

**Answer to Paragraph 31:** GFDC's request for relief does not require a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief from Charter. As explained below, the Service Agreement that GFDC entered into on May 1, 2013, expressly prohibited the damages sought, and attorney's fees are not available in a formal complaint proceeding. Charter lacks knowledge and information sufficient to form a belief as to whether GFDC is entitled to relief from AT&T.

32. Further, Exotic respectfully requests a declaration that Charter's failure to ensure it could service the number prior to porting the toll-free number away from AT&T and subsequent failure to transfer the toll-free number back to AT&T was unlawful and in violation of applicable FCC regulations and policies.

**Answer to Paragraph 32:** GFDC's request for declaratory relief does not require a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief from Charter.

33. Exotic also requests a declaration that AT&T's continued billing for a transferred and disconnected toll-free number was unlawful and in violation of applicable FCC regulations and policies.

**Answer to Paragraph 33:** Charter lacks knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 33.

34. It is further requested that the Commission enter an order directing that the toll-free number be transferred back to Exotic under Section 52.111 of the Rules expressly acknowledges the Commission's authority to authorized exceptions to the usual first-come, first-served protocol in certain cases. The Commission has in fact ordered transfers of toll-free numbers to specified users where there were important public interest reasons for so doing. Exotic respectfully submits that there are sufficient public interest grounds for granting such special relief in this case. [Toll Free Access Codes, 20 FCC Rcd 150B9 (2005) (800-RED-CROSS temporary reassignment order); Toll Free Access Codes, 21FCC Rcd 9925 (WCB 2006) (800-RED-CROSS permanent reassignment order) case); Toll Free Access Codes, 22 FCC Rcd 651 (WCB 2007) (800/888-SUICIDE temporary reassignment order); Toll Free Access Codes, 24 FCC Rcd 13022 (2009) (800/888-SUICIDE permanent reassignment

order), vacated and remanded sub nom. **Kristin Brooks Hope Center v. FCC**, 626 F.3d 393 (D.C. Cir. 2010)]. The court's remand order in the case of 800/888 SUICIDE was based on insufficiency of the record underlying the factual basis for the determination, but did not disturb the fundamental principle, i.e., that sufficient public interest reasons do justify assignment of a number. Since the remand, the Commission has repeatedly extended the temporary reassignment of the number pending further development and evaluation of the factual record. [Toll Free Access Codes, 26 FCC Rcd 327 (WCB 2011), 26 FCC Rcd 1395 (WCB 2011), 26 FCC Rcd 8454 (2011), and 2011 FCC Lexis 3661 (DA 11-1512; WCB rel. Sept. 7, 2011)].

**Answer to Paragraph 34:** The allegations of this paragraph are legal argument not requiring a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief as a result of acts undertaken by Charter.

35. Unless there is hope for some form of remedy or redress when members of the public have been wrongfully deprived of access to toll-free numbers, they will have no incentive to present complaints to the Commission. But such complaints must be encouraged, for at least two important reasons. First, absent complaints, the Commission will never be made aware of such violations. The nature of toll-free number administration is such that the Commission cannot adequately monitor and police the conduct of Responsible Organizations like Charter and AT&T; indeed, often the subscribers and potential subscribers involved are unable to learn all the behind-the-scenes maneuvering involved. Second, the threat of such complaints can serve to deter Responsible Organizations from committing such violations. But unless there is a realistic hope of obtaining the sought-after number, a wronged party would have little incentive to expend the time and financial resources necessary to present a complaint to the Commission.

**Answer to Paragraph 35:** The allegations of this paragraph are legal argument not requiring a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief as a result of acts undertaken by Charter.

36. Exotic further asks that this matter be referred to the Enforcement Bureau for a full investigation, focusing particularly on the practices and actions Charter, including, but not limited to, the practice of soliciting letters of authorizations to transfer services before properly evaluating Charter's ability to provide the services they offer.

**Answer to Paragraph 36:** The allegations of this paragraph are legal argument not requiring a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief as a result of acts undertaken by Charter.

37. Depending on the results of such investigation, the Commission should impose such sanctions on Charter as it may determine is appropriate, for the violations of the Commission's regulations and policies, for the false statements and lack of candor in the

carriers' responses to the informal complaint, and for any further violations found in the course of addressing this complaint or in the investigation proposed. Possible sanctions should include, without limitation, a cease and desist order, monetary forfeiture, and decertification as a Responsible Organization.

**Answer to Paragraph 37:** The allegations of this paragraph are legal argument not requiring a response. To the extent a response is required, Charter denies that GFDC is entitled to any relief as a result of acts undertaken by Charter.

### **AFFIRMATIVE DEFENSES**

Pursuant to 47 C.F.R. § 1.724(e), Charter sets forth the following affirmative defenses, for which it incorporates by reference paragraphs 1-38 of its Answer.

#### **Abandonment**

For the reasons set forth in the legal analysis below, GFDC abandoned its right to seek relief against Charter for the allegations contained in its Formal Complaint.

#### **Failure To State A Claim Upon Which Relief Can Be Granted**

For the reasons set forth in the legal analysis below, the Complaint fails to state a claim upon which relief can be granted.

## LEGAL ANALYSIS

The Formal Complaint should be denied with prejudice for three key reasons. First, GFDC is precluded from filing the present Formal Complaint because it declined to provide Charter with the information necessary to timely investigate its concerns during the informal complaint process and abandoned its claims by waiting over one year to initiate formal proceedings.

Second, the facts demonstrate that Charter was not negligent. Charter became the service provider for GFDC's toll free number pursuant to GFDC's express authorization and disconnected the number only after GFDC itself canceled its telephone services with Charter and subsequently failed—over a period of seven-and-a-half months—to make arrangements for a new service provider. Charter's disconnection of the toll free number after GFDC failed to obtain a new service provider was in accordance with the Commission's rules prohibiting the warehousing of toll free numbers and industry standards governing the administration of toll free numbers. Indeed, GFDC's own allegations demonstrate that this Complaint flows from marked negligence and delay on the part of GFDC, which failed to contact AT&T or Charter for nine months notwithstanding that it received monthly statements confirming that it had not received or paid for any calls to its toll free number and notwithstanding that the toll free number was nonworking for that period.

Third, all of the relief GFDC seeks from Charter is precluded as a matter of law.

### **I. GFDC's Complaint Should Be Denied Because It Abandoned Its Allegations Against Charter.**

The Commission's rules set forth a specific procedure for filing complaints, upon which consumers and carriers rely. Simply put, GFDC has frustrated the intent and purpose of the Commission's rules—to promote efficient resolution and to ensure finality—and under a plain

reading of these rules GFDC abandoned its allegations against Charter. GFDC has done so to the prejudice of Charter, which was unable to effectively investigate GFDC's informal complaint because of GFDC's refusal to respond to Charter's repeated inquiries and was entitled to assume finality after GFDC abandoned its allegations against Charter.

**A. Upon filing its informal complaint, GFDC refused to provide Charter with any of the information necessary to timely investigate its allegations.**

The Commission's rules require that a person who wishes to file a complaint must first file an informal complaint. 47 C.F.R. §§ 1.716-18. The purpose of the informal complaint procedure is to provide an efficient means for the complainant to present its complaint, for a carrier to investigate the concerns raised, and for the Commission to determine what, if any, additional action is warranted, without the need for formal proceedings. *See FCC, Practice and Procedure; Improvement of the Efficiency and Clarity of Informal Complaint Procedures and Requirements*, 51 Fed. Reg. 16039 (1986). For this reason, only if the complainant has participated in the informal complaint process and "is not satisfied by the carrier's response and the Commission's disposition" may the complainant bring a formal complaint. 47 C.F.R. § 1.717.

After filing its informal complaint, GFDC declined to respond to any of Charter's repeated attempts to make contact with GFDC to obtain further information necessary to timely investigate GFDC's allegations. Indeed, after GFDC filed its informal complaint on April 2, 2014, Charter attempted to contact GFDC by telephone on April 21, April 23, April 24, and April 25, 2014. Henry Decl. ¶ 4; Ex. 6 (May 14, 2014 Report by Charter to FCC). GFDC failed to respond to any of these inquiries. Henry Decl. ¶ 4; Ex. 6. Thereafter, Charter sent GFDC a letter informing GFDC that Charter "would like the opportunity to address [GFDC's] concerns" and explaining that "it is difficult for [Charter] to provide further assistance without being able to

“speak directly with [GFDC].” Ex. 5 (May 2, 2014 Letter from Charter to GFDC); Henry Decl. ¶ 5. This was particularly the case given that the individual who filed the informal complaint was not an authorized user of GFDC’s account with Charter. Henry Decl. ¶ 2; Ex. 6 (May 14, 2014 Report by Charter to FCC). Charter provided GFDC with direct contact information for Charter’s Executive Escalation Manager and requested that GFDC contact Charter at its earliest convenience. Henry Decl. ¶ 5; Ex. 5. GFDC again failed to respond. Henry Decl. ¶ 5; Ex. 6. Charter thus filed its report on GFDC’s informal complaint on May 14, 2014, explaining that it was unable to locate any records substantiating GFDC’s complaint and had been unsuccessful in its numerous attempts to contact GFDC. Ex. 6; Henry Decl. ¶ 7. Even after Charter filed its response to the informal complaint, Charter continued its effort to contact GFDC. Henry Decl. ¶ 8; Ex. 7. Charter attempted to call GFDC twice on June 2, 2014. Henry Decl. ¶ 8; Ex. 7. Charter was unable to leave a message on the first call attempt, but did leave a voice message on the second call attempt. Henry Decl. ¶ 8; Ex. 7. Charter attempted to call GFDC on June 3, 2014, and left a voice message. Henry Decl. ¶ 8; Ex. 7. Charter attempted to call GFDC on June 4, 2014, and left a voice message. Henry Decl. ¶ 8; Ex. 7. Charter called GFDC on June 6, 2014, and spoke with a representative of GFDC. Given the length of time that has passed since GFDC filed its Complaint, there is no record of what was said during this telephone call. Henry Decl. ¶ 8. Charter attempted to call GFDC again on June 10, 2014, but Charter could not leave a voice message. Henry Decl. ¶ 8; Ex. 7. GFDC never returned Charter’s June 10, 2014 call. Henry Decl. ¶ 9.

**B. GFDC abandoned its allegations against Charter as a result of GFDC’s substantial delay in initiating formal proceedings.**

“Pursuant to section 1.718 of the Commission’s rules, the Complainant is required to convert its informal complaint into a formal complaint within six months of the date that the

Defendant replies to the informal complaint, or such informal complaint will be deemed to be abandoned.” *In re Judith Judware*, 20 FCC Rcd 4069, 4069 (2005) (footnote omitted); 47 C.F.R. § 1.718 (“If no formal complaint is filed within the 6-month period, the complainant will be deemed to have abandoned the unsatisfied informal complaint.”); *see also In re Amendment of Subpart E of Chapter 1 of the Commission’s Rules Governing Procedures to Be Followed When Informal Complaints Are Filed Against Common Carriers*, 9 FCC Rcd 4499 (1994) (“As currently drafted, Section 1.718 literally read, states that informal complaints are deemed to be abandoned, or a complainant’s right to file a formal complaint can be extinguished, if the formal complaint is not filed within six months after the carrier has filed its report in the informal complaint proceeding”). This rule is “intended to ensure finality to a controversy within a time certain if no formal complaint is filed.” *In re Bay Commc’ns*, 7 FCC Rcd 254, 254 (1992); *see also* 9 FCC Rcd 4499 (observing that this rule serves the purpose of providing carriers with certainty as to “when they are no longer required to retain informal complaint files”).

The Commission’s rules thus required GFDC to file any formal complaint against Charter within six months of Charter’s May 14, 2014 report, *i.e.*, by November 14, 2015. GFDC did not file the present Formal Complaint until June 9, 2015—almost seven months late (and over double the time permitted by the Commission’s rules), and despite numerous attempts by Charter to communicate with GFDC regarding the allegations to perform a timely investigation.

**C. The Commission should not allow GFDC to prejudice Charter by reopening the Complaint after GFDC declined to meaningfully participate in the informal complaint process and abandoned its allegations against Charter.**

Had GFDC been responsive to Charter’s inquiries after filing its informal complaint, Charter could have conducted a more comprehensive and timely investigation of GFDC’s allegations and ensured the preservation of all relevant information. Moreover, upon GFDC’s failure to file a formal complaint against Charter within six months (and its repeated refusal to

respond to Charter's inquiries), Charter was entitled to rely on the Commission's rules and on GFDC's abandonment of its informal complaint. *See In re Bay Commc'ns*, 7 FCC Rcd at 254 (underscoring that the Commission's rules are intended to provide "finality"); 9 FCC Rcd 4499 (echoing that the rules provide guidance to carriers "when they are no longer required to retain informal complaint files").

**D. GFDC has failed to justify or provide any explanation for its delay in bringing a formal complaint against Charter.**

On June 25, 2015—after GFDC filed its Formal Complaint—Charter learned for the first time that AT&T filed its response to GFDC's informal complaint on May 14, 2014 and corrected an error in its response on December 9, 2014. As described above, GFDC abandoned its allegations against Charter on November 14, 2014, one month before AT&T sent its corrective letter. The correction made by AT&T—that the request to reassign GFDC's toll free number was received from Level 3, as opposed to directly from GFDC—was and remains immaterial to GFDC's allegations against Charter. Indeed, based on GFDC's own allegations, it was already aware of this fact in February 2014, ten months before AT&T served its correction. *See Formal Compl.* ¶ 19, Ex. 11 (showing a fax date of February 28, 2014).

Moreover, even assuming that AT&T's correction somehow revived GFDC's allegations as to AT&T, it did not revive the allegations as to Charter. *See In re Judith Judware*, 20 FCC Rcd 4069, 4069 (2005) ("Pursuant to section 1.718 of the Commission's rules, the Complainant is required to convert its informal complaint into a formal complaint within six months of the date that *the Defendant* replies to the informal complaint, or such informal complaint will be deemed to be abandoned." (footnote omitted)). Pursuant to the Commission's rules, AT&T's response was served only on the Commission and GFDC, and not on Charter. *See* 47 C.F.R. 1.717. Charter thus could not reasonably have known about AT&T's correction letter and was

reasonable in relying upon the Commission’s rules and on GFDC’s abandonment of its allegations against Charter—particularly given GFDC’s repeated refusal to answer Charter’s inquiries.

## **II. Charter Did Not Act Negligently.**

Section 201(b) of the Communications Act provides that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” 47 U.S.C. § 201(b). “It is well established that, in a formal complaint proceeding brought under section 208 of the Act, the complainant has the burden of proof to demonstrate that the carrier has violated the Act or Commission orders.” *In the Matter of Hi-Tech Furnace Sys., Inc., & Robert E. Kornfeld*, 14 FCC Rcd 8040, 8044 (1999) (footnote omitted). The rules “do not require [Charter] to prove that it has not violated the Act.” *Am. Message Centers v. FCC*, 50 F.3d 35, 41 (D.C. Cir. 1995).

Pursuant to this framework, GFDC has not shown that Charter engaged in any “unfair or unreasonable practice”—to the contrary, the facts demonstrate that all of Charter’s actions were taken pursuant to GFDC’s express authorization and were conducted in accordance with the Commission’s rules and industry guidelines. Any negligence that occurred was on the part of GFDC, which failed to obtain a new service provider for its toll free number after canceling its service with Charter and did so notwithstanding monthly documentation from AT&T that GFDC was not receiving or paying for any calls to its toll free number.

### **A. Charter did not act negligently when it directed Level 3 to become the RespOrg and to change the CIC for GFDC’s toll free number.**

GFDC argues that it was negligent for Charter to direct Level 3 to become the RespOrg for and to change the CIC for GFDC’s toll free number “prior to determining whether it could

actually provide service” to GFDC. Formal Compl. ¶ 27. This argument is incorrect for two reasons. First, Charter’s directions to Level 3 were made pursuant to GFDC’s express permission. Second, the provision of Charter telephone services was canceled *not* because Charter was unable to provide service to GFDC, but because GFDC declined to make necessary changes to its own telephone equipment, as it was responsible for doing under the Service Agreement.

1. Charter acted pursuant to GFDC’s express authorization. On May 1, 2013, GFDC executed the electronic LOA, which expressly authorized Charter to become the service provider for the toll free number and to reassign the RespOrg for the toll free number to Level 3. *See* Formal Compl. Ex. 8 at 1 (“I authorize Charter Fiberlink to become my inbound toll free service provider in place of my current provider(s)” and “I have selected a new Responsible Organization with the Identification Number of KSW01 (L3)”). It was based on this express authorization and representation that Charter appropriately directed Level 3 to become the RespOrg for GFDC’s toll free number, and to assign the CIC for the number to Charter, making Charter the toll free service provider. Chapman Decl. ¶¶ 7-9.

2. The installation of Charter telephone services was canceled because GFDC declined to make necessary changes to its telephone equipment, as it was responsible for doing under the Service Agreement. As described above, on May 1, 2013, GFDC executed the Service Agreement for the provision of Charter telephone services. Day Decl. ¶ 6; Service Agreement. In the Service Agreement, GFDC represented that Charter would not be “responsible for the installation [or] compatibility . . . of any Customer-supplied hardware, firmware or software.” Service Agreement at 2. Upon directing Level 3 to change the CIC for GFDC’s toll free number, Charter stood prepared to provide service to GFDC. Chapman Decl. ¶¶ 6, 10. It is undisputed,

however, that the provision of Charter telephone services was canceled because GFDC's customer-supplied telephone equipment was incompatible with Charter's services and GFDC did not wish to make any changes to its system. *See* Day Decl. ¶¶ 13-14; Ex. 4 at 1 (March 31, 2015 Letter From GFDC To Charter) at 1 (“Global decided not to pursue services with Charter since the phone system could not be connected.”). It is thus misleading to claim that Charter became the service provider for GFDC's toll free number “prior to determining whether it could actually provide service.” Formal Compl. ¶ 27. In fact, Charter was prepared to and capable of providing service and acted in reliance on GFDC's representation that it would ensure the compatibility of its own telephone equipment.

**B. Charter was not negligent for “fail[ing] to port [GFDC's] toll-free number back to AT&T after it determined it would be unable to service the number.”**

According to GFDC, Charter was negligent because it “fail[ed] to port [GFDC's] toll-free number back to AT&T after it determined it would be unable to service the number.” Formal Compl. ¶ 27.<sup>6</sup> This is incorrect, as it was GFDC that was responsible for establishing a business relationship with an alternative service provider, and Charter acted in compliance with and according to the Commission's rules and industry standards.

1. GFDC, not Charter, was the entity responsible for obtaining an alternative service provider. Upon GFDC's decision not to make any changes to its telephone equipment and its cancelation of services with Charter, GFDC was responsible for establishing a business relationship with an alternate service provider. *See* Industry Guidelines for Toll Free Number Administration § 2.2.1 (explaining that with few exceptions, the Toll Free Subscriber is the

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<sup>6</sup> GFDC's allegation is again misleading, as Charter never “determined it would be unable to service” GFDC's toll free number. Charter stood prepared to provide service to GFDC. Chapman Decl. ¶ 10. It is undisputed, however, that the provision of Charter telephone services was canceled because GFDC's customer-supplied telephone system was incompatible with Charter's services and GFDC did not wish to make any changes to its system. *See* Day Decl. ¶¶ 13-14; Ex. 4 (March 31, 2015 Letter From GFDC To Charter) at 1.

entity with the “ultimate right to control” all aspects regarding the use of a Toll Free Number); *id.* at § 5 (defining “Toll Free Subscriber” as, *inter alia*, the entity which *defines and manages all final termination points for the Toll Free Service . . .*”) (emphasis added); *id.* at § 3.2.2 (explaining that, in changing the responsible organization for a toll free number, the Toll Free Subscriber is responsible for “establish[ing] a business relationship with the [new] Resp Org” and for “notify[ing] its Toll Free Service Providers of any changes in service arrangements”). There existed no mechanism through which Charter could have, on its own accord, assigned GFDC’s toll free number to a new service provider. Chapman Decl. ¶ 13. Instead, GFDC was required to open an account with a new service provider and authorize that new provider to become the service provider for GFDC’s toll free number. Chapman Decl. ¶ 13; *see* Industry Guidelines for Toll Free Number Administration §§ 2.2.1, 3.2.2, 5. Indeed, Charter’s contemporaneous notes indicate that Charter even informed GFDC that it should contact its alternative service provider to reassign its toll free number to that provider in order to avoid interruptions to its toll free service.<sup>7</sup>

2. Charter’s direction to place the toll free number into Disconnect Status after GFDC failed to arrange for another service provider was made in accordance with the Commission’s rules and industry guidelines. The Commission’s rules and industry standards prohibiting the warehousing of toll free numbers prevent a RespOrg, either directly or indirectly through an affiliate, from maintaining control of toll free numbers “without having an actual toll

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<sup>7</sup> As described above, on May 14, 2013, at 4:10 PM, a Charter representative made an entry in the Charter system to “[p]lease have the customer contact their provider to port this back” and that “[i]f a valid port away request is not received for this by 05/21 it will be suspended.” Day Decl. ¶ 16; Ex. 3 at 2. This alert was brought to the attention of the Charter representative who had been acting as a liaison to GFDC. That representative responded promptly, indicating that he had spoken with GFDC, which remained “very nonchalant about the phones,” reaffirmed that it did not “want to bother getting a tech out for [its] phones,” and was “very adamant about not doing anything extra.” Day Decl. ¶ 7; Ex. 3 at 1.

free subscriber for whom those numbers are being reserved.” 47 C.F.R. § 52.105(a); *see also id.* § 52.105(b) (creating a rebuttable presumption of warehousing where the RespOrg “does not have an identified toll free subscriber agreeing to be billed for service associated with each toll free number reserved”); Industry Guidelines for Toll Free Number Administration § 2.4.3 (same). After GFDC canceled its services with Charter, GFDC did not arrange for another service provider to take control of its toll free number. Chapman Decl. ¶ 22. Because Charter did not have a customer account associated with the toll free number, on August 26, 2013, in accordance with the Commission’s rules and industry standards, Charter directed Level 3 to disconnect the number. Chapman Decl. ¶¶ 17-18.

*Staton Holdings, Inc. v. MCI Worldcom Communications, Inc.*, 19 FCC Rcd 8699 (2004)—the only authority cited by GFDC in support of its argument that Charter was negligent—does not support GFDC’s argument. There, the complainant brought a complaint against a carrier for negligently disconnecting its toll free number. The carrier, however, “offer[ed] no explanation as to how the alleged error occurred, and offer[ed] no basis to rebut the assertion that its actions were at least negligent” and, to the contrary, “seem[ed] to concede that its actions were negligent.” *Id.* at 8704. Much to the contrary, here, GFDC’s number was disconnected because GFDC itself failed to make arrangements with any other service provider to provide service to its toll free number and Charter disconnected the number in accordance with the Commission’s rules and industry guidelines. Accordingly, Charter cannot be considered negligent.

**C. To the extent the disconnection of GFDC’s toll free number was caused by negligence, it was negligence on the part of GFDC.**

As described above, after GFDC determined that it did not wish to upgrade its telephone equipment and canceled its services with Charter, GFDC did not make any arrangements to have

another provider service the toll free number. Moreover, based on the allegations in GFDC's Formal Complaint, GFDC received and disregarded monthly statements from AT&T, which repeatedly indicated that GFDC had neither received nor paid for any calls to its toll free number for seven months after its cancelation of telephone services with Charter; GFDC failed to contact Charter (or AT&T) for nine-and-a-half months after its toll free number became nonworking; and GFDC even delayed multiple weeks before contacting Charter when GFDC was allegedly notified by a customer that the toll free number was directing callers to an adult hotline.

1. Based on GFDC's own allegations, it received and ignored seven months of documentation confirming that GFDC had not received or paid for any calls to its toll free number. On May 16, 2013, GFDC received a monthly statement from AT&T charging GFDC for a monthly recurring service charge of \$14.00 and for 32 calls made to its toll free number between April 3 and May 3, 2013. Formal Compl. Ex. 6 (May 16, 2013 AT&T Monthly Statement). On June 16, 2013, GFDC received a monthly statement from AT&T charging GFDC for the recurring toll free service charge and for 9 calls made to its toll free number between May 4 and May 12, 2013. Formal Compl. Ex. 12 (June 16, 2013 AT&T Monthly Statement). The statement did not report or charge GFDC for any calls to the toll free number after May 12, 2013. *Id.* Thereafter, on July 16, 2013, August 16, 2013, September 16, 2013, October 16, 2013, and presumably each month afterwards, GFDC received a bill from AT&T that did not report or charge GFDC for *any* calls to the toll free number. Formal Compl. Ex. 12 (October 16, 2013 AT&T Monthly Statement).

Had GFDC contacted Charter in the seven-and-a-half month period between the time that GFDC canceled telephone services with Charter, on May 14, 2013, and the time that the toll free number 888-396-8421 was placed in Spare Status, on December 26, 2013, Charter would have

been able to provide guidance to GFDC on how to reactivate its toll free number. Chapman Decl. ¶ 23.<sup>8</sup>

2. GFDC failed to contact Charter (or AT&T) for nine-and-half-months after its toll free number became nonworking. As described above, after GFDC canceled its telephone services with Charter on May 14, 2013, anyone who called GFDC's toll free number would have received either dead air or a message stating "The number that you are calling is no longer in service." Chapman Decl. ¶¶ 16, 19-21. Nonetheless, GFDC did not contact Charter (or AT&T) until February 2014—nine months later. Had GFDC contacted Charter between May 14, 2013, and the time that the toll free number 888-396-8421 was placed in Spare Status, on December 26, 2013, Charter would have been able to provide guidance to GFDC on how to reactivate its toll free number. Chapman Decl. ¶ 23.

3. Even after GFDC allegedly discovered that its toll free number was directing callers to an adult hotline, it apparently waited multiple weeks to contact AT&T or Charter. GFDC alleges that it first discovered that its toll free number was directing callers to an adult hotline in January of 2014. Formal Compl. ¶ 15. However, notwithstanding GFDC's allegations that the toll free number was its "main contact number" that it "relied heavily upon," GFDC did not contact Charter until multiple weeks later, on February 14, 2014. Day Decl. ¶ 18; Formal Compl. Ex. 4 ¶ 20.

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<sup>8</sup> GFDC alleges that it was "hindered" from "discover[ing] that its toll-free number had been disconnected" because AT&T continued to bill GFDC for a toll free service charge until October 2013. Formal Compl. ¶ 28. This allegation is belied by the fact that the same invoices containing the toll free service charges confirmed that GFDC had not received or been charged for any calls to its toll free number after May 12, 2013. Moreover, even to the extent that GFDC was "hindered" by AT&T's conduct, it would not be a legitimate basis for attributing negligence to Charter.

In sum, the facts demonstrate that this Formal Complaint follows from repeated delay on the part of GFDC (in addition to its repeated refusal to participate in the informal complaint process). GFDC's toll free number was not disconnected as a result of any negligence by Charter.

### **III. The Relief Sought By GFDC Is Unavailable As A Matter Of Law.**

The Complaint seeks two forms of relief from Charter: (1) "damages for lost profits, injury to its reputations and loss of its marketing materials"; and (2) attorney's fees. Formal Compl. ¶ 31. Neither form of relief is available as a matter of law.<sup>9</sup>

#### **A. GFDC cannot recover lost profits as a matter of law.**

GFDC seeks to hold Charter liable "for lost profits, injury to its reputations, and loss of its marketing materials." Formal Compl. ¶ 31. However, GFDC's Service Agreement and the applicable Tariffs preclude GFDC from seeking such relief as a matter of law.

The Service Agreement that GFDC executed on May 1, 2013 (and which remains the operative agreement between GFDC and Charter) provides that telephone services are "governed by the terms and conditions contained in the applicable Tariff(s)/Service, Price and Terms Guide for the U.S. state in which the Service is provided and any applicable federal tariff." Service Agreement at 1. The Tariff applicable at the time that GFDC canceled its telephone services with Charter provides that "[i]n no event will [Charter] be liable for loss of profits (even if the Company has been advised of the possibility of such loss) or for any indirect, incidental, special, consequential, exemplary or punitive damages whatsoever arising, directly or indirectly, from or

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<sup>9</sup> As explained above, in light of the Commission's decision "that 'a determination of damages would best be made in a proceeding that is separate from and subsequent to th[is] proceeding'" and that "Defendants do not need to address in their Answers any factual allegations regarding damages," June 15, 2015 Notice of Formal Complaint at 2 (quoting 47 C.F.R. § 1.722(c)), Charter challenges only the availability of the relief sought as a matter of law and reserves its challenges to the factual allegations and calculation of damages.

in connection with the provision of Services.” Ex. 9 at 6 (Excerpt of Tariff for Charter Fiberlink-Michigan, LLC, 4th Revised (Oct. 2012)).<sup>10</sup> Thus, even assuming that GFDC could establish loss of profits and other consequential or incidental damages (such as reputational damage and loss of use of marketing materials), it is precluded from attempting to hold Charter liable for such injury. *See Staton Holdings, Inc.*, 19 FCC Rcd 8699 at 8706-07 (applying tariff to relief sought for negligent disconnection of complainant’s toll free number). Rather, the applicable Tariff provides that in the case of negligence, GFDC may hold Charter liable “in connection with the installation, provision, failure, termination, maintenance, repair or restoration of Service” only for “an amount equal to the Service charges incurred by Customer for the period during which the Service was affected,” Ex. 9 at 6—amount which is, in this case, equal to zero because GFDC did not incur any service charges from Charter.

**B. Attorney’s fees are not an appropriate form of relief in formal complaint proceedings.**

GFDC argues that it is entitled to “costs and attorney fees, which at present time total \$40,000.00, as provided by 47 U.S. Code § 206.” Formal Compl. ¶ 31. It is well established, however, that “[t]he Commission cannot award attorney’s fees or costs in a Section 208 formal complaint proceeding.” *In the Matter of Implementation of Sections 716 & 717 of the Commc’ns*

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<sup>10</sup> GFDC’s telephone services with Charter were governed by the Tariff for Charter Fiberlink CC VIII, LLC, which adopts in full the Tariff for Charter Fiberlink – Michigan LLC. Ex. 8 at 1 (Excerpt of Tariff for Charter Fiberlink CC VIII, LLC, 2d Revised (Feb. 2012)) (“Charter Fiberlink CC VIII, LLC hereby concurs in and adopts the descriptions, services, terms, conditions and regulations of Charter Fiberlink – Michigan, LLC for the provision of local and message telecommunications services within the state of Michigan.”). The Tariff for Charter Fiberlink CC VIII, LLC remains in effect and has not been amended since the time that GFDC canceled its telephone services with Charter. *See* Tariff for Charter Fiberlink CC VIII, LLC, 2d Revised (Feb. 2012), *available at* <https://www.charter.com/uploads/pdfs/TT/TT%20MI%20Charter%20Fiberlink%20CC%20VIII%20Local%20Tariff.pdf>. The present Tariff for Charter Fiberlink – Michigan, LLC continues to provide for the same limitation on liability. *See* Tariff for Charter Fiberlink-Michigan, LLC, 6th Revised (Dec. 2014), *available at* <https://www.charter.com/uploads/pdfs/TT/TT%20MI%20Charter%20Fiberlink-Michigan%20LLC%20Local%20Tariff.pdf>.

*Act of 1934*, 26 FCC Rcd 14,557, 14,676 & n.739 (2011) (collecting cases); *see also Staton Holdings, Inc. v. Mills Fleet Farm, Inc.*, 18 FCC Rcd 12,787, 12,787 (2003) (“The [Communications] Act and the Commission’s rules do not allow the Commission to award attorney’s fees or costs.”). Section 206 of the Communications Act, cited by GFDC, does not apply in the context of proceedings before the Commission and applies only in court proceedings. *AT&T Co. v. United Artists Payphone Corp.*, 852 F. Supp. 221, 224 (S.D.N.Y.) (holding that the Commission has no authority to grant attorney’s fees under 47 U.S.C. § 206), *aff’d*, 39 F.3d 411 (2d Cir. 1994); *In re Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 8 FCC Rcd 2614, 2626 n.71 (1993) (describing the lack of availability of attorneys fees as “one of several significant differences between” pursuing a remedy in court and through an administrative complaint proceeding).<sup>11</sup>

### CONCLUSION

For the foregoing reasons, GFDC’s Formal Complaint should be denied with prejudice.

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<sup>11</sup> GFDC also requests “an order directing that the toll-free number be transferred back” to GFDC and “that this matter be referred to the Enforcement Bureau for a full investigation.” Formal Compl. ¶¶ 34, 36. As described above, Charter has not acted negligently and GFDC’s number was disconnected based on GFDC’s failure to arrange for the number to be serviced by another provider. There is thus no basis for further investigation and any decision to transfer GFDC’s number should not be based on conduct by Charter.

July 9, 2015

Respectfully submitted,

/s/ Samuel L. Feder

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant,

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**CERTIFICATION OF GOOD FAITH SETTLEMENT EFFORTS**

Defendant Charter Communications, Inc. (“Charter”) hereby certifies that it has in good faith attempted to discuss the possibility of settlement with Global Franchise Development Corp. d/b/a Exotic Sportz (“GFDC”) prior to the filing of the Formal Complaint. Charter took the following steps in an attempt to resolve this dispute prior to the filing of the Formal Complaint:

- After GFDC filed its informal complaint on April 2, 2014, Charter attempted to contact GFDC on April 21, April 23, April 24, and April 25, 2014 to obtain further information necessary to investigate GFDC’s concerns, but was unsuccessful in reaching GFDC on each occasion.
- On May 2, 2014, Charter sent GFDC a letter informing GFDC that Charter had been unsuccessful in its attempts to reach GFDC, providing GFDC with direct contact information for Charter’s Executive Escalation Manager, and requesting that GFDC contact Charter to allow Charter to investigate the matter. Charter did not receive a response to its letter.

- On May 14, 2014, Charter filed a response to GFDC's informal complaint, explaining that it was unable to reach GFDC to obtain the information necessary to investigate its concerns.
- After Charter filed its response to GFDC's informal complaint, Charter attempted to contact GFDC twice on June 2, 2014, and left voicemails for GFDC on June 2, June 3, and June 4, 2014. None of these calls were returned.
- On June 6, 2014, Charter contacted and spoke with GFDC by telephone.
- On June 10, 2014, Charter attempted to contact GFDC again by telephone. Charter's call was not returned.
- The next communication Charter received from GFDC was a letter dated March 31, 2015, in which GFDC stated that it "will be filing a formal complaint." Charter contacted GFDC by telephone in an effort to resolve its concerns.
- Charter and GFDC have engaged in good faith settlement negotiations over the last three weeks. The parties have reached an agreement on settlement terms and are in the process of documenting the agreement.

Respectfully submitted,

July 9, 2015

/s/ Samuel L. Feder

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**DECLARATION OF REGINA DAY**

1. My name is Regina Day. I am the Director over the Corporate Escalations Desk for Charter Communications, Inc. ("Charter"). I am responsible for supervising Charter's investigations into complaints filed by Charter customers with the FCC, state PSCs, Better Business Bureaus, and the state Attorney General offices.

2. According to Charter's records, Charter first installed Internet services with Global Franchise Development Corporation ("GFDC") on November 21, 2002. At that time GFDC executed a contract with Charter for Internet service with a 36 month term.

3. GFDC executed a "Business Internet Service Agreement" with Charter on October 10, 2006. This service agreement had a 24 month term with a month-to-month extended term.

4. GFDC executed a “Business Internet, Video, Music and Telephone Service Agreement” with Charter on January 25, 2011. This service agreement had a one month term with a year-to-year extended term.

5. According to Charter’s records, on March 20, 2013, Charter representative Maury Fogle provided a quote to GFDC for both Internet and Voice services.

6. On May 1, 2013, GFDC executed several documents with Charter. First, Ms. Terry Curry, on behalf of GFDC, executed a new “Business Internet, Video, Music Service Agreement and Telephone Service Agreement” (“2013 Service Agreement”). The 2013 Service Agreement has a one year term with a month-to-month extended term. GFDC is still purchasing Internet services under this 2013 Service Agreement.

7. Also on May 1, 2013, Ms. Curry executed an electronic Letter of Authorization (“LOA”) on behalf of GFDC. The LOA contains the following specific provision regarding toll free service: “I want to change my Inbound 800 – Toll Free Service Provider. By checking here and selecting Accept below, I authorize Charter Fiberlink to become my inbound toll free service provider in place of my current provider(s) for inbound 800 toll free service for the telephone number(s) listed above. I also understand that I have selected a new Responsible Organization with the identification number of KSW01 (L3).”

8. The third document executed by Ms. Curry on behalf of GFDC on May 1, 2013, was a permission form that authorized Charter to submit a Customer Service Request (“CSR”) to AT&T to obtain information on the GFDC account with AT&T.

9. According to Charter records, on May 2, 2013, Charter representative Jerry Juarez prepared and submitted two CSRs to AT&T. One CSR was for the GFDC corporate headquarters and the other CSR was for a GFDC store location.

10. On May 6, 2013, Charter's Service Activation Representative, Dana Cosgrove, sent a Responsible Organization Letter of Authorization to Level 3 for the toll free number (888-396-8421). The delivery date listed on the Responsible Organization Letter of Authorization was May 14, 2013.

11. According to Charter's records, on May 9, 2013, at 3:11 PM, Charter representative Megan Edwards made the following entry regarding GFDC into the Charter Salesforce Notes: "Terry [Curry] called in to confirm installs, she says they do have a phone system and her boss doesn't want to confirm this until they speak to the sales rep and find out if they need a vendor there or not. Leaving as is for now and they will call back."

12. According to Charter's records, the installation of Voice services at the GFDC premises was scheduled for 8:00 AM to 12:00 Noon on May 14, 2013.

13. On the morning of May 14, 2013, a Charter technician visited the premises of GFDC to complete a site survey and a customer equipment analysis. The Charter technician was also prepared to install Charter Voice services at the GFDC location that morning. The Charter technician determined that the telephone equipment owned by GFDC was not compatible with Charter's Voice services and the Charter technician informed GFDC that they would need to upgrade their equipment.

14. On the morning of May 14, 2013, GFDC told the Charter technician that GFDC would not upgrade its equipment. GFDC also canceled its request for Charter Voice services, including toll free service.

15. Charter immediately canceled its request to have GFDC's local numbers ported to Charter. GFDC's local numbers were never ported to Charter.

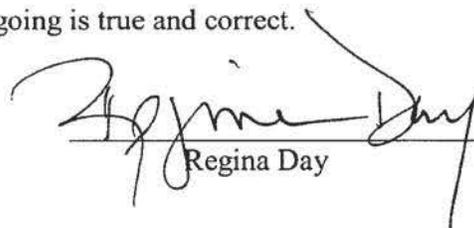
16. According to Charter's records, on May 14, 2013, at 4:10 PM, Charter representative Julie Brinkman made the following entry addressed to Ashley Smith in the Charter Salesforce Notes: "Install was canceled but we own the customer toll free TN 8883968421. Please have the customer contact their provider to port this back. If a valid port away request is not received for this by 05/21 it will be suspended."

17. According to Charter's records, on May 17, 2013, at 10:56 AM, Charter representative Ashley Smith made the following entry addressed to Maury Fogle in the Charter Salesforce Notes: "Please see below for the update on this location. Please advise on how to proceed." One hour later on that same day, May 17, 2013, at 12:13 PM, Charter representative Maury Fogle made the following entry [with typos] addressed to Ashley Smith in the Charter Salesforce Notes: "They were very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?"

18. According to Charter's records, Mr. Fogle's telephone call with GFDC on May 17, 2013 was the last communication between Charter and GFDC regarding the GFDC toll free number until February 14, 2014. For nine months, from May 17, 2013 until February 14, 2014, Charter has no record of any communications between Charter and GFDC regarding the GFDC toll free number.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/6/15

  
Regina Day



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**DECLARATION OF MICHAEL D. HENRY**

1. My name is Michael D. Henry. I am the Manager of the Telephone Customer Care Advocacy for the Corporate Escalations Desk for Charter Communications, Inc. ("Charter"). I first became the Manager of the Telephone Customer Care Advocacy on April 1, 2012. I am responsible for investigating complaints filed by Charter customers with the FCC, state PSCs, Better Business Bureaus, and the state Attorney General offices. I was the Manager of the Telephone Customer Care Advocacy in April and May of 2014, when Global Franchise Development Corporation ("GFDC") filed an Informal Complaint, Complaint # 14-C00573456-1, with the FCC on April 23, 2014.

2. The FCC Informal Complaint was filed by Mr. Patrick Sturdy on behalf of Global Franchise Development Corporation. Mr. Sturdy provided his name, address, and phone number in the FCC Informal Complaint in the place that typically the customer identifies his name and

address. However, the address and phone number provided by Mr. Sturdy in the FCC Informal Complaint belonged to the law firm of Cummings, McClorey, Davis & Acho and was not the corporate offices of GFDC. Also, Mr. Sturdy was not listed as one of the four authorized users on the GFDC account with Charter.

3. The GFDC Informal Complaint alleged that Charter wrongfully ported and then disconnected GFDC's toll free number 1-888-396-8421. It was my responsibility to supervise Charter's research into the GFDC toll free number.

4. To obtain more information regarding the GFDC toll free number, I attempted to contact Mr. Sturdy on April 21, April 23, April 24, and April 25, 2014. Mr. Sturdy never returned any of these calls.

5. On May 5, 2014, I sent a letter to Mr. Sturdy stating:

Charter has attempted to contact you but has been unable to reach you. Charter values you as a customer and would like the opportunity to address your concerns. However, it is difficult for us to provide further assistance without being able to speak directly with you. Please contact my office directly at 864-297-2248 at your earliest convenience.

Mr. Sturdy never responded to my letter and I never spoke with Mr. Sturdy.

6. In April and May of 2014, I supervised the research on GFDC's account with Charter. The investigation team that I managed found no record of the GFDC toll free number in the GFDC account with Charter. We also researched the Charter billing system. We found no record of the GFDC toll free number in the Charter billing system and we found no record of any calls to the GFDC toll free number being billed by Charter. After researching all the Charter computer records that were available to our team, we found no record of Charter receiving any inbound toll free calls placed to the GFDC toll free number in any of the Charter computer systems.

7. On May 14, 2015, Charter filed its Report with the FCC in response to GFDC's Informal Complaint. In the Report, Charter made the following statements: "A Charter representative was unable to locate any records reflecting that the toll free number (888) 396-8421 was ported to Charter." "However, the Exotic Sportz account has no record of the toll free number (888) 396-8421."

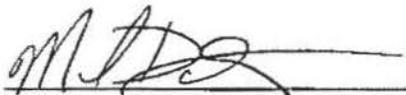
8. Charter continued its efforts to contact GFDC after May 14, 2014. According to Charter's records, Charter attempted to call GFDC twice on June 2, 2014. Charter was unable to leave a message on the first call attempt, but did leave a voice message on the second call attempt. Charter attempted to call GFDC on June 3, 2014, and left a voice message. Charter attempted to call GFDC on June 4, 2014, and left a voice message. Charter called GFDC on June 6, 2014, and spoke with a representative of GFDC. There is no record of what was said during this telephone call. Charter attempted to call GFDC on June 10, 2014, but Charter could not leave a voice message.

9. After June 10, 2014, Charter has no record of any further communications between GFDC and Charter regarding the GFDC toll free number.

10. In April of 2015, I received a copy of the March 31, 2015 demand letter from Ms. Kali Henderson on behalf of GFDC. Ms. Henderson is an attorney working for Cummings, McClorey, Davis & Acho, the same law firm that filed the FCC Informal Complaint on April 23, 2014 on behalf of GFDC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7/6/2015

  
Michael D. Henry



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**DECLARATION OF MIKE L. CHAPMAN**

1. My name is Mike L. Chapman. I am the Director of Service Delivery for Charter Communications, Inc. ("Charter"). I first became the Director of Service Delivery on June 28, 2010. I am responsible for supervising the installation and provisioning of Charter Voice services to Charter Business customers, which includes the installation and provisioning of toll free service. I was the Director of Service Delivery in May of 2013, when Global Franchise Development Corporation ("GFDC") first requested and then canceled its service order for Charter Voice services, including toll free service.

2. Charter uses a third party vendor, Level 3 Communications, Inc. ("Level 3"), to provide Responsible Organization ("RespOrg") services for Charter's toll free customers. A RespOrg is a company that administers and maintains the registration for toll free telephone numbers in the central Service Management System/800 database ("SMS Database"). As a

RespOrg, Level 3 implements Charter's requests to change the status of, or the Carrier Identification Code ("CIC") for, the toll free numbers of Charter's customers and updates the SMS Database accordingly.

3. Every toll free number is assigned to a carrier through a CIC. When a local customer dials a toll free number, the Local Exchange Company for that customer sends a message to the SMS Database administrator to obtain the CIC for that toll free number. The Local Exchange Carrier then routes the toll free call to the terminating carrier that is identified by the CIC. When the terminating carrier receives the toll free call, the terminating carrier translates the toll free number into a local number and terminates the call to that local number.

4. For a toll free number to be moved to a new carrier, the RespOrg for that toll free number sends a request to the SMS Database administrator to change the CIC from the prior carrier's CIC to the new carrier's CIC.

5. Because Level 3 provides RespOrg services on behalf of Charter, Charter also uses Level 3's CIC to provide toll free service to Charter customers. As such, a call made to a toll free number owned by a Charter customer is received by Level 3, which then transposes the toll free numbers into local telephone numbers. After an incoming toll free call has been transposed, Level 3 routes the call to Charter over a dedicated trunk group.

6. In order for Charter to install, activate and test a toll free number, Charter must submit a CIC change request to Level 3 prior to the installation, activation and testing.

7. On May 1, 2013, GFDC executed a Letter of Authorization that authorized Charter to change the CIC for GFDC's toll free number from the AT&T CIC to the Level 3 CIC.

8. On May 6, 2013, Charter's Service Activation Representative, Dana Cosgrove, submitted a Responsible Organization Letter of Authorization for toll free number 1-888-396-

8421 to Level 3. The Responsible Organization Letter of Authorization listed a delivery date of May 14, 2013.

9. Given the amount of time that has passed, Charter does not have a record of sending a request to Level 3 to change the CIC to Level 3. On Thursday, June 18, 2015, I contacted Level 3 to determine if Level 3 possessed any records of a request from Charter to change the CIC for GFDC's toll free number. Level 3 confirmed that Charter submitted a request to change the CIC on May 14, 2013.

10. According to Charter's records, a Charter technician visited the premises of GFDC on the morning of May 14, 2013 to complete a site survey and a customer equipment analysis. The Charter technician was also prepared to install Charter Voice services at the GFDC location that morning. The Charter technician determined that the telephone equipment owned by GFDC was not compatible with Charter's Voice services and the Charter technician informed GFDC that GFDC would need to upgrade their equipment.

11. On the morning of May 14, 2013, GFDC told the Charter technician that GFDC would not upgrade its equipment. GFDC also canceled its request for Charter Voice services, including toll free service.

12. Upon GFDC's cancellation of Charter's telephone services, Charter promptly canceled its request to port GFDC's local numbers to Charter. The local telephone numbers for GFDC remained with AT&T and were not ported to Charter.

13. Charter and Level 3 did not have any mechanism or authority to change the CIC back to AT&T. The Letter of Authorization executed by GFDC on May 1, 2013, authorized Charter only to become the inbound toll free service provider. The LOA did not authorize Charter to select AT&T as the new toll free service provider for GFDC. Instead, GFDC was

responsible for contacting a new carrier to provide service to its toll free number. That carrier would then request that Level 3 change the CIC for its toll free number to the new carrier, or would change the RespOrg and have the new RespOrg change the CIC.

14. According to Charter's records, Charter representative Maury Fogle contacted GFDC on May 17, 2013, to obtain an update on how GFDC wished to proceed. Mr. Fogle made the following entry [with typos] at 12:13 PM on May 17, 2014, regarding GFDC: "They were very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?" This is the only record Charter has of the May 17, 2013 telephone conversation between Mr. Fogle and GFDC.

15. Charter does not have any call detail records of the toll free number, 888-396-8421, or the GFDC local telephone number associated with the toll free number, 734-878-2002.

16. After GFDC canceled its telephone services with Charter on May 14, 2013, any call to GFDC's toll free number would have been routed in one of two possible manners, from a technical standpoint, each of which is described below. In either case, the toll free number would have been nonworking and any person who called the toll free number 888-396-8421 would have received either dead air or a message stating "The number that you are calling is no longer in service."

Alternative #1: From May 14, 2013 through August 26, 2013, any telephone call placed to the toll free number 888-396-8421 was routed to Level 3, pursuant to the Level 3 Carrier Identification Code that was assigned to the toll free number 888-396-8421. If Charter had requested Level 3 to translate the toll free number into the GFDC local number (734-878-2002), then Level 3 would have performed that translation and routed

the call to Charter over a trunk group to the Charter network (Charter has no record of its requests to Level 3 for processing toll free calls for the number 888-396-8421). When the inbound call to the GFDC local number (734-878-2002) reached the Charter network, the Charter Sonus Platform would identify the 734-878-2002 number as not being served by Charter. At this point, the person calling the toll free number would receive either dead air or a message stating “The number that you are calling is no longer in service.” Under this scenario, none of the calls placed to the toll free number 888-396-8421 between May 14 and August 26, 2013 were routed to a working telephone number.

Alternative #2: From May 14, 2013 through August 26, 2013, any telephone call placed to the toll free number 888-396-8421 was routed to Level 3, pursuant to the Level 3 Carrier Identification Code that was assigned to the toll free number. However, since Charter was not providing service to the GFDC local number (734-878-2002), Charter may have requested that Level 3 translate the toll free number into a non-service number and route the call to Charter over a trunk group to the Charter network (Charter has no record of its requests to Level 3 for processing toll free calls for the number 888-396-8421). When the inbound call to the non-service number reached the Charter network, the Charter Sonus Platform would route the call to that non-service number. At this point, the person calling the toll free number 888-396-8421 would receive either dead air or a message stating “The number that you are calling is no longer in service.” Under this scenario, none of the calls placed to the toll free number 888-396-8421 between May 14 and August 26, 2013 were routed to a working telephone number.

17. Charter has a process to request that toll free numbers that are not assigned to a Charter customer's account after a period of time be placed in Disconnect Status, pursuant to the Industry Guidelines for Toll Free Number Administration.

18. On Thursday, June 18, 2015, I contacted Level 3 to determine Level 3 possessed any record of a request from Charter to place the toll free number 888-396-8421 into Disconnect Status. Level 3 stated that Charter submitted an order to disconnect the GFDC toll free number on August 26, 2013.

19. Level 3 informed me that Level 3 placed the toll free number 888-396-8421 into Transitional Status on August 26, 2013.

20. Level 3 also informed me Level 3 placed the toll free number 888-396-8421 into Spare Status on December 26, 2013. Level 3 also reported to me that the toll free number was reserved by another carrier on December 26, 2013.

21. Level 3 has confirmed that while the toll free number was in Transitional Status, from August 26, 2013 through December 26, 2013, any telephone call to the number would have received either dead air or a message from Level 3 stating "The number that you are calling is no longer in service."

22. According to Charter's records, there were no communications between Charter and GFDC regarding the toll free number between May 17, 2013 (the last call placed by Charter representative Maury Fogle) and December 26, 2013 (the date the toll free number was placed into Spare Status). During this time Charter never received a request to assign a new RespOrg to the toll free number 888-396-8421, or received a request from a new RespOrg to change the CIC for the toll free number.

23. If GFDC had contacted Charter between May 17 and December 26, 2013, Charter would have been able to provide guidance to GFDC on how to reactivate its toll free number. Likewise, I also believe that if GFDC had contacted AT&T during this time, AT&T could have provided guidance to GFDC on how to reactivate their toll free number.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 07/06/15

  
Mike L. Chapman





# Exhibit 1

## **BUSINESS INTERNET, VIDEO, MUSIC SERVICE AGREEMENT AND TELEPHONE SERVICE AGREEMENT**

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Both parties desire to enter into this Agreement and Order to set forth the general terms under which Charter is to provide Customer with Charter's services ("Service" or "Services") to the Customer's place(s) of business, the scope and description to be specified in the Service Order section below. This Agreement will be effective after presentation by Charter to and upon electronic acceptance by Customer.

The Services to be provided under its respective Agreement hereunder shall be performed and rendered separately by one of or both of the Charter affiliates specified below. The operations, acts, or omissions related to, and/or provision of one of the Services by the respective Charter affiliate, is exclusive to the distinct Service such Charter entity is rendering consistent with the language of this Agreement, and as such, the applicability of the terms and conditions set forth herein respect to each such Service and Service-rendering Charter entity is individual and exclusive to such Service and corresponding Charter entity (not collective, cumulative, nor joint and several). A default by one Charter entity with respect to one Service shall not be considered a default by the other Charter entity with respect to the other Service, and any liability on Charter's part hereunder shall strictly be limited to the respective Service and Service-rendering Charter entity out of which such liability arises.

Customer's continued use of the Service(s) after the implementation of any change(s) to either the Commercial Terms of Service or the applicable Charter Telephone Service Tariff(s)/Service, Price and Terms Guide, each of which may change from time to time, shall reflect Customer's agreement thereto. Customer shall have the right to terminate this Service Order in the event Customer objects to any material change to the Commercial Terms of Service that adversely affects Customers rights under this Agreement by providing Charter with written notice within sixty (60) days of such change and provided that Customer pays any unpaid or previously by waived one-time charges.

### **BUSINESS INTERNET, VIDEO AND MUSIC**

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Business Internet, Video and Music services are offered and shall be provided hereunder by and between CC VIII Operating, LLC, (hereafter, "Charter Business" or "Charter") with corporate offices at 853 McIntosh Wausau WI 54403 and Exotic Sportz, ("Customer") with its place of business at 125 Pearl St., Suite 1 , Pinkney MI 48169 ("Service Location"). Charter and Customer agree to the terms and conditions of this agreement, including the Commercial Terms of Service applicable to Business Internet, Video and Music Services and of which are posted to the Charter website, [www.charterbusiness.com](http://www.charterbusiness.com). Customer's execution hereunder shall represent Customer's acknowledgement and agreement of the Commercial Terms of Service.

### **BUSINESS TELEPHONE**

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Telephone services are offered and shall be provided hereunder by and between Charter Advanced Services (MI), LLC, (hereafter, "Charter Business" or "Charter") with corporate offices at 853 McIntosh Wausau WI 54403 and Customer. Charter Business Telephone Service is governed by the terms and conditions contained in the applicable Tariff(s)/Service, Price and Terms Guide for the U.S. state in which the Service is provided and any applicable federal tariff. The applicable Charter Telephone Service Tariff(s)/Service, Price and Terms Guide for your state can be found at Charter's website, [www.charterbusiness.com](http://www.charterbusiness.com) (or any successor URL), and clicking on your U.S. state.

**Single Service Payment Limitation.** If Customer has not signed a valid Service Order for any other Charter Services (those Services not otherwise ordered under a Business Telephone Order) or a Service Order for other Charter Services is terminated for any reason, or Customer does not otherwise maintain a subscription to such other Charter Services, Customer must (i) sign up for Charter's automatic payment option before Services will be provided under this Business Telephone Order and (ii) maintain a valid account for the automatic payment option for not less than six (6) months from the date the Business Telephone Service is installed. Should a valid account not be maintained for the automatic payment option during such six (6) month period, Customer's Business Telephone Service may be subject to disconnection.

**911** One of the most important elements of Enhanced Universal Emergency Number Service E911 is automatic location information (ALI). ALI informs the Public Safety Answering Point (PSAP) of the 911 callers name and address. In cases where the 911 caller is unable to provide this information, for whatever reason, ALI furnishes this information instantaneously, thereby facilitating the PSAP to respond appropriately. As currently offered, however, the location provided by regular ALI will be the same for all lines on the same account.

Your Charter installed telephone equipment must not be moved without first contacting Charter. If it is relocated, in the event you dial 911, your location information will not be transmitted properly and you will be required to supply the emergency operator with the address of the emergency. The Charter installed equipment also has battery backup, intended to supply four (4) hours of standby time and three (3) hours of user time in case of a power outage. In the event the battery life is exhausted and your power is out you will not be able to use your service including 911.

Charter Business™ Telephone Service does not support multiple address locations. The only address sent to the 911 operator for all telephone numbers is the service address listed on the account. You agree to advise all individuals who may place calls using your Charter service from a location which cannot be seen or identified at the address on the account of this limitation.

**You will be responsible for directing any emergency personnel, related to a 911 call, to the correct building, room, location, or person in need of emergency assistance.**

**Third Party Verification/ Letter of Authorization.** FCC Regulations require telephone companies and long distance service providers to verify a subscribers selection of a provider of telephone exchange service or telephone toll service. Customer may elect to identify above up to three employees in their company to be authorized to verify your selection of Charter Telephone Services via Charter's toll-free third party verification ("TPV") or Letter of Authorization ("LOA") process where applicable. If this verification is not completed, this contract will not be valid.

**Customer Supplied Equipment.** Charter is not responsible for the installation, maintenance, compatibility or performance of any Customer-supplied hardware, firmware or software with the Services.

**Government/Institutional Customers.** If Customer is a Federal, state or local government, an agency, department, division or subdivision of a Federal, state or local government, a hospital or health care facility, school or school district, or military installation and/or public safety agency, the following is provided for clarification:

**Directory Listings.** In the event Customer has selected on this Service Order the option for "Blue Pages," Charter will exercise commercially reasonable efforts to provide Customer with a specialized listing in the governmental section (i.e. "blue pages") of a printed telephone directory to the same extent that such specialized listings are

provided by the incumbent telephone provider in the directory made available in the Customer's area. Should Charter be unable to provide Blue Page listings, Customer shall not be liable for applicable fees for Blue Pages until such time as Charter is able to provide such Blue Pages. Charter shall not be in default of this Order if it is not able to provide the Blue Page(s).

**Special Requirements.** Prior to ordering any Service or requesting any modification of the Service or any other special arrangements (such as billing or reporting), Customer shall provide written notice to Charter in the event (i) any Customer methods or requirements at the Customer Service Location regarding Service(s) or equipment installation, maintenance and repair (including any requirements for cabling and/or grounding), access to Customer's premises, or other similar business procedures, and (ii) any requirements for specialized equipment or materials at the Customer Service Location. Charter is not obligated to comply with such methods or requirements to the extent that such methods and/or requirements are not specifically described in a Service Order accepted by Charter related to such Customer order or request.

**No Priority Restoration.** Charter does not offer nor provide priority restoration of Service(s).

**Business Internet, Video and Music Monthly Fees:**

**Video Services**

No Video Services included on this order.

**Music Services**

No Music Services included on this order.

**Business Internet Services**

Product	Quantity	Price
BI: Essentials30 (30M Down / 4M Up) Bundle	1	\$55.00

**Additional Services**

No Additional Services included on this order.

**Total Business Internet, Video and Music Monthly Fees: \$55.00**

**Telephone Monthly Fees**

**Business Telephone Line #1:**

BT: LD minutes - 01000 B	\$35.99
BT: 800 -SW Access	\$2.00
BT: Basic Feature Package Bundle	\$4.99
BT: Business line (ported) Bundle	\$18.99
BT: CPE - MTA	\$0.60
BT: Feature - Voice Messaging	\$5.00

**Business Telephone Line #2:**

BT: Business line (ported) Bundle	\$18.99
BT: Complete Feature Package Bundle	\$15.99
BT: CPE – MTA	\$0.60

**Business Telephone Line #3:**

BT: Basic Feature Package Bundle	\$4.99
BT: Business line (ported) Bundle	\$18.99
BT: CPE – MTA	\$0.60
BT: Feature – Voice Messaging Group	\$5.00

**Business Telephone Line #4:**

BT: Business line (ported) Bundle	\$18.99
BT: CPE – MTA	\$0.60

**Business Telephone Line #5:**

BT: Basic Feature Package Bundle	\$4.99
BT: Business line (ported) Bundle	\$18.99
BT: CPE – MTA	\$0.60
BT: Feature – Voice Messaging	\$5.00

**Total Business Telephone Monthly Fees: \$181.90**

**TOTAL FEES:**

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Total Monthly Service Fees of \$236.90 are due upon receipt of the monthly invoice.

Total One-Time Charges of \$0.00 are included in the first monthly invoice.

**SERVICE PERIOD.** The initial Service Period of the above Service Order(s) shall begin on the date the Services are functional in all material respects and available for use (the "Turn-up Date") and shall continue for a period of 1 month(s).

Upon expiration of the initial Service Period, this Service Order shall automatically renew for successive one-month terms unless either party terminates this Service Order by giving thirty (30) days prior written notice to the other party before the expiration of the current term.

Video Services are subject to rate increases during the term of the contract as described in the section titled, "Video, Music and Content Services" in the Commercial Terms of Service.

**SERVICEABILITY.** Customer understands and agrees that in the event during a survey or assessment of any

Service Location prior to or during installation of the Services, Charter determines that the cost(s) to complete such installation or to provide and maintain the Service(s) exceeds its previous assessment undertaken to extend the respective Services at the pricing presented herein, Charter shall notify Customer and provide Customer with the OTC(s) and/or increase in MSF, as applicable, and Customer shall have the right to agree to pay such OTC(s) and/or increased MSF or terminate this Service Order, provided that Customer provides written notice of termination within five (5) business days of receiving the same. Customer's failure to terminate this Service Order within such timeframe shall be deemed an affirmative election to agree to pay such OTC(s) and/or increased MSFs.

Customer accepts and executes this Agreement by its duly authorized representative, and Customer understands that such electronic acceptance on Customers behalf of this unilateral contract shall bind Customer and Charter to the terms hereof and that signature by an authorized representative of Charter is not necessary to effect the agreement of the parties hereto provided that this Agreement has been completely filled out by Charter prior to presentation to Customer.

Name: Terry Curry  
Title: Office Manager  
Date: Wednesday, May 01, 2013  
Sent To: info@hellsurvivors.com

To send a link of an online version of this contract, please follow the instructions below.

To send the link to: info@hellsurvivors.com click the "Send Link" button.



# Exhibit 2

Task Call

Help for this Page

1 7 31

Attachments

Task Detail

Edit Create Follow-Up Task Create Follow-Up Event

Assigned To	<a href="#">Megan Edwards</a>	Status	Completed
Subject	Call	Name	
Due Date	5/9/2013	Related To	<a href="#">Exotic Sportz - Telephone</a>
Phone		Email	
Priority	Normal	Type	
DNIS		Call Type	
Call Duration		Call Result	
Service Add/Change			
MRR Change			
Created By	<a href="#">Megan Edwards</a> , 5/9/2013 3:11 PM	Last Modified By	<a href="#">Megan Edwards</a> , 5/9/2013 3:11 PM
Comments	Terry called in to confirm installs, she says they do have a phone system and her boss doesnt want to confirm this until they speak to the sales rep and find out if they need a vendor there or not. Leaving as is for now and they will call back.		

Reminder

Reminder

Edit Create Follow-Up Task Create Follow-Up Event

Attachments

No records to display

Back To Top

Always show me more records per related list



# Exhibit 3

From: Maury Fogle [mfogle@inveniemarketing.com](mailto:mfogle@inveniemarketing.com)  
To: Smith, Ashley T <[Ashley.Smith3@charter.com](mailto:Ashley.Smith3@charter.com)>  
Received at: 5/17/2013 12:13:47 PM

They are very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?

You can cancel the phone install.

Maury

From: Smith, Ashley T [mailto:[Ashley.Smith3@charter.com](mailto:Ashley.Smith3@charter.com)]  
Sent: Friday, May 17, 2013 10:56 AM  
To: [mfogle-charter@offer-center.com](mailto:mfogle-charter@offer-center.com)  
Subject: FW: Tollfree Ownership

Hello Maury,

Please see below for the update on this location:

<https://ssl.salesforce.com/00600000000ACQQY>

Please advise on how to proceed.

Thank you and have a great day!

charter\_email\_logo

Ashley Smith | Sales Support Coordinator CB

Channel Partners: 888-362-4802 | National Accounts: 866.472.1300  
10300 Ormsby Park Place, Louisville, Ky 40223

From: Julie Brinkman [mailto:[julie.brinkman@chartercom.com](mailto:julie.brinkman@chartercom.com)]  
Sent: Tuesday, May 14, 2013 4:10 PM  
To: Smith, Ashley T  
Subject: Tollfree Ownership

EX 3 001

New Task

To: Ashley Smith

Julie Brinkman has assigned you the following new task:

Subject: Tollfree Ownership

Opportunity: Exotic Sportz - Telephone

Priority: Normal

Comments: Hi Ashley, we have recieved a case on this customers Tollfree #. Please see below.

Install was cancelled but we own the customers toll free TN 8883968421. Please have the customer contact their provider to port this back, If a valid port away request is not received for this by 05/21 it will be suspended

thanks!

For more details, click the following link:

<https://ssl.salesforce.com/00T0000000hqvcd>

image001.jpg

Screenshot of above email exchange as it appears in Salesforce.com:

The screenshot shows a Salesforce task record titled "Email: RE: Tollfree Ownership". The task is assigned to Ashley Stron. The subject is "Email: RE: Tollfree Ownership", the due date is 5/17/2013, and the priority is Normal. The task is related to the "Exotic Sportz" opportunity. The task type is "Email". The task was created by Ashley Stron on 5/17/2013 at 11:40 AM. The comments section contains an email exchange from Maury Fogle to Ashley Stron, dated 5/17/2013 at 12:13:47 PM. The email content is: "They are very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?". Below the comments, there is a note: "You can cancel the phone install." and the name "Maury".

Assigned To	Ashley Stron	Status	ServiceabilityCheck
Subject	Email: RE: Tollfree Ownership	Name	
Due Date	5/17/2013	Related To	Exotic Sportz
Phone		Email	
Priority	Normal	Type	Email
DNS		Call Type	
Call Duration		Call Result	
Service Add/Change			
MRR Change			
Created By	Ashley Stron 5/17/2013 11:40 AM	Last Modified By	Ashley Stron 5/17/2013 11:40 AM
Comments	From: Maury Fogle mfofle@evomarketing.com To: Smith Ashley T <Ashley.Stron@salesforce.com> Received at: 5/17/2013 12:13:47 PM They are very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?		
	You can cancel the phone install.		
	Maury		

From: Smith, Ashley T (mailto:Ashley.Smith@charter.com)  
Sent: Friday, May 17, 2013 10:56 AM  
To: ash@cc.charter.com  
Subject: FW: Tollfree Ownership

Hello Maury

Please see below for the update on this location

<https://sfd.salesforce.com/0000000004CQ0Y>

Please advise on how to proceed

Thank you and have a great day!

charter\_email\_logo

Ashley Smith | Sales Support Coordinator CB  
Channel Partners 888-362-4602 | National Accounts 866-472-1300  
10300 Omsby Park Place, Louisville, KY 40223

From: Julie Brinkman (mailto:julie.brinkman@charter.com)  
Sent: Tuesday, May 14, 2013 4:10 PM  
To: Smith, Ashley T  
Subject: Tollfree Ownership

New Task

To: Ashley Smith

Julie Brinkman has assigned you the following new task

Subject: Tollfree Ownership  
Opportunity: Exotic Sports - Telephone  
Priority: Normal  
Comments: Hi Ashley, we have received a case on this customer's Tollfree #. Please see below

Install was canceled but we own the customer's toll free TN 8883668421. Please have the customer contact their provider to port this back. If a valid port away request is not received for this by 05/21 it will be suspended  
thanks!

For more details, click the following link

<https://sfd.salesforce.com/0010000000buzd>

image001.jpg

Reminder

Reminder

Edit Create Follow-Up Task Create Follow-Up Event

Attachments

No records to display



# Exhibit 4



ATTORNEYS AND COUNSELORS AT LAW  
33900 SCHOOLCRAFT ROAD • LIVONIA, MICHIGAN 48150 • PHONE: (734) 261-2400 • FACSIMILE: (734) 261-4510

Kali M. Lester  
klester@cnda-law.com

March 31, 2015

*VIA CERTIFIED MAIL*

Ms. Veronica Watts  
Manager-FCC Appeal Bureau  
AT&T  
One AT&T Way, Suite 412  
Bedminster, NJ 07921-0752

Mr. Michael Henry  
Executive Escalation Manager  
Charter Communications  
2 Digital Place  
Simpson, SC 29681

Level 3 Communications  
6185 E Huntley Road  
Worthington, OH 43229

**Re: Formal Complaint/FCC Informal Complaint No. 14-C00573456**

Dear All:

This correspondence is sent in accordance with 47 C.F.R. § 1.721(a)(8) to inform you that Global Franchise Development Corporation d.b.a. Exotic Sportz ("Global") is now pursuing a formal complaint against you regarding the illegal porting of its toll free number.

In May of 2013, Charter Communications ("Charter") solicited Global's business by offering to provide a quote to bundle their phone and internet services. After Charter analyzed Global's phone system, Global was informed that Charter would be unable to connect Global's phone system. Global decided not to pursue services with Charter since the phone system could not be connected. **Global was told by the Charter Representative that no changes had been made to the phone system.**

In January of 2014, it was brought to Global's attention that its 800 number was no longer directing traffic to Global, but instead to a company in the Adult Entertainment Industry. Global had been using this number for nearly two decades to establish itself as a leader in the Paintball Industry and now it was directing its customers, including minor children, to call an Adult hotline. This has severely damaged Global's sales and reputation.

Since learning of the problem, Global, with the assistance of its attorneys, have been investigating what happened. **Global has learned that on May 8, 2013, the number was ported from AT&T, Global's phone service provider, to Charter by Level 3.** On or around August 26, 2013, the number was disconnected. It was reserved by Beckham Telecom on December 26, 2013, and later sold by the same to America's Hottest Talk Line on January 9, 2014.

The porting of this number away from Global was illegally performed. Global never authorized Charter to port the number away from it. AT&T has reported that it received a Letter of Authorization that was signed by a representative of Level 3 and authorized by Terry Curry, an employee of Global. Terry Curry did not authorize the porting of this number and Global has yet to receive any information demonstrating that she did. Charter has repeatedly changed its position in regards to the porting of the number, even denying that the number was ever ported by Charter. Such conduct is reprehensible and reflective of Charter's irresponsible business practices.

Global will be filing a formal complaint based upon the above facts requesting \$600,000 in damages. If you wish to engage in earnest settlement negotiations, please contact me by April 22, 2015. I can be reached by telephone at (734)261-2400 or by email at [klester@cmda-law.com](mailto:klester@cmda-law.com).

Truly,



Kali M. Lester

KML/dlv

P:\dlv\Kali\Exotic\ConLetter 3-30-15.docx



# Exhibit 5

# Charter

COMMUNICATIONS

May 2, 2014

Mr. Patrick Sturdy  
33900 Schoolcraft  
Livonia, MI 48150

Dear Mr. Sturdy,

Our office has been notified of your recent inquiry filed with the FCC. Charter has attempted to contact you but has been unable to reach you. Charter values you as a customer and would like the opportunity to address your concerns. However, it is difficult for us to provide further assistance without being able to speak directly with you.

Please contact my office directly at 864-297-2248 at your earliest convenience. If I am temporarily unavailable please provide a number where you can be reached and the best time for us to give you a call.

I look forward to speaking and working with you to resolve your billing concerns as quickly as possible.

Sincerely yours,

Michael D. Henry  
Executive Escalation Manager  
Charter Communications  
2 Digital Place  
Simpsonville, SC 29681  
864-297-2248  
864-297-2236 (facsimile)



# Exhibit 6



May 14, 2014

**VIA ELECTRONIC FILING**

Federal Communications Commission  
Consumer Complaints  
445 12<sup>th</sup> Street  
Washington, D.C. 20554

Re: Notice of Informal Complaint  
Complainant: Sturdy, Patrick  
Complaint Number: 14-C00573456-1  
Date Served from FCC: 04/23/2014

Charter Communications ("Charter") received notice from the Federal Communications Commission of the above-referenced Notice of Informal Complaint (the "Notice"). This correspondence is Charter's response to the Notice.

A Charter representative was unable to locate any records reflecting that the toll free number (888) 396-8421 was ported to Charter.

The customer has an account with Charter under the business name "Exotic Sportz". The account has four authorized users, but Mr. Sturdy is not listed as an authorized user. The customer has been purchasing Internet service from Charter since August of 2002. However, the Exotic Sportz account has no record of the toll free number (888) 396-8421.

A Charter representative attempted to contact Mr. Sturdy on April 21, April 23, April 24 and April 25, 2014. On May 5, 2014, a letter was mailed to Mr. Sturdy providing Charter contact information.

Regards,

Janeen Domagalski  
Senior Regulatory Specialist

cc: Patrick Sturdy, Global Franchise Development Corp.



# Exhibit 7

Contact / Research Log - Ticket # 1169896

Submit

Contact Log

	Entered By	Date	Time	Contact Result	Type	
<b>Add</b>		 6/22/2015	3 <input type="text"/> : 30 <input type="text"/> PM <input type="text"/>	<input type="text"/>	<input type="text"/>	
<a href="#">Edit</a>	jwright1	06/02/2014	5:30 PM	No Contact / Could Not Leave a Message	Call	<a href="#">Delete</a>
<a href="#">Edit</a>	jwright1	06/02/2014	7:15 PM	Left Voicemail Message	Call	<a href="#">Delete</a>
<a href="#">Edit</a>	mgiralico1	06/03/2014	11:10 AM	Left Voicemail Message	Call	<a href="#">Delete</a>
<a href="#">Edit</a>	rcecil	06/04/2014	12:25 AM	Left Voicemail Message	Call	<a href="#">Delete</a>
<a href="#">Edit</a>	lhoback	06/06/2014	10:55 AM	Spoke with Customer	Call	<a href="#">Delete</a>
<a href="#">Edit</a>	jwright1	06/10/2014	7:20 PM	No Contact / Could Not Leave a Message	Call	<a href="#">Delete</a>



# Exhibit 8

## **Charter Fiberlink CC VIII, LLC**

**12405 POWERSCOURT DRIVE  
ST. LOUIS, MISSOURI 63131-3674**

### **COMPETITIVE ACCESS TELECOMMUNICATIONS SERVICES TARIFF**

#### **CONCURRENCE and ADOPTION NOTICE**

Charter Fiberlink CC VIII, LLC hereby concurs in and adopts the descriptions, services, terms, conditions and regulations of Charter Fiberlink – Michigan, LLC for the provision of local and message telecommunications services within the state of Michigan.

(C)  
|  
(C)

The Telephone Company reserves the right to cancel this concurrence and adoption notice after compliance with requirements as to tariff filings.

---

Issued under authority of the Michigan Public Service Commission in an order dated 2/24/05, in Case No. U-14355  
Issued: February 23, 2012 Effective: February 24, 2012

By: Betty Sanders  
Director Regulatory Affairs  
12405 Powerscourt Drive  
St. Louis, Missouri 63131-3674



**TABLE OF CONTENTS**

CHECK SHEET .....	2	
TABLE OF CONTENTS .....	3	
SYMBOLS .....	4	
SECTION 1 .....	1	(C)
1.1 Reserved for Future Use .....	1	(C)
1.2 Reserved for Future Use .....	2	(C)

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Issued under authority of the Michigan Public Service Commission in an order dated 2/24/05, in Case No. U-14355  
Issued: February 23, 2012

Effective: February 24, 2012

By: Betty Sanders  
Director Regulatory Affairs  
12405 Powerscourt Drive  
St. Louis, Missouri 63131-3674



# Exhibit 9









### **Application of Tariff**

This Tariff sets forth the terms and conditions of services applicable to furnishing intrastate common carrier local and interexchange communications services by Charter Fiberlink-Michigan, LLC (the "Telephone Company" or the "Company"), a competitive facilities-based provider, to customers within the state of Michigan.

The Company may assign its rights or delegate its obligations under this Tariff to any affiliate or successor in interest. The Customer may not transfer or assign his or her rights or obligations associated with the Services hereunder without the Company's prior written consent.

This Tariff is to be governed by and construed in accordance with the laws of the State of Michigan.

In the event of a conflict or inconsistency between (i) the Contract, as defined herein, and (ii) this Tariff, the Tariff will govern.

Should any provision of this Tariff be held by a court or administrative agency of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions of this Tariff will remain in full force and effect.

### **Explanation of Symbols**

The following symbols are used herein to identify schedule and text changes:

- (C) To signify a changed regulation or condition
- (T) To signify a change in text, but no change in regulation or condition
- (M) To signify relocation of text without change
- (N) To signify a new regulation or condition
- (D) To signify a discontinued regulation or condition











**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant,

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**INFORMATION DESIGNATION  
OF CHARTER COMMUNICATIONS, INC.**

Pursuant to 47 C.F.R. § 1.724(f), Charter Communications, Inc. (“Charter”) hereby submits this information designation in connection with its Answer to the Formal Complaint of Global Franchise Development Corp. d/b/a Exotic Sportz (“GFDC”).

**I. PERSONS WITH KNOWLEDGE – 47 C.F.R. § 1.724(F)(1).**

Charter attaches to this document as Table 1 a list of the names, titles, and addresses of persons with first-hand knowledge of facts alleged with particularity in Charter’s Answer, along with a description of the facts within each person’s knowledge.

**II. DESCRIPTION OF DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS – 47 C.F.R. § 1.724(F)(2).**

Charter attaches to this document as Table 2 a list of the documents, data compilations and tangible things in Charter's possession, custody, or control that are relevant to the facts alleged with particularity in Charter's Answer to GFDC's Formal Complaint.

**III. DESCRIPTION OF MANNER OF IDENTIFICATION OF PERSONS WITH KNOWLEDGE AND RELEVANT DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS – 47 C.F.R. § 1.724(F)(3).**

Charter identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to this dispute as follows: Ken Port, Senior Manager and Counsel for Charter, reviewed GFDC's Formal Complaint filed in this proceeding. Mr. Port contacted individuals with firsthand knowledge of information relevant to this dispute. The following Charter employees and their direct reports conducted an investigation to identify the persons and documents that are relevant to the dispute:

- Mike Chapman, Director of Service Delivery for Charter Business
- Regina Day, Director of Corporate Escalations
- Michael Henry, Manager of Telephone Customer Care Advocacy
- Jeremy Fyelling, Director of Service Activation for Charter Business

These individuals identified documents and other information relevant to the dispute, and also identified individuals directly or substantially involved in the matters averred in GFDC's Formal Complaint. Those individuals, likewise, identified documents and other information in their possession relevant to the dispute.

**TABLE 1: PERSONS WITH KNOWLEDGE**

<b>NAME</b>	<b>TITLE</b>	<b>BUSINESS ADDRESS</b>	<b>DESCRIPTIONS OF FACTS WITHIN PERSON'S KNOWLEDGE</b>
<b>Mike L. Chapman</b>	Director of Service Delivery for Charter Business	Charter Communications, Inc. 941 Charter Commons Drive Town and Country, Missouri	Mr. Chapman supervises the service delivery process for Charter Business customers. Mr. Chapman contacted Level 3 on June 18, 2015, to investigate whether Charter had submitted a Carrier Identification Code change request to Level 3 for the GFDC toll free number and whether Charter had submitted a disconnection request to Level 3 for the same toll free number.
<b>Regina Day</b>	Director of Corporate Escalations	Charter Communications Inc. 2 Digital Place Simpsonville, South Carolina	Ms. Day investigated the communications between the Charter Customer Care Representatives and GFDC from May 1, 2013 to present. Ms. Day is also able to verify the prior contracts executed by GFDC.
<b>Jeremy Fyelling</b>	Director of Service Activation for Charter Business	Charter Communications, Inc. 941 Charter Commons Drive Town and Country, Missouri	Mr. Fyelling supervises the service activation process for Charter Business customers. Mr. Fyelling has knowledge of the process, forms, and documents required to implement a toll free service on behalf of a Charter Business customer.
<b>Dana Cosgrove</b>	Workforce Admin Technical	Charter Communications, Inc. 3993 Heritage Place NW. Rochester, Minnesota	On May 8, 2013, Ms. Cosgrove was working in the Service Activation Group at Charter. Based upon the Exhibits presented by GFDC, on May 8, 2013, Ms. Cosgrove submitted a Responsible Organization Letter of Authorization to Level 3 for the GFDC toll free number.

NAME	TITLE	BUSINESS ADDRESS	DESCRIPTIONS OF FACTS WITHIN PERSON'S KNOWLEDGE
<b>Megan Edwards</b>	Sales Support Coordinator for Charter Business	Charter Communications Inc. 3605 Highway 52 North Rochester, Minnesota	On May 9, 2013, Ms. Edwards received a call from GFDC employee Terry Curry and made the following entry into the Charter Salesforce computer system. "Terry [Curry] called in to confirm installs, she says they do have a phone system and her boss doesn't want to confirm this until they speak to the sales rep and find out if they need a vendor there or not. Leaving as is for now and they will call back."
<b>Ryan J. Meade</b>	Broadband Senior Technician	7936 East M-36, Suite C Whitmore Lake, Michigan	On May 14, 2013, between 8:00 AM and 12:00 Noon, Mr. Meade visited the premises of GFDC. Mr. Meade has no independent recollection of this service visit. According to Charter's records of the service visit, Mr. Meade determined that the GFDC customer premise equipment would not support Charter's telephone service. GFDC told Mr. Meade that they would not update their equipment and told Mr. Meade to cancel the GFDC order for Charter telephone service.
<b>Julie Brinkman</b>	Former Charter Employee	Unknown	On May 14, 2013, at 4:10 PM, Ms. Brinkman made the following entry addressed to Ashley Smith in the Charter Salesforce computer system. "Install was canceled but we own the customer toll free TN 8883968421. Please have the customer contact their provider to port this back. If a valid port away request is not received for this by 05/21 it will be suspended."
<b>Ashley Smith</b>	Former Charter Employee	Unknown	On May 17, 2013, at 10:56 AM, Ms. Smith forwarded the inquiry created by Julie Brinkman to

NAME	TITLE	BUSINESS ADDRESS	DESCRIPTIONS OF FACTS WITHIN PERSON'S KNOWLEDGE
			Maury Fogle in the Charter Salesforce computer system and stated: "Please see below for the update on this location. Please advise on how to proceed."
<b>Maury Fogle</b>	Former Third Party Contractor Providing Services to Charter	Unknown	In March 2013, Mr. Fogle contacted GFDC to provide a quote on Charter telephone services. After GFDC canceled its service, Mr. Fogle responded to Ashley Smith's May 17, 2013 inquiry and made the following entry in the Salesforce computer system addressed to Ashley Smith: "They were very nonchalant about the phones. They have had them a long time and the owner doesn't want to bother getting a tech out for their phones. So they decided not to install the phones at this time. They are very adamant about not doing anything extra?"
<b>Brandon Seymour</b>	Resolution Specialist Charter Business	10300 Ormsby Park, Place Suite 100 Louisville, Kentucky	On February 19, 2014 at 5:05 PM, Mr. Seymour made the following entry in the Charter Salesforce computer system. "If the customer calls back let him know that Charter has no control over this number at this time. It was won back by the previous provider on 8/26/13 at that point they should have contacted him to see what was to be done with the number. That never happened and the toll free was purchased by another business on 12/26/13. We have management approval to send up a credit request to try to provide some sort of restitution. But on a technical stand point there is nothing Charter can do to restore this toll free number." (The credit request referenced in the entry

NAME	TITLE	BUSINESS ADDRESS	DESCRIPTIONS OF FACTS WITHIN PERSON'S KNOWLEDGE
			made by Mr. Seymour was never approved by Charter.)
<b>Nick German</b>	Resolution Specialist	3605 Highway 52 North Rochester, Minnesota	On February 19, 2014 at 6:01 PM, Mr. German contacted GFDC regarding GFDC's inquiry into its toll free number. Mr. German informed GFDC that Charter had no control over GFDC's former toll free number.
<b>Elaine Bowen</b>	Supervisor, Charter Business Repair	3605 Highway 52 North Rochester, Minnesota	Ms. Bowen spoke with representatives at GFDC in February 2014 in response to GFDC's inquiries about its former toll free number.
<b>Terry Curry</b>	Employee of GFDC	Unknown	Ms. Curry is listed as an authorized user on GFDC's account with Charter. Ms. Curry corresponded with Charter regarding the provision of telephone services to GFDC.
<b>Dave Massey</b>	Employee of GFDC	Unknown	Mr. Massey is listed as an authorized user on GFDC's account with Charter and may have corresponded with Charter regarding the provision of telephone services to GFDC.
<b>Mary Ellen Langer</b>	Employee of GFDC	Unknown	Ms. Langer is listed as an authorized user on GFDC's account with Charter and may have corresponded with Charter regarding the provision of telephone services to GFDC.

**TABLE 2: DESCRIPTION OF DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS**

<b>DATE</b>	<b>AUTHOR OR OTHER SOURCE / RECIPIENT</b>	<b>PHSYCIAL LOCATION</b>	<b>DESCRIPTION OF RELEVANCE</b>
October 10, 2006	Charter.	Charter.	Agreement between Charter and GFDC for the provision of Internet services.
January 25, 2011	Charter.	Charter.	Agreement between Charter and GFDC for the provision of Internet services.
May 1, 2013	Charter.	Exhibit 1 to Charter's Answer.	Agreement between Charter and GFDC for the provision of Internet and Voice services.
February 24, 2012	Charter.	Charter. Relevant excerpts of the Tariff are included as Exhibit 8 to Charter's Answer.	Tariff for Charter Fiberlink CC VIII, LLC, 2d Revised (Feb. 2012). Tariff governing the provision of telephone services to GFDC at the relevant time.
October 22, 2012	Charter.	Charter. Relevant excerpts of the Tariff are included as Exhibit 9 to Charter's Answer.	Tariff for Charter Fiberlink-Michigan, LLC, 4th Revised (Oct. 2012). Adopted in full by the Tariff governing the provision of telephone services to GFDC at the relevant time.

DATE	AUTHOR OR OTHER SOURCE / RECIPIENT	PHSYCIAL LOCATION	DESCRIPTION OF RELEVANCE
May 1, 2013	Charter.	Formal Compl. Ex. 8.	The LOA authorizes Charter to become the inbound toll free service provider for the toll free number 888-396-8421.
May 1, 2013	Charter.	Charter.	Charter Salesforce Opportunity Detail. This is a Charter internal database system that records the sale and implementation of telephone services for Charter Business customers. The Salesforce Opportunity Record establishes the time and date of events and communications between Charter and GFDC, concerning the installation of local telephone service on May 14, 2013.
May 6, 2013	Charter.	Formal Compl. Ex. 11.	Responsible Organization Letter of Authorization sent by Charter to Level 3 on May 6, 2013.
May 9, 2013	Charter.	Exhibit 2 to Charter's Answer.	Salesforce Call Record. Entry in Charter system documenting call with GFDC employee Terry Curry, stating "Terry called in to confirm installs, she says they do have a phone system and her boss doesn't want to confirm this until they speak to the sales rep and find out if they need a vendor there or not. Leaving as is for now and they will call back."

DATE	AUTHOR OR OTHER SOURCE / RECIPIENT	PHSYCIAL LOCATION	DESCRIPTION OF RELEVANCE
May 14, 2013	Charter.	Charter.	Salesforce Case Detail. Establishes the time and date of events and communications between Charter and GFDC concerning the cancelation of the local service order on May 14, 2013, including the cancelation of the toll free service
May 17, 2013	Charter.	Exhibit 3 to Charter's Answer.	Salesforce record of electronic communications between Julie Brinkman, Ashley Smith, and Maury Fogle on May 14 and May 17, 2013, that discuss contacting GFDC after GFDC canceled their local telephone service order with Charter.
May 2, 2014	Charter.	Exhibit 5 to Charter's Answer.	May 2, 2014 Letter from Charter to GFDC. The May 2, 2014 letter provides documentation of Charter's attempts to investigate and resolve the dispute alleged by GFDC. After filing the FCC Informal Complaint on April 23, 2013, Mr. Sturdy would not return the telephone calls from Charter representatives. This non-cooperation by Mr. Sturdy hindered Charter's ability to investigate the issues raised by GFDC.

DATE	AUTHOR OR OTHER SOURCE / RECIPIENT	PHSYCIAL LOCATION	DESCRIPTION OF RELEVANCE
May 14, 2014	Charter.	Exhibit 6 to Charter's Answer.	Response Letter from Charter to the FCC. The May 14, 2014 Response Letter documents that Charter was unable to locate any records reflecting that the toll free number 888-396-8421 was ported to Charter. The May 14, 2014 Response Letter also documents that Charter attempted to call Patrick Sturdy on April 21, April 23, April 24 and April 25, 2014.
June 2, 2014	Charter.	Exhibit 7 to Charter's Answer.	Call log establishing that Charter attempted to contact GFDC six times in June of 2014.
March 31, 2015	GFDC.	Exhibit 5 to Charter's Answer.	The March 31, 2015 Demand Letter states that GFDC is demanding \$600,000 in damages for the loss of the toll free number 888-396-8421.



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant,

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**CHARTER COMMUNICATIONS, INC.'S INTERROGATORIES**

Pursuant to 47 C.F.R. § 1.729(a) and the Commission's June 15, 2015 Notice of Formal Complaint, Defendant Charter Communications, Inc. requests that Global Franchise Development Corp. d/b/a Exotic Sportz answer each of the following interrogatories in writing and under oath:

**INTERROGATORY NO. 1**

Identify the number of telephone calls placed to the toll free number 888-396-8421 according to your AT&T monthly statements, for each month from, and including, April 2012 to, and including, March 2013.

**INTERROGATORY NO. 2**

Identify the total amount that you were charged for telephone calls made to the toll free number 888-396-8421 according to your AT&T monthly statements (not including any recurring

monthly toll free service charge), for each month from, and including, April 2012 to, and including, March 2013.

**INTERROGATORY NO. 3**

Identify the number of telephone calls placed to the toll free number 888-396-8421 according to your AT&T monthly statements, for each month from, and including, October 2013 to, and including, February 2014.

**INTERROGATORY NO. 4**

Identify the total amount that you were charged for telephone calls made to the toll free number 888-396-8421 according to your AT&T monthly statements (not including any recurring monthly toll free service charge), for each month from, and including, October 2013 to, and including, February 2014.

July 9, 2015

/s/ Samuel L. Feder  
Samuel L. Feder  
Jessica R. Hertz  
Amir H. Ali  
Jenner & Block LLP  
1099 New York Ave., NW  
Suite 900  
Washington, DC 20001  
SFeder@jenner.com  
(202) 639-6000  
(202) 639-6066 (facsimile)

*Attorneys for Defendant Charter Communications, Inc.*



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

GLOBAL FRANCHISE  
DEVELOPMENT CORP.  
D.B.A. EXOTIC SPORTZ,

Complainant,

v.

AT&T CORP. AND CHARTER  
COMMUNICATIONS, INC.,

Defendants.

EB Docket No. 15-132  
File No. EB-15-MD-004

**PROOF OF SERVICE**

Pursuant to 47 C.F.R. §§ 1.47(g) and 1.735(f), and the Commission's June 15, 2015 Notice of Formal Complaint, I hereby certify I caused the Answer of Defendant Charter Communications, Inc., and supporting documents, to be served upon the attorneys of record for each party by email and overnight mail at the following addresses:

Kali M. L. Henderson  
Seward Peck & Henderson  
210 East 3rd Street, Suite 212  
Royal Oak, Michigan 48067  
khenderson@sph-pllc.com

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July 9, 2015

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