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September 24, 2007

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

Re: In the matter of the formal complaint, application and request for emergency relief of Clear Rate Communications, Inc. against Local Exchange Carriers of Michigan, Inc., and Internet 123, Inc.
MPSC Case No. U-15424

Dear Ms. Kunkle:

Enclosed for filing, please find Internet 123, Inc.'s Answer to Complaint and Affirmative Defenses in the above-captioned proceeding. Proof of Service upon the Party of Record is also enclosed.

Very truly yours,

CLARK HILL PLC

Haran C. Rashes

HCR:pat
Enclosures

cc: Party of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the formal complaint,)	
application and request for emergency relief of)	
Clear Rate Communications, Inc. against)	Case No. U-15424
Local Exchange Carriers of Michigan, Inc. and)	
Internet 123, Inc.)	

INTERNET 123, INC.’S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Internet 123, Inc. (“Internet 123”), by and through its attorneys, Clark Hill PLC, and pursuant to Rule 509 of the Rules of Practice and Procedure¹ before the Michigan Public Service Commission (“Commission” or “MPSC”), hereby submits its Answer and Affirmative Defenses to the Formal Complaint, Application, and Request for Emergency Relief filed September 17, 2007 by Clear Rate Communications, Inc. (“Clear Rate” or “Complainant”) in the above-captioned proceeding and states as follows.

PARTIES

1. Complainant Clear Rate Communications, Inc. (“Clear Rate”) is a Michigan corporation with its principal place of business located at 24700 Northwestern Hwy, Suite 340, Southfield, Michigan 48075.

ANSWER: Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs.

¹ 1999 MAC R 460.17509.

2. *Clear Rate is a competitive local exchange carrier ("CLEC") that offers a variety of local, long distance, and enhanced telecommunications services to residential, business and governmental customers in Michigan.*

ANSWER: Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs.

3. *Respondent Local Exchange Carriers of Michigan, Inc. ("LECM") is a Michigan corporation and is a provider of basic local exchange service. LECM received its license to provide basic local exchange service in Michigan on April 23, 1999 in Case U-11877.*

ANSWER: Based upon information and belief, Internet 123 admits that Respondent Local Exchange Carriers of Michigan, Inc. ("LECM") is a Michigan corporation and a provider of basic local exchange service. Answering further, and based upon information and belief, Internet 123, notes that LECMI was initially licensed to provide basic local exchange service in all zones of the Grand Rapids District Exchange under its previous name of Mutual Information Exchange, Inc. in MPSC Case No. U-11877 on April 23, 1999. LECMI's license was expanded to include authority to serve all exchanges served in which Ameritech Michigan (now known as AT&T Michigan), Verizon North Inc., Contel of the South, Inc., d/b/a Verizon North Systems, CenturyTel of Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Midwest-Michigan, Inc., and CenturyTel of the Upper Peninsula, Inc. are the incumbent local exchange carriers, in MPSC Case No. U-12916 on July 11, 2001.

4. *LECM's principal place of business is 50572 Jefferson, New Baltimore, Michigan 48047.*

ANSWER: Based upon information and belief, Internet 123 admits the allegations contained in Paragraph 4 of the Complaint.

5. *Respondent Internet 123, Inc. ("I 123") is a Michigan corporation and is a provider of telecommunications services, including the reselling or wholesaling local exchange service.*

ANSWER: Internet 123 admits the allegations contained in Paragraph 5 of the Complaint that it is a Michigan corporation providing unregulated telecommunications services to the wholesale and resale markets. Answering further, Internet 123 denies as untrue the implication, contained in Paragraph 5 of the Complaint, that Internet 123 provides wholesale or resells *regulated* basic local exchange services.

6. *I 123 is an affiliate of LECM, shares the same corporate president with LECM, shares the same key employees with LECM, shares telecommunication facilities and equipment with LECM and shares the same business locations including their principal place of business at 50572 Jefferson, New Baltimore, Michigan 48047 with LECM.*

ANSWER: Internet 123 states that Paragraph 6 of the Complaint consists of a legal conclusion (that Internet 123 and LECMI are affiliates) to which no response is required. The allegations contained in Paragraph 6 of the Complaint are unclear because the term “affiliate” is not defined. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 6 of the Complaint. Specifically, Internet 123 denies as untrue that it and LECMI share a corporate president. The corporate president of Internet 123 is Dan Irvin. Upon information and belief, the corporate president of LECMI is James Kandler. Internet 123 denies as untrue that it shares any employees with LECMI. Internet 123 admits the allegation contained in Paragraph 6 of the Complaint that it shares the same business locations including their principal place of business at 50572 Jefferson, New Baltimore, Michigan 48047 with Respondent LECMI. Regarding the allegation that Internet 123 and LECMI share telecommunications facilities and equipment, without a definition of what the Complainant means by “shares,” Internet 123 is without knowledge or information sufficient to form a belief

as to such allegation, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Further, Internet 123 does admit that it purchases telecommunications facilities from and leases telecommunication facilities and equipment from LECMI and other carriers, none of which are affiliates of Internet 123. To the extent the Complainant seeks to “pierce the corporate veil” between Internet 123 and LECMI, the Michigan Supreme Court, in *Daymon v Fuhrman*, 474 Mich 920, 921; 705 NW2d 347 (2005) restated the Court of Appeals standard established in *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996), that to “pierce the corporate veil” a Complainant must establish the following three elements. “First, the corporate entity must be a mere instrumentality of another entity or individual. Second, the corporate entity must be used to commit a fraud or wrong. Third, there must have been an unjust loss or injury to the plaintiff.” Internet 123 denies that any of those elements have been alleged or established in the Complaint.

7. *LECM and I 123 are alter egos of each other and hereafter are referred to a LECM/I 123.*

ANSWER: Internet 123 states that Paragraph 7 of the Complaint consists of a legal conclusion (that Internet 123 and LECMI are (“alter egos of each other”)) to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 7 of the Complaint. In *Spartan Tube & Steel v Himmelspach*, 102 F3d 223 (6th Cir 1996), the Sixth Circuit Court of Appeals, citing the Michigan Court of Appeals in *Nogueras v Maisel & Assoc of Michigan*, 142 Mich App 71, 86; 369 NW2d 492, 498 (1985), held that “[a] court may find that one entity is the alter ego of another and pierce the corporate veil upon proof of three elements: first, the corporate entity must be a mere instrumentality of another; second, the corporate entity must be used to commit a fraud or wrong; and third, there must have been an unjust loss or injury to the plaintiff.” Internet 123 denies that any of those

elements have been alleged or established in the Complaint. Responding further, Internet 123 notes that use of the term “LECM/I 123” to refer to two separate corporate entities renders many of the additional allegations in the Complaint confusing and difficult to answer, as no such combined entity exists. Likewise, Complainant’s use of the term “LECM/I 123” in both the singular and plural, sometimes within the same allegation, is confusing and makes it difficult to understand, let alone answer, such allegations

8. *Both LECM/I 123 provide regulated and unregulated services, including but not limited to local exchange service.*

ANSWER: Internet 123 denies as untrue the allegation contained in Paragraph 8 of the Complaint that Internet 123 provides “regulated services . . . including but not limited to local exchange service. Based upon information and belief, Internet 123 admits that LECMI provides “regulated and unregulated services, including but not limited to local exchange service.” Answering further, Internet 123 admits that it does provide unregulated telecommunications services. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

9. *LECM/I 123 resells or wholesales telecommunications services, including local exchange service to Clear Rate, and are interconnected with Clear Rate.*

ANSWER: Internet 123 admits the allegations, contained in Paragraph 9 of the Complaint, that it resells or wholesales unregulated telecommunications services; however Internet 123 denies as untrue any implication, contained in Paragraph 9 of the Complaint, that it resells or wholesales regulated telecommunications services, including regulated basic local

exchange service. Answering further, Internet 123 denies as untrue the allegation, contained in Paragraph 9 of the Complaint, that it is “interconnected” with the Complainant. Based upon information and belief, Internet 123 denies as untrue the allegation, contained in Paragraph 9 of the Complaint, that LECMI “resells or wholesales telecommunications services, including local exchange service to Clear Rate.” Based upon information and belief, Internet 123 denies as untrue the allegation, contained in Paragraph 9 of the Complaint, that LECMI is “interconnected” with the Complainant. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 9 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

COMPLAINANT’S SUMMARY OF ISSUE

10. This formal complaint, application and request for emergency relief or order pursuant to Section 203(13) is being filed as a result of the unlawful, discriminatory and retaliatory treatment LECM/I 123 have imposed upon Clear Rate which threatens to immediately disrupt Clear Rate's ability to serve its retail customers, including local exchange service and emergency 911 service.

ANSWER: The allegation contained in Paragraph 10 of the Complaint states a legal conclusion to which no response is required. To the extent that an answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 10 of the Complaint. Internet 123 is not, and has never, engaged in any unlawful, discriminatory and retaliatory treatment of any customer, including the Complainant. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 10 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

Responding further, upon information and belief, Clear Rate can quickly and efficiently move all of its services to another provider.

JURISDICTION

11. *Pursuant to Section 201 of the Michigan Telecommunications Act ("MTA"), the Commission has jurisdiction over this formal complaint. Section 201 of the MTA provides the Commission "the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations delegated to the state." MCL 484.2202(1).*

ANSWER: Internet 123 states that Paragraph 11 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 further states that Paragraph 11 of the Complaint appears to accurately quote certain portions of the MTA. To the extent any answer is required, Internet 123 admits the allegations contained in Paragraph 11 of the Complaint to the extent that such allegations are consistent with the MTA, and denies those allegations to the extent that such allegations are not consistent with the MTA.

12. *Section 203(1) of the MTA allows the Commission, upon the filing of a complaint, to "conduct an investigation, hold hearings and issue its findings and order under the contested hearing provisions of the administrative procedures act of 1969." MCL 484.2203(1).*

ANSWER: Internet 123 states that Paragraph 12 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 further states that Paragraph 12 of the Complaint appears to accurately quote certain portions of the MTA. To the extent any answer is required, Internet 123 admits the allegations contained in Paragraph 12 of the Complaint to the extent that such allegations are consistent with the MTA, and deny those allegations to the extent that such allegations are not consistent with the MTA.

13. *Section 205(1) provides this Commission with the authority to investigate and resolve complaints. MCL 484.2205(1).*

ANSWER: Internet 123 states that Paragraph 13 of the Complaint consists of a legal conclusion to which no response is required. To the extent any answer is required, Internet 123 admits the allegations contained in Paragraph 13 of the Complaint to the extent that such allegations are consistent with the MTA, and deny those allegations to the extent that such allegations are not consistent with the MTA.

14. *In addition, Section 204 of the MTA provides the Commission with the authority to resolve this dispute as an application because it involves a dispute between two providers and relates to a regulated service and a matter prohibited by Section 305. MCL 484.2204.*

ANSWER: The allegations contained in Paragraph 14 of the Complaint are unclear because of the use of the phrase “[i]n addition,” therefore Internet 123 is unable to respond to Paragraph 14 of the Complaint. Answering further, Internet 123 states that Paragraph 14 of the Complaint consists of a legal conclusion to which no response is required. To the extent any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 14 of the Complaint that this matter involves a dispute related to regulated services.

15. *This dispute involves an interconnection dispute between providers.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 15 of the Complaint. Internet 123 does not provide any “interconnection” to the Complainant as that term is defined in Section 102(l) of the MTA, MCL 484.2102(l), or in Section 251 of the Federal Communication Act of 1934, as amended, 47 USC § 251.

GENERAL ALLEGATIONS

16. Over three years ago, Clear Rate entered into an agreement with LECMI 123 to purchase wholesale basic local exchange and other telecommunications services for the provision of retail telecommunications services by Clear Rate. The services Clear Rate purchases from LECMI 123, include, but are not limited to:

- a. Collocation
- b. 24/7 unescorted Access to all Clear Rate Equipment
- c. 24/7 unescorted Access to the collocation room
- d. 24/7 unescorted access to all Cabinets
- e. Uninterrupted AC/DC Power
- f. Uninterrupted transport and cross-connect services
- g. Uninterrupted unrestricted Internet Bandwidth & Connectivity
- h. Maintenance of current Cabinet & Rack locations
- i. Maintenance of current security level of Cabinet & Rack locations
- j. ISDN PRI T-1 Service
- k. Local Exchange Service
- l. Intralata & Interlata Access Services
- m. EMERGENCY E911 services for all end-users currently served by E911
- n. CAS T-1 Service
- o. SS7 Interconnection & Trunking
- p. D-users currently served by E911
- q. Local Number Portability
- r. "Port-In" & "Port-Out" of Clear Rate telephone numbers or End-Use Telephone numbers
- s. Interoffice transport & ILEC Facilities
- t. DS-3 Multiplexer Units
- u. Interoffice transport
- v. Leased T-1 Services
- w. High-Speed Internet & Bandwidth
- x. 100 Megabit per second Internet Access

ANSWER: Internet 123 denies as untrue that it has any “agreement” to provide the listed services to Clear Rate, as alleged in Paragraph 16 of the Complaint, and notes that no such “agreement” was attached to the Complaint or to the prefiled testimony that accompanied the Complaint. Based upon information and belief, Internet 123 denies as untrue that LECMI has any “agreement” to provide the listed services to Clear Rate, as alleged in Paragraph 16 of the Complaint, and notes that no such “agreement” was attached to the Complaint or to the prefiled

testimony that accompanied the Complaint. Responding further, Internet 123 denies as untrue that Complainant purchases all of the services listed in Paragraph 16 of the Complaint from Internet 123. Based upon information and belief, Internet 123 denies as untrue that Complainant purchases **any** services from LECMI. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 16 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

17. Clear Rate uses these services purchased from LECM/I 123 to provide retail telecommunications service, including local exchange service and E911 service, to numerous businesses and governmental entities, including a police department, medical facilities, public & private schools, government offices, banks and credit unions, colleges, car dealerships, television stations, hotels, churches, propane supply companies, manufacturing facilities, non-profit organizations, and numerous other private businesses.

ANSWER: The allegations contained in Paragraph 17 of the Complaint are unclear because the Complainant does not indicate what services are being referred to in Paragraph 17 of the Complaint; therefore, Internet 123 is unable to respond to Paragraph 17 of the Complaint. To the extent that any answer is required, Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17 of the Complaint, because Internet 123 does not know for what use Complainant uses services it purchases, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Answering further, based upon information and belief, Internet 123 denies as untrue allegations, contained in Paragraph 17 of the Complaint, that Complainant purchases any services from LECMI. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 17 of the Complaint. To the extent that the

Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

18. Since entering into the agreement with LECM/I 123, Clear Rate purchased its wholesale and telecommunications services from them, including wholesale local exchange service.

ANSWER: Internet 123 denies as untrue that it has any “agreement” to provide the services to Clear Rate, as alleged in Paragraph 18 of the Complaint, and notes that no such “agreement” was attached to the Complaint or to the prefiled testimony that accompanied the Complaint. Based upon information and belief, Internet 123 denies as untrue that LECMI has any “agreement” to provide services to Clear Rate, as alleged in Paragraph 18 of the Complaint, and notes that no such “agreement” was attached to the Complaint or to the prefiled testimony that accompanied the Complaint. Responding further, Internet 123 admits allegations, contained in Paragraph 18 of the Complaint, that Complainant purchases unregulated wholesale and telecommunications services from Internet 123, including unregulated wholesale local exchange services. Based upon information and belief, Internet 123 denies as untrue allegations, contained in Paragraph 18 of the Complaint, that Complainant purchases **any** services from LECMI. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 18 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

19. *Clear Rate and LECMI 123 have a billing dispute relating to intercarrier compensation billings. Since June 22, 2005, Clear Rate has been billing LECMI 123 for intercarrier compensation and to date LECMI 123 have not made any payment.*

ANSWER: Internet 123 states that Paragraph 6 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations, contained in Paragraph 19 of the Complaint, that Internet 123 has a billing dispute with Complainant. Answering further, Internet 123 notes that it has never received any invoices or billings from Clear Rate. Based upon information and belief, Internet 123 admits that LECMI has received and disputed intercarrier compensation invoices received from Complainant and has made no payments thereupon. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 19 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

20. *Clear Rate had received a backbill for various services from LECMI 123, and Clear Rate offered to offset the intercarrier compensation billing against the backbilled amount. This offer was refused and Clear Rate made a full payment of the backbilled amount without resolution of the intercarrier compensation billing dispute.*

ANSWER: The allegations contained in Paragraph 20 of the Complaint are unclear because the term “backbill” is not defined, therefore Internet 123 is unable to respond to Paragraph 20 of the Complaint. To the extent that any answer is required, Internet 123 admits the allegation, implied in Paragraph 20 of the Complaint, that it has, in the past, billed Complainant for services that had been rendered more than one month in the past. Internet 123 states that it has never received any invoices or billings from Clear Rate. Based upon information and belief, Internet 123 admits that LECMI has received and disputed intercarrier

compensation invoices received from Complainant and has made no payments thereupon. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6, 7, and 19 of the Complaint in its response to Paragraph 20 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer, and Internet 123 is unable to answer the remaining allegations contained in Paragraph 20 of the Complaint without further clarification..

21. *In September 2007, Clear Rate began purchasing some of its services from a different provider.*

ANSWER: Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 21 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs.

22. *As a result of Clear Rate's decision to not purchase certain services from LECM/I 123, LECM/I 123 have retaliated and discriminated against Clear Rate by unilaterally changing their long-standing billing practices, by unilaterally attempting to increase the rates agreed upon between LECM/I 123 and Clear Rate, by threatening to immediately cut off service to Clear Rate and not providing a reasonable time for Clear Rate to migrate its services from LECM/I 123's network.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 22 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 22 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123” and to a “LECM/I 123 network” that does not exist, such an allegations renders this Paragraph confusing and difficult to answer.

23. *In some cases LECM/I 123 is attempting to charge 100 times more for services. An example is porting out numbers off of the LEC/ I 123's network. Prior to this dispute Clear Rate was charged \$5 for each port out order which*

could include 100 Telephone numbers. Now, Clear Rate is being charged \$5 per telephone number, which would cost Clear Rate \$500 for an order that in the past cost \$5. Currently Clear Rate Communications, Inc. has over 2,200 Telephone Numbers with LECM/I 123 and they are attempting to charge Clear Rate \$40,000 just to migrate the telephone numbers from their network.

ANSWER: The allegations contained in Paragraph 23 of the Complaint are unclear because of the use of the phrases “[i]n some cases” and “100 times more for services.” Internet 123 is without knowledge or information sufficient to form a belief or to determine what “cases” Complainant is referring to and what services Complainant is referring to in Paragraph 23 of the Complaint; therefore, Internet 123 is unable to respond to Paragraph 23 of the Complaint. To the extent an answer is required, Internet 123 admits that it has charged Complainant for local number portability on a per number basis. Based upon information and belief, Internet 123 denies as untrue the allegations, contained in Paragraph 23 of the Complaint, that LECMI has charged Complainant for **any** services. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 23 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, and refers to such a non-existent entity in the singular and plural in the same paragraph, such an allegation renders this Paragraph confusing and difficult to answer.

24. Prior to September 2007, LECM/I 123 invoiced Clear Rate on a monthly basis for the services that were used by Clear Rate in the prior month. Clear Rate was given 30 days in which to pay the invoice. (See, e.g. Exhibit C-1 attached to Mr. Namy's pre-filed direct testimony, September 2007 invoice.)

ANSWER: Internet 123 admits the allegations contained in Paragraph 24 of the Complaint that it invoiced Complainant on a monthly basis for services that were purchased by the Complainant in the prior month. Based upon information and belief, Internet 123 denies as untrue the allegations, contained in Paragraph 24 of the Complaint, that LECMI invoiced Complainant for **any** services. Answering further, Internet 123 incorporates by reference its

responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 24 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

25. *However, on September 11, 2007 LECM/I 123, due to Clear Rate's decision to not purchase certain services from LECM/I 123, suddenly and unilaterally changed its billing method for Clear Rate.*

ANSWER: Internet 123 admits that it changed its billing practices for all customers of Internet 123 in September. However, Internet 123 denies as untrue the allegation, contained in Paragraph 25 of the Complaint, that such a change to its billing practice for all customers of Internet 123 was predicated on any decision by the Complainant. Based upon information and belief, Internet 123 denies as untrue the allegations, contained in Paragraph 25 of the Complaint, that LECMI has charged Complainant for any services. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 25 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

26. *On that day, LECM/I 123 notified Clear Rate that it was, effective immediately, requiring Clear Rate to pay in advance for its telecommunication services. Consequently, LECM/I 123 advised Clear Rate that Clear Rate was required to pay its September 1, 2007 invoice – which is not due until September 30, 2007 – by 5:00 pm on September 13, 2007, otherwise LECM/I 123 would suspend service to Clear Rate and thus shut off Clear Rate's customers, including access to local exchange service and E911 services.*

ANSWER: The allegations contained in Paragraph 26 of the Complaint are unclear because of the use of the phrase “[o]n that day” without any reference as to what day the Complainant is referring; therefore, Internet 123 is unable to respond to Paragraph 26 of the Complaint. To the extent that any answer is required, Internet 123 denies as untrue the

allegations contained in Paragraph 26 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 26 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

27. In addition, LECM/I 123 advised Clear Rate that Clear Rate also needed to pre-pay its October services – even though LECM/I 123 have not yet invoiced Clear Rate for those services – by 5:00 pm on September 13, 2007, otherwise LECM/I 123 would terminate service to Clear Rate and thus shut off Clear Rate's customers, including access to local exchange service and E911 services.

ANSWER: The allegations contained in Paragraph 27 of the Complaint are unclear because of the use of the phrase “[i]n addition,” therefore Internet 123 is unable to respond to Paragraph 27 of the Complaint. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 27 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 27 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

28. *Furthermore, on September 11, 2007, LECM/I 123 not only unilaterally attempted to increase the agreed upon rates it was charging to Clear Rate for providing telecommunications services, it also notified Clear Rate that they would be permanently terminating service to Clear Rate in 30 days, which is not a reasonable time period for Clear Rate to migrate its services from LECM/I 123 network to another network. For example, LECM/I 123 required 56 days to port in all of the telephone numbers from Verizon for a PRI T-1 for one of Clear Rate's customers. Since it took LECM/I 123 fifty-six days to migrate just one of Clear Rate's customers, this demonstrates that it is not reasonable or even possible to migrate all customers within 30 days. If LECM/I 123 are allowed to carry through on this retaliatory threat, then local exchange and E911 service to Clear Rate's retail customers will be disrupted*

ANSWER: The allegations contained in Paragraph 28 of the Complaint are unclear because of the use of the phrase “[f]urthermore,” therefore Internet 123 is unable to respond to Paragraph 28 of the Complaint. The allegations contained in Paragraph 28 of the Complaint presuppose certain alleged actions of Internet 123 and or LECMI, which have not been proven or established, therefore Internet 123 is unable to respond to Paragraph 28 of the Complaint. To the extent that any answer is required, Internet 123 admits that it notified Complainant that Internet 123 would be permanently terminating service to Complainant in 30 days. Internet 123 is without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 28 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Answering further, Internet 123 notes that it is not the exclusive provider of any services purchased by Complainant in the State of Michigan. Internet 123 has reason to believe that Clear Rate can quickly and efficiently move all of its services to another provider. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 27 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not

exist, and refers to such a non-existent entity in the singular and plural in the same paragraph, such an allegation renders this Paragraph confusing and difficult to answer.

29. *Furthermore, on September 11, 2007, LECM/I 123 demanded that Clear Rate withdraw its intercarrier compensation billing dispute and agree to a bill and keep arrangement, or LECM/I 123 would immediately disrupt service to Clear Rate.*

ANSWER: The allegations contained in Paragraph 29 of the Complaint are unclear because of the use of the word “[f]urthermore,” therefore Internet 123 is unable to respond to Paragraph 29 of the Complaint. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 29 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 29 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

30. *Moreover, on September 13, 2007, LECM/I 123 did, in fact, follow through on their threats to disrupt service. At about 5:00 pm that day, LECM/I 123 violated a temporary restraining order that was issued by the Macomb County Circuit Court earlier that day, and temporarily suspended service to Clear Rate because Clear Rate did not accede to their outrageous and illegal demands.*

ANSWER: The allegations contained in Paragraph 30 of the Complaint are unclear because of the use of the word “[m]oreover,” therefore Internet 123 is unable to respond to Paragraph 30 of the Complaint. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 30 of the Complaint. Answering further, Internet 123 notes that the first it heard of any Temporary Restraining Order against it and LECMI was when Internet 123 reviewed the Temporary Restraining Order attached to the Complaint filed with the Commission on September 17, 2007. Internet 123 admits that it disrupted Claimant’s

unregulated connectivity for about five minutes on September 13, 2007. Internet 123 denies violating the Temporary Restraining Order as it had no knowledge that such was in place. Internet 123 states that no essential services were disrupted during this time frame. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 30 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

COUNT 1
ALLEGED VIOLATIONS OF SECTION 301 OF THE MTA

31. *Clear Rate adopts by reference the allegations set forth above.*

ANSWER: Internet 123 repeats and incorporates its responses set forth above as though fully set forth here.

32. *I 123 is a basic local exchange service provider despite the fact that it does not have license to provide such service from the Commission.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 32 of the Complaint that it is a provider of regulated basic local exchange service. Internet 123 admits the allegation contained in Paragraph 32 of the Complaint that it does not have a license from the Commission to provide regulated basic local exchange service. Answering further, Internet 123 notes that it provides local telephone services utilizing a packet based switch and Voice Over Internet Protocol (“VoIP”) technology – such services are unregulated in Michigan for which no license is required.

33. *LECM and I 123 are alter egos of each other. I 123 shares the same corporate president with LECM, shares the same key employees with LECM, shares telecommunication facilities and equipment with LECM and shares the same business locations at 50572 Jefferson, New Baltimore, Michigan 48047*

and 24700 Northwestern Highway, Suite 50, Southfield, Michigan, 48075 with LECM.

ANSWER: Internet 123 states that Paragraph 33 of the Complaint consists of a legal conclusion (that Internet 123 and LECMI are “alter egos of each other”) to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegation, contained in Paragraph 33 of the Complaint, that LECMI is the “alter ego” of Internet 123; Internet 123 denies as untrue the allegation, contained in Paragraph 33 of the Complaint, that Internet 123 and LECMI share the same corporate President; Internet 123 denies as untrue the allegation, contained in Paragraph 33 of the Complaint, that Internet 123 and LECMI share the same key employees; Internet 123 denies as untrue the allegation, contained in Paragraph 33 of the Complaint, that Internet 123 and LECMI share telecommunications facilities and equipment, though Internet 123 does purchase and lease various telecommunications facilities and equipment from LECMI and other carriers; Internet 123 admits that it shares business locations at 50572 Jefferson, New Baltimore, Michigan 48047 and 24700 Northwestern Highway, Suite 50, Southfield, Michigan, 48075 with Respondent LECMI. Answering further, Internet 123 notes that in *Spartan Tube & Steel v Himmelspach*, 102 F3d 223 (6th Cir 1996), the Sixth Circuit Court of Appeals, citing the Michigan Court of Appeals in *Nogueras v Maisel & Assoc of Michigan*, 142 Mich App 71, 86; 369 NW2d 492, 498 (1985), held that “[a] court may find that one entity is the alter ego of another and pierce the corporate veil upon proof of three elements: first, the corporate entity must be a mere instrumentality of another; second, the corporate entity must be used to commit a fraud or wrong; and third, there must have been an unjust loss or injury to the plaintiff.” Internet 123 denies that any of those elements have been alleged or established in the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 33 of the Complaint. To the

extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

34. *While Clear Rate's switch is interconnected and collocated with LECM, it is billed by I 123 for local exchange service, including E911 service and collocation service.*

ANSWER: Based upon information and belief, Internet 123 denies as untrue the allegation, contained in Paragraph 34 of the Complaint, that Complainant’s switch is “interconnected” to LECMI as that term is defined in Section 102(l) of the MTA, MCL 484.2102(l), or in Section 251 of the Federal Communication Act of 1934, as amended, 47 USC § 251. Internet 123 is without knowledge or information sufficient to form a belief as to the whether Complainant’s switch is “collocated” with LECMI, as alleged in Paragraph 34 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Internet 123 admits the allegations, contained in Paragraph 34 of the Complaint, that it bills Complainant for unregulated services including E 9-1-1 and collocation services.

35. *Further proof of the alter ego relationship is that I 123 requested a DS-3 circuit to be purchased by Clear Rate to be connected to LECM facilities with a LECM circuit ID. Clear Rate will bill and expects to be paid by I 123 for this service.*

ANSWER: The allegations contained in Paragraph 35 of the Complaint are unclear because of the use of the phrase “[F]urther proof of the alter ego relationship,” which presupposes other proof that such a relationship has been established, which has not been established. Internet 123 states that Paragraph 35 of the Complaint consists of a legal conclusion (that an alter-ego relationship has been established) for which no response is required. To the extent that any answer is required, Internet 123 notes that in *Spartan Tube & Steel v Himmelspach*, 102 F3d 223 (6th Cir 1996), the Sixth Circuit Court of Appeals, citing the

Michigan Court of Appeals in *Nogueras v Maisel & Assoc of Michigan*, 142 Mich App 71, 86; 369 NW2d 492, 498 (1985), held that “[a] court may find that one entity is the alter ego of another and pierce the corporate veil upon proof of three elements: first, the corporate entity must be a mere instrumentality of another; second, the corporate entity must be used to commit a fraud or wrong; and third, there must have been an unjust loss or injury to the plaintiff.” Internet 123 denies that any of those elements have been alleged or established in the Complaint. Internet 123 admits the allegation contained in the first sentence of Paragraph 35 of the Complaint that it requested a circuit be purchased by Complainant to connect to LECMI, a telecommunications supplier of Internet 123; Internet 123 leases bandwidth on various LECMI owned circuits to facilitate providing service to Complainant and other customers of Internet 123. Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in the second sentence of Paragraph 35 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs.

36. Further, I 123 bills wholesale local exchange service to Clear Rate, which includes local dial tone, local calling, directory assistance and E-911 service. Exhibit C-1 of Mr. Namy's testimony clearly shows that the services are for local services, including local switched telephone service.

ANSWER: The allegations contained in Paragraph 36 of the Complaint are unclear because of the use of the word “[f]urther,” therefore Internet 123 is unable to respond to Paragraph 36 of the Complaint. To the extent that any answer is required, Internet 123 admits the allegations, contained in Paragraph 36 of the Complaint, that Internet 123 bills Complainant for local dial tone, local calling, directory assistance and E 9-1-1 service which it provides to Complainant, and states that it does so utilizing a packet based switch and VoIP technology – such services are unregulated in Michigan for which no license is required. Regarding the allegations made in the second sentence of Paragraph 36 of the Complaint, Internet 123 states

that proposed Exhibit C-1 to Mr. Namy's prefiled testimony speaks for itself and no response is required to such allegation.

37. *As a result, I 123, has violated Section 301 of the MTA by "provid[ing] or resell[ing] basic local exchange service" without a license.*

ANSWER: The allegations contained in Paragraph 37 of the Complaint are unclear because of the use of the phrase "[a]s a result," therefore Internet 123 is unable to respond to Paragraph 37 of the Complaint. Internet 123 states that Paragraph 37 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 37 of the Complaint. To the extent Complainant quotes from the MTA, Internet 123 respectfully refers the Commission to the full text of the quoted section of the MTA and Internet 123 denies as untrue violating such.

COUNT II ALLEGED VIOLATION OF SECTION 305 OF THE MTA

38. *Clear Rate adopts by reference the allegations set forth above.*

ANSWER: Internet 123 repeats and incorporates its responses set forth above as though fully set forth here.

39. *In unilaterally tripling the rates charged to Clear Rate, unilaterally changing its billing practices, threatening to suspend - and actually suspending - services to Clear Rate, and threatening to permanently terminate services to Clear Rate and not allowing Clear Rate a reasonable opportunity to migrate off of LECM/I 123's network as a result of Clear Rate's decision to not purchase certain wholesale and telecommunications services from LECM/I 123, LECM/I 123 have violated Section 305 of the MTA, including, but not limited to, Sections 305(a),(b),(d) and (m).*

ANSWER: The allegations contained in Paragraph 39 of the Complaint are unclear because they presuppose factual occurrences that have not been established and consist of a legal conclusion for which no response is required. Further, Complainant fails to identify what rates

were allegedly tripled, what billing practices were changed, and what was threatened and or suspended. To the extent that any answer is required, Internet 123 denies as untrue tripling rates charged to Complainant as alleged in Paragraph 39 of the Complaint; Internet 123 admits unilaterally changing billing practices, as alleged in Paragraph 39 of the Complaint, and states that it did so for all of its customers; Internet 123 denies “threatening to suspend - and actually suspending - services to” Complainant, as alleged in Paragraph 39 of the Complaint; Internet 123 denies “threatening to permanently terminate services to” Complainant, as alleged in Paragraph 39 of the Complaint; and, Internet 123 denies “not allowing [Complainant] a reasonable opportunity to migrate off of” Internet 123’s network, as alleged in Paragraph 39 of the Complaint. Based upon information and belief, Internet 123 denies as untrue LECMI engaged in any of the allegations contained in Paragraph 39 of the Complaint. To the extent Paragraph 39 of the Complaint alleges violations of sections of the MTA, Internet 123 states that the MTA speaks for itself and denies violating the MTA. Answering further, Internet 123 notes that Section 305 of the MTA, MCL 484.2305, is only applicable to providers of basic local exchange service. As a provider of unregulated telecommunications services utilizing a packet based switch and VoIP technology, Internet 123 denies as untrue that it is a provider of basic local exchange service. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 39 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123” or to a network “LECM/I 123 network” which do not exist, such allegations renders this Paragraph confusing and difficult to answer.

40. *Section 305(m) specifically prohibits a provider from bundling unwanted services for sale or lease to another provider. When Clear Rate decided to purchase certain services from another provider, LECM/I 123's retaliatory conduct clearly violates this provision.*

ANSWER: Internet 123 states that Paragraph 40 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 40 of the Complaint. To the extent Complainant cites to sections of the MTA, Internet 123 respectfully refers the Commission to the full text of those sections of the MTA and Internet 123 denies as untrue violating such. Answering further, Internet 123 notes that Section 305 of the MTA, MCL 484.2305, is only applicable to providers of basic local exchange service. As a provider of unregulated telecommunications services utilizing a packet based switch and VoIP technology Internet 123 denies as untrue that it is a provider of basic local exchange service. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 40 of the Complaint. To the extent that the Complainant refers to a combined entity "LECM/I 123," which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

41. *In addition, LECM/I 123 threatens to shut off service and to not allow a reasonable time to migrate from LECM/I 123's network violates Sections 305(a), (b) and (d) of the MTA.*

ANSWER: The allegations contained in Paragraph 41 of the Complaint are unclear because of the use of the phrase "[i]n addition," therefore Internet 123 is unable to respond to Paragraph 41 of the Complaint. Internet 123 states that Paragraph 41 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 41 of the Complaint. To the extent Complainant cites to sections of the MTA, Internet 123 respectfully refers the

Commission to the full text of those sections of the MTA and Internet 123 denies as untrue violating such. Answering further, Internet 123 notes that Section 305 of the MTA, MCL 484.2305, is only applicable to providers of basic local exchange service. As a provider of unregulated telecommunications services utilizing a packet based switch and VoIP technology, Internet 123 denies as untrue that it is a provider of basic local exchange service. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 41 of the Complaint. To the extent that the Complainant refers to a combined entity "LECM/I 123," which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

42. LECM/I 123 also violated Section 305(n) of the MTA, which prohibits a provider of basic local exchange service from "[p]erforming any act that has been prohibited by [the MTA] or an order of the commission," when it violated Sections 301, 352(2), 305(a), (b),(d) and (m), 403 and 502.

ANSWER: The allegations contained in Paragraph 42 of the Complaint consist of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 42 of the Complaint. To the extent Complainant quotes and cites from the MTA, Internet 123 respectfully refers the Commission to the full text of the quoted and cited sections of the MTA and Internet 123 denies as untrue violating such. Answering further, Internet 123 notes that the cited sections of the MTA are only applicable to providers of regulated telecommunications services. As a provider of unregulated telecommunications services utilizing a packet based switch and VoIP technology, Internet 123 denies as untrue that it violated the MTA. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 42 of the Complaint. To the extent that the Complainant refers to a

combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

COUNT III
ALLEGED VIOLATION OF SECTION 403 OF THE MTA

43. *Clear Rate adopts by reference the allegations set forth above.*

ANSWER: Internet 123 repeats and incorporates its responses set forth above as though fully set forth here.

44. *In addition to being providers of regulated services, LECM/I 123 also provide unregulated services.*

ANSWER: The allegations contained in Paragraph 44 of the Complaint are unclear because they presuppose factual occurrences that have not been established and consist of a legal conclusion to which no response is required. The allegations contained in Paragraph 44 of the Complaint are unclear because of the use of the phrase “[i]n addition to,” therefore Internet 123 is unable to respond to Paragraph 14 of the Complaint. To the extent that any answer is required, Internet 123 admits the allegation contained in Paragraph 44 of the Complaint that it provides unregulated telecommunications services. Internet 123 denies as untrue the allegations contained in Paragraph 44 of the Complaint that it provides regulated telecommunications services. Based upon information and belief, Internet 123 admits that LECMI provides regulated and unregulated services. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 44 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

45. *LECM/I 123 erroneously assert that they only provide unregulated services.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 45 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 45 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

46. *Even if LECM/I 123 erroneous assertion were true, which it is not, Section 403 of the MTA states: "A provider of unregulated telecommunication services shall not at any time refuse, charge, delay, or impair the speed of the connecting of a person to a telecommunication emergency service."*

ANSWER: Internet 123 denies as untrue that it has made any “erroneous assertions” as alleged in the first clause of Paragraph 46 of the Complaint. Answering further, Internet 123 states that the second clause of Paragraph 46 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 further states that Paragraph 46 of the Complaint appears to accurately quote certain portions of the MTA. To the extent any answer is required, Internet 123 admits the allegations contained in Paragraph 46 of the Complaint to the extent that such allegations are consistent with the MTA, and denies those allegations to the extent that such allegations are not consistent with the MTA. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 46 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

47. *In threatening to shut-off services to Clear Rate and depriving Clear Rate a reasonable time to migrate from LECM/I 123's network, LECM/I 123 will violate Section 403 of the MTA by interfering with Clear Rate's customers of access to E911 service. These customers include a police department, medical facilities, public & private schools, government offices,*

banks and credit unions, colleges, car dealerships, television stations, hotels, churches, propane supply companies, manufacturing facilities, non-profit organizations, and numerous other private businesses.

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 47 of the Complaint that Internet 123 or LECMI threatened to shut off services. Internet 123 denies as untrue the allegations contained in Paragraph 47 of the Complaint that Internet 123 or LECMI deprived Complainant of a reasonable time to migrate off of Internet 123 or LECMI's networks. Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 47 of the Complaint with regard to nature of the Complainant's clientele, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. To the extent Complainant alleges a violation of Section 403 of the MTA, Internet 123 respectfully refers the Commission to the full text of the quoted section of the MTA and Internet 123 denies as untrue violating such. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 47 of the Complaint. To the extent that the Complainant refers to a combined entity "LECM/I 123" and to a network, the "LECM/I 123 network," which do not exist, such an allegation renders this Paragraph confusing and difficult to answer.

COUNT IV

ALLEGED VIOLATION OF SECTION 502 OF THE MTA

48. *Clear Rate adopts by reference the allegations set forth above.*

ANSWER: Internet 123 repeats and incorporates its responses set forth above as though fully set forth here.

49. *In unilaterally attempting to triple the rates charged to Clear Rate, unilaterally changing its billing practices, threatening to suspend - and actually suspending - services to Clear Rate, and threatening to permanently terminate*

services to Clear Rate as a result of Clear Rate's decision to not purchase certain wholesale and telecommunications services from LECM/I 123, LECM/I 123 have violated Section 502 of the MTA, including, but not limited to, Sections 502(1).

ANSWER: The allegations contained in Paragraph 49 of the Complaint are unclear because they presuppose factual occurrences that have not been established and consists of a legal conclusion to which no response is required. Further, Complainant fails to identify what rates were allegedly attempted to tripled, what billing practices were changed, and what was threatened and or suspended. To the extent that any answer is required, Internet 123 denies tripling rates charged to Complainant as alleged in Paragraph 49 of the Complaint; Internet 123 admits unilaterally changing billing practices, as alleged in Paragraph 49 of the Complaint, and states that it did so for all of its customers; Internet 123 denies “threatening to suspend - and actually suspending - services to” Complainant, as alleged in Paragraph 49 of the Complaint; Internet 123 admits threatening to permanently terminate unregulated services to Complainant, as alleged in Paragraph 49 of the Complaint; and, Internet 123 denies “not allowing [Complainant] a reasonable opportunity to migrate off of” Internet 123’s network, as alleged in Paragraph 49 of the Complaint. Based upon information and belief, Internet 123 denies LECMI engaged in any of the allegations contained in Paragraph 49 of the Complaint. To the extent Paragraph 49 of the Complaint alleges violations of sections of the MTA, Internet 123 states that the MTA speaks for itself and denies violating the MTA. Internet 123 further notes that in Paragraph 49 of the Complaint, the Complaint alleges that Internet 123 and/or LECMI “attempted” certain conduct, which was alleged as a fact in Paragraph 49 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 49 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123” or to a network “LECM/I 123 network” which do not exist, such allegations renders this Paragraph confusing and difficult to answer.

COUNT V
ALLEGED VIOLATION OF SECTION 352 OF THE MTA

50. *Clear Rate adopts by reference the allegations set forth above.*

ANSWER: Internet 123 repeats and incorporates its responses set forth above as though fully set forth here.

51. *In unilaterally tripling the rates they charge to Clear Rate, LECM/I 123 have violated the Michigan Telecommunications Act ("MTA").*

ANSWER: The allegations contained in Paragraph 51 of the Complaint are unclear because they presuppose factual occurrences that have not been established and consists of a legal conclusion to which no response is required. Further, Complainant fails to identify what rates were allegedly tripled. To the extent that any answer is required, Internet 123 denies the allegations contained in Paragraph 51 of the Complaint. To the extent Complainant alleges a violation of the MTA, Internet 123 respectfully refers the Commission to the full text of the MTA and Internet 123 denies as untrue violating such. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 51 of the Complaint. To the extent that the Complainant refers to a combined entity "LECM/I 123," which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

52. *Section 355 of the MTA places requirements on unbundling of local service and Section 352(2) of the MTA requires that the "rates for network elements and combinations of network elements, unbundled loops, number portability, and the termination of local traffic shall be the rates established by the commission." MCL 484.2352(2).*

ANSWER: Internet 123 states that Paragraph 52 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 further states that Paragraph 52 of the Complaint appears to accurately quote certain portions of the MTA, out of context. To the extent

any answer is required, Internet 123 admits the allegations contained in Paragraph 52 of the Complaint to the extent that such allegations are consistent with the MTA, and denies those allegations to the extent that such allegations are not consistent with the MTA.

53. *LECM/I 123 therefore violated Section 352(2) in unilaterally tripling its rates to Clear Rate because said rate increase was not established or approved by the Commission.*

ANSWER: Internet 123 states that Paragraph 53 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 53 of the Complaint. Answering further, Internet 123 notes that Section 352 of the MTA, MCL 484.2352, is only applicable to providers of basic local exchange service. As a provider of unregulated telecommunications services utilizing a packet based switch and VoIP technology, Internet 123 denies as untrue that it is a provider of basic local exchange service. In further response, Internet 123 notes that Section 352 of the MTA, MCL 484.2352, is only applicable to interconnection. Internet 123 does not provide any “interconnection” to the Complainant as that term is defined in Section 102(l) of the MTA, MCL 484.2102(l), or in Section 251 of the Federal Communication Act of 1934, as amended, 47 USC § 251. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 53 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

**COMPLAINANT’S REQUEST FOR EMERGENCY RELIEF OR ISSUE AN ORDER
PURSUANT TO SECTION 203(13)**

54. *An order for emergency relief may be granted if the commission finds all of the following:*

(a) That the party has demonstrated exigent circumstances that warrant emergency relief;

(b) That the party seeking relief will likely succeed on the merits;
(c) That the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted; and
(d) That the order is not adverse to the public interest.

ANSWER: Internet 123 states that Paragraph 54 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 further states that Paragraph 54 of the Complaint appears to accurately quote certain portions of the MTA, out of context. To the extent any answer is required, Internet 123 admits the allegations contained in Paragraph 54 of the Complaint to the extent that such allegations are consistent with the MTA, and denies those allegations to the extent that such allegations are not consistent with the MTA.

55. *The harm from LECM's/I 123's conduct is ongoing and continuing and constitutes exigent circumstances that warrant emergency relief.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 55 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 55 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

56. *Clear Rate will likely succeed on the merits.*

ANSWER: Internet 123 states that Paragraph 56 of the Complaint consists of a legal conclusion to which no response is required. To the extent that any answer is required, Internet 123 denies as untrue the allegations contained in Paragraph 56 of the Complaint.

57. *Clear Rate will suffer irreparable harm in its ability to serve customers if emergency relief is not granted, as LECM/I 123 are threatening to terminate, and have already temporarily terminated, service to Clear Rate, which would in turn prevent Clear Rate from providing telecommunications services to its customers.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 57 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 57 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

58. *The grant of emergency relief will not be adverse to the public interest. In fact, granting emergency relief will promote the public interest because it will prevent LECM/I 123 from terminating telecommunication services to a number of governmental entities that must have access to basic local exchange service and E911 service, such as police departments, medical facilities and public and private schools. If emergency relief is not granted to Clear Rate, many citizens may be left without access to emergency response teams.*

ANSWER: Internet 123 denies as untrue the allegations contained in Paragraph 58 of the Complaint. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 58 of the Complaint. To the extent that the Complainant refers to a combined entity “LECM/I 123,” which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

59. *Since a circuit court has already issued a TRO, the Commission may wish to instead issue an order pursuant to Section 203(13) of the MTA, which provides: "If a complaint is filed under this section by a provider against another provider, the provider of service shall not discontinue service during the period of the contested case, including the alternative dispute process, if the provider receiving the service has posted a surety bond, provided an irrevocable letter of credit, or provided other adequate security in an amount and on a form as determined by the commission."*

ANSWER: Internet 123 states that Paragraph 59 of the Complaint consists of a legal conclusion and legal presupposition (Complainant cannot presuppose what the Commission may do) to which no response is required. Internet 123 further states that Paragraph 59 of the Complaint appears to accurately quote certain portions of the MTA, out of context. Internet 123 would further notes that Michigan Court Rule 2.116(C)(6) would appear to prohibit filing multiple actions involving the same claim in multiple forums.

60. *Clear Rate is seeking with all deliberate speed to remove its services from LECM/I 123's network.*

ANSWER: Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 60 of the Complaint, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Answering further, Internet 123 incorporates by reference its responses to Paragraphs 6 and 7 of the Complaint in its response to Paragraph 60 of the Complaint. To the extent that the Complainant refers to a combined entity "LECM/I 123," which does not exist, such an allegation renders this Paragraph confusing and difficult to answer.

61. *Clear Rate is willing to begin to pay for services at the previously agreed upon rates between the parties a month in advance while this migration occurs. Clear Rate has already paid the 9/1/07 invoice due on 9/30/07 on Friday 9/14/07 and has paid for an invoice received on 9/16/07 for services through 9/30/07 on 9/17/07.*

ANSWER: Internet 123 is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 61 of the Complaint regarding what Complainant is and is not willing to do, and therefore neither admits nor denies such allegations and leaves Complainant to its proofs. Internet 123 admits that Complainant is current in payment of its invoices for services provided by Internet 123. In further response, Internet 123 notes that there is no contractual arrangement for its provision of service to Clear Rate and Internet 123 denies as untrue it has any “agreed upon rates between the parties” as alleged in Paragraph 61 of the Complaint.

62. *Instead of issuing an emergency order, the Commission could issue, pursuant to Section 203(13), an order preventing discontinuous of service and require Clear Rate to post a bond with the Commission in the amount of \$26,791.28, which is the amount of the last monthly invoice.*

ANSWER: Internet 123 states that Paragraph 62 of the Complaint consists of a legal conclusion to which no response is required. Internet 123 admits that its last monthly invoice to Complainant was in the amount of \$26,791.28.

AFFIRMATIVE DEFENSES

1. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.
2. The Complaint fails to state a complaint with enough specificity that such complaint can be defended by Internet 123.
3. The Commission lacks jurisdiction over the services provided by Internet 123 to the Complainant.

4. The claims stated in the Complaint are barred, in whole or in part, by the Doctrines of Waiver, Estoppel, Laches, and Unclean Hands.

5. Internet 123 has no contractual obligation to provide service to Complainant.

6. Internet 123 provides telecommunications services utilizing a packet based switch and VoIP technology – such services are unregulated in Michigan for which no license is required.

7. Complainant's claims are frivolous, within the meaning of Section 209 of the MTA, MCL 484.2209.

8. Internet 123 reserves the right to assert additional Affirmative Defenses that become applicable during the course of discovery.

**CONCLUSION
AND REQUEST FOR RELIEF**

Internet 123 respectfully requests that the Commission: 1) find in favor of Internet 123 on all counts of the Complaint, deny in its entirety the relief sought by the Complainant, and dismiss the Complaint in its entirety; 2) make a finding that Complainant claims are frivolous, within the meaning of Section 209 of the MTA, MCL 484.2209, and award “costs, including reasonable attorney fees, against the [Complainant] and their attorney;” and, 3) grant Internet 123 such other relief as the Commission deems just and reasonable.

Respectfully Submitted,

By: _____

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Date: September 24, 2007

Attorneys For Internet 123, Inc.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the formal complaint,)
application and request for emergency relief of)
Clear Rate Communications, Inc. against)
Local Exchange Carriers of Michigan, Inc. and)
Internet 123, Inc.)

Case No. U-15424

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Patricia A. Tooker, being duly sworn, deposes and says that she is an employee of Clark Hill PLC, and that on September 24, 2007, a copy of Internet 123, Inc.'s Answer to Complaint and Affirmative Defenses in the above captioned proceeding was served via Electronic and United States Postal Service First-Class Mail upon the below stated party of record.

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Patricia A. Tooker

Subscribed and sworn to before me
this 24th day of September, 2007.

Haran C. Rashes, Notary Public
Washtenaw County, Michigan
Acting in Ingham County, Michigan
My Commission Expires: September 18, 2013