

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

CAVALIER TELEPHONE, LLC,)
Plaintiff)
)
versus) Civil Action No. 03:01CV736
)
VERIZON VIRGINIA INC.,)
Defendant)

SUPPLEMENTAL COMPLAINT

Plaintiff, Cavalier Telephone, LLC (“Cavalier”), brings this action against defendant, Verizon Virginia Inc. (“Verizon”), pursuant to section 2 of the Sherman Act, 15 U.S.C. § 2; section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); pertinent sections of the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*; and other provisions of federal and state law, as enumerated below; and to obtain equitable relief and damages pursuant to sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and other applicable law; and alleges as follows:

Nature of Action

1. Cavalier seeks injunctive relief and damages against Verizon arising out of Verizon’s anticompetitive and exclusionary conduct aimed at excluding Cavalier from the relevant market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas and preserving Verizon’s monopoly power in that market, thereby causing substantial harm to competition.

Parties

2. Plaintiff, Cavalier Telephone, LLC (“Cavalier”), is a Virginia limited liability company with its principal place of business in Richmond, Virginia.

3. Cavalier's sole member is Cavalier Telephone Corporation, a Delaware corporation that is a holding company with no principal place of business.

4. Defendant, Verizon Virginia Inc. (together with Bell Atlantic-Virginia, Inc. and any other predecessors in interest, "Verizon"), is a Virginia corporation with its principal place of business in Richmond, Virginia.

Jurisdiction

5. Cavalier brings this action pursuant to sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, and federal question jurisdiction of Cavalier's claims is based on 28 U.S.C. § 1331.

6. The Court also has jurisdiction of Cavalier's claims pursuant to 15 U.S.C. §§ 15 and 26, as an action brought by a person injured in its business or property by violation of the antitrust laws, and as an action for injunctive relief against a violation of the antitrust laws.

7. The Court has jurisdiction of Cavalier's antitrust and Lanham Act claims pursuant to 28 U.S.C. § 1337, an Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

8. The Court has jurisdiction of Cavalier's Lanham Act claims pursuant to 28 U.S.C. § 1338, as an action arising under an Act of Congress relating to trademarks, and pursuant to 15 U.S.C. §§ 1116 and 1117, as claims for damages and for injunctive relief arising under the Lanham Act, 15 U.S.C. §§ 1051-1129.

9. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332, because, under the rule of Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990), Cavalier is a citizen of Delaware; the action is thus between

citizens of different States, and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

10. The Court also has jurisdiction of Cavalier's claims under Virginia law pursuant to the court's supplemental jurisdiction under 28 U.S.C. § 1367, because those claims are so related to claims with the Court's original jurisdiction that they form part of the same case or controversy.

11. The Court has jurisdiction of Cavalier's claims under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, pursuant to 47 U.S.C. § 207, because Cavalier has brought suit to recover damages for Verizon's violation of the provisions of Title 47, Chapter 5 of the United States Code.

12. The Court has jurisdiction of Cavalier's claims for violation of an order of the Federal Communications Commission ("FCC") pursuant to 47 U.S.C. § 401(b), because Cavalier claims injury due to Verizon's failure to comply with, and seeks to enforce Verizon's compliance with, the FCC's June 16, 2000 Memorandum Opinion and Order, FCC 00-221, in *GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, FCC Docket No. 98-184 ("*BA/GTE Merger Order*").

Venue

13. Venue of Cavalier's claims for violation of the antitrust laws is proper in this Court pursuant to 15 U.S.C. § 22, because Verizon is an inhabitant of this district, and because Verizon may be found and transacts business in this district.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), because (a) Verizon resides in this district within the meaning of 28 U.S.C. § 1391(c), (b) a substantial part of the events or omissions giving rise to Cavalier's claims occurred in this district, and (c) Verizon may be found in this district, if there is no district in which this action may otherwise be brought.

Nature of Trade and Commerce

15. Verizon is the sole supplier of "last-mile" equipment and facilities required to compete in the Basic Telecommunications Services market.

16. Verizon directly competes in the product market for Basic Telecommunications Services which includes a cluster of products and services sold with local telephone service.

17. Verizon possesses approximately 90% of this market.

18. Cavalier also competes in the relevant product market by providing local telephone service, dial-up Internet access, high-capacity voice and data services, high-speed Internet access, private lines, and other telecommunications services over approximately 100,000 telephone lines.

19. To provide those services, Cavalier has, among other things, installed three Lucent 5ESS switches, assembled three fiber-optic networks that span approximately 150 miles each, installed equipment in 65 Verizon central offices, obtained regulatory approval and filed tariffs with the Virginia State Corporation Commission ("SCC") and FCC, obtained municipal franchises from over 20 municipalities, and hired over 400 employees to serve customers and maintain its facilities and equipment.

20. Other companies, such as Covad, Net 2000, Broadslate, and Cox Virginia Telecom, also compete in this market.

21. Cavalier and the other competitors and potential competitors require access to essential facilities controlled by Verizon, primarily the “last mile” of copper or fiber cable needed to reach individual homes and businesses from the Verizon central office.

22. Cavalier cannot reasonably or practicably duplicate these facilities, which were built over many years at the expense of customers under “rate of return” regulation of Verizon as a government-sanctioned monopoly.

23. Even though captive consumers paid for these facilities, Verizon still owns these facilities and uses them to reduce competition to these consumers.

Relevant Markets

24. As stated above, the relevant product market is Basic Telecommunications Services.

25. These services include plain old telephone service (“POTS”), dial-up Internet access, digital subscriber line services (“DSL”) for high-speed Internet access, high-capacity voice and data services, voice-mail, access to long-distance services, calling features such as *67 and *69, and any other services that can be provided over last-mile copper or fiber-optic cable that links each customer to a central office.

26. Some of these services are regulated and some are not.

27. The relevant geographic markets consist of those parts of the Richmond, Tidewater, and northern Virginia urban areas where Verizon formerly held a regulated monopoly over Basic Telecommunications Services.

Summary of Alleged Conduct

28. Verizon has attempted to, and has, maintained its monopoly power in the relevant product and geographic markets through a series of exclusionary acts, each of which is aimed at either reducing or eliminating Cavalier's ability to reach end users, or raising the costs to Cavalier of competing with Verizon.

29. Some of Verizon's anticompetitive conduct, described below, independently violates other laws, including the Lanham Act, Virginia's Uniform Trade Secrets Act, and common law prohibitions against tortious interference with contractual relations and business expectancies.

30. The impact of Verizon's conduct has been both to harm consumers of basic telephone services in the relevant geographic markets and to cause Cavalier to lose substantial profits.

Verizon's Anticompetitive Conduct

1. Competition in Virginia's Basic Telecommunications Services Market

31. In 1995, Virginia's General Assembly followed the lead of several other states and ended Verizon's regulated monopoly over Basic Telecommunications Services.

32. In 1998, Cavalier was founded in Virginia by principals who had successfully competed against a similar company, Ameritech, by providing Basic Telecommunications Services to residential and business customers in Michigan.

33. Cavalier's founders believed that they would also be able to compete successfully against Verizon, because Cavalier possessed the relevant know-how, experience, financing, and equipment to enter the market and compete successfully.

34. Instead, Verizon has successfully limited competition by Cavalier and other competitors to a very small share of the market.

35. Verizon has done that by raising the costs of competing with Verizon as well as erecting absolute barriers to entry and competition.

36. Cavalier provides Basic Telecommunications Services through facilities and equipment that it owns and operates.

37. Those facilities and equipment include, among other things, three Lucent 5ESS switches, networks of fiber-optic cables, various other telecommunications equipment, and customer care, assignment, sales, sales support, translations, repair and dispatch, Internet services, information technologies, and billing departments.

38. These facilities and equipment are located in the Richmond, Tidewater, and northern Virginia areas, where Cavalier competes against Verizon in the areas where Verizon formerly held a government-protected monopoly over Basic Telecommunications Services.

39. However, Verizon controls certain facilities absolutely required for access to customers.

40. These facilities include the copper or fiber-optic cables connecting individual customer premises to Verizon's central offices where those lines are aggregated and connected to Verizon's network ("last-mile facilities").

41. Access over these last-mile facilities is essential to successfully providing Basic Telecommunications Services.

42. No other entity, including Cavalier, can duplicate these facilities in any reasonable or practicable way.

43. Last-mile facilities were built over many decades, at the expense of the public at a time when AT&T was a regulated monopoly.

44. With the break-up of AT&T almost twenty years ago, Verizon inherited the monopoly over the basic telephone line hook-up to each home and business in the relevant geographic market.

45. Those facilities can accommodate several competitors offering different basic telephone services.

46. Verizon has refused to make these facilities available to Cavalier in a manner that would allow Cavalier to compete on an equal basis.

47. Instead, Verizon has used its control of those facilities to prevent Cavalier from competing against Verizon

48. As described below, Verizon imposes a variety of obstacles and additional costs that hobble Verizon's competitors and that prevent competition on the merits.

2. Interconnection Obstacles

49. When Cavalier first sought to interconnect its network with Verizon's network, Verizon refused to agree to such interconnection until Cavalier obtained a certificate of public convenience and necessity from the Virginia State Corporation Commission ("the SCC").

50. Such a certificate was not necessary or required by any law as a precondition to interconnection.

51. The impact of Verizon requiring it was to delay Cavalier's entry into the market for Basic Telecommunications Services.

52. Even after Verizon agreed to the terms of interconnection with Cavalier, Verizon further delayed Cavalier from entering the market, by delaying the provision of trunks required for Cavalier to compete and by not establishing adequate trunks to carry telephone traffic between Cavalier's customers and Verizon's customers.

53. Trunks are the communications lines that link two switching systems, such as Cavalier's Lucent 5ESS switches and the switching equipment in Verizon's central offices.

54. Inadequate trunking resulted in a blockage of 25-70% of the calls to many Cavalier customers in the Tidewater region, undermining Cavalier's ability to compete and damaging Cavalier.

55. Verizon has also misrouted Cavalier's calls in the Tidewater area, and caused a complete outage for Cavalier in northern Virginia, again undermining Cavalier's ability to compete and damaging Cavalier.

3. Collocation Obstacles

56. Cavalier has a comprehensive fiber-optic network connecting its switches to Verizon's central offices, where Verizon's last-mile lines are aggregated.

57. To connect with these lines, Cavalier must place equipment within Verizon's central office, just as other competitors do and just as long-distance companies have done for decades.

58. Verizon has used its control over the central office to raise Cavalier's costs, delay competition, and blockade entry.

59. For example, Verizon sought to charge Cavalier unpredictable amounts that in one case exceeded \$400,000, solely for so-called “space preparation” for a ten foot by ten foot floor space required by Cavalier in the central office.

60. Verizon then “decided” that the cost was supposedly a uniform \$47,686.20 for all such spaces, not an amount of up to \$400,000.

61. Even the \$47,686.20 was far higher than comparable charges for the same space preparation in states such as Massachusetts and Rhode Island.

62. Such artificial charges are imposed solely to harm competitors and competition.

63. Even after accepting such charges, Cavalier was forced to wait over 600 days for space in some Verizon central offices.

64. Further, Verizon typically refuses to make space available until expiration of the maximum “interval” imposed by Verizon, even if the space could be made available at an earlier time.

65. Verizon also engages in other anticompetitive practices against Cavalier and other competitors, such as charging non-competitive prices for the modicum of power needed at collocation sites, and imposing arbitrary and unnecessarily complex and burdensome rules for collocation.

4. Pre-Order and Ordering Issues

66. Verizon further made the process of identifying and ordering last-mile facilities excessively lengthy, complex, and expensive.

67. This conduct creates important marketing disadvantages.

68. For instance, after the customer authorizes it, Cavalier requests from Verizon customer service records, to identify what services a customer currently receives from Verizon and the charges for such services.

69. Verizon's wholesale organization improperly makes this information available to Verizon's directory publication personnel, Verizon's retail sales personnel, and others.

70. As a result, Verizon's directory publication personnel have contacted existing or potential customers of Cavalier and made misrepresentations to such customers concerning the availability and/or the cost of directory listings or directory assistance listings if such customers agree to buy, or continue to buy, Basic Telecommunications Services from Cavalier.

71. As a further result, Verizon's retail sales personnel have contacted existing or potential customers of Cavalier and made misrepresentations about Cavalier or its services, and/or tried to convince such customers not to buy, or continue to buy, Basic Telecommunications Services from Cavalier.

72. Moreover, the "loop qualification database" that Verizon makes available to Cavalier and other competitors is inferior in comparison to the databases utilized by Verizon's retail business.

73. This inequality creates further competitive disparities.

74. Specifically, the database made available to Cavalier and other competitors does not contain accurate information about last-mile facilities, and therefore causes problem for Cavalier and other competitors who try to provide Basic Telecommunications Services to customers over those facilities.

75. Further, Verizon initially identified only one method for Cavalier to order last-mile facilities from Verizon, a Web-based graphical user interface that is inferior to a functional, application-to-application service ordering process.

76. That interface is frequently slow or completely “down” for an entire day, at times that are completely unpredictable to Cavalier.

77. Cavalier therefore loses hours or entire days of employee time to process orders for last-mile facilities.

78. The Web-based interface and other systems made available by Verizon do not function as well, or in the same manner as, the systems that Verizon itself uses.

79. The Web-based interface also creates many problems for Cavalier because it is slow and unpredictable in returning firm order confirmations, which are basically an acknowledgement of the order placed by Cavalier for last-mile facilities.

80. Problems with the interface, and Verizon’s use of a process requiring that the same order information be entered manually multiple times for each order, also cause repeated errors, as well as delay and uncertainty in when Verizon actually provides the last-mile facilities ordered by Cavalier.

81. As a result, Verizon usually provides the facilities to Cavalier after the due date that Verizon itself has established, and sometimes long after the due date.

82. By comparison, Verizon is usually able to provide its own retail customers with service in a just two to three days.

5. Facilities Assignment

83. Verizon assigns last-mile facilities using systems and procedures that are intentionally flawed and unnecessarily complex, delay-ridden, and expensive.

84. This conduct raises competitors' costs and reduces competition.

85. For example, Cavalier has a certain number of "ports" to connect with last-mile facilities for individual customers served out of each central office.

86. Verizon insists on assigning these ports by maintaining a separate database to track the ports, and will not connect facilities to the port that Cavalier asks Verizon to use.

87. Because of inaccuracies in Verizon's database, Verizon frequently refuses to connect facilities to a certain port that Verizon will say does not exist or is already being used by another customer.

88. Verizon refuses to do so even if Cavalier assures Verizon that the port exists or that Cavalier is not already providing dial tone to a customer through that port.

89. Verizon's systems and procedures for assigning facilities have also caused problems for Cavalier with respect to circuit identification, automatic line information codes, multiple firm order confirmations for the same order, "jeopardy" notices, and other issues.

90. These problems extend to the disconnection of last-mile facilities for individual Cavalier customers, as well as the initial connection of last-mile facilities.

6. Provision of Last-Mile Facilities

91. Verizon has also implemented systems and procedures that are flawed, overly complex, delay-ridden, and expensive, in the provision of last-mile facilities.

92. First, Verizon refuses to provide Cavalier with last-mile facilities on integrated digital loop carriers ("IDLCs"), which serve almost 25% of Verizon's lines in Virginia.

93. Verizon claims that it is not “technically feasible” to provide such facilities, even though other companies such as BellSouth provide access to such last-mile facilities within its former regulated monopoly territory.

94. Verizon exacerbates this problem by refusing to provide Cavalier with any reliable indication of when a particular customer is served by an IDLC line, preventing Cavalier from serving Cavalier’s customers effectively.

95. Instead of timely providing accurate information to Cavalier, Verizon often delays until the due date for delivery of service, or the day before, to tell Cavalier about an IDLC issue, making competition difficult.

96. At that point, Cavalier is not only unable to offer service, but appears incompetent to the customer because of the last-minute announcement.

97. Even when Verizon does provide “spare” facilities, such facilities have caused so many problems, such as problems with modem speed for dial-up Internet customers, that Cavalier was forced to stop advertising its popular and innovative “Internet caller ID” service.

98. Verizon thus deliberately deprives Cavalier and other competitors of access to information about last-mile facilities, and then uses its exclusive control of such information to make Cavalier and other competitors look bad in the eyes of customers.

99. In addition, the high-capacity facilities that Verizon provides to Cavalier have had a disproportionately high number of problems.

100. Cavalier has used these high-capacity lines to provide Basic Telecommunications Services consisting of both voice and data services.

101. These “bad” facilities have caused Cavalier to lose customers and suffer damage to its reputation and good will.

102. Moreover, Verizon has also provided a disproportionately high number of ordinary last-mile facilities that do not function upon their delivery for use by Cavalier’s customers.

103. These non-functional facilities have imposed undue delay and expense on Cavalier, and have also caused Cavalier to lose customers and suffer damage to its reputation and good will.

104. Verizon has also imposed costs on Cavalier’s existing or potential customers through the premature disconnection of customers who unexpectedly lose telephone service in the process of switching to Cavalier as their provider of Basic Telecommunications Services.

105. In September 2000, Verizon disconnected over 100 customers in this fashion in just one week, by intentionally refusing to coordinate the disconnection of Verizon’s services and the delivery of last-mile facilities to Cavalier.

106. Verizon has further imposed problems on Cavalier’s customers by continuing to bill those customers for time periods after those customers started obtaining Basic Telecommunications Services from Cavalier.

107. Verizon also instructed its billing personnel to refuse to talk to any of Cavalier’s customers, even when those customers called the telephone number that Verizon itself had listed on the bills as the number to contact if they had a question about the Verizon bill.

108. Again, this intentional misconduct by Verizon simply caused unnecessary frustration, delay, and wasted resources for Cavalier and its customers.

109. Verizon has also intentionally imposed unreasonable systems for directory assistance (411) listings and listings in directory publications.

110. Verizon controls both the publication of printed directories and the electronic listings in the directory assistance database.

111. Verizon's burdensome process for directory publication listings has forced Cavalier to dedicate employees to the problem on a full-time basis.

112. This same process has caused Cavalier many problems, and one customer lawsuit to date.

113. Verizon's intentionally costly approach to both directory assistance and directory publications have caused Cavalier unnecessary problems with customer listings and with customers relationships.

114. Verizon also manipulates the charges and practices used to provide certain last-mile facilities.

115. For example, with high-capacity last-mile facilities, Verizon recently changed its practice of providing such facilities.

116. Instead, Verizon began refusing to provide such facilities on the same basis, and requiring Cavalier to order such facilities on a retail, rather than wholesale, basis.

117. Verizon then proposed to offer these same services at a price lower than Cavalier's "retail" cost for high-capacity facilities, or at a price so low that Cavalier could not profitably offer such services if forced to obtain last-mile facilities at the "retail" cost.

118. Verizon has also sought to impose costly charges on Cavalier for “loop conditioning,” or the removal of equipment that Verizon itself has placed on certain lines.

119. Such equipment must be removed before Cavalier can offer digital subscriber line services, or high-speed Internet access, over last-mile facilities.

120. Although Cavalier has sought to resolve this issue since August 1999, Verizon continues to propose rates that are unreasonably high, are anticompetitive, and do not comply with the constraints imposed by the BA/GTE Merger Order.

121. Ostensibly because of the lack of agreement on this issue, Verizon has outright refused to allow Cavalier to offer digital subscriber line services on loops beyond a certain distance from the central office—loops on which Cavalier, but not Verizon, had been able to offer such services.

122. With these anticompetitive charges, Verizon is trying to raise the cost of last-mile facilities to a point where it is higher than the retail cost of Verizon’s digital subscriber line services, or to a point where Cavalier cannot profitably offer its own digital subscriber line services.

123. Finally, when Cavalier and other competitors seek to resolve any of these problems, Verizon stalls by creating an “issues matrix,” scheduling repetitive and unproductive conference calls and meetings, and simply repeating the same position again and again, with no intention of resolving the problem.

124. These many conference calls, meetings, and other methods of obfuscation simply impose additional cost and delay upon Cavalier and other competitors.

125. The overall goal of Verizon's tactics, and the cumulative effect of those tactics, is to drive Cavalier out of the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas.

7. Network-Related Problems

126. Verizon has also intentionally imposed additional delay and expense on Cavalier during Cavalier's effort to build fiber-optic networks linking its switches to Verizon's central offices.

127. First, Verizon imposed an unnecessarily complex, lengthy, and expensive process for Cavalier to mount its fiber on Verizon's utility poles or to pull its fiber through conduit systems owned by Verizon.

128. These poles and conduits are part of the bottleneck facilities controlled by Verizon and used to stifle competition.

129. Specifically, Verizon has used its control of these poles and conduits to block Cavalier's network-building, resulting in delays of as long as 250 days for access to these necessary items.

130. Moreover, where Cavalier has also encountered issues with poles and conduits owned by Dominion Virginia Power, Verizon has prevented a unified solution to such issues and has also made it needlessly complex, time-consuming, and expensive for Cavalier to use Verizon's spare fiber-optic cable.

131. For example, after the FCC required Verizon to make available such spare fiber, Verizon imposed an irrational and unreasonable set of procedures that were intentionally designed to impede Cavalier's efforts to obtain such fiber, procedures that the FCC has not addressed.

132. As with access to lines on IDLC, Verizon claimed that it was not “technically feasible” to implement the process requested by Cavalier.

133. The disingenuousness of this response was demonstrated when Verizon later sought approval to offer long-distance in Pennsylvania, and settled Cavalier’s objection concerning spare fiber by implementing exactly the solution that Verizon had earlier insisted was not “technically feasible.”

134. Further, even when Cavalier finally obtained spare fiber and other inter-office facilities from Verizon, Cavalier has had problems with those facilities.

135. At one point, Verizon interrupted all service to Cavalier’s northern Virginia switch for a period of several hours, leaving Cavalier’s customers completely without service.

136. More recently, Verizon has also impeded Cavalier’s access to spare fiber between Verizon’s central offices and specific customer premises.

8. Verizon’s Error-Laden Bills

137. As part of its anticompetitive campaign, Verizon has also intentionally made billing for last-mile facilities a costly and difficult process for competitors.

138. Both the U.S. Department of Justice and Arthur Andersen LLP, as well as competitors of Verizon, have identified problems with Verizon’s billing procedures with competitors, and Cavalier has experienced similar billing problems in multiple areas.

139. For example, Verizon’s bills for “unbundled network elements,” or last-mile facilities, suffer from several problems, including application of the wrong rate elements and non-compliance with conditions imposed by the BA/GTE Merger Order, all aggravated by Verizon’s use of different billing systems.

140. Cavalier has disputed these bills, and the adequacy of services that are the subject of the bills, but Verizon has initiated collections procedures and taken other threatening and predatory actions, even while promising to provide reconciliations and to meet with Cavalier to resolve the issues.

141. Verizon has also intentionally created problems for Cavalier by refusing to adjust its charges to third parties, such as charges to municipalities for services related to E911, to account for the fact that Cavalier and not Verizon now performs such services for Cavalier's customers.

142. As a result, Verizon has caused Cavalier to become embroiled in disputes over tariffed charges by Cavalier to municipalities.

143. All of Verizon's billing-related conduct has caused Cavalier wasted time and effort, burdened Cavalier with voluminous paper bills that Verizon refuses to provide in electronic format, left Cavalier unaware of how much it truly owes and thus unable to plan its financing reliably, and served as a pretense for Verizon to deny and threaten to deny the continued provision of services.

Verizon's Retaliation Against Cavalier for Filing Suit

144. In early November 2001, Cavalier signed an agreement to acquire substantially all of the telecommunications assets of Net2000 Communications, Inc. ("Net2000"), a competitor of Verizon that filed for bankruptcy protection.

145. Cavalier planned to provide Basic Telecommunications Services to Net2000's former customers more profitably than Net2000 had provided such services, by moving the customers off expensive special access services purchased by Net2000 from Verizon, and onto less expensive fiber-optic networks owned or leased by Cavalier.

146. Not long after the purchase, Cavalier met with Verizon to discuss this proposed transfer of customers from Verizon's network onto Cavalier's network pursuant to Cavalier's independent right to order services from Verizon under its interconnection agreements with Verizon or under Verizon's tariffs .

147. Verizon agreed to accommodate this transfer, as it had done when Cavalier had acquired customers from other carriers such as Conectiv Communications, Inc. and Broadstreet Communications.

148. In December 2001, when this transfer was actually scheduled to begin, Verizon's operations personnel contacted Cavalier's engineering staff and told them that Verizon would not be transferring the customers, on advice of Verizon's counsel.

149. Cavalier asked Verizon to go through with the transfer, but Verizon refused, using its control of last-mile facilities to block Cavalier's efforts.

150. Verizon claimed that Cavalier's effort to continue service with Verizon, until the transfer could be completed, meant that Cavalier had agreed to keep the customers on the expensive special access services purchased from Verizon by Net2000, for the full term of Net2000's contracts with Verizon.

151. Verizon's actions have caused uncertainty that led many former Net2000 customers to switch their service from Cavalier to Verizon, at the cost of thousands of access lines to date.

152. Verizon's actions have also caused Cavalier to incur additional liabilities, roughly estimated at approximately \$1.5 million per month, to maintain service through more services provided by Verizon and other carriers, because Cavalier is unable to transfer those customers to its own, less expensive network.

153. Verizon appears to have taken these actions to retaliate against Cavalier for commencing this civil action on November 1, 2001.

Verizon's Exclusionary Conduct Harms Competition

154. Verizon's campaign to suppress competition has successfully imposed so much additional cost and delay on competitors that Verizon has reduced competition in the market for Basic Telecommunications Services and harmed consumers.

155. Verizon has used its control of last-mile facilities to drive a number of competitors to file for bankruptcy, cease offering services in Virginia, or abandon plans to offer services in Virginia.

156. For example, competing providers of voice and data services like PICUS Communications of Virginia, Inc., which was based in the Tidewater area of Virginia, have gone bankrupt and ceased providing service.

157. Competing providers of broadband services, such as Rhythms Links, Inc.-Virginia, Broadband Office Communications-Virginia, and Everest Connections Corporation of Virginia, have likewise either gone bankrupt, ceased providing service in Virginia, or scuttled plans to offer service in Virginia.

158. These competitors typically offered lower prices, better services, or more innovative services than Verizon.

159. Like many competitors, Cavalier offers Basic Telecommunications Services at prices that are 15-25% lower than Verizon's prices.

160. The costs imposed by Verizon and its exclusionary conduct deprive customers of lower-cost alternatives to Verizon.

161. Cavalier has also introduced new services that Verizon does not offer, or had not yet offered, such as Internet caller identification and talking caller identification services.

162. By driving competitors from the marketplace, and by delaying and limiting Cavalier's ability to offer services, Verizon has caused consumers to pay higher prices for Basic Telecommunications Services and has prevented consumers from obtaining the benefit of innovative services.

Harm to Cavalier

163. Verizon has also harmed Cavalier in a number of ways, through individual categories of anticompetitive conduct, and also through the cumulative impact of such actions on Cavalier and its customers.

164. First, Verizon delayed Cavalier's entry into the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas.

165. That delay cost Cavalier revenues that it would have received absent such a delay.

166. Second, Verizon has directly imposed unnecessary and additional costs on Cavalier.

167. Third, Cavalier has lost customers due to Verizon's actions.

168. Fourth, Cavalier has suffered significant harm to its reputation and good will because of Verizon's actions.

169. Fifth, Cavalier has encountered a higher cost of securing investment and financing because of Verizon's actions.

Related Regulatory Actions

170. Cavalier has sought regulatory intervention in several of its problems with Verizon.

171. In a formal complaint that involved some of the issues described above, the Virginia State Corporation Commission (“the SCC”) declined to arbitrate any issues under 47 U.S.C. § 252, declined to address any issues under federal law, and found that it lacked authority to award Cavalier monetary damages under any circumstances.

172. In a separate proceeding related specifically to premature disconnection of customers’ service, the SCC found that Verizon had acted improperly, but declined to penalize Verizon, and instead simply ordered its Staff to monitor the situation.

173. In response, Cavalier withdrew its formal complaint at the SCC.

174. Cavalier has also sought expedited relief from the FCC in two cases.

175. In one case, Cavalier asked the FCC to place the spare fiber dispute on the FCC’s “accelerated docket” for expedited decision-making, and Verizon responded that the solution sought by Cavalier was not “technically feasible.”

176. Cavalier was unable to make any progress until Verizon agreed to implement Cavalier’s proposed solution, to overcome Cavalier’s objection to Verizon’s request for long-distance authority in Pennsylvania.

177. In the other case, Cavalier asked the FCC to place the issue of Verizon’s new policy on high-capacity loops on the accelerated docket, but the FCC has not acted.

178. Cavalier recently learned that of 67 requests for accelerated docket treatment in almost two years, the FCC had granted only one request.

179. Cavalier has therefore brought this civil action against Verizon, because both the SCC and the FCC appear to lack the tools to address the many competitive obstacles erected by Verizon.

First Cause of Action: Monopolization

180. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

181. Verizon possesses monopoly power in the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas, as shown by, among other things, its possession of a dominant share of the market in those areas.

182. Substantial entry barriers prevent new rivals from easily entering this market.

183. Those entry barriers include, without limitation, state regulatory requirements for entering the market, local regulatory requirements for entering the market, the substantial sunk costs required to acquire and build other telecommunications equipment and facilities, such as switches and fiber-optic networks, and Verizon's control of essential facilities.

184. These entry barriers prevent new rivals from timely responding to increases in price above the competitive level or from timely responding to the lack of innovation in the market.

185. By engaging in the exclusionary conduct described above, Verizon has willfully and illegally maintained its monopoly power in the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas.

186. Through its refusal to deal, Verizon is willfully and illegally maintaining its monopoly power in the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas.

187. Verizon also controls the last-mile facilities needed for Verizon, Cavalier, or other competitors to provide Basic Telecommunications Services over those facilities in the Richmond, Tidewater, and northern Virginia areas.

188. Cavalier is unable to duplicate those facilities in any reasonable or practicable way.

189. Verizon has denied the use of those facilities to Cavalier by engaging in the conduct alleged above.

190. It is feasible for Verizon to provide these facilities to Cavalier.

191. Through its conduct, as alleged above, Verizon has charged or sought to charge Cavalier wholesale prices for last-mile facilities that are higher than the Basic Telecommunications Services that Verizon provides over those last-mile facilities.

192. Alternatively, Verizon has charged or sought to charge Cavalier wholesale prices for last-mile facilities that are so high that Cavalier cannot profitably offer Basic Telecommunications Services over those facilities.

193. As alleged above, competition has suffered as a direct and proximate result of Verizon's maintenance of its monopoly power.

194. Also as a direct and proximate result of Verizon's conduct, Cavalier has suffered damages in an amount to be fully determined at trial, and estimated to be at least \$45 million, which should be trebled to \$135 million pursuant to 15 U.S.C. § 15.

195. Because Verizon's actions are willful and flagrant, Cavalier further requests that it be awarded treble damages pursuant to Virginia Code § 59.1-9.12(b).

196. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further violation of § 2 of the Sherman Act, pursuant to 15 U.S.C. § 26 and Virginia Code § 29.1-9.12(a).

Second Cause of Action: Attempted Monopolization

197. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

198. By engaging in the conduct alleged above, Verizon has engaged in predatory, anticompetitive, and exclusionary conduct.

199. These anticompetitive practices by Verizon evince Verizon's specific intent to monopolize the market for Basic Telecommunications Services.

200. Verizon has a dangerous probability of regaining market power in the market for Basic Telecommunications Services in the Richmond, Tidewater, and northern Virginia areas.

201. Although competitors initially began to lure away customers in this market, through lower prices and better and more innovative services, Verizon's anticompetitive practices have created a dangerous probability that Verizon will regain monopoly power in these markets.

202. As alleged above, Verizon has market power in the market for last-mile facilities used to provide Basic Telecommunications Services.

203. Verizon has used that power, through the misconduct alleged above, to foreclose competition, to gain or preserve a competitive advantage, and to destroy competitors in the distinct market for Basic Telecommunications Services.

204. As alleged above, competition has suffered as a direct and proximate result of Verizon's maintenance of its monopoly power.

205. Also as a direct and proximate result of Verizon's conduct, Cavalier has suffered damages in an amount to be fully determined at trial, and estimated to be at least \$45 million, which should be trebled to \$135 million pursuant to 15 U.S.C. § 15.

206. Because Verizon's actions are willful and flagrant, Cavalier further requests that it be awarded treble damages pursuant to Virginia Code § 59.1-9.12(b).

207. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further violation of § 2 of the Sherman Act, pursuant to 15 U.S.C. § 26 and Virginia Code § 29.1-9.12(a).

Third Cause of Action: Violation of the Lanham Act

208. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

209. Through its conduct, as alleged above, Verizon, in connection with services, used in commerce false and misleading descriptions or misleading representations of fact.

210. These false and misleading descriptions or misleading representations of fact, in commercial advertising or promotion, misrepresented the nature, characteristics, and qualities of Cavalier's services.

211. Verizon has thus violated § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

212. As a direct and proximate result of this conduct in violation of § 43(a) of the Lanham Act, Cavalier has suffered damages in an amount to be determined at trial.

213. Because Verizon's actions in violation of § 43(a) the Lanham Act have been willful and wanton, Cavalier respectfully requests that it be awarded treble the amount of any actual damages, pursuant to § 35 of the Lanham Act, 15 U.S.C. § 1117(a).

214. Because of the exceptional nature of this case, as demonstrated by Verizon's blatantly willful, predatory, and anticompetitive campaign against Cavalier, Cavalier respectfully requests that it be awarded reasonable attorney fees as the prevailing party, pursuant to § 35 of the Lanham Act, 15 U.S.C. § 1117(a).

215. Finally, in addition to awarding Cavalier an appropriate amount of monetary damages and other relief, as requested above, Cavalier respectfully requests that the Court enter a preliminary and permanent injunction barring Verizon from any further false statements, pursuant to § 34 of the Lanham Act, 15 U.S.C. § 1116(a).

Fourth Cause of Action: Violation of the Communications Act of 1934

216. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

217. Through its conduct, as alleged above, Verizon has not provided physical connection to Cavalier, another carrier, in accordance with the orders of the FCC.

218. Verizon has therefore violated § 201(a) of the Communications Act of 1934, 47 U.S.C. § 201(a).

219. Through its conduct, as alleged above, Verizon also has imposed charges and practices on Cavalier that are unjust and unreasonable.

220. Verizon has therefore also violated § 201(b) of the Communications Act of 1934, 47 U.S.C. § 201(b).

221. Through its conduct, as alleged above, Verizon has imposed unjustly and unreasonably discriminatory charges and practices, including charges for, and/or services in connection with, the use of common carrier lines of communication.

222. Verizon has therefore also violated §§ 202(a) and 202(b) of the Communications Act of 1934, 47 U.S.C. §§ 202(a) and 202(b).

223. Verizon's conduct, as alleged above, constitutes violations of Chapter 5 of the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

224. As a direct and proximate result of Verizon's conduct in violation of Chapter 5 of the Communications Act of 1934, as specified, above, Cavalier has suffered damages in an amount to be fully determined at trial.

225. Pursuant to 47 U.S.C. § 207, Cavalier respectfully requests that it be awarded monetary damages to compensate it for these damages.

226. Pursuant to 47 U.S.C. § 206, Cavalier further respectfully requests that it be awarded a reasonable counsel or attorney's fee in this matter.

227. Because Verizon's actions are intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

228. Finally, in addition to awarding Cavalier an appropriate amount of monetary damages, and other relief as requested above, Cavalier respectfully requests that the Court enter a preliminary and permanent injunction barring Verizon from any further violation of the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

Fifth Cause of Action: Violation of BA/GTE Merger Order

229. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

230. In the BA/GTE Merger Order, the FCC approved the merger of Bell Atlantic Corporation (“Bell Atlantic”) and GTE Corporation (“GTE”) subject to certain conditions that were intended to help promote competition in local telephone markets.

231. However, since the merger, Verizon, the company formed by that merger, has repeatedly violated the terms of the BA/GTE Merger Order.

232. Auditors, such as Arthur Andersen and Mitchell & Titus, have noted some violations of the order.

233. Verizon’s conduct has also contravened a fundamental goal of the BA/GTE Merger Order, that Verizon adopt the “best practices” of Bell Atlantic and GTE in unifying their practices for interaction with competitive local exchange carriers.

234. For example, instead of continuing its past practices in providing high-capacity loops, Verizon recently adopted what appears to be a former GTE practice of denying access to such facilities if certain components are not present at each end of the circuit.

235. Verizon thus adopted the “worst practices” instead of the “best practices” of its predecessors.

236. As a direct and proximate result of Verizon’s violation of the BA/GTE Merger Order, Cavalier has suffered monetary damages in an amount to be fully determined at trial.

237. Because Verizon's actions have been intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

238. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further violations of the Bell Atlantic/GTE Merger Order.

Sixth Cause of Action: Violation of Uniform Trade Secrets Act

239. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

240. Cavalier's information about existing and prospective customers, and particularly the fact that these customers may or will switch to another provider of Basic Telecommunications Services, is information that derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

241. This customer information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy and is not limited to the type of customer information or customer proprietary network information described in 47 U.S.C. § 222.

242. Verizon has used this information without Cavalier's express or implied consent when Verizon, at the time of such use, knew that this information was acquired under circumstances giving rise to a duty to maintain its confidentiality or limit its use.

243. Verizon used the information to its own economic benefit in breach of Verizon's duty to maintain the confidentiality of the information.

244. Verizon had a duty not to disclose this information, but Verizon nonetheless made this information available to its directory listing sales personnel and to its retail sales personnel.

245. As a result, Verizon's directory listing and retail sales personnel contacted Cavalier's existing or prospective customers and sought to intimidate them into not buying, or not continuing to buy, Basic Telecommunications Services from Cavalier.

246. As a direct and proximate cause of Verizon's misuse of the confidential customer information described above, Cavalier has suffered damages including but not limited to loss of customers, loss of revenue, and loss of profits, in an amount to be fully determined at trial.

247. Because Verizon's actions have been intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

248. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further misappropriation of Cavalier's trade secrets.

Seventh Cause of Action: Tortious Interference with Contract

249. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

250. Cavalier has entered into contracts with both residential and business customers.

251. Verizon has knowledge of these relationships.

252. Verizon has knowledge of the name, address, and other particulars of each new residential and business customer that is switching to Cavalier as the provider of local telephone service, because of documentation that Verizon requires Cavalier to submit as part of the pre-order, ordering, and provisioning processes.

253. Verizon has intentionally acted to induce or cause breach or termination of these relationships, through the intentional misconduct and other actions alleged above.

254. Such conduct has had the effect of inducing or causing breach or termination of Cavalier's contractual relationships with its business and residential customers.

255. As a direct and proximate result of Verizon's conduct, Cavalier has suffered damages including but not limited to increased costs, loss of customers, loss of revenue, loss of profits, and damage to reputation and good will, in an amount to be fully determined at trial.

256. Because Verizon's actions have been intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

257. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further interference with Cavalier's contractual relations.

**Eighth Cause of Action: Tortious Interference
with Prospective Economic Advantage**

258. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

259. Cavalier has entered into contracts with residential and business customers.

260. Cavalier has also had the expectancy of a business relationship with business and residential customers.

261. Cavalier has had the probability of future economic benefit from both the existing business relationships and the expectancies of business relationships.

262. Verizon has knowledge of these relationships.

263. Through Cavalier's submission of requests to Verizon for customer service records, Verizon has knowledge of the name, address, and other particulars of each prospective residential and business customer that is considering switching to Cavalier as a provider of local telephone service.

264. It was reasonably certain that these residential and business customers would have continued their business relationship with Cavalier or commenced a business relationship with Cavalier, absent intentional misconduct by Verizon.

265. Verizon interfered with these business relationships and expectancies through its improper conduct, as alleged above.

266. Verizon's improper conduct included, without limitation, intentional violations of the federal antitrust laws, Virginia's antitrust laws, Virginia's Uniform Trade Secrets Act, applicable provisions of the Communications Act of 1934, applicable terms of the BA/GTE Merger Order, and applicable FCC regulations.

267. Verizon's improper conduct also included, without limitation, intentional efforts to interfere with Cavalier's existing or potential customers through

misrepresentations to such customers by Verizon's directory publication personnel and retail sales personnel, as alleged above.

268. Verizon's improper conduct also included, without limitation, Verizon's efforts to cause delay, uncertainty, added expense, unnecessary complexity, and extraneous problems in the provision of last-mile facilities to Cavalier, as alleged above.

269. As a direct and proximate result of Verizon's intentional misconduct and interference with Cavalier's business relationships and business expectancies, Cavalier has suffered damages including but not limited to increased costs, loss of customers, loss of revenue, loss of profits, and damage to reputation and good will, in an amount to be fully determined at trial.

270. Because Verizon's actions have been intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

271. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further interference with Cavalier's prospective business relations.

Ninth Cause of Action: Intentional or Negligent Misrepresentation

272. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

273. Verizon has misrepresented material facts to Cavalier concerning the actual costs of physical collocation, the availability of spare fiber and other last-mile

facilities, the availability of fully functional operations support systems, and other aspects of access to Verizon's last-mile facilities.

274. Verizon made these misrepresentations either intentionally, or with reckless disregard for the truth or falsity of the representations or negligently, without reasonable basis for making the representations.

275. Verizon made these false representations with the knowledge that Cavalier would rely to its detriment upon such representations.

276. Cavalier reasonably relied on these representations and as a direct and proximate result of this reliance suffered damages that increased the cost of operations and caused the loss of customers, loss of revenues, loss of profits, and damage to Cavalier's good will and reputation.

277. As a direct and proximate result of Verizon's misrepresentations, Cavalier has suffered damages in an amount to be fully determined at trial.

278. To the extent that Verizon's misrepresentations have been intentional, deliberate, and malicious, Cavalier further requests that it be awarded an additional \$500 million in punitive damages.

279. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further misrepresentations.

Tenth Cause of Action: Breach of Contract

280. Cavalier restates the allegations set forth in the paragraphs above as if fully set forth herein.

281. On January 13, 1999, Cavalier entered into an Interconnection Agreement with Verizon.

282. The agreement is a legally binding contract between Cavalier and Verizon.

283. This contract established a series of commitments by Verizon for Cavalier to interconnect its network with Verizon's network.

284. Since entering into the agreement, Verizon has intentionally acted contrary to express provisions of that contract, and in breach of the contract, as set forth above.

285. As a direct and proximate result of Verizon's breach of contract, Cavalier has suffered damages in an amount to be fully determined at trial.

286. In addition to awarding Cavalier an appropriate amount of monetary damages, Cavalier respectfully requests that the Court issue a preliminary and permanent injunction barring Verizon from any further breaches of this contract.

WHEREFORE, for the reasons stated above, plaintiff, Cavalier Telephone, LLC respectfully requests that the Court enter judgment in its favor and against defendant, Verizon Virginia Inc., and grant Cavalier the following relief:

- (a) trial by jury of all its claims so triable;
- (b) compensatory damages in an amount currently estimated to be at least \$45 million, trebled to at least \$135 million;
- (c) punitive damages of \$500 million;
- (d) preliminary and permanent injunctive relief as requested above;
- (e) the award of costs and attorneys' fees as requested above; and

(f) such other monetary damages and such other legal and equitable relief to which Cavalier may be entitled.

Dated: February 7, 2002.

Respectfully submitted,

CAVALIER TELEPHONE, LLC

By: _____
Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February, 2002, I caused a true and correct copy of the above pleading to be served by first class U.S. mail, postage prepaid and properly addressed, to the following counsel:

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