

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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**Verizon Communications Inc., Verizon New  
Jersey Inc., Verizon Pennsylvania Inc.,  
Verizon Delaware Inc., Verizon Virginia Inc.,  
Verizon Maryland Inc., Verizon Washington,  
D.C. Inc., and Verizon New York Inc.,  
Plaintiffs and Counterdefendants,**

**Case No. 02-1374 (SLR)**

**v.**

**ATX Communications, Inc., ATX Licensing, Inc.,  
CoreComm Maryland, Inc.,  
CoreComm New Jersey, Inc., CoreComm  
New York, Inc., CoreComm Virginia, Inc.,  
and ATX Telecommunications  
Services of Virginia, LLC,**

**JURY TRIAL  
REQUESTED**

**Defendants and Counterclaimants,**

**and**

**Verizon Services Corp. and Telesector Resources  
Group, Inc., d/b/a/ Verizon Services Group,  
Additional Counterdefendants.**

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**ANSWER, WITH AFFIRMATIVE DEFENSES and COUNTERCLAIMS**

Defendants ATX Communications, Inc., ATX Licensing, Inc., CoreComm New Jersey, Inc., CoreComm Virginia, Inc., ATX Telecommunications Services of Virginia, LLC, CoreComm Maryland, Inc., and CoreComm New York, Inc. (collectively, "ATX"), answer the Complaint as follows:

1. Answer deferred subject to pending Motion to Dismiss. ATX has filed a motion to dismiss Count XXIX of the Complaint and will not, therefore, answer any allegations related to these claims.

2. ATX admits that in certain cases its relationship with Verizon is governed, in part, by interstate and intrastate tariffs issued by Verizon, but only at most to the extent that ATX has purchased services from said tariffs. ATX admits that some of the Defendants have entered into interconnection agreements with Verizon that were approved by state regulators. These tariffs and interconnection agreements speak for themselves, and ATX denies Verizon's characterizations of these documents. ATX denies Verizon's allegation that its tariffs have in all cases been approved by regulators and denies all of the other allegations of Paragraph 2 of the Complaint.

3. ATX admits that some of the tariffs issued by Verizon and the interconnection agreements between ATX and Verizon provide in certain cases that under highly limited circumstances involving nonpayment, Verizon may lawfully suspend service, and admits that some of the tariffs issued by Verizon and the interconnection agreements between ATX and Verizon provide in certain other cases that in other highly limited circumstances involving nonpayment, Verizon may lawfully terminate its relationship with ATX. However, ATX denies that any of these circumstances have taken place, and denies all other allegations of Paragraph 3 of the Complaint.

4. On information and belief, ATX denies that Verizon Communications, Inc. is an incumbent local exchange carrier ("ILEC"), as state and federal law define that term. ATX admits all other allegations of Paragraph 4 of the Complaint.

5. ATX is unaware of any definition of the term “competitive local exchange carriers” (“CLECs”) under federal law or under the law of all of the states at issue, but admits that the defendants are CLECs as that term is generally used in the telecommunications industry.

a. ATX admits that ATX Communications, Inc. is a Delaware corporation with its principal place of business in Pennsylvania, admits that until July 2002 ATX Communications, Inc. was known as CoreComm Holdco, Inc., admits that CoreComm Holdco, Inc. was an operating subsidiary of CoreComm Limited, admits that CoreComm Holdco, Inc. assumed ownership of substantially all the business operations owned by CoreComm Limited, admits that CoreComm Holdco, Inc. changed its name to ATX Communications, Inc., and denies all other allegations of Paragraph 5(a) of the Complaint.

b. ATX admits that ATX Licensing is a Delaware corporation with its principal place of business in Pennsylvania, and denies all other allegations of Paragraph 5(b) of the Complaint.

c. ATX admits that CoreComm New Jersey is a Delaware corporation and denies all other allegations of Paragraph 5(c) of the Complaint.

d. ATX denies the allegations of Paragraph 5(d) of the Complaint.

e. ATX admits that ATX Telecommunications Services of Virginia, LLC has its principal place of business in Pennsylvania and denies all other allegations of Paragraph 5(e) of the Complaint.

f. ATX admits CoreComm Maryland, Inc. is a Delaware corporation and denies all other allegations of Paragraph 5(f) of the Complaint.

g. ATX admits that CoreComm New York, Inc. is a Delaware corporation and denies all other allegations of Paragraph 5(g) of the Complaint.

6. ATX admits that ATX Communications and that the entities described by Verizon as the “CoreComm State Entities” have common ownership, operate at least in part out of the corporate headquarters of ATX Communications, and are, directly or indirectly, wholly owned subsidiaries of ATX Communications. ATX denies all other allegations of Paragraph 6 of the Complaint.

7. ATX admits that the CoreComm State Entities share a common marketing image and logo, admits that the CoreComm website ([www.corecomm.com](http://www.corecomm.com)) gives no indication that service is provided by different entities in different states, and denies all other allegations of Paragraph 7 of the Complaint.

8. ATX admits that ATX Licensing and ATX Virginia have common ownership, admits that ATX Virginia operates out of the offices of ATX Licensing, and admits that ATX Virginia was formed by ATX Licensing or one of its predecessor-in-interest or affiliates. ATX denies all other allegations of Paragraph 8 of the Complaint.

9. ATX admits that ATX Virginia and ATX Licensing share a common marketing image and logo, admits that all advertising for ATX Virginia is controlled by ATX Licensing or one of its affiliates, admits that the ATX website ([www.atx.com](http://www.atx.com)) is used for both companies and that it does not give any indication of distinction between the two companies, and denies all other allegations of Paragraph 9 of the Complaint.

10. ATX denies the allegations of Paragraph 10 of the Complaint.

11. ATX admits that it obtains access services from Verizon and that in some instances in which Verizon provides access service to ATX, Verizon carries the calls of

customers to which ATX sells long distance service between the premises of those customers and ATX's switching facilities, but denies that this occurs in all instances in which Verizon provides access service to ATX. ATX denies that Verizon provides only three types of services that are relevant to this case, and denies all other allegations of Paragraph 11 of the Complaint.

12. ATX admits that Verizon has filed a series of tariffs for access charges with the FCC and various state public utilities commissions, and denies all other allegations of Paragraph 12 of the Complaint.

13. ATX admits that Verizon's access service tariffs contain provisions that establish procedures for billing disputes, and, in certain cases under highly limited circumstances, Verizon's right to suspend or terminate service. ATX is without knowledge or information sufficient to form a belief as to the truth of the allegation with respect to the rates paid by every other party that obtains access services from Verizon, and therefore denies the allegation that every party that purchases access service from Verizon pays the rate specified in the relevant tariff. ATX denies all other allegations of Paragraph 13 of the Complaint.

14. ATX denies the allegations set forth in the first two sentences of Paragraph 14 of the Complaint. As to the remainder of Paragraph 14 of the Complaint, no response is necessary because the tariffs speak for themselves.

15. ATX admits that Verizon's tariffs contain provisions setting forth billing dispute procedures that may be applicable for services purchased from the tariffs. ATX admits that under these procedures it is required to notify Verizon of a dispute, and that it is permitted to withhold payment pending resolution of a dispute. ATX denies that the

tariffs permit Verizon to make a unilateral determination that a dispute has been resolved in Verizon's favor and denies all other allegations of Paragraph 15 of the Complaint.

16. ATX admits that Verizon's FCC access tariff includes provisions that would in certain highly limited circumstances permit Verizon to refuse additional applications for service, but denies that anything in Verizon's tariff authorizes Verizon to make a unilateral determination that disputes raised by ATX are "proven to be without merit" and denies all other allegations of Paragraph 16 of the Complaint except insofar as the tariff cited speaks for itself.

17. ATX admits that it purchases from Verizon both resold local telephone service and UNE-P service, admits that "UNE-P" is an acronym that is short for "unbundled network element platform," and denies all other allegations of Paragraph 17 of the Complaint.

18. ATX admits that pursuant to interconnection agreements and/or tariffs, ATX locates certain of its equipment within certain of Verizon's premises for several purposes, including making it possible for the equipment to be connected to Verizon's network, and denies all other allegations of Paragraph 18 of the Complaint.

19. ATX admits that in states in which Verizon has an effective wholesale tariff, a CLEC may purchase services from the wholesale tariff without having entered into an interconnection agreement with Verizon, and denies all other allegations of Paragraph 19 of the Complaint.

20. ATX admits that Verizon's state access service tariffs generally contain provisions regarding the timing of payments and establishing procedures for billing disputes, and, in certain cases under highly limited circumstances, Verizon's right to

suspend or terminate service. ATX denies all other allegations of Paragraph 20 of the Complaint.

21. ATX admits that Verizon provides resale and collocation to ATX pursuant to interconnection agreements adopted in some, but not all, of the states in which ATX does business, admits that the 1996 Act requires Verizon to enter into contracts with carriers who request that Verizon enter into an interconnection agreement with them and to some degree regulates the terms of those contracts, admits the allegations of the third sentence of Paragraph 21 of the Complaint, and denies all other allegations of Paragraph 21 of the Complaint.

22. ATX denies that Verizon provides services to the Defendants pursuant to a state wholesale tariff and its federal access tariff in all of the states designated by Verizon as a “Relevant State.” ATX admits the remainder of Paragraph 22 of the Complaint.

23. ATX admits that the interconnection agreements between Verizon and ATX contain provisions that establish procedures for payment for services and for billing disputes, and, in certain cases under highly limited circumstances, Verizon’s right to suspend or terminate service. ATX denies all other allegations of Paragraph 23 of the Complaint.

24. ATX admits that Paragraph 24 of the Complaint has accurately quoted a portion of § 4.1 of the Pennsylvania Interconnection Agreement between ATX Licensing and Verizon Pennsylvania and denies all other allegations of Paragraph 24 of the Complaint.

25. ATX admits that the parties’ interconnection agreements establish procedures governing the resolution of billing disputes, but denies that anything in the

agreements permits Verizon to assert that it has the unilateral right to “resolve” a dispute in its own favor; to the contrary, the agreements provide that disputes that the parties cannot resolve themselves must first be submitted to the state public utility commission or some other forum for resolution. *See, e.g.*, Pennsylvania Agreement at § 24.1. ATX denies all other allegations of Paragraph 25 of the Complaint.

26. ATX admits that Paragraph 26 of the Complaint has accurately quoted from § 16.4 of the Pennsylvania Interconnection Agreement between ATX Licensing and Verizon Pennsylvania and denies all other allegations of Paragraph 26 of the Complaint. Indeed, Verizon counsel has stated on the record of a proceeding before the Pennsylvania Public Utilities Commission that, contrary to Verizon’s assertion in Paragraph 26 of the Complaint, Verizon does not suspend or terminate service when the reason for a carrier’s nonpayment is the existence of a billing dispute.

27. ATX denies the allegations of Paragraph 27 of the Complaint.

28. ATX admits that it received letters dated December 13, 2001, January 31, 2002, and July 23, 2002 from Verizon notifying ATX of alleged defaults. ATX denies all other allegations of Paragraph 28 of the Complaint.

29. ATX denies the allegations of Paragraph 29 of the Complaint.

30. While ATX admits that Verizon has correctly recited excerpts from the March 13, 2002 Memorandum of Decision and Order on Plaintiff’s Application for Preliminary Injunction of the Massachusetts Superior Court, a case involving an ATX subsidiary that is not a defendant in this proceeding and that was not a party to any of the interconnection agreements that are at issue in this proceeding, Verizon fails to disclose that it procured that decision by submitting to the Massachusetts Superior Court a false

affidavit regarding amounts allegedly owed by to Verizon by the ATX subsidiary. The Verizon affidavit upon which the Massachusetts Superior Court based the decision from which Verizon quotes in Paragraph 30 falsely represented to the Massachusetts Superior Court that ATX owed Verizon large sums of money that had in fact been owed by an unrelated party (USN Communications Inc.) and that had in fact been discharged by order of the United States Bankruptcy Court for the District of Delaware. ATX denies all other allegations of Paragraph 30 of the Complaint.

31. ATX admits that Verizon provides service to ATX Licensing and CoreComm New Jersey in New Jersey under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 31 of the Complaint.

32. ATX admits that ATX New Jersey received letters from Verizon dated October 10, 2001 and January 31, 2002 notifying it of alleged defaults, and denies all other allegations of Paragraph 32 of the Complaint.

33. ATX admits that Verizon provides service to ATX Licensing and CoreComm Pennsylvania in Pennsylvania under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 33 of the Complaint.

34. ATX admits that ATX Licensing received letters dated December 13, 2001, January 31, 2002 and July 23, 2002 from Verizon notifying it of alleged defaults, and denies all other allegations of Paragraph 34 of the Complaint.

35. ATX admits that Verizon provides service to ATX Licensing in Delaware under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 35 of the Complaint.

36. ATX admits that ATX Licensing received letters dated October 10, 2001 and January 31, 2002 from Verizon notifying it of alleged defaults, and denies all other allegations of Paragraph 36 of the Complaint.

37. ATX admits that Verizon provides service to ATX Virginia and CoreComm Virginia in Virginia under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 37 of the Complaint.

38. ATX admits that ATX Virginia received letters dated October 10, 2001 and January 31, 2002 from Verizon notifying it of alleged defaults. ATX admits that ATX Virginia made payments to Verizon subsequent to the October 10, 2001 letter, and denies all other allegations of Paragraph 38 of the Complaint.

39. ATX admits that Verizon provides service to ATX Licensing and CoreComm Maryland in Maryland under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 39 of the Complaint.

40. ATX admits that ATX Licensing received letters dated October 10, 2001 and January 31, 2002 from Verizon notifying it of alleged defaults. ATX admits that ATX Licensing made payments to Verizon subsequent to the October 10, 2001 letter, and denies all other allegations of Paragraph 40 of the Complaint.

41. ATX admits that Verizon provides service to ATX Licensing in Washington, D.C. under Verizon's tariffs and the parties' interconnection agreements and denies all other allegations of Paragraph 41 of the Complaint.

42. ATX admits that ATX Licensing received letters dated October 10, 2001 and January 31, 2002 from Verizon notifying it of alleged defaults. ATX admits that ATX Licensing made payments to Verizon subsequent to the October 10, 2001 letter, and denies all other allegations of Paragraph 42 of the Complaint.

43. ATX admits that Verizon provides service to CoreComm New York in New York under an interconnection agreement and denies all other allegations of Paragraph 43 of the Complaint.

44. ATX admits that ATX Licensing received letters dated May 14, 2001 and January 31, 2002 from Verizon notifying it of alleged defaults. ATX admits that it made payments to Verizon subsequent to the May 14, 2001 letter, and denies all other allegations of Paragraph 44 of the Complaint.

45. ATX denies the allegations of Paragraph 45 of the Complaint.

46. ATX admits that when it has found Verizon's bills to be improper, it has lodged disputes pursuant to the interconnection agreement or tariff; admits that some of these disputes have been caused by Verizon's failure to break down amounts properly by billing account number; admits that in some instances in which Verizon has conceded the validity of ATX's disputes, Verizon has provided ATX with appropriate credits; and denies all other allegations of Paragraph 46 of the Complaint.

47. ATX denies the allegations of Paragraph 47 of the Complaint.

48. ATX denies the allegations of Paragraph 48 of the Complaint.

49. ATX admits the allegations of the first three sentences of Paragraph 49 of the Complaint and asserts that it made reasonable counterproposals, which Verizon flatly rejected. ATX denies all other allegations of Paragraph 49 of the Complaint.

50. Answer deferred subject to pending Motion to Dismiss.

51. Answer deferred subject to pending Motion to Dismiss.

52. Answer deferred subject to pending Motion to Dismiss.

53. Answer deferred subject to pending Motion to Dismiss.

54. Answer deferred subject to pending Motion to Dismiss.

55. Answer deferred subject to pending Motion to Dismiss.

All allegations of the Complaint not expressly admitted or otherwise answered herein are hereby denied.

### **Count I**

56. ATX restates and incorporates by reference each and every statement in paragraphs 1-55 of its Answer as if fully set forth herein.

57. ATX admits that Verizon's FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Licensing or CoreComm Pennsylvania as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

58. ATX denies the allegations of Paragraph 58 of the Complaint.

59. ATX denies the allegations of Paragraph 59 of the Complaint.

60. ATX denies the allegations of Paragraph 60 of the Complaint.

## **Count II**

61. ATX restates and incorporates by reference each and every statement in paragraphs 1-60 of its Answer as if fully set forth herein.

62. ATX admits that Verizon's Pennsylvania wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm Pennsylvania as a result of Verizon's failure to perform pursuant to its Pennsylvania wholesale tariffs.

63. ATX denies the allegations of Paragraph 63 of the Complaint.

64. ATX denies the allegations of Paragraph 64 of the Complaint.

65. ATX denies the allegations of Paragraph 65 of the Complaint.

## **Count III**

66. ATX restates and incorporates by reference each and every statement in paragraphs 1-65 of its Answer as if fully set forth herein.

67. ATX admits that the interconnection agreements between Verizon Pennsylvania and both ATX Licensing and CoreComm Pennsylvania are legally enforceable agreements, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm Pennsylvania as a result of Verizon's failure to perform pursuant to such agreements.

68. ATX denies the allegations of Paragraph 68 of the Complaint.

69. ATX denies the allegations of Paragraph 69 of the Complaint.

70. ATX denies the allegations of Paragraph 70 of the Complaint.

#### **Count IV**

71. ATX restates and incorporates by reference each and every statement in paragraphs 1-70 of its Answer as if fully set forth herein.

72. ATX restates and incorporates by reference each and every statement in paragraphs 57, 62, and 67 of its Answer as if fully set forth herein.

73. ATX denies the allegations of Paragraph 73 of the Complaint.

74. ATX denies the allegations of Paragraph 74 of the Complaint.

75. ATX denies the allegations of Paragraph 75 of the Complaint.

76. ATX denies the allegations of Paragraph 76 of the Complaint.

#### **Count V**

77. ATX restates and incorporates by reference each and every statement in paragraphs 1-76 of its Answer as if fully set forth herein.

78. ATX admits that Verizon's FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Licensing as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

79. ATX denies the allegations of Paragraph 79 of the Complaint.

80. ATX denies the allegations of Paragraph 80 of the Complaint.

81. ATX denies the allegations of Paragraph 81 of the Complaint.

#### **Count VI**

82. ATX restates and incorporates by reference each and every statement in paragraphs 1-81 of its Answer as if fully set forth herein.

83. ATX admits that Verizon's Delaware wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Licensing as a result of Verizon's failure to perform pursuant to its Delaware wholesale tariffs.

84. ATX denies the allegations of Paragraph 84 of the Complaint.

85. ATX denies the allegations of Paragraph 85 of the Complaint.

86. ATX denies the allegations of Paragraph 86 of the Complaint.

#### **Count VII**

87. ATX restates and incorporates by reference each and every statement in Paragraphs 1-86 of its Answer as if fully set forth herein.

88. ATX admits that the interconnection agreement between Verizon Delaware and ATX Licensing is a legally enforceable agreement, but denies that Verizon has the right to enforce the agreement against ATX Licensing as a result of Verizon's failure to perform pursuant to said agreement.

89. ATX denies the allegations of Paragraph 89 of the Complaint.

90. ATX denies the allegations of Paragraph 90 of the Complaint.

91. ATX denies the allegations of Paragraph 91 of the Complaint.

#### **Count VIII**

92. ATX restates and incorporates by reference each and every statement in paragraphs 1-91 of its Answer as if fully set forth herein.

93. ATX restates and incorporates by reference each and every statement in Paragraphs 78, 83, and 88 of its Answer as if fully set forth herein.

94. ATX denies the allegations of Paragraph 94 of the Complaint.

95. ATX denies the allegations of Paragraph 95 of the Complaint.

96. ATX denies the allegations of Paragraph 96 of the Complaint.

97. ATX denies the allegations of Paragraph 97 of the Complaint.

**Count IX**

98. ATX restates and incorporates by reference each and every statement in Paragraphs 1-97 of its Answer as if fully set forth herein.

99. ATX admits that Verizon's FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Licensing or CoreComm New Jersey as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

100. ATX denies the allegations of Paragraph 100 of the Complaint.

101. ATX denies the allegations of Paragraph 101 of the Complaint.

102. ATX denies the allegations of Paragraph 102 of the Complaint.

**Count X**

103. ATX restates and incorporates by reference each and every statement in Paragraphs 1-102 of its Answer as if fully set forth herein.

104. ATX admits that Verizon's New Jersey wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm New Jersey as a result of Verizon's failure to perform pursuant to its New Jersey wholesale tariffs.

105. ATX denies the allegations of Paragraph 105 of the Complaint.

106. ATX denies the allegations of Paragraph 106 of the Complaint.

107. ATX denies the allegations of Paragraph 107 of the Complaint.

**Count XI**

108. ATX restates and incorporates by reference each and every statement in Paragraphs 1-107 of its Answer as if fully set forth herein.

109. ATX admits that the interconnection agreements between Verizon New Jersey and both ATX Licensing and CoreComm New Jersey are legally enforceable agreements, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm New Jersey as a result of Verizon's failure to perform pursuant to such agreements.

110. ATX denies the allegations of Paragraph 110 of the Complaint.

111. ATX denies the allegations of Paragraph 111 of the Complaint.

112. ATX denies the allegations of Paragraph 112 of the Complaint.

**Count XII**

113. ATX restates and incorporates by reference each and every statement in Paragraphs 1-112 of its Answer as if fully set forth herein.

114. ATX restates and incorporates by reference each and every statement in Paragraphs 99, 104 and 109 of its Answer as if fully set forth herein.

115. ATX denies the allegations of Paragraph 115 of the Complaint.

116. ATX denies the allegations of Paragraph 116 of the Complaint.

117. ATX denies the allegations of Paragraph 117 of the Complaint.

118. ATX denies the allegations of Paragraph 118 of the Complaint.

**Count XIII**

119. ATX restates and incorporates by reference each and every statement in paragraphs 1-118 of its Answer as if fully set forth herein.

120. ATX admits that FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Virginia or CoreComm Virginia as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

121. ATX denies the allegations of Paragraph 121 of the Complaint.

122. ATX denies the allegations of Paragraph 122 of the Complaint.

123. ATX denies the allegations of Paragraph 123 of the Complaint.

**Count XIV**

124. ATX restates and incorporates by reference each and every statement in Paragraphs 1-123 of its Answer as if fully set forth herein.

125. ATX admits that Verizon's Virginia wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Virginia or CoreComm Virginia as a result of Verizon's failure to perform pursuant to its Virginia wholesale tariffs.

126. ATX denies the allegations of Paragraph 126 of the Complaint.

127. ATX denies the allegations of Paragraph 127 of the Complaint.

128. ATX denies the allegations of Paragraph 128 of the Complaint.

**Count XV**

129. ATX restates and incorporates by reference each and every statement in Paragraphs 1-128 of its Answer as if fully set forth herein.

130. ATX admits that the interconnection agreements between Verizon Virginia and both ATX Virginia and CoreComm Virginia are legally enforceable agreements, but denies that Verizon has the right to enforce such agreements against ATX Virginia or CoreComm Virginia as a result of Verizon's failure to perform pursuant to such agreements.

131. ATX denies the allegations of Paragraph 131 of the Complaint.

132. ATX denies the allegations of Paragraph 132 of the Complaint.

133. ATX denies the allegations of Paragraph 133 of the Complaint.

**Count XVI**

134. ATX restates and incorporates by reference each and every statement in Paragraphs 1-133 of its Answer as if fully set forth herein.

135. ATX restates and incorporates by reference each and every statement in Paragraphs 120, 125 and 130 of its Answer as if fully set forth herein.

136. ATX denies the allegations of Paragraph 136 of the Complaint.

137. ATX denies the allegations of Paragraph 137 of the Complaint.

138. ATX denies the allegations of Paragraph 138 of the Complaint.

139. ATX denies the allegations of Paragraph 139 of the Complaint.

**Count XVII**

140. ATX restates and incorporates by reference each and every statement in Paragraphs 1-139 of its Answer as if fully set forth herein.

141. ATX admits that Verizon's FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Licensing or CoreComm Maryland as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

142. ATX denies the allegations of Paragraph 142 of the Complaint.

143. ATX denies the allegations of Paragraph 143 of the Complaint.

144. ATX denies the allegations of Paragraph 144 of the Complaint.

### **Count XVIII**

145. ATX restates and incorporates by reference each and every statement in Paragraphs 1-144 of its Answer as if fully set forth herein.

146. ATX admits that Verizon's Maryland wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm Maryland as a result of Verizon's failure to perform pursuant to its Maryland wholesale tariffs.

147. ATX denies the allegations of Paragraph 147 of the Complaint.

148. ATX denies the allegations of Paragraph 148 of the Complaint.

149. ATX denies the allegations of Paragraph 149 of the Complaint.

### **Count XIX**

150. ATX restates and incorporates by reference each and every statement in Paragraphs 1-149 of its Answer as if fully set forth herein.

151. ATX admits that the interconnection agreements between Verizon Maryland and both ATX Licensing and CoreComm Maryland are legally enforceable

agreements, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm Maryland as a result of Verizon's failure to perform pursuant to such agreements.

152. ATX denies the allegations of Paragraph 152 of the Complaint.

153. ATX denies the allegations of Paragraph 153 of the Complaint.

154. ATX denies the allegations of Paragraph 154 of the Complaint.

**Count XX**

155. ATX restates and incorporates by reference each and every statement in Paragraphs 1-154 of its Answer as if fully set forth herein.

156. ATX restates and incorporates by reference each and every statement in Paragraphs 141, 146, and 151 of its Answer as if fully set forth herein.

157. ATX denies the allegations of Paragraph 157 of the Complaint.

158. ATX denies the allegations of Paragraph 158 of the Complaint.

159. ATX denies the allegations of Paragraph 159 of the Complaint.

160. ATX denies the allegations of Paragraph 160 of the Complaint.

**Count XXI**

161. ATX restates and incorporates by reference each and every statement in Paragraphs 1-160 of its Answer as if fully set forth herein.

162. ATX admits that Verizon's FCC Tariff 1 is a legally enforceable agreement to the extent that carriers place orders under it, but denies that Verizon has the right to enforce such agreement against ATX Licensing as a result of Verizon's failure to perform pursuant to its FCC Tariff 1.

163. ATX denies the allegations of Paragraph 163 of the Complaint.

164. ATX denies the allegations of Paragraph 164 of the Complaint.

165. ATX denies the allegations of Paragraph 165 of the Complaint.

**Count XXII**

166. ATX restates and incorporates by reference each and every statement in Paragraphs 1-165 of its Answer as if fully set forth herein.

167. ATX admits that Verizon's Washington, D.C. wholesale tariffs are legally enforceable agreements to the extent that carriers place orders under them, but denies that Verizon has the right to enforce such agreements against ATX Licensing as a result of Verizon's failure to perform pursuant to its Washington, D.C. wholesale tariffs.

168. ATX denies the allegations of Paragraph 168 of the Complaint.

169. ATX denies the allegations of Paragraph 169 of the Complaint.

170. ATX denies the allegations of Paragraph 170 of the Complaint.

**Count XXIII**

171. ATX restates and incorporates by reference each and every statement in Paragraphs 1-170 of its Answer as if fully set forth herein.

172. ATX admits that the interconnection agreement between Verizon Washington and ATX Licensing is a legally enforceable agreement, but denies that Verizon has the right to enforce the agreement against ATX Licensing as a result of Verizon's failure to perform pursuant to said agreement.

173. ATX denies the allegations of Paragraph 173 of the Complaint.

174. ATX denies the allegations of Paragraph 174 of the Complaint.

175. ATX denies the allegations of Paragraph 175 of the Complaint.

**Count XXIV**

176. ATX restates and incorporates by reference each and every statement in Paragraphs 1-175 of its Answer as if fully set forth herein.

177. ATX restates and incorporates by reference each and every statement in Paragraphs 162, 167, and 172 of its Answer as if fully set forth herein.

178. ATX denies the allegations of Paragraph 178 of the Complaint.

179. ATX denies the allegations of Paragraph 179 of the Complaint.

180. ATX denies the allegations of Paragraph 180 of the Complaint.

181. ATX denies the allegations of Paragraph 181 of the Complaint.

**Count XXV**

182. ATX restates and incorporates by reference each and every statement in Paragraphs 1-181 of its Answer as if fully set forth herein.

183. ATX denies the allegations of Paragraph 183 of the Complaint.

184. ATX denies the allegations of Paragraph 184 of the Complaint.

185. ATX denies the allegations of Paragraph 185 of the Complaint.

186. ATX denies the allegations of Paragraph 186 of the Complaint.

**Count XXVI**

187. ATX restates and incorporates by reference each and every statement in Paragraphs 1-186 of its Answer as if fully set forth herein.

188. ATX denies the allegations of Paragraph 188 of the Complaint

189. ATX denies the allegations of Paragraph 189 of the Complaint.

190. ATX denies the allegations of Paragraph 190 of the Complaint.

191. ATX denies the allegations of Paragraph 191 of the Complaint.

**Count XXVII**

192. ATX restates and incorporates by reference each and every statement in Paragraphs 1-191 of its Answer as if fully set forth herein.

193. ATX admits that the interconnection agreements between Verizon New York and both ATX Licensing and CoreComm New York are legally enforceable agreements, but denies that Verizon has the right to enforce such agreements against ATX Licensing or CoreComm New York as a result of Verizon's failure to perform pursuant to such agreements.

194. ATX denies the allegations of Paragraph 194 of the Complaint.

195. ATX denies the allegations of Paragraph 195 of the Complaint.

196. ATX denies the allegations of Paragraph 196 of the Complaint.

**Count XXVIII**

197. ATX restates and incorporates by reference each and every statement in Paragraphs 1-196 of its Answer as if fully set forth herein.

198. ATX restates and incorporates by reference each and every statement in Paragraphs 183, 188, and 193 of its Answer as if fully set forth herein.

199. ATX denies the allegations of Paragraph 199 of the Complaint.

200. ATX denies the allegations of Paragraph 200 of the Complaint.

201. ATX denies the allegations of Paragraph 201 of the Complaint.

202. ATX denies the allegations of Paragraph 202 of the Complaint.

**Count XXIX**

203. Answer deferred subject to Motion to Dismiss.

204. Answer deferred subject to Motion to Dismiss.

205. Answer deferred subject to Motion to Dismiss.

206. Answer deferred subject to Motion to Dismiss.

**FIRST AFFIRMATIVE DEFENSE**

207. The Complaint fails to state any claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

208. The Complaint is barred in whole or in part by the applicable Statutes of Limitations and by laches.

**THIRD AFFIRMATIVE DEFENSE**

209. The Complaint is barred in whole or in part by the doctrines of estoppel, waiver, ratification, and acquiescence.

**FOURTH AFFIRMATIVE DEFENSE**

210. The Complaint is barred in whole or in part by a failure of consideration.

**FIFTH AFFIRMATIVE DEFENSE**

211. The Complaint is barred in whole or in part by Plaintiffs' failure to comply with the conditions precedent set forth in the contracts and/or tariffs through which Plaintiffs seek to recover.

**SIXTH AFFIRMATIVE DEFENSE**

212. The Complaint is barred in whole or in part by virtue of the fact that the services rendered to Plaintiffs by Defendants failed to meet the applicable standards set forth in the contracts, tariffs, and applicable law.

**SEVENTH AFFIRMATIVE DEFENSE**

213. The Complaint is barred in whole or in part by Plaintiffs' improper and inaccurate billing of unidentified and unsubstantiated charges.

**EIGHTH AFFIRMATIVE DEFENSE**

214. The Complaint is barred in whole or in part by virtue of Plaintiffs' billing for services never rendered or billing at excessive, erroneous or improper rates.

**NINTH AFFIRMATIVE DEFENSE**

215. Any recovery to which Plaintiffs may be entitled is subject to setoff reflecting those Amounts owed by Plaintiffs to Defendants.

**TENTH AFFIRMATIVE DEFENSE**

216. The Complaint is barred by the doctrine of unclean hands, Plaintiffs' failure to do equity, and Plaintiffs' bad faith.

**ELEVENTH AFFIRMATIVE DEFENSE**

217. ATX hereby gives notice that it intends to rely upon other defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its defenses.

**COUNTERCLAIMS**

218. Counterclaimants ATX Communications, Inc., ATX Licensing, Inc., CoreComm New Jersey, Inc., CoreComm Virginia, Inc., ATX Telecommunications Services of Virginia, LLC, CoreComm Maryland, Inc., and CoreComm New York, Inc. (collectively, "ATX") which offer competitive local telephone service to business and residential customers in various markets, bring these Counterclaims to recover damages for injuries suffered by reason of the illegal maintenance of monopoly power by the counterdefendants Verizon Communications Inc. ("VCI"), Verizon Services Corporation ("VSC"), Telesector Resources Group, Inc. d/b/a/ Verizon Services Group ("VSG"),

Verizon New Jersey Inc., Verizon Pennsylvania Inc., Verizon Delaware Inc., Verizon Virginia Inc., Verizon Maryland Inc., Verizon Washington, D.C. Inc., and Verizon New York Inc., and their predecessors (collectively “Verizon”), the dominant, incumbent providers of local telephone service for businesses and consumers in numerous local markets in the Northeastern and Mid-Atlantic regions of the United States, to recover damages for Verizon’s breaches of contracts, tortious conduct, and violation of various state statutes, and to restrain Verizon’s ongoing unlawful conduct. These claims are brought pursuant to Section 2 of the Sherman Act, 15 U.S.C. § 2, applicable state statutes, and applicable state common law barring breaches of contract and tortious conduct.

## **COUNT I – MONOPOLIZATION**

### **NATURE OF THE CASE**

219. ATX entered the telecommunications business in 1985 by offering long-distance service, primarily to small business customers. ATX often leased portions of Verizon’s network in to order to serve its customers. In offering long-distance service, ATX competed against AT&T and other long distance telecommunications providers, such as MCI and Sprint. ATX established itself as a successful and viable competitor in long-distance telephone service.

220. In offering long-distance service, ATX did not compete against Verizon’s predecessor, Bell Atlantic Corporation, because the latter was then legally barred from providing long-distance service in the markets in which it provided local service. For eleven years, from 1985 until 1996, ATX enjoyed an amicable and productive working

business relationship with Verizon's predecessor, with very few business or technical problems.

221. In 1996, Congress enacted the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 151 *et seq.*, which encouraged the development of competition in markets for long-distance and local telephone service. Long-established, incumbent, local monopoly telephone companies like Verizon actively sought this legislation in order to regain the ability to offer long-distance service in their home territories.

222. In order to compete, companies that have entered markets for local telephone service must interconnect with, lease facilities from, and purchase services from the locally dominant provider of these services. In its markets in the Northeastern and Mid-Atlantic states, ATX must interconnect with and secure facilities and services from Verizon, whose predecessors obtained their local telephone infrastructures when those assets were divested by the old American Telephone and Telegraph Company.

223. ATX first entered local telephone service markets in 1997. A number of other competitive telephone companies also began operations in the mid- to late 1990s. Until then, long-established, incumbent telephone companies like Verizon had faced virtually no competition for most local customers.

224. When local competition appeared in its markets, Verizon reacted with a determined campaign of obstruction and disruption of the new firms' operations that continues to this day. Rather than respond to the increased competition with improved services and rates in order to retain customers, Verizon instead worked to make it difficult and expensive, if not impossible, for its new competitors to do business.

225. Verizon unreasonably established procedures and undertook practices that ensure that customers of ATX and other competitive telephone companies suffer unreasonable delays in obtaining service and partial or complete disruptions of service after it is installed.

226. Verizon also unreasonably refuses to sell certain of its local telephone services to ATX and other competitive firms on any terms whatsoever, and takes other actions to restrict the ability of competitive firms to obtain the necessary network arrangements to offer such services through other means to business or residential customers on commercially viable terms.

227. Verizon unreasonably refuses to provide competitive firms with access on reasonable terms and conditions to portions of the local telephone infrastructure under its control, access to which is essential to their ability to compete.

228. Verizon adopts practices that unreasonably drive up its competitors' costs of operations without improving or enhancing Verizon's own operations in any way, so that competitive telephone companies cannot compete effectively against it.

229. Verizon's obstruction and disruption of ATX's operations and the operations of other competitive telephone companies, its denials of reasonable access to its essential facilities, its refusals to sell certain services to competitive firms such as ATX on any terms, and its practices that unnecessarily and unreasonably raise its competitors' costs, all run counter to its own short-term business interests in maximizing sales by taking full advantage of all possible sales channels. Its actions are consistent with its short-term interests only to the extent that it can persuade customers to abandon competitive telephone companies and to return to Verizon service, without itself offering

customers better terms or improving its levels of service. Verizon's conduct is primarily intended to, and does, serve its long-term interest in protecting and preserving its monopoly power.

230. Through its competitive misconduct, Verizon has succeeded in maintaining its monopoly control over local markets for business and for residential telephone service in the Northeastern and Mid-Atlantic states, thereby harming ATX, other competitive telephone companies, and all customers of local telephone service.

231. Moreover, Verizon has inflicted harm on ATX by routinely breaching contracts between Verizon and ATX (sometimes referred to herein as "interconnection agreements") on which ATX relies to provide services. In violation of these interconnection agreements, among other things Verizon has billed ATX and demanded payment from ATX for amounts far in excess of the amount to which it is entitled, supplied defective products and services, failed to provide services on a non-discriminatory basis as required by contract, failed to respond to complaints in a reasonable and timely manner, provided a wholly inadequate billing process, failed to credit within a reasonable period amounts wrongly billed, and has generally failed to communicate in good faith with ATX to accomplish the intent of the agreements.

232. Verizon's conduct intentionally and improperly interfered with ATX's contractual and prospective economic relations with its customers by causing customers to cancel contracts with ATX, to stop taking service from ATX, to not enter into contracts with ATX, or to not commence taking service from ATX, and by intentionally and improperly interfering with ATX's ability to provide its services under contracts with its existing and prospective customers.

## JURISDICTION AND VENUE

233. This Court has original jurisdiction over ATX's antitrust counterclaim pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, as well as 28 U.S.C. §§ 1331, 1337.

234. This Court has supplemental jurisdiction over ATX's contract and interference with economic relations claims pursuant to 28 U.S.C. § 1367(a), because they form part of the same case or controversy as ATX's antitrust claim, over which the Court has original jurisdiction.

235. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c), because a substantial part of the events or omissions giving rise to these claims occurred here, and because this Court has personal jurisdiction over all of the counterdefendants.

236. This Court has personal jurisdiction over counterdefendants VSC and VSG, both of which are subsidiaries of plaintiff VCI, because these counterdefendants are incorporated in Delaware.

## PARTIES

237. Counterclaimant ATX Communications, Inc. ("ATXC"), through various subsidiaries, offers telecommunications and Internet services to business and residential customers. ATXC is a Delaware corporation with its principal place of business in Bala Cynwyd, Pennsylvania. It is the ultimate parent company of the other counterclaimants. Verizon's competitive misconduct and breaches of contract have harmed it as well as its various affiliates that are the immediate targets of those actions.

238. Counterclaimant ATX Licensing, Inc. ("ATXL") is a Delaware corporation with its principal place of business in Bala Cynwyd, Pennsylvania. ATXL is an integrated communications company that provides a broad range of

telecommunications services in Delaware, New Jersey, New York, Maryland, Pennsylvania, Washington, D.C., and elsewhere. It competes to provide local telephone service in Delaware, Maryland, New Jersey, New York, Pennsylvania, and Washington, D.C.

239. Counterclaimant CoreComm Maryland, Inc., is a Delaware corporation with its principal place of business in Bala Cynwyd, Pennsylvania. It competes to provide local telephone service in Maryland. Counterclaimant CoreComm New Jersey, Inc., is a Delaware corporation with its principal place of business in Bala Cynwyd, Pennsylvania. It competes to provide local telephone service in New Jersey. Counterclaimant CoreComm New York Inc., a Delaware corporation with its principal place of business in Bala Cynwyd, Pennsylvania, competes to provide local telephone service in New York. Counterclaimant CoreComm Virginia, Inc., is a Virginia corporation with its principal place of business in Bala Cynwyd, Pennsylvania. It competes to provide local telephone service in Virginia. All four of these entities are wholly owned subsidiaries of ATXC.

240. Counterclaimant ATX Telecommunications Services of Virginia, LLC – a wholly owned subsidiary of ATXL – is a Virginia corporation with its principal place of business in Bala Cynwyd, Pennsylvania. It competes to provide local telephone service in Virginia.

241. ATX is one of the largest competitive telephone companies in the United States and offers various telecommunications services in targeted markets throughout the country. The services it offers include long-distance telephone service, local telephone service, Internet access, private line services, and web hosting, together with consultation

and support services that enable customers to select the best mix of services for their needs. Most customers that obtain business or residential local telephone service from ATX also purchase associated telecommunications services from ATX. Its business model is principally facilities-based, that is, ATX has built and plans to build segments of a telecommunications network with which to serve its customers.

242. ATX generates more than \$300,000,000 in revenues annually, largely in the Northeastern, Mid-Atlantic, and Midwestern regions of the country. It provides approximately 275,000 local telephone lines to customers and has more than 1,200 employees.

243. At all times relevant to these Counterclaims, the senior management and principals of ATX have been individuals with extensive, successful, prior telephone industry experience.

244. In many markets in the Northeastern and Mid-Atlantic regions of the United States, ATX competes with Verizon to provide local telephone service to business and to residential customers.

245. Counterdefendant VCI is a Delaware corporation with its principal place of business in New York City, New York. It is the parent of the other counterdefendants and provides various telecommunications services. VCI's March 20, 2002 Form 10-K (amended June 3, 2002), filed with the United States Securities and Exchange Commission, reported that VCI had more than \$67 billion in annual revenues in 2001 and approximately 248,000 employees in that year. VCI's Form 10-K further states that VCI's subsidiaries are the largest providers of wireline telecommunications in the United States, with 133.8 million access-line equivalents.

246. VCI was formed pursuant to the June 30, 2000, merger of Bell Atlantic Corporation (which had earlier merged with NYNEX Corporation) (“Bell Atlantic”) and GTE Corporation (“GTE”). In each of the markets relevant to these Counterclaims, VCI is the successor to one of these three companies.

247. The practices alleged in these Counterclaims, although often undertaken by VCI subsidiaries, reflect and are wholly consistent with the policies of VCI.

248. Counterdefendant VSC is a Delaware corporation with its principal place of business in Arlington, Virginia.

249. Counterdefendant VSG is a Delaware corporation with its principal place of business in New York City, New York. Together with VSC, it provides various centralized services for VCI’s subsidiaries.

250. Counterdefendant Verizon Delaware Inc. is a Delaware corporation with its principal place of business in Wilmington, Delaware. Counterdefendant Verizon Maryland Inc. is a Maryland corporation with its principal place of business in Baltimore, Maryland. Defendant Verizon New Jersey Inc. is a New Jersey corporation with its principal place of business in Newark, New Jersey. Counterdefendant Verizon Pennsylvania Inc. is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Counterdefendant Verizon Virginia Inc. is a Virginia corporation with its principal place of business in Richmond, Virginia. Counterdefendant Verizon Washington, D.C. Inc. is a New York corporation with its principal place of business in Washington, D.C. Each of these counterdefendants is a wholly owned subsidiary of VCI. These companies are the incumbent local telephone companies in all

or most of the States of Delaware, Maryland, New Jersey, Pennsylvania, and Virginia, and Washington, D.C., respectively.

251. Counterdefendant Verizon New York Inc. – a wholly owned subsidiary of NYNEX Corporation, which is a wholly owned subsidiary of VCI – is a New York corporation with its principal place of business in New York City, New York. It is the incumbent local telephone company in most of the State of New York.

252. Two of Verizon’s predecessors, Bell Atlantic and the former NYNEX Corporation, were created at the time of the entry of the consent decree in *United States v. Western Electric Co.* in 1982, which separated the old American Telephone & Telegraph Company’s local telephone service from its long-distance and telecommunications equipment businesses. Bell Atlantic and NYNEX both acquired monopoly power in various local telephone markets in the Northeastern and Mid-Atlantic states from AT&T pursuant to that decree.

253. Verizon continues to own extensive physical communications facilities that encompass most of the local telephone infrastructure in markets in the Northeastern and Mid-Atlantic United States. These networks include, among other things, millions of telephone lines (“loops”), and thousands of “central offices” (buildings where loops and interoffice facilities converge). The networks also include switches, transmission facilities, poles, conduits, ducts, rights of way, and other infrastructure elements. Most importantly, Verizon’s network includes “last-mile” facilities, which are loops connecting virtually every individual customer premises in most of the Northeastern and Mid-Atlantic states to the nearest switch, through which the customer can reach all other networked telephones, whether across the street or around the world.

## INTERSTATE COMMERCE

254. Verizon's services enable users of local telephone services to originate and receive telecommunications carried across state lines. Its operations utilize goods and services acquired in interstate commerce. It is engaged in, and its activities affect, interstate commerce.

## RELEVANT MARKETS

255. The two relevant product markets are local wireline telephone services for business customers ("local business telephone service") and local wireline telephone services for residential customers ("local residential telephone service"). A primary component of both types of local telephone service is local exchange service, which carries telephone calls into and out of a customer's home or business.

256. For businesses, there is no practical substitute for local business telephone service. This service provides the most reliable connection available between businesses and a wide range of other telephone facilities, for both incoming and outgoing calls. It is the only means by which a variety of associated telecommunications services can be provided to businesses. Regulations prohibit business customers in local markets throughout the Northeastern and Mid-Atlantic States and the District of Columbia from obtaining residential service.

257. For residential customers, there is no practical substitute for local residential telephone service. This service provides the most reliable connection available between homes and a wide range of other telephone facilities, for both incoming and outgoing calls. It is the only means by which a variety of associated telecommunications services can be provided to consumers in their homes. For

consumers, business service is not a feasible alternative, because it is substantially more expensive than residential service. Pursuant to tariffs filed by Verizon and accepted by governing state public utility commissions, residential customers in local markets throughout the United States obtain local telephone services, including local exchange service, on more favorable terms than do business customers.

258. For reasons of technology, convenience, and cost, most customers obtain associated telecommunications services from the same firm that supplies their local exchange service. Associated telecommunications services include but are not limited to voicemail, and custom calling features such as call forwarding, speed dialing, and caller identification. Associated telephone services are also components of local telephone service. Many business customers also purchase high-speed data services.

259. A customer can only utilize local telephone service that can be delivered to the place where its wireline telephone is located, and it cannot feasibly turn to a provider that offers service only in other places. Thus, firms that provide local telephone service in one geographic market are not feasible alternatives for any customer located in another market.

260. Local telephone services are actively marketed through metropolitan print, radio, and television media, which often cross state lines but do not include all of any single state. Thus the areas within which a telephone company seeks customers, and within which customers are likely to turn in purchasing local telephone services, extend throughout the regions served by the metropolitan media in which the firms advertise. Moreover, local telephone companies usually organize their sales and operating facilities by metropolitan area.

261. Each of the following metropolitan areas and their respective surrounding suburban and rural areas are relevant geographic markets for local business telephone service and local residential telephone service:

Wilmington, Delaware;  
Baltimore, Maryland;  
Atlantic City, New Jersey;  
Newark, New Jersey;  
Trenton, New Jersey;  
New York City, New York;  
Allentown, Pennsylvania;  
Harrisburg, Pennsylvania;  
Philadelphia, Pennsylvania;  
Pittsburgh, Pennsylvania; and  
Washington, District of Columbia.

262. Alternatively, the relevant geographic markets are, respectively, Verizon's service territories in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and Washington, D.C. In each of these jurisdictions except Pennsylvania and Virginia, the governing public utility commission has issued a single certificate authorizing Verizon to provide local telephone service to all persons located in its jurisdiction. In Pennsylvania and Virginia, the service territories formerly belonging to Bell Atlantic and those formerly belonging to GTE are separately certificated and operate under different tariffs. In all seven of the jurisdictions named, however, Verizon's local business and local residential telephone services are governed in part by state-wide (or, in the case of Washington, D.C., district-wide) regulations and tariffs, which apply throughout each respective jurisdiction.

#### VERIZON'S ANTICOMPETITIVE PRACTICES

263. Verizon holds monopoly power in markets for local business telephone service in each of the relevant local markets. On information and belief, Verizon's shares

of business customers are greater than 80% in each relevant local market except New York City and the Pennsylvania markets, and greater than 90% in most of them. On information and belief, Verizon's share of business customers in the New York City market and in each of the local markets in Pennsylvania is greater than 70%.

264. Verizon holds monopoly power in markets for local residential telephone service in each of the relevant local markets. On information and belief, Verizon's share of residential customers is greater than 90% in each relevant local market.

265. The value of a telephone to its user is directly correlated to the number of people, devices, and resources can be reached with it, so ATX and other competitive telephone companies could not attract many business or residential customers if they could not enable their customers to make calls to and receive calls from customers served by Verizon.

266. With few exceptions, it is cost-prohibitive for ATX or any other competitive telephone company to reach Verizon customers directly by duplicating the "last-mile" portion of any local telephone network, the portion that connects each local telephone customer the nearest telephone switch. In the relevant markets at issue in this case, much of this infrastructure has been in place for decades. No technology foreseen today would make it financially feasible for a new entrant into local service to construct its own infrastructure reaching the last mile to all currently networked telephone customers prior to beginning to provide service. Thus access on reasonable terms to the incumbent telephone company's last-mile facilities is essential to competing in markets for local telephone service.

267. It is also cost-prohibitive for a new entrant to duplicate an entire existing telephone network, apart from the last mile, before beginning to offer service, given the time required for the entrant to attract enough customers to earn a return on the enormous investment that would be required. Thus access on reasonable terms to other portions of local telephone infrastructure, in addition to the last mile, is essential to entering markets for local telephone service.

268. ATX seeks to be primarily a facilities-based competitor, which means that in the markets relevant to this Counterclaim it is gradually acquiring and installing its own equipment, including switches and other equipment, in order to serve its customers using more and more of its own facilities and utilizing fewer and fewer of the facilities of Verizon. This investment in infrastructure will enable ATX to offer different and better services and functions than Verizon offers and compete more effectively against it. The process is an incremental one, however, as the total quantity of facilities needed to duplicate the local telephone network, even short of the last mile, is enormous.

269. Because Verizon controls almost all of the existing telecommunications infrastructure in the relevant local telephone markets, ATX and other competitive telephone companies must obtain access to Verizon's facilities on reasonable terms in order to compete.

270. As a result of Verizon's obstruction of ATX's efforts to develop and utilize its own facilities, although ATX has installed and operates several of its own switching facilities, in recent years ATX has been forced to rely more heavily than it had planned on a business model that includes resale and other forms of service relying entirely on Verizon's infrastructure. ATX remains committed, however, to a facilities-

based strategy, and has recently acquired and is currently installing new switching facilities in Pennsylvania and Virginia.

271. Verizon has at least two reasons to discourage facilities-based competition:

a. in the short term, Verizon earns lower profits from interconnection with a facilities-based competitive company than it does from providing that company with forms of service that utilize more of Verizon's network, such as resale or a form of service called UNE-P; and

b. over the long term, Verizon would face more vigorous competition from facilities-based competitors than from firms utilizing other business models, since competitors utilizing some of their own facilities can offer customers new products and services, and improved levels of quality. Facilities-based competition is also more durable than other modes of competition, because exit is more costly.

272. The 1996 Act allows each regional telephone company whose predecessor was part of the old AT&T company to offer long-distance service within its service territory once that territory is open to competition in local service in certain specified ways. 47 U.S.C. § 271.

#### Verizon's Obstruction of ATX's Operations

273. The local telecommunications services that Verizon offers to ATX and other competitive telephone companies in all relevant markets are markedly inferior to the services that Verizon provided to ATX when ATX offered only long-distance service, before it became a competitor of Verizon's in markets for local telephone service.

274. ATX first encountered unreasonable obstruction and delay by Verizon's predecessor, Bell Atlantic, when it attempted to negotiate an Interconnection Agreement in order to provide local telephone services in Pennsylvania. ATX attempted to open negotiations about interconnection with Bell Atlantic in May of 1996. Formal negotiations between the two parties finally began six months later. ATX was certified by the Pennsylvania Public Utility Commission to provide local telephone service on January 17, 1997, but three months later, in April of 1997, Bell Atlantic still refused to specify the prices it would charge for many services that ATX needed in order to begin competing in markets for local telephone service. ATX's interconnection agreement with Bell Atlantic finally went into effect on September 3, 1997, after approval by the Pennsylvania Public Utilities Commission.

275. One way in which Verizon has continued to disrupt and impede ATX's operations is by its consistently substandard performance in implementing various types of collocation. Federal law permits ATX to have its network connection and routing equipment installed in any Verizon switching office from which the last mile of local transmission wiring travels to the premises of one of ATX's customers, so that ATX can physically connect its switching facilities to that "loop." This is termed "collocation."

276. Collocation is of critical importance to a facilities-based competitor such as ATX. Collocation at a Verizon office is the key means for such a competitor to connect its switching facilities to Verizon's last-mile facilities, which in turn provide the only feasible physical access for a competitive company to most of its customers.

277. One common type of collocation is "physical collocation," in which Verizon reserves and prepares a caged space inside its switching office to which ATX

then has physical access and can itself install, operate, and maintain its transmission equipment. “Scope collocation” is similar to physical collocation, but does not involve use of a cage.

278. Another type of collocation is “virtual collocation,” in which ATX provides the equipment to Verizon and Verizon installs and maintains the equipment at its offices as if it were its own, but at ATX’s expense.

279. Verizon regularly and unreasonably obstructs and delays the installation of both virtual and physical collocation by ATX.

280. Among other things, in local markets in Pennsylvania and New Jersey beginning in 1999, Verizon has unreasonably delayed the delivery of functioning virtual and physical collocation sites. It has hired subcontractors who failed to prepare the sites properly, then has refused to recall them promptly to repair the resulting inadequate installations, to repair the installations itself, or to permit ATX to repair the sites. It has repeatedly advised ATX that a collocation site is ready for use when the site is in fact obviously not ready, so that ATX dispatches technical personnel on fruitless site visits. When a site is ready for use, Verizon unreasonably refuses to provide technical information that ATX needs in order to calibrate its equipment properly.

281. Verizon established systems for the ordering and provisioning of collocation sites, and for the resolution of any problems with those processes, that were unreasonably convoluted and opaque, further adding unnecessary costs for both Verizon and ATX and delaying the delivery of functioning collocation sites that ATX could utilize in its operations. For example, Verizon made it difficult for ATX to identify, and then to communicate with, the appropriate person within Verizon who would correct

errors made by Verizon personnel in connection with the ordering and provisioning of collocation sites.

282. Verizon unreasonably and improperly billed ATX for usage of electrical power at collocation sites that ATX had not used. Verizon knew or should have known that ATX had not used the power for which Verizon billed ATX.

283. Some of the problems with collocation were eventually addressed, after protracted and costly efforts by ATX.

284. Despite such efforts, however, other problems with collocation continue to this day. The persistence of problems with installing and operating collocation sites has deterred ATX from collocating at additional collocation sites, and the inability to secure more collocation sites has forced ATX to curtail its plans aggressively to develop its own facilities.

285. Verizon's extensive and unreasonable delays in provisioning functional collocation sites to ATX impeded ATX's ability to compete effectively in a number of ways. Among other things, it disrupted ATX's schedule for the build-out of other portions of its infrastructure and delayed ATX's marketing efforts. Moreover, since investors were interested in the number of functional collocation sites a competitive telephone company had, Verizon's delays inhibited ATX's ability to continue to attract investment capital.

286. Once ATX had some largely functional collocation facilities in place, its customers began to experience technical problems with the "last-mile" lines that ATX leases from Verizon and that run from ATX's collocation facilities to each customer's premises. The volume of technical problems is much greater than ATX and its customers

experienced when ATX was not competing with Verizon to provide local telephone service, even when considering the increase in volume of services purchased. For example, ATX has encountered a high volume of service failures resulting from Verizon's use of certain types of two-wire HDSL remote termination equipment, called "smart jacks," on lines serving ATX customers. On information and belief, Verizon has used facilities and equipment to serve ATX customers that are sufficiently inferior to the facilities and equipment that Verizon uses to serve its own end-user customers that ATX's ability to compete effectively is significantly impeded.

287. ATX's customers in numerous Mid-Atlantic markets have suffered outages and other serious service difficulties as a result of Verizon's conduct, necessitating expensive emergency repairs chargeable to ATX that could have been averted. These problems also harm ATX's customer relations, since ATX customers blame ATX for such outages and other serious service problems. After an outage or other service problem, some business and residential ATX customers drop their local ATX service and return to Verizon local service, even if Verizon caused the outage or other problem.

288. On information and belief, Verizon sometimes knowingly advised ATX that operational problems being experienced by ATX customers did not originate in Verizon's portion of the facilities serving those customers, when Verizon knew the problems did originate in its portion of those facilities. On these occasions, Verizon's misrepresentations significantly delayed resumption of full service for ATX customers, since based on Verizon's misrepresentations, ATX would dispatch its repair personnel to

check its equipment, would find no problem, and only then would raise the issue with Verizon a second time.

289. Verizon has disrupted ATX's operations in other ways. For example, Verizon announced that it was prepared to convert customers of competitive telephone companies from resale service, in which ATX simply purchases Verizon services at wholesale and resells them to customers, to UNE-P service, a platform based on the leasing of unbundled network elements. The latter service consists of a package of separate elements of Verizon's network that can be used to provide basic telephone service. In contrast to resale service, on which few if any competitive telephone companies have been able to break even financially, UNE-P can be a profitable form of service for competitive telephone companies.

290. During 2000 and 2001 in various local markets, ATX attempted to obtain UNE-P connections from Verizon in order to serve ATX customers using certain associated business telephone services. Customers that purchase a variety of services are among the most valuable customers for a local telephone company. Although Verizon repeatedly stated that ATX could provide these associated services in conjunction with UNE-P service, a significant proportion of the customers ATX transferred to UNE-P service suffered: (i) a loss of dialtone, (ii) a loss of features even if basic dialtone remained in service, and/or (iii) inaccurate billing. All of these problems were caused by Verizon's failure to handle the conversion of these customers to UNE-P service in a reasonably competent manner.

291. In March, 2002, ATX again transferred a number of customers to UNE-P service, again on the basis of Verizon's assurances that it could handle the conversions,

and again a large number of ATX customers lost some or all of their service as a result of Verizon's failures.

292. Other ATX customers, with fewer telecommunications services, also suffered Verizon-generated service disruptions when ATX transferred them to UNE-P service.

293. In addition, ATX customers previously transferred to UNE-P service have continued to suffer Verizon-generated problems with their service.

294. In connection with its obtaining the right to offer long-distance service in Pennsylvania pursuant to 47 U.S.C. § 271, Verizon conceded that it could not competently convert to UNE-P all ATX customers in Pennsylvania that ATX then wished to convert.

295. Verizon's technical failures have plagued conversions of ATX customers to UNE-P service and continuing UNE-P service in a number of other states as well.

296. When Verizon advised ATX, other competitive telephone companies, and state regulatory authorities that it was technically prepared to provide UNE-P service to customers currently served by competitive telephone companies via other forms of service, it knew or should have known that its representation was incorrect, that competitive telephone companies would rely on it and attempt to convert many of their customers to UNE-P, that significant numbers of these customers would suffer service disruptions and outages as a result, and that ATX and other competitive telephone companies would be competitively harmed as a result.

297. ATX's inability to obtain reliable UNE-P service from Verizon has restricted ATX's ability to compete effectively in a number of ways, including preventing

ATX from widely marketing UNE-P service to its customers. Many ATX customers could not be converted to UNE-P without losing features they want, so ATX can only market the service in a selective way that is less efficient than broader marketing efforts would be.

298. In all relevant markets, Verizon frequently disrupts service to ATX customers that are moving to a new location by unreasonably refusing to coordinate its disconnection of the old line in the customer's former location with the connection of the new line in the customer's current location. Verizon is readily capable of handling moves in a far more efficient fashion, without such a high rate of disruption of customer service.

299. Verizon's implementation of wholly inadequate and unreasonably convoluted procedures for reporting and repairing service interruptions and delays compounds the problems caused for ATX and its customers by Verizon's disruptions of ATX's operations. ATX personnel attempting to get a Verizon error corrected are referred from one Verizon employee to another according to an multi-step escalation process in which no step may be omitted, even if it is clear that the problem is of such a nature that it will require the attention of a senior Verizon official. Frequently one or more Verizon employees in the chain will not return telephone calls for a few days, during which no progress in correcting the error is made. In addition, the details of the escalation process and the Verizon personnel involved change frequently, without notice to ATX, so that when a Verizon error needs to be corrected, ATX personnel cannot with confidence simply follow the escalation chain they have followed in the past.

300. These operational problems and others not detailed here, considered together, reflect an intentional policy by Verizon, by means of which it can do business

with competitive telephone companies to the minimal extent required for it to qualify for the right to offer long-distance telephone service under 47 U.S.C. Section 271, while at the same time ensuring that its competitors cannot operate and compete efficiently enough to threaten Verizon's monopoly power.

301. Through its strategy of disrupting and obstructing the operations of competitive telephone companies, Verizon has lost wholesale business that it otherwise would have attracted. Its strategy makes business sense primarily as a means of preserving its monopoly power.

302. The myriad operational deficiencies in the services Verizon provides to ATX impair ATX's ability to compete in several ways. They drive up ATX's costs unnecessarily, as ATX constantly makes futile site calls, performs emergency rather than regularly scheduled operational work, and expends time and money trying to correct unreasonable service deficiencies so that its customers will not be harmed. They also impair the timeliness and quality of the service that ATX can offer its customers, causing it to delay providing service to some customers, lose some customers, and fail to attract others it would otherwise win. They harm its reputation, diminish its customer good will, and reduce its enterprise value.

303. These and other problems alleged below persuade many local service customers, both business customers and consumers purchasing residential service, to abandon or never select competitive service providers and instead obtain their service from Verizon. Verizon earns more revenue by serving these customers directly than it does by providing wholesale services to ATX or another competitive telephone company,

which then provide service to the customer. In addition, by inhibiting the ability of competitive companies to compete, Verizon faces reduced competition in service quality.

304. In addition, these operational deficiencies make it more difficult and costly for ATX and other competitive telephone companies to obtain capital. Among other things, these operational problems impeded ATX's ability to invest in its facilities-based strategy. Because Verizon made implementing a functional collocation facility time-consuming and expensive, ATX cannot obtain the return on investment that will support efforts to build additional collocation facilities.

305. Verizon's continual disruptions of connections between ATX equipment and the Verizon network have also deterred ATX from aggressively further expanding the installation and use of its own facilities, which would make ATX a more effective competitor and increase the level of competition in the relevant markets.

#### Refusals to Deal

306. Verizon has frequently refused to make available to competitive telephone companies products and services that telecommunications statutes or regulations do not explicitly require it to offer as a condition of qualifying to offer long-distance telephone service. The purpose and effect of these refusals is to prevent ATX and other competitive telephone companies from competing effectively for some of the most valuable customers, those seeking multiple telecommunications services.

307. On other occasions, while not openly refusing to do business with competitive telephone companies, Verizon has, knowingly and without legitimate business justification, imposed such onerous conditions on the lease or sale of particular

products and services that it is not feasible for ATX or other competitive telephone companies to obtain or provide them for their customers.

308. ATX has faced other, similar refusals by Verizon to sell or lease products or services to ATX. Many of these are related to Verizon's efforts to deter use by competitive telephone companies of UNE-P, one of the most viable of the business models available to a competitive telephone company.

309. Senior Verizon officials have publicly expressed objections to UNE-P service and have expressed their desire to eliminate it.

310. Verizon has imposed such heavy burdens on the entire process of ordering, installing, and billing for UNE-P service that it has effectively refused to sell or lease this service to ATX on reasonable terms and conditions, although it has repeatedly advised ATX and regulators that the service is available.

311. Verizon delayed for months release of a full set of the rules a competitive telephone company must use for ordering UNE-P service for certain types of complex customer services, and during the period in which no ordering rules were available, the UNE-P platform was not available for use with these complex customer services.

312. Verizon has also consistently imposed unworkable and unreasonable conditions on ATX's acquisition or provision of associated services for its UNE-P customers, even while continuing to assert that the service was available. Verizon's refusals further impede ATX's ability to compete using a business plan based upon UNE-P service.

313. One such associated service is voicemail. A substantial portion of ATX customers and prospective customers wish to purchase voicemail services from their

local telephone service provider. Except in New York, where regulations prohibit Verizon from doing so, Verizon establishes operational prerequisites to ATX's reselling its voicemail service for use by ATX UNE-P customers that effectively preclude ATX from providing Verizon voicemail services to these customers.

314. At the same time, Verizon refuses to lease facilities to ATX that would make it possible for ATX to provide its UNE-P customers with commercially viable voicemail service from a source other than Verizon, including ATX itself. ATX can only offer such voicemail without any form of customer alert (such as a message light or a stutter dial tone) when a message has been received. In other words, to determine whether there are any messages, a customer must first dial into voicemail. The alert feature is considered standard and most customers insist on having it.

315. As a result of these Verizon refusals, ATX is able to sell voicemail service to only about 5% of its UNE-P customers in Verizon territories outside of New York. Where ATX can provide its customers with a fully functional voicemail service, ATX enjoys voicemail subscription rates far exceeding 5%.

316. Thus, the inability to offer full-function voicemail service significantly restricts ATX's ability to compete effectively for customers in its strongest and most profitable market segments.

317. Voicemail services are part of a voice messaging market that is currently undergoing significant technological development. Voice message services were once largely limited to voicemail and answering machines, but they now include enhanced features, such as the ability to translate audio messages into text and relay them to a handheld device, and the ability to indicate not only the existence of a waiting message,

but the number of waiting messages and their sources. Other enhancements are expected to reach the marketplace soon. Because of these ongoing innovations, voice message services are a means by which a competitive telephone company might distinguish itself in the marketplace and build a base of loyal customers.

318. Verizon's refusals to allow ATX to interconnect with its network in order to provide voice messaging services of ATX's choice to ATX UNE-P customers unreasonably inhibits ATX's ability to compete for voice messaging customers. Since many of these customers purchase their voice messaging services from their local service provider, Verizon thus unreasonably inhibits ATX's ability to compete effectively in local service markets as well.

319. Similarly, operator services and directory assistance once consisted largely of completing calls for customers and retrieving information from telephone directories. Today, enhanced operator services include driving directions and other information, and directory assistance is an evolving product as well. These services are also means by which a competitive telephone company might distinguish itself in the marketplace and build base of loyal customers.

320. Verizon's refusals to allow ATX to interconnect with its network in order to provide the operator services and directory assistance of its choice to ATX UNE-P customers unreasonably inhibits ATX's ability to compete for customers of these services. Since many of these customers purchase their operator service and directory assistance from their local service provider, Verizon thus unreasonably inhibits ATX's ability to compete effectively in local service markets as well.

321. Verizon also refuses to sell or lease certain other products and services to ATX.

322. By refusing to sell or lease products and services to ATX, Verizon has forgone wholesale business it otherwise would have attracted. It has no legitimate business reason for its refusals. Its strategy makes business sense primarily as a means of preserving its monopoly power.

323. By refusing to deal with ATX for certain products and services and by imposing commercially infeasible conditions on the sale of other products and services, Verizon has impeded ATX's ability to compete. Many of the products and services Verizon has refused to provide are popular ones, so that ATX's inability to provide them significantly limits its ability to attract and retain customers and to maintain customer good will and its reputation. Verizon's conduct has also diminished the enterprise value of ATX.

324. Through its unreasonable refusals to deal with ATX and other competitive telephone companies, Verizon has preserved its monopoly power in each of the relevant local telephone markets.

#### Verizon's Denial of Access to its Network

325. Verizon's obstruction and disruption of ATX's operations, Verizon's refusals to sell or lease certain products or services on reasonable terms and conditions, and its refusal to sell or lease others on any terms, collectively constitute a refusal to make access to the telephone network it owns and controls, including last-mile and other essential facilities, reasonably available to competitors. Verizon has no legitimate

business or technical reason for its denial of reasonable access, and could feasibly make such access available.

326. Through its strategy of disrupting and obstructing the operations of competitive telephone companies, Verizon has lost wholesale business that it otherwise would have attracted. Its strategy makes business sense only as a means of preserving its monopoly power.

327. Verizon's denial of access on reasonable terms to its essential monopoly facilities has enabled it to preserve its monopoly power in each of the relevant markets for local telephone service.

#### Verizon's Intentional and Unreasonable Raising of ATX's Costs

328. Verizon has interfered with ATX's business operations in myriad other ways that have significantly and unreasonably raised ATX's costs of doing business and have impeded its ability to compete effectively.

329. For example, Verizon implemented a system for ordering many of the services needed by competitive telephone companies that a reasonable person familiar with the telecommunications marketplace would know was likely to result in substantial errors and delays. Substantial delays and errors in ordering have in fact resulted for a variety of services.

330. Verizon's provisioning of services ordered by ATX has also frequently been unreasonably slow and unreliable. Among other things, ATX has repeatedly had to wait months after it has requested what should be a routine conversion of lines to Enhanced Extended Loops. Verizon's unreasonable refusal to handle ATX's orders in a

timely and dependable manner has imposed substantial costs on ATX and impeded in a number of ways its ability to compete efficiently.

331. Verizon's procedures for resolving problems arising from its inefficient and unreliable ordering and provisioning processes are themselves unreasonably opaque and difficult to navigate. As a result, ATX must expend considerable time and effort to persuade Verizon to correct even simple problems. The convoluted escalation processes impose unreasonable costs on ATX and other competitive telephone companies.

332. In addition, Verizon has created operational problems that unreasonably raise ATX's costs of operations. For example, Verizon has repeatedly failed to identify with appropriate tags the lines entering a building in which an ATX customer lives or has offices. Without the correct tags, ATX technicians cannot determine which telephone numbers are assigned to which loop and correctly connect a new customer's internal telephone system. In addition, inaccurate tagging delays delivery of service to the ATX customer for an average of one week, inconveniencing the customer and delaying the date on which ATX can begin providing service to the customer.

333. Another part of Verizon's strategy to drive up costs for competitive telephone companies is its defective billing process, which in itself ensures that the costs of doing business for ATX and other competitive telephone companies remain unreasonably high. Verizon has repeatedly and unreasonably failed to provide ATX with bills that are either accurate or readily auditable.

334. Errors commonly appearing in Verizon bills include but are not limited to:
- erroneous resale charges;
  - failure to apply required state resale discounts to services;
  - charging for local calls as if they were toll calls;
  - incorrect directory assistance charges;

- inapplicable taxes;
- improper surcharges;
- charges for features that have not been sold by ATX;
- inappropriate installation charges;
- erroneous charges for lines and services that have not been provided;
- subtotaled charges that cannot be reconciled with totaled charges;
- double billing;
- mis-crediting of earlier billing errors; and
- indecipherable crediting of earlier billing errors.

335. Verizon has also established a process for resolution of billing disputes that is unnecessarily and unreasonably slow, complicated, unreliable, and expensive. Billing disputes from 1999 and 2000 remain unresolved, despite repeated efforts by ATX to have Verizon correct the billing errors that gave rise to the disputes.

336. In addition, despite ATX's persistent efforts to get Verizon to correct its bills, hundreds of ATX customers have continued for up to eight months to receive bills containing errors originating from Verizon's records. Verizon's response to ATX has been, "We are currently in a backlog situation. . . . If your dispute needs immediate attention, please refer to the Resale/CLEC Handbooks for information regarding the escalation process."

337. Verizon's refusal to provide ATX with comprehensible and reliable billing processes has lessened ATX's ability to compete effectively in a number of ways. First, ATX has been forced to divert substantial resources away from the implementation of its business plan and redirect them to the burdensome and costly task of auditing in detail each charge on each Verizon bill. Second, Verizon's systemic billing errors severely limit ATX's ability to monitor, predict, and adjust its expenses and prices so that it can charge an appropriate rate for each service it offers. Among the resulting harms to ATX

have been lost profits, reduction in its enterprise value, and loss of reputation and customer good will.

338. Verizon has engaged in other tactics that had no procompetitive purpose or effect, and instead were designed to drive up its competitors' costs of doing business. For example, on information and belief, Verizon personnel have advised local telephone service customers that the equipment Verizon uses to serve ATX customers is inferior to the equipment Verizon uses to serve its own end-user customers, and they have recommended that the customers transfer their accounts back to Verizon in order to obtain higher-quality and more reliable service.

339. Through these efforts, Verizon has lost substantial wholesale business it otherwise would have attracted. Its strategy makes business sense only as a means of preserving its monopoly power.

340. Verizon's deliberate efforts to drive up its competitors' costs has impeded the ability of competitive telephone companies to compete effectively and has served to protect and maintain Verizon's monopoly power in each of the relevant local markets.

#### REGULATION

341. The operations of Verizon are governed in part by federal and state statutes and regulations. These schemes are not intended to, and do not, supplant the federal antitrust laws or affect Verizon's obligation to comply with those laws.

342. Regulation is inherently less effective than market forces in providing the public with the benefits of competition, including lower prices, better service, and more innovation.

343. Regulators are necessarily less informed than the companies they regulate about those companies' intentions and conduct. Many regulatory violations are never discovered by the regulatory authorities.

344. Even if a regulator discovers a violation, a time-consuming and expensive process is required before the violation can be addressed by regulatory action or court order.

345. Often a subsequent regulatory action or court order simply bars the company from continuing to commit the violation, while the company is able to retain the fruits of its misconduct. In addition, regulators have limited resources, and cannot prosecute every regulatory violation of which they become aware. The regulatory process is less than fully effective both at correcting identified abuses and at deterring future ones.

346. Moreover, many important aspects of the Verizon conduct that forms the basis of the monopolistic scheme described herein are not the subject of regulation. Among others, Verizon's operator services, directory assistance, and voicemail are not subject to regulation (except that voicemail is regulated in the State of New York).

347. These are among the reasons why, in the telecommunications industry as in most other regulated industries, Congress has preserved the applicability of the antitrust laws against harm to competition while imposing a regulatory scheme intended in part to offer customers some protection against specific types of misconduct by monopoly providers.

#### ANTICOMPETITIVE EFFECTS

348. Verizon's obstruction of ATX's operations has unreasonably impaired ATX's ability to compete effectively in each of the relevant local markets.

349. Verizon's refusals to sell certain services and lease certain facilities on commercially reasonable terms and conditions to ATX have also unreasonably impaired ATX's ability to compete effectively in each of the relevant markets.

350. Verizon has unreasonably refused to permit reasonable access to essential monopoly facilities under its ownership and control, although providing such access would be feasible, further impeding ATX's ability to compete effectively in each of the relevant markets.

351. The difficulties encountered by ATX and other competitive telephone companies in their dealings with Verizon are far more extensive than would be expected in a normal business relationship, and are part of Verizon's scheme. Verizon's actions have unreasonably and substantially raised the costs of doing business for ATX and other competitive companies and interfered with their ability to compete effectively and win customers.

352. Verizon has deterred and defeated competition from other competitive telephone companies in similar anticompetitive ways.

353. There is no technical or business justification for Verizon's anticompetitive actions.

354. Verizon intends for its scheme to preserve its monopoly power in local markets for telephone service to business and to residential customers.

355. Through its competitive misconduct, Verizon has succeeded in preserving its monopoly over local telephone services for business and for residential customers in

the relevant markets, and threatens to continue to do so. As a result of Verizon's willful maintenance of its monopoly power in the relevant markets, ATX and other competitive firms have been deprived of the opportunity to compete efficiently and effectively in these markets. They have lost profits they otherwise would have earned, the value of their enterprises has been diminished, and they have suffered a loss of reputation and customer goodwill.

356. In addition, through Verizon's competitive misconduct, both business customers and residential customers have been deprived of the lower prices, better service, and more rapid pace of innovation that competition would have brought.

#### ANTITRUST VIOLATION ALLEGED

357. Paragraphs 1-356 are hereby incorporated by reference as if fully set forth herein.

358. Verizon's conduct violated and is continuing to violate Section 2 of the Sherman Act, 15 U.S.C. §2, which prohibits illegal maintenance of monopoly power.

#### COUNT II – BREACH OF CONTRACT

##### VERIZON BILLING ERRORS

359. Paragraphs 1-358 are hereby incorporated by reference as if fully set forth herein. As discussed in more detail below, the wrongful Verizon conduct set forth in Count I of ATX's Counterclaims regarding Verizon's systemic billing errors, ATX's billing disputes with Verizon, and Verizon's unilateral actions taken in response to these billing disputes -- as discussed in Paragraphs 330-334 above -- also constitutes breaches of contract by Verizon to the parties' interconnection agreements and applicable Verizon's

federal and state tariffs. Moreover, Verizon's breached the terms of its interconnection agreements with ATX and Verizon's tariffs with regard to other issues discussed below.

360. ATX has entered into interconnection agreements with Verizon that govern the terms, conditions, and prices for local exchange services it purchases from Verizon. These agreements have been entered into and approved by the respective public utility commissions in the following jurisdictions: the District of Columbia, Delaware, Maryland, New Jersey, New York, Pennsylvania, and Virginia (the "ATX States"). ATX also purchased certain services – *e.g.*, collocation services and unbundled network elements ("UNEs") -- from Verizon's federal and/or state tariffs.

361. Verizon has failed to provide ATX with accurate bills and to timely resolve billing disputes according to the terms of the parties' interconnection agreements. This has been a recurring problem in all of the ATX States. This issue came to a head in January 2002 when Verizon sent letters to ATX in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, and Virginia threatening to impose service embargoes on ATX – in violation of the parties' respective interconnection agreements – based, in part, upon pending billing disputes ATX previously raised with Verizon over wholesale local exchange services and other telecommunications services.

362. Verizon's interconnection agreements in the ATX States require Verizon to provide ATX with timely and accurate bills -- *i.e.*, bills clearly listing not only the charges by Verizon but also credits due to ATX -- so that ATX can review the charges imposed, dispute any charges it deems inappropriate, verify that credits due from Verizon has been properly provided, and pay its bills in a timely manner. For example, Section 3 of Attachment VIII of the interconnection agreement between Verizon and

ATX's Pennsylvania affiliate (the "Pennsylvania Agreement") require Verizon's bills to "include all *appropriate* charges, credits and adjustments for the services that were ordered, established, utilized, discontinued or performed during the relevant billing period." Similar provisions are contained in ATX's interconnection agreements with Verizon in the other ATX States. In Delaware and Maryland, Verizon has a further obligation to certify that its bills are accurate. Specifically, Attachment VI, Section 17 of Verizon's interconnection agreements with ATX in Delaware and Maryland require the parties "to transmit to each other accurate and current bills and invoices. The Parties further agree to negotiate the implementation of controls and processes that ensure the transmission of accurate and current bills and invoices." Verizon has failed to meet this obligation. Furthermore, Verizon's own federal and state tariffs, including Section 2 of its FCC Tariff No. 1, require it to provide ATX with bills that *accurately* reflect the charges and credits due to ATX arising from services provided by Verizon.

363. Beginning at least as early as 1998, ATX submitted billing disputes to Verizon arising from significant Verizon billing errors in its bills provided to ATX for local exchange services in the ATX States. ATX notified Verizon of these problems in writing. These problems included, but were not limited to, the following types of billing errors: erroneous resale charges, failure to apply required state resale discounts to services, charging for local calls as if they were toll calls, incorrect directory assistance charges, inapplicable taxes, improper surcharges, charges for features that have not been sold by ATX, inappropriate installation charges, erroneous charges for lines and services that have not been provided, subtotaled charges that cannot be reconciled with totaled charges, double billing, mis-crediting, and indecipherable crediting of earlier billing

errors. These billing errors constitute breaches by Verizon of provisions of the parties' interconnection agreements in the ATX States. For example, Verizon breached the following provisions of the Pennsylvania Agreement: erroneous resale charges and failure to apply required state resale charges (Attachment I, Section 3), charging local calls as if they were toll calls (Attachment IV, Section 7), incorrect directory assistance charges (Attachment I), and inapplicable taxes (Part A, Section 21). Other agreements, for example Attachment VI, Section 9.2 of the Delaware and Maryland interconnection agreements, go even further by explicitly stating that Verizon' s bill "will include all appropriate charges, *credits and adjustments* for the Network Elements and Telecommunications Services that were ordered, established, utilized, discontinued or performed during the relevant billing period."

364. Verizon's repeated provision of inaccurate bills, and its failure to correct the systematic problems in its billing systems after such problems had repeatedly been brought to its attention by ATX and other CLECs, constitutes a breach of its obligations to ATX under contract and tariff in each of the ATX States, including but not limited to its contractual undertaking to perform in good faith, discussed in Paragraphs 389-395, below.

365. Once ATX properly raised billing disputes with Verizon, Verizon also breached the dispute resolution provisions of the parties' interconnection agreements in the ATX States by disregarding the procedures and timelines for resolving the disputes. For example, Part A, Section 21 of the parties' Pennsylvania Agreement precludes Verizon from terminating or suspending services to ATX for any charges that are part of a billing dispute between the parties. Despite this provision, Verizon in 2001 and 2002

did not act in good faith to resolve the billing disputes or provide ATX with accurate descriptions of the charges and amounts in dispute, but rather, threatened to embargo services to ATX unless payment was made of both undisputed and disputed charges.

366. ATX, in the regular course of its business, has notified Verizon of billing disputes, via e-mail, letters and oral discussions, of specific Verizon charges. Because of the size of the bills, often thousands of pages, and the large number of errors, it has taken ATX 60 to 90 days to audit each of Verizon's error laden bills. Rather than attempt to resolve these billing disputes on a timely basis in accordance with the billing dispute provisions of the parties' interconnection agreements -- *e.g.*, the Pennsylvania Agreement Part A, Section 21 and Attachment VIII, Section 3.1.9 -- and just as importantly, correct the recurring billing errors, Verizon threatened in January 2002 to refuse service to any new ATX customers and threatened to refuse to allow any existing ATX customers in the ATX States to add to or change their service or to move it to a new location. At that time, Verizon's billing errors were so significant and given that Verizon had failed to provide ATX with information it had requested months before in an attempt to resolve the billing disputes, ATX sent written notice to Verizon that it was disputing all charges in the ATX States until Verizon provided the requested information. Verizon disregarded ATX's letter placing all of these charges into dispute. These threatened embargoes by Verizon violated the dispute resolution provisions of the parties' interconnection agreements in the ATX States which required the parties to attempt to resolve disputes within specified periods of time and expressly precluded Verizon from suspending or terminating services for such disputed charges.

367. In a further breach of the parties' interconnection agreements, Verizon has improperly reserved to itself alone the right to determine what is a valid billing dispute brought by ATX, and hence, Verizon has improperly dismissed or ignored valid ATX billing disputes. On a regular basis, ATX has provided Verizon with written descriptions of billing disputes, typically sent to Verizon via e-mail. Once Verizon receives these written disputes, the parties' interconnection agreements dispute resolution provisions – *e.g.*, Pennsylvania Agreement Attachment VIII, Section 3.1.9 -- explicitly preclude Verizon from embargoing or terminating services to ATX, and, as discussed above, require the parties to negotiate in good faith in order to resolve the dispute within specified time periods. If the parties cannot resolve the disputes within the prescribed time periods, then under the agreements, either party has the right to bring a dispute before the FCC, a state public utility commission, or a court of competent jurisdiction for resolution. Verizon has asserted, incorrectly, and in breach of these agreements, that it alone can determine what is a valid billing dispute by ATX – rather than the underlying contractual agreements – and has refused to acknowledge valid disputes by ATX after Verizon has unilaterally deemed them “resolved” in its own favor. This behavior by Verizon is a breach, for example, of Section 4.1.6 of Attachment VIII of ATX's New York interconnection agreement with Verizon (“New York Agreement”) which provides that “[b]illed amounts which are being investigated, queried, or for which claims have been filed are not due for payment until such investigations, claims, or queries have been fully resolved by both [ATX] and [Verizon].” Similar terms, which that permit ATX to dispute charges and withhold payment pending resolution of the billing disputes, are

contained in Part A, Section 21.3.3 of the parties' Pennsylvania Agreement and the parties' agreements in the other ATX States.

368. More recently, on July 23, 2002, and August 1, 2002, Verizon again breached the terms of the parties' interconnection agreements -- this time in New Jersey and Pennsylvania -- when it sent letters to ATX threatening to embargo services in both of these states and to terminate service in Pennsylvania altogether. Verizon threatened to take these actions if ATX did not pay Verizon both disputed and undisputed billing amounts in these states and provide Verizon with security deposits.

369. These Verizon letters violated the parties' interconnection agreements and Verizon's state collocation tariffs in New Jersey and Pennsylvania. First, Verizon is not permitted under the parties' interconnection agreements or Verizon's state collocation tariffs in Pennsylvania or New Jersey to require ATX to post a customer deposit for local exchange services or collocation services purchased by ATX. Furthermore, Verizon breached Part A, Section 21 the parties' New Jersey and Pennsylvania interconnection agreements by threatening to embargo or suspend services based upon, in part, charges disputed by ATX. Such threats of embargoes or termination of service -- which would be fatal to ATX's business -- were a ruthless attempt by Verizon to eliminate a competitor and maintain its monopoly over local exchange services.

370. Beginning with its first bills to ATX, Verizon breached the parties' interconnection agreements and the terms of Verizon's state UNE tariffs through its delay, and some cases failure, to provide ATX with billing credits owed that arose from ATX's conversion of its sale customers to UNE-Platform ("UNE-P"). UNE-P is a service offering in which Verizon is required to combine and offer at a wholesale

discount to ATX those UNEs necessary to provide local exchange service -- *e.g.*, the loop and switching. Verizon, in breach of its Pennsylvania PUC Tariff No. 216, Section 3(C)(5), improperly imposed certain non-recurring charges on ATX, including new loop and port installation charges, for conversions of existing ATX customers to UNE-P. Verizon may not impose such charges on existing ATX customers under this tariff. This breach also has occurred in other ATX States.

371. Verizon breached Attachment IV, Section 7 and 8 of the Pennsylvania Agreement by improperly charging ATX toll charges for calls that are rated as local calls on ATX's interconnection trunks. ATX had the capability and sent Verizon calling party number ("CPN") data for each telephone call, as required by Attachment IV, Section 7.3 the Pennsylvania Agreement, thus providing Verizon with the information necessary to automatically identify whether a call was a local or toll call. Upon information and belief, Verizon had the ability to use such CPN information to classify traffic delivered by ATX as either local traffic or toll traffic. The CPN information that ATX sent to Verizon demonstrated that the traffic being sent should have been classified as local and billed accordingly. Verizon failed to utilize ATX's data appropriately and therefore billed ATX at higher rates than it should have. This breach occurred in several ATX States, including Delaware, New Jersey, and Pennsylvania, and Verizon has not yet properly credited ATX for these improper charges.

372. Verizon breached the parties' interconnection agreements through its refusal to provide ATX with electronic billing for UNE-P services when requested by ATX in March 2001. Verizon took until January 2002 to provide ATX with its UNE-P bills in electronic format even though the Pennsylvania Agreement, Attachment VIII,

Section 3.1.6 specifically requires the "providing Party [Verizon] agrees to transmit bills and invoices in the appropriate CABS or SECAB format electronically via Connect:Direct (formerly known as Network Data Mover) to the purchasing Party [ATX] at an agreed upon location." This provision is found in ATX's interconnection agreements in other ATX States, and Verizon similarly breached its obligations in these states, including New Jersey.

#### VERIZON'S BREACHES IN PROVISIONING UNE-PLATFORM ("UNE-P") SERVICE TO ATX

373. Verizon repeatedly and unreasonably disrupted service to ATX customers when ATX submitted orders with Verizon to convert ATX customers from resale service to UNE-P. In the ATX States, Verizon is required to provide UNE-P to ATX in accordance with Amendment No. 1 to ATX's interconnection agreements with Verizon and Verizon's applicable state UNE tariffs. However, Verizon breached its obligations under Amendment No. 1 to provide "a combination of network elements [including UNE-P]" through its failure to provision such service properly to ATX, as discussed below. Specifically, Verizon's deliberate failure to provide such UNE-P service to ATX without service disruptions and outages -- where no new facilities are installed, but simply a billing change occurs when Verizon converts ATX's customers from resale to UNE-P -- breaches Verizon's obligation to under the Pennsylvania Agreement, Part A, Section 42.1 to "perform[] [its] obligations under the Agreement" and also breaches Verizon's obligation to "provide Network Elements at Parity" as provided in Part A, Section 13.3 of the Pennsylvania Agreement. Similar provisions are contained in the Parties' agreements in the other ATX States.

374. Verizon breached the parties' interconnection agreements and Verizon's state UNE tariffs, through its refusal to allow ATX to utilize UNE-P with other services or features, including Custopac with dial 9 capability, PBX trunks, primary rate interface ("PRI"), basic rate interface ("BRI"), and remote call forwarding. Verizon's refusal to provide these additional services to ATX expressly breaches the terms of the parties' interconnection agreements and Verizon's state UNE tariffs. For example, neither ATX's Amendment No. 1 in Pennsylvania nor Verizon's Pennsylvania State UNE Tariff No. 216 restrict ATX from utilizing these services together. In fact, Section 3(B)(1)(j)(1) of Verizon's Pennsylvania PUC Tariff No. 216 explicitly requires Verizon to offer UNE-P with PBX, BRI, and PRI services. Similar provisions are contained in amendments to the parties' interconnection agreements in other ATX States and in Verizon's other state UNE tariffs. ATX has raised similar billing disputes with Verizon in the other ATX States.

375. For a period from early 2001 until approximately May 2002, Verizon failed to develop and to provide ATX with Verizon's updated business rules governing certain types of orders for UNE-P in violation of Section 1(A) of Amendment No. 1 to the parties' Pennsylvania Agreement. This breach occurred in all of the ATX States in which ATX ordered UNE-P services. These types of UNE-P involved combinations of UNE-P and other features that are important to ATX's customers, such as remote call forwarding, BRI, and PRI services. Ordering rules to purchase these types of UNE-P services are extremely important to ATX, because they provide the company with guidance as to the information it must collect and provide to Verizon when submitting service order requests for complex UNE-Ps. Without these rules, Verizon personnel had no standard by which to evaluate ATX's service order requests, resulting in inconsistent

review by Verizon of these orders and an unreasonably high rejection rate. Although ATX asked for these rules in early 2001, Verizon did not publish such rules on its website until approximately May 2002. Verizon's failure for over a year to develop these rules breached Amendment No. 1, Section 1(A) of the Parties' Pennsylvania Agreement which requires Verizon to provide ATX with "Guidelines for Converting Special Access to Loop -- Transport Combinations." Similar provisions are found in the amendments to the parties' interconnection agreements in the other ATX States.

VERIZON'S BREACHES IN PROVISIONING AND BILLING ATX FOR UNE-  
EXTENDED LOOPS ("UNE-EELS")

376. Verizon breached both the terms of its interconnection agreements with ATX and Verizon's state tariffs arising from its delays in provisioning UNE-EELs to ATX. A UNE-EEL is a combination of a loop, interoffice transport, and multiplexing, and allows a competitor to provide service to its customers without having to collocate facilities in a Verizon central office or to purchase expensive special access services from Verizon. As permitted by its interconnection agreements and Verizon's state tariffs, ATX has sought since August 2000 to convert its customers' existing special access services to UNE-EELs. When ATX submitted such orders to Verizon, however, Verizon delayed this conversion process, failed to update its billing records, and as a result, for a considerable time period, imposed the much higher special access services rates on ATX rather than the lower UNE-EEL rates to which ATX was entitled.

377. In the ATX States, Verizon is required to provide UNE-EELs to ATX in accordance with Amendment No. 1 to ATX's interconnection agreements with Verizon and Verizon's applicable state UNE tariffs. However, Verizon breached its obligations to provide "a combination of network elements [including UNE-EELs]" through its

failure to timely provision such service to ATX. Furthermore, Pennsylvania PUC Tariff No. 216, Section 3(B)(1) governing the process by which Verizon must convert special access services to UNE-EELs, does not permit Verizon to delay this conversion once ATX has provided Verizon with the information required under the tariff. In New Jersey, the parties' interconnection agreements and Verizon's UNE tariffs contain similar obligations, and Verizon likewise breached its obligations. This breach occurred in other ATX States, including New Jersey, in which ATX ordered UNE-EELs.

#### OTHER BREACHES BY VERIZON

378. Verizon's actions in rejecting ATX's service orders also breached the terms of the parties' interconnection agreements. For example, Verizon's order rejection practices are in breach of, *inter alia*, Section 3.2.7.1 of Attachment VIII of the New York Agreement. This section provides that "[Verizon] shall, in its reject notice, specifically describe all of the reasons for which the order was rejected." The parties' other interconnection agreements -- *e.g.*, the Pennsylvania Agreement, Attachment VIII, Section 2.2.8 -- contain language with strict guidelines when Verizon may reject a service order -- *i.e.*, "the providing Party [Verizon] shall reject and return to the purchasing Party [ATX] any order that is incomplete, internally inconsistent, or that the providing Party cannot provision due to defects, including but not limited to, the requested due date is prior to the submission date." Similar terms to those in the Pennsylvania Agreement are contained in the parties' agreements in the other jurisdictions at issue in this Counterclaim. Verizon has violated these provisions by summarily rejecting orders and adopting a policy of deliberate refusal to elaborate on the reasons for rejection or possible methods of remedying any problems with the orders.

379. Verizon has failed to provide collocated equipment installation services that are comparable to those it performs on its own behalf, in breach of, *inter alia*, Section 13 of Part A of the Pennsylvania Agreement, which provides that “[Verizon] shall provide Interconnection at parity and on a Non-Discriminatory Basis.” Similar terms are contained in the parties’ interconnection agreements in the other jurisdictions at issue in this Counterclaim. In violation of the requirement that Verizon provide interconnection at parity and on a non-discriminatory basis, Verizon has deliberately assigned technicians without any experience to install ATX’s equipment, rather than assigning technicians who already have experience with installing similar equipment in Verizon’s own network.

380. Verizon schedules Collocation Acceptance Meetings, at which finished collocation space is to be turned over to a CLEC that is leasing collocation space in Verizon’s central offices. Verizon has frequently scheduled and held such meetings with ATX before Verizon has completed its work to make those spaces ready for ATX to occupy. Verizon’s frequent presentation of unfinished physical collocation spaces at Collocation Acceptance Meetings, and its failure to correct deficiencies in a timely manner are in breach of, for example, Section 2.13 of Attachment V of the Pennsylvania Agreement, which provides that “[e]xceptions from drawings and plans approved under Section 2.12 . . . shall be corrected by Bell Atlantic [Verizon] within five (5) business days after the walk through unless otherwise agreed.” Similar terms are contained in the parties’ agreements in the other jurisdictions at issue in this Counterclaim. However, Verizon has frequently failed to correct the exceptions within a five-day period.

381. Verizon also repeatedly failed to meet its commitment dates for delivery of physical collocation space to ATX, in breach of Verizon's FCC and/or state collocation tariffs in the ATX States. ATX faced delays resulting from Verizon's construction and release of collocation space to ATX, which significantly delayed ATX's ability to provide local exchange services to its customers, and hence, compete with Verizon. For example, Verizon's Pennsylvania PUC Tariff No. 218, Section 2(B)(1)(H) prescribes specific intervals for Verizon to provision physical, 90 days, and secured open collocation environment collocation, 60 days, to its CLEC competitors. In other ATX States, including Delaware, the District of Columbia, Maryland, New Jersey, and Virginia, ATX purchased collocation services from Verizon's FCC Tariff No. 1. This tariff, like Verizon's Pennsylvania tariff, contains specific time periods by which Verizon must deliver to ATX physical collocation space -- *e.g.*, Section 19.3(H) of Verizon FCC Tariff No. 1 provides that the "standard interval to establish a Physical Collocation arrangement will be 120 business days." Verizon breached the Pennsylvania tariff and had similar breaches of its tariffs in other ATX States.

382. Verizon has unreasonably and improperly billed ATX for usage of electrical power at collocation sites that ATX had not used. For example, in Pennsylvania, Verizon has imposed charges of in excess of \$300,000 for electrical power consumption by ATX for electrical power in ATX's collocation space that ATX never consumed, in violation of Section 2(B) of Verizon Pennsylvania Tariff No. 218.

383. Verizon's consistent failure to tag lines (described in Paragraph 332, above) is in breach of, *inter alia*, Section 2.1 of Attachment III of the Pennsylvania Agreement, which provides that "each Network Element provided by Bell Atlantic

[Verizon] to MCIIm [ATX] . . . shall be provided at Parity and in a Non-Discriminatory manner in the areas of: quality of design, performance, features, functions, capabilities and other characteristics . . . that Bell Atlantic [Verizon] provides to itself (where Technically Feasible), to a Bell Atlantic Affiliate, or to any other entity . . .” and Section 13.4 of Part A of the Pennsylvania Agreement, which provides that “[Verizon] shall provide Interconnection at Parity and on a Non-Discriminatory Basis.” Similar terms are contained in the parties’ interconnection agreements in the other ATX States at issue in this Counterclaim.

384. Verizon refuses to provide tagging information to ATX technicians when they arrive at a site that Verizon has failed to tag, as a result of which they must make a return visit after Verizon has installed the tags. Verizon technicians, however, are provided with tagging information while they are still on site. This is also in breach of *inter alia*, Section 2.1 of Attachment III of the Pennsylvania Agreement, which provides that “each Network Element provided by Bell Atlantic [Verizon] to MCIIm [ATX] . . . shall be provided at Parity and in a Non-Discriminatory manner in the areas of: quality of design, performance, features, functions, capabilities and other characteristics . . . that Bell Atlantic [Verizon] provides to itself (where Technically Feasible), to a Bell Atlantic Affiliate, or to any other entity . . .” and Section 13.4 of Part A of the Pennsylvania Agreement, which provides that “[Verizon] shall provide Interconnection at Parity and on a Non-Discriminatory Basis.” Similar terms are contained in the parties’ agreements in the other ATX States at issue in this Counterclaim.

385. Verizon has failed to replace defective smart jacks in a routine and systematic manner in breach of, *inter alia*, Section 2.1 of Attachment III of the

Pennsylvania Agreement, which provides that “each Network Element provided by Bell Atlantic [Verizon] to MCIIm [ATX] . . . shall be provided at Parity and in a Non-Discriminatory manner in the areas of: quality of design, performance, features, functions, capabilities and other characteristics . . . that Bell Atlantic [Verizon] provides to itself (where Technically Feasible), to a Bell Atlantic Affiliate, or to any other entity . . . .” and Section 13.4 of Part A of the Pennsylvania Agreement, which provides that “[Verizon] shall provide Interconnection at Parity and on a Non-Discriminatory Basis.” Similar terms are contained in the parties’ agreements in the other jurisdictions at issue in this Counterclaim.

386. While Verizon tested and replaced defective smart jacks for its own facilities, in ATX’s experience Verizon deliberately refrained from adequately testing and maintaining smart jacks connected to customers of competitive telephone companies like ATX. This is in breach of Verizon’s contractual obligations to provide interconnection at "parity" as found, *inter alia*, in Section 2.1 of Attachment III of the Pennsylvania Agreement, which provides that “each Network Element provided by Bell Atlantic [Verizon] to MCIIm [ATX] . . . shall be provided at Parity and in a Non-Discriminatory manner in the areas of: quality of design, performance, features, functions, capabilities and other characteristics . . . that Bell Atlantic [Verizon] provides to itself (where Technically Feasible), to a Bell Atlantic Affiliate, or to any other entity . . . .” and Section 13.4 of Part A of the Pennsylvania Agreement, which provides that “[Verizon] shall provide Interconnection at Parity and on a Non-Discriminatory Basis.” Similar terms are contained in the parties’ agreements in the other ATX States at issue in this Counterclaim.

387. Verizon has failed to provide adequate connections for delivery of traffic to ATX, although it does so for itself. Specifically, Verizon refused to engineer its connections to ATX with the same care that it devotes to its connection with customers that do not compete against it, in breach of its contractual obligations to provide interconnection at parity. These actions by Verizon breach, *inter alia*, Section 8 of Attachment IV of the Pennsylvania Agreement, which provides that "Bell Atlantic [Verizon] and [ATX] shall treat each other fairly and nondiscriminatorily for all items included in this Agreement . . . ." and Part A, Section 13.4 of the Pennsylvania Agreement that provides that "Bell Atlantic [Verizon] shall provide Interconnection at Parity and on a Non-Discriminatory Basis." Similar terms are contained in the parties' agreements in the other ATX States.

388. Verizon's refusal to establish a viable process for handling service disruptions and delays (as discussed in Paragraph 299, above) is in breach of, *inter alia*, Section 5.1.8.6 of Attachment VIII of the Pennsylvania Agreement, which provides that "the Parties shall establish escalation procedures for trouble tickets and maintenance requests that are not resolved in a timely manner." Similar terms are contained in the parties' agreements in the other ATX States.

#### BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

389. Individually and taken in their totality, the foregoing breaches also comprise a breach of the Verizon's express and implied duty of good faith and fair dealing in the performance of the parties' interconnection agreements. For example, Section 42 of Part A of the Pennsylvania Agreement provides that "the Parties shall

*cooperate fully* and act in good faith and consistently with the intent of the act.”

(emphasis supplied).

390. Moreover, Section 205 of the Restatement (Second) of Contracts provides that, even in the absence of an express duty of good faith, “[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”

The Comments to Section 205 proceed to affirm that “[g]ood faith performance or enforcement of a contract emphasizes *faithfulness to an agreed common purpose* and consistency with the justified expectations of the other party.” (emphasis supplied). The absence of good faith may be evidenced in “*evasion of the spirit of the bargain, lack of diligence and slacking off, [and] willful rendering of imperfect performance . . . .*”

(emphasis supplied).

391. By any standard, Verizon has breached its duty of good faith. Its steady and prolonged failures in performance, as demonstrated above, reflect both a lack of diligence and a willful rendering of imperfect performance. That Verizon has persistently and repeatedly failed to meet its performance obligations and provide adequate service to ATX, its competitor in the relevant markets, demonstrates Verizon’s bad faith and malice towards ATX.

392. ATX has been harmed by each of the foregoing breaches of Verizon’s obligations under contract and tariff.

393. As a direct result of these breaches, ATX has endured delays in providing revenue-generating services to its customers. It has incurred additional administrative expenses to correct orders improperly handled by Verizon and otherwise to resolve the problems created by these breaches.

394. As a direct result of these breaches of Verizon's contractual obligations, ATX has incurred also unreasonable costs arising from the need to audit Verizon's error-laden bills, the making of unnecessary visits to inspect incomplete collocation sites, to inspect customer sites with untagged or untested lines, technician overtime to complete these tasks when Verizon has finally prepared the facilities as required by its contractual obligations, and legal expenses incurred responding to Verizon's improper threats to embargo and terminate services to ATX.

395. As a direct result of these breaches of Verizon's contractual obligations, the enterprise value of ATX has been diminished. ATX has lost revenues because of customer dissatisfaction and defection arising from service problems outside of ATX's control, but clearly within Verizon's control, and has suffered injury to its reputation and customer goodwill.

### **COUNT III - INTERFERENCE WITH ECONOMIC RELATIONS**

396. Paragraphs 1-395 are hereby incorporated by reference as if fully set forth herein.

397. As discussed in more detail below, the wrongful Verizon conduct set forth above, including but not limited to Verizon's obstruction of ATX's operations, refusal to provide access to services and facilities, and wrongfully delaying and improperly provisioning its services, constitutes unlawful interference with ATX's contractual and business relations with its existing and prospective customers.

398. As described above, ATX offers telecommunications services to business and residential customers in the ATX States in competition with Verizon. ATX has had and continues to have prospective economic relations with its customers and prospective customers with the probability of future economic benefit to ATX.

399. At all relevant times, Verizon has had knowledge of ATX's intention and attempts to offer competing services to customers in the ATX States. At all relevant times, Verizon has had knowledge of ATX's contractual and prospective economic relations with its customers.

400. By its wrongful acts described above, Verizon intentionally and improperly interfered with ATX's contractual and prospective economic relations with its customers by causing customers to cancel contracts with ATX, to stop taking service from ATX, to not enter into contracts with ATX, or to not commence taking service from ATX, and by intentionally and improperly interfering with ATX's ability to provide its services under contracts with its existing and prospective customers. Verizon undertook such conduct with the knowledge and intent that it would prevent or impede ATX's

ability to provide its services to its existing and prospective customers and would interfere with ATX's prospective economic benefits.

401. Verizon's wrongful actions have, in fact, interfered with ATX's contractual and prospective economic relations with its customers and prospective customers. But for Verizon's wrongful conduct, ATX would have been able to provide its services to its existing and prospective customers.

402. Verizon's wrongful actions are without legal justification or privilege.

403. As a direct result of Verizon's wrongful conduct, ATX has suffered damages as a result of the loss of existing and prospective customers and the corresponding economic benefit in an amount to be determined at trial.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff ATX respectfully requests:

404. That the Court adjudge and decree that Verizon's conduct constitutes illegal maintenance of monopoly power in the provision of local telephone service for business customers and for residential customers in each of the relevant local markets, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;

405. That Verizon and its officers, directors, agents, employees, subsidiaries, and successors, and any other persons acting or claiming to act on their behalf, be permanently enjoined, restrained, and prohibited, in any manner, directly or indirectly, from:

a. refusing to sell any associated service to ATX that Verizon makes available to customers that do not compete against it, in connection with each form of basic service that Verizon is otherwise required to make available to ATX;

b. failing to put in place a system of quality control that will ensure, as far as it is within Verizon's control, that local telephone service to ATX customers is no less prompt and reliable than service to Verizon customers that do not compete with Verizon and that do the same or a smaller volume of business with Verizon as ATX; and

c. failing to put in place ordering, provisioning, and billing systems that ensure that Verizon's service to ATX and ATX customers will be as fast and reliable as its ordering, provisioning, and billing for Verizon customers that do not compete against Verizon;

406. That ATX be awarded its actual damages, trebled pursuant to § 4 of the Clayton Act, 15 U.S.C. § 15, resulting from Verizon's monopolistic conduct;

407. That ATX recover its actual damages for Verizon's breaches of its contracts with ATX;

408. That ATX recover its actual damages for Verizon's interference with ATX's contractual and economic relations with ATX's customers and prospective customers;

409. That the Court dismiss Plaintiffs' Complaint;

410. That ATX recover its costs and attorneys' fees; and

411. That the Court grant such other relief as the Court may deem just and proper to end Verizon's violations, prevent their recurrence, and eliminate their anticompetitive effects.

ATX REQUESTS A TRIAL BY JURY.

Dated: September 24, 2002

KLEHR, HARRISON, HARVEY,  
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By:

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