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March 1, 2002

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17120

**Re:    *ATX, A CoreComm Company v. Verizon***  
***Docket No. C-20026867***

Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Amended Complaint of ATX.

If you have any questions, please feel free to contact me.

Sincerely,

Steven P. Hershey

:mtb  
Enclosure  
cc: Service List  
      Allison K. Turner, ALJ

*m0353199.doc*

Steven P. Hershey  
215.851.8421  
sph@escm.com

**CERTIFICATE OF SERVICE**

*In Re: ATX, A CoreComm Company v. Verizon Pennsylvania, Inc.  
Docket No. C-20026867*

I hereby certify that on this 1st day of March, 2002 I have served a true and correct copy of the foregoing Amended Complaint on behalf of ATX, A Corecomm Company upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), upon the persons listed below via first class mail:

Daniel E. Monagle Esquire  
Julia A. Conover, Esquire  
Verizon Pennsylvania, Inc.  
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*Counsel for ATX, A CoreComm Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IN RE: Complaint of ATX A CoreComm :**  
**Company With Regard to Billing :**           **Docket No. C-20026867**  
**Issues with Verizon-PA :**

**AMENDED COMPLAINT OF ATX**

In accordance with 52 Pa. Code §§ 1.81 and 5.91, ATX Licensing, Inc. (also known as “ATX Telecommunications Services” or “ATX, a CoreComm Company” (“ATX”) hereby amends its Complaint in the above-captioned matter.<sup>1</sup>

**Introduction And Summary**

1. ATX initiated this proceeding on February 12, 2002 by filing with the Commission a “Petition for an Emergency Order” seeking to preserve the status quo by prohibiting Verizon Pennsylvania (“Verizon”) from moving forward with its threat to impose an embargo and suspension of service on ATX during the pendency of a dispute between the parties arising from Verizon’s longstanding failure to correct its wholesale billing errors. Under the threatened embargo, Verizon would have, among other actions, refused to process any pending orders or service requests for new customers, including requests to move, add or change the services of existing ATX customers, unless ATX submitted to Verizon’s demand for payment. Verizon demanded approximately \$4 million in charges for access, UNE and resale services

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<sup>1</sup> As discussed more fully below, ATX’s Complaint was initially filed as a “Petition for an Emergency Order”. ATX subsequently requested that the Petition be construed as a complaint following one of Verizon's postponements of the imposition of the embargo. As a result, the Commission closed the Petition docket and opened this complaint docket. *See*, February 19, 2002 Secretarial Letter to Steven P. Hershey.

which Verizon asserted were due and unpaid through the date of Verizon's demand letter of January 31, 2002.<sup>2</sup>

2. Although the immediate reason for filing the Complaint was the threatened embargo, the embargo threat itself was the direct result of three underlying issues. First, there has been a long simmering dispute between the parties concerning Verizon's persistent failure to render accurate, reliable and auditable wholesale bills. The substantial adverse affect of these billing problems has hindered ATX's ability to process the bills and, ultimately, to compete effectively in the local marketplace. Second, Verizon's decision to abandon the 60 to 90 day payment arrangements under which the parties had been operating for several years. Eliminating this time interval would effectively force ATX to pay charges in Verizon's error-prone bills that ATX had not yet had an opportunity to validate. Third, Verizon has assumed for itself the right to unilaterally decide what constitutes a valid dispute, as evidenced by its decision to proceed with a threatened embargo despite the fact that the amounts at issue had been placed in dispute by ATX, whether or not acknowledged by Verizon.

3. The flaws in Verizon's billing systems have for several years been so serious that ATX has been required to divert substantial resources away from the implementation of its business plan and redirect them towards undertaking an extremely burdensome, time consuming and costly audit of each Verizon bill. Additionally, Verizon's threat of an embargo has required ATX to devote even more resources to these billing issues even though the fault – and the solution – lies with Verizon. Although Verizon would have the Commission believe that the dispute is brought about by a financially troubled CLEC that is simply unwilling (or unable) to

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<sup>2</sup> As discussed more fully below, Verizon subsequently admitted that this figure was incorrect, but has yet to provide any of the details that ATX has requested to support these claims.

pay its legitimately billed charges, such a depiction is false and clearly designed to damage the reputation of one of Verizon's major local competitors.<sup>3</sup>

4. ATX has been making and continues to make substantial payments to Verizon in the ordinary course of business on a regular basis. Those payments average approximately \$5.4 million per month, although the time-consuming nature of the auditing process, a direct function of the persistent billing errors found in Verizon's bills, has generally caused payments to be rendered an average of 60 to 90 days beyond the due date set forth in the parties' interconnection agreement.<sup>4</sup>

5. Until relatively recently, this practice had been the accepted course of dealing between the parties in view of what ATX had understood to be Verizon's recognition of the problems created by its continuing, unresolved billing errors. Indeed, ATX is aware that other CLECs have experienced similar billing issues and been forced to operate under the same industry-accepted practice regarding payment disputes.

6. Although the threat of embargo related to Verizon's claims in its letter of January 31, 2002, and described in ATX's Petition, has been lifted, the underlying problems remain and Verizon has specifically stated that it will issue a new demand letter for unpaid charges. The new letter will carry with it the threat of an embargo should the claims not be paid by a certain date. Accordingly, it is essential that the core problems fueling the current dispute – the integrity of Verizon's billing processes and the question of how the dispute process functions – be resolved. It is for that reason that ATX has filed this Amended Complaint.

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<sup>3</sup> Representatives of Verizon have repeatedly told current and prospective customers of ATX that the company is going out of business and/or bankrupt. Indeed, one of Verizon's lobbyists has been making the rounds in the Pennsylvania legislature with a copy of one of Verizon's embargo letters in an effort to further undermine that body's confidence in ATX's continuing existence.

<sup>4</sup> For example, ATX made payments to Verizon of \$9.4 million in October 2001, \$3.1 million in November 2001, \$6.9 million in December 2001, \$4.2 million in January 2002, and \$8.0 million in February 2002, each of which included, on average, at least \$2.5 million towards Verizon's bills for Pennsylvania.

**Verizon's Billing Problems Have Continued Unabated for Several Years And Have Caused ATX Considerable Harm.**

7. ATX has been providing telecommunications services in Pennsylvania since 1985, initially as a provider of interstate long distance services and later, after entering the local phone market in 1998, as a provider of "all distance" local, long distance, internet access and other communications services. During the first 13 years, while it was providing only long distance services that did not compete with Verizon's core local exchange business, ATX purchased millions of dollars of services from Verizon on an annual basis and was treated as a highly-valued customer. Not surprisingly, ATX experienced few, if any operational, billing or other problems with Verizon during that period.

8. In contrast, almost immediately after ATX expanded into the local exchange business in direct competition with Verizon, the relationship between the parties took an abrupt and significant turn for the worse. Despite the fact that ATX has continued to spend millions of dollars per month with Verizon for non-competitive special access in addition to local wholesale services, it found itself fobbed off to a new, inexperienced and ever-changing account management team. Moreover, Verizon's service levels began to decline significantly and ATX began to experience serious operational problems in almost every facet of its relationship with Verizon. In short, once ATX became a competitor, it lost its status as a valued customer. Not only was this status lost, but ATX began to experience what has appeared to be a massive and sustained effort by Verizon to impede ATX's ability to compete effectively in the local marketplace. Whether or not the Verizon action was intentional, the effect was the same.

Although these problems have manifested themselves in many ways, one of the most egregious has been in the area of wholesale billing.<sup>5</sup>

9. For almost 5 years now -- from the time that ATX received its first wholesale bill as a local service provider to the present -- Verizon has consistently and repeatedly failed to provide ATX with complete, readable, accurate and auditable wholesale bills. In spite of ATX's lodging of disputes and citation of recurring errors, Verizon has refused to negotiate in good faith and refused to make reasonable efforts to implement controls and processes to provide accurate bills, in violation of the Interconnection Agreement at Part A, §4 and at Attachment VIII, §3. A copy of those sections is attached as Appendix A to this Amended Complaint. Instead, month after month, year after year, ATX has been inundated with literally hundreds of thousands of pages of billing records replete with errors, including, but not limited to:

- incorrect directory assistance charges;
- erroneous resale charges;
- inappropriate taxes;
- improper surcharges;
- charges for features that have not been sold by ATX because they are unavailable for resale;
- inappropriate installation charges;
- “orphan” charges that appear on stray bills instead of the master account;
- inappropriate PICC charges for lines that are not ATX customers;
- incorrect loop charges;
- charges for features that have not been provided;
- charges for lines that have not been in service for more than a year.

10. In light of these billing deficiencies, ATX has had to develop and implement a costly, time-consuming and burdensome audit process so that it can identify and dispute

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<sup>5</sup> Other problems not covered by this Complaint include network availability, product parity between retail and wholesale, service levels, platform reliability and other OSS limitations.

Verizon's improper charges. Pursuant to that process, ATX has routinely disputed these and other improper charges.

11. ATX estimates that it received more than \$12 million in credits from Verizon between 1996 and 2001 in connection with disputed charges, with approximately another \$6.6 million of disputed charges currently outstanding and unresolved as of the date of filing.<sup>6</sup>

12. To compound these problems, which themselves have been sufficient to impose significant operational difficulties and costs on ATX, it ordinarily takes Verizon a substantial amount of time to post credits to ATX's account in response to billing claims. For example, ATX estimates that it took Verizon an average of more than 230 days to post credits to ATX's account in 2001, up from 144 days in 2000 and 90 days in 1999.

13. When (and if) credits from resolved disputes are provided, they are often less than the amount claimed, with no explanation provided for the reduced amount, thereby creating additional reconciliation problems. Worse yet, credits are often given without any context or reference back to the original claim. Instead, they simply appear as an aggregate line item on a random bill months after the claim was lodged, without any explanation as to what they represent or why they have been provided, placing the burden on ATX to verify the disputes lodged and acknowledged on a daily basis. Since Verizon routinely fails to respond to ATX's multiple inquiries concerning these credits, ATX must then review the entire Verizon bill a second time and re-lodge disputes as necessary. Ironically, when ATX has complained about this problem, Verizon has responded that it cannot validate these claims in less than 60-90 days itself. Of particular concern to ATX is the repeated requests by Verizon for ATX's detailed dispute log.

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<sup>6</sup> Of the \$12 million in credits posted and \$6.6 million in outstanding disputes, ATX estimates that approximately \$8.5 million in paid credits and \$2.9 million in open disputes can be attributed to services in Pennsylvania. This information is derived from bills that have currently been processed and therefore does not reflect potential disputes or credits from bills that are yet to be processed.

These recurring requests have made ATX an administrative support function of Verizon where their operational support systems have failed or are non-existent. This grand-scale absurdity has even begun to erode the morale of ATX's auditing workforce, since the duplicative work is viewed as non-value-adding.

14. Unfortunately, these and other billing problems have been brought to Verizon's attention on numerous occasions over the years, both verbally and in writing, but to no avail. Despite ATX's continued practice of filing detailed disputes, Verizon has not solved its problems. During numerous meetings with Verizon representatives, including face-to-face conferences with senior executives, Verizon has acknowledged the validity of ATX's concerns and has given assurances that the problems either have been or would be fixed promptly, but the bills continue to show the same errors month after month. See Affidavit of Scott N. Dulin, attached as Appendix B to ATX's Petition for Emergency Order.

15. For example, ATX provided Verizon with a list of billing problems that ATX had been experiencing in a letter dated August 28, 2001, from Scott N. Dulin to Ms. Cathy Webster. Although extensive, the list of problems set forth in the letter was not intended to be exhaustive, but rather was crafted to summarize various discussions that had taken place between the two companies and articulate clear action items with corresponding deadlines for follow-up by the parties. A copy of the August 28, 2001 letter is attached to ATX's Petition for Emergency Order as Appendix D.

16. Verizon failed to provide a satisfactory response to either the meeting or the follow-up letter of August 28. After more than two months and several status inquiries from

ATX via telephone and e-mail<sup>7</sup> Verizon dispatched a letter by e-mail from Ms. Kirkman to ATX's Senior Vice President for Finance, Mr. Peritz dated November 2, 2001.<sup>8</sup>

17. Notwithstanding the promises made in Verizon's letter of November 2, the majority of the problems identified in ATX's letter of August 28 have not been resolved and remain on-going problems which make it impossible to accord any credibility to invoices sent by Verizon to ATX.

18. For example, during its review of various invoices for December 2001, ATX found almost 1,000 examples of billing errors that Verizon asserted in its November 2 letter either had been or would be fixed. These errors included, among others, incorrect charges for resale services billed at the retail rate, inappropriate charges for taxes, inappropriate surcharges, charges for features that are not sold by ATX, inappropriate charges for installation services associated with converting Verizon customers to ATX resale accounts, multiple "orphan" bills, inappropriate PICC charges, and multiple problems associated with the Verizon's posting of credits.

19. Thus, the November 2 response is similar in many respects to other written and verbal assurances that Verizon has conveyed over time: incorrect assurances that the problems raised by ATX have been solved and empty promises that other problems will be resolved shortly.

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<sup>7</sup> ATX sent an email to Verizon on October 12 asking for a response to the August 28th letter, a copy of which is attached as Appendix B to this Amended Complaint. In addition, ATX sent an email on November 2nd describing an inappropriate Verizon retail contact with an ATX customer. That email is attached hereto as Appendix C.

<sup>8</sup> Although the August 28 letter from ATX to Verizon was sent by Scott Dulin to Ms. Cathy Webster, Verizon's response of November 2 was sent to Neil Peritz by Ms. Kirkman and was not communicated to Mr. Dulin. Consequently, Mr. Dulin was not aware at the time he submitted his Affidavit in support of ATX's Petition that Verizon had, indeed, provided the November 2 response. And, surprisingly, Verizon did not refer ATX back to the November 2 letter in subsequent discussions despite the fact that ATX repeatedly complained about not having received a written response.

20. ATX understands that billing mistakes are bound to happen on occasion in any supplier-customer relationship. But when one compares Verizon's bills to those of other wholesale vendors, Verizon's error-rate is an order of magnitude worse. The errors cited above, which are merely examples drawn from some of ATX's recent bills, have been systemic, pervasive and continuing despite the fact that Verizon has given its repeated assurances to ATX and various regulators that these problems either had been or would be promptly corrected.

21. Verizon has not denied that its billing systems produce erroneous invoices and need to be fixed. Instead, it has urged patience while simultaneously trivializing ATX's claims by suggesting that the total dollar amount of the monthly charges ordinarily placed into dispute by ATX is nominal when compared with Verizon's overall monthly billing to ATX. This argument misses the point entirely. It is not simply the dollar amounts of the claims that are causing problems for ATX -- which themselves can be quite substantial. It is the fact that Verizon's long-standing billing problems, coupled with Verizon's false promises that the problems have been or would be resolved, have thoroughly undermined any confidence that ATX ever had in the accuracy of Verizon's bills. As a result, ATX has been forced to incur substantial costs and divert resources away from growing its business in order to engage in a burdensome, time-consuming and unnecessary audit process each month in order to satisfy itself that its payments to Verizon are even remotely related to the services that ATX has actually purchased.

22. Verizon has suggested that ATX simply proceed to pay an estimated portion of its monthly charges, less an estimated sum equivalent to what ATX has historically placed in dispute over time, with the understanding that the parties will engage in some sort of

reconciliation at some unspecified point down the road in order to “true-up” any overpayments or underpayments revealed by the audit process.

23. Although this proposal was considered by ATX , upon close examination it was found to be lacking in at least two material respects. First, it would serve as simply a stop-gap measure that would only mask the underlying billing issues without resolving any of the core problems. Second, it would compound the difficulties faced by ATX by generating additional downstream accounting problems rather than resolving any of the underlying issues. For example, a “true up” approach would force ATX to override and/or manipulate inputs into its accounts payable and disbursements systems, thus potentially compromising the quality of the information that is stored in those systems.

24. Even if ATX could manipulate the data in its systems to have a check out, additional resources would need to be allocated to ensure that the data inputs and payments were properly tracked against Verizon’s charges, including disputed charges.

25. Additional resources would then be necessary to undertake yet another “true-up” reconciliation on top of the monthly dispute reconciliation/audit process that must be employed by ATX to identify and dispute Verizon’s many billing errors. Of course this only summarizes some of the operational difficulties that would be presented by adoption of Verizon’s approach. Other downstream problems would likely include not only the need to create special accounting reserves for the various amounts at issue, but also the need to allocate additional resources towards tracking the various figures at issue and factoring them into the company’s various business models, thus creating additional business uncertainties. Since Verizon has to date been unable to provide ATX with an accurate amount outstanding, ATX believes that Verizon cannot

provide accurate detail of amounts outstanding. Given the circumstances, the burden should be on Verizon, not ATX.

26. Verizon's billing failures have had a substantial adverse affect on ATX's business and operations in a variety of respects, not just its accounting function. The impact is felt in other groups in the organization that must be dragged in to investigate and work to resolve problems, requiring them to put aside their normal work of serving ATX customers and implementing the ATX business plan. Additionally, the problems have effected business planning, customer service, operations, legal, regulatory and other functions, as well as employee moral. Literally thousands of hours of operational and management time have been devoted exclusively to trying to assess and resolve these issues. Much of this harm may never be fully remedied and/or will continue to cause lasting, irreparable injuries. The only appropriate resolution of the present situation is for Verizon to fix its billing systems so that they generate complete, accurate, reliable and auditable bills.

**Verizon Has Been Using Threats of An Embargo As A Collection Tool.**

27. Notwithstanding the many problems with its billing systems, for approximately the last 2 years Verizon has regularly sent embargo notices to ATX. Each such threat of embargo included a claim that ATX owed Verizon an overdue, undisputed balance and threatened that an embargo of services would be imposed if ATX did not pay the specified amount within a certain period of time. In each instance, ATX responded by informing Verizon that its figures were incorrect, that payments had been and would continue to be made in the ordinary course, and that an accelerated payment approach was not possible given the audits required by Verizon's billing errors. ATX would also complain about having to respond to the

threatened embargo, which Verizon had explained were being generated automatically by its billing system, and a resolution would then be negotiated quickly and informally. In every case, any overdue balance that may have existed at the time of the notice was directly related to the billing problems and time-consuming nature of the ATX audit processes described above. In every case, Verizon's claim that the unpaid balance was undisputed was incorrect.

28. During the latter half of 2001, Verizon started to become much more aggressive in its collections approach and began to demand payments from ATX on an accelerated basis while using its threat of an embargo as a collections tool, despite the fact that it had not yet fixed its underlying billing problems. These threats sought to alter the prior custom and practice in place between the parties under which payments were typically made by ATX within 60 to 90 days beyond the ordinary due date as a result of Verizon's billing errors and the need for ATX to audit Verizon's bills.

29. On several occasions in 2001, the embargo threats became more difficult to resolve. On each such occasion, the threats and negotiations which followed generally tracked the pattern of events that ultimately followed Verizon's embargo threat of January 31, 2002, described below, which led to the Petition for Emergency Order which was filed by ATX to commence this proceeding. However, in each case formal action was averted through business-to-business discussions between the parties. Now, it has become finally apparent to ATX that Verizon is not going to respect the payment arrangements that the parties have been following over time and that Verizon is going to proceed with its efforts to collect payments from ATX on charges that have not yet been audited due to Verizon's billing failures.

30. By letter dated January 31, 2002, Verizon management informed ATX that ATX was in default on payments due under the parties' interconnection agreement and that if ATX

refused or failed to pay the "undisputed" amount of \$4 million by Monday, February 11, 2002, Verizon would proceed with imposing an embargo on ATX. In doing so, Verizon would refuse to process any pending orders or new customer service requests or change orders submitted by ATX for services in Pennsylvania. A copy of said letter is attached to ATX's Petition for Emergency Order as Appendix A.

31. The letter of January 31 represented a decision by Verizon to bring ATX current in spite of the billing problems and the necessary audit process and in spite of outstanding disputes.

32. In response to the January 31<sup>st</sup> Embargo Letter, ATX advised Verizon once again that it was continuing to experience significant billing errors and that ATX had no intention of paying charges that had not yet been audited and verified as accurate. ATX also reiterated that it would continue to make substantial payments to Verizon consistent with the normal course of dealings between the parties, but that it would not accede to Verizon's demands to accelerate the payment cycle because that would require payment of charges that had not yet been audited.

33. ATX asked Verizon once again to provide basic information about the derivation of the amounts set forth in the January 31 letter – including how it had applied cash from prior payments -- but that information was not provided and has still not been supplied.

34. ATX notified Verizon pursuant to the parties' interconnection agreement that the charges underlying the demand of January 31 were disputed and had previously been disputed. Letter from Neil Peritz, dated February 8, 2002, which is attached to ATX's Petition as Appendix C.

35. The letter of February 8, 2002 was followed by an exchange of letters between the parties and an allocation of ATX's resources which was dedicated to avoiding the embargo –

even though the threat of embargo was totally inappropriate and unjustified. Indeed, on February 21, 2002, during the negotiations that followed the February 8 letter, Verizon informed ATX that some of the charges for which payment had been demanded in the letter of January 31, 2002, were incorrect.

36. During the period of negotiations, ATX made substantial payments to Verizon in the normal course of operations on bills that had been determined to be correct following ATX's normal audit. Each time that ATX made a payment, Verizon agreed to extend the date on which the embargo would be imposed.

37. When the ATX payments during this period had exceeded the amount demanded in the letter of January 31, Verizon agreed on February 22, 2002, to abandon the threat of embargo even though the amount paid and the specific charges paid were unrelated to the demands of January 31.<sup>9</sup>

38. When counsel for Verizon informed counsel for ATX that the threat of embargo was being lifted, Verizon's counsel warned that another demand letter with another threat of embargo would be issued the following week.

39. Verizon's letter threatening an embargo violates the dispute resolution provisions of the Interconnection Agreement between Verizon and ATX at Part A, Section 24. The Agreement was approved by this Commission at Docket No. A-310104F0002. A copy of those provisions is attached as Appendix D to this Amended Complaint.

40. Verizon's threatened embargo is being utilized by Verizon as a collection tool. As such, it is inconsistent with representations made by Verizon to this Commission and to the FCC. Both Commissions relied on these representations in granting Verizon's application for 271

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<sup>9</sup> ATX paid \$4.5 million during this period for Pennsylvania charges. Verizon's letter of January 31 had demanded payment of \$4.001 million.

approval. For example, Verizon has stated that it would not require CLECs to pay disputed charges<sup>10</sup> and that it would not impose an embargo based on disputed charges.<sup>11</sup>

41. If Verizon's threat is carried out, ATX, its customers, and the local telecommunications market will be irreparably injured, as set forth in detail in the Affidavit of Scott N. Dulin, Senior Vice President of ATX which is attached to ATX's Petition for Emergency Order as Appendix B.

42. Given the nature and history of the controversy, as well as the amount of money involved, Verizon's February 11, 2002 deadline for paying all "undisputed" amounts was clearly unreasonable and without merit.

43. It is Verizon alone that can remedy these delays in ATX payments by resolving the underlying problem and eliminating the need for an extensive audit of each bill. That would be accomplished by providing ATX with accurate bills and appropriate supporting documentation and by "fixing" the flaws in the Verizon billing system, as described more fully in ATX's letter of August 28, 2001.

44. If Verizon is permitted to proceed with extreme action of imposing an embargo, Verizon would be capable of unilaterally putting ATX out of business as well as irreparably harming innocent residential and business customers of ATX, as more fully set forth in Mr. Dulin's Affidavit which is attached as Appendix B to the Petition for Emergency Order.

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<sup>10</sup> In the Matter of Application of Verizon Pennsylvania Inc., et al. For Authorization to Provide In-Region InterLata Services in Pa., Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001).

<sup>11</sup> Verizon resale witness Mr. Huster testified before this Commission that it was Verizon policy not to embargo for disputed billing amounts. Verizon 271 Proceeding, Docket No. M-00001435, February 16 at Tr. at 107. Mr. Petersen, counsel for Verizon, emphasized that point: "... we do not even suspend service or declare an embargo when there is a billing dispute. We do not use that as a vehicle to, as OTS comments suggested, you know, use it as a collection vehicle to hammer down on people that don't pay bills." Verizon 271 Proceeding, Docket No. M-00001435, February 16 at Tr. 110.

**Verizon Has Reserved To Itself Alone The Right to  
Determine Whether or Not a Dispute Exists**

45. ATX continues to dispute all claims made by Verizon which form the basis for the threatened embargo of ATX service orders as articulated in Verizon's letter of January 31, 2002. ATX also continues to dispute numerous other charges billed by Verizon as a result of continuing billing errors and failure to properly account for credits and other charges, as set forth above.

46. ATX believes that Verizon's failure to recognize these disputes remains at the heart of this periodic threat of embargo in spite of ATX's regular notification of disputes. Verizon has reserved to itself alone the authority to determine whether or not ATX's disputes are "legitimate" and "adequately documented." Verizon bases its decisions on whether or not to proceed with the threatened embargo on its determination of the "legitimacy" of the dispute and on the adequacy of ATX's documentation of the basis for its dispute. As such, Verizon has chosen to ignore ATX's regular posting of dispute claims and documentation concerning the systematic flaws in the billing system which produces the recurring errors in Verizon bills to ATX. Verizon's actions violate the Interconnection Agreement between the parties at Part A, Section 24, which is attached hereto as Appendix D.

47. Under normal business practices, disputes could readily be supported by documentation sufficient to identify the problem and the potential remedy. Verizon's failure to provide error-free, documented, auditable bills, however, makes it impossible for ATX to provide supporting documentation of its disputes until it has completed its audit of the bills.

48. ATX is thus trapped by Verizon's failure to render accurate bills and Verizon's increasingly aggressive collection strategy. ATX must dispute its bills promptly, but cannot provide adequate documentation on the new, expedited time frame to meet Verizon's definition

of a dispute, thus allowing Verizon to claim that charges are undisputed and appropriate for collection and the threat of embargo. Verizon has created a neat, but illegal trap.

**Verizon's Behavior Is Anti-Competitive And Causes ATX To Suffer Irreparable Harm**

49. Should Verizon implement its threatened embargo and refuse to process any ATX orders, ATX would suffer both grave economic harm<sup>12</sup> and irreparable damage to its business operations and reputation. Customers' requests for new service or a change in existing service could not be implemented during the term of the Verizon embargo. Requests by ATX for service to new customers would not be processed by Verizon. Such conduct would cause customers to call into question the ability of ATX, or of any other CLEC, to provide reliable telecommunications services. By imposing such an embargo, Verizon would be able to unilaterally eliminate ATX as a competitor. Such action could never be remedied. The resulting injury to the competitive local exchange market would also be irreparable.

50. This Commission should not permit Verizon to take such anti-competitive action - action that would result in allowing an incumbent local exchange carrier to put a competitive

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<sup>12</sup> As set forth above, ATX believes that it will suffer both economic harm and harm to its business operations and reputation. There is no dispute that harm to one's reputation is irreparable. Verizon claims that economic harm that can be compensated is insufficient basis for an emergency order, citing *West Penn Power Company v. Pennsylvania Public Utility Commission*, 615 A.2d 951, 959 (Pa.Cmwlth. 1992). See Verizon Answer, p. 4. Verizon's citation of the case is in error. The Court reached the opposite conclusion:

...although monetary losses generally are insufficient to support an emergency order, such losses can satisfy the rule's irreparable injury requirement...Accordingly, this court concludes that the irreparable harm criterion was satisfied.

*Id.*

local exchange carrier out of the Pennsylvania market at its whim. This Commission should not allow Verizon to act in a manner which is inconsistent with its representations on the record before this Commission and before the FCC. The Commission should not allow Verizon to put such a significant damper on the competitive market by imposing an embargo whenever Verizon unilaterally deems it appropriate to ignore existing legal constraints which preclude such conduct.

51. The harm to innocent ATX customers will likely also be irreparable. These 12,000 residential and business Pennsylvania customers would be prevented from obtaining the kind of service that meets their needs. It is likely that the Verizon embargo would substantially interfere with their ability to meet existing or planned personal or business obligations. These customers would truly be innocent victims of a dispute to which they are not parties.

52. Imposition of the threatened embargo by Verizon is contrary to the public interest in that it would undermine the competitive telecommunications market and would disrupt services to ATX customers.

**WHEREFORE**, ATX hereby requests that this Commission:

- (a) Enter a finding that ATX and its customers would be irreparably harmed by the imposition of the threatened embargo;
- (b) Enter a finding that the threatened embargo is contrary to the public interest;
- (c) Issue an order preventing Verizon from imposing an embargo on ATX service orders until the billing system problems have been eliminated;
- (d) Require Verizon to modify its billing system in a manner that eliminates the reoccurrence of billing errors after those errors have been identified;
- (e) Require Verizon to abandon its use of a service embargo when a CLEC or any other customer disputes the charges which are the basis for the threatened embargo;
- (f) Prohibit Verizon from engaging in any collection activity, including threatening an embargo, for charges which have been disputed;

(g) Provide such other relief as is just and reasonable.

Respectfully submitted,

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Steven P. Hershey (Pa. I.D. No. 22936)  
Adrian DiCianno Newall (Pa. I.D. No. 76918)  
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*m0354517.doc*

# APPENDIX A

## Part A.

### *Section 4. Charges and Payment*

4.1 In consideration of the services provided under this Agreement, the purchasing Party shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by a purchasing Party hereunder are set forth in Attachment VIII.

## Attachment VIII

### *Section 3. Standards*

3.2.4 The providing Party agrees to use commercially reasonable efforts to transmit to the purchasing Party accurate and current bills and invoices. If necessary beyond the provisions of this Section 3, the Parties agree to negotiate implementations of controls and processes to facilitate the transmission of accurate and current bills and invoices.

## APPENDIX B

-----Original Message-----

From: Neil Peritz

Sent: Friday, October 12, 2001 10:41 AM

To: Jeannine. T. Kirkman (E-mail); Len. G. Canalini (E-mail)

Cc: 'david.r.blackmore@verizon.com'

Subject: Embargo Letters

<<Verizon Embargo Letters Dated 10-10-01 - revised\_\_.doc>>

This e-mail message is confidential, intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender at (212) 906-8440 and delete this e-mail message from your computer. Thank you.



- Verizon Embargo Letters Dated 10-10-01 - revised\_\_.doc

**Verizon**  
**Jeannine Kirkland**

I wanted to reply to this Email as well as to our conversation yesterday. Upon our meeting over two months ago, it was promised that:

**1. No more Embargo Letters will be issued -- which has not been honored.**

Upon a call from you two weeks ago, Stefanie Brodsky from ATX/CoreComm notified you and Len Canalini that payments were being sent. These amounts were confirmed yesterday. No subsequent Emails, voice mails or other correspondence was sent informing us that we might receive any kind of Embargo Letter after that time, unless payments were made or accelerated. We received a phone call on October 11, 2001, notifying us that you had sent Embargo Letters. You confirmed that these letters did not include the recent payments made and that you were not aware whether they included payments made almost two weeks ago. Furthermore, it was confirmed that these letters, as in the past, do not include any proper aging by invoice to verify any of the balances requested. Subsequently, we received an aging from David Blackmore in

your group which do not net the disputes lodged as promised. Therefore, while these Embargo letters include incorrect balances from which Verizon determines that service will be discontinued, there is no accurate support from Verizon to resolve these amounts. Consequently, this affects the daily service that ATX/CoreComm provides to its customers. You indicated that these updates are forthcoming, but the deadline to resolve this Embargo issue remains.

Additionally, in an effort to reconcile the Midwest accounts, information detailing how checks were posted and how debits/credits were transferred among accounts in the last 6 or so months was requested some time ago. Verizon never delivered this information as promised. Recently, Len Canalini has stated that since the move from the NY office, he has had a difficult time in collecting the relevant receivable information to assist the matter of reconciling these accounts.

**2. Verizon Billing Errors will be addressed immediately and corrected**

This has not happened and billing errors continue to create substantial costs to ATX/CoreComm. Certain fixes have occurred which have had little to no impact in verifying the Verizon Billing. Subsequent calls to Len Canalini and others have resulted in no material change in billing. Several other billing issues discussed at our meeting have yet to be addressed or corrected by Verizon

**3. Verizon will process credits due ATX/CoreComm for past billing disputes.**

Verizon has only processed credits related to Directory Advertising, Non resalable USOCs and partial tax credits. There are multiple other issues still open, which have been discussed at length on several occasions, including the most recent meeting at ATX headquarters, which have not yet been credited.

**4. Verizon will send all correspondence such as any collection letters to Neil Peritz and/or Scott Dulin going forward; Verizon agreed.**

Verizon sent Embargo letters to other individuals as well as other offices in error, thus creating further delays. Likewise, they sent sensitive information without verifying correct names and addresses.

In summary, Verizon continues to promise a remedy for billing and operational errors without any significant results. Verizon continues to threaten ATX/CoreComm's ability to conduct business by sending Embargo Letters, which demand payment for incorrect amounts. Furthermore, there is no support to reconcile or satisfy the requirements set forth by Verizon. Verizon's business conduct has caused AT/CoreComm significant financial hardships while demonstrating no desire to salvage an ongoing working relationship.

I look forward to your comments in final resolution to these problems and this letter does not constitute the extent of the problems faced by ATX/CoreComm.

## APPENDIX C

Message-ID:

<83B3C40CEBABD411ACFB0000D1ED48A2073253AB@mail.atx.com>

From: Neil Peritz <Neil.Peritz@atx.com>

To: "Jeannine. T. Kirkman (E-mail)"

<jeannine.t.kirkman@verizon.com>

Subject: Additional Information

Date: Mon, 5 Nov 2001 09:08:47 -0500

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.5.2653.19)

Content-Type: multipart/alternative; boundary="----  
\_=\_NextPart\_003\_01C1BF1E.50E6C670"

> Neil

> Just thought you'd find this interesting and should probably be forwarded

> to Jeannine Kirkman

>

> From Day 1 the billing for Raritan's BTN #908 722 0030 has been incorrect.

>

> Since May 2001 this BTN has been billed as a separate paper invoice or

> "orphan" as Verizon calls them

> We have sent in disputes for this BTN since May 01 informing Verizon that

> this BTN was not billing under the correct NJ Business Master BAN #201 X09

> 1000 999 but as I mentioned to Jeanine last week on our conf call, I have

> not received any sort of resolutions on any of these separate paper

> invoice disputes in months

> Years ago when we first started disputing these orphan bills TISOC

> instructed us to NOT pay them; that when the BTN gets fixed and converted

> over to the Master BAN the charges get transferred over as well

> Since Verizon is not working these claims, this BTN as well as many others

> appear as way past due in Verizon's system which is probably what prompted

> the call from Verizon to the customer which never should have happened as

> the reason these BTNs are unpaid is Verizon's fault

>

Message-ID:

<83B3C40CEBABD411ACFB0000D1ED48A207325394@mail.atx.com>

From: Neil Peritz <Neil.Peritz@atx.com>

To: "'jeannine.t.kirkman@verizon.com'"

<jeannine.t.kirkman@verizon.com>

Subject: Problem

Date: Fri, 2 Nov 2001 11:23:13 -0500

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.5.2653.19)

Content-Type: multipart/alternative; boundary="----  
\_=\_NextPart\_003\_01C1BF1E.50E6C670"

Jeannine,

I can't believe i just read this. At this juncture, i have no other choice but to include Legal on this matter.

Neil,

I just recv'd a fax from Marie at "Raritan Valley Surgical Assoc." The person from Verizon who called our customer is Kent Miller 1 888 244-2525 Ext. 6385. He called and told Marie that we owe Verizon money and that he was going to disconnect her service. He also faxed her papers to sign her service directly over to Verizon. If you need anything just let me know.

Thanks

Lisa

# APPENDIX D

## Part A

### *Section 24. Dispute Resolution Procedures*

24.1 In the event the Commission retains continuing jurisdiction to implement and enforce the terms and conditions of this Agreement, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve, may be submitted to the Commission for resolution. The Parties agree to seek expedited resolution by the Commission, pursuant to applicable procedures established by the Commission. During the Commission proceeding, each Party shall continue to perform its obligations under this Agreement; provided, however that neither Party shall be required to act in any unlawful fashion. This provision shall not preclude the Parties from seeking relief available in any other forum.

24.2 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Commission. Any and all of the terms of this Agreement may be altered or abrogated by a successful challenge to the Agreement (or to the order approving the Agreement) as permitted by Applicable Law. By signing this Agreement, the Parties do not waive the right to pursue such a challenge.

## Attachment VIII

### **3.1.9 Billing Dispute**

3.1.9.1 Subject to and without waiver of any of the providing Party's rights under Section 21.3 of Part A of this Agreement, each Party agrees to notify the other Party upon the discovery of a billing dispute. In the event 3.1.9 of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the Bill Date on which such disputed charges appear. Resolution of the dispute is expected to occur at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the issues are not resolved within the allotted time frame, the following resolution procedure will begin:

3.1.9.1.1 If the dispute is not resolved within sixty (60) days of the Bill Date, the dispute will be escalated to the second level of management for each of the respective Parties for resolution.

3.1.9.1.2 If the dispute is not resolved within ninety (90) days of the Bill Date, the dispute will be escalated to the third level of management for each of the respective Parties for resolution.

3.1.9.1.3 If the dispute is not resolved within one hundred and twenty (120) days of the Bill Date, the dispute will be resolved in accordance with the dispute resolution procedures set forth in Part A of this Agreement.

3.1.9.2 Upon resolution of the dispute, the relevant Party shall pay all amounts determined to have been due in accordance with Section 21.3 of Part A.



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In Re: ATX a CoreComm Company            :**  
**Petition For an Emergency Order        :**            **Docket No.**  
**Pursuant to 52 Pa. Code § 3.2           :**

**RECEIVED  
02 FEB 12 PM 4:25  
PENNSYLVANIA  
SECRETARY'S BUREAU**

**PETITION OF ATX A CORECOMM COMPANY  
FOR AN EMERGENCY ORDER PREVENTING VERIZON PENNSYLVANIA  
FROM REFUSING TO PROCESS PENDING ORDERS OR NEW ORDERS FOR  
ACCESS, RESALE OR UNE SERVICE IN PENNSYLVANIA**

In accordance with Section 3.2 of the Commission's regulations, 52 Pa. Code § 3.2, ATX a CoreComm Company ("ATX") hereby files this Petition for an Emergency Order to preserve the status quo and to prohibit Verizon Pennsylvania ("Verizon") from imposing an embargo on ATX by, among other actions, refusing to process any pending orders or new customer service requests or change orders submitted by ATX and to further direct Verizon to process all orders in accordance with the provisions of the interconnection agreement between the two companies approved by this Commission at Docket No. A-310104F0002.

**I. Background.**

1. By letter dated January 31, 2001, Verizon informed ATX that it was currently in default on payments due under the parties' interconnection agreement and that if ATX refused or failed to pay the "undisputed" amount of \$4 million by Monday, February 11, 2002, Verizon would be imposing an embargo on ATX. In doing so, Verizon would refuse to process any pending orders or new customer service requests or

change orders submitted by ATX for services in Pennsylvania. A copy of said letter is attached hereto as Appendix A.

2. Verizon's letter is without basis in fact and violates the dispute resolution provisions of the Interconnection Agreement[s] between Verizon and ATX. If Verizon's threat is carried out, ATX, its customers, and the local telecommunications market will be irreparably injured, as set forth in detail in the affidavit of Scott N. Dulin, Senior Vice President of ATX which is attached hereto as Appendix B. See also the February 8, 2002 letter to Verizon from Neil Peritz, Senior Vice President Finance of ATX which is attached hereto as Appendix C.

3. ATX has long disputed Verizon's unsubstantiated bills and associated claims to full recovery on the amounts set forth therein. Substantial and continuing billing errors made by Verizon over an extended period of time make it impossible to substantiate the amount claimed by Verizon at any one time and in particular in the claims made in the Verizon letter of January 31, 2002. ATX pays undisputed charges in the normal course of business and has attempted on numerous occasions to resolve the current disputes with Verizon.

4. By letter dated August 28, 2001, from Scott N. Dulin to Ms. Cathy Webster, ATX provided Verizon with a comprehensive catalog of billing disputes under discussion between ATX and Verizon. The problems described in the letter were identified as recurring errors plaguing the bills submitted by Verizon to ATX. These recurring errors resulted in billing disputes by ATX, the basis of which Verizon periodically admitted to be justified. In spite of such admissions, however, Verizon never corrected its billing system to avoid repetition of these errors. This August 28 letter

summarized discussions that had taken place between the two companies and set clear action items and deadlines where the parties had agreed on a course of action to resolve particular issues. A copy of the August 28, 2001 letter is attached hereto as Appendix D.

5. The letter of August 28, 2001, reflects the frustrations experienced by ATX in its numerous attempts to resolve the disputes outlined in that letter. Despite such efforts, which included requests by ATX for documentation substantiating Verizon's bills, the response from Verizon had been inadequate. In many instances it has taken Verizon months or even years to acknowledge disputes and/or errors.

6. ATX never received a written or oral response to the letter of August 28, 2001. Instead Verizon issued its default letter of January 31, described in paragraph 1. The disputed issues identified in ATX's letter of August 28 have never been resolved and remain on-going problems. These problems make it impossible to accord any credibility to invoices sent by Verizon to ATX. On the contrary, given the long history of billing errors, ATX has been obligated to undertake extremely time-consuming audits of each and every invoice it receives from Verizon. These audits consume substantial resources and delay by at least several months the date on which ATX or any prudent businessperson would agree to make payments on such bills.

7. Instead of engaging in substantive discussions with ATX to remedy the errors in its billing system, Verizon has chosen instead to ignore them. In its letter of January 31, 2002 to ATX, Verizon claimed not only that ATX was in default, but also that the balances identified by Verizon were "undisputed" amounts requiring full payment by February 11, 2002. This default notice came without any warning or justification. Given the nature and history of the dispute, as well as the amount of money

involved, Verizon's February 11, 2002 deadline for paying all "undisputed" amounts was clearly unreasonable and without merit.

8. ATX believes, based on communications it has received from Verizon, that it is the delay in payment that prompted the letter of January 31, 2002 threatening an embargo. It is, however, Verizon alone that can remedy these delays and resolve the underlying problem by providing ATX with accurate bills and appropriate supporting documentation, as described more fully in ATX's letter of August 28, 2001.

9. The action threatened by Verizon is in clear violation of the applicable provisions of the parties' interconnection agreement and Pennsylvania law. If Verizon is permitted to take proceed with such extreme action, it would be in the position of being able to unilaterally put ATX out of business as well as irreparably harming innocent residential and business customers of ATX, as more fully set forth in Mr. Dulin's affidavit.

10. By letter dated February 11, 2002, Verizon responded to the letter from Mr. Peritz of ATX. Verizon agreed to extend until February 15, 2002, the date for documentation of all pending disputes of charges billed by Verizon and payment of all charges for which documentation is not provided. Failure to comply would activation of an embargo on February 19, 2002. A copy of this letter is attached as Appendix E.

11. ATX has already provided on numerous occasions the documentation demanded in the February 11 letter and believes that it will face embargo on February 19 no matter how it responds to this most recent Verizon demand.

## II. REQUEST FOR AN EMERGENCY ORDER.

12. Section 3.2 of the Commission's regulations governs requests to the Commission for emergency relief. "Emergency" is defined in Section 3.1 as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled meeting." 52 Pa. Code § 3.1.

13. While an emergency order is a form of relief that is to be utilized only in the most extraordinary of circumstances, this Commission has previously held that termination of utility service is such an extraordinary circumstance that presents a clear and present danger to life or property. See e.g. *Petition of United Mine Workers of America for an Emergency Order*, 1992 Pa. PUC LEXIS 142 (1992).<sup>1</sup> As the Commission has held, the "clear and present danger" standard of Section 3.2 is at least as stringent as the "irreparable harm" standard set forth in Section 3.7 relating to the issuance of interim emergency orders. See *West Penn Power Co.*, 69 Pa. PUC 343, 347 (1989).

14. ATX's request for an emergency order meets the Commission's standards. If the Commission were to permit Verizon to refuse to process ATX's orders for customer, ATX, its customers, and the local telecommunications market would incur immediate and irreparable harm.

15. If Verizon were to refuse to process any ATX orders, ATX would suffer both grave economic harm and irreparable damage to its business operations and reputation. Customers' requests for new service or a change in existing service could not

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<sup>1</sup>In this proceeding, the United Mine Workers of America filed a Petition for an Emergency Order pursuant to 52 Pa. Code § 3.2 to prevent West Penn Power Company from terminating electric service to Shamopin Mining Company. On September 8, 1992, Vice Chairman Joseph Rhodes, Jr. issued an Emergency Order prohibiting such termination. (unpublished Order). The decision cited above is the Recommended Decision

be implemented during the term of the Verizon embargo. Such conduct would cause customers to call into question the ability of ATX or of any other CLEC to provide reliable telecommunications services. By imposing such an embargo, Verizon would be able to unilaterally eliminate ATX as a competitor. Such action could never be remedied. In addition, the injury to the competitive local exchange market would be irreparable.

16. This Commission should not permit Verizon to take such anti-competitive action - action that would result in allowing an incumbent local exchange carrier to put a competitive local exchange carrier out of the Pennsylvania market at its whim. The Commission cannot allow Verizon to put such a significant damper on the competitive market by imposing an embargo whenever Verizon unilaterally deems it appropriate to ignore existing contractual provisions which preclude such conduct.

17. The harm to the innocent ATX customers can also not be overlooked by the Commission. Both existing customers and potential customers have put their faith in the competitive market and, in particular, in ATX as a provider of local exchange services. The Commission must not allow these customers to be harmed while the two parties negotiate billing disputes.

18. The Commission is the appropriate forum to address this issue and ATX urges the Commission to promptly issue an emergency order preventing Verizon from causing irreparable harm to ATX and its customers.

19. Such an Emergency Order would preserve the status quo and allow the parties to engage in meaningful dispute resolution procedures. If the Commission fails to

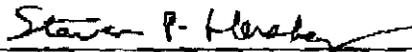
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of the Administrative Law Judge who conducted the hearing on the Emergency Order pursuant to 52 Pa. Code § 3.3.4. The ALJ recommended that the Emergency Order be extended.

grant ATX's request for an Emergency Order, any mediation of the billing disputes between the parties will be futile.

WHEREFORE, ATX respectfully urges the Commission to issue an immediate emergency order to cease and desist from its threatened account embargo and service suspension procedures as well as service disconnection and contract termination.

Respectfully submitted,



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Steven P. Hershey (Pa. I.D. No. 22936

Adrian DiCianno Newall (Pa. I.D. No. 76918

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MELLOTT LLC

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