

Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company, Nevada Bell Telephone Company, Michigan Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company, and The Woodbury Telephone Company,

Plaintiffs,

v.

VarTec Telecom, Inc., PointOne Telecommunications, Inc., Unipoint Holdings, Inc., Unipoint Enhanced Services, Inc. (d/b/a "PointOne"), Unipoint Services, Inc., Transcom Holdings, Inc., Transcom Enhanced Services, LLC, Transcom Communications, Inc., and JOHN DOES 1-10

Defendants.

Case No. 4:04CV1303CEJ

JURY TRIAL REQUESTED

FIRST AMENDED COMPLAINT

Plaintiffs Southwestern Bell Telephone, L.P., Pacific Bell Telephone Company, Nevada Bell Telephone Company, Michigan Bell Telephone Company, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Ohio Bell Telephone Company, Wisconsin Bell, Inc., The Southern New England Telephone Company, and The Woodbury Telephone Company, for their Complaint against defendants VarTec Telecom, Inc. ("VarTec"), PointOne Telecommunications, Inc., Unipoint Holdings, Inc., Unipoint Enhanced Services, Inc. (d/b/a "PointOne"), Unipoint Services, Inc.

(collectively “Unipoint”), Transcom Holdings, Inc., Transcom Enhanced Services, LLC, Transcom Communications, Inc. (collectively “Transcom”), and JOHN DOES 1-10 allege as follows:

NATURE OF THE ACTION

1. This case involves defendants’ failure to pay legally required charges for their use of plaintiffs’ local network facilities to complete long-distance calls. VarTec is a long-distance carrier headquartered in Dallas. It pioneered the use of “dial around” long-distance service, where a customer dials 10-10-287 or some other “10-10” number to bypass the line’s regular long-distance carrier in favor of VarTec. VarTec now offers various long-distance and local calling plans to end users.

2. Whenever one of VarTec’s customers makes a long-distance call to a local telephone customer served by one of the plaintiffs, VarTec uses plaintiffs’ local facilities to complete, or “terminate,” the long-distance call. Pursuant to federal and state tariffs on file with the Federal Communications Commissions (“FCC”) and state regulatory bodies, VarTec is required to pay plaintiffs for this “access” to plaintiffs’ local exchange facilities. Beginning in 2001 or earlier and continuing to the present, however, VarTec orchestrated and implemented a fraudulent scheme to avoid these tariffed “access charges” by delivering its long-distance calls to so-called Least Cost Routers (“LCRs”), which in turn deliver calls to plaintiffs for termination, often through still other intermediaries, over facilities that are restricted to local traffic. Currently, plaintiffs estimate that VarTec is using this scheme to avoid terminating access charges on fully 50% of the long-distance calls it carries. Plaintiffs accordingly seek not only to recover the access charges that VarTec, in many cases with the assistance of other carriers,

principally Unipoint and Transcom, has unlawfully avoided – which plaintiffs preliminarily estimate to be between \$19 million and \$35 million, not including late fees and interest – but also to enjoin defendants from perpetuating this unlawful conduct.

3. Plaintiffs also seek to recover unpaid access charges for interexchange traffic – whether or not carried at some point by VarTec – that is terminated to plaintiffs over local interconnection facilities by the principal LCRs participating in VarTec’s unlawful scheme: defendants Unipoint and Transcom. These carriers operate networks that use the Internet Protocol (“IP”) to transmit calls. After receiving long-distance calls from interexchange carriers (among them VarTec), Unipoint and Transcom convert those calls from a “circuit-switched” format, in which ordinary long-distance calls originate, to IP format. Upon information and belief, Unipoint and Transcom then transport that traffic in IP format for some distance across their networks. Unipoint and Transcom then convert the traffic back to circuit-switched format and hand it to plaintiffs for termination, typically via competitive local exchange carriers (“CLECs”), through facilities designated for local calls.

4. Like VarTec, Unipoint and Transcom are legally required to pay access charges for the interexchange traffic they deliver – either directly or through intermediaries – to plaintiffs for termination. And, like VarTec, Unipoint and Transcom have failed to pay those fees in the past, and that failure persists today. Accordingly, plaintiffs seek injunctive relief against Unipoint and Transcom as well, and they also seek payment of all unpaid access fees for all interexchange traffic Unipoint and Transcom have transmitted to plaintiffs (directly or indirectly).

5. VarTec has sought to justify its access-avoidance scheme by claiming that, once it hands a long-distance call to an LCR, it is not responsible for how that call is terminated or whether terminating access charges are paid. *See* VarTec Petition for Declaratory Ruling (FCC filed Aug. 20, 2004). VarTec has taken this position even though the calls that it hands off to LCRs are placed in the same manner and using the same facilities as other long-distance calls; even though neither the calling nor the called party has any idea that a “handoff” or “protocol conversion” has taken place; and, most fundamentally, despite the clear statement of the FCC that long-distance carriers cannot avoid responsibility for access charges by handing off traffic to other entities or by carrying calls using IP.

6. On April 21, 2004, the FCC unanimously rejected a claim, made by long-distance giant AT&T Corp., that long-distance calls should be exempt from access charges when they are transported in part using the IP format. *See* Order, *Petition for a Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (Apr. 21, 2004) (“*FCC Access Charge Order*”).

In rejecting AT&T’s petition, the FCC held:

[W]hen a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the [public switched telephone network] . . . and terminate on the [public switched telephone network], the interexchange carrier is obligated to pay terminating access charges. *Our analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.*

Id. at 7470, ¶ 19 (emphasis added). In light of this decision, defendants have no excuse for their failure to pay lawfully tariffed access charges for all of the long-distance voice

traffic that they deliver, or hand off to other entities to deliver, to plaintiffs for termination.

JURISDICTION AND VENUE

7. This is primarily a collection action for payments arising under section 203 of the Communications Act of 1934, 47 U.S.C. § 203, and plaintiffs' interstate access tariffs filed thereunder. This Court accordingly has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337. In addition, this Court has jurisdiction over plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), as a substantial part of the events and omissions giving rise to the claims in this Complaint occurred in this judicial district.

PARTIES

9. Southwestern Bell Telephone, L.P., is a Texas limited partnership with its principal place of business in Dallas, Texas. Southwestern Bell Telephone, L.P., provides, among other things, telecommunications services in Missouri, Texas, Kansas, Oklahoma, and Arkansas.

10. Pacific Bell Telephone Company is a California corporation with its principal place of business in San Francisco, California. Pacific Bell Telephone Company provides, among other things, telecommunications services in California.

11. Nevada Bell Telephone Company is a Nevada corporation with its principal place of business in Reno, Nevada. Nevada Bell Telephone Company provides, among other things, telecommunications services in Nevada.

12. Michigan Bell Telephone Company is a Michigan corporation with its principal place of business in Detroit, Michigan. Michigan Bell Telephone Company provides, among other things, telecommunications services in Michigan.

13. Illinois Bell Telephone Company is an Illinois corporation with its principal place of business in Chicago, Illinois. Illinois Bell Telephone Company provides, among other things, telecommunications services in Illinois.

14. Indiana Bell Telephone Company is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Indiana Bell Telephone Company provides, among other things, telecommunications services in Indiana.

15. The Ohio Bell Telephone Company is an Ohio corporation with its principal place of business in Cleveland, Ohio. The Ohio Bell Telephone Company provides, among other things, telecommunications services in Ohio.

16. Wisconsin Bell, Inc. is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. Wisconsin Bell, Inc. provides, among other things, telecommunications services in Wisconsin.

17. The Southern New England Telephone Company is a Connecticut corporation with its principal place of business in New Haven, Connecticut. The Southern New England Telephone Company provides, among other things, telecommunications services in Connecticut.

18. The Woodbury Telephone Company is a Connecticut corporation with its principal place of business in Woodbury, Connecticut. The Woodbury Telephone Company provides, among other things, telecommunications services in Connecticut.

19. VarTec Telecom, Inc. is a Texas corporation with its principal place of business in Lancaster, Texas. VarTec provides, among other things, telecommunications services throughout the United States, including in Missouri.

20. PointOne Telecommunications, Inc. is a Delaware corporation with its principal place of business in Austin, Texas.

21. Unipoint Holdings, Inc., is a Delaware corporation with its principal place of business in Austin, Texas. Unipoint Enhanced Services, Inc. (d/b/a "PointOne"), and Unipoint Services, Inc., are Texas corporations with their principal place of business in Austin, Texas. Unipoint Enhanced Services, Inc., and Unipoint Services, Inc., are wholly owned subsidiaries of Unipoint Holdings, Inc. On information and belief, with regard to the actions alleged in this Complaint, the Unipoint defendants function as one entity. Unipoint operates facilities that are used in connection with the transmission of telephone calls that originate and terminate in multiple states in which plaintiffs do business, including Missouri.

22. Transcom Holdings, Inc., Transcom Enhanced Services, LLC, and Transcom Communications, Inc. are Texas corporations with their principal place of business in Irving, Texas. Transcom Enhanced Services, LLC and Transcom Communications, Inc. are wholly owned subsidiaries of Transcom Holdings, Inc. On information and belief, with regard to the actions alleged in this Complaint, the Transcom defendants function as one entity. Transcom operates facilities that are used in connection with the transmission of telephone calls that originate and terminate in multiple states in which plaintiffs do business, including Missouri. Transcom has filed a tariff to provide, among other things, telecommunications services in Missouri.

Transcom carries on the business of a now-bankrupt company, known as DataVoN, that contracted with other interexchange carriers to deliver calls for termination in multiple states in which plaintiffs do business, including Missouri.

23. The true names and roles of defendants DOES 1-10, inclusive, are unknown to plaintiffs, which accordingly sue those defendants by fictitious names. Plaintiffs believe and allege that each of the DOE defendants is legally responsible in some manner for transporting interexchange telephone calls, including but not limited to, interexchange calls carried by defendant VarTec, and delivering those calls to plaintiffs for termination improperly and without payment of the legally required access charges. Plaintiffs will amend the Complaint to reflect the true names and roles of the DOE defendants when plaintiffs obtain that information.

BACKGROUND

The Access Charge Regime

24. This action arises out of defendants' non-payment of lawfully tariffed access charges. These are the fees that long-distance carriers such as VarTec must pay local exchange carriers such as plaintiffs to defray the costs associated with the use of local exchange facilities for originating and terminating long-distance calls. These access charges are established and mandated by federal and state regulations and tariffs.

25. Since the breakup of the Bell System in 1984, the Bell operating companies ("BOCs"), including plaintiffs, and long-distance carriers, such as VarTec, have played largely distinct roles in the telecommunications industry. The BOCs have primarily carried local calls – *i.e.*, calls between end users located within local calling areas or exchanges – over the so-called "public switched telephone network," or "PSTN."

Long-distance carriers have traditionally carried calls between exchanges, on both an intrastate and interstate basis. This long-distance service is known as “interexchange” service.

26. In order to provide interexchange service, long-distance carriers such as VarTec typically establish one or more points of presence (POPs) within a given area. POPs are facilities that provide a point of interconnection between local exchange networks and interexchange networks. When a customer makes an interexchange call, that customer’s local exchange carrier (say, plaintiff Southwestern Bell) transports the call over the local exchange carrier’s network to the POP of the long-distance carrier that the customer has selected (say, VarTec). The long-distance carrier then transports the call from the POP in the area where the calling party is located (*i.e.*, where the call originates) to the POP in the area where the called party is located (*i.e.*, where the call terminates). The called party’s local exchange carrier then receives the call from the long-distance carrier, either directly or through an intermediary, and delivers it to the called party.

27. The transmission of an interexchange call from the calling party *to* a long-distance carrier’s POP is known as “originating access.” The transmission of an interexchange call *from* a long-distance carrier’s POP to the called party is known as “terminating access.”

28. Federal and state tariffs and regulations mandate the appropriate originating and terminating access charges that apply to a given interexchange call, depending on whether the call is interstate or intrastate. If the call originates in one state and terminates in another, the access charges that apply are set forth in interstate tariffs

filed with the FCC. If the call originates and terminates within the same state, the access charges that apply are set forth in intrastate tariffs filed with individual state regulatory commissions.

29. Access charges are set at levels designed to recover the costs of using the local exchange carrier's facilities to complete long distance calls, as well as the overall costs of providing local telephone service. Intrastate access charges are often higher (in many cases, considerably so) than interstate access charges.

Defendants' Evasion of Lawfully Tariffed Interstate and Intrastate Access Charges

30. Defendants' access-avoidance scheme is accomplished by disguising the true nature of ordinary long-distance calls delivered to plaintiffs for termination. For more than half of its long-distance traffic, VarTec contracts with LCRs, principally Unipoint and Transcom, to terminate the traffic. Unipoint and Transcom charge VarTec substantially less than the cost of terminating the calls directly to plaintiffs through facilities intended for interexchange traffic. Unipoint and Transcom convert the circuit-switched calls they receive from VarTec into IP format, transport those calls across their networks for some distance in IP format, and then convert the calls back to circuit-switched format, before handing them off to plaintiffs – either directly or through competitive local exchange carriers doing business in plaintiffs' regions – through facilities intended for *local* traffic.

31. As the name implies, Internet Protocol, or "IP," is a technology that was originally developed for use with the networks that make up the Internet. In general, IP technology is very efficient at carrying traffic, and for that reason an increasing number of communications service providers have adopted IP in their networks. Although IP

technology was originally developed to carry data traffic generated by computers, technological advances over the past several years have made it possible to use IP technology to transport voice traffic as well.

32. IP technology is simply the latest in an array of transmission technologies used to transport ordinary telephone calls from one point to another. Some carriers use microwave transmission, others use fiber-optic cables, others use satellites, and still others continue to use the copper wires that have been in use for decades. As the FCC has recognized, however, the choice of transmission technology makes no difference to the regulatory classification of a telephone call or the applicability of access charges. Thus, under the FCC's longstanding rules, when a call begins and ends as an ordinary, circuit-switched telephone call, the technology carriers elect to use to facilitate its transmission is beside the point for purposes of access charges.

33. In order for carriers to use IP in the transmission of ordinary long-distance voice traffic, they must perform what is known as a "protocol conversion" on *both* ends of the call. For example, in the case of a VarTec long-distance customer in Dallas making a call to St. Louis, the call (1) originates on Southwestern Bell's network in Dallas as an ordinary telephone call, (2) is handed off to VarTec in circuit-switched format, (3) is converted to the IP format, (4) is transported in the IP format for some distance between Dallas and St. Louis (though not necessarily the entire distance), (5) is converted back into circuit-switched format, (6) is handed to Southwestern Bell in circuit-switched format, and (7) is delivered to the called party in St. Louis by Southwestern Bell. Although this call thus undergoes two protocol versions, it undergoes no *net* protocol conversion because it begins and ends in the same format.

34. In this scenario, neither the calling party in Dallas nor the called party in St. Louis has any idea that their call has been converted to the IP format somewhere in the middle of the transmission path. Indeed, the call is dialed and received in the same manner as any other long-distance call, and customers receive no added functionality as a result of the use of IP.

35. VarTec, Unipoint, and Transcom have nevertheless avoided paying terminating access charges for calls that they transport using IP format, by disguising those calls as local calls on the terminating end. As noted above, a long-distance call that defendants transport using IP format is no different than a long-distance call using any other transmission technology, and plaintiffs perform the same functions over the same facilities to deliver that call to the called party. In fact, plaintiffs ordinarily would not even be aware of whether an interexchange call is transported using IP format, provided it is converted back into an ordinary telephone call before it is handed off for termination.

36. Beginning in 2001, or perhaps even earlier, defendants began disguising interexchange calls delivered to plaintiffs' local exchange networks as local calls, and thereby avoiding payment of the lawfully tariffed access charges that apply to such calls. In the normal course of business, plaintiffs make available to long-distance carriers exchange access facilities – typically known as “Feature Group D” trunks – that are designed to receive interexchange traffic for termination. Among other things, these facilities are set up to measure interexchange traffic so that plaintiffs can bill the appropriate access charges for that traffic. Defendants, however, arranged for the delivery of interexchange voice traffic to plaintiffs through facilities that, pursuant to

various tariffs and negotiated contracts, are designed to carry *local* traffic, and that accordingly are not set up to measure and bill for interexchange traffic.

37. Defendants intentionally took these steps knowing that, because the facilities they used were not configured to carry interexchange traffic – and may not lawfully be used for that purpose – plaintiffs generally have not implemented mechanisms to detect, measure, and bill for any interexchange traffic that traverses them. To ensure that carriers are using these local-only facilities for their intended purpose, plaintiffs rely instead on the restrictions within their tariffs and agreements and the good-faith representations that carriers make by purchasing facilities under these tariffs and agreements.

38. By design, defendants' improper call-termination scheme prevented plaintiffs from distinguishing between local traffic that was lawfully terminated on local facilities, and interexchange traffic that was unlawfully terminated on these facilities. Plaintiffs were thus unable to bill for (or, in many cases, even to detect or measure) a great deal of interexchange voice traffic delivered to them for termination.

39. Defendants intentionally pursued their improper access-avoidance scheme surreptitiously for several years. Recently, however, plaintiffs learned of their behavior and demanded that they cease terminating traffic improperly and make plaintiffs whole for the access charges they have avoided. In response, VarTec filed a petition requesting the FCC to declare that VarTec was not required to pay access charges when it contracted with LCRs such as Unipoint and Transcom to terminate its long-distance traffic. VarTec's basic claim is that the carriers that directly deliver the calls to plaintiffs for termination, not VarTec itself, are responsible for access charges.

40. VarTec’s petition is a meritless and thinly disguised attempt to create a vehicle for a primary jurisdiction referral to the FCC. The FCC itself has *already* rejected VarTec’s position, in the course of rejecting AT&T’s above-mentioned petition. *See FCC Access Charge Order, supra*. There, the FCC declared that AT&T was required to pay access charges for *all* interexchange voice traffic that originates and terminates over circuit-switched local exchange networks, including traffic that is transported in IP format for some intermediate distance between the points of origination and termination. *See id.* at 7466-70, ¶¶ 14-20. The FCC accordingly authorized local telephone companies such as plaintiffs to pursue collection actions for access charges that AT&T had failed to pay based on its flawed legal interpretation. *See id.* at 7472 ¶ 23 n.93.

41. The FCC emphasized that the reasoning in its Order applied to any interexchange service that “(1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN) and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology.” *Id.* at 7457-58, *id.* ¶ 1. Because the interexchange service provided by VarTec, Unipoint, and Transcom meets all three criteria, defendants are no less liable than AT&T for terminating access charges.

42. Furthermore, the FCC held: “Our analysis in this order applies to services that meet these three criteria *regardless of whether only one interexchange carrier uses IP [T]ransport or instead multiple service providers are involved in providing IP [T]ransport.*” *Id.* at 7458, ¶ 1. (emphasis added). Thus, for example, the fact that VarTec hands off calls to Unipoint, Transcom, or other LCRs, which in turn may hand off traffic

to other intermediaries in order to deliver it to plaintiffs for termination, is wholly immaterial to whether VarTec owes access charges on that traffic. Likewise, the fact that Unipoint and Transcom receive calls from other interexchange carriers (including VarTec and others) in no way affects the requirement that they pay access charges on the interexchange traffic that they carry and that is delivered to plaintiffs for termination. In light of the FCC's decision, VarTec's Petition for Declaratory Ruling is a baseless and transparent effort to shield itself from litigation.

43. Despite the fact that defendants' scheme was intended to prevent plaintiffs from detecting, measuring, and billing improperly terminated interexchange traffic, plaintiffs have, at some expense, attempted to identify specific instances of each defendants' fraudulent misconduct, and to estimate the magnitude of access charges avoided on calls carried by VarTec. On information and belief, since 2001, and perhaps earlier, a substantial proportion of the interexchange calls carried by VarTec have entered plaintiffs' networks through local-only facilities, rather than through the "Feature Group D" facilities designated for interexchange access. It currently appears that VarTec, with the aid of Unipoint, Transcom, and other LCRs, is terminating over 50% of its long-distance traffic over local interconnection facilities. Furthermore, plaintiffs preliminarily estimate that, through August 2004, defendants avoided paying between \$19 million and \$35 million in access charges on traffic carried by VarTec, not including late fees and interest.

44. Defendants have no excuse for their failure to pay access charges for interexchange voice traffic carried by VarTec. This traffic is governed by the same federal and state access tariffs that apply to all other ordinary interexchange voice traffic

that interexchange carriers terminate with plaintiffs. Likewise, Unipoint and Transcom have no excuse for their failure to pay access charges on all interexchange traffic they carry which is delivered to plaintiffs for termination, including but not limited to traffic they receive from VarTec, and regardless of whether that traffic is delivered to plaintiffs directly or through CLEC intermediaries. In short, defendants must pay the tariffed rates for all interexchange traffic they carry which is delivered to plaintiffs for termination, which they have heretofore failed to do.

COUNT I (Against All Defendants)
(BREACH OF FEDERAL TARIFFS)

45. Plaintiffs incorporate by reference as though fully set forth herein the allegations of paragraphs 1 through 44 of this Complaint.

46. Plaintiffs' interstate access charges for long distance calls for Texas, Missouri, Oklahoma, Kansas, and Arkansas are set forth in federal tariff Southwestern Bell Telephone Company Tariff F.C.C. No. 73.

47. Plaintiffs' interstate access charges for California are set forth in Pacific Bell Telephone Company Tariff F.C.C. No. 1.

48. Plaintiffs' interstate access charges for Nevada are set forth in Nevada Bell Telephone Company Tariff F.C.C. No. 1.

49. Plaintiffs' interstate access charges for Michigan, Illinois, Ohio, Wisconsin, and Indiana are set forth in Ameritech Operating Companies Tariff F.C.C. No. 2.

50. Plaintiffs' interstate access charges for Connecticut are set forth in The Southern New England Telephone Company Tariff F.C.C. No. 39.

51. Plaintiffs' federal tariffs provide, among other things, that defendants must pay plaintiffs access charges for both originating access and terminating access.

52. Plaintiffs fully performed their obligations under their federal tariffs, except for those that they were prevented from performing, those that they were excused from performing, or those that were waived by defendants' misconduct as alleged herein.

53. Defendants materially violated plaintiffs' federal tariffs by failing to pay the tariffed rates for the services they used.

54. Plaintiffs have been damaged in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

COUNT II (Against All Defendants)
(BREACH OF STATE TARIFFS)

55. Plaintiffs incorporate by reference as though fully set forth herein the allegations of paragraphs 1 through 54 of this Complaint.

56. Southwestern Bell's intrastate access charges for long distance calls in Missouri are set forth in Access Services Tariff P.S.C. Missouri – No. 36.

57. Southwestern Bell's intrastate access charges for long distance calls in Texas are set forth in Access Services Tariff – Texas.

58. Southwestern Bell's intrastate access charges for long distance calls in Kansas are set forth in Access Services Tariff – Kansas.

59. Southwestern Bell's intrastate access charges for long distance calls in Oklahoma are set forth in Access Services Tariff – Oklahoma.

60. Southwestern Bell's intrastate access charges for long distance calls in Arkansas are set forth in Access Services Tariff – Arkansas.

61. Pacific Bell's intrastate access charges for long distance calls in California are set forth in Pacific Bell Schedule Cal. P.U.C. No. 175-T.

62. Nevada Bell's intrastate access charges for long distance calls in Nevada are set forth in Nevada Bell Telephone Company d/b/a SBC Nevada Tariff P.U.C.N. No. C.

63. Michigan Bell's intrastate access charges for long distance calls in Michigan are set forth in Michigan Bell Telephone Company Tariff M.P.S.C. No. 20R.

64. Illinois Bell's intrastate access charges for long distance calls in Illinois are set forth in Illinois Bell Telephone Company Access Services Ill. C.C. No. 21.

65. Ohio Bell's intrastate access charges for long distance calls in Ohio are set forth in The Ohio Bell Telephone Company P.U.C.O. No. 20.

66. Wisconsin Bell's intrastate access charges for long distance calls in Wisconsin are set forth in Wisconsin Bell, Inc. Access Service Tariff P.S.C. of W. 2.

67. Indiana Bell's intrastate access charges for long distance calls in Indiana are set forth in Indiana Bell Telephone Company, Inc. Tariff IURC No. 20.

68. Plaintiffs' intrastate access charges for long distance calls in Connecticut are set forth in The Southern New England Telephone Company Connecticut Access Service Tariff.

69. Each of the tariffs listed above provides, among other things, that defendants must pay intrastate access charges for both originating access and terminating access.

70. Plaintiffs fully performed their obligations under each of the tariffs listed above, except for those that they were prevented from performing, those that they were

excused from performing, or those that were waived by defendants' misconduct as alleged herein.

71. Defendants materially violated the tariffs listed above by failing to pay the tariffed rates for the services they used.

72. Plaintiffs have been damaged in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

COUNT III (In the Alternative) (Against All Defendants)
(UNJUST ENRICHMENT)

73. Plaintiffs incorporate by reference as though fully set forth herein the allegations of paragraphs 1 through 72 of this Complaint.

74. For the reasons set forth above and in the *FCC Access Charge Order*, pursuant to plaintiffs' federal and state tariffs, defendants are liable to plaintiffs for their failure to pay interstate and intrastate access charges on interexchange traffic that defendants delivered to plaintiffs for termination. This Count III is pleaded solely in the alternative, in the unlikely event those tariffs are determined not to apply. In no way is this Count III to be construed as an admission that those tariffs do not govern this case.

75. By terminating interexchange calls carried by defendants to plaintiffs' local telephone customers, plaintiffs permitted defendants' customers to complete long-distance calls. Plaintiffs thereby conferred a benefit on defendants.

76. Defendants understood that the termination of interexchange calls by plaintiffs was important to defendants' customers, and they accordingly appreciated and recognized that plaintiffs' termination of interexchange calls carried by defendants was a benefit to defendants.

77. Defendants unjustly accepted and retained the benefit of plaintiffs' call termination services without providing legally required compensation to plaintiffs.

78. Plaintiffs have been damaged in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

COUNT IV (Against All Defendants)
(FRAUD)

79. Plaintiffs incorporate by reference as though fully set forth herein the allegations of paragraphs 1 through 78 of this Complaint.

80. VarTec, Unipoint and Transcom committed fraud against plaintiffs. Specifically, VarTec, Unipoint and Transcom knowingly, and with the intent to defraud, made misrepresentations and omissions of material facts, including, but not limited to:

- a) VarTec's representations to consumers, in bills and otherwise, that the interexchange calls that they delivered to plaintiffs over local facilities were in fact long-distance calls subject to access charges, as well as Unipoint's and Transcom's knowledge of and complicity in the making and dissemination of these misrepresentations.
- b) VarTec's, Unipoint's, and Transcom's routing of interexchange voice traffic through facilities that are not designed or designated for the termination of such traffic.
- c) VarTec's, Unipoint's, and Transcom's commingling of interexchange voice traffic with local voice traffic using existing facilities.
- d) VarTec's, Unipoint's, and Transcom's failure to put plaintiffs on notice with specificity of their practice of avoiding access charges for interexchange traffic in any of the states in which plaintiffs provide

terminating access service, or of the extent to which they adopted this practice.

81. These misrepresentations and/or omissions were false and misleading at the time they were made.

82. Defendants made each of these misrepresentations and/or omissions with knowledge of their falsity or recklessly without regard for their truthfulness as a positive assertion, with the intent to deceive plaintiffs, and with the intent to induce plaintiffs to act in the manner herein alleged.

83. Plaintiffs were, in fact, deceived by defendants' misrepresentations and omissions.

84. Plaintiffs reasonably and justifiably relied to their detriment on defendants' misrepresentations and omissions. Due to defendants' fraudulent conduct, plaintiffs were unable to bill for (or, in some cases, even to detect or measure) the interexchange traffic that each defendant terminated with plaintiffs, either directly or indirectly, on plaintiffs' local networks, nor were plaintiffs able to ascertain the volume of interexchange traffic that each defendant was delivering to plaintiffs for termination without payment of access charges. The truth about the scope of each defendant's unlawful conduct accordingly remained within the peculiar knowledge of that defendant, which engaged in deceptive acts calculated to mislead and thereby obtain an unfair advantage.

85. Plaintiffs were damaged as a direct and proximate result of each defendant's misrepresentations and omissions in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for relief as hereinafter set forth.

COUNT V (Against All Defendants)
(CIVIL CONSPIRACY)

86. Plaintiffs incorporate by reference as though fully set forth herein the allegations of paragraphs 1 through 85 of this Complaint.

87. VarTec, Unipoint, and Transcom acted in concert as members of a conspiracy with the unlawful objectives of breaching plaintiffs' federal and state tariffs, unjustly enriching themselves, and committing fraud against plaintiffs.

88. Each of the defendants had a "meeting of the minds" with at least one other defendant with respect to these unlawful objectives, and also had a "meeting of the minds" with respect to the course of action required to accomplish breach of tariffs, unjust enrichment, and fraud. Defendants' "meeting of the minds" is evidenced by, among other things, the agreements between Unipoint and VarTec, on the one hand, and between Transcom and VarTec, on the other, to transport and deliver VarTec's long-distance calls to plaintiffs for termination for substantially less than the cost of lawfully terminating the calls to plaintiffs through facilities designated for interexchange traffic.

89. Defendants committed numerous overt acts in furtherance of the conspiracy. These acts include, but are not limited to:

- a) VarTec's delivery of its long-distance traffic to Unipoint and Transcom for termination.
- b) Unipoint's and Transcom's delivery of VarTec's long-distance traffic to plaintiffs, either directly or through CLEC intermediaries, for termination through facilities restricted to local traffic.
- c) VarTec's, Transcom's, and Unipoint's express and implied representations to customers that the calls VarTec, Unipoint,

Transcom, and the DOE defendants terminated through local interconnection facilities were ordinary long-distance calls.

d) VarTec's payment of fees to Unipoint and Transcom for the termination of VarTec's traffic.

e) Unipoint's and Transcom's acceptance of fees from VarTec.

90. Plaintiffs were damaged as a direct and proximate result of defendants' actions in an amount to be determined at trial.

WHEREFORE, plaintiffs pray for relief as herein set forth.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court grant relief for all misconduct as follows:

- a) Money damages to be proven at trial, plus late fees and prejudgment interest;
- b) Punitive damages;
- c) Restitution;
- d) All costs and attorney's fees incurred by plaintiffs;
- e) Preliminary and permanent injunctive relief enjoining defendants from continuing to engage in the conduct alleged herein;
- f) A full accounting of the number of interexchange minutes improperly sent to plaintiffs for termination;
- g) Indemnification for claims that have been or may be asserted and damages that have been or may be sought by third parties arising in whole or in part from defendants' wrongful conduct; and

h) Such further relief as this Court deems appropriate and just.

JURY DEMAND

Plaintiffs hereby request a jury trial on all issues and claims.

Dated: December 17, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of December 2004, I electronically filed the foregoing First Amended Complaint with the Clerk of the Court using CM/ECF system that sent notification of such filing to the following:

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