FORM B10 (Official Form 10) (04/04)

United States Bankruptcy Court **Northern District of Texas**

PROOF OF CLAIM

Name of Debtor	Case Number
Telco Communications Group, Inc	04-81704-HDH-11

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503

Name of Creditor (The person or other entity to whom the debtor owes money or property)
Illinois Bell Telephone Company d/b/a SBC Illinois

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

Name and address where notices should be sent
SBC Communications
c/o Cheryl Becker
722 N Broadway, Floor 11
Milwaukee WI 53202
Telephone number 414 273-8175

☐ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if the address differs from the address on the envelope sent to you by the court

This space is for Court Use Only

Account or other number by which creditor identifies debtor
See attached addendum and complaint

Check here if this claim ☐ replaces ☐ amends a previously filed claim dated _____

1 Basis for Claim
- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ■ Other Telecommunications

☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Wages salaries and compensation (Fill out below)
Last four digits of SS# _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2 Date debt was incurred through 10-31-04

3 If court judgment, date obtained

4 Total Amount of Claim at Time Case Filed

$ _____	unliquidated	unliquidated	unliquidated
(unsecured)	(secured)	(priority)	(Total)

If all or part of your claim is secured or entitled to priority also complete Item 5 or 7 below
☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

5 Secured Claim
■ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral
☐ Real Estate ☐ Motor Vehicle
■ Other set-off

Value of Collateral $ extent of set-off rights

Amount of arrearage and other charges at time case filed included in secured claim if any $

6 Unsecured Nonpriority Claim $
☐ Check this box if a) there is no collateral or lien securing your claim or b) your claim exceeds the value of the property securing it or if c) none or only part of your claim is entitled to priority

7 Unsecured Priority Claim
☐ Check this box if you have an unsecured priority claim

Amount entitled to priority $
Specify the priority of the claim
- ☐ Wages salaries or commissions (up to $4 925) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 U S C § 507(a)(3)
- ☐ Contributions to an employee benefit plan 11 U S C § 507(a)(4)
- ☐ Up to $2 225* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U S C § 507(a)(6)
- ☐ Alimony maintenance or support owed to a spouse former spouse or child 11 U S C § 507(a)(7)
- ☐ Taxes or penalties owed to governmental units 11 U S C § 507(a)(8)
- ☐ Other Specify applicable paragraph of 11 U S C § 507(a)( )

Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 Supporting Documents *Attach copies of supporting documents* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

9 Date-Stamped Copy To receive an acknowledgment of the filing of your claim enclose a stamped self-addressed envelope and copy of this proof of claim

This Space Is for Court Use Only

FILED
MAR 0 8 2005
BMC

Vartec Telecom Inc
02057

Date	Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)
3-7-05	Cheryl Becker Cheryl Becker- Manager Credit & Collections

Penalty for presenting fraudulent claim Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U

Addendum to Proof of Claim

1 The signator to this proof of claim, whose business address is 722 N Broadway, Floor 11, Milwaukee, WI 53202, is authorized to make and file proofs of claim on behalf of Illinois Bell Telephone Company d/b/a SBC Illinois ("Claimant") against Telco Communications Group, Inc (the "Debtor") The "SBC Entities" as used herein include the following operating telephone companies 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, The Ohio Bell Telephone Company, Wisconsin Bell, Inc , The Southern New England Telephone Company and The Woodbury Telephone Company

2 On November 1, 2004 (the "Petition Date"), the Debtor and certain of its direct and indirect subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code

3 The SBC Entities provide telecommunications services to the Debtors, including, without limitation, this Debtor

4 Prior to the Petition Date, the Debtor began a pattern of conduct in which the Debtor, among other things, failed to pay legally required charges for its use of the SBC Entities' local network facilities to complete long distance calls and evaded lawfully tariffed interstate and intrastate access charges

5 On September 24, 2004, the SBC Entities initiated a lawsuit in The United States District Court For The Eastern District of Missouri, Eastern Division styled *Southwestern Bell Telephone, L P et al v Vartec Telecom, Inc et al* , case no 4 04-CV-01303-CEJ (the "SBC Litigation") A copy of the Amended Complaint which is the live complaint in the SBC Litigation is attached hereto as Exhibit "A" and incorporated herein by reference (the "Amended Complaint")

6 In the SBC Litigation, as set forth in the Amended Complaint, the SBC Entities advance claims and causes of action against the Debtor and the other defendants in the litigation for, among other things (i) breach of federal tariffs, (ii) breach of state tariffs, (iii) unjust enrichment, (iv) fraud and (v) civil conspiracy (collectively, the "SBC Litigation Claims")

7 Accordingly, as set forth in the Amended Complaint, as of the Petition Date, the Debtor was liable to the SBC Entities for the amount of any and all damages attributable to the SBC Litigation Claims arising prior to the Petition Date and the SBC Entities are entitled to, among other things (i) money damages, (ii) punitive damages, (iii) restitution, (iv) costs and attorney's fees, (v) injunctive relief, (vi) an accounting and (vii) indemnification (collectively, the "SBC Litigation Damages") In addition, the SBC

Entities are entitled to recover interest on account of the SBC Litigation Damages to the extent permitted by applicable state and federal law

8 Accordingly, as of the Petition Date, the claim of Claimant against the Debtor attributable to the SBC Litigation Claims and the SBC Litigation Damages had not been liquidated to a judgment and is presently undetermined

9 The claim of Claimant as set forth herein, to the extent such amounts are attributable to periods on and after the Petition Date, is an administrative/priority claim pursuant to 11 U S C §§ 503, 507 and other applicable provisions of the United States Bankruptcy Code

10 Each of the claims asserted by the SBC Entities in each of the Debtors' bankruptcy cases, including, without limitation, the claim as set forth herein, is subject to upward adjustments

11 The entire amount of the claim of each the individual SBC Entities has been asserted in each of the Debtors' bankruptcy cases Each of the individual SBC Entities, including Claimant, reserves its respective right to reallocate that entity's total claim amount among any or all of the Debtors

12 The claim of Claimant as set forth herein is subject to a right of setoff, including, without limitation, the right of Claimant to setoff any and all claim amounts as set forth herein against any and all amounts which otherwise would be owing by any of the SBC Entities to any of the Debtors (the "SBC Entities' Setoff Rights") The SBC Entities' Setoff Rights, without limitation, include the right of Claimant to setoff its claim against any amounts which otherwise would be owing by any of the SBC Entities to any of the Debtors pursuant to any agreement by which any of the SBC Entities provide billing and collections services to or for the benefit of any of the Debtors (collectively, the "Billing and Collection Agreements") Due to volume, the Billing and Collection Agreements have not been attached hereto but will be provided upon request Pursuant to the Stipulation And Consent Order By And Among Certain Carriers And The Debtors Regarding Adequate Assurance/Adequate Protection Of Future Payments, entered in the Debtors' bankruptcy cases on December 2, 2004, the SBC Entities have asserted a right of setoff, and given notice of their intent to setoff, by correspondence dated February 2, 2005 (the "Setoff Notice")

13 This Claim is filed as a SECURED CLAIM for the value of the SBC Entities' Setoff Rights as set forth above and an UNSECURED CLAIM for the balance of this proof of claim In addition, the amounts set forth in this claim are entitled to ADMINISTRATIVE PRIORITY to the extent such amounts are attributable to periods on and after the Petition Date

14 Claimant reserves its rights to amend this proof of claim

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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Attorneys for Plaintiffs

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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