

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Astro Tel, Inc.
Debtor.

Case No. 8:10-bk-29992-MGW
Chapter 11

_____ /

Astro Tel, Inc.,

Plaintiff,

vs.

Adv. No.: 8:11-ap-____-MGW

Verizon Florida, LLC, and
Verizon Communications, Inc.,

Defendants.

_____ /

VERIFIED COMPLAINT

Plaintiff, **ASTRO TEL, INC.**, (“AstroTel”), operating as a Debtor-in-Possession under Chapter 11, by and through its undersigned counsel, files this complaint against **VERIZON COMMUNICATIONS, INC.**, and **VERIZON FLORIDA, LLC** (collectively, “**Verizon**”), and alleges:

GENERAL ALLEGATIONS

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and pursuant to the referral to this Court of cases under Title 11 and proceedings arising under, arising in, or related to Title 11 cases pursuant to 28 U.S.C. § 157(a).

2. This is a core proceeding which may be heard by the Bankruptcy Court pursuant to 28 U.S.C. § 157(a) and 28 U.S.C. § 157(b)(2)(A) and (O).

3. On December 16, 2010, AstroTel filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Main Proceeding, Case No. 8:10-bk, 29992-MGW.

4. On December 25, 2010 AstroTel filed an Application for Authority to Employ the undersigned counsel (Main Proceeding Doc. No. 15), and on December 27, 2010 the Court entered an order approving the application for the undersigned counsel to represent AstroTel as Debtor-in-Possession (Main Proceeding Doc. No. 16).

5. This is an action for injunctive relief and damages arising out of the unlawful and anticompetitive conduct of Verizon Communications, Inc., and its defendant subsidiary Verizon Florida, LLC. (collectively, “**Verizon**”) against AstroTel, Inc. (“**AstroTel**”). A multi-billion dollar company, Verizon is an heir to America's longest-lasting and most successful monopolist. Like that of its corporate ancestors, Verizon's course of conduct is a textbook example of abuse of monopoly power. At virtually every turn, Verizon has attempted to stifle competitive entry into the markets it controls, either by denying access to essential facilities or by using its control of those facilities to impose such severe costs, delays, and other restraints on new competitors as to make competition virtually impossible. Verizon's business strategy is to preserve its inherited monopoly by preventing competitors from offering consumers better products and services at lower prices. By implementing this strategy, Verizon can continue to sell the same inferior products and services at the same inflated prices, to the detriment of AstroTel, consumers, and competition.

6. After enjoying significant growth as a protected monopolist, Verizon inherited the ownership and control of all the physical infrastructure that makes the

provision of telephone service possible. The control of these physical assets is the lynchpin of Verizon's monopoly in the "basic local services" market for provision of local telephone service to small-and medium-sized businesses, described in more detail below. Moreover, Verizon has exploited its monopoly of the basic local services market to obtain an equally dominant share of the burgeoning market for "enhanced services," such as voice mail and internet access.

7. AstroTel has sought to compete with Verizon and provide consumers better products and services at cheaper prices. Founded in 2001, AstroTel is based in Bradenton, Florida and now provides basic local telephone service, enhanced services, and internet access services to residential consumers and small-to-medium size businesses within the state of Florida. Of course, neither AstroTel nor anyone else can duplicate the vast physical infrastructure that quite literally connects every house and office that has phone service to every other house and office. AstroTel is no mere reseller of that infrastructure. To the contrary, AstroTel operates its own telecommunications network which serves more than half of the state of Florida.

8. Verizon has engaged in a wide variety of schemes and artifices designed to unlawfully protect and exploit its monopoly power and thwart AstroTel's ability to operate. Verizon has embarked on a conscious strategy of using its control of essential facilities to obstruct AstroTel's ability to serve telecommunications subscribers, and to drive up AstroTel's costs so that AstroTel cannot profitably provide products and services that customers want. In particular, Verizon has committed the following acts, among others:

- a) Illegally cross-subsidized its unregulated services such as Internet Access Services, wireless mobile telephone service and television service with its regulated local telecommunications services. This has created an illegal price squeeze in an effort to prevent AstroTel and others from competing in the market for local telephone service;
- b) Consistently failed to install service ordered by AstroTel on-time with the same diligence which it provides for its own retail subscribers;
- c) Consistently failed to meet due dates provided to AstroTel (and then by AstroTel to a subscriber) with no reasonable explanation;
- d) Consistently failed to provide adequate information to its own field installers to install or repair AstroTel service, and then directed its installers to close AstroTel's install orders as completed rather than actually completing the installation;
- e) Repeatedly falsified its own records to indicate that it has installed service ordered by AstroTel, when in fact the service was not installed;
- f) Repeatedly initiated billing for service based upon the foregoing falsified records, when in fact the service was not installed and Verizon knew or should have known that the service was not installed;
- g) Repeatedly forcing AstroTel to visit a customer premise, then open new repair tickets when service was not installed but the order was marked completed, causing service delays, disruptions and outages for AstroTel subscribers and severe manpower drains upon AstroTel;

h) Intentionally and repeatedly forced AstroTel to invoke government processes not to resolve a bona fide dispute, but instead to force AstroTel to expend time and resources in regulatory proceedings to obtain Verizon's compliance with established regulations and interconnection agreements. These repeated actions by Verizon have delayed provision of basic local and enhanced services to AstroTel subscribers, and perpetuated service quality issues for AstroTel subscribers which were solely caused by Verizon. These repeated and willful actions were detrimental to both the subscriber and to AstroTel, and substantially damaged AstroTel's reputation. Even after numerous findings by state regulators that Verizon was in violation of its obligations, Verizon has continued its illegal behavior without any noticeable attempt to remedy;

i) In connection with its actions to delay and impair the service of AstroTel's subscribers, Verizon has embarked upon a malicious campaign of disparagement, misrepresenting the products and services that AstroTel provides to the public, and unfairly disparaging AstroTel's reputation. In many cases, Verizon itself has caused service issues for AstroTel subscribers, failed or refused to timely and properly install or repair service, and then illegally contacted AstroTel subscribers to tell them that they would get better service and more diligent repair services as a Verizon subscriber. In that campaign, Verizon has told AstroTel subscribers that AstroTel is a simple reseller of Verizon's service and

functions solely as a useless “middleman”, has told AstroTel subscribers that Verizon subscribers will get superior service over what Verizon provides to AstroTel customers, has told AstroTel subscribers that Verizon subscribers will get superior repair response to what Verizon provides to AstroTel customers, and has made other disparaging remarks to AstroTel customers;

j) Deliberately failed to provide timely information about customers terminating their service with AstroTel (information that Verizon has under its exclusive control, by virtue of its control of the essential facilities), causing AstroTel to improperly bill former customers, and resulting in unnecessary expenditures on account management and regulatory proceedings;

k) Deliberately supplied false bills to AstroTel for services it has not ordered or received, services which were ordered but never provided, services which had been previously ordered disconnected, or services billed at rates substantially higher than those approved by state regulators;

l) Deliberately refused to work with AstroTel or AstroTel’s agents in good faith to resolve issues surrounding the false bills and non-received bills, but instead continued to send false bills and to repeatedly threaten disconnection of AstroTel’s subscribers and facilities for non-payment of the false bills which AstroTel had disputed in good faith, and non-payment of the bills which Verizon had been notified that AstroTel did not receive

and which Verizon still failed to send;

m) Deliberately and repeatedly used confidential, protected Customer Proprietary Network Information (“CPNI”) provided by AstroTel during the course of wholesale ordering for Verizon’s own marketing purposes, illegally attempting to entice AstroTel subscribers to switch to Verizon instead;

n) Attempted to require AstroTel to purchase unnecessary additional Verizon services in order to connect to the public 911 Emergency Network which Verizon operates on behalf of six Florida counties, and then refused to stop billing for and to reverse charges for those unnecessary services even after the Florida Public Service Commission found that it should do so;

o) Failed or refused to provide access to facilities information, so that AstroTel can effectively determine if it can provide specific services to a specific subscriber’s address. This data is provided to Verizon’s affiliate companies, and without this data AstroTel must actually order and pay for service to a certain address and then wait an average of ten days for installation before it can determine whether the service will actually work at that address;

p) Eliminated its “CLEC Specialist” and other staff members who were charged with addressing problems for CLEC subscribers, and by doing so deliberately created an environment where CLECs such as

AstroTel are entirely unable to get Verizon-caused installation, repair, directory listing or billing issues resolved in a timely manner.

9. These acts, individually and in combination, constitute a deliberate scheme to maintain and even expand Verizon's's monopoly power by exclusionary, anticompetitive, and illegal means. By engaging in these acts, Verizon has committed flagrant violations of the federal antitrust laws prohibiting monopolization and attempts to monopolize. They further constitute and evidence violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and the Lanham Act. Verizon's conduct also violates state laws prohibiting breach of contract, tortious interference, unfair competition, and business disparagement and defamation.

10. As a consequence of Verizon's unlawful conduct, AstroTel has wrongfully been prevented from entering or expanding in markets dominated by Verizon and has suffered millions of dollars in damages to its business or property. In addition, competition has been injured and consumers have been harmed by, among other things, being deprived of the valuable and innovative services that AstroTel can provide. By filing this case, AstroTel requests that this Court compel Verizon to remedy the damages inflicted upon AstroTel as a result of Verizon's unlawful and anti-competitive acts, and further that the Court order Verizon to refrain from engaging in such acts in the future. In sum, AstroTel asks that the competitive balance envisioned by the antitrust laws be enforced, and that the injuries suffered by AstroTel be redressed.

JURISDICTION AND VENUE

11. This is a civil action arising under federal law. This Court has subject

matter jurisdiction pursuant to 28 U.S.C. § 1331, 15 U.S.C. §§ 15 and 1121, and 18 U.S.C. § 1964. This Court has supplemental jurisdiction over AstroTel's state law claims pursuant to 28 U.S.C. § 1367.

12. Venue is proper in this District pursuant to 15 U.S.C. § 22, 15 U.S.C. § 15, and 28 U.S.C. § 1391(b) and (c). Verizon Florida, LLC resides in, has an agent in, and transacts business in the Middle District of Florida. Verizon and its subsidiaries operate as a single business entity, such that all defendants are subject to personal jurisdiction in the Middle District of Florida and thus may be considered to reside in the Middle District of Florida. Furthermore, all of the events or omissions giving rise to AstroTel's claims were implemented within Verizon's Florida service area, which entirely resides within the Middle District of Florida. Alternatively, defendant Verizon Florida, LLC resides in the Middle District of Florida, and there is no district in which the action may otherwise be brought. Therefore, venue is proper in the Middle District of Florida.

PARTIES

13. Plaintiff AstroTel is a Florida corporation with its principal place of business in Bradenton, Florida. AstroTel does business throughout the State of Florida, including the Middle District of Florida.

14. Defendant Verizon Florida, LLC is a Florida limited liability company with its principal place of business in Tampa, Florida.

15. Defendant Verizon Communications, Inc. is a Delaware corporation, with its principal place of business in New York, New York.

16. Verizon and its subsidiaries, which are collectively and appropriately

referred to as “Verizon” throughout this complaint, effectively operate as a single enterprise. Verizon controls its subsidiaries to such a degree that they act as its instrumentalities. Verizon also operates nationwide under a single Verizon brand. Verizon has perpetrated the wrongs of which AstroTel complains in part through its subsidiaries, which serve as instrumentalities acting on Verizon's behalf and on their collective behalf, or as Verizon's agent or alter ego. Verizon operates a single wholesale operation on behalf of all the Verizon subsidiaries.

BACKGROUND

I. The Nature of AstroTel's Competition With Verizon

17. AstroTel is a telecommunications company that competes against Verizon to provide telephone service to residential and small and medium-sized business subscribers. Verizon has a stranglehold on certain physical assets necessary to provide such services, and AstroTel can only provide these services if it has access to these facilities. Thus, AstroTel leases these essential facilities from Verizon and combines them with AstroTel's own equipment and services to meet the needs of its subscribers.

II. The Nature of Trade and Commerce Involved

18. The relevant product markets at issue in this case are: (1) basic analog local dial-tone service (“basic local service”) to residences and small to medium-sized businesses, which is the service of connecting one customer to another within a locality via telephone lines or wires, (2) “enhanced services,” which are additional features that purchasers of basic local service can add to their telephone service, such as voice mail and other features such as internet access service.

a. Basic Local Services Product Market

19. Each dial-tone customer has at least one twisted copper pair telephone line (“line”) from his or her home or small business, which is connected to a “central office.” These customer-specific telephone lines are referred to in the industry as the “local loop.” At the telephone company's central office, residential and small business telephone lines converge and are connected to the rest of the local telephone and internet network, much like a hub-and-spoke system.

20. “Switches” at the central office route incoming calls based on the number dialed, taking the place of the telephone operator of old who manually connected a caller with the recipient of the call. When a call is made to a customer not connected directly to the caller's central office, the call is transported from the caller's central office to the intended recipient's central office. In industry parlance, “transport” refers to the transmission facilities that make this connection possible, including telephone poles, conduits, ducts, rights of way, and other hard assets. If the central offices are not directly connected by transport, then the call is transported to one or more “tandem switches,” which are generally contained in intermediary central offices that join central offices and allow a call to eventually be transported to the intended recipient's central office, where it is then connected to the recipient's local loop. The last elements needed for the actual connection of callers are the “operations support systems,” which are the services and equipment necessary to operate, maintain, and repair these assets.

21. The local loop, the switches at the central office, the transport, the tandem switches, and the operations support systems are all essential to the provision of basic

local services to residences and small to medium-sized businesses. Large businesses requiring multiple lines are not part of the relevant market. Basic local service to large business may, in some instances, be provided economically by multiple telecommunications carriers, unlike residences and small-to-medium-sized businesses. It is uneconomic, inefficient, commercially impracticable, and, in most cases, technically infeasible to duplicate the facilities necessary for basic local service, and access to these facilities is thus essential to competing in the provision of telecommunications services in the basic local services and internet access service markets for residences and small-to-medium-sized businesses.

22. AstroTel leases access to the essential portions of Verizon's network, *i.e.*, the local loops, transport, central office real estate for its own network equipment, and operations support systems - so that it may provide basic local services. Standing alone, however, the network made up of these facilities represents only raw capacity, rather than a finished service. To provide basic local service or internet access service, AstroTel must combine the leased capacity with, among other things, its own network and switches, customer service, account management, and billing and collection. It must also undertake the complicated work of charging (and paying) other carriers for sending and receiving calls. For example, when a competing carrier's customer calls an AstroTel customer, AstroTel may be entitled to collect a fee for completing the call. Similarly, AstroTel may owe such a fee to another carrier when one of its customers calls a customer served by another carrier. AstroTel operates its own call center and its account management staff comprises the majority of its employees. These activities may add as

much to the cost of providing basic local service as do the components of the network leased from Verizon.

23. In the geographic markets at issue in this complaint, Verizon is the sole owner of the facilities required to provide basic local services. Verizon, accordingly, is known in industry parlance as the incumbent local exchange carrier, or “ILEC.” AstroTel, along with other entities that seek to compete with an incumbent carrier is known as a competitive local exchange carrier (“CLEC” or “competitive carrier”).

b. Relevant Geographic Markets

24. The relevant geographic market at issue is the Verizon incumbent operating territory in the state of Florida. Verizon operates as the incumbent carrier, or ILEC and AstroTel operates as a competitive carrier or CLEC.

III. Verizon's Monopoly and its Long History of Antitrust Scrutiny

25. For most of the history of telephone service in the United States, the provision of local and long-distance telecommunications services, as well as the sale of telecommunications equipment, was dominated by a single company, AT&T, which owned Bell Atlantic, Verizon's predecessor. Competition was non-existent. In the 1970's, however, the US DOJ sued AT&T, alleging violations of the monopolization provisions of the Sherman Act. In particular, the DOJ alleged that AT&T had abused its local service monopolies in an attempt to monopolize long-distance service and other markets. The end result of this suit was the most extreme of judicial remedies: the break-up of AT&T pursuant to a consent decree entered in 1983.

26. Although this decree introduced competition into the long-distance market

and the telephone equipment manufacturing market, the basic local services market remained a bastion of monopoly. The break-up of AT&T led to the creation of the original Regional Bell Operating Companies (“RBOCs”), which continued to provide price-regulated basic local service as monopolists. Among the original RBOCs were The Bell Telephone Company of Pennsylvania, New Jersey Bell Telephone Company, The Diamond State Telephone Company, The Chesapeake and Potomac Telephone Company, The Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, and The Chesapeake and Potomac Telephone Company of West Virginia and NYNEX. All of these later became known as simply “Bell Atlantic”, and then in the year 2000 combined with GTE to become Verizon.

27. Verizon enjoys ownership and control over the ubiquitous physical facilities that form the massive local telecommunications and enhanced services network in the geographic areas in which it operates. Those physical facilities include, among other things, local loops, switches, transport, central office real estate, and operations support systems. Without access to these physical assets, effective competition in the local services markets is impossible. As a result of its control of those assets, Verizon enjoys, on information and belief, a market share of more than 75% in the basic local services market in all the relevant geographic market.

IV. The Need for Access to Verizon's Network

28. To compete against Verizon in the basic local services market in the relevant geographic markets, potential competitors require access to essential facilities, which are part of the local telephone network over which Verizon exercises total control:

(1) the local loops that connect subscribers to Verizon central offices, (2) switching to permit calling between Verizon subscribers and AstroTel subscribers, (3) “shared transport,” or high capacity lines that connect originating and terminating switches and tandem switches, (4) Central Office Real Estate, for AstroTel to install its own equipment into a Verizon Central Office to connect to the leased loops that serve subscribers, and (5) operations support systems to provide, operate, and repair the local loops. It is not economically feasible to duplicate Verizon's local facilities.

29. Access to each of these facilities is necessary to ensure that there is a connection between AstroTel's network and its subscribers. These facilities, among other elements of Verizon's network, are thus absolutely essential to AstroTel's business and its ability to compete. To have a meaningful opportunity to compete, AstroTel's access to these essential facilities must be dependable, timely, and non-discriminatory. Delaying access or installation, demanding exorbitant fees, or failing to make timely repairs effectively thwarts competition. Verizon has excess capacity that would permit it to provide access without affecting its own ability to provide basic local and enhanced services to customers.

V. Verizon's Predatory Responses to AstroTel's Competitive Threat

30. Since 2001, AstroTel has engaged in a concerted effort to enter the basic local and enhanced services markets in the state of Florida to provide competitive, innovative services to customers in those markets. Verizon, however, has used its monopoly control over the local network to erect roadblocks to competition. Implementing a business plan conceived at the highest levels of the company, Verizon

has employed a variety of tactics with one unshakeable goal: to protect and defend the monopoly that it inherited and to defeat and dismantle competition in any possible manner. To achieve this goal, Verizon has undertaken a variety of actions for the sole purpose of preventing the erosion of its monopoly power. Among other things, Verizon has abused its monopoly power by:

- a) Illegally cross-subsidized its unregulated services such as Internet Access Services, wireless mobile telephone service and television service with its regulated local telecommunications services. This has created an illegal price squeeze in an effort to prevent AstroTel and others from competing in the market for local telephone service;
- b) Consistently failed to install service ordered by AstroTel on-time with the same diligence which it provides for its own retail subscribers;
- c) Consistently failed to meet due dates provided to AstroTel (and then by AstroTel to a subscriber) with no reasonable explanation;
- d) Consistently failed to provide adequate information to its own field installers to install or repair AstroTel service, and then directed its installers to close AstroTel's install orders as completed rather than actually completing the installation;
- e) Repeatedly falsified its own records to indicate that it has installed service ordered by AstroTel, when in fact the service was not installed;
- f) Repeatedly initiated billing for service based upon the foregoing falsified records, when in fact the service was not installed and Verizon

knew or should have known that the service was not installed;

g) Repeatedly forcing AstroTel to visit a customer premise, then open new repair tickets when service was not actually installed but the order was marked completed by Verizon, causing service delays, disruptions and outages for AstroTel subscribers and severe manpower drains upon AstroTel;

h) Intentionally and repeatedly forced AstroTel to invoke government processes not to resolve a bona fide dispute, but instead to force AstroTel to expend time and resources in regulatory proceedings to obtain Verizon's compliance with established regulations and interconnection agreements. These repeated actions by Verizon have delayed provision of basic local and enhanced services to AstroTel subscribers, and perpetuated service quality issues for AstroTel subscribers which were solely caused by Verizon. These repeated and willful actions were detrimental to both the subscriber and to AstroTel, and substantially damaged AstroTel's reputation. Even after numerous findings by state regulators that Verizon was in violation of its obligations, Verizon has continued its illegal behavior without any noticeable attempt to remedy;

i) In connection with its actions to delay and impair the service of AstroTel's subscribers, Verizon has embarked upon a malicious campaign of disparagement, misrepresenting the products and services that AstroTel provides to the public, and unfairly disparaging AstroTel's reputation. In

many cases, Verizon itself has caused service issues for AstroTel subscribers, failed or refused to timely and properly install or repair service, and then illegally contacted AstroTel subscribers to tell them that they would get better service and more diligent repair services as a Verizon subscriber. In that campaign, Verizon has told AstroTel subscribers that AstroTel is a simple reseller of Verizon's service and functions solely as a useless "middleman", has told AstroTel subscribers that Verizon subscribers will get superior service over what Verizon provides to AstroTel customers, has told AstroTel subscribers that Verizon subscribers will get superior repair response to what Verizon provides to AstroTel customers, and has made other disparaging remarks to AstroTel customers;

j) Deliberately failed to provide timely information about customers terminating their service with AstroTel (information that Verizon has under its exclusive control, by virtue of its control of the essential facilities), causing AstroTel to improperly bill former customers, and resulting in unnecessary expenditures on account management and regulatory proceedings;

k) Deliberately supplied false bills to AstroTel for services it has not ordered or received, services which were ordered but never provided, services which had been previously ordered disconnected, or services billed at rates substantially higher than those approved by state regulators;

- l) Deliberately refused to work with AstroTel or AstroTel's agents in good faith to resolve issues surrounding the false bills and non-received bills, but instead continued to send false bills and to repeatedly threaten disconnection of AstroTel's subscribers and facilities for non-payment of the false bills which AstroTel had disputed in good faith, and non-payment of the bills which Verizon had been notified that AstroTel did not receive and which Verizon still failed to send;
- m) Deliberately and repeatedly used confidential, protected Customer Proprietary Network Information ("CPNI") provided by AstroTel during the course of wholesale ordering for Verizon's own marketing purposes, illegally attempting to entice AstroTel subscribers to switch to Verizon instead;
- n) Attempted to require AstroTel to purchase unnecessary additional Verizon services in order to connect to the public 911 Emergency Network which Verizon operates on behalf of six Florida counties, and then refused to stop billing for and to reverse charges for those unnecessary services even after the Florida Public Service Commission found that it should do so;
- o) Failed or refused to provide access to facilities information, so that AstroTel can effectively determine if it can provide specific services to a specific subscriber's address. This data is provided to Verizon's affiliate companies, and without this data AstroTel must actually order and pay for

service to a certain address and then wait an average of ten days for installation before it can determine whether the service will actually work at that address;

p) Eliminated its “CLEC Specialist” and other staff members who were charged with addressing problems for CLEC subscribers, and by doing so deliberately created an environment where CLECs such as AstroTel are entirely unable to get Verizon-caused installation, repair, directory listing or billing issues resolved in a timely manner.

31. Verizon also has deliberately abused government processes to prevent competitive entry of AstroTel and other carriers, by forcing AstroTel to complain to state regulators over and over about the same violations by Verizon. Verizon's anticompetitive actions involved the sacrifice of short-term profits and goodwill for the purpose of unlawfully preserving Verizon's monopoly and thwarting competition in the long-run.

VI. Verizon Has Engaged in Exclusionary Conduct by Cross-Subsidizing, Participating in an Illegal Price Squeeze Designed to Exclude Competition

32. In a further effort to exclude competition, Verizon has engaged in an illegal price squeeze designed to achieve anticompetitive results to preclude AstroTel from competing in the market for basic local service and internet access service. AstroTel leases elements of Verizon's network at wholesale prices set by state regulators. In contrast, if the subscriber purchases non-regulated services from Verizon or its affiliates such as wireless mobile telephone service, internet access service, or television service, Verizon offers regulated basic local telephone service to retail customers at rates that are believed to be significantly below both its reasonable cost to provide that service and

significantly below AstroTel's wholesale cost from Verizon for the network elements needed to provide the same service. The end result is an illegal price squeeze in which Verizon has taken advantage of AstroTel's status as both a competitor and a customer.

a) **Verizon's Abuse of its Network Ownership to Raise AstroTel's Costs and Exclude Competition**

33. Verizon has abused its ownership of the essential network facilities through a conscious scheme designed to raise AstroTel's costs in order to maintain or enhance Verizon's monopoly power and to engage in other exclusionary conduct. Examples of this scheme include, but are not limited to, its failure to provide complete, accurate, and timely line loss information, repeated and willful falsification of installation and repair records, repeated failure to meet installation and repair due dates and its false and fraudulent billing practices.

i. **Verizon has Engaged in Exclusionary Conduct With a Strategy to Increase AstroTel's "Churn" Rate by Failing to Provide Complete, Accurate, and Timely Line Loss Information**

34. Because AstroTel is providing local exchange services in some areas by reselling Verizon's regulated telephone service, AstroTel does not control the switches serving each of its customers and cannot detect when such a customer has decided to switch carriers. AstroTel relies upon a faxed notification from Verizon to inform AstroTel when an AstroTel subscriber has elected to change service providers. This information is known as "line loss" information. If Verizon does not provide this information in a complete, accurate, and timely fashion, it causes AstroTel to improperly bill former customers after their discontinuance of AstroTel service, leading to billing disputes, customer complaints, regulatory complaints and the like, all of which impose

substantial costs on AstroTel and harm its reputation in the marketplace.

35. To provide line loss information to AstroTel, Verizon transmits a single page fax to AstroTel for each resale subscriber line which it converts away from AstroTel at a subscriber's request. Until approximately June 2010, Verizon provided this fax in most cases when it converted an AstroTel resale subscriber to itself or another carrier. From June 2010 through present, Verizon has continued to transmit the line loss notifications, but now omits the telephone number that it has converted which it previously provided on the faxed notice. No information is provided on the notice which Verizon is now sending to AstroTel that identifies the line or the subscriber which has been converted, making the notice entirely useless. Between June 2010 and December 2010, AstroTel complained to Verizon about problems with the line loss notification by repeatedly contacting its assigned Verizon account manager, Ric Ponce De Leon. That account manager acknowledged receipt of the emailed inquiry more than once, but failed or refused to take any action to resolve, investigate, or escalate the problem.

36. The negative consequences on AstroTel of these errors take several forms. First, accurate and timely information on disconnections by customers is necessary for AstroTel to audit the charges of Verizon for the essential network facilities that AstroTel leases because many of these charges are measured on a per-customer basis. Such audits are necessary to ensure that Verizon does not charge AstroTel for facilities used to serve customers who are no longer AstroTel customers. An audit of Verizon invoices for the time period between January 2005 and December 2010 showed that less than ten percent of Verizon's invoices to AstroTel were correct and error-free.

37. A second negative consequence to AstroTel of erroneous and untimely provision of line loss notification relates to consumer complaints. Verizon's line loss notification failings have caused AstroTel and other competitive carriers to bill customers for services subsequent to the time at which they switched to another carrier. Customers can then be double-billed by both their new carrier and old carrier. Some of these customers complain directly to AstroTel, some complain to the Better Business Bureau while others make formal complaints to state or federal agencies such as the Florida Public Service Commission or the FCC. Either way, such complaints cause AstroTel to incur costs in responding to these complaints and damage AstroTel's reputation with former, present, and prospective customers.

38. Verizon's repeated and flagrant failure with respect to line loss notifications throughout the Verizon Region is not mere incompetence. Verizon's anticompetitive intent is apparent from the efficiency with which it manages to transmit this information to its own retail marketing operations when the migration is from Verizon to another carrier. When a Verizon subscriber switches to AstroTel or another competitive carrier, Verizon contacts the lost subscriber by telephone, mail or both, offering incentives if the former Verizon subscriber switches back to Verizon.

39. Moreover, Verizon has discriminated in favor of its own retail marketers as compared to AstroTel and other carriers in terms of the substance of the information provided when line losses occur. The previous line loss notification to AstroTel included only a working telephone number, the order number for the disconnection, and the date of the disconnection, while the current line loss notification provides only the date and

AstroTel's company identifier and nothing else. However, Verizon provided its marketers with a detailed summary of the customer they lost to help Verizon win back that customer. Among the additional information that Verizon provided to its own marketers, but not to AstroTel, is information on how the customer is billed, the services actually provided to the customer, and a description of the customer's reasons for cancellation. Verizon has used this additional information to secure for itself a competitive advantage in winning back customers who intended to leave Verizon for a competing carrier's services and thus to discriminate against the potential competitor.

**ii. Verizon has Engaged in Exclusionary Conduct by
Increasing AstroTel's Costs and Harming its Business
Reputation Through False and Fraudulent Billing Practices**

40. Verizon refuses to provide accurate and auditable bills for the network facilities that AstroTel leases and refuses to provide call detail records and other information regarding alternatively billed services, cellular calls, and other types of transactions in an accurate manner and according to industry standards. Verizon often bills AstroTel for services it has not provided and bills AstroTel incorrect rates and charges for items that AstroTel has ordered. In addition, Verizon's bills lack any cross references to the applicable tariff or interconnection agreement that is the source of specific charges. As a result, AstroTel has filed literally hundreds of billing disputes with Verizon and is forced to expend undue resources on deciphering Verizon's inaccurate bills month after month as Verizon refuses to correct or even address its mistakes. Moreover, even with AstroTel's extraordinary efforts to verify Verizon's bills, it is likely that there are additional amounts for which AstroTel has been falsely billed that AstroTel

has simply been unable to detect due to the poor quality of the billing information that Verizon provides. One consequence of the dearth of information is that AstroTel is unable to properly and accurately bill its subscribers and third parties.

41. Further, even after AstroTel informed Verizon of its false invoices and billing inaccuracies, Verizon has repeated the false billing in subsequent months for numerous items and failed to respond to the vast majority of AstroTel's billing disputes. Similarly, Verizon has billed AstroTel for items for which it is not entitled to bill under explicit state commission findings, and then threatened to disconnect AstroTel's customers and to refuse to accept new service orders from AstroTel when AstroTel refused to pay such disputed amounts. Verizon's conduct is nothing more than a thinly veiled effort to use intentional, manufactured billing errors as a basis for accomplishing its anticompetitive ends. Thus, Verizon's conduct in repeatedly submitting false bills to AstroTel is intentional and/or reckless.

42. In several instances, Verizon has attempted to collect from AstroTel amounts which it alleges are past due but for which it has not properly billed to AstroTel. Despite numerous disputes, Verizon continues to demand payment for amounts not properly billed, and threatens to disconnect AstroTel's facilities and subscribers for nonpayment of the amounts for which it has repeatedly failed to deliver bills.

43. Verizon also fails to provide call records in an accurate manner and according to industry standards. Despite this failure, Verizon still demands that AstroTel collect certain fees related to such calls on Verizon's behalf. Verizon also has engages in "self-help," refusing to pay AstroTel amounts owed by Verizon for terminating the calls

of Verizon subscribers in retaliation for other types of billing disputes submitted by AstroTel. In refusing to pay AstroTel's properly billed and documented charges, Verizon fails to produce any verifiable dispute nor any evidence whatsoever to support its refusal to pay.

44. Nor does Verizon have in place an efficient mechanism to resolve billing disputes. Often, Verizon's billing analysts have insufficient knowledge or understanding of the essential network facilities and the corresponding rate elements that apply for providers such as AstroTel. AstroTel's complaints about Verizon's billing practices are not merely routine performance disputes. They constitute a direct and substantial means by which Verizon maintains its monopoly power in the local dial-tone and enhanced services markets. By maximizing inefficiencies in resolving billing disputes, Verizon is able to impose greater costs on AstroTel and other competitive carriers, thereby impeding their ability to compete.

45. The failure of Verizon to provide accurate and timely bills and call records to AstroTel unduly hinders AstroTel's business operations and planning and, thus, its ability to provide service in competition with Verizon. The US DOJ and the FCC have both recognized that improper billing can have a substantial anticompetitive effect; indeed, the US DOJ has acknowledged that "proper billing is essential to competition" Both agencies have recognized "that undependable billing diverts CLEC resources to bill reconciliation and bill correction, hampers CLEC ability to raise capital because improper overcharges are carried on the CLEC's financial reports, diminishes CLEC capacity to adjust prices and expenses in response to competition, and deprives CLECs of revenue

because they are unable to backbill previously undercharged end users.”

b. Verizon's Abuse of Government Processes

46. Verizon repeatedly has failed or refused to properly install service for AstroTel and its subscribers, failed or refused to properly repair its facilities serving AstroTel’s subscribers, and made numerous repeated “errors” pertaining to AstroTel’s subscribers. Verizon has developed a business process for ordering and repair activity, which AstroTel is forced to use, which is clearly designed to prevent AstroTel and its subscribers from obtaining timely installation or repair of the essential facilities provided to AstroTel and its subscribers by Verizon. This process began when Verizon eliminated its “CLEC Specialist” staff, whose job it was to address ordering, installation or repair issues which were not resolved through its automatic processes. Verizon’s current business process eliminates the CLEC’s ability to have human contact in many cases, providing a sole remedy of opening an on-line ticket for any problem that may arise with ordering or repair. Such tickets have routinely gone unanswered for days or weeks at a time. Verizon’s sole remedy for this routine issue is a process which it refers to as “escalation”. This process involves accessing the same system which failed to result in the proper installation or repair in the first place, which then was used to open an on-line ticket which has not been responded to, and which the CLEC is then advised to access for at least a third time to mark the on-line ticket as “escalated”. In AstroTel’s experience, this has had no actual effect. Then, once Verizon has failed to respond to one or more escalation attempts, AstroTel is advised to wait another 24 hours and then contact a list of “escalation contacts” provided on Verizon’s website. These escalation contacts most

often do not answer calls or return voicemail messages, and several times have advised that they no longer handle escalations at all and don't know why they are on Verizon's escalations list. If AstroTel is actually ever able to get Verizon's attention, it is generally after hours of effort and days or weeks of delay, and the likelihood of AstroTel retaining the subscriber is slim to none. Therefore, this has left AstroTel no reasonable recourse other than the filing of regulatory complaints with the Florida Public Service Commission to attempt to gain Verizon's compliance. Despite the Florida PSC's findings overwhelmingly in AstroTel's favor that its handling of AstroTel issues is unreasonable and in violation of regulatory rules, Verizon has continually failed to correct its anti-competitive business processes which are at the heart of this issue.

47. Verizon routinely falsifies records to falsely claim that it has met regulatory guidelines. AstroTel has dozens of examples where Verizon has falsified its own records to reflect that it has installed or repaired service for an AstroTel subscriber, when in fact it has not done so. AstroTel has evidence which shows that Verizon employees were not given adequate information to complete AstroTel installation orders, knew that the work had not been completed, but were told by superiors to falsify the records in an apparent attempt to appear compliant.

48. Verizon is not shielded from antitrust liability pursuant to the *Noerr-Pennington* doctrine for this conduct for numerous reasons as a matter of law and as a matter of fact, including, but not limited to, that the course of conduct and particular acts alleged herein constitute a pattern of abusive conduct made without regard to the merits that used administrative processes (as opposed to the outcome of those processes) as an

anticompetitive weapon. This pattern of abusive conduct falls outside any petitioning privilege under the *Noerr-Pennington* doctrine [See *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 135 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657, 670 (1965).]

c. Verizon's Campaign of Defamation and Disparagement

49. Verizon has also engaged in a deliberate and malicious effort to defame and disparage AstroTel's business and the business of other competitive carriers through a campaign of false statements and representations. AstroTel has submitted numerous documented examples to the Florida Public Service Commission of incidents where Verizon and its network have been the sole cause of service issues for an AstroTel subscriber, and then Verizon employees have advised the subscriber that they would get faster repair service or have fewer service issues if they switch back to Verizon. AstroTel has also shown several documented examples where Verizon technicians have advised customers that their service outage is "AstroTel's problem" when in fact Verizon had, through malice or mistake, disconnected the customer's telephone service shortly after the customer switched from Verizon to AstroTel. In one documented example which was submitted to the Florida PSC, Verizon advised an AstroTel customer in writing that AstroTel did not pay its bills. In that instance Verizon admitted to the PSC that it made a "mistake" when converting the customer's service to AstroTel which resulted in more than an entire day of total service outage for the small law firm subscriber. Based upon the painful outage caused by Verizon and Verizon's assertions about AstroTel's failure to pay its bills, the customer broke its contract with AstroTel and switched back to Verizon.

50. On one telephone call from a Verizon marketer to an AstroTel subscriber, the marketer repeatedly stated that AstroTel is a simple reseller of Verizon service without any network of its own, named AstroTel by name as the current carrier (which violates federal law governing the use and disclosure of Confidential Proprietary Network Information), stated that by cutting out the “middleman” the subscriber would get better service directly with Verizon than it does with AstroTel, and further stated that Verizon subscribers would get more responsive repair service than AstroTel subscribers, because Verizon controls the repair service provided to AstroTel’s subscribers. The Verizon employee clearly represented that AstroTel is not an actual telephone carrier but is simply a billing agent for Verizon despite the value-added services that AstroTel combines with facilities leased from Verizon to provide basic local and enhanced services, some of which Verizon does not even offer.

VII. Impact on AstroTel and Consumers

51. The effect of Verizon's unlawful practices is as immediate as it is obvious - Verizon has grievously injured competition and greatly harmed AstroTel by excluding it from the marketplace. Verizon has done everything it can to prevent AstroTel from gaining any significant share of the market in its service area. From the beginning, AstroTel was met with stall tactics, delays, and refusals to provide essential facilities, as well as fraudulent and false information designed to increase the costs of AstroTel doing business in the Verizon Region.

52. Overall, the effects on AstroTel have been severe. Verizon's conduct has imposed hurdles that have greatly reduced AstroTel’s market share in the enhanced

services and basic local service markets, reduced AstroTel's revenues, significantly increased its costs and seriously damaged its reputation.

53. As a direct and proximate result of Verizon's unlawful conduct, AstroTel's market entry has been impeded and frustrated, and AstroTel has been foreclosed from the relevant markets and has lost substantial sales, profits, and the value of its business. AstroTel has suffered and will continue to suffer harm through loss of and injury to its trade and business in that (a) AstroTel has been and will be precluded from entering into contracts for the sale of competitive basic local and enhanced services; (b) AstroTel has been and will be precluded from carrying out contracts already entered into for the sale of competitive basic local and enhanced services; (c) AstroTel has been and will continue to be harmed in its reputation and goodwill; and (d) AstroTel and other competitive service providers will be hampered in marketing, selling and providing their services.

54. Verizon's conduct has harmed competition and consumers in that it has had and will continue to have the effects of (a) denying AstroTel fair access to the basic local and enhanced services markets; (b) denying consumers free choice in the basic local and enhanced services markets; (c) affecting a substantial amount of commerce in the basic local and enhanced services markets; (d) substantially lessening competition and tending to create or maintain a monopoly in the basic local and enhanced services markets; (e) creating higher prices for basic local and enhanced services; (f) forcing consumers to use inferior basic local and enhanced services; and (g) stifling the development of new and better basic local and enhanced services.

COUNT I - SHERMAN ACT, SECTION 2, 15 U.S.C. § 2 - MONOPOLIZATION

55. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

56. Verizon has monopoly power in both the basic local and enhanced services markets in the relevant geographic market. Among other things, Verizon owns and controls the only ubiquitous physical local telecommunications and enhanced services network within the region.

57. Verizon has engaged in the anticompetitive conduct described above with the specific intent to maintain and extend its monopoly power and position in the basic local service and enhanced services markets. Verizon's conduct has delayed and prevented AstroTel's entry into these markets in the relevant geographic market. Verizon continues to dominate that market through exclusionary conduct, to the detriment of consumers and competition.

58. As a direct and proximate result of Verizon's monopolistic conduct, competition in the relevant markets has been injured, consumers have been damaged, AstroTel has been injured, and AstroTel has been damaged in that: (i) its costs of operation have increased; and (ii) its ability to penetrate Verizon's monopoly has been frustrated and delayed, causing AstroTel to lose potential customers and profits and harming AstroTel's goodwill and reputation. AstroTel has been damaged in its business operation and has sustained damages and continues to sustain damages in an amount to be determined at trial.

**COUNT II - SHERMAN ACT, SECTION 2, 15 U. S. C. § 2 –
ATTEMPTED MONOPOLIZATION**

59. AstroTel incorporates by reference the allegations of paragraphs 1 through

54 of this Complaint, as though fully set forth here.

60. Verizon has engaged in the anticompetitive conduct described above in a willful effort and attempt to gain or continue a monopoly with the conscious object of acquiring the power to control prices or to exclude or destroy competition in both the basic local services market and in the enhanced services markets in one or more of the relevant geographic markets.

61. There is a dangerous probability that Verizon will succeed in its efforts to gain, perpetuate or enhance a monopoly in the basic local and enhanced services markets in all or part of the relevant geographic market. Verizon continues to dominate that market through unlawful conduct, to the detriment of consumers and competition.

62. As a direct and proximate result of Verizon's monopolistic conduct, competition in the relevant markets has been injured, consumers have been damaged, and AstroTel has been damaged in its business or property in that: (i) its costs of operation have increased significantly; and (ii) its ability to penetrate Verizon's monopoly has been frustrated and delayed, causing AstroTel to lose potential customers and profits and harming AstroTel's goodwill and reputation. AstroTel has sustained damages and continues to sustain damages in an amount to be determined at trial.

**COUNT III - SHERMAN ACT, SECTION 2, 15 U. S. C. § 2 –
MONOPOLY LEVERAGING**

63. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

64. Verizon has monopoly power in the basic local service market by virtue of its ownership of the physical assets necessary to participate in that market, including local

loops, switching, transport, central office real estate and operational support systems. In addition, Verizon has market power in the market for broadband internet access.

65. Verizon uses its monopoly power in the basic local services market to gain an unlawful, competitive advantage in the enhanced services market. In particular, as described above, Verizon uses its monopoly power in the basic local services market to deny and delay AstroTel's ability to combine basic local service with enhanced services, to prevent AstroTel from providing services to its subscribers, to increase AstroTel's costs in providing services relative to Verizon's costs, and to limit AstroTel's access to information on a timely basis that is necessary for AstroTel to place orders for and to provide basic local service and also enhanced services, which information is exclusively controlled by Verizon. Verizon then often rejects AstroTel orders, sometimes after the due date that Verizon previously promised to install services, because AstroTel's order does not reflect certain facility data which Verizon refused to provide to AstroTel and which AstroTel cannot otherwise have known.

66. Verizon also uses its monopoly power in the market to gain an unlawful, competitive advantage in the basic local services market. In particular, as described above, Verizon uses its monopoly power to deny and delay AstroTel's ability to provide basic local service to customers of Verizon's FIOS internet and/or television service. At any address where Verizon has deployed its FIOS internet and/or television service, as a matter of procedure Verizon destroys the copper telephone line serving that address which a CLEC could use to provide basic local telephone service or internet access service. Although it is required to re-install such copper telephone lines if ordered by a

CLEC, Verizon imposes significant installation delays in these cases and also refuses to provide essential network information to the CLEC. This information would permit a CLEC to determine the viability of specific services at the address based upon the type and length of the copper loop, and would also permit the CLEC to place a correct order with Verizon on the first try. This data is available to Verizon and its affiliates but not to CLECs.

67. The unfair competitive advantage that Verizon creates for itself derives from its monopoly power in the basic local services market, and thus constitutes monopoly leveraging.

68. As a direct and proximate result of Verizon's monopolistic conduct, competition in the relevant markets has been injured, consumers have been damaged, and AstroTel has been damaged in its business or property in that: (i) its costs of operation have increased significantly; (ii) AstroTel has lost customers and profits; and (iii) AstroTel's goodwill and reputation have been harmed. AstroTel has sustained damages and continues to sustain damages in an amount to be determined at trial.

COUNT IV - SHERMAN ACT, SECTION 1, 15 U. S. C. § 1 - TYING

69. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

70. When Verizon installs its FIOS broadband internet or FIOS television service for a subscriber, it deliberately destroys the copper loop facility which may be used by a CLEC such as AstroTel to provide basic local exchange service to that subscriber. It then claims that there are no facilities available for a CLEC such as

AstroTel to provide service to that address, even though the facilities were otherwise available before such mutilation. Verizon acts in this manner as a matter of policy, in a deliberate effort to preserve and maintain its monopoly in the basic local and enhanced services market. Although AstroTel can generally get Verizon to eventually re-install the copper loop as required, the delay imposed by this process usually results in the loss of the residential subscriber who was unwilling to wait weeks for a simple telephone line to be installed.

71. If a Verizon FIOS subscriber attempts to change carriers from Verizon to AstroTel for basic local service or enhanced service, Verizon will routinely suddenly terminate the customer's telephone service and leave them without service for a significant period of time, or will deny AstroTel the ability to provide basic local service to that customer by improperly rejecting its order for unbundled facilities to that address., by imposing an unreasonable delay for completion of AstroTel's order, or by "mistakenly" installing the ordered facilities incorrectly in a manner which renders them unusable.

72. The relevant tying markets are the market for broadband internet service, and television service. The relevant tied markets are the basic local services market and the enhanced services market. Verizon has appreciable economic power in the relevant tying market and uses that market power to force customers of its FIOS service to purchase its basic local and enhanced services and to maintain its monopoly power in the basic local and enhanced services markets and thereby affects a substantial volume of commerce in those markets. Verizon's tying scheme imposes prohibitively higher

switching costs on customers in order for Verizon to maintain or expand its monopoly power in the basic local and enhanced services markets. Were it not for Verizon's illegal tying arrangement, many customers would purchase basic local and enhanced services from carriers other than Verizon.

73. As a direct and proximate result of Verizon's conduct, competition in the relevant markets has been injured, consumers have been damaged, and AstroTel has been damaged in its business or property in that: (i) its costs of operation have increased significantly; (ii) AstroTel has lost customers and profits; and (iii) AstroTel goodwill and reputation have been harmed. AstroTel has sustained damages and continues to sustain damages in an amount to be determined at trial.

COUNT V - RICO VIOLATION

74. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

A. Enterprise

75. Defendants are associated with an enterprise engaging in, and the activities of which affect, interstate commerce.

76. Each subsidiary of Verizon Communications, Inc., including Verizon Florida LLC, constitutes an enterprise. In the alternative, the enterprise consists of an association-in-fact of Verizon and its subsidiaries including Verizon Florida, LLC, as recognized under 18 U.S.C § 1961(4). The relationship among the members of this association is continuous and the enterprise and association in fact enterprise has been used and threatens to be used to submit false and fraudulent invoices and other

information to AstroTel in an effort defraud AstroTel out of money and to foreclose and inhibit AstroTel from participating in the basic local and enhanced services markets.

B. Substantive Violations of RICO

77. Verizon, beginning in 2004 and continuing through the filing of this Complaint, has unlawfully, willfully, and knowingly maintained an interest in, or control of, its subsidiaries, including Verizon Florida LLC, directly, or indirectly, through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(b). Verizon, through its unlawful and intentional conduct, acted to enhance or protect the value of its subsidiaries including Verizon Florida LLC, (and necessarily, Verizon's market power) in a manner directly injurious to AstroTel.

78. Verizon, beginning in 2004 and continuing through the filing of this Complaint, has unlawfully, willfully, and knowingly conducted and participated, directly and indirectly, in the conduct of its subsidiaries', including Verizon Florida LLC, affairs through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

79. Defendants, beginning in 2004 and continuing through the filing of this Complaint, have unlawfully, willfully, and knowingly conducted and participated, directly and indirectly, in the conduct of the enterprises', as alleged directly and in the alternative above, affairs through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

80. Defendants, in addition or in the alternative, beginning in 2004 and continuing through the filing of this Complaint, unlawfully, willfully, and knowingly did conspire, combine, confederate, and agree together, and with various other persons whose

names are both known and unknown, to violate 18 U.S.C. § 1962(b) and 18 U.S.C. § 1962(c), which constitute a violation of 18 U.S.C. § 1962(d).

C. Predicate Acts/Pattern of Racketeering Activity

81. The enterprises, as alleged directly and in the alternative above, are at all relevant times continuing enterprises, engaging in predicate acts of mail, 18 U.S.C. § 1341, and wire fraud, 18 U.S.C. § 1343, with the distinct purpose of defrauding AstroTel out of money and unlawfully foreclosing and inhibiting AstroTel from participating in the basic local and enhanced services markets.

82. The predicate acts of mail and wire fraud, alleged herein, continue through the date of this Complaint and are ongoing by virtue of the continued submission of false and fraudulent invoices and other information to AstroTel in an effort to defraud AstroTel out of money and foreclose and inhibit AstroTel from participating in the basic local and enhanced services markets, all to the detriment of AstroTel and consumers in the Verizon Florida Region.

83. The pattern of racketeering activity, as defined by 18 U.S.C. §§ 1961(1) and (6), presents a distinct threat of continuing unlawful activity. Defendants continue to engage in mail and wire fraud by submitting false and fraudulent invoices and other information to AstroTel in an effort to defraud AstroTel out of money and foreclose and inhibit AstroTel from participating in the enhanced services market. Such activity, consisting of multiple acts of racketeering (spanning well over 60 months and continuing), is interrelated, not isolated, and is perpetrated for the same or similar purposes by the same persons. Such activities occurred after the effective date of 18

U.S.C. §§ 1961, et seq., and the last such act occurred within 10 years after the commission of a prior act of racketeering activity.

84. Defendants, aided and abetted by each other, having devised a scheme or artifice in 2004 to defraud AstroTel out of money and to impair AstroTel's ability to compete in the basic local and enhanced services markets, did, for the purpose of furthering and executing such scheme or artifice, defraud, transmit, and cause to be transmitted by means of the mail or wire communications in interstate commerce, writing, signs, signals, pictures, or sound, in violation of 18 U.S.C. § 1341 and § 1343.

D. Verizon's Subsidiaries Assume A Distinct Role In Facilitating And Masking Defendants' Fraud

85. Verizon's subsidiaries' role in the racketeering activity complained of here has been and continues to be distinct and separate from that of their parent, Verizon Communications, Inc. Verizon's subsidiaries undertake distinct roles in facilitating the Defendants' fraudulent scheme: (1) Verizon's subsidiaries have sent AstroTel invoices by electronic communications and mail on a regular basis, beginning in 2004 to the present, that reflect charges purportedly owed by AstroTel for the use of network facilities, which fraudulently and falsely state the amount owed based on misrepresentations of the interconnection information; (2) Verizon's subsidiaries sent AstroTel regular reports on line loss information, which beginning in July 2010 no longer contain adequate data to determine which AstroTel subscriber, telephone number or service Verizon has converted from AstroTel to itself, causing AstroTel to overcharge customers who had changed carriers, but with respect to which AstroTel had not been informed by Verizon; (3) Verizon has routinely denied AstroTel access to available facility data which is necessary

for AstroTel to place orders with Verizon to provide service to its subscribers, in an effort to deny AstroTel the ability to serve those subscribers; and (4) Verizon subsidiaries have made and continue to make misrepresentations to AstroTel and to state regulators concerning the accuracy of Verizon's invoices and other information, including the available facility data. Verizon's subsidiaries' actions are all aimed at concealing, masking, and facilitating the Defendants' fraudulent scheme.

86. Verizon also attempted to benefit from the illegal activity of its subsidiaries as alleged herein, and thus is not a passive victim of racketeering activity, but an active perpetrator.

87. AstroTel relied on the Defendants' material misstatements, misrepresentations, and falsehoods and has been injured in its business or property by reason of the Defendants' violations of 18 U.S.C. § 1962(b), 1962(c), and 1962(d) and the Defendants' fraudulent conduct.

88. As a result of the violations of 18 U.S.C. §§ 1962(b), 1962(c), and 1962(d), AstroTel has suffered substantial damages, and pursuant to 18 U.S.C. § 1964(c), AstroTel is entitled to recover all actual damages, as well as treble damages.

COUNT VI - LANHAM ACT VIOLATION

89. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

90. As described above, Verizon, in connection with its provision of basic local and enhanced services, caused to be used in interstate commerce false and misleading descriptions or misleading representations of fact. These false and misleading

descriptions or misleading representations of fact, made by its employees and agents in marketing efforts, misrepresented the nature, characteristics, and qualities of AstroTel's services, in violation of 15 U.S.C. § 1125(a). In particular, Verizon has misrepresented the nature, characteristics, and qualities of both Verizon's and AstroTel's basic local and enhanced services. For example, by providing line loss information to itself before providing it to AstroTel and by falsely and fraudulently billing AstroTel on a regular basis, Verizon creates a false impression of the nature, characteristics, and qualities of the customer service AstroTel provides, which it uses as the basis for its false and misleading descriptions or misleading representations of fact in such marketing efforts. By directly stating to AstroTel subscribers that AstroTel is a mere "middleman" reseller of Verizon services, and further that Verizon provides substandard service and repair to AstroTel subscribers compared to that which it provides to its own subscribers, Verizon has misrepresented the nature, characteristics, and qualities of AstroTel's services, in violation of 15 U.S.C. § 1125(a).

91. These statements actually deceived or had a tendency to deceive a substantial segment of AstroTel's existing and also potential customers and are likely to influence the customers' purchasing decisions.

92. As a direct and proximate result of this conduct in violation of the Lanham Act, AstroTel has suffered actual damages that it is entitled to recover at trial.

COUNT VII - TORTIOUS INTERFERENCE WITH CONTRACT

93. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

94. At all relevant times, Verizon was aware that AstroTel had contracts with a number of subscribers of AstroTel's services in the Verizon Florida Region.

95. Verizon attempted to and did exclude AstroTel from competing in the Verizon Florida Region, in the process interfering with AstroTel ability to offer services to consumers there, including causing the cancellation of contracts to purchase AstroTel service. Verizon further improperly interfered with AstroTel's existing contracts with customers by, among other things, directly causing substantial and lengthy service outages for customers switching from Verizon to AstroTel service with the result, intended by Verizon, that AstroTel customers canceled their contracts with AstroTel.

96. Verizon attempted to and did exclude AstroTel from competing in the Verizon Florida Region, in the process interfering with AstroTel's ability to offer services to consumers there, including causing the cancellation of contracts to purchase AstroTel's service. Verizon improperly interfered with AstroTel's existing contracts with customers by, among other things, illegally using confidential proprietary network information to contact AstroTel's subscriber, and then by making misleading, disparaging remarks misrepresenting the nature, characteristics, and qualities of both Verizon's and AstroTel's basic local and enhanced services. Verizon has successfully enticed AstroTel's subscribers to cancel AstroTel service and switch to Verizon service by its use of this strategy.

97. Verizon attempted to and did exclude AstroTel from competing in the Verizon Florida Region, in the process interfering with AstroTel ability to offer services to consumers there, including causing the cancellation of contracts to purchase AstroTel

service. On numerous occasions, customers switching to AstroTel were advised by Verizon that there was a “verbal contract” for multiple years of service with Verizon, in many cases which had already run its course and which Verizon claimed had automatically renewed. Thus, Verizon advised the subscriber that it would impose substantial penalties upon the subscriber for switching to another carrier, even without a shred of evidence of the “verbal contract” and with the customer’s assurance that it had not knowingly entered into such an agreement. Verizon achieved its intended result on many occasions when the subscriber decided not to switch carriers to avoid the substantial cancellation fees created by this scheme.

98. Verizon acted with the knowledge and intent that its conduct would prevent AstroTel from offering competing services, in a deliberate and intentional attempt to restrain trade, injure AstroTel’s business and drive AstroTel out of business in the Verizon Florida Region.

99. Verizon’s actions have been and continue to be without legal justification or excuse, and without privilege.

100. As a direct result of Verizon’s conduct, Verizon has interfered with AstroTel’s ongoing business and with customer orders. Verizon has induced customers to cancel such orders. As a direct and proximate result of this conduct, AstroTel has suffered actual damages that it is entitled to recover at trial.

101. Moreover, Verizon’s conduct was willful, malicious, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to AstroTel and consumers in the

Verizon Florida Region, entitling AstroTel to punitive damages.

**COUNT VIII - INTERFERENCE WITH PROSPECTIVE
BUSINESS RELATIONS**

102. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

103. At all relevant times, Verizon was aware of AstroTel's intention and attempts to offer services in direct competition with Verizon, to consumers in the Verizon Florida Region.

104. At all relevant times, Verizon was aware that AstroTel's services would appeal to a number of consumers in the Verizon Florida Region.

105. Verizon attempted to and did exclude AstroTel from competing in the Verizon Florida Region, in the process interfering with AstroTel's ability to offer services to consumers there, including improperly interfering with AstroTel's prospective business relations with customers by, among other things, wrongfully delaying and refusing to supply facilities necessary for development and completion of AstroTel's business relations with its prospective customers, and wrongfully delaying and refusing to provide complete, accurate and facility availability information on a timely basis and on the same terms as Verizon provides this information to its retail marketers.

106. Verizon acted with the knowledge and intent that its conduct would prevent AstroTel from offering competing services, in a deliberate and intentional attempt to restrain trade, injure AstroTel's business and drive AstroTel out of business in the Verizon Florida Region.

107. Verizon's actions have been and continue to be without legal justification

or excuse, and without privilege.

108. Verizon's conduct, as described in the other causes of action herein, was independently tortious and/or unlawful.

109. As a direct result of Verizon's conduct, Verizon has induced persons who, but for Verizon's interference, were reasonably likely to purchase or continue basic local and enhanced services from AstroTel instead to purchase those services from other carriers. Further, Verizon has induced customers not to order services from AstroTel. As a direct and proximate result of this conduct, consumers have been damaged and AstroTel has suffered actual damages that it is entitled to recover at trial.

110. Moreover, Verizon's conduct was willful, malicious, wanton and demonstrated such entire want of care that it raises the presumption of conscious indifference to the consequences it would cause to AstroTel and consumers in the Verizon Florida Region, entitling AstroTel to punitive damages.

COUNT IX - UNFAIR COMPETITION

111. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

112. Verizon's wrongful conduct as described above constitutes unfair competition under the common law and pursuant to the laws of the state of Florida where defendants do business. Verizon's unfair business practices hinder rather than promote the efficient operation of the basic local services and enhanced services markets. The nature of these practices is anticompetitive and injurious to both AstroTel and consumers of local dial-tone and enhanced services.

113. In addition, Verizon's violation of the antitrust laws, the Telecommunications Act of 1996, the Lanham Act, RICO, and relevant states laws constitutes unfair competition.

114. As a direct result of this actual and threatened misconduct, competition has been injured, consumers have been damaged, and AstroTel has suffered and will suffer injury and is entitled to receive all actual damages proximately caused by such conduct, as well as punitive damages.

COUNT X - BUSINESS DEFAMATION AND DISPARAGEMENT

115. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

116. Verizon's false statements made to AstroTel subscribers have defamed and disparaged the business of AstroTel. On several documented occasions, Verizon directly caused outages or service issues for AstroTel subscribers, then while it was supposed to be repairing the outage which it directly caused it instead disparaged AstroTel's reputation, claiming that the subscriber would get more reliable service and more responsive repair of its outage if it switched back to Verizon.

117. On one documented occasion, Verizon caused a lengthy outage for a business subscriber who had entered into a contract to switch from Verizon to AstroTel. While it was supposed to be repairing the outage that it caused, it advised the subscriber **in writing** that AstroTel did not pay its bills to Verizon and that this was the cause of the outage. Verizon admitted later that it had caused the outage "in error", but the customer

still switched back to Verizon.

118. On another documented occasion, Verizon willfully and maliciously disparaged AstroTel directly to its subscriber in conjunction with its illegal use of the CPNI data. In that instance, Verizon told the subscriber that AstroTel is a simple reseller of Verizon's service and functions solely as a "middleman", told the subscriber that Verizon subscribers will get superior service to what Verizon provides to AstroTel subscribers, told the subscriber that Verizon subscribers will get superior repair response to what Verizon provides to AstroTel subscribers, told the subscriber that Verizon is in total control of its service whether it chooses AstroTel or Verizon as its local telephone carrier, and made other disparaging remarks to AstroTel's subscriber. In fact, AstroTel pays Verizon a fee for the use of certain essential facilities of Verizon's network, pursuant to an FCC-prescribed formula that expressly incorporates a reasonable profit for Verizon. Moreover, AstroTel is far from a middleman, and instead combines the facilities it leases from Verizon with its own network, its own equipment, its own employees, and its own customer service and account management, to provide integrated services in both the basic local and enhanced service markets. Finally, AstroTel has, contrary to Verizon's employee's implication, spent substantial sums developing and deploying new technologies and innovative products that Verizon does not even provide.

119. All these facts were known or should have been known to Verizon at the time of Verizon's defamatory and disparaging statements. As a result, Verizon's statements were defamatory or were made negligently and without regard to the truth of the statements. Verizon's statements therefore constitute business defamation. AstroTel

has suffered and continues to suffer damages as a result of Verizon's unlawful conduct, and is entitled to recover nominal, general, and special damages as authorized by law.

120. In addition or in the alternative, each of these statements is false, not privileged, and malicious. Verizon knew the statements were false or acted in reckless disregard of the fact that the statements were false. As such, these statements constitute business disparagement. AstroTel has suffered pecuniary damages as a result of this conduct, including loss of profits and loss of goodwill, entitling AstroTel to recover actual and punitive damages.

COUNT XI - CIVIL CONSPIRACY

121. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

122. Verizon entered into an agreement or understanding to act in concert with the other defendants as members of a conspiracy, with the purpose and intent of unlawfully depriving AstroTel of its legal rights, and has taken unlawful acts in furtherance of that conspiracy.

123. AstroTel has been injured as a proximate result of the wrongful conduct emanating from this civil conspiracy. There is no legal justification or excuse for Verizon's actions.

COUNT XII - UNJUST ENRICHMENT

124. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

125. Verizon has unjustly appropriated for itself the business of AstroTel's

customers and impeded AstroTel's ability to offer competing basic local and enhanced services. These actions were wrongful and done without justification, with an intent to harm AstroTel and enrich Verizon.

126. By accumulating the profits from sales to customers of basic local and enhanced services, Verizon has been unjustly enriched by its wrongful conduct.

127. The unjust enrichment received by Verizon consists of all the profits earned by Verizon from the sales of basic local and enhanced services to customers in the Verizon Florida Region, which have been earned as a result of Verizon's anticompetitive conduct.

128. Because of Verizon's wrongful conduct and unjust enrichment, Verizon must disgorge any and all profits, earnings, and other ill-gotten gains attributable to its wrongful actions.

COUNT XIII - EQUITABLE ACCOUNTING

129. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

130. Verizon has engaged in a concerted scheme to raise AstroTel's costs by providing inaccurate line loss information and by falsely and fraudulently billing AstroTel for the use of Verizon's network facilities and other items. On its own, AstroTel has uncovered many of these errors, but AstroTel has not been provided with a detailed accounting of the charges that Verizon contends it owes, the amount of overcharges by Verizon, or individualized charges pertaining to particular network facilities.

131. As a matter of law, AstroTel is entitled to a full accounting by Verizon of

its billing of AstroTel, including a detailed and itemized accounting of the associated costs with particular network facilities.

COUNT XIV - PERMANENT INJUNCTIVE RELIEF

132. AstroTel incorporates by reference the allegations of paragraphs 1 through 54 of this Complaint, as though fully set forth here.

133. AstroTel has been and will continue to be severely injured by being foreclosed and inhibited from participation in the telecommunications markets in the Verizon Florida Region. Such a broad-based, dramatic foreclosure from markets and competition will continue to cause a loss of reputation, goodwill, and competitiveness, which cannot be adequately compensated for in damages.

134. AstroTel prays that this Court grant it a permanent injunction prohibiting Verizon from (a) preventing its FIOS customers from purchasing basic local services from a non-Verizon carrier; (b) tying its basic local service, enhanced services and television services; (c) discriminating against AstroTel in the provision of line loss and facility information in favor of Verizon's marketing or retailing affiliates; (d), using Customer Proprietary Network Information (CPNI) for any purpose other than the fulfillment of AstroTel's wholesale orders with which such CPNI is submitted; (e) forcing AstroTel to seek regulatory remedy from state regulators for repeated, willful acts or omissions by Verizon which substantially harm AstroTel and consumers; (f) invoicing AstroTel for leased network facilities that are not specifically listed and cross-referenced against the applicable tariff or interconnection agreement supporting the purported charge; and (g) making disparaging, false or misleading statements about AstroTel, its

products and services, and its relationship to Verizon.

135. AstroTel is entitled to a permanent injunction because it has no adequate remedy at law.

WHEREFORE, AstroTel respectfully prays:

- a) That this Court declare under 28 U.S.C. § 2201 that Verizon has violated the Sherman Act, RICO, the Lanham Act, and other applicable laws;
- b) That this Court enjoin Verizon and each of its officers, directors, agents, employees, successors and assigns, including all defendants, and all persons acting under, through or for Verizon, from, in any manner, directly or indirectly, (a) preventing its FIOS customers from purchasing local telephone services from a non-Verizon carrier; (b) tying its basic local service, enhanced services and television services; (c) discriminating against AstroTel in the provision of line loss and facility information in favor of Verizon's marketing or retailing affiliates; (d), using Customer Proprietary Network Information (CPNI) for any purpose other than the fulfillment of AstroTel's wholesale orders with which such CPNI is submitted; (e) forcing AstroTel to seek regulatory remedy from state regulators for repeated, willful acts or omissions by Verizon which substantially harm AstroTel and consumers; making disparaging, false or misleading statements about AstroTel, its products and services, and its relationship to Verizon.
- c) That this Court award all actual damages incurred by AstroTel as a result of conduct of Verizon;
- d) That this Court order disgorgement of all profits or other ill-gotten gains of Verizon;
- e) That this Court award treble damages for violation of the Sherman Act, and RICO;

- f) That this Court award punitive damages for all tortious conduct due to the willful and malicious conduct of Verizon; and;
- g) That this Court award prejudgment and postjudgment interest and the costs of this action, including reasonable attorneys' fees as allowed for violations of the Sherman Act, RICO, the Lanham Act, and
- h) That this Court order such other and further relief as the Court deems just and proper.

Respectfully submitted this 29th day of March, 2011.

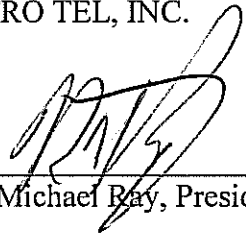
VERIFICATION

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, Michael Ray, President of ASTRO TEL, INC., hereby declare under penalty of perjury under the laws of the United States that the information contained in the Complaint is true and correct, provided that this declaration does not extend to paragraphs that contain analysis of Florida law governing the merits of the Complaint about which I am unqualified to opine because I am not a member of The Florida Bar.

ASTRO TEL, INC.

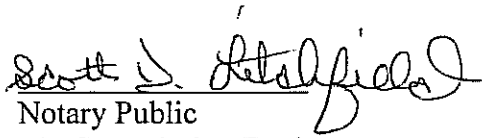
By: 

 Michael Ray, President

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me, this 29th day of March, 2011, by Michael Ray, in his capacity as the President of Astro Tel, Inc.
 He is personally known to me.


 Notary Public
 My Commission Expires:



SCOTT D. LITCHFIELD
 MY COMMISSION # DD 900883
 EXPIRES: June 21, 2013
 Bonded Thru Budget Notary Services

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