

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

AT&T Corp.,)	
)	
Plaintiff,)	
)	
v.)	
)	
Superior Telephone Cooperative; The)	No. _____
Farmers Telephone Company of Riceville,)	
Iowa; Interstate 35 Telephone Company)	
d/b/a Interstate Communications Company;)	
Great Lakes Communication Corp.;)	
Aventure Communication Technology,)	
LLC; Futurephone.com LLC; Future Fone)	
Services, Inc.; Free Call Planet LLC; Does)	
1-10 and Roes 1-10,)	
)	
Defendants.)	
)	

COMPLAINT

AT&T Corp. (“AT&T”), by and through its attorneys, for its complaint against defendants Superior Telephone Cooperative (“Superior”), The Farmers Telephone Company of Riceville, Iowa (“Farmers-Riceville”), Interstate 35 Telephone Company, d/b/a Interstate Communications Company) (“Interstate”), Great Lakes Communication Corp. (“Great Lakes”), Aventure Communication Technology, LLC (“Aventure”), Futurephone.com LLC (“Futurephone”), Future Fone Services, Inc. (“Future Fone”), Free Call Planet LLC (“Free Call Planet”), Does 1-10 and Roes 1-10 (collectively, “Defendants”), alleges as follows:

INTRODUCTION

1. By this action, AT&T seeks to stop deceitful and unlawful schemes through which AT&T unlawfully is billed exorbitant fees for call termination services that are not provided. Defendants’ schemes violate federal communications laws and regulations, the

federal and state tariffs that govern Defendants' terminating access services, and applicable state law.

2. Defendants in this action fall into two categories. The first category consists of defendants Superior, Farmers-Riceville, Interstate, Great Lakes, Aventure and Does 1-10 (collectively, "LEC Defendants"), each of which is a small local telephone company, also called a local exchange carrier or "LEC," operating predominately in rural areas of Iowa. The second category consists of defendants Futurephone, Future Fone, Free Call Planet and Roes 1-10 (collectively, "Website Defendants"), each of which operates an Internet website and advertises the purportedly "free" international voice telephone calls that are the subject of this Complaint.¹

3. By way of example, as described below, one aspect of the unlawful conduct of defendants Superior and Futurephone is representative of the most widespread of these unlawful schemes. The other LEC Defendants and Website Defendants are engaged in materially indistinguishable conduct.

4. Defendant Superior is a small local telephone company that operates in Superior, Iowa, a rural community in Dickinson County, with a 2000 Census population of 142 people living in 57 households.

5. To deliver long-distance calls that terminate at the premises of residents of Superior, AT&T and other telephone companies rely upon Superior's local telephone network.

¹ AT&T includes Does 1-10 and Roes 1-10 as Defendants because AT&T believes that additional entities also may be engaged in the schemes described herein. AT&T will name as a Defendant any such entity as soon as it can be identified (via discovery or otherwise).

Specifically, to terminate such calls, long-distance carriers typically purchase “switched access” call termination service from Superior.

6. The switched access rates that Superior charges for the use of its local wireline network to terminate calls made to Superior residents are among the highest in the country. Even so, given the small population of Superior, Iowa, Superior’s bills to AT&T for both terminating access charges associated with calls made by AT&T long distance customers to Superior residents and originating access charges associated with calls from Superior residents that are AT&T long distance customers have historically averaged, in total, less than two *thousand* dollars each month.

7. Beginning in mid-2006, Superior’s bills to AT&T for access services suddenly skyrocketed and now exceed two *million* dollars each month. These increases are not the product of any sudden growth in the population of Superior, Iowa, or increased telephone usage by Superior’s residents. Instead, these increases reflect illegal “traffic pumping” schemes designed to generate or divert millions of telephone calls through Superior, Iowa for the purpose of inflating Defendant Superior’s access bills.

8. Defendant Futurephone advertises “free” international calls on its website and elsewhere and identifies to prospective customers “Iowa-based” telephone numbers that it obtains from Superior and other LEC Defendants.² These phone numbers connect the caller to an international “gateway,” which is connected to (and, upon information and belief, collocated with) Superior’s local switch. When an international caller dials the advertised Iowa number, the call is routed through the “gateway” which prompts the international caller to enter the

² <http://www.futurephone.com/> (last visited Jan. 26, 2007).

international telephone number of the called party and the international voice call is thereafter routed out of Iowa and completed to the international destination.

9. The only charges paid by the international voice caller are the long distance charges, if any, that may apply as a result of the caller being located outside of the Superior, Iowa local exchange. As Futurephone advertises on its website, consumers can avoid *any* additional charges for these calls by obtaining “unlimited long distance or nationwide long distance plans [from] their cell” phone or other telecommunications service provider.³

10. This scheme has attracted significant media attention, and triggered the obvious question “What’s the catch?”⁴ The “catch” is that the “free” international calling scheme can only exist if Superior and Futurephone can require AT&T and other long distance carriers to fund it through terminating access charges for international voice calls that Superior does not, in fact, terminate.

11. Defendants’ scheme is unlawful on several grounds. First, Superior has billed AT&T for “terminating access services,” but has not provided AT&T with terminating access services in connection with these international voice calls.

12. Under the Communications Act, 47 U.S.C. § 151 *et seq.* and regulations of the Federal Communications Commission (“FCC”), “access services” – which are also known as “exchange access” – are defined as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C.

³ <http://www.futurephone.com/faq.html> (last visited Jan. 26, 2007).

⁴ <http://www.futurephone.com/inthenews.html> (citing news articles on free international calling services) (last visited Jan. 26, 2007).

§ 153(16). The international voice calls at issue here do not “terminat[e]” in Superior, Iowa, but instead terminate in another country. Superior and the other LEC Defendants cannot lawfully bill AT&T for access services for terminating calls in Iowa when those calls actually terminate in international locations.

13. Although an international voice call initiated by dialing the Iowa-based number supplied by Superior may be handed off by AT&T in Iowa and received by Superior in Superior, Iowa, these intermediate steps in the call routing do not alter the fact that the call is a single international voice call. As a result, the routing of that call through Iowa is not relevant for determining where the call terminates for purposes of assessing access charges.

14. Indeed, both the FCC and the Iowa Utilities Board have expressly rejected previous attempts to treat a single voice call as two calls and to collect terminating access charges where the carrier was not actually terminating the call to the called party, but only acting as an intermediary. *See, e.g., In re Long Distance/USA, Inc.*, 10 FCC Rcd. 1634 at ¶ 15 (1995) (“from the caller’s point of view, any intermediate switching during the call is transparent. . . . [T]he user . . . intends to make a single call terminating not at a complainant’s intermediate switch, where the [first] leg of the call’s journey ends, but at the telephone number of the called party”); *In re 360 Networks (USA) Inc.*, 2006 Iowa PUC LEXIS 376 (2006) (allowing companies “that are in the middle of the transmission chain to file tariffs and collect access charges would . . . create a situation in which multiple carriers would claim access charges for the completion of a single call”). The “access service” bills that Superior and the other LEC Defendants have issued to AT&T therefore violate federal and state law.

15. Second, Iowa local carriers like Superior provide interstate access services pursuant to tariffs filed with the FCC and intrastate access services pursuant to Iowa state tariffs. The bills issued by Superior and the other LEC Defendants violate the terms of their own filed tariffs. For example, even though Superior's bills to AT&T assess charges for "switched access services," Superior's federal tariff defines "Switched Access Service" as providing a "two-point communications path between a customer designated premises and an end user's premise." The tariff further states that Superior's Switched Access Service "provides for the ability . . . to terminate calls from a customer designated premises to an end user's premises."

16. Superior does not, with respect to these international voice telephone calls, "provide for the ability . . . to terminate calls" to an "end user's premises." Superior therefore is not providing "Switched Access Service" under the terms of its federal and state tariffs with respect to these calls, and it violates federal and state law by assessing charges for the calls under those tariffs.

17. The deceptive nature of this scheme is likewise clear. On its website, Futurephone misleadingly states that it offers "free" voice calls because "[i]f we can gain your confidence in our company and services, we hope to introduce other products and services to you in the future."⁵ In truth, Defendants such as Superior have billed AT&T millions of dollars for "terminating switched access service" associated with international voice calls even though Superior and other Defendants are not providing any terminating access services to AT&T on these calls.

⁵ <http://www.futurephone.com/faq.html> (last visited Jan. 26, 2007).

18. Another website that offers an identical “free” international calling service is more candid. It acknowledges that the service is “free” not because of any desire to attract customers to other services or other similar pretexts offered by the Futurephone website, but instead because the caller’s long distance carrier (*e.g.*, AT&T) pays a “fee” (*i.e.*, terminating access charges) associated with the call:

How Are You Able to Offer Free International Calls?:

The call is routed in a way where the carrier must pay a fee. This fee is greater than what it costs us to send the call to certain areas of the world. This is the future of international calling.⁶

19. Unless these unlawful schemes are stopped, they will, indeed, be the future of international calling – at great cost to U.S. consumers. Usage of these “free” international calling schemes is growing exponentially and absent immediate action to put an end to the Defendants’ unlawful practices, U.S. long distance carriers will have to raise long distance rates to cover their increasing costs. The Defendants’ unlawful schemes thus force all Americans to subsidize the telephone bills of a minority of heavy international callers that are using Defendants’ unlawful schemes.

20. If these schemes are allowed to continue, they will also force Americans to subsidize *foreign* callers for international calls that neither originate nor terminate in the United States, but that are routed through Iowa solely to obtain funding for the schemes from U.S. long distance carriers and their customers through billing for exorbitant access charges. In fact, such traffic already is traversing AT&T’s network, and, upon information and belief, Defendant Superior has recently conspired with an Ireland-based company (that is in the business of selling franchises for international telephone calling services) to advertise free

⁶ <http://www.freecalltheworld.com/> (last visited Jan. 26, 2007).

international calling in Europe and elsewhere to callers that dial an Iowa number supplied by Superior.

21. These schemes to pump long distance traffic into rural Iowa exchanges are already causing serious network congestion that disrupts ordinary long-distance calls that have nothing to do with these schemes.

22. Finally, upon information and belief, Defendants also are engaged in other unlawful traffic-pumping schemes that are designed to inflate the amount of the LEC Defendants' interstate and intrastate access service bills to AT&T.

23. AT&T seeks restitution and damages, and declaratory rulings that the above-described schemes are unlawful, that AT&T is not required to pay the unlawful access service bills issued to it, and that no Defendant is entitled to bill AT&T for such calls in the future. AT&T also seeks an injunction against Defendants from perpetuating the schemes described herein.

JURISDICTION AND VENUE

24. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1337, and 47 U.S.C. § 207 because AT&T's claims arise under the federal Communications Act, a law of the United States. This Court has jurisdiction over AT&T's state law claims under 28 U.S.C. § 1332. In addition, this Court also has supplemental jurisdiction over the state law claims asserted in this action under 28 U.S.C. § 1367(a). Finally, this Court has jurisdiction over AT&T's requests for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

25. Venue is proper in this judicial district under 28 U.S.C. § 1391. One or more Defendants reside in this judicial district, and all defendants reside in Iowa within the meaning of 28 U.S.C. § 1391(b). Alternatively, one or more Defendants may be found in this judicial district and there is no other district in which the action otherwise may be brought.

PARTIES

26. AT&T is a New York corporation that provides communications and other services to U.S.-based and foreign-based customers and has its principal place of business in Bedminster, New Jersey. AT&T is a wholly-owned subsidiary of AT&T, Inc.

27. Superior is, upon information and belief, an Iowa local telephone company that has its principal place of business in Superior, Iowa. Upon information and belief, Superior provides local exchange and other services in and near Superior, Iowa.

28. Farmers-Riceville is, upon information and belief, an Iowa local telephone company that has its principal place of business in Nora Springs, Iowa. Upon information and belief, Farmers-Riceville provides local exchange and other services in and near Nora Springs, Iowa.

29. Great Lakes is, upon information and belief, an Iowa local telephone company that has its principal place of business in Spencer, Iowa. Upon information and belief, Great Lakes provides local exchange and other services in and near Spencer, Iowa.

30. Interstate is, upon information and belief, an Iowa local telephone company that has its principal place of business in Truro, Iowa. Upon information and belief,

Interstate provides local exchange and other services in and near Truro, St. Charles and St. Mary's, Iowa.

31. Aventure is, upon information and belief, an Iowa limited liability local telephone company that has its principal place of business in Sioux City, Iowa. Upon information and belief, Aventure provides local exchange and other services in and near western Iowa.

32. Does 1-10 are named as additional LEC Defendants because AT&T believes that additional Iowa-based local telephone companies may be participating in the illegal schemes described herein.

33. Futurephone is, upon information and belief, a Nevada limited liability company that has its principal place of business in Reno, Nevada.

34. Free Call Planet is, upon information and belief, a Nevada limited liability company that has its principal place of business in Carson City, Nevada.

35. Future Fone is, upon information and belief, a California corporation that has its principal place of business in San Diego, California.

36. Roes 1-10 are named as additional Website Defendants because AT&T believes that other web-based companies may be participating in the illegal schemes described herein and other related schemes designed to inflate the access charges billed to AT&T. In particular, AT&T has identified several website addresses that offer customers the "free" international calling scheme described herein and that list "access numbers" associated with one of the five LEC Defendants. At this time, however, AT&T cannot discern whether such websites

are associated with one of the three named Website Defendants, or are separate entities. Such website addresses are identified in footnote 10 to paragraph 49, *infra*. As further investigation and discovery reveals the identity of the entities that operate the identified website addresses, AT&T will identify additional defendants as appropriate.

BACKGROUND

37. Traditionally, telephone calls have been divided into local calls and long distance calls. Local calls are placed within a designated local calling area, sometimes called an “exchange.” An exchange is served by one or more local exchange carriers (LECs).⁷ LECs typically own wires and switches used to initiate calls from and to complete telephone calls to their customers. Thus, when a caller calls a neighbor living down the street, that call originates and terminates within the same local exchange and the caller may use local exchange service provided by the LEC serving that local calling area.

38. Domestic long distance calls are carried from one local calling area (or local exchange) to another local calling area (or local exchange) either within the same state or between different states. Long distance carriers, also known as “interexchange carriers” or “IXCs,” typically carry these types of calls from the originating exchange to the terminating exchange. Thus, when a Superior, Iowa resident calls a friend in Minneapolis, the Superior resident must use a long distance service.

⁷ There are “incumbent” local exchange carriers, which are the traditional providers of local exchange services in an area, as well as “competitive” local exchange areas, which are new entrants that offer local services in competition with incumbent LECs. Defendants Superior, Interstate and Farmers-Riceville are incumbent LECs. Defendants Great Lakes and Aventure are competitive LECs.

39. AT&T and its affiliates provide both local and long distance services. However, AT&T and its affiliates do not own local exchange facilities throughout the country. In those areas where AT&T does not operate local exchange facilities, AT&T typically uses “access services” to originate and terminate long-distance calls that are provided by LECs that operate local exchange facilities in the areas where the calls originate and terminate.

40. For example, a long distance telephone call placed from an AT&T long distance customer in Minneapolis to a resident of Des Moines, Iowa, may be routed as follows: When the caller in Minneapolis dials the phone number of the Des Moines resident, the call is first routed by a local carrier in Minneapolis from the building where the caller is located to AT&T’s long distance network, which has a “point of presence” in that local area. This LEC service is called “originating” access service, and the Minnesota LEC bills AT&T for that originating access service. AT&T then carries the call over its long distance network to an AT&T point of presence in Des Moines, Iowa. AT&T then hands the call off to a local carrier, and the call is then terminated to the Des Moines resident in the LEC’s local service area. This LEC service is called “terminating” access service, and the Des Moines LEC bills AT&T for that terminating access service.

41. The rates for these access services can vary widely. In much of the country (including AT&T’s LEC service areas), for example, interstate access charges are less than a penny per minute. In the wake of a recent rate increase, however, Defendant Superior has interstate switched access service rates that total more than 13 cents per minute. The other LEC Defendants have access service rates that range from over 4 cents per minute to just under 7 cents per minute. The LEC Defendants’ rates for terminating access services are among the highest in the country.

42. Under the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* (the “Act”), LECs typically offer interstate access services (*i.e.*, access services for the origination and termination of interstate long-distance calls) pursuant to federal tariffs filed with the FCC. LECs typically offer intrastate access services (for calls that both originate and terminate in the state) via state tariffs typically filed with state public utility commissions.

DEFENDANTS’ UNLAWFUL INTERNATIONAL CALLING SCHEME

43. Defendants’ principal scheme is simple. They advertise “free” international voice calls to anyone willing to dial an intermediate Iowa-based number. The originating callers dial an Iowa number supplied by a LEC Defendant, and then are asked to enter the international long distance number. Defendants do not assess any additional charges on the caller for the international call. Instead, Defendants fund this “free” international calling (and their own profits) by billing AT&T and other long distance carriers from 4 to more than 13 cents per minute for “terminating access services” as if the calls actually terminated to end users in Iowa, even though these international voice calls in fact terminate in foreign countries.

44. The Website Defendants’ role in the scheme is spelled out on Defendant Futurephone’s website. Futurephone’s website advertises its “free” international calling service and instructs callers on how they can make “free” international calls.⁸ Customers are directed to call an “Iowa-based” “gateway access number.” As of October 10, 2006, the “gateway access number” identified on the Futurephone website was 712-858-8883, which is a number that is associated the local exchange network of Defendant Superior.⁹ The Futurephone website

⁸ <http://www.futurephone.com/>.

informs the caller that “when the gateway answers, enter 011 then the country code and number you want to reach” and then “wait a few moments for your call to ring through and then enjoy your free call.” *Id.*

45. Ordinarily, international voice calls placed over standard long distance facilities are priced significantly higher than domestic long distance calls. However, under the Defendants’ scheme, the callers are able to make “free” international calls simply by dialing the domestic long distance number listed on the website – *i.e.*, by dialing an Iowa number.

46. Defendants do not bill callers anything for placing the international call. The caller need only pay its long distance or wireless provider the charges applicable to a domestic long distance phone call to Iowa.

47. As Futurephone’s website advertises, when callers use cellular phones that have no additional charges for long distance calls or if they subscribe to a flat-rate long distance plan, the caller may incur *no* costs at all to make these international voice calls.

48. By way of example, and on information and belief, an international voice call by an AT&T long distance customer from Los Angeles to Shanghai, China routed pursuant to this scheme would travel the following path. An AT&T long distance customer in Los Angeles, California would dial the Iowa number advertised on the Internet by Futurephone. The

⁹ The “gateway access number” listed on the Futurephone website, and the LEC Defendant providing it, has changed over time. On January 26, 2007, the listed “gateway access numbers” included 712-945-1112, which is a number associated with LEC Defendant Aventure, and 7-12-338-1200, which is a number associated with LEC Defendant Great Lakes. On that same date, allfreecalls.net, which upon information and belief is operated by Cubic Telecom, a franchisor of international telephone services located in Ireland, advertised an Iowa number supplied by Defendant Superior (712-858-8094).

LEC serving the Los Angeles area would carry the call from the customer's home to the LEC switch, which routes the call to AT&T's long distance point of presence in Los Angeles. AT&T would incur originating access charges for that portion of the call. AT&T then would carry the call to its point of presence in Iowa, which connects (directly or indirectly) to the network of a LEC Defendant. The LEC Defendant then would route the call to the international gateway, the customer would enter the desired Shanghai number, and the call would be routed to and terminated in Shanghai through an arrangement with another carrier or carriers. Finally, the LEC Defendant would bill AT&T terminating access charges as if the call had been terminated to a customer in the LEC Defendant's local service area in Iowa.

49. The LEC Defendants treat these international voice calls as if they terminated at the Futurephone gateway in Iowa (rather than in a foreign country) and thus they charge AT&T terminating access services for these calls. The more callers that use the Defendants' scheme, and the longer they talk, the larger the terminating access fees that the LEC Defendants bill to AT&T for these voice calls.¹⁰

50. The effect of this scheme is illustrated by the interstate access bills issued to AT&T by Defendant Superior. Prior to mid 2006 – when AT&T believes that Superior first

¹⁰ AT&T believes that each of the LEC Defendants has entered into the arrangement described herein with one or more of the Website Defendants. The list below identifies the Website Defendant or Defendants that AT&T believes are associated with each LEC Defendant. Where AT&T was able to identify a named Website Defendant as the entity operating a "free international calling" website, AT&T has named that Defendant. Where AT&T was unable to identify the operator of a website, AT&T listed only the website address. The list is as follows: (i) Superior (Futurephone, freecalltheworld.com, callsforfree.com, freecallstochina.com, allfreecalls.net); (ii) Interstate (Free Call Planet, callchinaforfree.com, asia-works.com); (iii) Farmers-Riceville (callchinaforfree.com); (iv) Great Lakes (Free Call Planet, asia-works.com, freecallstomexico.com, freecallstogermany.com, freecallstochina.com, freecallstoargentina.com, freecallstouk.com, callchinaforfree.com, freecalltheworld.com); and (v) Aventure (Futurephone, Free Call Planet, callchinaforfree.com, intl4free.com, ophone.net).

began participating in the scheme – Superior issued AT&T monthly access charge bills that averaged less than \$2,000. Since this scheme began, however, Superior’s access charge bills have ballooned and now exceed \$2 million each month.¹¹

51. Defendants’ free international call scheme is patently unlawful. It rests on the ability of the LEC Defendants to collect massive terminating access charges from AT&T and other long distance providers even though the LEC Defendants are not providing terminating access service for these calls.

52. The Act defines exchange access service as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C. § 153(16). Similarly, the FCC’s regulations define “access service” as including “services and facilities provided for the origination or termination of any interstate or foreign communication.” 47 C.F.R. § 69.2. Under these definitions, a LEC Defendant is not providing “exchange access” or “access services” in Iowa for these international voice calls because these calls terminate not in Iowa, but in foreign countries.

53. The FCC has ruled that a single voice communication “extends from the inception of a call to its completion, regardless of any intermediate facilities.” *In re Long Distance/USA, Inc.*, 10 FCC Rcd 1634, ¶ 13 (1995). Here, any intermediate steps that merely route an international voice call through Iowa so that it ultimately will be terminated at a foreign

¹¹ The following hypothetical underscores the impropriety of Defendants’ scheme and its impact on AT&T. If each of the 142 Superior, Iowa residents had his or her own phone line and was on the receiving end of a long distance telephone call from an AT&T customer for twenty-four hours per day for all 31 days in December 2006, Superior’s access bill to AT&T (at the exorbitant rate of 13.5 cents per minute) would have totaled about \$855,000 – substantially less than Superior’s actual bill to AT&T in December 2006.

destination do not transform that *single* voice call into *two* separate calls such that the LEC Defendants would be permitted to charge AT&T for terminating the “first” call. *See id.* (“Applying this principle to the case before us, we conclude that the configuration is a single interstate communication that does not become two communications because it passes through intermediate switching facilities.”). Indeed, the FCC has rejected the argument that requiring a caller to enter a “second number” “when the call reaches a [carrier’s] intermediate switch” transforms a single call into two separate calls because (i) the carrier’s service “convey[s] a single communication from the caller to the called party” and (ii) the caller “intends to make a single call terminating not at a [carrier’s] intermediate switch . . . but at the telephone line of the called party.” *Id.* ¶¶ 12, 15; *accord Teleconnect Co. v. Bell Tel. Co. of Pa.*, Mem. Op. & Order, 10 FCC Rcd. 1626, ¶ 14 (1995) (“from the caller’s point of view, any intermediate switching during the call is . . . transparent”).¹²

54. LECs may not collect terminating access charges for terminating access services they do not provide. *See, e.g., In the Matter of Access Billing Requirements for Joint Service Provision*, 1988 FCC Lexis 2006, ¶ 87 (Oct. 4, 1988) (holding that intermediate carrier cannot bill for components of terminating access service that it has not provided); *In re 360 Networks (USA) Inc.*, 2006 Iowa PUC LEXIS 376, *3 (Aug. 30, 2006) (rejecting effort by “wholesale companies that are in the middle of the transmission chain to file tariffs and collect access charges”).

¹² *See also, e.g., Southwestern Bell Telephone Co.*, 3 FCC Rcd. 2339, ¶¶ 25-28 (1988) (“[s]witching . . . is an intermediate step in a single end-to-end communication”); *Time Machine, Inc.*, 11 FCC Rcd. 1186 (1995) (“calls involving 800 switching should be treated for jurisdictional purposes as single, end-to-end communications”).

55. The routing of these international voice calls through Iowa does not alter the fact that each call originates in the United States and terminates at some international location. As a consequence, no “terminating access services” are provided to AT&T by the LEC Defendants in connection with these international voice calls. Defendants’ scheme to bill AT&T for such charges is thus unlawful.

56. Defendants’ scheme to bill AT&T for terminating access services also violates the terms of the federal and state tariffs by which the LEC Defendants offer access service.

57. For example, Superior’s federal tariff defines “Switched Access Service” as providing a “two-point communications path between a customer designated premises and an end user’s premises.”¹³ The tariff further states that its Switched Access Service “provides for the ability . . . to terminate calls from a customer designated premises to an end user’s premises.”¹⁴

58. As explained above, these international voice calls do not terminate at the “gateway” in Superior Iowa. Accordingly, the service that Superior provides to AT&T does not “provide for the ability . . . to terminate calls.” Also, the “gateway” is not an “end user” of telecommunications services, and thus Superior is not connecting AT&T’s network “to an end user’s premises.” The service supplied by Superior does not constitute Switched Access Service

¹³ Superior’s access services tariff incorporates the definitions used in the tariff filed by the National Exchange Carrier Association (“NECA”), which is an association of incumbent local exchange carriers. *See* Superior Tel Coop., Tariff F.C.C. No. 1, Sections 1.3 and 6 (eff. July 1, 2006) (incorporating by reference NECA Access Tariff F.C.C. No. 5, Section 6.1).

¹⁴ *Id.* (emphasis added).

under the terms of its tariffs, and therefore Superior cannot lawfully bill AT&T for Switched Access Service under its tariffs.

59. Each of the tariffs filed by the other LEC Defendants similarly defines terminating access services as allowing for the long distance carrier customer to terminate its calls from its point of presence to the end-user.¹⁵ Accordingly, the LEC Defendants do not provide terminating access services and therefore cannot bill AT&T for terminating access charges in connection with the international voice calls made using an Iowa number advertised by a Website Defendant.

60. The practices of one or more of the LEC Defendants violate federal law in an additional respect. In blatant violation of 47 U.S.C. § 201(b), which prohibits unjust and unreasonable practices in the provision of interstate telecommunications services, one or more the LEC Defendants, through arrangements with an intermediary carrier that is owned by the LEC Defendants, among others, have conspired to shift the locations where the LEC Defendants interconnect with the intermediary carrier (“network interconnection points”) in order to grossly inflate the “transport” component of the originating and terminating access charges they assess.

¹⁵ *See, e.g.*, Kiesling Associates LLP (filing tariff on behalf of Farmers-Riceville and Interstate), Tariff F.C.C. No. 1, Sections 1.3 and 6 (incorporating by reference NECA Access Tariff F.C.C. No. 5, Section 6.1); Aventure Communication Technology, LLC, Tariff F.C.C. No. 1, Section 3.1.1; Great Lakes Communication Corp., Tariff F.C.C. No. 1, Section 6.1; Iowa Telecommunications Association (“ITA”) (filing tariff on behalf of Aventure, Superior and I-35), Access Service Tariff No. 1, Section 1.1 (concurring in terms of NECA Tariff F.C.C. No. 5 (with exceptions not relevant here); Great Lakes Communication Corp., Tariff No. 2 (IUB), Section 1 (concurring in terms of ITA Access Tariff No. 1 (with exceptions not relevant here). Aventure’s federal tariff first took effect on December 20, 2006. As a result, Aventure has no basis to bill AT&T for access services prior to December 20, 2006.

61. Defendant Superior, for example, has established a new interconnection point with an intermediary carrier that is more than one hundred miles from Superior, Iowa, thereby inflating the transport component of the access charges it bills AT&T by *several hundred* percent. Upon information and belief, Superior has constructed no new facilities and the actual physical routing of calls from AT&T to Superior remains unchanged; yet on the basis of its paper change in interconnection points, Superior claims that it is entitled to several cents more for each minute of traffic routed through the international gateway.

62. Specifically, upon information and belief, Superior has inflated its access charge billings by changing its point of interconnection with Iowa Network Services (“INS”) from Spencer, Iowa to Des Moines, Iowa. INS is a consortium developed (and owned) by rural Iowa LECs that was justified as a way to more easily and efficiently complete long-distance calls. Typically, a long distance call enters the INS system and then is routed across INS’s fiber ring network to the closest interconnection point on that network to the LEC to which the call is being routed. INS charges long distance carriers a flat rate (of less than a penny a minute) for the transport it provides between the long distance carrier and the LEC. The LEC then charges the long distance carrier for any transport it legitimately provides between its point of interconnection with INS and its own local switch.

63. Until recently, Superior interconnected with INS at Spencer, Iowa, which required Superior to transport long-distance calls approximately 23 miles (from the INS interconnection point at Spencer, Iowa to Superior’s switch in Superior, Iowa).

64. Upon information and belief, as of July 2006, Superior changed its point of interconnection with INS to Des Moines, Iowa, which, based upon Superior’s access bills, is

about 143 miles from Superior's switch in Superior, Iowa. In December 2006 alone, this unjust and unreasonable practice – which serves no purpose other than to inflate access charges – increased Superior's access bill to AT&T by almost \$1 million dollars.

COUNT I

(LEC Defendants - Violation of Federal Tariffs and 47 U.S.C. § 203(c))

65. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 64 of its Complaint as if set forth fully herein.

66. Section 203(c) of the Communications Act provides, in relevant part, that “[n]o carrier . . . shall engage or participate in [interstate or foreign wire or radio] communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder” and that “no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, . . . than the charges specified in the schedule then in effect . . .” *Id.*

67. The LEC Defendants' federal access schedules (*i.e.*, tariffs) set forth the rates for and terms and conditions under which they assess interstate access services. The LEC Defendants' federal access tariffs define access services as providing the ability to terminate long distance calls from a long distance carrier's point of presence to an end-user, and those tariffs thus provide for the assessment of terminating access charges for long-distance calls that actually terminate in the LEC Defendants' local exchanges in Iowa.

68. The international voice calls at issue do not fall within the scope of the LEC Defendants' federal access tariffs because those calls do not terminate in Iowa but at the premises of the called party in the foreign country.

69. The LEC Defendants' federal access tariffs do not permit them to bill carriers for terminating access services that they did not provide.

70. By charging, demanding, and collecting compensation under rates and conditions which are not set forth in their filed tariffs, the LEC Defendants violated their federal access tariffs and the Act. *See, e.g.*, 47 U.S.C. § 203.

71. Defendant Aventure's bills also violate its federal tariff because those bills seek recovery for services allegedly provided before Aventure's federal tariff went into effect on December 20, 2006.

72. AT&T has been damaged by the LEC Defendants' violation of their federal access tariffs, and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT II

(LEC Defendants – Unreasonable Practice in Violation of 47 U.S.C. § 201(b))

73. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 72 of the Complaint as if set forth fully herein.

74. Under the Communications Act and the FCC's rules, access services are provided "for the origination or termination of an interstate or foreign communication." 47 C.F.R. § 69.2; *see* 47 U.S.C. § 153(16).

75. The international voice calls at issue do not terminate at the Iowa gateway located in a LEC Defendant's service territory.

76. Because each of these calls is a single international call, with no endpoints in Iowa, that does not terminate at the gateway in a LEC Defendant's service territory, the LEC Defendants do not provide AT&T with terminating access service in connection with these international voice calls.

77. Even though the LEC Defendants are not providing AT&T with terminating access services in connection with these calls, the LEC Defendants are billing AT&T for terminating access service in connection with these voice calls.

78. Billing for services that a carrier has not provided, and, specifically, billing for terminating access charges for international voice calls for which the LEC Defendants provide only intermediate routing, constitutes an unjust and unreasonable practice that is unlawful under Section 201(b) of the Act.

79. Upon information and belief, one or more LEC Defendants have also engaged in unjust and unreasonable practices in violation of § 201(b) by shifting their interconnection points through sham arrangements that serve no legitimate business purpose and serve only to inflate the transport component of the access charges that these LEC Defendants bill to AT&T.

80. Upon information and belief, the LEC Defendants are involved in other unlawful schemes and sham arrangements that are also designed to inflate their monthly access charges to AT&T.

81. AT&T has been damaged by the LEC Defendants' unlawful practices, and prays for damages in an amount to be determined at trial, interest, attorneys' fees, court

costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT III

(LEC Defendants - Violation of State Tariffs)

82. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 81 of the Complaint as if set forth fully herein.

83. The intrastate access tariffs of the LEC Defendants set forth the rates, terms and conditions of their provision of intrastate access services.

84. The LEC Defendants' Iowa tariffs define access services as providing the ability to terminate long distance calls from a long distance carrier's point of presence to an end-user.

85. The international voice calls at issue here do not fall within the scope of the LEC Defendants' state access tariffs because those calls do not terminate in Iowa but instead terminate at the premises of the called party in the foreign country.

86. The LEC Defendants' state access tariffs do not permit them to bill for terminating access services they did not provide.

87. By charging, demanding, and collecting compensation under rates and conditions which are not set forth in their filed tariffs, the LEC Defendants violated their state access tariffs and Iowa law.

88. AT&T has been damaged by the LEC Defendants' violation of their state access tariffs, and prays for damages in an amount to be determined at trial, interest, attorneys'

fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT IV

(All Defendants - Unjust Enrichment)

89. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 88 of the Complaint as if set forth fully herein.

90. On information and belief, the LEC Defendants and the Website Defendants have entered into a scheme or schemes whereby the LEC Defendants (i) bill AT&T for interstate and intrastate terminating access services for the international voice calls even though the LEC Defendants do not provide AT&T with terminating access services; and (ii) bill AT&T for interstate and intrastate terminating access charges with regard to other calls for which imposition of such access charges is unjust, unreasonable or unlawful.

91. Upon information and belief, the LEC Defendants share with the Website Defendants the revenues from the access charges that they wrongfully billed to AT&T.

92. By paying access charges to the LEC Defendants, a portion of which are then paid to the Website Defendants, AT&T has conferred a benefit upon both the LEC Defendants and the Website Defendants.

93. Retention of that benefit by the LEC Defendants or the Website Defendants would be unjust because, *inter alia*, AT&T did not receive the access services for which it is being billed.

94. AT&T has been damaged by the actions of the LEC Defendants and the Website Defendants, and prays for damages and/or restitution in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT V

(LEC Defendants Farmers-Riceville, Great Lakes and Interstate – Fraudulent and Negligent Misrepresentation)

95. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 94 of the Complaint as if set forth fully herein.

96. The LEC Defendants, including Farmers-Riceville, Great Lakes and Interstate, issued to AT&T bills for interstate and intrastate access services purporting to inform AT&T of its access charge liability in each of those months.

97. The access bills contained false information because they included charges for interstate and intrastate terminating access charges on international voice calls that did not terminate in Iowa and for which LEC Defendants Farmers-Riceville, Great Lakes and Interstate provided no terminating access services to AT&T.

98. Specifically, the bills issued by Farmers-Riceville dated August 1, 2006 and September 1, 2006 contained access charges on at least 74,102 minutes and 179,840 minutes, respectively, for international voice calls that did not terminate in Iowa.

99. The bills issued by Great Lakes dated August 1, 2006, September 1, 2006 and October 1, 2006 contained access charges on at least 176,915 minutes, 261,776 minutes and 183,075 minutes, respectively, for international voice calls that did not terminate in Iowa.

100. The bills issued by Interstate dated August 1, 2006, September 1, 2006 and October 1, 2006 contained access charges on at least 133 minutes, 121,595 minutes and 386,319 minutes, respectively, for international voice calls that did not terminate in Iowa.

101. LEC Defendants Farmers-Riceville, Great Lakes and Interstate knew, or should have known, that they did not provide terminating access services on the international voice calls that did not terminate in Iowa.

102. LEC Defendants Farmers-Riceville, Great Lakes and Interstate knew, or should have known, that AT&T would rely upon the bills they submitted for access charges.

103. AT&T justifiably relied upon the false information presented in the above-identified access charge bills from LEC Defendants Farmers-Riceville, Great Lakes and Interstate that AT&T paid.

104. AT&T incurred damages as a result of its justifiable reliance on statements by LEC Defendants Farmers-Riceville, Great Lakes and Interstate that those LEC Defendants knew or should have known were false.

105. AT&T prays for damages from LEC Defendants Farmers-Riceville, Great Lakes and Interstate in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT VI

(All Defendants - Civil Conspiracy)

106. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 105 of the Complaint as if set forth fully herein.

107. Upon information and belief, each of the LEC Defendants and one or more of the Website Defendants agreed to an illicit arrangement or arrangements as follows: (i) the Website Defendant would place a “gateway” in the LEC Defendant’s service territory, (ii) and LEC Defendant would assign a telephone number to the gateway; (iii) the LEC Defendant would bill AT&T for terminating access charges on long distance calls made by users of the international voice calling service that are routed through the Iowa gateway; and (iv) the LEC Defendant would share with the Website Defendant a portion of the monies billed to or received from AT&T.

108. As explained above, these international voice calls do not terminate in Iowa. Rather, these calls continue on to the premises of the called party in the foreign country. The LEC Defendants’ conduct in billing AT&T for terminating access services for these calls violates the terms of the LEC Defendants’ federal and Iowa access tariffs, federal law and state law.

109. The agreement or agreements reached between each LEC Defendant and one or more of the Website Defendants thus constitute an agreement or agreements to take unlawful actions. Upon information and belief, the Website Defendants have reached agreements with the corresponding LEC Defendants as set forth in footnote 10 to paragraph 49.

110. The unlawful actions taken during and in furtherance of the unlawful agreements between each LEC Defendant and one or more of the Website Defendants have injured AT&T.

111. The agreement between each LEC Defendant and one or more of the Website Defendants is a civil conspiracy or conspiracies, and the LEC Defendants and the Website Defendants are liable for the harm caused by the unlawful acts taken in furtherance of the conspiracy.

112. AT&T prays for damages against the LEC Defendants and Website Defendants in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief and such other relief as the Court may deem just and reasonable.

COUNT VII

(LEC Defendants – Declaratory Ruling)

113. AT&T repeats and re-alleges each and every allegation contained in paragraphs 1 through 112 of the Complaint as if set forth fully herein.

114. The bills rendered by LEC Defendants to AT&T contain charges that purport to assess AT&T with terminating access charges for the international voice calls that the LEC Defendants did not terminate.

115. The interstate and intrastate access charges that appear in the bills rendered by the LEC Defendants to AT&T contain charges for other calls for which imposition of access charges is unlawful.

116. The inclusion of these access charges in bills submitted to AT&T violates the LEC Defendants' federal and state access tariffs, the Communications Act, the FCC's implementing rules and state law.

117. AT&T is entitled to judgment under 28 U.S.C. § 2201(a) declaring that (i) the LEC Defendants are not providing terminating access services to AT&T in connection with the international voice calls, (ii) the interstate and intrastate access charges that appear in the bills rendered by the LEC Defendants to AT&T violate the LEC Defendants' interstate and intrastate tariffs, the Communications Act and the FCC's implementing rules, and Iowa law, and (iii) AT&T is not obliged to pay the interstate or intrastate access charges that appear in the bills rendered by the LEC Defendants to AT&T that contain charges for international voice calls or other calls made using the service of a Website Defendant.

WHEREFORE, for the reasons stated above, AT&T respectfully requests that judgment be entered for AT&T on each and all of its claims, together with appropriate damages, declaratory relief, injunctive relief, reasonable costs and fees, including attorneys' fees and expert fees, and interest together with such other and further relief as the Court may deem just and equitable under the circumstances.

Date: January 29, 2007

Respectfully submitted,

BELIN LAMSON McCORMICK ZUMBACH
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By: /s/
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