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SERVICES, INC, and VERIZON BUSINESS GLOBAL  
8 LLC and Defendant/Counterclaim Plaintiff VERIZON  
GLOBAL NETWORKS, INC  
9

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
12

13 NORTH COUNTY  
COMMUNICATIONS  
14 CORPORATION, a California  
corporation,

15 Plaintiff,

16 vs.

17 VERIZON SELECT SERVICES, INC.,  
18 a Delaware corporation; VERIZON  
BUSINESS NETWORK SERVICES,  
19 INC., a Delaware corporation;  
VERIZON GLOBAL NETWORKS,  
20 INC., a Delaware corporation; and  
VERIZON BUSINESS GLOBAL LLC  
21 dba VERIZON BUSINESS, MCI,  
22 SKYTEL, UUNET, TTI NATIONAL,  
INTERMEDIA, and TELECOM USA,  
23 a Delaware limited liability company,

24 Defendants.

25 VERIZON GLOBAL NETWORKS,  
INC., a Delaware corporation,

26 Counterclaimant,

27 vs.

28 NORTH COUNTY

CASE NO. 08 CV 1518 BEN BLM

**COUNTERCLAIM**

**Jury Trial Demanded**

Judge Roger T. Benitez  
Courtroom 3

1 COMMUNICATIONS  
2 CORPORATION, a California  
corporation,

3 Counter-Defendant

4 Verizon Global Networks, Inc. (“Verizon”), by and through its attorneys, for  
5 its counterclaims against Plaintiff/Counterclaim Defendant North County  
6 Communications Corporation (“NCC”), alleges as follows:

7 **NATURE OF THE ACTION**

8 1. In this action, Verizon seeks to recover money that NCC collected  
9 from Verizon purportedly for interstate and intrastate telecommunications services,  
10 but which Verizon did not owe and NCC had no right to collect.

11 2. NCC is a competitive local exchange carrier (“CLEC”) that provides  
12 local telephone service in several states, subject to federal and state regulation. In  
13 addition to serving local end-users, local exchange carriers also generally offer  
14 switched access service to long-distance telephone companies (also known as  
15 “interexchange carriers” or “IXCs”) such as Verizon. Switched access service  
16 allows an IXC to use the CLEC’s local network equipment and facilities to connect  
17 a long-distance call to the CLEC’s end-user.

18 3. For several years, NCC has billed Verizon for purported interstate  
19 switched access service pursuant to its federal tariffs. NCC’s federal tariff lacks a  
20 valid rate for interstate switched access service. The tariff contains a rate *only* for  
21 the period from June 20, 2001 through June 20, 2004, except for a limited area in  
22 which NCC’s competitor, the incumbent local exchange carrier Leaf River  
23 Telephone Company, also provides service. Outside Leaf River’s territory, the  
24 tariff contains *no* rate for calls after June 20, 2004, including the calls in dispute in  
25 this case. Billing under a tariff in the absence of a valid tariffed rate constitutes an  
26 unjust and unreasonable practice under Section 201 of the Communications Act.  
27 Moreover, NCC’s rate for service *within* Leaf River’s territory exceeds the  
28

1 maximum permissible rate under federal law, which also constitutes an unjust and  
2 unreasonable practice under Section 201 of the Communications Act. Verizon is  
3 entitled to recover the money that NCC has wrongfully collected.

4 4. In addition, NCC's federal and state tariffs do not even apply to the  
5 traffic at issue in this case. On information and belief, most or all of NCC's  
6 switched access traffic stems from agreements that NCC has entered with chat-line  
7 providers and/or other conference-calling-service providers (collectively, "chat-line  
8 providers"). The purpose of these arrangements is to artificially stimulate the  
9 volume of calls to the NCC network, a practice known as "traffic-pumping." NCC  
10 represented that Verizon owed NCC switched access charges for calls generated by  
11 these traffic-pumping agreements. In fact, for several independent reasons,  
12 delivering calls to chat-line providers does not constitute "switched access service"  
13 as that term is defined in NCC's federal and state tariffs. In the absence of a tariff  
14 or contractual obligation to pay, Verizon did not, and does not, owe NCC switched  
15 access charges for these calls.

16 5. On information and belief, NCC's activities also violate an agreement  
17 that NCC entered into with an affiliate of Verizon. Because Verizon is an intended  
18 beneficiary of this agreement, it is entitled to damages stemming from NCC's  
19 breach of its contractual obligations.

20 6. For these and other reasons, Verizon seeks to recover, under federal  
21 and state law, the amounts that it paid but did not owe NCC, its attorney's fees,  
22 declaratory relief and any other relief to which it is entitled at law.

### 23 **THE PARTIES**

24 7. Counterclaim Plaintiff Verizon Global Networks, Inc. is a Delaware  
25 corporation with its primary place of business in the Commonwealth of Virginia.

26 8. Counterclaim Defendant North County Communications Corporation  
27 is a California corporation that has its principal place of business in California.

### 28 **JURISDICTION AND VENUE**



1 carriers (“ILECs”), which prior to 1996 generally enjoyed regional monopolies over  
2 local telephone service. Generally, both CLECs and ILECs provide local telephone  
3 service to end user subscribers. They also provide “switched access service” to  
4 IXCs such as Verizon, which allows IXCs to use a local exchange carrier’s  
5 facilities to connect calls to the local carrier’s end user subscribers.

6 15. CLECs may bill IXCs for switched access service in one of two ways.  
7 First, they may negotiate individual contracts with IXCs. Alternatively, they may  
8 file tariffs with the FCC or state public utility commissions. The tariff defines the  
9 CLEC’s switched access service and lists the terms, conditions, and rates for that  
10 service.

11 16. FCC regulations limit the rates that a CLEC may charge for tariffed  
12 interstate switched access service. As relevant here, that rate can be no greater than  
13 the rate charged by the competing ILEC in the territory where the CLEC operates.  
14 The FCC has also explained that absent a contract, tariff, or FCC rule creating a  
15 duty to pay, a carrier may not seek compensation from another carrier for interstate  
16 telecommunications services.

17 17. Verizon has not entered a contract with NCC regarding the provision  
18 of interstate switched access service. Rather, NCC has billed Verizon for purported  
19 interstate switched access service pursuant to the terms of its federal tariff.

20 18. Similarly, Verizon has not entered a contract with NCC regarding the  
21 provision of intrastate switched access service. In most states where NCC operates,  
22 NCC has purported to bill Verizon for intrastate switched access service pursuant to  
23 tariffs filed with state public utilities commissions. In the absence of a contract or  
24 applicable tariff, Verizon has no duty to pay NCC for intrastate switched access  
25 service.

26 **B. NCC Lacks a Valid Tariffed Rate for Interstate Switched Access Service**

27 19. NCC’s federal tariff states that “the Company only provides such  
28 Switched Access Services for which it has established rates as specified in this

1 tariff.”

2 20. NCC’s federal tariff lacks an established rate for interstate switched  
3 access service provided outside of the territory served by Leaf River Telephone  
4 Company, a rural ILEC in Illinois. The tariff contains a schedule of switched  
5 access rates applicable from June 20, 2001 through June 20, 2004. The tariff does  
6 not contain a rate after that date for switched access service outside the Leaf River  
7 territory. Therefore under the terms of NCC’s tariff, NCC does not provide  
8 interstate switched access services outside the Leaf River territory.

9 21. For service within the Leaf River territory, NCC’s tariffed rate exceeds  
10 the maximum rate permitted under the FCC’s benchmarking rules. NCC’s tariff  
11 claims a rate of \$0.06894/minute for interstate switched access service in the Leaf  
12 River territory. But under the FCC’s benchmarking rules, NCC’s rate cannot  
13 exceed the rate charged by the competing ILEC, in this case Leaf River Telephone  
14 Company.

15 22. Since 2005, Leaf River Telephone Company has participated in the  
16 common federal tariff filed by the National Exchange Carrier Association  
17 (“NECA”). Under the NECA tariff, Leaf River Telephone Company currently  
18 charges \$0.02301/minute for interstate switched access service.

19 23. In 2006, Verizon disputed NCC’s rate within the Leaf River territory  
20 because it exceeded the benchmark set by the competing ILEC. In November 2006  
21 NCC agreed to lower its rate to Leaf River’s benchmark on a prospective basis,  
22 without admitting or denying the validity of Verizon’s dispute. NCC did not  
23 reimburse Verizon for overcharges that Verizon sustained before NCC brought its  
24 rate into compliance.

25 24. A federally regulated carrier is subject to refund liability for charges  
26 that violate FCC rules, even though those charges are contained in a filed tariff,  
27 unless that tariff has been “deemed lawful” under 47 U.S.C. § 204(a)(3) or  
28 otherwise ruled lawful by the FCC. To be deemed lawful, a tariff must be filed

1 with at least seven days' notice for rate decreases or fifteen days' notice for rate  
2 increases. NCC's current interstate switched access rates were filed on January 14,  
3 2003 and became effective on January 17, 2003. As a result, the tariff is not  
4 "deemed lawful." Moreover, the FCC has never adjudicated NCC's tariff to be  
5 lawful. Verizon is therefore entitled to a refund of the overcharged amounts.

6 25. Because NCC's tariff lacks an effective rate outside the Leaf River  
7 territory, Verizon is entitled to recover all amounts purportedly collected for such  
8 service. In addition, because NCC's Leaf River rate exceeds the appropriate  
9 benchmark and has been neither deemed nor ruled lawful, Verizon is entitled to a  
10 refund of the amount charged for service within the Leaf River territory in excess of  
11 the benchmarked rate.

### 12 **C. NCC's Federal and State Tariffs Do Not Apply To Traffic-Pumping** 13 **Calls**

14 26. NCC cannot charge Verizon for the calls involved in this dispute for  
15 another reason: most or all of NCC's switched access traffic stems from calls to  
16 chat-line providers. Completion of such calls does not constitute "switched access  
17 service" as that term is defined in NCC's federal and state tariffs.

#### 18 **1. NCC's Traffic-Pumping Arrangements**

19 27. As the FCC's Enforcement Bureau recently noted, "[m]ost, if not all,  
20 of North County's end-user customers are either chat-line providers or  
21 telemarketers." *North County Commc'ns Corp. v. MetroPCS Cal. LLC*, File No.  
22 EB-06-MD-007, 2009 WL 818927, at ¶ 3 (released March 30, 2009). On  
23 information and belief, NCC has contracted with chat-line providers to artificially  
24 stimulate the volume of traffic delivered to the NCC network. Through these  
25 arrangements, NCC provides these companies with telephone numbers associated  
26 with NCC's network. These companies then provide free or heavily discounted  
27 services to members of the public who call these lines.

28 28. When an end-user calls a chat-line number from a location outside

1 NCC's network, the end user's IXC must carry the call to the NCC network. At  
2 this point the IXC hands off the call to NCC, which completes the connection to the  
3 chat-line provider.

4 29. NCC then bills the IXC, purportedly for terminating switched access  
5 service. IXCs generally pay NCC's invoices because they believe that the services  
6 described in the bills are tariffed switched access services for which they must pay  
7 under federal and state laws. Verizon held this belief when it paid the NCC  
8 invoices at issue in this case.

9 30. On information and belief, NCC then shares the revenue received from  
10 this traffic-pumping arrangement with the chat-line providers, either directly or  
11 indirectly.

## 12 **2. Traffic-Pumping Does Not Constitute Switched Access Under** 13 **NCC's Federal Tariff**

14 31. NCC's federal tariff describes switched access service as "the  
15 origination or termination of interstate or international calls from or to the  
16 Company's *end user subscribers* over local exchange circuits furnished by the  
17 Company" (emphasis added).

18 32. NCC's federal tariff also incorporates by reference certain sections of  
19 NECA Tariff F.C.C. No. 5 (the "NECA Tariff"), including Section 2. Section 2  
20 defines "end user" as "any *customer* of an interstate or foreign telecommunications  
21 service that is not a *carrier*. . . ." (emphasis added).

22 33. The NECA Tariff defines "customer," in turn, as "any individual,  
23 partnership, association, joint-stock company, trust, corporation, or governmental  
24 entity or other entity which *subscribes* to the services offered under this tariff,  
25 including both Interexchange Carriers (ICs) and End Users" (emphasis added). It  
26 defines "carrier" as "any individual, partnership, association, joint-stock company,  
27 trust, governmental entity or corporation engaged for hire in interstate or foreign  
28 communication by wire or radio, between two or more exchanges."

1           34. Among other things, calls to the chat-line providers do not constitute  
2 switched access service under NCC's tariff because the chat-line providers are not  
3 "end user subscribers." On information and belief, the chat-line providers did not  
4 subscribe to NCC's services under any federal or state tariff. As a result, they were  
5 not "customers" within the meaning of NCC's federal tariff. Because they were not  
6 "customers" and because they did not "subscribe" to NCC's tariffed service, they  
7 are not "end user subscribers" under the tariff. Therefore, NCC's delivery of calls  
8 to these entities was not switched access service, and Verizon was not legally  
9 obligated to pay NCC for this purported service.

10           35. The chat-line providers are also "carriers" within the meaning of  
11 NCC's tariffs. As entities that connect individual chat line participants, chat-line  
12 providers are engaged for hire in interstate or foreign communication by wire or  
13 radio between two or more exchanges. Because they are "carriers," they are  
14 excluded from the tariff's definition of "end user" and therefore cannot be "end user  
15 subscribers." For this independent reason, NCC's delivery of calls to these entities  
16 was not switched access service, and Verizon was not legally obligated to pay NCC  
17 for this purported service.

18           **2. Traffic-Pumping Does Not Constitute Switched Access Under**  
19           **NCC's State Tariffs**

20           36. For similar reasons, calls to chat-line providers do not constitute  
21 intrastate switched access service as defined under NCC's various intrastate tariffs.

22           37. NCC has filed tariffs with state public utility commissions in Arizona,  
23 California, Illinois, and Washington. It also maintains a price list that purportedly  
24 governs the provision of switched access service in Oregon.

25           38. Like NCC's federal tariff, its California and Washington tariffs and its  
26 Oregon price list each define switched access service as the origination or  
27 termination of traffic to "end user subscribers." As alleged in paragraph 34 above,  
28 on information and belief, chat-line providers do not subscribe to NCC service and

1 they therefore do not constitute “end user subscribers.” Therefore the delivery of  
2 traffic to these entities does not constitute “switched access services” as defined in  
3 these tariffs.

4 39. Similarly, NCC’s Arizona tariff defines switched access service as  
5 “originating or terminating intrastate interexchange calls to Customers over local  
6 exchange lines furnished by the Company.” A “customer,” in turn, is defined as  
7 any entity “that contracts for service under this tariff or that is otherwise responsible  
8 for the payment of charges. . . .” Because, on information and belief, chat-line  
9 providers have not “contract[ed] for service” under NCC’s local exchange tariffs  
10 and are not “responsible for the payment of charges” to NCC, they are not  
11 “customers” under the Arizona tariff. As a result, the delivery of traffic to these  
12 entities does not constitute switched access service under the tariff.

13 40. NCC’s Illinois tariff defines switched access as providing “a two-point  
14 electrical communications path between a Customer’s premises and an End User’s  
15 premises” in order “to originate and to terminate calls from an End User’s premises  
16 to a Customer’s premises in the LATA where it is provided.” An end-user, in turn,  
17 is defined as “[a]ny customer of an intrastate telecommunications service that is not  
18 a Carrier or Common Carrier.” As alleged in paragraph 35 above, chat-line  
19 providers are carriers. Therefore they cannot be end users under the tariff, and  
20 delivery of traffic to these entities does not constitute switched access service under  
21 the tariff.

22 41. As under the federal tariff, there may well be other reasons why  
23 NCC’s traffic-pumping arrangements fall outside the scope of their intrastate  
24 switched access tariffs. Discovery will expose these potential issues in greater  
25 depth.

26 **D. Traffic-Pumping Arrangements Violate NCC’s Contractual Obligations**

27 42. On information and belief, NCC’s activities also violate an agreement  
28 that NCC entered into with an affiliate of Verizon. In accordance with the Court’s

1 minute order issued in this case on April 9, 2009, Verizon has not set forth the  
2 specific details of this agreement.

3 43. Verizon is an intended beneficiary of this agreement.

4 44. Because NCC's actions have breached its contractual obligations,  
5 Verizon is entitled to damages stemming from this breach.

6 **E. NCC Does Not Provide Service in West Virginia**

7 45. NCC has billed, and Verizon has paid, invoices purporting to be for  
8 interstate and intrastate switched access services provided in West Virginia.

9 46. NCC does not provide switched access services in West Virginia. On  
10 June 8, 2007, NCC sold its West Virginia telecommunications assets to North  
11 County Communications Corporation of West Virginia ("NCC-WV"). Though the  
12 parties were required to seek prior approval of this transaction from the West  
13 Virginia Public Services Commission ("the Commission"), they failed to do so.

14 47. On June 30, 2008, the Commission retroactively approved the sale of  
15 NCC's facilities and assets to NCC WV. But it did not permit NCC to transfer its  
16 certificate of public convenience and necessity ("CPCN"), which is required to  
17 conduct telecommunications operations within the state. On information and belief,  
18 NCC WV does not have, and has never had, a valid CPCN or intrastate tariff  
19 governing switched access services.

20 48. As a result switched access services in West Virginia were provided by  
21 NCC WV, not NCC. But NCC WV cannot legally provide telecommunications  
22 services in the state, including switched access, and has no tariff on file governing  
23 these services. Therefore for this independent reason, Verizon is not obligated to  
24 pay NCC for any services purportedly provided within West Virginia after June 8,  
25 2007.

26 **F. The Present Dispute**

27 49. On January 31, 2008, Verizon sent a letter via email to NCC disputing  
28 NCC's bills since February 1, 2006. In that letter, Verizon reiterated its existing

1 dispute regarding NCC's interstate switched access rates, challenged NCC's traffic-  
2 pumping arrangements and requested that NCC provide documentation that its  
3 invoices represented legitimate switched access charges. Verizon sent a second  
4 letter on April 28, 2008 that reiterated its dispute and its request for documentation.

5 50. NCC has not admitted or denied the validity of Verizon's disputes or  
6 provided the information that Verizon requested.

7 **COUNT I: UNLAWFUL IMPOSITION OF CHARGES FOR UNTARIFFED**  
8 **SERVICES [47 U.S.C. §§ 203, 206, 207]**

9 51. Verizon realleges and incorporates hereat by reference the allegations  
10 set forth in paragraphs 1-50, inclusive, above.

11 52. NCC has imposed or attempted to impose charges on Verizon for a  
12 purported interstate communications service that was not provided pursuant to the  
13 terms of NCC's filed tariffs. The charges were not authorized by any provision of  
14 the Communications Act, any FCC rule, or any contract between NCC and  
15 Verizon. NCC's disregard of the terms of its tariffs and its attempt to impose  
16 charges for purported service outside the terms of its tariffs violated 47 U.S.C. §  
17 203.

18 53. NCC's violation of § 203 injured Verizon by causing Verizon to pay  
19 money that Verizon did not owe, in an amount according to proof at trial.

20 54. Under 47 U.S.C. §§ 206 and 207, Verizon is entitled to recover its  
21 damages and its attorneys' fees incurred as a result of NCC's violation of Section  
22 203.

23 **COUNT II: UNFAIR AND UNREASONABLE RATES**  
24 **[47 U.S.C. §§ 201(b), 206, 207]**

25 55. Verizon realleges and incorporates hereat by reference the allegations  
26 set forth in paragraphs 1-54, inclusive, above.

27 56. Section 201(b) of the Federal Communications Act prevents NCC  
28 from engaging in unjust or unreasonable rates and practices.

1 57. NCC violated Section 201(b) by billing Verizon under its interstate  
2 tariff without a valid interstate tariffed rate, and in excess of the maximum  
3 permissible benchmark rate.

4 58. NCC's violation of § 201(b) injured Verizon by causing Verizon to  
5 pay money that Verizon did not owe, in an amount according to proof at trial.

6 59. Under 47 U.S.C. §§ 206 and 207, Verizon is entitled to recover its  
7 damages and its attorneys' fees incurred as a result of NCC's violation of Section  
8 201(b).

9 **COUNT III: UNFAIR AND UNREASONABLE PRACTICES**

10 **[47 U.S.C. §§ 201(b), 206, 207]**

11 60. Verizon realleges and incorporates hereat by reference the allegations  
12 set forth in paragraphs 1-59, inclusive, above.

13 61. On information and belief, NCC's traffic-pumping arrangements had  
14 the purpose and effect of obtaining inflated access charges from IXC's, including  
15 Verizon, by means of a sham carrier-to-end-user relationship with chat-line  
16 providers. The scheme was therefore an unreasonable practice that violated  
17 § 201(b).

18 62. NCC's violation of § 201(b) injured Verizon by causing Verizon to  
19 pay money that Verizon did not owe, in an amount according to proof at trial.

20 63. Under 47 U.S.C. §§ 206 and 207, Verizon is entitled to recover its  
21 damages and its attorneys' fees incurred as a result of NCC's violation of Section  
22 201(b).

23 **COUNT IV: UNJUST ENRICHMENT**

24 64. Verizon realleges and incorporates hereat by reference the allegations  
25 set forth in paragraphs 1-63, inclusive, above.

26 65. NCC has received a significant financial benefit from Verizon in the  
27 form of payments for purported switched access services that it did not provide and  
28

1 that were not authorized by any contract or tariff, in an amount according to proof  
2 at trial.

3 66. Verizon conferred this benefit on NCC under the mistaken belief that  
4 NCC provided Verizon switched access services.

5 67. NCC has retained these benefits at the expense of Verizon,  
6 notwithstanding Verizon's demand for the return of such benefits.

7 68. NCC has unjustly retained this benefit at the expense of Verizon, and  
8 the law imposes a duty on NCC to compensate Verizon by repaying and returning  
9 this benefit.

10 **COUNT V: BREACH OF CONTRACT**

11 69. Verizon realleges and incorporates hereat by reference the allegations  
12 set forth in paragraphs 1-68, inclusive, above.

13 70. NCC has entered into a contract with an affiliate of Verizon.

14 71. Verizon is an intended beneficiary of that contract.

15 72. On information and belief, NCC's activities violated its contractual  
16 obligations.

17 73. Verizon and its affiliate have performed all of their obligations.

18 74. Verizon has been damaged by NCC's breach of its obligations in that  
19 it has paid money to NCC for purported switched access services generated by  
20 NCC's traffic-pumping arrangements, in an amount according to proof at trial.

21 **COUNT VI: DECLARATORY RELIEF [28 U.S.C. §§ 2201, 2202]**

22 75. Verizon realleges and incorporates hereat by reference the allegations  
23 set forth in paragraphs 1-74, inclusive, above.

24 76. Verizon seeks a judicial determination and declaration of its rights  
25 pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Specifically, Verizon  
26 seeks a declaration that it need not pay any currently unpaid invoices submitted by  
27 NCC to Verizon, purporting to represent switched access charges for which  
28

1 Verizon has no duty to pay.

2 77. NCC disputes Verizon's contention that it has no duty to pay, and  
3 contends that Verizon is obligated to pay all currently unpaid invoices submitted to  
4 Verizon for payment.

5 78. The conflicting interests of Verizon and NCC are real and adverse, and  
6 the issue is ripe for judicial determination. NCC has demanded payment of the  
7 unpaid invoices and has sued Verizon for recovery under the invoices.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Verizon prays judgment against Counterclaim Defendant as  
10 follows:

11 A. its actual damages, in an amount to be proved at trial and not less than  
12 \$2.3 million, that it paid to NCC, but did not owe, for purported switched access  
13 services;

14 B. its attorneys' fees incurred herein to prosecute Verizon's  
15 Communications Act claims;

16 C. a declaratory judgment stating that NCC has no valid interstate  
17 switched access rate, that calls to chat-line providers do not constitute switched  
18 access services under NCC's federal and state tariffs, and that Verizon Global  
19 Networks, Inc. has no duty to pay any outstanding NCC invoices for switched  
20 access service;

21 D. its costs of suit; and

22 E. such other relief as the Court may deem appropriate.

23 **JURY DEMAND**

24 Verizon demands a jury trial on all issues so triable.  
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DATED: April 9, 2009

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