**Bell Atlantic Corporation, BellSouth Corporation, Qwest Communications International Inc., SBC Communications Inc., and Verizon Communications Inc., *Defendants.***

***CONSOLIDATED AMENDED CLASS ACTION COMPLAINT***

***JURY TRIAL DEMANDED***

Plaintiffs, by and through their undersigned attorneys, for their Amended Class Action Complaint allege the claims set forth herein. Plaintiffs' claims as to themselves and their own actions, as set forth in ¶¶ 9 and 10 are based upon their own knowledge. All other allegations are based upon information and belief pursuant to the investigation of counsel.

## I.

## *NATURE OF THE ACTION*

1. This lawsuit is brought as a class action on behalf of all individuals and entities who purchased local telephone and/or high speed internet services in the continental United States (excluding Alaska and Hawaii) from at least as early as February 8, 1996 and continuing to present (the "Class Period").

2. The Telecommunications Act of 1996, 47 U.S.C. §§ 151 to 614 (the "Act") was designed to promote competition for local telephone services by opening the markets to effective competition. The purpose, intent and requirements of the Act are to create competition without delay in the local telephone services markets so that the public's local telephone bills and charges will be reduced as soon as possible by virtue of such competition.

3. Local telephone services include traditional dial tone primarily used to make or receive voice, fax, or analog modem calls from a residence or business and exchange access services which allow long distance carriers to use their local exchange facilities to originate and terminate long distance calls to end users. Local telephone services also include, but is not limited to, custom calling services such as Caller ID, Call Waiting, Voice Mail and other advanced services. High speed internet services include circuits that connect customers to the internet at speeds in excess of 56K such as, but not limited to, T1 lines, asynchronous transfer mode circuits, frame relay circuits, ISDN, and digital subscriber lines ("DSL"). The rates concerning certain features or services are either not subject to tariff filing requirements and/or are not subject to any meaningful review.

4. Plaintiffs allege that Defendants entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets by, among other things, agreeing not to compete with one another and to stifle attempts by others to compete with them and otherwise allocating customers and markets to one another.

5. As a direct and proximate result of Defendants' unlawful contract, combination or conspiracy, Plaintiffs and members of the Class allege that Defendants have hindered the development of the local telephone and/or high speed internet services markets. Plaintiffs and members of the Class further allege that they have been and continue to be denied the benefits of free and unrestrained competition for local telephone and/or high speed internet services. Plaintiffs and members of the Class have, therefore, been forced to pay supracompetitive prices for such services causing them to sustain injury to their business or property.

## II.

## *JURISDICTION AND VENUE*

6, Plaintiffs bring this class action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15 and 26, to recover treble damages and injunctive relief as well as reasonable attorneys' fees and costs with respect to injuries arising from violations by Defendants of the federal antitrust laws, including Section 1 of the Sherman Act. 15 U.S.C. § 1.

7. The Court has federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26. The Court has supplemental jurisdiction over the state antitrust law claims pursuant to 28 U.S.C. § 1367.

8. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(2) because a part of the events or omissions giving rise to the claims occurred in this district, and pursuant to 28 U.S.C. § 1391(b)(3) and 15 U.S.C. §§ 15 and 22 because Defendants Bell Atlantic and Verizon have maintained or maintain a principal place of business within this district.

## III.

## *PARTIES*

9. Plaintiff William Twombly is a resident of Bethel, Connecticut. At times relevant herein, William Twombly was a resident of New York, New York and purchased local telephone and/or high speed internet services from Defendants Belt Atlantic Corporation or Verizon Communications, Inc.

10. Plaintiff Lawrence Marcus is a resident of Maple Glen, Pennsylvania. At times relevant herein, Lawrence Marcus purchased local telephone and/or high speed internet services from Defendants Bell Atlantic Corporation or Verizon Communications, Inc.

11. Defendant Bell Atlantic Corporation is a Delaware corporation with its principal place of business at 1095 Avenue of Americas, New York, New York. Bell Atlantic Corporation is a telecommunications company with principal operating subsidiaries (together with the parent company "Bell Atlantic") that provide local telephone and/or high speed internet services to subscribers in Connecticut, Delaware, Maryland, Massachusetts, Maine, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and the District of Columbia.

12. Defendant BellSouth Corporation is a Delaware corporation with its principal place of business at 1155 Peachtree Street, N.E., Atlanta, Georgia. BellSouth Corporation, is a telecommunications company that, through its wholly owned subsidiaries including but not limited to Bell South Telecommunications, Inc. (together with the parent company "BellSouth"), provides local telephone and/or high speed internet services to millions of subscribers in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee ("BellSouth").

13. Defendant Qwest Communications International, Inc., is a Delaware corporation with its principal place of business at 1801 California Street, Denver, Colorado. Qwest Communications International, Inc., is a telecommunications company that, through its wholly-owned subsidiaries including but not limited to Qwest Corporation, Inc (together with the parent company "Qwest"), provides local telephone and/or high speed internet services in fourteen states, including Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming ("Qwest").

14. Defendant SBC Communications, Inc., is a Delaware corporation with its principal place of business at 175 East Houston, San Antonio, Texas. SBC Communications, Inc., is a telecommunications company that, through its operating subsidiaries including but not limited to SBC Ameritech, SBC Nevada Bell, SBC Pacific Bell, SBC SNET and SBC Southwestern Bell (together with the parent company "SBC"), provides local telephone and/or high speed internet services to subscribers in Arkansas, California, Connecticut, Florida, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin.

15. Defendant Verizon Communications, Inc. ("Verizon") is a Delaware corporation with its principal place of business at 1095 Avenue of Americas, New York, New York. GTE Corporation ("GTE") merged with and became a wholly-owned subsidiary of Bell Atlantic. Bell Atlantic now does business as Verizon Communications, Inc.

## IV.

## *CO-CONSPIRATORS*

16. Various other persons, firms, corporations and associations, not named in this Complaint, have participated in the violations alleged herein and have performed acts and made statements in furtherance thereof.

## V.

## *BACKGROUND*

### A. *The Bell Operating System and Divestiture*

17. During the early part of its approximately 120-year history, the telephone industry experienced varying periods of competition, monopolization and regulation. By 1934, the Bell System, consisting of Bell Operating Companies, along with American Telephone and Telegraph Company ("AT&T"), owned 80 percent of all the local telephone lines and services in the United States and owned a monopoly long-distance network. The Bell Operating Companies were wholly-owned subsidiaries of AT&T.

18. In 1934, the Communications Act of 1934 was adopted. That act severed regulation of the telephone industry from the Interstate Commerce Commission and provided for the creation of the Federal Communications Commission ("FCC") to regulate interstate telephone, telegraph and radio companies. Interstate and international telephone services fell under the aegis of the FCC, and intrastate telephone services became regulated under the auspices of respective state commissions. Once a telephone communications service crossed a state line, it fell under the jurisdiction of the FCC.

19. In 1974, the United States filed a lawsuit against AT&T alleging that it had monopolized and conspired to restrain trade in the manufacture, distribution, sale and installation of telephones, telephone apparatus equipment and materials and supplies in violation of §§ 1, 2, and 3 of the Sherman Act, 15 U.S.C. §§ 1, 2, and 3. The basic theory of the government's case, as explained by the District Court, was that AT&T had unlawfully used its control of local exchange facilities to suppress competition in related markets, such as the markets for long distance services, which are dependent upon access to the local exchange to originate and terminate calls. *United States v. AT&T,* 524 F. Supp. 1336, 1352 (D.D.C. 1981).

20. In 1982, the United States and AT&T agreed to settle the case through the entry of a consent decree. In 1982, United States District Court Judge Harold H. Greene signed the Modified Final Judgment, settling the antitrust suit against AT&T. The Modified Final Judgment was based on divestiture; AT&T was required to divest itself of its twenty-two Bell Operating Companies ("BOCs"). The BOCs provided the means by which local telephone service was furnished, Bell customers gained access to the network for both local and long distance telecommunications services through the BOCs. The Modified Final Judgment, however, imposed certain business restrictions on the newly divested BOCs. Specifically, the BOCs were prohibited from providing inter-LATA services (which are long distance services involving calls that terminated outside the "local access and transport area" in which they originate, as defined in the Modified Final Judgment), or any non-telecommunications services, and from manufacturing telecommunications equipment. In addition, the Modified Final Judgment required the BOCs to provide all interexchange carriers (*i.e.*, long distance providers) with exchange access that was equal in type, quality

and price to the access provided to AT&T. *United States v. AT&T,* 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom., Mayland v. United States,* 460 U.S. 1001, 103 S. Ct. 1240, 75 L.Ed.2d 472 (1983).

21. On January 1, 1984, divestiture of the Bell System by AT&T took effect. AT&T divested the seven Regional Bell Operating Companies ("RBOCs") and exited the local telephone business. The RBOCs were barred from providing long distance services. The seven RBOCs became known as the Baby Bells and included: Ameritech; SBC Communications; Pacific Telesis; Bell South; US West; Bell Atlantic; and NYNEX. SBC became the parent corporation of Southwestern Bell, and Pacific Telesis became the parent corporation of Pacific Bell and Nevada Bell. SBC and Pacific Telesis merged in early 1997. NYNEX and Bell Atlantic merged in mid-1997 and became known as Bell Atlantic Corporation. Bell Atlantic later merged with GTE Corporation and is now doing business as Verizon Communications, Inc.

22. Local telephone companies such as the Bell Operating Companies are commonly referred to as local exchange carriers ("LECs") and provide business and residential customers with local telephone and/or high speed internet services.

23. In addition to the Bell Operating Companies, there are hundreds of other local exchange carriers operating in the United States. These local exchange carriers generally offer the same services as the Bell Operating Companies. Although GTE was not one of the original Bell Operating Companies, prior to merging with Bell Atlantic it acquired local telephone systems in 28 states and was one of the largest local phone companies in the nation in terms of telephone lines. Local exchange carriers historically operated in their local franchise areas free of competition, pursuant to exclusive franchises granted by state regulatory authorities.

24. A consent decree also was entered against GTE in 1984. *United States v. GTE Corp.,* 1985-1 Trade Cas. (CCH) § 66.355 (D.D.C. 1984) ("GTE Consent Decree"). The GTE Consent Decree was prompted by GTE's acquisition of one of the largest long-distance companies in the United States, and was based upon the same concerns underlying the AT&T consent decree with the United States. Under the GTE Consent Decree, operating companies (*i.e.*, the local exchange providers) were prohibited from providing long distance services, but GTE Corporation itself was permitted to provide long distance services through other subsidiaries. GTE was required to maintain total separation between its long distance operations and the GTE operating companies, so that those companies could not use their position as exclusive local telephone service providers within their franchised areas to lessen competition in long distance services.

### B. *The Telecommunications Act of 1996*

25. On February 8, 1996, the Telecommunications Act of 1996 became law when it was signed by President Clinton. Pub. L. No. 104, 110 Stat. 56. The Act amends the Communications Act of 1934. (See 47 U.S.C. § 609, Historical and Statutory Notes.) The Act changed the landscape of federal and state telecommunications regulatory policies and the telecommunications industry.

26. The Act adopts a pro-competitive framework for the telecommunications industry in the United States. It opens the markets for both local telephone and long-distance services to effective competition.

27. Because of their prior unique existence as government granted monopolies and the benefits that they enjoyed as government granted monopolies, the Act requires that the LECs, including Defendants, must provide potential competitors access and connections to their lines and equipment on just, reasonable and non-discriminatory terms.

28. The Act also requires the incumbent local exchange companies ("ILEC") to provide competitors with the same quality of service that the incumbent local exchange carriers provide to themselves or their own customers. The Act specifically defines an ILEC as follows: "With respect to an area, the local exchange carrier that on February 8, 1996, provided telephone exchange service in such area." 47 U.S.C. § 251. The seven original RBOCs, GTE and Defendants herein are ILECs.

29. With respect to long-distance service, the Act establishes a detailed mechanism for the RBOCs to compete for the first time in the long distance business. Unlike the RBOCs, GTE was allowed to expand into long-distance telephone service as soon as the Act became law on February 8, 1996.

30. Pursuant to the Act, before the respective RBOCs can offer long-distance telephone service, they must, *inter alia*, satisfy a 14-point checklist of requirements and demonstrate that there is competition in their respective local markets. It is up to the FCC in coordination with the Department of Justice and various state public utilities commissions to decide, upon request by an RBOC, when the RBOC has met the requirements.

31. Section 251 of the Act (47 U.S.C. § 251) imposes certain obligations on ILECs designed to permit new entrants to use some or all of the ILECs' networks to offer local-exchange services.

32. Section 251 of the Act requires an ILEC to: (1) allow a competitor to interconnect with its network so that the competitor can provide calls to and from that network; (2) sell to competitors access to components of its network, called network elements, on an unbundled or individual basis; and (3) sell its retail telephone services to competitors at wholesale prices. All of these requirements of an ILEC are to be provided by the ILEC "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." *Id.* Section 251 imposes specific obligations on telecommunications carriers designed to promote competition in local exchange markets across the country. Federal Register/Vol. 61. No. 169, August 29, 1996, at 45476.

33. The Act directed the FCC to establish regulations to implement § 251's requirements within six months of its enactment. On August 8, 1996, the FCC released its Report and Order ("Report and Order").

34. The Report and Order promulgated "national rules and regulations implementing the statutory requirements of the Act intended to encourage the development of competition in local exchange and exchange access markets." Federal Register/Vol. 61. No. 169, August 29, 1996 at 45476.

35. GTE and the RBOCs appealed the Report and Order to the 8th Circuit, and on October 15, 1996, the 8th Circuit stayed the Report and Order, including its pricing rules and regulations, pending a decision on the merits. *Iowa Utils. Bd. v. FCC,* 109 F.3d 418 (8th Cir. 1996). The group defending the Report and Order included, among others, the FCC and the U.S. Department of Justice.

36. On July 18, 1997, the U.S. Court of Appeals for the Eighth Circuit filed its Opinion in the *Iowa Utilities Board v. FCC* case. *Iowa Utils. Bd. v. FCC,* 120 F.3d 753 (8th Cir. 1997). The Court vacated certain provisions of the FCC's Report and Order and upheld the remainder. Specifically, the Court stated: "We decline the petitioners' request to vacate the FCC's entire First Report and Order and limit our rejection of FCC rules only to those that we have specifically overturned in this opinion." *Id.* at 819. In a footnote, the ***20** Court stated: "In total we vacate the following provisions: 47 C.F.R. §§ 51.303 51.305(a)(4) 51.311(c)-f 51.317 (vacated only to the extent this rule establishes a presumption that a network element must be unbundled if it is technically feasible to do so) 51.405 51.501-51.515 (inclusive except for 51.515 (b) 51.601-51.611 (inclusive) 51.701-51.717 (inclusive except for 51.701 51.703 51.709(b) 51.7119a0910 51.7159d0 and 51.717 but only as they apply to CMRS providers) 51.809 First Report and Order ¶¶ 101-103 121-128 180. We also vacate the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration dated September 27 1996." *Id.*

### C. *The RBOCs' Market Allocation and Refusal to Compete*

37. The 1996 Telecommunications Act authorized RBOCs to offer local telephone and/or high speed internet services in each other's territories, yet they have stayed almost completely out of one another's markets. Indeed, "[t]he major telephone companies have not sought to provide local telephone service

outside of their home territories." Consumer Federation of America, *Lessons From 1996 Telecommunications Act: Deregulation Before Meaningful Competition Spells Consumer Disaster*, February 2001, p. 2. "Major incumbent service providers have failed to attack markets within their industry … [m]ajor incumbent service providers have failed to use their facilities to attack cross markets." *Id.* at 20.

38. "It was hoped that the large incumbent local monopoly companies (RBOCs) might attack their neighbors' service areas, as they are the best situated to do so. But such competition has not happened. The incumbent local exchange carriers (RBOCs) have simply not tried to enter each other's service territories in any significant way." Consumer Federation of America, *Lessons From 1996 Telecommunications Act: Deregulation Before Meaningful Competition Spells Consumer Disaster*, February 2001, p. 13.

39. Although the RBOCs contend that CLECs are hurting them by leasing network components at below-cost rates, the RBOCs have refrained from engaging in meaningful head-to-head competition in each other's markets. For example, "[i]n New York, SBC served a grand total of six residential lines at the end of 2001." Joan Campion, *Competition Is Vital For Phone Customers*, Chicago Tribune, Nov. 11, 2002, Commentary pg. 20.

40. The failure of the RBOCs to compete with one another would be anomalous in the absence of an agreement among the RBOCs not to compete with one another in view of the fact that in significant respects, the territories that they service are non-contiguous. As reflected in Exhibit A hereto, SBC serves most of the State of Connecticut even though Verizon rather than SBC serves the surrounding states. SBC serves California and Nevada, even though Qwest serves the other surrounding states. Similarly, there are many relatively small areas within the States of California, Texas, Illinois, Michigan, Ohio, Wisconsin, Indiana and other states that are served by Verizon, even though SBC serves all surrounding territories, as illustrated in Exhibit B hereto,[1] The failure of the RBOCs that serve the surrounding territories to make significant attempts to compete in the surrounded territories is strongly suggestive of conspiracy, since the service of such surrounded territories presents the RBOC serving surrounding territories with an especially attractive business opportunity that such RBOCs have not meaningfully pursued.

41. In competing for business in Connecticut, Verizon's predominance in the surrounding states would have provided it with substantial competitive advantages. In competing for business in California and Nevada, Qwest's predominance in surrounding states would have given it substantial competitive advantages. In competing for the business in the many smaller territories that Verizon serves that are surrounded by territories served by other RBOCs, the dominance of those other RBOCs in surrounding areas would have given them substantial competitive advantages. Nevertheless, Verizon has not sought to compete in a meaningful manner with SBC in Connecticut, Qwest has not sought to compete meaningfully with SBC in California and Nevada, and the RBOCs that serve the areas surrounding the smaller areas served by Verizon, as illustrated on Exhibit B hereto, have not sought to compete meaningfully with Verizon in those smaller areas. In the absence of an agreement not to compete, it is especially unlikely that there would have been no efforts by surrounding and dominant RBOCs to compete in such surrounded territories.

42. On October 31, 2002, Richard Notebaert the former Chief Executive Officer of Ameritech, who sold the company to Defendant SBC in 1999 and who currently serves as the Chief Executive Officer of Defendant Qwest, was quoted in a *Chicago Tribune* article as saying it would be fundamentally wrong to compete in the SBC/Ameritech territory, adding "it might be a good way to turn a quick dollar but that doesn't make it right." Jon Van, *Ameritech Customers Off Limits: Notebaert*, Chicago Tribune, Oct. 31, 2002 Business, pg. 1.

43. The pronouncement that Qwest would forgo lucrative opportunities in its sister monopoly markets and in its principal line of business came as Qwest announced a Third Quarter loss of $214 million and 13% fall in revenue.

44. On November 8, 2002, in response to Notebaert's remarks, the Illinois Coalition For Competitive Telecom called Notebaert's statement "evidence of potential collusion among regional Bell phone monopolies to not compete against one another and kill off potential competitors in local phone service."

*Illinois CLECS Assail Notebaert*, State Telephone Regulation Report, Comment, Vol. 20, No. 22. According to the article, "[t]he CLEC group said Notebaert indicated that the Bells' strategy was to divide the country into local phone 'fiefdoms,' not to compete against each other, and to devote their collective efforts to 'eliminating would-be competitors in local service.' " *Id.*

45. On December 18, 2002, United States Representatives John Conyers, Jr. of Michigan and Zoe Lofgren of California sent a letter to United States Attorney General John Ashcroft requesting that the U.S. Department of Justice, Antitrust Division investigate whether the RBOCs are violating the antitrust laws by carving up their market territories and deliberately refraining from competing with one another. Jon Van, *Lawmakers Seek Probe of Bells; Do Firms Agree Not To Compete*, Chicago Tribune, Dec. 19, 2002, Business, pg. 2; James S. Granelli, *Federal Probe of Baby Bells Urged; Comments By Chairman Of Qwest Raise Questions About The Competitive Zeal Of The Regional Phone Companies*, Los Angeles Times, Dec. 19, 2002, Business, Part 3, Pg. 3; *Conyers Asks Justice Dept. To Investigate Bells On Anticompetitive Practices*, Communications Daily, Dec. 20, 2002, Today's News. Representatives Conyers and Lofgren questioned the extent to which the RBOCs' "very apparent noncompetition policy in each others' markets is coordinated." Letter to The Honorable John D. Ashcroft dated December 18, 2002, p. 2.

46. The RBOCs do indeed communicate amongst themselves through a myriad of organizations, including but not limited to the United States Telecom Association, the Tele-Messaging Industry Association, the Alliance for Telecommunications Industry Solutions, Telecordia, Alliance for Public Technology, the Telecommunications Industry Association and the Progress and Freedom Foundation.

47. Defendants have engaged in parallel conduct in order to prevent competition in their respective local telephone and/or high speed internet services markets. "They have refused to open their markets by dragging their feet in allowing competitors to interconnect, refusing to negotiate in good faith, litigating every nook and cranny of the law, and avoiding head-to-head competition like the plague." Consumer Federation of America, *Lessons From 1996 Telecommunications Act: Deregulation Before Meaningful Competition Spells Consumer Disaster*, February 2001, p. 1. Defendants also have engaged and continue to engage in unanimity of action by committing one or more of the following wrongful acts in furtherance of a common anticompetitive objective to prevent competition from Competitive Local Exchange Carriers ("CLECS") in the their respective local telephone and/or high speed internet services markets:

(a) Defendants have failed to provide the same quality of service to competitors that Defendants provided to their own retail customers;

(b) Defendants have failed to provide access to their operational support systems ("OSS"), including on-line customer service records ("CSRs"), on a nondiscriminatory basis that places competitors at parity. Moreover, competitors do not have access to unbundled elements on the same basis on which Defendants accessed the same elements;

(c) Defendants' competitors have experienced undue delays in the provisioning of unbundled elements. Such delays are discriminatory and preclude competitors from offering service as attractive to customers as Defendants' services and on a basis that places competitors at parity with a respective Defendant;

(d) Defendants have billed customers of competitors who are converted from Defendants' retail service. As a result of Defendants' practices, customers of competitors are double-billed. Defendants' practices have severely impacted competitors' relationships with customers;

(e) Defendants have failed to provide interconnection between the network and those of competitors that is equal in quality to the interconnection that each provided itself;

(f) Defendants have refused to sell to competitors, on just, reasonable, and non-discriminatory terms, access to components of the network on an unbundled or individual basis;

(g) Defendants have refused to sell to competitors local telephone and/or high speed internet services at wholesale prices that are just, reasonable and nondiscriminatory, thereby preventing Defendants'

competitors from being able to competitively resell the services to Plaintiffs and members of the Class;

(h) Defendants have refused to allow competitors to connect to essential facilities, consisting of, but not limited to, local telephone lines, equipment, transmission and central switching stations (central office) and "local loop" on just, reasonable and non-discriminatory terms;

(i) Defendants have used discriminatory and error filled methods to bill local telephone service competitors in order to discourage competition by making it virtually impossible for competitors to audit the bills they received from Defendants;

(j) Defendants have imposed slow and inaccurate manual order processing causing competitors to devote significant time, effort and expense to identify and rectify problems to ensure that orders were ultimately processed correctly;

(k) Defendants have used monopoly power in their respective wholesale local telephone and/or high speed internet services market in order to gain or maintain a competitive advantage in the retail market for the provision of local telephone and/or high speed interact services; and

(l) Defendants have used their respective monopoly power and exclusive control over essential facilities consisting of, but not limited to, local telephone lines, equipment, transmission and central switching stations (central office) and "local loop" to negotiate agreements on unfair terms with competitors who were seeking access to their respective local telephone networks. Each Defendant, possessing the exclusive and sole source of entry into its own local telephone and/or high speed internet services market, was in a superior bargaining position to competitors and potential competitors and used that superior bargaining position to dictate unfair terms upon competitors.

48. The structure of the market for local telephone services is such as to make a market allocation agreement feasible, in that the four defendants, taken together, account for as much as ninety percent or more of the markets for local telephone services within the 48 contiguous states. Elaborate communications thus would not have been necessary in order to enable Defendants to agree to allocate territories and to refrain from competing with one another. A successful conspiracy among the Defendants to allocate territories would not require such frequent communications as to make prompt detection likely.

49. If one of the Defendants had broken ranks and commenced competition in another's territory the others would quickly have discovered that fact. The likely immediacy of such discovery makes a territorial allocation agreement among the Defendants more feasible, more readily enforceable, and more probable. In this respect as well, the structure of the market was conducive to an agreement among the Defendants to allocate territories to one another.

50. Had any one of the Defendants not sought to prevent CLECs (other than the other Defendants) from competing effectively within that Defendant's allocated territory in the ways described above, the resulting greater competitive in-roads into that Defendant's territory would have revealed the degree to which competitive entry by CLECs would have been successful in the other territories in the absence of such conduct. In addition, the greater success of any CLEC that made substantial competitive inroads into one Defendant's territory would have enhanced the likelihood that such a CLEC might present a competitive threat in other Defendants' territories as well. In these respects as well as others, Defendants had compelling common motivations to include in their unlawful horizontal agreement an agreement that each of them would engage in a course of concerted conduct calculated to prevent effective competition from CLECs in each of the allocated territories.

51. In the absence of any meaningful competition between the RBOCs in one another's markets, and in light of the parallel course of conduct that each engaged in to prevent competition from CLECs within their respective local telephone and/or high speed internet services markets and the other facts and market circumstances alleged above, Plaintiffs allege upon information and belief that Defendants have entered into a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets and have agreed not to compete with one another and otherwise

allocated customers and markets to one another.

## VI.

## *INTERSTATE TRADE AND COMMERCE*

52. At times relevant herein, Defendants and/or their subsidiaries provided local and regional telephone and/or high speed internet services across state lines, and regularly and frequently solicited customers and sent bills and received payments via the mail throughout the United States. The marketing, sale and provision of local telephone and/or high speed internet services regularly occurs in and substantially affects interstate trade and commerce.

## VII.

## *CLASS ACTION ALLEGATIONS*

53. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class:

> All persons or entities who reside or resided in the continental United States (excluding Alaska and Hawaii) and are or were subscribers of local telephone and/or high speed internet services (the "Class") from February 8, 1996 to present (the "Class Period"). Excluded from the Class are the Defendants and any parent, subsidiary, corporate affiliate, officer, director or employee of a Defendant and any judge or magistrate judge assigned to entertain any portion of this case.

54. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. The exact number and identity of Class members is unknown to Plaintiffs but can readily be ascertained from books and records maintained by Defendants or their agents. Upon information and belief, there are millions of local telephone and/or high speed internet services subscribers in the United States who are within the defined Class.

55. There are questions of law or fact common to the Class members concerning:

(a) whether Defendants and their co-conspirators engaged in a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets by, among other things, agreeing not to compete with one another and otherwise allocating customers and markets to one another;

(b) the duration and extent of the contract, combination or conspiracy alleged herein;

(c) whether the Defendants were participants in the contract, combination or conspiracy alleged herein;

(d) whether the alleged contract, combination or conspiracy violated Section 1 of the Sherman Act, 15 U.S.C. § 1;

(e) whether the alleged contract, combination or conspiracy caused injury and damage to Plaintiffs and members of the Class and the appropriate measure of damages;

(f) whether a Defendant's conduct violated state antitrust laws;

(g) whether Plaintiffs and members of the Class are entitled to injunctive and other equitable relief; and

(h) whether Defendants and their co-conspirators fraudulently concealed the conspiracy alleged herein.

56. The claims of Plaintiffs are typical of the claims of each of the members of the Class. Plaintiffs and members of the Class purchased local telephone and/or high speed internet services from a Defendant or a competitor of a Defendant in the continental United States.

57. Plaintiffs will fairly and adequately protect the interests of the Class. There is no conflict of interest between Plaintiffs and other members of the Class and Plaintiffs are represented by experienced class action counsel.

58. Defendants have acted in an unlawful manner on grounds generally applicable to all members of the Class.

59. The questions of law or of fact common to the claims of the Class predominate over any questions affecting only individual class members, so that the certification of this case as a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

60. For these reasons, the proposed Class may be certified under Fed. R. Civ. P. 23.

## VIII.

## *FRAUDULENT CONCEALMENT*

61. Plaintiffs and members of the Class had no knowledge of the contract, combination or conspiracy or any facts alleged herein which might have led to the discovery thereof until shortly before the filing of this Complaint. Plaintiffs and members of the Class could not have discovered the contract, combination or conspiracy at an earlier date by the exercise of due diligence because of the affirmative, deceptive practices and techniques of secrecy employed by Defendants. Through these acts of secrecy and deception, which included affirmative acts to hide their wrongdoing, Defendants actively misled Plaintiffs and the Class about the existence and terms of their contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets by, among other things, agreeing not to compete with one another and to stifle attempts by others to compete with them and otherwise allocating customers and markets to one another.

## *COUNT I*

### *Violation of Sherman Act § 1 - 15 U.S.C. § 1*

62. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 61 as if fully set forth herein.

63. Defendants and their co-conspirators have engaged in a horizontal contract, combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act. 15 U.S.C. § 1.

64. Beginning at least as early as February 6, 1996, and continuing to the present, the exact dates being unknown to Plaintiffs, Defendants and their co-conspirators engaged in a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets by, among other things, agreeing not to compete with one another and to stifle attempts by others to compete with them and otherwise allocating customers and markets to one another in violation of Section 1 of the Sherman Act. 15 U.S.C. § 1.

65. The contract, combination or conspiracy has had and will continue to have the following effects:

(a) competition in the local telephone and/or high speed internet services market has been unlawfully restrained, suppressed or eliminated;

(b) Plaintiffs and members of the Class have been denied the benefits of free, open and unrestricted competition in the local telephone and/or high speed internet services markets; and

(c) the price of local telephone and/or high speed internet services in the United States have been fixed, raised, maintained or stabilized at artificially high and noncompetitive levels.

66. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Class have suffered injury to their business or property and have paid supracompetitive prices for local telephone and/or high speed interact services.

67. If not permanently enjoined, the unlawful contract, combination or conspiracy will continue and cause irreparable harm to Plaintiffs and members of the Class who have no adequate remedy at law.

***COUNT II***

***Violation of State Antitrust Laws***

68. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 67 as if fully set forth herein.

69. As described above, Defendants have engaged in a contract, combination or conspiracy to prevent competitive entry in their respective local telephone and/or high speed internet services markets by, among other things, agreeing not to compete with one another and to stifle attempts by others to compete with them and otherwise allocating customers and markets to one another in violation of the following state antitrust laws.

70. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Arizona Revised Stat. §§ 44-1401, *et seq.*

71. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Cal. Bus. & Prof. Code §§ 16700, *et seq.*, and Cal. Bus, & Prof. Code §§ 17200.

72. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of violation of D.C. Code Ann. §§ 28-45031, *et seq.*

73. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Fla. Stat. §§ 501. Part II, *et seq.*

74. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Iowa Code §§ 553.4 *et seq.*

75. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Kan. Stat. Ann. §§ 50-101, *et seq.*

76. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of La. Rev. Stat. §§ 51:137, *et seq.*

77. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Me. Rev. Stat. Ann. 10, § 1101, *et seq.*

78. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Mass. Ann. Laws ch. 93, *et seq.*

79. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Mich. Comp. Laws Ann. §§ 445.771, *et seq.*

80. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Minn. Stat. §§ 325D.52, *et seq.*

81. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Miss. Code Ann. §§ 75-21-1, *et seq.*

82. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Nev. Rev. Stat. Ann. § 598A, *et seq.*

83. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*

84. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of N.M. Stat. Ann. §§ 57-1-1 *et seq.*

85. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of New York General Business Law §§ 340, *et seq.* and § 349 *et seq.*

86. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of N.C. Gen. Stat. §§ 75-1, *et seq.*

87. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of N.D. Cent. Code § 51.08.1-01, *et seq.*

88. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of S.D. Codified Laws Ann. § 37-1, *et seq.*

89. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Tenn. Code Ann. §§ 47-25-101, *et seq.*

90. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Vt. Stat. Ann. 9, § 2453, *et seq.*

91. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of W.Va. Code §§ 47-18-1, *et seq.*

92. Defendants have unlawfully entered into a contract, combination or conspiracy in unreasonable restraint of trade in violation of Wis. Stat. § 133.01, *et seq.*

93. Plaintiffs and members of the Class have been injured in their business or property by reason of Defendants' antitrust violations alleged in this Count. Their injury consists of paying higher prices for local telephone and/or high speed internet services than they would have paid in the absence of the violations alleged herein. This injury is of the type the antitrust laws of the above States and the District of Columbia were designed to prevent and flows from that which makes Defendants' conduct unlawful.

## COUNT III

### *Unjust Enrichment*

94. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 93 as if fully set forth herein.

95. Defendants have benefitted from their unlawful acts through the overpayments from Plaintiffs and other Class members and the increased profits resulting from such overpayments. It would be inequitable for Defendants to be permitted to retain the benefit of these overpayments, which were conferred by Plaintiffs and the other class members and retained by Defendants.

96. Plaintiffs and members of the Class are entitled to the establishment of a constructive trust consisting of the benefit to Defendants of such overpayments, from which Plaintiffs and the other Class members may make claims on a pro-rata basis for restitution.

## *PRAYER FOR RELIEF*

WHEREFORE, Plaintiffs and members of the Class pray that the Court enter judgment in their favor as follows:

A. Declaring this action to be a proper class action and certifying Plaintiffs as the representative of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Declaring that Defendants violated and are in violation of the Sherman Act § 1 and the various state antitrust statutes alleged herein;

C. Awarding threefold the damages sustained by Plaintiffs and members of the Class as a result Defendants' violations;

D. Ordering injunctive relief preventing and restraining Defendants and all persons acting on their behalf from engaging in the unlawful acts alleged herein;

["E" omitted in original]

F. Awarding Plaintiffs and members of the Class the costs, expenses, and reasonable attorneys' fees and experts' fees for bringing and prosecuting this action; and

G. Awarding Plaintiffs and members of the Class such other and further relief as the Court may deem just and proper.

## *JURY DEMAND*

Pursuant to Rule 38(h) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: April 11, 2003
New York, New York

MILBERG WEISS BERSHAD HYNES & LERACH LLP

Exhibit A


Exhibit B