

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

John R. Gammino,

Plaintiff,

v.

American Telephone & Telegraph Company, and  
Unknown American Telephone & Telegraph  
Company Subsidiaries,

Century Link, Inc. and  
Unknown Century Link Subsidiaries,

Sprint Communications Company L.P.,  
Sprint Spectrum, L.P.,  
Nextel Operations, Inc.,  
Virgin Mobile USA, L.P.,  
Sprint Nextel Corporation, and  
Unknown Sprint Subsidiaries, and

Verizon Communications, Inc., and  
Unknown Verizon Subsidiaries,

Defendants.

C. A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, John R. Gammino ("Mr. Gammino") by his attorneys, and Stradley Ronon  
Stevens and Young, LLP, makes this Complaint against the Defendants:

**The Parties**

1. Plaintiff, John R. Gammino is an adult individual and is a resident of the state  
of Florida.

2. Defendants American Telephone & Telegraph Company and its Unknown  
Subsidiaries (collectively referred to as "ATT Defendants" or "ATT"), regularly conduct  
business in this judicial district.

3. Upon information and belief, the ATT Defendants' principal place of business is at 32 Avenue of the Americas, New York, New York 10013-2412.

4. Defendant American Telephone & Telegraph Company is organized under the laws of the State of Delaware.

5. Defendants Century Link, Inc. and its Unknown Subsidiaries (collectively referred to as "Century Link Defendants" or "Century Link"), regularly conduct business in this judicial district.

6. Upon information and belief, the Century Link Defendants' principal place of business is located at 100 Centurylink Dr., Monroe, Louisiana 71203.

7. Defendant Century Link is organized under the laws of the State of Delaware.

8. Defendants Sprint Communications Company L.P., Sprint Spectrum, L.P., Nextel Operations, Inc., Virgin Mobile USA, L.P., and Sprint Nextel Corporation, and their Unknown Subsidiaries (collectively referred to as "Sprint Defendants" or "Sprint"), regularly conduct business in this judicial district.

9. Upon information and belief, the Sprint Defendants have a registered office address of Corporation Service Company, 200 SW 30<sup>th</sup> Street, Topeka, Kansas 66611.

10. Defendant Sprint Communications Company L.P. is organized under the laws of the State of Delaware.

11. Defendant Sprint Spectrum, L.P. is organized under the laws of the State of Delaware.

12. Defendant Nextel Operations, Inc. is organized under the laws of the State of Delaware.

13. Virgin Mobile USA, L.P. is organized under the laws of the State of Delaware.

14. Defendant Sprint Nextel Corporation is organized under the laws of the State of Kansas.

15. Defendants Verizon Communications, Inc. and its Unknown Subsidiaries (collectively referred to as “Verizon Defendants” or “Verizon”) regularly conduct business in this judicial district.

16. Upon information and belief, the Verizon Defendants’ principal place of business is at 140 West St. New York, New York 10007.

17. Defendant Verizon Communications, Inc. is organized under the laws of the State of Delaware.

18. The ATT Defendants, Century Link Defendants, Sprint Defendants and Verizon Defendants are collectively referred to herein as “Defendants.”

#### **Jurisdiction and Venue**

19. This Court has jurisdiction over the subject matter of this action pursuant to the provisions of 28 U.S.C. § 1331 and § 1338, in that the claims in this action arise under the Patent Act of the United States, 35 U.S.C. § 101 et seq.

20. This Court has personal jurisdiction over each of the Defendants because each Defendant regularly conducts business in this judicial district. Moreover, as alleged herein, seven (7) of the eight (8) named Defendants are organized under the laws of the State of Delaware.

21. Venue in the District of Delaware is proper pursuant to 28 U.S.C. § 1391(b) (2), in that a substantial part of the events or omissions giving rise to the claims alleged occurred in this district; and pursuant to 28 U.S.C. § 4100(b) in that this is a civil action for

patent infringement and Defendants have committed acts of patent infringement in this judicial district and have regular and established places of business in this judicial district.

22. More specifically, with respect to personal jurisdiction, each of the Defendants regularly conduct business in the State of Delaware by providing telecommunications services to their respective customers residing in the State of Delaware.

23. Moreover, all within Delaware, Defendants each sell or lease wireless telephones, provide telephone services to businesses and homes, and/or sell and service telephone calling cards, or place or take collect calls from their respective customers.

24. It is these services and products, each provided by Defendants, that serve as a basis for the patent infringement claims alleged by Gammino against Defendants.

### **Introduction**

25. Information published by each of the Defendants, providing how customers may place certain telephone calls using Defendants' telecommunications systems, establishes that each of the Defendants infringe U.S. Patent No. 5,359,643 ("the '643 patent"). A copy of the '643 patent is attached as Exhibit A.

26. After a search of public documents including press releases, website and Securities and Exchange Commission public filings, Mr. Gammino has not been able to identify all the entities related to ATT, Century Link, Sprint or Verizon that have infringed and/or are infringing the '643 patent. Mr. Gammino needs the aid of discovery to determine which Unknown Subsidiaries of ATT, Century Link, Sprint or Verizon may be infringing the '643 patent.

27. Mr. Gammino has been able to identify and determine some of the Sprint entities involved in this case because on November 22, 2011, the Sprint entities involved in

this case filed suit against Mr. Gammino in the United States District Court for the District of Kansas demanding a declaratory judgment regarding the '643 patent (the "Sprint Kansas Action").

28. After Mr. Gammino filed a motion to dismiss the Sprint Kansas Action based upon a lack of personal jurisdiction, Sprint dismissed the Sprint Kansas Action.

**COUNT I -- PATENT INFRINGEMENT AGAINST ATT**

29. The averments of paragraphs 1 through 28 above are incorporated herein by reference.

30. The ATT Defendants infringe one or more of claims of the '643 patent by using infringing methods and apparatus in their telecommunications systems and network.

31. More specifically, the ATT Defendants use methods that permit customers to place different types of telephone calls using the ATT Defendants' telecommunications systems and network, where such methods are within the scope of one or more claims of the '643 patent.

32. ATT's statements in its website and instructions provided to its customers confirm ATT's infringement of the '643 patent.

33. The ATT Defendants have used and continue to use the methods claimed in the '643 patent to place calling card, credit card and collect calls.

34. The ATT Defendants also have used and continue to use the methods claimed in the '643 patent to promote the use of their telecommunications system and increase their base of customers, thereby increasing sales, revenue and income.

35. As a result of the foregoing conduct, the ATT Defendants have infringed and continue to infringe one or more of the claims of the '643 patent, and have caused Mr. Gammino damages as a direct and proximate result of such infringing conduct.

36. The ATT Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of their infringement of one or more claims of the '643 patent, including lost income, profits, and/or royalties and other damages.

### **COUNT II -- INDUCEMENT TO INFRINGE BY ATT**

37. The averments of paragraphs 1 through 36 above set forth above are incorporated herein by reference.

38. The acts of the ATT Defendants constitute an active inducement of its calling card customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more claims of the '643 patent, causing Mr. Gammino damages as a direct and proximate result thereby.

39. The ATT Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the induced infringement including lost income, profits, and/or royalties and other damages.

### **COUNT III -- PATENT INFRINGEMENT AGAINST CENTURY LINK**

40. The averments of paragraphs 1 through 40 above are incorporated herein by reference.

41. The Century Link Defendants infringe one or more of claims of the '643 patent by using infringing methods and apparatus in their telecommunications systems and network.

42. More specifically, the Century Link Defendants use methods that permit customers to place different types of telephone calls using the Century Link Defendants' telecommunications systems and network, where such methods are within the scope of one or more claims of the '643 patent.

43. Century Link's statements in its website and instructions provided to its customers confirm Century Link's infringement of the '643 patent.

44. The Century Link Defendants have used and continue to use the methods claimed in the '643 patent to place calling card and/or collect calls, and upon information and belief they also use or have used the methods claimed in the '643 patented invention for other types of calls.

45. The Century Link Defendants also have used and continue to use the methods claimed in the '643 patent to promote the use of their system and increase their base of customers, thereby increasing sales, revenue and income.

46. As a result of the foregoing conduct, the Century Link Defendants have infringed and continue to infringe one or more of the claims of the '643 patent, and have caused Mr. Gammino damages as a direct and proximate result of such infringing conduct.

47. The Century Link Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of their infringement of one or more claims of the '643 patent, including lost income, profits, and/or royalties and other damages.

#### **COUNT IV -- INDUCEMENT TO INFRINGE AGAINST CENTURY LINK**

48. The averments of paragraphs 1 through 47 set forth above are incorporated herein by reference.

49. The acts of the Century Link Defendants constitute an active inducement of its calling card customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more claims of the '643 patent, causing Mr. Gammino damages as a direct and proximate result thereby.

50. The Century Link Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the induced infringement including lost income, profits, and/or royalties and other damages.

#### **COUNT V -- PATENT INFRINGEMENT AGAINST SPRINT**

51. The averments of paragraphs 1 through 50 set forth above are incorporated herein by reference.

52. The Sprint Defendants infringe one or more of claims of the '643 patent by using infringing methods and apparatus in their telecommunications systems and network.

53. More specifically, the Sprint Defendants use methods that permit customers to place different types of telephone calls using the Sprint Defendants' telecommunications systems and network, where such methods are within the scope of one or more claims of the '643 patent.

54. Sprint's statements in its website and instructions provided to its customers confirm Sprint's infringement of the '643 patent.

55. The Sprint Defendants have used and continue to use the methods claimed in the '643 patent to place calling card calls and collect calls, and upon information and belief they use or have used methods claimed in the '643 patent for other types of calls.



56. The Sprint Defendants also have used and continue to use the methods claimed in the '643 patent to promote the use of their system and increase their base of customers, thereby increasing sales, revenue and income.

57. As a result of the foregoing conduct, the Sprint Defendants have infringed and continue to infringe one or more of the claims of the '643 patent and have caused Mr. Gammino damages as a direct and proximate result of such infringing conduct.

58. The Sprint Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of their infringement of one or more claims of the '643 patent, including lost income, profits, and/or royalties and other damages.

59. By way of background, Mr. Gammino has also filed suit against Sprint for infringement of U.S. Patent No. 5,809,125 (the "'125 patent"). The '125 patent is not related to the '643 patent at issue in this matter.

60. The patent infringement matter for the '125 patent is pending in the United States Court for the Eastern District of Pennsylvania, having Civil Action No. 2:10-cv-02493 (the "'125 Action").

61. Seven months after the '125 Action was pending in the Eastern District of Pennsylvania, Mr. Gammino amended the complaint to add an allegation that Sprint had also infringed the '643 patent.

62. On Sprint's motion, the '643 claim was dismissed from that action without prejudice (Dkt. 98).

63. In support of the dismissal sought by Sprint, Sprint alleged that the '643 patent "is unrelated to the two closely related patents already in suit [the '125 and '650" patents]" and "adding these new counts and a new patent [the '643 patent] to the current litigation

involving two other patents will disrupt and slow the current proceedings, without any benefit of efficiency or economy.” (Dkt. 57, at page 2).

64. In support of its motion to dismiss the amendments to the “125 Action complaint, Sprint stated “hardship and disruption that will be caused by adding new subject matter [the ‘643 patent] to the current Proceeding.” (Dkt. 57, at page 1).

65. Sprint’s Motion specifically included sections entitled, “This Case Is Too Far Advanced To Open Up Litigation on A New Patent,” and “The ‘643 Patent’s Technology Differs from That of the Two Patents Already at Issue.” (Dkt. 57, at pages 2, 3).

66. The United States Court for the Eastern District of Pennsylvania Court rendered no ruling on the merits of the cause of action claiming infringement of the ‘643 patent.

#### **COUNT VI -- INDUCEMENT TO INFRINGE AGAINST SPRINT**

67. The averments of paragraphs 1 through 66 set forth above are incorporated herein by reference.

68. The acts of the Sprint Defendants constitute an active inducement of its calling card customers, other customers, and other entities or persons operating in the telecommunications industry to infringe one or more claims of the ‘643 patent, causing Mr. Gammino damages as a direct and proximate result thereby.

69. The Sprint Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the induced infringement including lost income, profits, and/or royalties and other damages.

#### **COUNT VII -- PATENT INFRINGEMENT AGAINST VERIZON**

70. The averments of paragraphs 1 through 69 set above are incorporated herein by reference.

71. The Verizon Defendants infringe one or more of claims of the '643 patent by using infringing methods and apparatus in their telecommunications systems and network.

72. More specifically, the Verizon Defendants use methods that permit customers to place different types of telephone calls using the Verizon Defendants' telecommunications systems and network, where such methods are within the scope of one or more claims of the '643 patent.

73. Verizon's statements in its website and instructions provided to its customers confirm infringement of the '643 patent.

74. The Verizon Defendants have used and continue to use the methods claimed in the '643 patent to place calling card calls, and upon information and belief, they use or have used the methods claimed in the '643 patent for other types of calls.

75. The Verizon Defendants also have used and continued to use the methods claimed in the '643 patent to promote the use of its system and increase their base of customers, thereby increasing sales, revenue and income.

76. As a result of the foregoing conduct, the Verizon Defendants have infringed and continue to infringe one or more of the claims of the '643 patent and have caused Mr. Gammino damages as a direct and proximate result of such infringing conduct.

77. The Verizon Defendants are liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of their infringement of one or more claims of the '643 patent, including lost income, profits, and/or royalties and other damages.

**COUNT VIII -- INDUCEMENT TO INFRINGE BY VERIZON**

78. The averments of paragraphs 1 through 77 set above set forth above are incorporated herein by reference.

79. The acts of the Verizon Defendants constitute an active inducement of their calling card customers, other customers and other entities or persons operating in the telecommunications industry to infringe one or more claims of the '643 patent, causing Mr. Gammino damages as a direct and proximate result thereby.

80. The Verizon Defendants are jointly and severally liable to Mr. Gammino for all damages suffered by Mr. Gammino as a result of the induced infringement including lost income, profits, and/or royalties and other damages.

**WHEREFORE**, Plaintiff John R. Gammino prays:

(a) That all Defendants be adjudged to have infringed and induced infringement of one or more claims of the United States Letters Patent No. 5,359,643;

(b) That all Defendants and respective officers, agents, servants, employees and attorneys, and those person in active concert or participation with them who receive actual notice of the Order, be immediately, preliminarily and permanently enjoined from infringing and inducing the infringement of any of the claims of the United States Letters Patent No. 5,359,643.

(c) That Mr. Gammino be awarded damages against all Defendants for the infringement or inducement of the infringement of one or more of the claims of United States Letters Patent No. 5,359,643;

(d) That the damages in this judgment be trebled in accordance with 35 U.S.C. § 284 in view of the willful and deliberate infringement of one or more of claims of the United States Letters Patent No. 5,359,643;

(e) That an assessment be awarded to plaintiff of interest on the damages so computed;

(f) That the Court find this case to be an exceptional case, and award John R. Gammino his reasonable attorney fees and costs pursuant to 35 U.S.C. § 285; and

(g) That John R. Gammino receive such other and further relief as this Honorable Court shall deem just and proper.

By: 

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