

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Red River Fiber Optic Corporation,

Plaintiff,

v.

Verizon Services Corp., Verizon
Business Network Services Inc.,
Verizon Enterprise Delivery LLC,
AT&T Corp., Qwest Corporation, and
Qwest Communications Corporation,

Defendants.

Civil Action No. 2:08-cv-00215-TJW-CE

**PLAINTIFF RED RIVER FIBER OPTIC
CORPORATION'S FOURTH AMENDED COMPLAINT**

Plaintiff Red River Fiber Optic Corporation ("Red River") files this Fourth Amended Complaint for infringement of U.S. Patent No. 5,555,478, a copy of which is attached hereto as Exhibit A, under 35 U.S.C. § 271, and in support thereof would respectfully show the Court as follows:

PARTIES

1. Red River is a corporation organized and existing under the laws of the State of Texas. Red River maintains its principal place of business at 115 N. Wellington, Suite 100, Marshall, Texas 75670.

2. Defendant Verizon Services Corp. ("VSC") is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, having a principal place of business and home office at 140 West Street, New York, NY 10007. VSC regularly conducts and transacts business in Texas, throughout the United States, and within the

Eastern District of Texas, itself and through one or more subsidiaries, affiliates, business divisions, or business units (e.g., Verizon Telecom, Verizon Business Network Services Inc. and/or Verizon Business Global LLC), and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. Upon information and belief, VSC can be served with process through any of its agents including officers or directors or its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. In the alternative, VSC has not designated or maintained a resident agent for service of process although VSC is required to do so by statute and/or engages in business in Texas. Therefore, the Secretary of State is an agent for service of process on VSC. VSC offers for sale, sells, advertises, and provides a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “Verizon,” “Verizon Telecom,” and “FIOS.”

3. Defendant Verizon Business Network Services Inc. (“VBNS”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, having a principal place of business and home office at 140 West Street, New York, NY 10007. VBNS regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and through one or more subsidiaries, affiliates, business divisions, or business units (e.g., Verizon Telecom, Verizon Business Network Services Inc. and/or Verizon Business Global LLC), and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. Upon information and belief, VBNS can be served with process through any of its agents including officers or directors or its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street,

Wilmington, DE 19801. In the alternative, VBNS has not designated or maintained a resident agent for service of process although VBNS is required to do so by statute and/or engages in business in Texas. Therefore, the Secretary of State is an agent for service of process on VBNS. VBNS offers for sale, sells, advertises, and provides a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “Verizon,” “Verizon Telecom,” and “FIOS.”

4. Defendant Verizon Enterprise Delivery LLC (“VED”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware, having a principal place of business and home office at 140 West Street, New York, NY 10007. VED regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and through one or more subsidiaries, affiliates, business divisions, or business units (e.g., Verizon Telecom, Verizon Business Network Services Inc. and/or Verizon Business Global LLC), and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. Upon information and belief, VED can be served with process through any of its agents including officers or directors or its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. In the alternative, VED has not designated or maintained a resident agent for service of process although VED is required to do so by statute and/or engages in business in Texas. Therefore, the Secretary of State is an agent for service of process on VED. VED offers for sale, sells, advertises, and provides a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “Verizon,” “Verizon Telecom,” and “FIOS.”

5. Defendant AT&T Corp. (“AT&T”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of New York, having a principal place of business at One AT&T Way, Bedminster, New Jersey 07921. AT&T regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and through one or more subsidiaries or affiliates, and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. AT&T’s registered agent in Texas is CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201. AT&T offers for sale, sells, advertises, and markets a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “AT&T” and “U-Verse.”

6. Defendant Qwest Corporation (“Qwest”) is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of Delaware. Qwest regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and through one or more subsidiaries or affiliates, and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. Upon information and belief, Qwest can be served with process through any of its agents including officers or directors or its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. Qwest offers for sale, sells, advertises, and markets a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “Qwest.”

7. Defendant Qwest Communications Corporation (n/k/a Qwest Communications Company LLC) (“QCC”) is, and at all relevant times mentioned herein was, a corporation

organized and existing under the laws of the State of Delaware. QCC regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and through one or more subsidiaries or affiliates, and, as set forth below, has committed and continues to commit tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas. Upon information and belief, QCC can be served with process through any of its agents including officers or directors or its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201. QCC offers for sale, sells, advertises, and markets a fiber optic transmission system in the United States and, more particularly, in the Eastern District of Texas, under the brand name “Qwest.”

JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case under 28 U.S.C. § 1338(a).

9. This Court has personal jurisdiction over each Defendant. Each Defendant has conducted and does conduct business within the State of Texas. Each Defendant, directly or through subsidiaries or intermediaries, offers for sale, uses, makes, distributes, sells, advertises, and markets fiber optic transmission systems in the United States, the State of Texas, and the Eastern District of Texas. Defendants have voluntarily sold infringing services and distributed infringing products in this District, either directly to customers in this District or through intermediaries with the expectation that the services and products will be sold and distributed to customers in this District. These infringing services and products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Each Defendant has

committed acts of infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

10. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

COUNT ONE
PATENT INFRINGEMENT

11. Red River refers to and incorporates the foregoing paragraphs by reference as if set forth fully herein.

12. United States Patent No. 5,555,478 (the “’478 patent”), entitled “Fiber Optic Information Transmission System,” was duly and legally issued by the United States Patent and Trademark Office on September 10, 1996, after a full and fair examination. An *ex parte* reexamination certificate issued on June 19, 2007. The ’478 patent relates to, among other things, a fiber optic transmission system and a method for routing calls on a fiber optic network. Red River is the assignee of all rights, title, and interest in and to the ’478 patent and possesses all rights of recovery under the ’478 patent.

13. Each Defendant is infringing the ’478 patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling within the United States products and services that practice the inventions of the ’478 patent; (b) contributing to the infringement of the ’478 patent by others in the United States; and/or (c) inducing others to infringe the ’478 patent within the United States.

14. Red River incorporates its June 17, 2010 First Supplemental Infringement Contentions by reference as if set forth fully herein.

15. AT&T owns, operates, maintains, sells, offers for sale, makes, and uses a fiber optic transmission system as described in the claims of the ’478 patent. AT&T owns, operates,

maintains, sells, offers to sell, makes, and utilizes an all fiber optic network that provides an end-to-end fiber optic transmission system. The AT&T fiber optic transmission system accused of infringement includes the “Lightspeed,” SBCIS (SBC Internet Services), BRIB (Bell South Regional IP Backbone), and CBB (Common Backbone) networks. AT&T provides a number of products and services over these networks including its U-Verse and Business U-Verse offerings and Enterprise Hosting Services. Besides owning, operating, maintaining, selling, offering for sale, making, and using the AT&T system, AT&T induces the use of the AT&T system by, among others, residential, business, governmental, and enterprise subscribers, who also directly infringe the ’478 patent. AT&T has actively and knowingly aided and abetted that direct infringement. AT&T actually intended to cause the acts that constitute direct infringement, knew of the ’478 patent, and knew or should have known that its actions would lead to actual infringement. AT&T also contributorily infringes the ’478 patent. There are numerous direct infringers of the ’478 patent, including but not limited to AT&T’s residential, business, governmental, and enterprise subscribers. AT&T sold, offered for sale, and/or imported a material component of the patented invention that is not a staple article of commerce capable of substantial non-infringing use, with knowledge of the ’478 patent, and knowledge that the component was especially made or adapted for use in an infringing manner.

16. Qwest and QCC own, operate, maintain, sell, offer for sale, make, and use a fiber optic transmission system as described in the claims of the ’478 patent. Qwest and QCC own, operate, maintain, sell, offer to sell, make and utilize an all fiber optic network that provides an end-to-end fiber optic transmission system. The Qwest and QCC system accused of infringement includes Qwest’s and QCC’s fiber to the home infrastructure and Qwest’s and QCC’s regional, metropolitan, transport, and backbone networks. Services such as Qwest’s and

QCC's Choice Online, Choice TV, Voice over IP, Metro Optical Ethernet (QC, QCC, and iQ), DIA, and Qwest hosting services are offered over and by way of the system. Besides owning, operating, maintaining, selling, offering for sale, making, and using the system, Qwest and QCC induce the use of the system by, among others, residential, business, governmental, and enterprise subscribers, who also directly infringe the '478 patent. Qwest and QCC have actively and knowingly aided and abetted that direct infringement. Qwest and QCC actually intended to cause the acts that constitute direct infringement, knew of the '478 patent, and knew or should have known that their actions would lead to actual infringement. Qwest and QCC also contributorily infringe the '478 patent. There are numerous direct infringers of the '478 patent, including but not limited to Qwest and QCC's residential, business, governmental, and enterprise subscribers. Qwest and QCC sold, offered for sale, and/or imported a material component of the patented invention that is not a staple article of commerce capable of substantial non-infringing use, with knowledge of the '478 patent, and knowledge that the component was especially made or adapted for use in an infringing manner.

17. VSC, VBNS, and VED own, operate, maintain, sell, offer for sale, make, and use a fiber optic transmission system as described in the claims of the '478 patent. VSC, VBNS, and VED own, operate, maintain, sell, offer to sell, make, and use an all fiber optic network that provides an end-to-end fiber optic transmission system. VSC's, VBNS', and VED's fiber optic transmission system includes the FiOS network (also referred to as Converged Fiber to the Desktop), and their IP, transport, and backbone networks. VSC, VBNS, and VED provide a number of services over the system including FiOS, FTTP Voice, FiOS Voice or Digital Voice, Hosting Services (e.g., co-location or managed hosting at Verizon Business Data Centers), and Private IP. Besides owning, operating, maintaining, selling, offering for sale, making, and using

the system, VSC, VBNS, and VED induce the use of the system by, among others, residential, business, governmental, and enterprise subscribers, who also directly infringe the '478 patent. VSC, VBNS, and VED have actively and knowingly aided and abetted that direct infringement. VSC, VBNS, and VED actually intended to cause the acts that constitute direct infringement, knew of the '478 patent, and knew or should have known that their actions would lead to actual infringement. VSC, VBNS, and VED also contributorily infringe the '478 patent. There are numerous direct infringers of the '478 patent, including but not limited to VSC's, VBNS', and VED's residential, business, governmental, and enterprise subscribers. VSC, VBNS, and VED sold, offered for sale, and/or imported a material component of the patented invention that is not a staple article of commerce capable of substantial non-infringing use, with knowledge of the '478 patent, and knowledge that the component was especially made or adapted for use in an infringing manner.

18. AT&T (and/or its affiliated companies) has known of the '478 patent since as early as 2003 when it was notified of the '478 patent by Red River.

19. VSC, VBNS, and VED (and/or their affiliated companies) have known of the '478 patent since as early as 2003 when they were notified of the '478 patent by Red River.

20. Qwest and QCC (and/or their affiliated companies) have known of the '478 patent since as early as 2000 when they were notified of the '478 patent by Red River.

21. Upon information and belief, each Defendant's infringement has been and continues to be willful. Among other things, following notice of the '478 patent by Red River, each Defendant has acted despite an objectively high likelihood that its actions infringed a valid patent, and this objectively high likelihood of infringement was either known or so obvious that it should have been known to each Defendant. The totality of the circumstances also indicate

that each Defendant's infringement of the '478 patent is willful. For example, no Defendant has offered any evidence that it sought or relied on any legal advice, much less competent legal advice, with respect to its infringement of the '478 patent, and Defendants have not presented any substantial defense to their infringement. Furthermore, Defendants have no reasonable basis for believing that they have not infringed the '478 patent or that the '478 patent was invalid or unenforceable. There is also no evidence that, when Defendants learned of the '478 patent, they investigated the scope of the '478 patent and formed a good faith belief that the '478 patent was invalid or that it was not infringed before Defendants started or continued their infringing activities. Defendants have not made a good faith effort to avoid infringing the '478 patent, because, for example, there is no evidence that Defendants took remedial action upon learning of the '478 patent by ceasing their infringing activity or by attempting to design around the '478 patent. Indeed, Defendants' infringing activities continue to this day. Defendants' willful infringement was conducted after each Defendant had knowledge of the '478 patent, and had the opportunity to conduct a review and analysis of the '478 patent. Each Defendant's infringement has been and continues to be willful, deliberate, and in flagrant disregard of Red River's patent rights under the '478 patent.

PRAYER FOR RELIEF

Red River prays for the following relief:

A. A judgment that each Defendant has directly infringed the '478 patent, contributorily infringed the '478 patent, and induced infringement of the '478 patent, and that such infringement is and has been willful;

B. An injunction preventing each Defendant and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active

concert or participation with any of them, from directly infringing, contributorily infringing, and inducing the infringement of the '478 patent;

C. A judgment and order requiring each Defendant to pay Red River's damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

D. A judgment and order requiring each Defendant to pay Red River's pre-judgment and post-judgment interest on the damages awarded;

E. A judgment and order requiring each Defendant to pay Red River the costs of this action (including all disbursements) and attorney's fees as provided by 35 U.S.C. § 285; and

F. Such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Red River hereby demands that all issues be determined by jury.

DATED: November 3, 2010

Respectfully submitted,

By: /s/ Douglas A. Cawley

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed in compliance with Local Rule CV-5(a) on November 3, 2010. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Steven Callahan
Steven Callahan