

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CELLCO PARTNERSHIP d/b/a VERIZON	:	
WIRELESS,	:	
	:	Case No. 1:09-cv-6656 (LTS)
Plaintiff/Counterclaim Defendant,	:	
	:	<b>ECF Case</b>
v.	:	
	:	
AT&T MOBILITY LLC,	:	
	:	
Defendant/Counterclaim Plaintiff.	:	
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**ANSWER AND COUNTERCLAIM OF AT&T MOBILITY LLC**

AT&T Mobility LLC (“AT&T”) submits this Answer and Counterclaim in response to the Amended Complaint of Cellco Partnership d/b/a Verizon Wireless (“Verizon”), in which Verizon alleges that its advertising claims of “Most Reliable 3G Network,” “Best 3G Network,” and “Most Reliable Wireless Network” are truthful, accurate, and substantiated and that unrelated advertising claims by AT&T of “More Bars in More Places,” “Best Coverage,” and “Best Coverage Worldwide” are false, misleading, and unsubstantiated.

These allegations are meritless. Verizon admits that in measuring network “reliability” for purposes of its “Most Reliable” claims it ignores the speed of its 3G network—even though Verizon concedes that speed is one of the most important attributes of a 3G wireless network—and instead considers only connection and transmission success. Wireless service providers such as AT&T and Verizon have in recent years invested substantial resources to upgrade to 3G wireless networks, and have emphasized that capability in advertisements to the public, for one reason: 3G wireless networks offer significantly increased data transmission speed, reducing the time it takes to download and upload data on wireless devices and effectively allowing

and worldwide for many years; numerous other carriers compete with AT&T domestically and globally. AT&T and Verizon are two of the largest providers of wireless communications services in the United States and compete with one another for share of the wireless communications services market.

6. Verizon has made false, misleading, and/or unsubstantiated claims regarding the reliability of its 3G wireless network and the coverage of its wireless network.

### **I. Reliability Claims**

7. Wireless service providers seek to offer a quality wireless network experience by, among other things, upgrading and enhancing their wireless network capabilities. The most significant of the recent such network upgrades has been the move from second generation (“2G”) to third generation (“3G”) networks.

8. The primary function of 2G networks was to facilitate voice communications. The “reliability” of voice communications has been viewed by some in the wireless industry as depending principally on two factors: (i) “accessibility,” defined as the ability to connect to the network, and (ii) “retainability,” defined as the ability to maintain a connection. Data transmission speed has generally not been considered in measuring the “reliability” of a 2G network because speed is not particularly relevant in describing a 2G network.

9. The primary reason that wireless service providers have invested substantial resources to upgrade to 3G wireless networks (and have emphasized that capability in advertisements to the public) is that 3G wireless networks offer significantly increased data transmission speed. 3G networks improve on 2G technology by transmitting data at much faster speeds. Increased data transmission speed reduces the time it takes to download and upload data and effectively allows consumers to access the range of resources now available on the Internet

via mobile wireless devices. Speed of data transmission is one of the most important attributes of a 3G wireless network.

10. Verizon measures the “reliability” of its 3G data network by reference only to accessibility and retainability. Verizon does not consider network speed in measuring the “reliability” of its 3G data network.

11. Speed of data transmission must be considered in measuring the reliability of a 3G wireless network. The “reliability” of a 3G data network is measured by reference to the three critical attributes of a 3G data network: speed, accessibility, and retainability.

12. AT&T’s 3G network is more reliable than Verizon’s 3G network. Even if speed is ignored, as Verizon wishes, AT&T, not Verizon, still has the “most reliable” wireless 3G network.

13. Verizon does not have the most reliable 3G network.

14. Verizon nevertheless has presented in its national advertising, including in television commercials, print advertisements, billboards, and Internet advertisements, the following claims:

- a. “Most Reliable 3G Network”
- b. “Best 3G Network”
- c. “Most Reliable Wireless Network”

Examples of these advertisements are attached as Exhibit A of this Answer and Counterclaim.

15. These claims are literally false and/or misleading and are not substantiated by valid data or test results. The standard by which Verizon measures reliability fails to consider the critical attribute of speed of the network. If speed is appropriately considered, along with accessibility and retainability, AT&T, not Verizon, has the most reliable 3G network. And, even