

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
County of Charleston, South Carolina,  
Plaintiff,

v.

AT&T Corp.; BellSouth  
Telecommunications, LLC; Teleport  
Communications America, LLC;  
Bandwidth.com CLEC, LLC;  
CenturyLink Communications, LLC;  
United Telephone Company of the  
Carolinas, LLC; Comcast Phone of South  
Carolina, Inc.; DeltaCom, LLC; Business  
Telecom, LLC; Knology Broadband, Inc.;  
Knology of South Carolina, Inc.; Knology  
of Charleston, Inc.; Level 3  
Communications, LLC; Level 3 Telecom  
of South Carolina, LLC; Time Warner  
Cable Information Services (South  
Carolina), LLC; Telcove Operations,  
LLC; McClellanville Telephone  
Company, Inc.; US LEC of South  
Carolina LLC; Windstream Nuvox, LLC;  
and YMAX Communications Corp.

Defendants.

) IN THE COURT OF COMMON PLEAS  
)  
)

) CIVIL ACTION NO.: 2017-CP-10-\_\_\_\_\_  
)  
)

**COMPLAINT**

**(Jury Trial Demanded)**

FILED  
2017 AUG 17 AM 11:03  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Plaintiff County of Charleston, South Carolina, a local government, files this complaint against Defendants AT&T Corp.; BellSouth Telecommunications, LLC; Teleport Communications America, LLC; Bandwidth.com CLEC, LLC; CenturyLink Communications, LLC; United Telephone Company of the Carolinas, LLC; Comcast Phone of South Carolina, Inc.; DeltaCom, LLC; Business Telecom, LLC; Knology Broadband, Inc.; Knology of South Carolina, Inc.; Knology of Charleston, Inc.; Level 3 Communications, LLC; Level 3 Telecom of South Carolina, LLC; Time Warner Cable Information Services (South Carolina, LLC); Telcove

Operations, LLC; McClellanville Telephone Company, Inc.; US LEC of South Carolina LLC; Windstream Nuvox, LLC; and YMAX Communications Corp. (collectively “Defendants”), alleging as follows:

### **INTRODUCTION**

1. This is an action for damages, for injunctive relief, and for any other relief deemed appropriate by this Court, arising out of Defendants’ failure to properly bill, collect, and remit 911 charges as required by South Carolina law and local ordinances.

2. Plaintiff, in order to finance its 911 Center, opted by ordinance to assert its statutory authority to impose a \$0.50 monthly charge on each “local exchange access facility” and each “voice over internet protocol (“VoIP”) service line.” Under both South Carolina law and local ordinances, Defendants must collect this 911 charge and remit it to Plaintiff on a monthly basis, minus a 2% administrative fee.

3. Defendants knowingly violate the law by not billing their subscribers the required amount of 911 charges and under-remitting 911 charges to Plaintiff. They similarly misrepresent that the amounts remitted reflect the appropriate number of service lines subject to the 911 charge and constitute the full remittance required by law.

4. Defendants’ conduct injures Plaintiff because Plaintiff’s 911 emergency services are not properly and adequately funded, which leads to budget shortfalls that can have dire consequences for the public. The public is harmed when South Carolina’s local governments cannot fund their 911 emergency services in the manner that the General Assembly intended.

5. Accordingly, this action seeks damages and injunctive relief to remedy Defendants’ violations of their duties under South Carolina law and local ordinances.

### **PARTIES, JURISDICTION, AND VENUE**

6. Plaintiff County of Charleston, South Carolina, is a county and political subdivision of the State of South Carolina, residing in Charleston County. It is a “local government,” as defined by applicable law. By intergovernmental agreement, Plaintiff operates its 911 Center on behalf of itself and other local governments in Charleston County.

7. Defendant AT&T Corp. is a telecommunications company and “service supplier,” as defined by applicable law. AT&T Corp. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, AT&T Corp. was a corporation, organized and existing under the laws of the State of New York. AT&T Corp. is registered as a foreign entity with the South Carolina Secretary of State.

8. Defendant BellSouth Telecommunications, LLC is a telecommunications company and “service supplier,” as defined by applicable law. BellSouth Telecommunications, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, BellSouth Telecommunications, LLC was a limited liability company, organized and existing under the laws of the State of Georgia. BellSouth Telecommunications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

9. Defendant Teleport Communications America, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Teleport Communications America, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Teleport Communications America, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Teleport Communications America, LLC is registered as a foreign entity with the South Carolina Secretary of State.

10. Defendant Bandwidth.com CLEC, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Bandwidth.com CLEC, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Bandwidth.com CLEC, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Bandwidth.com CLEC, LLC is registered as a foreign entity with the South Carolina Secretary of State.

11. Defendant CenturyLink Communications, LLC is a telecommunications company and “service supplier,” as defined by applicable law. CenturyLink Communications, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, CenturyLink Communications, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. CenturyLink Communications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

12. Defendant United Telephone Company of the Carolinas, LLC is a telecommunications company and “service supplier,” as defined by applicable law. United Telephone Company of the Carolinas, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, United Telephone Company of the Carolinas, LLC was a limited liability company, organized and existing under the laws of the State of South Carolina. United Telephone Company of the Carolinas, LLC is registered as a domestic entity with the South Carolina Secretary of State.

13. Defendant Comcast Phone of South Carolina, Inc. is a telecommunications company and “service supplier,” as defined by applicable law. Comcast Phone of South Carolina, Inc. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Comcast Phone of South Carolina, Inc. was a corporation, organized and

existing under the laws of the State of South Carolina. Comcast Phone of South Carolina, Inc. is registered as a domestic entity with the South Carolina Secretary of State.

14. Defendant DeltaCom, LLC is a telecommunications company and “service supplier,” as defined by applicable law. DeltaCom, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, DeltaCom, LLC was a limited liability company, organized and existing under the laws of the State of Alabama. DeltaCom, LLC is registered as a foreign entity with the South Carolina Secretary of State.

15. Defendant Business Telecom, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Business Telecom, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Business Telecom, LLC was a limited liability company, organized and existing under the laws of the State of North Carolina. BellSouth Telecommunications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

16. Defendant Knology Broadband, Inc. is a telecommunications company and “service supplier,” as defined by applicable law. Knology Broadband, Inc. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Knology Broadband, Inc. was a corporation, organized and existing under the laws of the State of Delaware. Knology Broadband, Inc. is registered as a foreign entity with the South Carolina Secretary of State.

17. Defendant Knology of South Carolina, Inc. is a telecommunications company and “service supplier,” as defined by applicable law. Knology of South Carolina, Inc. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Knology of South Carolina, Inc. was a corporation, organized and existing under the laws

of the State of Delaware. Knology of South Carolina, Inc. is registered as a foreign entity with the South Carolina Secretary of State.

18. Defendant Knology of Charleston, Inc. is a telecommunications company and “service supplier,” as defined by applicable law. Knology of Charleston, Inc. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Knology of Charleston, Inc. was a corporation, organized and existing under the laws of the State of Delaware. BellSouth Telecommunications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

19. Defendant Level 3 Communications, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Level 3 Communications, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Level 3 Communications, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Level 3 Communications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

20. Defendant Level 3 Telecom of South Carolina, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Level 3 Telecom of South Carolina, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Level 3 Telecom of South Carolina, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Level 3 Telecom of South Carolina, LLC is registered as a foreign entity with the South Carolina Secretary of State.

21. Defendant Time Warner Cable Information Services (South Carolina), LLC is a telecommunications company and “service supplier,” as defined by applicable law. Time Warner Cable Information Services (South Carolina), LLC provides telecommunications services to

subscribers in Charleston County, South Carolina. At all relevant times, Time Warner Cable Information Services (South Carolina), LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Time Warner Cable Information Services (South Carolina), LLC is registered as a foreign entity with the South Carolina Secretary of State.

22. Defendant Telcove Operations, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Telcove Operations, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Telcove Operations, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Telcove Operations, LLC is registered as a foreign entity with the South Carolina Secretary of State.

23. Defendant McClellanville Telephone Company, Inc. is a telecommunications company and “service supplier,” as defined by applicable law. McClellanville Telephone Company, Inc. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, McClellanville Telephone Company, Inc. was a corporation, organized and existing under the laws of the State of South Carolina. McClellanville Telephone Company, Inc. is registered as a domestic entity with the South Carolina Secretary of State.

24. Defendant US LEC of South Carolina LLC is a telecommunications company and “service supplier,” as defined by applicable law. US LEC of South Carolina LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, US LEC of South Carolina LLC was a limited liability company, organized and existing under the laws of the State of Delaware. US LEC of South Carolina LLC is registered as a foreign entity with the South Carolina Secretary of State.

25. Defendant Windstream Nuvox, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Windstream Nuvox, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Windstream Nuvox, LLC was a limited liability company, organized and existing under the laws of the State of Delaware. Windstream Nuvox, LLC is registered as a foreign entity with the South Carolina Secretary of State.

26. Defendant YMAX Communications Corp. is a telecommunications company and “service supplier,” as defined by applicable law. YMAX Communications Corp. provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, YMAX Communications Corp. was a corporation, organized and existing under the laws of the State of Delaware. YMAX Communications Corp. is registered as a foreign entity with the South Carolina Secretary of State.

27. No claims in this action arise under federal law.

28. Jurisdiction and venue for this action properly lie in the Charleston County Court of Common Pleas pursuant to S.C. Code Ann. § 15-7-30.

### **FACTUAL ALLEGATIONS**

#### **A. 911 Emergency Services in Charleston County**

29. South Carolina has enacted laws governing and authorizing the creation of local 911 emergency services. The laws authorize local governments, which include cities, counties, and other political subdivisions across South Carolina, to establish, operate, and maintain their 911 emergency systems in their respective jurisdictions, known as “service areas.”

30. In the mid-2000s, Plaintiff and other political subdivisions in Charleston County consolidated their 911 emergency dispatch services to facilitate more effective emergency services



for the public. In January 2008, these local governments executed an intergovernmental agreement that transferred responsibility for the operation of 911 emergency services to Plaintiff. When the City of Charleston joined the agreement in January 2010, Plaintiff and its 911 Center became the exclusive provider of 911 emergency dispatch services throughout Charleston County.

31. The 911 Center's trained personnel work around the clock, receiving 911 telephone calls and transmitting emergency information to the proper authorities throughout Charleston County.

**B. 911 Charges in Charleston County**

32. Because Plaintiff and its 911 Center exclusively provide 911 emergency dispatch services in Charleston County, Plaintiff must finance those operations. To that end, Plaintiff receives funding from several sources. A critical source of that funding is a specific charge imposed on telephone service lines in its service area.

33. To fund 911 emergency services, South Carolina law authorizes Plaintiff and other local governments to assess a monthly "911 charge" on local exchange access facilities and VoIP service lines. *See* S.C. Code 23-47-10(17), (38); S.C. Code Ann. § 23-47-40(A); S.C. Code Ann. § 23-47-67(A). The law also requires telephone service suppliers like Defendants to bill each telephone subscriber an amount of 911 charges that reflect the amount of service lines, to collect those charges, and to remit those charges to the appropriate local government "within forty-five days of the end of the month during which such charges were collected." S.C. Code Ann. § 23-47-50(D). Service suppliers "are entitled to retain two percent of the gross 911 charges remitted to the local government as an administrative fee." *Id.*

34. Local governments like Plaintiff have the option to impose a 911 charge on telephone service lines in their service area, and if they choose to impose one, they must do so by passing appropriate local ordinances.

35. Plaintiff elected to impose a 911 charge in its service area, and it relies on the revenue from the 911 charges to fund its 911 Center and to provide emergency dispatch services in its jurisdiction. Specifically, Plaintiff passed an ordinance that tracks the state law, and that ordinance imposes a 911 charge on each “local exchange access facility subscribed by telephone subscribers whose local exchange access lines are in the area served, or would be served, by the enhanced 9-1-1 service and/or system of the [county].” Charleston Cnty. Ordinance § 14.5-53(b). Further, On June 16, 2015, Plaintiff raised the 911 charge to \$0.50 from \$0.30—a level that Plaintiff previously maintained for many years.

36. Therefore, at all times relevant to this action, Plaintiff imposed valid 911 charges on all applicable local exchange access lines and VoIP service lines, and the revenue from those 911 charges went directly to its provision of 911 emergency dispatch services in Charleston County.

**C. Defendants’ Failure to Collect and Remit 911 Charges to Plaintiff**

37. At all times relevant to this action, Defendants, or agents or subsidiaries under their control, failed to bill, collect, and remit the appropriate amount of 911 charges to Plaintiff as required by South Carolina law and local ordinances. Defendants are knowingly and routinely under-billing, under-collecting, and under-remitting these 911 charges. Consequently, Defendants’ monthly remittances of 911 charges to Plaintiff are false and misleading, and they deprive Plaintiff of critical funding for its 911 Center.

38. Defendants know that South Carolina law and local ordinances require it to bill, collect, and remit 911 charges on each local exchange access line and each VoIP service line in Plaintiff's service area. The South Carolina law and local ordinances imposing the 911 charge are unambiguous, and there is no confusion in complying with the requirements. Yet, Defendants routinely fail to bill, collect, and remit the correct amount of 911 charges, or fail to bill, collect, or remit 911 charges at all.

39. Defendants know the correct amounts of 911 charges to remit to Plaintiff and other local governments, and are doing nothing to correct their noncompliance. For example, at a 2012 telecommunications industry conference in Orlando, Florida, one presentation warned that not understanding the proper way to apply 911 service charges could cause carriers to "either under-collect or over-collect such fees from customers on a frighteningly large scale." In 2013, a similar presentation at the same conference noted that the presenter's "estimates show carriers misreport their annual 911 fees by \$50,000,000.00 alone!"

40. Prior to the filing of this action, Defendants never informed Plaintiff that they were inadequately billing and collecting 911 charges on the appropriate lines in Plaintiff's service area and that they were inadequately remitting 911 charges to Plaintiff. Likewise, Plaintiff was not in a position to know the remittances were inadequate.

**D. Harm Caused by Defendants' Failure to Collect and Remit 911 Charges**

41. As a result of Defendants' unlawful practices, Plaintiff and its 911 Center are not receiving the 911 charges that they are entitled to by law, and the 911 Center is not fully funded and cannot afford to purchase the necessary technology or to maintain critical infrastructure. Therefore, Plaintiff respectfully seeks appropriate relief from this Court on the following grounds:

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

42. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

43. By not billing, collecting, and remitting all of the required 911 charges, Defendants can provide telecommunications services at rates that are cheaper than their competitors, particularly services to their business customers, and can, thereby, gain an unfair competitive advantage in the telecommunications services market.

44. Defendants' services provided to Plaintiff, which included the billing, collecting and remitting of the 911 charges, are unfair and deceptive, and Defendants' unfair and deceptive conduct proximately caused and continues to proximately cause significant injury to Plaintiff and the people of South Carolina.

45. Defendants' conduct violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, because it includes "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

46. Defendants knew or should have known that their conduct was a violation of the South Carolina Unfair Trade Practices Act, and therefore they willfully and knowingly violated the South Carolina Unfair Trade Practices Act and continue to do so.

47. Plaintiff is entitled to an award of this Court for actual damages trebled, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

**COUNT TWO**  
**VIOLATION OF THE 911 CHARGE STATUTE**

48. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

49. The 911 charge statute, S.C. Code Ann. § 23-47-50, imposes upon Defendants a duty to bill, collect, and remit to Plaintiff the 911 charges upon each local exchange access facility and VoIP service line.

50. Plaintiff was an intended beneficiary within the protection of the 911 charge statute. The 911 charges that the 911 charge statute required Defendants to bill, collect, and remit to Plaintiff provided a significant source of funding for Plaintiff's provision of 911 emergency services in its service area.

51. In violation of the 911 charge statute and in breach of their duty, Defendants did not bill, collect, and remit to Plaintiff all 911 charges upon each local exchange access facility and VoIP service line.

52. Plaintiff has an implied right of action under the 911 charge statute to recover from Defendants all 911 charges that Defendants were required to bill, collect, and remit to Plaintiff. The South Carolina General Assembly intended for Plaintiff to have this right of action.

53. The existence of an implied right of action under the 911 charge statute is consistent with the 911 charge statute's underlying purpose of providing a means for delivery of 911 emergency services to the public. If the 911 charge statute cannot be enforced against service suppliers that purposefully or negligently fail to fulfill their obligations under the 911 charge statute, no means would exist to ensure the funding of 911 emergency services as intended by the South Carolina General Assembly.

54. Defendants' violation of the 911 charge statute proximately caused Plaintiff to suffer significant injury.

55. For these reasons, Plaintiff prays that the Court enter judgment against Defendants in Plaintiff's favor, and award compensatory damages, punitive damages, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

**COUNT THREE  
BREACH OF STATUTORY DUTY**

56. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

57. Plaintiff brings this action to recover damages for Defendants' breach of legal duties owed by virtue of the requirements of the 911 charge statute, S.C. Code Ann. § 23-47-50.

58. Defendants violated their legal duties and obligations to Plaintiff by failing to bill, collect, and remit 911 charges for every telephone subscriber as required by the 911 charge statute.

59. Defendants' violations of their duties under the 911 charge proximately caused Plaintiff to suffer significant injury.

60. For these reasons, Plaintiff prays that the Court enter judgment against Defendants in Plaintiff's favor, and award compensatory damages, punitive damages, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

**COUNT FOUR  
BREACH OF FIDUCIARY DUTY**

61. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

62. During all relevant times, Defendants were under a fiduciary duty to bill and collect the 911 charges upon each local exchange access facility and VoIP service line. Defendants were

further obligated by their fiduciary duty to remit to Plaintiff those 911 charges, less an administrative fee. These fiduciary duties were imposed upon Defendants by the 911 charge statute, S.C. Code Ann. § 23-47-50, and common law, and derive from the special and confidential relationship between Plaintiff and Defendants.

63. The fiduciary relationship between the parties gave rise to a duty of care on the part of Defendants to Plaintiff whereby Defendants would act with utmost good faith, loyalty, and honesty toward Plaintiff.

64. The 911 charge statute sets out a system to fund 911 emergency services that requires local governments to rely upon telecommunications service suppliers, such as Defendants, to act in good faith and with honesty in billing, collecting, and remitting to Plaintiff the appropriate 911 charges.

65. Plaintiff has had to rely on Defendant to act in good faith and with honesty because Plaintiff is not aware of the actual number of local exchange access facilities and VoIP service lines, or of the actual amount of 911 charges Plaintiff should receive. Defendants have sole and exclusive control of that information. As the sole parties possessing the information needed to determine the correct amount of 911 charges that should have been paid or transmitted to Plaintiff, Defendants were in a dominant position in their relationship with Plaintiff. As Defendants determined the amount of 911 charges received by Plaintiff, and as those 911 charges made were a significant source of Plaintiff's 911 Center's funding, Defendants effectively exercised control over Plaintiff's 911 Center funding.

66. In relying on Defendants to perform their statutory obligations, Plaintiff trusted Defendants would act with utmost good faith, loyalty, and honesty toward Plaintiff.

67. Defendants knowingly breached their fiduciary duties to Plaintiff and the standard of care by: concealing from Plaintiff the actual number of local exchange access facilities and VoIP service lines; concealing from Plaintiff the correct amount of 911 charges owed to Plaintiff; failing to bill, collect, and remit to Plaintiff the full amount of 911 charges owed to Plaintiff; and misleading Plaintiff concerning the actual amount of 911 charges owed to Plaintiff.

68. Defendants' breaches of their fiduciary duties and the standard of care proximately caused significantly injury to Plaintiff.

69. For these reasons, Plaintiff prays that the Court enter judgment against Defendants in Plaintiff's favor, and award compensatory damages, punitive damages, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

**COUNT FIVE**  
**NEGLIGENCE AND NEGLIGENCE *PER SE***

70. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

71. Defendants were under statutory and common law duties to submit to Plaintiff payment of the proper amount of 911 charges. The 911 charge statute, S.C. Code Ann. § 23-47-50, imposes upon Defendants a duty to bill, collect, and remit to Plaintiff 911 charges for all local exchange access facilities and VoIP service lines. Defendants were also under a duty to bill, collect, and remit to Plaintiff the 911 charges in good faith and in accordance with the standards applicable to reasonable service suppliers.

72. Defendants breached these duties by failing to exercise reasonable care to determine that they were properly billing and collecting for all local exchange access facilities and VoIP service lines. Defendants also breached these duties by failing to use reasonable care to



ensure that the amounts remitted to Plaintiff were the full and appropriate amounts for all local exchange access facilities and VoIP service lines.

73. Defendants' breaches of their duties to exercise reasonable care in the billing, collecting, and remitting of 911 charges actually and proximately caused significant injury to Plaintiff.

74. Defendants' breach of the statutory duty imposed by the 911 charge statute also constituted negligence *per se*. The 911 charge statute imposed a duty on Defendants to bill, collect, and remit to Plaintiff 911 charges on all local exchange access facilities and VoIP service lines. Plaintiff was within the class of persons the 911 charge statute was designed to protect as it was an intended recipient of the 911 charges, and relied on payment of those charges to fund its essential, statutorily-authorized operations.

75. Plaintiff's injuries, including its failure to receive the funds to which it is entitled under the 911 charge statute, are the precise injuries the 911 charge statute was designed to prevent, and these injuries hinder and impair Plaintiff's ability to provide 911 services in furtherance of the 911 charge statute's stated purposes.

76. Defendants' breaches of their duties proximately caused significant injury to Plaintiff.

77. For these reasons, Plaintiff prays that the Court enter judgment against Defendants in Plaintiff's favor, and award compensatory damages, punitive damages, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

#### **COUNT SIX CONSTRUCTIVE FRAUD**

78. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

79. The 911 charge statute imposes upon Defendants a duty to bill, collect, and remit to Plaintiff the 911 charges upon each local exchange access facility and VoIP service line.

80. Defendants submitted to Plaintiff monthly remittances that purported to accurately reflect the appropriate number of local exchange access facilities and VoIP service lines in Plaintiff's service area.

81. Defendants' representations to Plaintiff in their monthly remittances purported to express existing or past facts as to the appropriate number of local exchange access facilities and VoIP services, and, correspondingly, the actual amount of 911 charges to be billed, collected, and remitted to Plaintiff under the 911 charge statute.

82. Defendants' representations to Plaintiff in their monthly remittances were false at the time they were made, as Defendants omitted a significant number of local exchange access facilities and VoIP service lines and under-reported the amount of 911 charges owed to Plaintiff under the 911 charge statute.

83. As the purpose of the representation in the monthly remittances were to communicate the appropriate amount of 911 charges owed to Plaintiff, Defendants' remittances misrepresented material facts.

84. Defendants knew their representations in their monthly remittances regarding the amount of 911 charges owed to Plaintiff were false because they knew they did not bill and collect the 911 charge on all local exchange access facilities and VoIP service lines in Plaintiff's service area. Alternatively, Defendants' misrepresentations were made recklessly because Defendants were capable of determining (and required to determine) the correct number of local exchange access facilities and VoIP service lines in Plaintiff's service area.

85. Plaintiff, having no knowledge that Defendants' representations were false and a right to rely on Defendants' representations, reasonably relied upon the misrepresentations and suffered significant injury as a proximate result.

86. For these reasons, Plaintiff prays that the Court enter judgment against Defendants in Plaintiff's favor, and award compensatory damages, punitive damages, attorneys' fees, interest and costs, and any other relief to which Plaintiff may be entitled.

**COUNT SEVEN**  
**REQUEST FOR DECLARATORY JUDGMENT**

87. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

88. An actual, present, and justiciable controversy has arisen and now exists between Plaintiff and Defendants concerning Defendants' legal obligations under the 911 charge statute, S.C. Code Ann. § 23-47-50, to bill, collect, and remit to Plaintiff payment of 911 emergency charges based on the number of local exchange access facilities and VoIP service lines, and Defendants' conduct in discounting 911 charges to their subscribers to seek competitive advantage or for other reasons.

89. The 911 charge statute has at all relevant times imposed upon Defendants the obligation to bill, collect, and remit payment to Plaintiff of 911 charges for all local exchange access facilities and VoIP service lines.

90. A judicial declaration regarding these issues is necessary and appropriate so that Plaintiff may ascertain and effectively enforce its rights to receive full and complete payment of 911 charges as authorized by the 911 charge statute. For these reasons, Plaintiff prays that the Court issue a declaratory judgment expressly holding that the 911 charge statute at all relevant times has imposed upon Defendants the obligation to bill, collect, and remit to Plaintiff 911 charges

for all local exchange access facilities and VoIP service lines, and that Defendants may not forego collection of 911 charges or reduce 911 charges to gain competitive advantage or otherwise.

**COUNT EIGHT**  
**REQUEST FOR PERMANENT INJUNCTION**

91. Plaintiff hereby incorporates the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

92. Defendants are obligated by the 911 charge statute, S.C. Code Ann. § 23-47-50, and other applicable law to truthfully and fully remit to Plaintiff 911 charges imposed on all local exchange access facilities and VoIP service lines.

93. Defendants' failure to meet their statutory obligations have and will continue to irreparably harm Plaintiff because Plaintiff relies upon the 911 charges to provide funding for its critical 911 emergency operations.

94. Defendants' failure to meet their statutory obligations have threatened, and will continue to threaten, the public's safety.

95. Plaintiff does not have any other adequate legal remedy at law because future enforcement of its rights under the 911 charge statute would likely require Plaintiff to file and litigate multiple actions.

96. A permanent injunction is warranted considering the balance of hardships between the parties. Defendants would suffer absolutely no legally cognizable harm from being required to meet their statutory obligations. Conversely, Plaintiff and the public would be manifestly and actually harmed by Defendants' failure to fulfill their statutory obligations.

97. The public interest would be served by the issuance of a permanent injunction.

98. For these reasons, Plaintiff prays that the Court permanently enjoin Defendants from failing to bill, collect, and remit to Plaintiff 911 charges for all local exchange access facilities and VoIP service lines.

**PRAYER FOR RELIEF**

99. Plaintiff respectfully requests that this Court grant the following relief:

A. That proper process issue and be served upon Defendants requiring it to appear and answer this complaint in the manner and within the time permitted by law;

B. That Defendants provide Plaintiff a record of Defendants' accounts;

C. That judgment enter against Defendants and in favor of Plaintiff in the amount to be determined at trial, together with actual damages, treble damages, punitive damages, and all pre- and post-judgment interest accruing under applicable law;

D. That this Court enter a declaration that the 911 charge statute, section 23-47-50 of the South Carolina Code, imposes, and at all relevant times has imposed, upon Defendants the obligation to bill, collect, and remit to Plaintiff 911 charges for all local exchange access facilities and VoIP service lines;

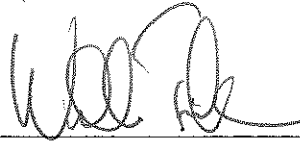
E. That this Court permanently enjoin Defendants from failing to fully bill, collect, and remit to Plaintiff 911 charges for all local exchange access facilities and VoIP service lines;

F. That Plaintiff be awarded its costs of this action and its reasonable attorneys' fees;

G. That a jury be impaneled to try all issues so triable by a jury; and

H. That the Court award Plaintiff such other general and special relief to which it may be entitled, as the Court deems appropriate, and as justice and equity may require.

[Signature block on following page.]



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August 17, 2017  
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