

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

HAMILTON COUNTY EMERGENCY)
COMMUNICATIONS DISTRICT,)
)
 Plaintiff,)
)
 vs.)
)
 BELLSOUTH TELECOMMUNICATIONS,)
 LLC d/b/a AT&T TENNESSEE,)
)
 Defendant.)

Case No. 1:11-cv-330

JURY DEMAND

COMPLAINT

Plaintiff Hamilton County Emergency Communications District (the “District”), for its Complaint for declaratory, injunctive, and monetary relief, states to the Court as follows:

SUMMARY OF COMPLAINT

1. Pursuant to state law, the District provides critical, life-saving emergency 911 services to the citizens of Hamilton County and to others who visit and travel through our community. These services are an essential and indispensable component of the public safety and emergency preparedness system of Hamilton County and the towns and cities located within the County. The District’s 911 services have permitted emergency response personnel to be promptly directed to the scenes of emergencies, dangers, and disasters, thereby saving countless lives and providing incalculable benefits to the citizens of this County.

2. The District’s 911 services are principally funded by emergency telephone service charges (“911 Charges”) collected from telephone users by providers of telephone services. Defendant Bellsouth Communications, LLC, d/b/a AT&T Tennessee (“Defendant”) is the largest

telephone services provider in Hamilton County. Along with other telephone service suppliers, Defendant has the statutory responsibility to collect, report, and remit to the District 911 Charges on each telephone line that may be used as a pathway to the District's emergency call center.

3. Tennessee law provides that the 911 Charges "shall have uniform application and shall be imposed throughout the entire district to the greatest extent possible in conformity with the availability of such service within the district." Tenn. Code Ann. § 7-86-108.

4. Even though the charges levied by the Defendant for telephone services to the District's operation centers constitute the largest expense of the District other than personnel costs, the Defendant has intentionally failed to fulfill its obligation to collect, report, and remit to the District 911 Charges necessary to finance the District's operations. Rather, in order to obtain competitive advantage, the Defendant has refused to collect or remit emergency service charges upon which the District relies. In so doing, the Defendant has purposefully deprived the District of the revenue it needs to provide its critical, life-saving 911 emergency services within Hamilton County.

5. This case is brought by the District under the Tennessee False Claims Act and other law to compel the Defendant to fulfill its obligations as required by law, to collect from the Defendant unpaid amounts and to recover from the Defendant penalties, costs, and expenses provided by law.

6. As more specifically described below, Defendant has (i) failed and refused to truthfully report and remit 911 Charges on voice lines provided by multiplex circuits; (ii) promised to under-collect 911 Charges in order to gain an unlawful and unfair competitive advantage; (iii) failed and refused to truthfully report and remit 911 Charges on voice lines provided by single line circuits; and (iv) failed and refused to truthfully report and remit 911

Charges on voice lines in excess of one hundred (100) lines although the lines in excess of one hundred (100) provided pathways to the District's 911 services from multiple locations.

PARTIES, JURISDICTION, AND VENUE

7. The District is a municipal corporation located in Chattanooga, Tennessee with a business address of 3404 Amnicola Highway, Chattanooga, Tennessee 37406. The District was organized and operates pursuant to the Emergency Communications District Law, Tenn. Code Ann. §§ 7-86-101, *et seq.* (the "Act"), which assigns to the District the responsibility for providing critical, life-saving emergency 911 telephone services within Hamilton County.

8. Defendant Bellsouth Telecommunications, LLC d/b/a AT&T Tennessee is a Georgia limited liability company with a principal business address at 675 W. Peachtree St., NW, Suite 4500, Atlanta, Georgia 30375. It can be served through its registered agent CT Corporation System, 800 S. Gay St., Suite 2021, Knoxville, Tennessee 37929. At all times relevant to this suit, Defendant has provided residential and business telephone lines within Hamilton County.

9. Complete diversity of citizenship exists between the District and Defendant.

10. The amount in controversy in this action exceeds \$75,000.00, exclusive of interest and costs.

11. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332.

12. This Court has jurisdiction over the parties to this cause.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTUAL BACKGROUND

14. To enhance public safety, policy makers across the nation embraced the concept of a single, easy to remember, emergency calling code in the late 1960s. The system developed in the last 40 years has been remarkably successful and has saved many lives. Due to the success of the system, citizens consider that access to 911 is a critical public service that must be ubiquitous and reliable.

15. In 1984, the State of Tennessee enacted the Act to formally establish 911 as the primary emergency services telephone number in the state. Tenn. Code Ann. § 7-86-101, *et seq.* To implement 911 services, the Act permitted the legislative body of any city or county to create an emergency communications district (“ECD”) within its boundaries. Tenn. Code Ann. § 7-86-104. The District was organized pursuant to this authority.

16. The Act has since been amended to require provision of “Enhanced” 911 service. In its most basic form, this enhanced service automatically sends the caller’s location and phone number to the District, so that its 911 personnel can more efficiently dispatch emergency service personnel. In 1998, in the course of passing legislation that provided for the Enhanced 911 service and addressed the financing of emergency 911 services, the Tennessee General Assembly found and declared, among other things, that “the continued viability of the lifesaving 911 emergency communications service is of the highest priority for the health and safety of the citizens of Tennessee.” *See* 1998 Tenn. Pub. Acts, ch. 1108, § 2, codified as Tenn. Code Ann. § 7-86-102(b)(1).

17. The Act authorizes the boards of directors of ECDs to levy an emergency telephone service charge (“911 Charges”) to be used “to fund the 911 emergency telephone service.” Tenn. Code Ann. § 7-86-108. Telephone “service suppliers” such as Defendant are

required to collect the 911 Charges and to report and remit them at least every two (2) months to the ECD serving the areas from which the 911 Charges were collected. ECDs may unilaterally set the 911 Charges on each pathway capable of connecting to the 911 service center up to a maximum of \$.65 per residential line and \$2.00 per business line. If necessary to meet budgetary demands, ECDs may also seek approval for 911 Charges of up to \$1.50 for residential lines and \$3.00 for business lines by applying to the Tennessee Emergency Communications Board. Telephone service suppliers are authorized to retain up to 3% of the 911 Charges collected as an administrative fee. The Act provides that 911 Charges may not be imposed upon more than one hundred (100) business lines per user per location.

18. The 911 Charge levied by the District was two dollars (\$2.00) per business line per month prior to March, 2005. In March, 2005, the District obtained approval from the Tennessee Emergency Communications Board to increase the 911 Charge to three dollars (\$3.00) per business line per month.

19. The District is governed by an unpaid board that includes the chief law enforcement officers of Chattanooga and Hamilton County, emergency service officials, other law enforcement and governmental officials, and private citizens. Under the direction of this board, the District has created and operates extensive facilities staffed by trained personnel 24 hours a day, seven days a week who receive emergency 911 telephone calls and transmit emergency information to police, fire, ambulance, and other emergency service providers.

20. The Act mandates that the 911 Charges shall be collected and remitted by telephone service suppliers for each line capable of transmitting a voice call to a 911 emergency communications district. Tenn. Code Ann. §§ 7-86-103, 7-86-108(d), and 7-86-110.

21. Defendant is and was at all relevant times a telephone service supplier providing residential and business lines in the District's service area of Hamilton County, Tennessee. Defendant is the largest of more than fifty (50) telephone service suppliers operating in Hamilton County. Defendant is and has been required under the Act to collect, report, and remit to the District 911 Charges for each residential and business line Defendant provides in Hamilton County, Tennessee that provides a pathway for calls to the District's 911 center.

22. At a point in time currently unknown to the District, Defendant began offering to its business telephone subscribers multiplex telephone services capable of transmitting multiple voice or data lines over independent channels on a single multiplexed circuit. These multiplex services are typically T-1 lines that provide 24 channels. When implemented under the Primary Rate Interface ("PRI"), 23 of the 24 channels of a multiplexed circuit are configured as voice lines, and the remaining channel carries control and signaling information. Each of the voice lines is assigned a unique ten-digit telephone number and can be used to access 911 emergency services.

23. At all relevant times, the Act required Defendant to collect, report, and remit to the District the 911 Charges levied by the District for each voice line provided through a multiplexed circuit. Instead, Defendant intentionally collected, reported, and remitted the 911 Charges on only a small fraction of the voice lines provided through each multiplexed circuit.

24. Defendant knew that the Act required Defendant to collect and remit the 911 Charges levied by the District for each voice line providing a pathway to the District's 911 services through a multiplexed circuit.

25. Defendant presented to the District each month a report that purported to accurately report the number of business lines provided by Defendant in Hamilton County during

the previous month (the “Monthly Reports”). Instead, Defendant knowingly submitted Monthly Reports that contained false records of most voice lines provided to business customers through multiplexed circuits.

26. The Monthly Reports were transmitted to the District by mail or by wire.

27. Tenn. Code Ann. § 7-86-110(d) requires Defendant to annually provide to the District’s board of directors a certified accounting of 911 Charges (the “Annual Reports”). Defendant submitted to the District’s board of directors each year Annual Reports using a standard form prepared by the Tennessee Emergency Communications Board. The Annual Reports submitted by Defendant purported to accurately report the number of business lines provided by Defendant in Hamilton County during the annual period covered by each Annual Report. Instead, Defendant knowingly submitted Annual Reports that contained false records of most voice lines provided to business customers through multiplexed circuits.

28. The Annual Reports were transmitted to the District by mail or by wire.

29. Defendant has deliberately failed and refused to collect, report, and remit to the District the 911 Charges as required by the Act in order to gain an unfair and unlawful competitive advantage over other telecommunications providers. For example, on March 1, 2011, Defendant submitted a proposal to Hamilton County for Centrex and flat rate business lines in response to Hamilton County’s Request for Proposal #111-01 (the “Proposal”). In its Proposal, Defendant stated that it would not collect the 911 Charges at the \$3.00 rate per month per line currently levied by the District and required by law, but would instead collect only \$2.00 per month per line. Defendant also promised to discount its normal rates by \$6.27 per line per month. By stating that it would under-collect the 911 Charges by \$1.00 per line per month, Defendant underbid the next lowest proposal by \$0.69 per line per month and was awarded most

of the lines under the requirement as low bidder. By stating that it would under-collect the 911 Charges by \$1.00 per month, Defendant achieved its \$0.69 per line per month price advantage without having to further increase its discount, unlawfully increasing its profits at the expense of revenue to support the critical emergency services provided by the District.

30. Defendant knowingly submitted Monthly Reports and Annual Reports that contained false records of 911 Charges that Defendant under-collected in order to gain an unlawful competitive advantage.

31. The Monthly Reports and Annual Reports were transmitted to the District by mail or by wire.

32. At all relevant times, the Act required Defendant to collect, report, and remit to the District the 911 Charges levied by the District upon each voice line provided to a service user. In spite of this requirement, Defendant has failed and refused to collect, report, and remit to the District 911 Charges for a currently unknown number of single circuit business lines provided in Hamilton County.

33. Defendant knew that the Act required Defendant to collect, report, and remit the 911 Charges at the rate levied by the District for each business voice line provided to a user, including each single circuit business line. Nevertheless, Defendant knowingly and wrongfully failed and refused to collect, truthfully report, and remit to the District the 911 Service Charge.

34. Defendant knowingly submitted Monthly Reports and Annual Reports that contained false records of single circuit business lines as to which Defendant failed and refused to collect and remit 911 Charges.

35. The Monthly Reports and Annual Reports were transmitted to the District by mail or by wire.

36. At all relevant times, the Act required Defendant to collect and remit the 911 Charges levied by the District upon each voice line provided to a service user up to one hundred (100) lines per location. In spite of this requirement, Defendant has failed and refused to collect and remit 911 Charges where more than one hundred (100) lines were provided to a user even though the users' lines provided pathways to the District's 911 services from multiple locations.

37. Defendant knew that the Act required Defendant to collect and remit the 911 Charges levied by the District for each voice line provided to a user where one hundred (100) or fewer lines were provided at a single location.

38. Defendant knowingly submitted Monthly Reports and Annual Reports that contained false records excluding voice lines in excess of one hundred (100) lines even when the lines in excess of one hundred (100) provided pathways to the District's 911 services from multiple locations.

39. The Monthly Reports and Annual Reports were transmitted to the District by mail or by wire.

**COUNT I: VIOLATION OF
THE TENNESSEE FALSE CLAIMS ACT**

40. The District hereby incorporates the factual allegations set forth in all previous paragraphs of this Complaint.

41. Defendant is a Person under the Tennessee False Claims Act, Tenn. Code Ann. §4-18-101, *et seq.* (the "False Claims Act").

42. The District is a Political Subdivision under the False Claims Act.

43. The undersigned General Counsel of the District, Michael J. Mahn, is the District's Prosecuting Authority under the False Claims Act.

44. The Monthly Reports and Annual Reports contained a false record or statement of each voice line that Defendant omitted from those reports.

45. Defendant knowingly made, used, or caused to be made the false records or statements contained in the Monthly Reports and the Annual Reports to conceal, avoid, or decrease Defendant's obligation to pay 911 Charges on business voice lines provided to service users in Hamilton County.

46. Because of Defendant's deception, the District lacks information sufficient to identify the total number of false records or statements contained in the Monthly Reports and Annual Reports, because the information necessary to make this determination is in Defendant's sole control.

47. For these reasons, the District prays that the Court find Defendant's conduct to be in violation of the False Claims Act and:

- (a) award the District compensatory and treble damages in an amount to be determined by the jury, plus pre-judgment interest and the costs of this action, including attorney fees;
- (b) award the District civil penalties of \$10,000.00 for each false record or statement; and
- (c) provide such other and further relief to which the District may be entitled.

**COUNT II: RECOVERY FOR VIOLATIONS OF
THE EMERGENCY COMMUNICATIONS DISTRICT LAW**

48. The District hereby incorporates the allegations set forth in all previous paragraphs of this Complaint.

49. The Act imposes upon Defendant a duty to collect and remit to the District 911 Charges from Defendant's subscribers in Hamilton County based on the number of landlines capable of providing a voice pathway to the District's 911 service. Tenn. Code Ann. §§ 7-86-108 and -110.

50. The District was an intended beneficiary within the protection of the Act. The 911 Charges that the Defendant was required by the Act to collect, report, and remit to the District provided the principal source of funding for the District's provision of 911 services.

51. In violation of the Act and in breach of its duty, Defendant did not collect, report, and remit to the District the 911 Charges for all lines capable of reaching 911 service.

52. The District has a right of action under the Act to recover from Defendant all 911 Charges that Defendant was required to collect, report, and remit to the District. The Legislature intended for the District to have this right of action.

53. The existence of a right of action under the Act is consistent with the Act's underlying purpose of providing a means for delivery of 911 services to the public. If the Act cannot be enforced by emergency communications districts, such as the District, against providers of telephone services, such as the Defendant, no means would exist to ensure the funding of 911 services as intended by the Legislature.

54. Defendant's violation of the Act proximately caused the District to suffer significant injury, including the loss of significant operational funds to which it was and is entitled.

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

COUNT III: REQUEST FOR DECLARATORY JUDGMENT

56. The District incorporates the allegations set forth in all previous paragraphs of this Complaint.

57. An actual, present, and justiciable controversy has arisen and now exists between the District and Defendant concerning Defendant's legal obligations under the Act to collect and render to the District payment of emergency 911 Charges based on the number of voice lines capable of connecting to the 911 service when those voice lines have been provided by multiplex circuits.

58. The District contends, and Defendant disputes, that the Act has at all relevant times imposed upon Defendant the obligation to collect and render payment to the District of 911 Charges for each voice line capable of reaching 911 service, up to 100 voice lines per user per location, including all lines provided by Defendant by multiplex circuits.

59. A judicial declaration regarding this issue is necessary and appropriate so that the District may ascertain and effectively enforce its rights to receive full and complete payment of 911 Charges.

60. For these reasons, the District prays that the Court issue a declaratory judgment expressly holding that the Act at all relevant times has imposed upon Defendant the obligation to collect, report, and remit to the District 911 Charges for all voice telephone pathways capable of reaching the District's public safety answering point by dialing 911.

COUNT IV: REQUEST FOR PERMANENT INJUNCTION

61. The District hereby incorporates the allegations set forth in all previous paragraphs of this Complaint.

62. Defendant is obligated by the Act and other applicable law to submit to the District reports truthfully and fully containing records or statements of each voice line providing a pathway capable of reaching the District's 911 service, up to 100 lines per user per location, and remitting to the District for each voice line the full amount of the 911 Charges levied by the District

63. Defendant's failure to meet its statutory obligations would irreparably harm the District, because the District relies upon the 911 Charges to provide funding for its vital operations.

64. Defendant's failure to meet its statutory obligations would threaten the public, because, as the Tennessee General Assembly found and declared, "the continued viability of the lifesaving 911 emergency communications service is of the highest priority for the health and safety of the citizens of Tennessee."

65. The District does not have any other adequate legal remedy, as future enforcement of its rights under the Act would likely require the District to file and litigate multiple actions.

66. A permanent injunction, an equitable remedy, is warranted considering the balance of hardships between the parties. The Defendant would suffer absolutely no harm from being required to meet its statutory obligations. Conversely, the District and the public would be manifestly harmed by Defendant's failure to fulfill its statutory obligations.

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

68. For these reasons, the District prays that the Court permanently enjoin Defendant from failing to collect, truthfully report, and remit to the District 911 Charges for all voice telephone pathways capable of reaching the District's public safety answering point by dialing 911, up to 100 lines per user per location.

69. This is the District's first application for extraordinary relief.

WHEREFORE, premises considered, the Hamilton County Emergency Communications District respectfully requests that the Court grant the following relief:

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

2. That this Court enter a declaration that the Emergency Communications District Law imposes, and at all relevant times has imposed, upon Defendant the obligation to collect, report, and remit to the District 911 Charges for all voice telephone pathways capable of reaching a public safety answering point by dialing 911, up to 100 voice lines per user per location.

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

4. That this Court assess against Defendant a civil penalty of \$10,000 for each false record or statement submitted to the District;

5. That this Court permanently enjoin Defendant from failing to fully and truthfully collect, report, and remit to the District 911 Charges for all voice telephone pathways capable of reaching the District's public safety answering point by dialing 911, up to 100 voice lines per user per location;

6. That the District be awarded its costs of this action, including its reasonable attorneys' fees;

7. That a jury be empaneled to try all issues so triable by a jury; and

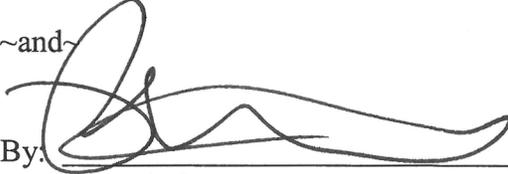
8. That the Court award the District such other general and special relief to which it may be entitled, as the Court deems appropriate, and as justice and equity may require.

Respectfully submitted,

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~and~

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