

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

COUNTY OF DORCHESTER,  
SOUTH CAROLINA,

*and*

TOWN OF SUMMERVILLE,  
SOUTH CAROLINA

Plaintiffs,

v.

LEVEL 3 COMMUNICATIONS, LLC,  
LEVEL 3 TELECOM OF SOUTH  
CAROLINA, LLC, TELCOVE  
OPERATIONS, LLC, BANDWIDTH.COM  
CLEC, LLC, BANDWIDTH INC.,  
CENTURYLINK COMMUNICATIONS,  
LLC, COMCAST IP PHONE, LLC,

Defendants.

Civil Action No. 2:18-cv-2891-RMG

**COMPLAINT**

Plaintiffs County of Dorchester, South Carolina, and Town of Summerville, South Carolina, both local governments, file this Complaint against Defendants Level 3 Communications, LLC; Level 3 Telecom of South Carolina, LLC; Telcove Operations, LLC; Bandwidth.com CLEC, LLC; Bandwidth Inc.; CenturyLink Communications, LLC; Comcast IP Phone, LLC (collectively “Defendants”), alleging as follows:

**INTRODUCTION**

1. This is an action for compensatory and punitive 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. Plaintiffs, in order to finance their 911 Centers or Public Safety Answering Points (“PSAPs”), opted by ordinance to assert their statutory authority to impose a monthly charge on each “local exchange access facility” and each “voice over internet protocol (“VoIP”) service line.” *See* Dorchester Cnty. Ordinance 12-20, *et. seq.* and the Town of Summerville 911 Ordinance, attached as Exhibit A. Dorchester County’s current 911 service charge is \$0.99 and the Town of Summerville’s current 911 service charge is \$0.93. *See Id.*

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

4. Defendants’ conduct injures Plaintiffs because Plaintiffs’ 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 and is forced to divert funds from other sources to support 911 emergency services.

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 Dorchester, South Carolina, is a county and political subdivision of the State of South Carolina, residing in Dorchester County. It is a “local government,” as defined by applicable law.

7. Plaintiff Town of Summerville, South Carolina, is a town and political subdivision of the State of South Carolina, also residing in Dorchester County. It is a “local government” as defined by applicable law.

8. 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 Dorchester 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. The sole member of CenturyLink Communications, LLC is CenturyLink, Inc., which is incorporated in and has its principal place of business in Louisiana. Thus, for purposes of diversity jurisdiction CenturyLink Communications, LLC is not a citizen of South Carolina. CenturyLink Communications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

9. Defendant Comcast IP Phone, LLC is a telecommunications company and “service supplier,” as defined by applicable law. Comcast IP Phone, LLC provides telecommunications services to subscribers in Charleston County, South Carolina. At all relevant times, Comcast IP Phone, LLC was a corporation, organized and existing under the laws of the State of Pennsylvania. The sole member of Comcast IP Phone LLC is Comcast Cable Communications LLC. The sole member of Comcast Cable Communications LLC is Comcast Holdings Corporation, which is a Pennsylvania corporation with its principal place of business in Pennsylvania. Thus, for purposes

of diversity jurisdiction Comcast IP Phone, LLC is not a citizen of South Carolina. Comcast IP Phone, LLC is registered as a foreign entity with the South Carolina Secretary of State.

10. 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 Dorchester 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. The sole member of Level 3 Communications, LLC is Level 3 Financing, Inc., a Delaware corporation with its principal place of business in Colorado. Thus, for purposes of diversity jurisdiction Level 3 Communications, LLC is not a citizen of South Carolina. Level 3 Communications, LLC is registered as a foreign entity with the South Carolina Secretary of State.

11. 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 Dorchester 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. The sole member of Level 3 Telecom of South Carolina, LLC is Level 3 Telecom Holdings, LLC, a Delaware limited liability company with its principal place of business in Colorado. The sole member of Level 3 Telecom Holdings, LLC is Level 3 Financing, Inc., a Delaware corporation with its principal place of business in Colorado. Thus, for purposes of diversity jurisdiction Level 3 Telecom of South Carolina, LLC is not a citizen of South Carolina. Level 3 Telecom of South Carolina, LLC is registered as a foreign entity with the South Carolina Secretary of State.

12. 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 Dorchester 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. The sole member of Telcove Operations, LLC is Defendant Level 3 Communications, LLC. The sole member of Level 3 Communications, LLC is Level 3 Financing, Inc., a Delaware corporation with its principal place of business in Colorado. Thus, for purposes of diversity jurisdiction Telcove Operations, LLC is not a citizen of South Carolina. Telcove Operations, LLC is registered as a foreign entity with the South Carolina Secretary of State.

13. 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 Dorchester 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. The sole member of Bandwidth.com CLEC, LLC is Bandwidth.com, Inc., a Delaware corporation with its principal place of business in North Carolina. Thus, for purposes of diversity jurisdiction Bandwidth.com CLEC, LLC is not a citizen of South Carolina. Bandwidth.com CLEC, LLC is registered as a foreign entity with the South Carolina Secretary of State.

14. Defendant Bandwidth Inc. (previously Bandwidth.com, Inc.) is a telecommunications company and “service supplier,” as defined by applicable law. Bandwidth Inc. provides telecommunications services to subscribers in Dorchester County, South Carolina. At all relevant times, Bandwidth Inc. was a corporation organized and existing under the laws of

the state of Delaware and its principal place of business is in North Carolina. Bandwidth Inc. is registered as a foreign entity with the South Carolina Secretary of State.

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

16. The parties in this case are completely diverse. Plaintiffs are citizens of South Carolina, and all Defendants are citizens of states other than South Carolina. The amount in controversy exceeds \$75,000.00. Thus, the Court has diversity, subject matter jurisdiction under 28 U.S.C. §1332(a).

17. Venue is proper in this Court under 28 U.S.C. §1391 because at all times relevant to this Complaint, Defendants have engaged in continual business in this District and, for the purposes of venue, are deemed to reside in this District under 28 U.S.C. §1391(c).

### **FACTUAL ALLEGATIONS**

#### **A. 911 Emergency Services in Dorchester County and the Town of Summerville**

18. 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.”

19. The 911 Center in Dorchester County is referred to as the “E911 Dispatch Center” and is managed and operated by the Dorchester County Sheriff’s Office. The E911 Dispatch Center serves all of Dorchester County, except for the area covered by the Town of Summerville’s PSAP.

20. The 911 Center in the Town of Summerville is referred to as the “Summerville Emergency Communications Center” and is managed and operated by the Summerville Police

Department. The Summerville Emergency Communications Center serves all of the Town of Summerville.

21. These 911 Centers’ trained personnel work around the clock, receiving 911 telephone calls and transmitting emergency information to the proper authorities throughout Dorchester County and the Town of Summerville.

**B. Overview of Telecommunications Technology and How Defendants Should Assess 911 Charges**

22. Because Plaintiffs and their 911 Centers provide 911 emergency dispatch services within their respective geographical boundaries, Plaintiffs must finance those operations. To that end, Plaintiffs receive funding from several sources. A critical source of funding is a specific charge imposed on telephone service lines in each of their respective service areas. Plaintiffs have depended on this source of funding since the establishment of each of their local ordinances. *See* Dorchester Cnty. Ordinance §§ 12-19-12-24 (1992); Ex. A.

23. To fund 911 emergency services, South Carolina law authorizes Plaintiffs 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 accurate number of exchange access facilities and 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.*

24. Local governments like Plaintiffs 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.

25. Plaintiffs elected to impose a 911 charge in their service areas, and they rely on the revenue from the 911 charges to fund their 911 Centers and to provide emergency dispatch services in their respective jurisdictions.

26. Dorchester County passed an ordinance that tracks the state law. It states that “each service supplier providing local telephone access services to telephone subscribers having access to emergency services . . . shall commence the billing and collection of a telephone service charge for each subscriber’s access line which is served by that service supplier.” Dorchester Cnty. Ordinance § 12-20(2). This charge is called the “E911 service fee.” *Id.* The ordinance further states that “[t]he E911 service fee charge shall be monthly per applicable subscriber line, for each billed line intended to have access to emergency service through the county E911 emergency telephone system.” Dorchester Cnty. Ordinance § 12-20(3) (1992). Dorchester County imposes a 911 fee in the amount of \$0.99.

27. The Town of Summerville also passed an ordinance that tracks the state law. It states that the E911 service fee charge “shall be \$.93 per month per applicable subscriber line for each billed lined intended to have access to Emergency Service through the Town of Summerville E 9-1-1 System.” Ex. A, § 3(B). This charge is called the “E 9-1-1 Service Fee charge.” *Id.* The Ordinance further states that “[t]he Service Supplier shall remit to the Town of Summerville E 9-1-1 Service Fee Collections within 45 calendar days following the end of the month of collection . . . .” *Id.* § 3(E).



28. Therefore, at all times relevant to this action, Plaintiffs 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 their provision of 911 emergency dispatch services in Dorchester County and the Town of Summerville.

**a. Exchange Access Facilities**

29. The South Carolina statute defines three types of telephone lines: Exchange access facilities, Commercial Mobile Radio Service (“CMRS”) or mobile, and Voice over Internet Protocol (“VoIP”). CMRS/mobile phone 911 service charges are not at issue in this litigation.

30. The South Carolina statute defines an “exchange access facility” as “the access from a particular telephone subscriber’s premises to the telephone system of a service supplier.” S.C. Code 23-47-10(17). This means there is an actual, physical, connection from the premises of the consumer to the local service provider or the publicly switched telephone network (“PSTN”). The actual connection is often referred to as a “channel,” and exchange access facilities encompass most traditional telephone service.

31. South Carolina’s statute refers to three types of access facilities: “Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by the South Carolina Public Service Commission.” *Id.*

32. “Service supplier provided access lines” refers to what most people think of as traditional residential telephone service. This type of service is commonly referred to as “POTS” which stands for “Plain Old Telephone Service.” This connection utilizes individualized copper wires only capable of supporting one voice conversation at a time, i.e., it creates only one channel to the PTSN and 911 service.

33. As technology advanced, Defendants gained the ability to allow businesses and other large subscribers to make multiple calls at once over a single wire. These copper wires were broken into twenty-three separate coordinated “time slots.” This process is referred to as Time Division Multiplexing (“TDM”). TDM was further refined with the advent of digital protocols known as Primary Rate Interface (“PRI”) which allows telecommunication providers to carry up to twenty-three simultaneous voice conversations over a single wire connection.

34. Since not every telephone user in a business will be making a call at the same time, PRI-based connections can support hundreds of telephone devices. Therefore, the telecommunications industry developed a standard “trunking ratio.” This assumes that each available channel can support five to eight telephone numbers. Thus, a single twenty-three channel PRI can support between 115 and 184 working telephone numbers.

35. PBX trunks are the channels coming in to a Private Branch Exchange (“PBX”) that are then distributed amongst callers on a first-come-first-served basis. This allows companies to take advantage of the “trunking ratio” for practical application. A PBX is hardware and software installed and maintained inside of a business’s facilities. PBX technology took the place of a business’s telephone switchboard operators by automating call delivery and message taking.

36. Centrex network access registers are ports located at the service provider’s premises that establish the number of concurrent Centrex calls allowed per Centrex customer. Centrex is a hosted PBX type service located at the service provider facility.

37. S.C. Code 23-47-50 describes subscriber billing for traditional telephone services (exchange access facilities) as follows:

“[A] subscriber must be billed a number of 911 charges equal to: (a) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the

assistance of the service supplier; or (b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier.”

S.C. Code 23-47-50(A).

38. Thus, all traditional telephone services are assessed by access line or channel—“the number of outward voice transmission paths activated on such a facility . . . .” For the individual, residential user, discussed *supra*, who has only a single copper wire and a single potential connection to 911 service that, means a single charge.

39. On the other hand, for a business or other organization with many phones, phone numbers, and access lines, Defendants must assess one 911 service charge for each access line or “outward voice transmission path[.]” Defendants should assess a PRI with twenty-three channels, no fewer than twenty-three 911 service charges because the PRI is capable of simultaneously connecting twenty-three separate users to the 911 system.

40. Subsection (b) caps the number of 911 service charges per access line to five where the subscriber has purchased fractional PRI service not delivered by a broadband connection that allows it to modify the number of channels without the assistance of the service supplier. This type of service is rare, and therefore most of Defendants’ subscribers are not subject to the five-line cap.

#### **b. Voice Over Internet Protocol (“VoIP”)**

41. More recently, in the last fifteen years, many large telephone users have replaced TDM and PRI service with a newer yet technology known as VoIP. VoIP connects calls by transferring audio or video over a network such as the Internet. Unlike the dedicated channels of traditional service, VoIP transmits calls through any data connection running on a public or private data network, and VoIP is not limited in the number of calls it can simultaneously complete at any given time.

42. Internet Protocol (“IP”) breaks data into tiny packets transmitted over an IP-enabled network and later reassembles those pieces at the end connection point. VoIP’s data packets contain voice, and VoIP is supported by many different types of networks: corporate, private, public, cable, and even wireless networks. In other words, VoIP does not run solely over the Internet.

43. VoIP also lacks the physical limitations of traditional service. Whereas a single PRI system can support twenty-three simultaneous calls, VoIP can support as many calls as the amount of bandwidth purchased will support. VoIP can support thousands of numbers and devices.

44. South Carolina’s statute assesses VoIP differently than traditional telephone service. It requires that Defendants assess VoIP connections by individual telephone number. S.C. Code 23-47-67 states that “[a] VoIP provider must collect the VoIP 911 charge established in subsection (A) on *each VoIP service line*.” S.C. Code § 23-47-67(B) (emphasis added). The 911 statute defines VoIP service line as “a VoIP service that offers *an active telephone number* or successor dialing protocol assigned by a VoIP service provider to a customer that has outbound calling capability.” S.C. Code 23-47-10(38) (emphasis added). As this definition shows, because there is no physical limitation on how many users may connect to the 911 system using VoIP, a service line is simply any working telephone number with 911 capabilities.

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

45. At all times relevant to this action, each of the Defendants, or agents or subsidiaries under their control, failed to bill, collect, and remit the appropriate amount of 911 charges to Plaintiffs 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 Plaintiffs are false and misleading, and they deprive Plaintiffs of critical funding for their 911 Centers.

46. Not only are Defendants misinterpreting the plain language of South Carolina's 911 Statute, but they are also interpreting the law differently than their competitors. For example, Sprint Communications Company, L.P. sells VoIP service in Richland County and it charges all VoIP customers by telephone number because it interprets the term "service line" to mean telephone number, as it should.

47. Defendants know that South Carolina law and local ordinances require them to bill, collect, and remit 911 charges on each local exchange access line, i.e., channel, and each VoIP service line in Plaintiffs' service areas. 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.

48. Defendants know the correct amounts of 911 charges to remit to Plaintiffs 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!"

49. Defendants inadequately bill, collect, and remit applicable 911 fees for several reasons. One compelling motivator is that Defendants who circumvent the law maintain a competitive edge over providers that comply with the law. For instance, if Provider A is in

compliance with the law, its customers' bills are going to be higher than customers of Provider B, who is not in compliance with the law, due to inadequate billing of 911 fees.

50. Additionally, Defendants' billing systems are outdated and have been for years. In order to bring those systems into compliance with the law, it would cost Defendants many millions of dollars. Instead of spending that money and billing 911 service charges in compliance with the law, Defendants typically assess 911 service charges in Dorchester County and the Town of Summerville the same as they do in most of the United States, regardless of the relevant law in any given jurisdiction.

51. Prior to the filing of this action, Defendants never informed Plaintiffs that they were inadequately billing and collecting 911 charges on the appropriate lines in Plaintiffs' service areas and that they were inadequately remitting 911 charges to Plaintiffs.

52. In short, Defendants' actions are intentional and reckless and, among other things, constitute a fraud on Plaintiffs. The "who, when, and where" of the fraud is straightforward.

- a. *Who*: each Defendant named herein has regularly submitted remittances to Plaintiffs that do not comply with law, i.e., under-remit;
- b. *Where*: each Defendant remits to the Plaintiffs in Dorchester County and the Town of Summerville; and
- c. *When*: each Defendant commits this fraud on a monthly basis when it submits an inaccurate remittances to the Plaintiffs.

53. Each remittance is a false statement to Plaintiffs. Plaintiffs have relied on the accuracy of every remittance, every month, for the relevant time period. During the relevant time period, Plaintiffs have had no accurate way to assess internally how many active channels or service lines each Defendant sells and services, and thus, were not and never have been in a position to know that Defendants remittances were false.

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

54. As a result of Defendants' unlawful practices, Plaintiffs and their respective 911 Centers are not receiving the 911 charges that they are entitled to by law, and the 911 Centers are not fully funded and cannot afford to purchase the necessary technology or to maintain critical infrastructure. Therefore, Plaintiffs respectfully seek appropriate relief from this Court on the following grounds:

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

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

55. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

56. 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.

57. Defendants' services provided to Plaintiffs, 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 Plaintiffs and the people of South Carolina.

58. 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."

59. 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.

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

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

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

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

63. Plaintiffs were intended beneficiaries within the protection of the 911 charge statute. The 911 charges that the 911 charge statute required Defendants to bill, collect, and remit to Plaintiffs provided a significant source of funding for Plaintiffs' provision of 911 emergency services in their service areas.

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

65. Plaintiffs have an explicit and 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 Plaintiffs. The South Carolina General Assembly intended for Plaintiffs to have this right of action.

66. The 911 Statute states that the County may initiate a collection action for unpaid charges. § 23-47-50.

67. The existence of an implied right of action under the 911 charge statute is also 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.

68. Defendants' violation of the 911 charge statute proximately caused Plaintiffs to suffer significant injury.

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

**COUNT THREE**  
**BREACH OF STATUTORY DUTY**

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

71. Plaintiffs bring 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.

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

73. Defendants' violations of their duties under the 911 charge statute proximately caused Plaintiffs to suffer significant injury.

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

**COUNT FOUR**  
**BREACH OF FIDUCIARY DUTY**

75. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

76. 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 Plaintiffs 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 Plaintiffs and Defendants.

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

78. 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 Plaintiffs the appropriate 911 charges.

79. Plaintiffs have had to rely on Defendant to act in good faith and with honesty because Plaintiffs are not aware of the actual number of local exchange access facilities and VoIP service lines, or of the actual amount of 911 charges Plaintiffs 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 Plaintiffs, Defendants were in a dominant position in their relationship with Plaintiffs. As Defendants determined the amount of 911 charges received by Plaintiffs, and as those 911 charges

made were a significant source of Plaintiffs' 911 Centers' funding, Defendants effectively exercised control over Plaintiffs' 911 Centers' funding.

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

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

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

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

## **COUNT FIVE**

### **NEGLIGENCE AND NEGLIGENCE *PER SE***

84. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

85. Defendants were under statutory and common law duties to submit to Plaintiffs 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 Plaintiffs 911 charges for all local exchange access facilities and VoIP service lines. Defendants were also under a duty to bill, collect, and remit to Plaintiffs the 911 charges in good faith and in accordance with the standards applicable to reasonable service suppliers.

86. 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 Plaintiffs were the full and appropriate amounts for all local exchange access facilities and VoIP service lines.

87. 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 Plaintiffs.

88. 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 Plaintiffs 911 charges on all local exchange access facilities and VoIP service lines. Plaintiffs were within the class of persons the 911 charge statute was designed to protect as they were intended recipients of the 911 charges, and relied on payment of those charges to fund their essential, statutorily-authorized operations.

89. Plaintiffs' injuries, including their failure to receive the funds to which they are entitled under the 911 charge statute, are the precise injuries the 911 charge statute was designed to prevent, and these injuries hinder and impair Plaintiffs' abilities to provide 911 services in furtherance of the 911 charge statute's stated purposes.

90. Defendants' breaches of their duties proximately caused significant injury to Plaintiffs.

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

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

92. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

93. The 911 charge statute imposes upon each Defendant a duty to bill, collect, and remit to Plaintiffs the 911 charges upon each local exchange access facility and VoIP service line, according to the structure detailed *supra*.

94. Each Defendant submitted remittances to Plaintiffs on a monthly basis that purported to accurately reflect the appropriate number of local exchange access facilities and VoIP service lines in Plaintiffs' service area.

95. Each Defendant's representations to Plaintiffs 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 Plaintiffs under the 911 charge statute.

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

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

98. Each Defendant knew their representations in their monthly remittances regarding the amount of 911 charges owed to Plaintiffs 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 Plaintiffs' service areas, and instead charged fees in Dorchester County and the Town of Summerville in the same manner they charged in other jurisdictions across the country, without complying with each Plaintiff's specific requirements.

99. Alternatively, each Defendant's misrepresentations were made recklessly because each Defendant was capable of determining (and required to determine) the correct number of local exchange access facilities and VoIP service lines in Plaintiffs' service area.

100. Plaintiffs, 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.

101. Therefore, each Defendant committed fraud monthly when they submitted their inadequate 911 fees to Plaintiffs. The person making this misrepresentation is the telecommunications company who is responsible for assessing, collecting and remitting 911 service charges to Plaintiffs. These checks were fraudulent because each time a Defendant remitted funds or caused funds to be remitted to Plaintiffs, it asserted that the amount on the check was the full amount owed, when in fact such amount was intentionally deficient.

102. For these reasons, Plaintiffs pray that the Court enter judgment against Defendants in Plaintiffs' favor, and award restitution and any other relief to which Plaintiffs may be entitled.

## **COUNT SEVEN**

### **REQUEST FOR DECLARATORY JUDGMENT**

103. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

104. An actual, present, and justiciable controversy has arisen and now exists between Plaintiffs and Defendants concerning Defendants' legal obligations under the 911 charge statute, S.C. Code Ann. § 23-47-50, to bill, collect, and remit to Plaintiffs 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.

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

106. A judicial declaration regarding these issues is necessary and appropriate so that Plaintiffs may ascertain and effectively enforce their rights to receive full and complete payment of 911 charges as authorized by the 911 charge statute. For these reasons, Plaintiffs pray 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 Plaintiffs 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**

107. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

108. 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 Plaintiffs 911 charges imposed on all local exchange access facilities and VoIP service lines.

109. Defendants' failure to meet their statutory obligations have and will continue to irreparably harm Plaintiffs because Plaintiffs rely upon the 911 charges to provide funding for their critical 911 emergency operations.

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

111. Plaintiffs do not have any other adequate legal remedy at law because future enforcement of their rights under the 911 charge statute would likely require Plaintiffs to file and litigate multiple actions.

112. 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, Plaintiffs and the public would be manifestly and actually harmed by Defendants' failure to fulfill their statutory obligations.

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

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

**COUNT NINE**  
**PUNITIVE DAMAGES**

115. Plaintiffs hereby incorporate the allegations set forth in the previous paragraphs of this complaint as if fully set forth herein.

116. 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 Plaintiffs 911 charges imposed on all local exchange access facilities and VoIP service lines.



117. Throughout the relevant time period, Defendants have known that they are not correctly billing, collecting the remitting 911 service charges in compliance with S.C. Code Ann. § 23-47-50 and relevant local ordinances.

118. Defendants' failure to bill, collect and remit the correct amount of 911 charges is willful, wanton, and reckless under S.C. Code Ann. § 15-32-520. They have taken these actions despite knowledge of the correct way to assess and remit 911 charges and with knowledge that their failure to fully collect and remit deprives Plaintiffs of funds needed to support life-saving technology and first responder services for South Carolina citizens.

119. For these reasons, Plaintiffs pray that the Court enter judgment against Defendants in Plaintiffs' favor, and in addition to compensatory damages, award punitive damages.

#### **PRAYER FOR RELIEF**

120. Plaintiffs respectfully request 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 Plaintiffs a record of Defendants' accounts;
- C. That judgment enter against Defendants and in favor of Plaintiffs 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 Plaintiffs 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 Plaintiffs 911 charges for all local exchange access facilities and VoIP service lines;

F. That Plaintiffs be awarded their costs of this action and their reasonable attorneys' fees;

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

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

/s/ Lance V. Oliver  
Marlon E. Kimpson  
Lance V. Oliver  
Max Gruetzmacher  
Annie E. Kouba  
MOTLEY RICE LLC  
28 Bridgeside Blvd.  
Mt. Pleasant, SC 29464  
(T) 843-216-9000  
(F) 843-216-9450  
mkimpson@motleyrice.com  
loliver@motleyrice.com  
mgruetzmacher@motleyrice.com  
akouba@motleyrice.com

*Attorneys for Plaintiffs*

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Mt. Pleasant, South Carolina