

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

BELLSOUTH TELECOMMUNICATIONS, LLC,

PLAINTIFF

v.

CIVIL NO. \_\_\_\_\_

LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT,

Serve: Mayor Gregory Fischer  
Metro Hall/4th Floor  
527 W. Jefferson St.  
Louisville, KY 40202

DEFENDANT.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff BellSouth Telecommunications, LLC, doing business as AT&T Kentucky (“AT&T”), states as follows for its complaint against defendant Louisville/Jefferson County Metro Government (“Louisville Metro”):

**NATURE OF THE CASE**

1. On February 11, 2016, Louisville Metro adopted an ordinance that purports to permit third parties to perform work on AT&T’s communications network, in some cases without so much as prior notice to AT&T. Under the new ordinance, where a third party seeks to attach equipment to a utility pole in the rights-of-way and AT&T already has lines or other equipment on the pole, the third party may remove, alter, and relocate AT&T’s facilities as it deems necessary. If the third party believes its work on AT&T’s facilities would not cause or reasonably be expected to cause a customer outage, the third party need not notify AT&T before

conducting such work. If, on the other hand, the work would cause or reasonably be expected to cause a customer outage, the third party may proceed after giving AT&T thirty days notice.

2. AT&T seeks declaratory and permanent injunctive relief to restrain Louisville Metro from enforcing this new ordinance. The ordinance conflicts with and is preempted by the pole attachment regulations of the Federal Communications Commission. In addition, Louisville Metro had no authority to adopt the ordinance, because Kentucky law gives the Kentucky Public Service Commission exclusive jurisdiction to regulate pole attachments.

### **JURISDICTION AND VENUE**

3. This action arises under the laws of the United States, specifically 47 U.S.C. § 224, a provision of the Communications Act of 1934 as amended (“Act”), and the Supremacy Clause of the federal Constitution. The Court has federal question jurisdiction over these claims pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over AT&T’s state law claims pursuant to 28 U.S.C. § 1367.

4. The Court also has diversity jurisdiction under 28 U.S.C. § 1332. There is complete diversity between the parties, as AT&T is a citizen of Delaware and Texas, and Louisville Metro is a citizen of the Commonwealth of Kentucky. The amount in controversy exceeds \$75,000. Among other things, the economic value of the rights AT&T seeks to protect exceeds \$75,000, and if relief is denied AT&T will suffer losses in excess of \$75,000.

5. The Court’s authority to grant declaratory relief and related injunctive relief is based upon 28 U.S.C. §§ 2201-2202 because an actual controversy exists.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the Louisville Metro ordinance at issue was enacted and AT&T’s claims arose in this judicial district.

## **PARTIES**

7. Plaintiff BellSouth Telecommunications, LLC, doing business as AT&T Kentucky, is a limited liability company. At all times relevant, AT&T has been and is qualified to do business in Kentucky.

8. Defendant Louisville Metro is a consolidated local government organized pursuant to the provisions of Kentucky Revised Statutes Chapter 67C, with the capacity to sue and be sued.

## **STATEMENT OF FACTS**

9. AT&T is a wireline telecommunications carrier that provides telephone and other communications services in Louisville and Jefferson County, among other places. In order to provide these services, AT&T and its predecessors have invested millions of dollars over more than one hundred years to construct, maintain, repair, replace, and operate an extensive communications network throughout Louisville and large portions of the Commonwealth of Kentucky, among other states.

10. A significant portion of AT&T's communications network in Louisville and Jefferson County consists of aerial telephone lines and associated equipment placed upon utility poles in the public rights-of-way. AT&T's authority to occupy the public rights-of-way in Louisville and Jefferson County stems from an irrevocable, perpetual, *statewide* franchise granted by Kentucky's General Assembly in 1886, not a franchise granted by Metro Louisville. The vast majority of the poles used by AT&T are owned by either AT&T or Louisville Gas & Electric ("LG&E"), an electric utility with which AT&T has had a contract for the joint use of utility poles since 1917.

11. On February 11, 2016, Louisville Metro adopted Ordinance No. O-427-15 (the “Ordinance”). (A copy is attached.) The Ordinance amends § 116.72 of the Louisville Metro Code of Ordinances, which governs “rights-of-way management and facilities requirements” for communications providers. Among other things, the Ordinance adds new subsection (2) to § 116.72(D), governing “third party facilities.”

12. That new subsection grants an “Attacher” the right to perform all of the “make-ready work” required to rearrange or relocate the pre-existing physical facilities and pole attachments of other communications providers (including AT&T). It states that “[u]pon approval of an Attachment Application [by the pole owner], Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate Attacher’s Attachment using Pole Owner approved contractors.” Where the affected communications provider does not own the pole (*e.g.*, where the Attacher wants to move AT&T facilities located on an LG&E pole), the Attacher need not obtain the consent of the affected provider to move that provider’s facilities.

13. Further, the Ordinance requires the Attacher to provide prior notice to the affected provider only if the Attacher concludes its work would cause, or would reasonably be expected to cause, a customer outage: “the Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User’s facilities that causes or would reasonably be expected to cause a customer outage . . . without first providing thirty (30) days written notice to the Pre-Existing Third Party User.” LCMO § 116.72(D)(2). “In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within thirty (30) days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User’s facilities that

causes or would reasonably be expected to cause a customer outage, Attacher may undertake such work.” *Id.*

14. The Ordinance thus purports to permit a third party (the Attacher) to temporarily seize AT&T’s property, and to alter or relocate AT&T’s property, without AT&T’s consent and, in most circumstances, without prior notice to AT&T. AT&T would be deprived of the opportunity to assess the potential for network disruption caused by the alteration or relocation, and to specify and oversee the work on AT&T’s own facilities to ensure any potential for harm to its network – and the continuity and quality of service to its customers – is minimized. Further, in the event there is network trouble during or after the Attacher’s work, AT&T may be hampered in locating and correcting that trouble if it does not even know the work is occurring, or is unaware that work has already been completed (during the 30-day period the Attacher has to provide notice of completion of the work).

15. The pole attachment rights and obligations created by the Ordinance are a drastic departure from, and conflict with, those set forth in federal regulations promulgated by the Federal Communications Commission (“FCC”). The Act authorizes the FCC to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable,” and it directs the FCC to “prescribe by rule regulations to carry out the provisions of this section.” 47 U.S.C. § 224(b)(1), (2).

16. Under the FCC’s regulations, an entity with existing attachments, including AT&T, is entitled to prior written notice in the event any make-ready work would affect the entity’s facilities. 47 C.F.R. § 1.1420(e). No such notice is required under the Ordinance unless the Attacher unilaterally determines that the Attacher’s planned relocation or alteration of AT&T’s facilities will “cause[] or would reasonably be expected to cause a customer outage....”

LCMO § 116.72(D)(2). Under the FCC's regulations, the entity with existing attachments, including AT&T, has up to 60 days (and potentially more, depending upon the type of facilities and size of the order) to modify its attachments to accommodate a new attacher. 47 C.F.R. § 1.1420(e). Further, under the FCC's regulation, a new attacher may hire a contractor to complete the make-ready work itself only if the work has not been completed by the specified deadline. 47 C.F.R. § 1.1420(i). Under the Ordinance, except where the Attacher determines the planned work may reasonably be expected to cause a customer outage, the Attacher may relocate or alter AT&T's facilities without providing AT&T notice and the opportunity to relocate or alter its own facilities. LCMO § 116.72(D)(2).

17. While in some circumstances 47 U.S.C. § 224 permits a state to override the FCC's pole attachment regulations, Kentucky law denies Louisville Metro any such authority and instead vests the Public Service Commission of Kentucky ("PSC") with exclusive authority to regulate utility pole attachments. In particular, Kentucky law gives the PSC "exclusive jurisdiction over the regulation of rates and service of utilities." KRS 278.040(2). The PSC's jurisdiction "extend[s] to all utilities in" Kentucky. *Id.* In *Kentucky CATV Association v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Kentucky Court of Appeals affirmed the PSC's determination that the PSC's exclusive jurisdiction over utility rates and service under this section extends to attachments on utility poles. The court noted that "[p]oles are an essential part of the facilities of most regulated utilities," and it concluded that "[w]e must agree with the finding by the PSC that the rates charged for pole attachments are 'rates' within the meaning of KRS 278.040, and that the pole attachment itself is a 'service' within the meaning of the statute." *Id.* at 396.

**FIRST CLAIM FOR RELIEF**  
**The Ordinance Is Preempted By Federal Law**

18. AT&T hereby incorporates by reference the allegations of paragraphs 1 through 17, inclusive, as though fully set forth herein.

19. In adopting its pole attachment regulations, the FCC acted upon a developed record and made findings regarding the reasonableness and appropriateness of its mandated procedures and timelines. In doing so, the FCC drew specific lines to weigh and balance various competing interests, including the public interest in giving utilities and telecommunications carriers sufficient time to perform make-ready work to ensure safety and reliability.

20. The Ordinance conflicts with the procedures created by the FCC, and upsets the careful balances struck by the FCC in crafting its pole attachment regulations.

21. The Ordinance is inconsistent with federal law, including 47 U.S.C. § 224 and the pole attachment regulations promulgated by the FCC, and thus is preempted by and rendered invalid and unenforceable by Article VI, Section 2 of the Constitution of the United States.

22. Unless the Court declares the Ordinance invalid and permanently enjoins Louisville Metro from enforcing it, AT&T will suffer irreparable harm that cannot be redressed by recovery of damages. For example, AT&T will be forced to comply with a preempted ordinance, will be improperly subjected to regulators at multiple levels of government, and will suffer a loss of customer goodwill. A permanent injunction will advance the public interest as defined by Congress and the FCC.

23. AT&T is entitled to a judgment declaring the Ordinance invalid and unenforceable, and a permanent injunction restraining Louisville Metro from enforcing, or authorizing any third-parties from acting pursuant to, the Ordinance.

**SECOND CLAIM FOR RELIEF**  
**The Kentucky PSC's Jurisdiction To Regulate Pole Attachments Is Exclusive Under Kentucky Law**

24. AT&T hereby incorporates by reference the allegations of paragraphs 1 through 23, inclusive, as though fully set forth herein.

25. Under Kentucky law, the PSC is vested with exclusive authority over the regulation of rates and service of utilities and telecommunications carriers such as AT&T. KRS 278.040(2).

26. In exercising its exclusive jurisdiction over utility rates and services, the PSC has determined that attachments on utility poles constitute a "service" subject to its exclusive jurisdiction under KRS 278.040(2) and that the regulation of the terms and conditions of utility pole attachments is subject to the PSC's exclusive jurisdiction over rates and services.

27. The Ordinance impermissibly intrudes upon the PSC's exclusive jurisdiction over utility rates and service under Kentucky law, and is invalid and unlawful.

28. Further, the PSC implements its exclusive jurisdiction over utility rates and services through KRS 278.160, which requires utilities to provide their service in conformity with their filed tariffs. To the extent that the Ordinance permits an Attacher to attach its facilities in contravention of LG&E's or AT&T's filed pole attachment tariffs, the Ordinance not only invades the exclusive jurisdiction of the PSC, but is directly contrary to the PSC's exercise of that jurisdiction in approving the pole attachment tariffs.

29. Unless the Court declares the Ordinance invalid and permanently enjoins Louisville Metro from enforcing it, AT&T will suffer irreparable harm that cannot be redressed by recovery of damages. For example, AT&T will be forced to comply with a preempted ordinance, will be improperly subjected to regulators at multiple levels of government, and will

suffer a loss of customer goodwill. A permanent injunction will advance the public interest as defined by Kentucky law.

30. AT&T is entitled to a judgment declaring the Ordinance invalid and unenforceable, and a permanent injunction restraining Louisville Metro from enforcing, or authorizing any third-parties from acting pursuant to, the Ordinance.

**THIRD CLAIM FOR RELIEF**  
**The Ordinance Exceeds Louisville Metro's Authority Under State Law**

31. AT&T hereby incorporates by reference the allegations of paragraphs 1 through 30, inclusive, as though fully set forth herein.

32. Pursuant to Kentucky law a consolidated local government such as Louisville Metro is granted the same authority as counties and cities of the first class. KRS 67C.101.

33. Such authority is limited to ordinances that are not in conflict with state statutes and are not inconsistent with law. An ordinance conflicts with a state statute if it is expressly prohibited by statute, or if there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes.

34. By vesting the PSC with exclusive jurisdiction over utility rates and services, including utility pole attachments, the Kentucky General Assembly has prohibited other Kentucky governmental entities, including Louisville Metro, from regulating utility pole attachments. Further, the Kentucky General Assembly through enactment of Chapter 278 of the Kentucky Revised Statutes, and the PSC through its exercise of its exclusive authority over utility rates and services, including utility pole attachments, have enacted a comprehensive scheme for regulating the provision of service, including utility pole attachments, by utilities and telecommunications carriers such as AT&T.

35. The Ordinance seeks to legislate matters committed to the exclusive jurisdiction of the PSC, and it conflicts and is inconsistent with the comprehensive regulatory scheme of utility rates and services, including pole attachments. The Ordinance is an invalid and *ultra vires* exercise of Louisville Metro's authority under state law, including but not limited to KRS 67C.101.

36. The Ordinance is also inconsistent with the applicable FCC regulations governing pole attachments, including those described above.

37. Further, the Ordinance, adopted as an amendment to existing Chapter 116 of the Louisville Code of Ordinances, is inconsistent with law in violation of KRS 67C.101, as it was not adopted in accordance with the requirements of applicable law, including the requirement to specifically repeal the chapter or section containing the Ordinance's former language and to substitute a new chapter or section containing the desired amendment in its place.

38. Unless the Court declares the Ordinance invalid and permanently enjoins Louisville Metro from enforcing it, AT&T will suffer irreparable harm that cannot be redressed by recovery of damages. For example, AT&T will be forced to comply with a preempted ordinance, will be improperly subjected to regulators at multiple levels of government, and will suffer a loss of customer goodwill. A permanent injunction will advance the public interest as defined by Kentucky law.

39. AT&T is entitled to a judgment declaring the Ordinance invalid and unenforceable, and a permanent injunction restraining Louisville Metro from enforcing, or authorizing any third-parties from acting pursuant to, the Ordinance.

**PRAYER FOR RELIEF**

WHEREFORE, AT&T prays for relief against Louisville Metro as follows:

1. For a declaration and judgment that the Ordinance conflicts with and is preempted by federal law;
2. For a declaration and judgment that the Ordinance is unlawful under applicable law, and that Louisville Metro exceeded its authority in enacting the Ordinance, because the Ordinance impermissibly intrudes upon the exclusive jurisdiction of the Kentucky Public Service Commission and its adoption was not a valid exercise of Louisville Metro's authority under state law;
3. For a permanent injunction restraining Louisville Metro from enforcing, or authorizing any third-parties from acting pursuant to, the Ordinance;
4. For an award of AT&T's costs; and
5. For such other and further relief as the Court may deem just and proper.

Dated: February 25, 2016

*/s/ Douglass Farnsley*

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*Of Counsel for BellSouth Telecommunications, LLC  
(Motions for admission pro hac vice to be filed)*

ORDINANCE NO. \_\_\_\_\_, SERIES 2015

**AN ORDINANCE AMENDING CHAPTER 116 OF THE LOUISVILLE METRO CODE OF ORDINANCES REGARDING COMMUNICATION SERVICES FRANCHISES (AMENDMENT BY SUBSTITUTION)(AS AMENDED).**

**Sponsored By: Council Member Hollander**

**WHEREAS**, communication services providers are increasing the types and volume of data, voice and image transmission services to consumers; and

**WHEREAS**, such expanded services require new and additional infrastructure in a limited amount of space available on poles, structures and ground space within the public right-of-way; and

**WHEREAS**, Metro Government desires to facilitate new and additional technology and infrastructure for the benefit of its citizens;

**WHEREAS**, pursuant to KRS 282.040(2), Metro Government retains all powers of municipalities and, pursuant to KRS 82.082, Metro Government may exercise any powers within its boundaries in furtherance of a public purpose; and

**WHEREAS**, Metro Government's proposed regulation of its rights of ways as set forth herein is consistent with the tariffs applicable to pole owners within Metro Louisville;

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**SECTION I:** Section 116.70(J) of the Louisville Metro Code of Ordinances (LMCO) is hereby amended to add the following definitions:

***Attacher:*** Any person, corporation, or other entity or their agents or contractors seeking to permanently or temporarily fasten or affix any type of

equipment, antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

**Attachment Application:** The application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole.

**Make Ready Costs:** The costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by Attacher to enable attachment to the utility pole or similar structure.

**Pre-Existing Third Party User:** The owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

**Pole Owner:** A person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

**SECTION II:** LMCO Section 116.72(D) is hereby amended as follows:

(D)(1) *Relocation of facilities.* Whenever Louisville Metro shall in its exercise of the public interest request of the franchisee the relocation or reinstallation of any of its facilities, the franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet the request and the cost of such relocation, removal, or reinstallation of the facilities shall be the exclusive obligation of such franchisee. A franchisee shall, upon request of any other person requesting relocation of facilities and holding a validly issued building or moving permit of Louisville Metro, temporarily raise, lower, or relocate its wires or other facilities as may be required for the person to exercise the rights under the permit within 48 hours prior to the date upon which said person intends to exercise its rights under said permit; provided, however, that the franchisee may

require such permit holder to make payment in advance for any expenses incurred by said franchisee pursuant to such person's request.

(2) *Third Party Facilities.* Notwithstanding any provision of this ordinance to the contrary, the provisions of this Subsection shall not apply to (i) facilities located above the "Communication Worker Safety Zone" as such term is defined in the National Electrical Safety Code or (ii) any electric supply facilities wherever located. Make-Ready Costs that are to be paid by Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate Attacher's Attachment. Upon approval of an Attachment Application, Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate Attacher's Attachment using Pole Owner approved contractors; provided, however, that Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage (this Subsection does not authorize activity requiring an electric supply outage) without first providing thirty (30) days prior written notice to the Pre-Existing Third Party User. In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within thirty (30) days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, Attacher may undertake such work. Following~~Within~~ thirty (30) days of the completion of any relocation or alteration, Attacher will send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner(s) of all poles or other structures on which such relocations or alterations were made. The as-built reports will include a unique field label identifier, and an address or coordinates. Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within fourteen (14) days at Attacher's expense. Attacher will pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure

owner(s) for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User will notify Attacher and within seven (7) days of the inspection. In the notice, the Pre-Existing Third Party User will elect to either (a) perform the correction itself and bill the Attacher will for the actual, reasonable and documented costs of the correction, or (b) instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of such notification. As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this Subsection, Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates (each an "Indemnitee") from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

**SECTION III:** LMCO Section 116.72(F)(6)(b) is hereby deleted in its entirety:

~~(b) Copyright Infringement Liability insurance covering any alleged infringement of patent or copyright or any other legal infringement in the transmission of materials through the cable franchise system. This coverage may be written as part of the General liability Insurance, or through a stand-alone policy, however, if written separately, it must have a minimum limit of liability amount of \$5,000,000 per occurrence and aggregate under a combined single limit and include the Louisville/Jefferson County Metro Government, including its Mayor and Metro Council members, as Additional~~

~~Insureds as respects all operations of the Insured Franchisee. The Metro Government reserves the right to make reasonable increases in the required amount of insurance coverage herein at anytime. Nothing herein is intended as a limitation on the extent of any legal liability of the franchisee.~~

**SECTION IV:** This Ordinance shall take effect upon its passage and approval.

\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

\_\_\_\_\_  
David Yates  
President of the Council

\_\_\_\_\_  
Greg Fischer  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

BY: \_\_\_\_\_



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/12)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> _____</p>	<p style="text-align: center;"><b>DEFENDANTS</b></p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> _____</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;"><b>PTF</b></td> <td style="width: 10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

<p style="text-align: center;"><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p style="text-align: center;"><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p style="text-align: center;"><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p style="text-align: center;"><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p style="text-align: center;"><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p style="text-align: center;"><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p style="text-align: center;"><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p style="text-align: center;"><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p style="text-align: center;"><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p style="text-align: center;"><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*: \_\_\_\_\_

Brief description of cause: \_\_\_\_\_

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint:    **JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) IF ANY**    *(See instructions):*    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_    SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

BELLSOUTH TELECOMMUNICATIONS, LLC,

PLAINTIFF

v.

LOUISVILLE/JEFFERSON COUNTY METRO  
GOVERNMENT,

DEFENDANT.

CIVIL NO. \_\_\_\_\_

**CIVIL COVER SHEET ATTACHMENT**

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*Of Counsel for BellSouth Telecommunications, LLC  
(Motions for admission pro hac vice to be filed)*



