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NY Counties Join Battle Over 911 Fees Against Telecoms

By **Anne Cullen**

Law360 (May 2, 2019, 7:56 PM EDT) -- Six New York counties accused Verizon, AT&T and other major phone service providers of shirking their duty to support local emergency call services in a state lawsuit Wednesday, joining the ranks of counties countrywide that are suing to make the telecoms pony up 911 funding.

The counties' suit goes after Verizon Communications Inc., AT&T Inc., Frontier Communications Corp., and Time Warner Cable for allegedly failing to tack a monthly surcharge on customers' bills to support local emergency service funding, which telecoms are required to do under New York law.

"As a result of defendants' malfeasance, plaintiffs' 911 emergency services are not properly and adequately funded, which leads to budget shortfalls that can have dire consequences for the public," they told the court. "The public is harmed when New York's local governments cannot fund their 911 emergency services in the manner that the New York legislature intended."

This latest challenge follows on actions lodged by counties in **Pennsylvania**, **Georgia**, and **South Carolina**, among others, trying to support their underfunded 911 services by forcing the providers to collect these fees and to recover the millions the phone companies should've been charging all along.

The Pennsylvania and Georgia counties weren't able to keep their cases afloat — both state high courts found local regulatory framework prohibits counties from recovering the 911 fees in court — but a South Carolina federal judge kept those counties' case alive in March.

And counsel for the New York counties said the way their state is wired makes their challenge more likely to succeed.

"New York is a home rule state, so the counties are in a much different position than in these other jurisdictions," Paul Napoli of Napoli Shkolnik PLLC told Law360 Thursday. A home rule state is one with self-administered local taxing authorities — cities, counties or special tax jurisdictions — that can collect and use taxes independently from the state.

Napoli added that their argument is supported by official state data, as he said, "a detailed report for the state comptroller found the counties were taken advantage of in the past, this is their opportunity to redress the past abuses by these carriers."

AT&T pushed back on the counties' claims Thursday, as a representative told Law360 that the carrier takes it 911 obligations seriously.

"Our role is to collect 911 charges from our customers in New York and turn the charges over to the appropriate government entity," AT&T said. "These entities believe our customers should have paid more 911 charges and now want to collect those amounts from us."

"We are simply the middleman, and New York law does not make telephone companies liable to the counties for 911 charges owed by their customers," the carrier argued.

A representative from Charter Communications Inc. — Time Warner's parent company — said they

hadn't yet received the complaint, and declined to comment. Representatives for the other service providers did not respond to requests for comment Thursday, and their counsel information was not immediately available.

The counties behind the suit — Nassau, Fulton, Otsego, Schoharie, Sullivan and Wyoming — are represented by Paul J. Napoli, Daniele J. Marlow and Salvatore C. Badala of Napoli Shkolnik PLLC.

The case is the County of Fulton et al. v. Verizon New York Inc. et al., case number 605952/2019, in the Supreme Court of the State of New York, County of Nassau.

--Additional reporting by Matt Bernardini. Editing by Connor Relyea.

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