

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

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DISTRICT OF COLUMBIA, <i>ex rel.</i> , [UNDER SEAL],	2018 CAB SLD 008216 Judge Anthony C. Epstein
Plaintiffs,	
v.	<b>JURY TRIAL DEMANDED</b>
[UNDER SEAL],	
Defendant.	

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DISTRICT OF COLUMBIA'S COMPLAINT IN  
INTERVENTION UNDER THE  
DISTRICT'S FALSE CLAIMS ACT AND FOR OTHER RELIEF

[FILED UNDER SEAL]

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

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<p>DISTRICT OF COLUMBIA, <i>ex rel.</i>, JEFFREY L. SMITH                                 Plaintiffs,</p> <p>v.</p> <p>AT&amp;T MOBILITY NATIONAL ACCOUNTS LLC d/b/a AT&amp;T MOBILITY II LLC, a Delaware limited liability company, 1025 Lenox Park Blvd NE Atlanta, GA 30319                                 Defendant.</p>	<p>2018 CAB SLD 008216 Judge Anthony C. Epstein</p> <p><b>JURY TRIAL DEMANDED</b></p> <p><b>FILED UNDER SEAL</b></p>
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**DISTRICT OF COLUMBIA’S COMPLAINT IN  
INTERVENTION UNDER THE  
DISTRICT’S FALSE CLAIMS ACT AND FOR OTHER RELIEF**

The District of Columbia (“District”), by its Office of the Attorney General, brings this action against AT&T Mobility National Accounts LLC d/b/a AT&T Mobility II, LLC (“AT&T”) to recover treble damages and civil penalties for its violations of the False Claims Act, D.C. Code § 2-381.02 *et seq.* (“FCA”), and to recover other monetary relief for its common law violations. The District alleges as follows:

**Introduction**

1. Relator Jeffrey L. Smith originally filed this action on behalf of the District under the *qui tam* provisions of the District’s False Claims Act, D.C. Code § 2.381.03(b)(1). The District files this Complaint in Intervention having filed a Notice of Intervention, pursuant to D.C. Code §§ 2-381.03(b)(4)(A) and (B)(d)(1).

2. This case arises out of AT&T's knowing failures to comply with the terms of a long-term contract between AT&T and a purchasing cooperative serving government and nonprofit entities, including the District. Governments use cooperative purchasing methods to contract for expensive, technically complicated services to provide greater price discounts, better benefits, and administrative convenience. For this contract specifically, the key objective was to "reduce member spend," and ensure that prices were lower than an entity could obtain on its own.

3. AT&T represented it would provide valuable, cost-saving services to the District and other governmental entities under the contract. It did not: AT&T knowingly failed to provide wireless services to the District at the promised "lowest cost available"; to provide rate plan optimization services including quarterly optimization reports; and to establish and provide a consistent standardized rate plan for wireless services for the District under the contract.

4. Because of these years-long failures, AT&T overbilled the District in violation of the False Claims Act and common law. AT&T concealed its overbilling, and the District's subsequent overpayments, with billing practices rife with errors, unapplied credits, billing overages and reports that did not meet the rate optimization standards of the contract.

5. This suit seeks damages and civil penalties under the False Claims Act and monetary relief under the common law for the millions of dollars that the District was overcharged between 2012 and 2018.

### Jurisdiction and Parties

6. This Court has jurisdiction over the subject matter of this action pursuant to D.C. Code D.C. Code § 11-921 and D.C. Code § 2.381.02 (1).

7. This Court has personal jurisdiction over the Defendants pursuant to D.C. Code §11-921 and §§ 13-423 (a)(1), (2), (3) and (4).

8. Plaintiff, the District of Columbia (“District”), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented in this action by its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has charge and conduct of all legal business of the District and all suits instituted by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81 (a)(1). The Attorney General is specifically authorized to enforce the District’s False Claims Act pursuant to D.C. Code § 2-381.03 (a).

9. The *qui tam* provisions of the District’s False Claims Act provide that a private person may file an action on behalf of the District against individuals and entities for violations of the False Claims Act. D.C. Code § 2-391.03 (b) (1). The person initiating such an action is called a “*qui tam* plaintiff” or a “relator.”

10. On February 19, 2021, the District notified the Court of its decision to intervene in this action. D.C. Code § 2.381.03(b)(4)(A). The District intervenes as to all allegations in Relator’s Complaint.

11. The District timely asserts the causes of action below based on the filing of the Relator's Complaint, which was filed under seal on November 27, 2018, and this Court's Order of September 14, 2020 extending both the seal and the time for the District to intervene in this case to February 23, 2021, as the causes of action here arise out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the Relator's Complaint.

12. Relator Jeffrey L. Smith is an individual and a citizen of the State of California.

13. Defendant AT&T Mobility National Accounts LLC d/b/a AT&T Mobility, d/b/a AT&T Mobility II, is a limited liability corporation organized under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia.

## **AT&T'S FRAUDULENT SCHEME AND FALSE CLAIMS**

### **1. The Cooperative Purchasing Agreement**

14. Cooperative purchasing contracts allow two or more government entities to purchase goods or services under the same contract terms and conditions, and to centralize procurement under a single purchasing entity.

15. Cooperative contracts are often developed by a purchasing cooperative. In the cooperative purchasing model, a "lead" government agency or State solicits and enters into one or more master contracts, which other members of the cooperative may adopt and use.

16. The Western States Contracting Alliance (“WSCA”) is the cooperative purchasing program of the National Association of State Procurement Officers (“NASPO”). WSCA was formed to provide savings to government entities and their political subdivisions by permitting them to qualify for volume discounts through cooperative purchasing agreements and by subsuming administrative costs into a single entity.

17. WSCA contracts are available to all NASPO members, which include the 50 states, the District, and U.S. territories.

18. Participating states, districts, territories, political subdivisions, and certain nonprofits (collectively, “Participating Entities”) may also contract individually as Participating Entities.

19. Since at least August 2012, the District has purchased wireless voice and broadband services, equipment, and accessories from AT&T pursuant to its participation in a WSCA cooperative purchasing agreement.

20. Under this contract, AT&T was required to provide the District with the lowest cost available for these services, quarterly price optimization reporting, and standardized rate plans.

## **2. The Terms of the WSCA Contract**

21. WSCA put out a request for proposal 1907 (“the RFP”) in 2011 for a cooperative purchasing agreement for wireless voice and broadband service, accessories, and equipment. The contract would be worth billions of dollars to participating vendors.

22. The RFP stated that the key objective of this WSCA contract was to harness WSCA's cooperative purchasing power to "obtain greater volume price discounts (reduce member spend)" The RFP also stated that WSCA's "expectation was that the pricing discounts provided under this procurement would be greater than the pricing discounts that any one entity would be able to achieve as a standalone entity" The RFP required that all pricing be centralized and that any discount offered to any Participating State be offered to all.

23. In keeping with its focus on reducing member spend, the RFP specifically stated that the selected vendor must be able to "[p]rovide quality wireless voice services, wireless broadband services, equipment and accessories at the lowest cost available[.]" RFP, § 3.1.2.

24. The RFP further required that the awarded vendor provide: reports in the format required by the WSCA contract administrator, including quarterly optimization reports for each wireless/broadband service; reports related to usage for services that are available and would optimize the Participating Entity's ability to assess utilization and cost; and establish and provide a set of "standard" plans for voice services. RFP, §§ 3.3; 3.5.1; 3.5.2; and 3.6.1.

25. Section 2 of the RFP states that the terms "shall," "must," and "will" indicate mandatory requirements for vendors bidding on the contract, and states that "[f]ailure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive."

26. The RFP also provided that each vendor “understands and acknowledges that the representations within their proposal response are material and important and will be relied on by the State in evaluation of the proposal. Any vendor misrepresentations shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.” RFP, Att. C, § 11.

27. Section 9.2.2.5 of the RFP required all bidding vendors to state with specificity any objection that would change a term in the contract, the objections were called Contractor Special Terms and Conditions (“CSTs”):

In order for any exceptions and/or assumptions to be considered they **MUST** be documented in detail in the tables in Attachment B1. The State will not accept additional exceptions and/or assumptions if submitted after the proposal submission deadline. Vendors must be specific. Nonspecific exceptions or assumptions may not be considered. If the exception or assumption requires a change in the terms or wording of the contract, the scope of work, or any incorporated documents, vendors must provide the specific language that is being proposed in Attachment B1.

28. AT&T did not specifically object to the RFP requirement that it provide its services at the lowest cost available. Bid Response, at VI-2.

29. Section 3.3.2 of the RFP also required a price optimization report that “shall be submitted for the respective quarter,” and stated:

The goal of the optimization reports is to ensure that each subscriber is utilizing the most appropriate plan. This includes identifying subscribers that may be consistently incurring overage charges, and therefore should move to a more cost-effective plan or subscribers consistently under-utilizing a plan and therefore should move to a lower cost plan.

30. The described goal of the quarterly optimization reports is what is known in the telecommunications industry as rate plan optimization. Rate plan



optimization is a process that requires that the telecommunications provider analyze all wireless lines of service to which a customer subscribes and provide the optimal—lowest cost—rate plan for each line selected from the rate plans available to that customer. Rate plan optimization requires that the customer always receives the most cost-efficient rate plan available.

31. In its Bid, AT&T agreed that it would comply with the RFP’s rate plan optimization requirements and provide quarterly optimization reports for each subscriber which would be delivered at the agency level through its Premier Platform (“Premier”). AT&T claimed that it would work with the Participating Entities to determine how the data should be customized and further agreed that its Premier Platform would “provide[] Participating Entities, on a monthly basis [with] the information they need to determine if an End User is utilizing the most appropriate plan.” Bid Response at VI-12.

32. AT&T also claimed to have a service management organization that would work regularly with Participating Entities to review their bills and suggest alternative services to ensure that the subscribers were on the most appropriate and cost-effective plan for them. It claimed that the service management organization serviced government clients in all 50 states and the District of Columbia. Bid Response at VI-12.

33. AT&T did not make any exception to the requirement that it provide the participating states with standardized rate plans. This provision required AT&T to establish and provide voice services and add-ons at a consistent billing structure,

available to all District agencies, which the contract referred to as standardized rate plans.

34. Nevada, the Lead State for the RFP, ultimately awarded a contract to AT&T, titled the Master Service Agreement (“1907 WSCA contract”). The 1907 WSCA contract incorporated by reference the RFP, AT&T’s Bid, and its CSTs.

35. When AT&T signed the 1907 WSCA Contract with Nevada, it laid out the following order of precedence of documents to interpret the contract in the event of a conflict: A Participating Addendum from a Participating Entity; the Master Service Agreement (the 1907 WSCA Contract); the CSTs; the RFP; AT&T’s Bid; and any individual orders placed pursuant to the contract.

36. The District entered into its Participating Addendum, pursuant to RFP 1907 and the 1907 WSCA Contract, by and through the District’s Office of Contracting and Procurement on or around August 1, 2012. The Participating Addendum became effective on November 1, 2012.

37. The 1907 WSCA Contract neither modified nor contradicted the RFP’s requirements that AT&T provide services to the District at the “lowest cost available,” provide quarterly optimization reports, and provide standardized rate plans. AT&T’s representations that it would abide by all mandatory terms of the RFP were material to the award of the WSCA 1907 Contract and to the District’s entry into its Participating Addendum.

38. The District exercised its annual options to extend its Participating Addendum and the 1907 WSCA contract for three years, and then further extended

the 1907 WSCA Contract in late 2016 with a Letter Contract, Contract No. CW49169 and, again, with Contract No. CW60896 executed on September 11, 2019.

**3. AT&T Understood What It Was Agreeing To Provide in the WSCA 1907 Contract**

39. Rate plan optimization is a common industry practice and considered one of the most effective methods of controlling costs. It is known to save customers 20-30% on the cost of wireless services.

40. The RFP's specialized provisions were designed to reduce costs on behalf of the Participating Entities, as was the use of the WSCA's purchasing power and the cooperative purchasing model overall.

41. In 2012, when the 1907 WSCA Contract went into effect, AT&T was promoting dozens of options for voice, text, and data plans to government purchasers under the contract.

42. Because AT&T typically offers multiple qualifying rate plans, frequently changes features and pricing, and offers many rate plan features and modifiers, selecting the most cost-effective rate plan for a given subscriber or agency is often difficult. Further, the cost-effectiveness of a rate plan is not static, as it is common for usage patterns to vary over time.

43. Most smartphone subscribers do not simply use their phone for voice calls, they use features and modifiers such as SMS or picture messaging, data, international service, and tethering, also known as using one's phone as a "hot spot" to provide wireless internet access to another device that does not have wireless service.

44. Identifying the most cost-effective rate plan for an individual phone line is difficult as it requires historical usage data, a complete list of available rate plans including add-on features, and the associated pricing formulas, and a way to match the usage with an optimal plan. The complexity of AT&T's rate plan and pricing structure makes it necessary for any entity seeking to optimize pricing to have access to detailed usage data on total wireless usage including calling patterns (peak or off peak), total minutes used, data use, and the number of text and video messages sent and received. These requirements coupled with the complexity of AT&T's rate plan and pricing structure put the service provider in a far superior position to identify the optimal rate plans than its customers.

45. Moreover, to identify the best rate plan, one must know all of the rate plans that AT&T makes available as well as the individual pricing features of each plan. This might require a review of dozens or more rate plans, features, and modifiers, and, as difficult as this process would be for a single subscriber, the difficulty is greatly amplified when applied to the thousands of subscribers' usage data and patterns at issue under a government contract.

46. In the context of billion-dollar, multi-year contracts with government accounts, churning hundreds or more subscribers per month, and including variables unique to these types of accounts such as shared (pooled) minutes and custom rate plans unavailable to the general public, rate plan optimization is a task uniquely suited for computerized analysis.

47. AT&T regularly bids on, provides, or arranges for rate plan optimization to large customers.

48. AT&T has offered and provided rate plan optimization to these customers through wireless “spend management programs.” These programs offered rate plan optimization designed to reduce wireless spend.

49. Because rate plan optimization provides such large savings, typically at least 20%, AT&T’s large commercial customers often hire large third-party optimization firms to perform the analyses or demand a contractual commitment from AT&T to provide it.

50. AT&T has frequently hired third-party firms to fulfill its contractual requirements to perform optimization analyses to reduce wireless spend.

51. Relator owned a company called eONtheGO Wireless that prepared rate plan optimization reports for some AT&T customers.

52. Relator has testified that rate plan optimization has a recognized and widely understood meaning within the telecommunication and wireless industry, which is that, at minimum, each line of service must be matched to the lowest cost rate plan given the subscriber’s usage patterns and the rate plans available from AT&T under the relevant agreement. Relator has been contracted to and has provided this level of service to AT&T for some AT&T customers.

#### 4. AT&T's False Claims

53. The District of Columbia Procurement Reform Amendment Act (the District's "False Claims Act") provides for the award of treble damages and civil penalties for a violation of any of the enumerated types of false claims. D.C. Code § 2-381.02(a)(1), (2), and (9) (2011 Supp), as amended by the Medicaid Enforcement and Recovery Amendment Act of 2012 (2013 Supp.).

54. Between at least August 2012 and January 1, 2018, AT&T violated its contractual obligations when it failed to provide the District with the lowest cost available for its wireless and broadband services and failed to provide quarterly optimization reports and failed and standardized rate plans. Instead, contrary to its obligations, AT&T provided rate plan features, add-ons, and modifiers that created a labyrinth of overcharges, improper charges, and line by line billing disputes.

55. AT&T took no steps to ensure that it was providing the District with the lowest cost available or best value in the services provided under the 1907 WSCA contract. AT&T did not provide any standardization of its plans or only charge the District for the lowest cost services available, requiring the District being forced to identify overcharges on each invoice or user line and demand credit on an ad hoc basis.

56. District entities contracting for AT&T's services were charged what were often widely varying amounts for rate plans, data, and add-ons, in violation of AT&T's agreement to provide standardized plans.

57. To ensure that AT&T was providing the lowest cost available to the District, it should have used rate plan optimization, including generating required quarterly optimization reports.

58. Between at least August 2012 and January 1, 2018, AT&T instead knowingly failed to provide the quarterly price optimization reports. Instead, AT&T provided the District with reports that AT&T knew were inadequate to meet its obligations under the Contract to provide service at the “lowest cost available” and rate optimization to reduce wireless spend.

59. AT&T, contrary to its contractual obligation to provide service at the lowest cost available, never recommended less expensive plans for lines that were below usage limits.

60. The District regularly had upwards of 1,500 users with no activity on their accounts for months or even entire quarters during the relevant time period. AT&T provided no reports, recommendations, or analyses to identify or implement savings relating to these users and plans, as required by the Contract.

61. AT&T provided an array of other reports, often bearing false and misleading titles that included phrases like “plan optimization” and “rate plan analysis,” but none of these reports met the requirements for price optimization under the Contract. These reports did not provide rate plan optimization data or information to the District.

62. AT&T also knowingly failed to provide any of the rate optimization services it agreed to provide in the 1907 WSCA contract. AT&T never provided a

service management organization to perform rate optimization services for the District.

63. AT&T failed to establish or provide any set of standard rate plans to the District as a Participating Entity under the 1907 WSCA Contract until at least January 1, 2018.

64. As a result, District entities contracting for AT&T's services were charged what were often widely varying amounts for rate plans, data, and add-ons, in violation of AT&T's agreement to provide standardized plans.

65. AT&T knew that failing to provide quarterly optimization reports, the requisite rate plan optimization, and the standardized plans, under the WSCA 1907 Contract would also violate its agreement to provide services at the lowest cost available, resulting in overbilling to the District. AT&T continued to overbill the District during the relevant time period.

66. Between at least August 2012 and January 1, 2018, AT&T knowingly submitted invoices to the District that did not charge the District the lowest cost available for AT&T's services, did not reflect rate optimization or the provision of quarterly optimization reports to the District, and did not reflect the establishment or provision of standard rate plans for the District as a Participating Entity, resulting in damages that the District believes to run into the millions of dollars over the relevant period.



**COUNT 1**

**Knowingly Presents, or Causes to be Presented, a False or Fraudulent Claim for Payment or Approval.**

**D.C. Code § 2-381.02 (a) (1) (2011 Supp.) and (2013 Supp.)**

67. The District incorporates the allegations in Paragraphs 1-66 as if fully set forth herein.

68. From August of 2012 until at least January 1, 2018, Defendant AT&T knowingly presented or caused to be presented, false or fraudulent claims for payment or approval. AT&T continued to submit invoices for payments knowing that it was not providing the District with the services required by the 1907 WSCA contract, including the lowest cost available for its services, rate plan optimization and quarterly optimization reports, and standardized rate plans, in violation of D.C. Code § 2-381.02 (a)(1).

**COUNT 2**

**Knowingly Makes, Uses, or Causes to be Made or Used, a False Record or Statement that is Material to a False or Fraudulent Claim or to get a False Claim Paid or Approved by the District.**

**D.C. Code § 2.381.02 (a)(2) (2011 Supp.) and (2013 Supp.)**

69. Paragraphs 1-68 are realleged as if set forth fully herein.

70. From August of 2012 until at least January 1, 2018, Defendant AT&T knowingly made, used, or caused to be made or used, false records or statements material to payment or approval of AT&T's invoices. AT&T failed to provide the District with quarterly optimization reports. The reporting provided violated AT&T's agreement to provide data sufficient to determine whether an end user was on the appropriate plan. AT&T continued to submit invoices for payments knowing that it was not providing the District with the services required by the 1907 WSCA contract,

including the lowest cost available for its services, rate plan optimization and quarterly optimization reports, and standardized rate plans, in violation of D.C. Code § 2-381.02 (a)(2).

**COUNT 3**

**Beneficiary of an Overpayment by the District of Monies not Due and  
Knowingly Fails to Repay the Overpayment to the District.  
D.C. Code § 2.381.02 (a)(9) (2011 Supp.) and (2013 Supp.)**

71. Paragraphs 1-70 are realleged as if set forth fully herein.

72. From August of 2012 until at least January 1, 2018, Defendant AT&T knowingly failed to repay the District for the District's overpayment of false invoices submitted by AT&T. AT&T continued to submit invoices for payments knowing that it was not providing the District with the services required by the 1907 WSCA contract, including the lowest cost available for its services, rate plan optimization and quarterly optimization reports, and standardized rate plans, resulting in overcharges that should have been refunded to the District, in violation of D.C. Code § 2-381.02 (a)(9).

**COUNT 4**

**Unjust Enrichment**

73. Paragraphs 1 through 72 are realleged as if fully set forth herein.

74. By failing to provide rate plan optimization including quarterly optimization reports or to establish and provide standardized rate plans for the District, AT&T failed to provide the District with the lowest cost wireless services

and has been unjustly enriched by these overcharges to the detriment of the District.

**Prayer for Relief**

WHEREFORE, the District requests that judgment be entered in its favor and against Defendant on its claims, and impose damages and penalties as follows:

- (1) On Counts 1, 2, and 3 against Defendant, awarding the District treble statutory damages in an amount to be determined at trial and applicable civil penalties payable to the District, for each violation of the District's False Claims Act;
- (2) On Count 4 against Defendant, awarding the District actual damages in an amount to be determined at trial;
- (2) Awarding the District interest, costs, and other recoverable expenses permitted by law; and
- (3) Awarding the District such further and additional relief as the Court may deem just and proper.

**Jury Demand**

The District of Columbia demands a trial by jury with respect to all issues.

Date: February 19, 2021  
Respectfully Submitted,

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Attorney General for the District of Columbia

KATHLEEN KONOPKA  
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Attorneys for the District of Columbia

### **Certificate of Service**

I hereby certify that on February 19, 2021 a true and correct copy of the foregoing District of Columbia's Complaint in Intervention for Treble Damages Under the District's False Claims Act and for Other Relief was served via email and first-class mail, postage pre-paid, to:

Michael Ronickher  
Anne Hartman  
Constantine Cannon LP  
1001 Pennsylvania Ave, NW, Suite 1300N  
Washington, DC 20004  
Attorneys for *Qui Tam* Plaintiff

Because this action is under seal pursuant to D.C. Code § 2-381.03(b)(2), Defendant has not been served with copies of this Complaint.

/s/ Naomi I. Claxton  
Naomi I. Claxton  
Assistant Attorney General