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July 31, 2013

Ex Parte (via e-mail)

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

**Re: Conexions LLC d/b/a Conexion Wireless Third Amended Compliance Plan,
WC Docket Nos. 11-42, 09-197**

Dear Ms. Dortch:

Last month, Thomas Biddix submitted a “Third Amended Compliance Plan” on behalf of his company Conexions LLC d/b/a Conexion Wireless (Conexions).¹ Mr. Biddix filed this amended compliance plan in support of Conexions’ pending application to become a Lifeline-only eligible telecommunications carrier (ETC) in over a half-dozen states and in the District of Columbia.²

Post-*Lifeline Reform Order*, a carrier seeking a Lifeline-only ETC designation must demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with the Commission’s low-income program rules.³ The Commission explained that “[a]mong the relevant considerations for [demonstrating financial and technical capability] would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in

¹ Conexions, LLC d/b/a Conexion Wireless Third Amended Compliance Plan, WC Docket Nos. 09-197, 11-42 (filed June 13, 2013) (Third Amended Compliance Plan).

² See Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia, CC Docket No. 96-45 (filed Oct. 7, 2009). While Mr. Biddix does not reference this application in his compliance plan, we have no reason to believe that he is no longer seeking Lifeline-only designations in these eight states and in D.C.

³ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 387 (2012) (*Lifeline Reform Order*); 47 C.F.R. §§ 54.201(h), 54.202(a)(4).

any state.” *Lifeline Reform Order* at ¶ 388. In his Third Amended Compliance Plan, Mr. Biddix includes a discussion about how Conexions has the financial and technical capability to provide Lifeline-supported services. Among other things, Mr. Biddix mentions his ownership of American Telecommunications Management Services, LLC (ATMS) and states that “[b]esides the ATMS matters in Louisiana and Florida discussed above, Conexions and Thomas Biddix are not aware of any other judicial or administrative proceedings, past or present, against the ATMS companies.”⁴ While it is unclear what the “ATMS matters in Louisiana and Florida” are because there is no discussion of such “matters” in the filing, AT&T attaches to this letter a copy of an Amended Complaint filed by one of its affiliates, BellSouth Telecommunications, LLC (BellSouth), against two of Mr. Biddix’s companies (BLC Management LLC and LifeConnex Telecom, LLC). According to Mr. Biddix, ATMS is the holding company for these two entities.⁵ Four state commissions (Kentucky, Mississippi, North Carolina, and Tennessee) have ordered these two Biddix-owned companies to pay BellSouth more than \$34 million. On May 9, 2013, the court clerk of the U.S. District Court Middle District of Florida, Orlando Division entered a notice of default against these companies and on July 25, 2013, BellSouth filed a Motion for Default Judgment.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Cathy Carpino
Cathy Carpino

Attachment

⁴ Third Amended Compliance Plan at p. 30 of 47. We note that the Third Amended Compliance Plan is not paginated.

⁵ *Id.* at pp. 26-27 of 47.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

BellSouth Telecommunications, LLC)
d/b/a AT&T Mississippi, AT&T Kentucky,)
AT&T Tennessee and AT&T North)
Carolina,)
)
Plaintiff,)

v.)

Case No.
6:13-cv-00529-CEH-DAB

BLC Management LLC d/b/a Angles)
Communications Solutions and)
LifeConnex Telecom, LLC)
f/k/a Swiftel LLC,)
)
Defendants.)

**AMENDED COMPLAINT OF PLAINTIFF
BELLSOUTH TELECOMMUNICATIONS, LLC**

BellSouth Telecommunications, LLC d/b/a AT&T Mississippi (“AT&T Mississippi”), AT&T Kentucky (“AT&T Kentucky”), AT&T Tennessee (“AT&T Tennessee”), and AT&T North Carolina (“AT&T North Carolina”) (collectively referred to as “BellSouth”), pursuant to Federal Rule of Civil Procedure 15(a)(1)(A), files this Amended Complaint against Defendants BLC Management LLC d/b/a Angles Communications Solutions (“BLC”) and LifeConnex Telecom, LLC f/k/a Swiftel LLC (“LifeConnex”) for breach of contract.

BLC and LifeConnex (“Defendants”) are (or were at all relevant times) new entrant telecommunications carriers, referred to as competitive local exchange carriers or “CLECs,” ultimately 100% owned by Thomas E. Biddix, an individual residing in Melbourne, Florida. Defendants have unlawfully failed to pay BellSouth millions of dollars for telecommunications services they purchased from BellSouth under an interconnection agreement (“ICA”) each Defendant entered into with BellSouth pursuant to the federal Telecommunications Act of 1996.

In a final order dated January 8, 2013 (the “Mississippi Order”), the Mississippi Public Service Commission (“Mississippi Commission”) found that “the parties’ ICA requires that BLC pay for the services rendered under the ICA”; that AT&T Mississippi billed BLC more than \$12 million for the services BLC purchased under the ICA; that BLC has failed to pay all amounts due to AT&T Mississippi; and that “AT&T Mississippi is entitled to be paid \$6,650,553.” The Mississippi Order is binding on BLC. A copy of the Mississippi Order is attached hereto as **Exhibit A**.

In two final orders dated February 19, 2013 (the “Kentucky Orders”), the Kentucky Public Service Commission (“Kentucky Commission”) found that BLC and LifeConnex are “liable to AT&T Kentucky for the undisputed balances [they] withheld from AT&T Kentucky as well as the wrongfully withheld charges

associated with [certain promotions].” As a result of the Kentucky Orders, BLC owes AT&T Kentucky \$3,600,132, and LifeConnex owes AT&T Kentucky \$912,367, for services provided to them by AT&T Kentucky under their respective ICAs. The Kentucky Orders, which are binding on BLC and LifeConnex, are attached hereto as **Exhibits B and C**.

On February 25, 2013, the Tennessee Regulatory Authority (“Tennessee Authority”) issued a final order finding that BLC “has failed to pay all amounts in issue . . . resulting in unpaid charges due and owing [to BellSouth] in the amount of \$15,894,723” (the “Tennessee Order”). The Tennessee Order, which is binding on BLC, is attached hereto as **Exhibit D**.

On March 22, 2013, the North Carolina Utilities Commission (the “North Carolina Commission”) issued a final order finding that BLC owes AT&T North Carolina \$7,803,836 (the “North Carolina Order”). The North Carolina Order, which is binding on BLC, is attached hereto as **Exhibit E**.

All told, these state commission orders establish that Defendants owe BellSouth more than \$34 million.

NATURE OF THE CASE

1. This case arises out of unpaid charges for telecommunications services provided by BellSouth to BLC and its affiliate, LifeConnex, for resale in

Mississippi, Kentucky, Tennessee and North Carolina pursuant to the terms of a binding ICA entered into by each Defendant and BellSouth. Although BellSouth — doing business in Mississippi as AT&T Mississippi, in Kentucky as AT&T Kentucky, in Tennessee as AT&T Tennessee, and in North Carolina as AT&T North Carolina — provided millions of dollars of telecommunications services to Defendants for resale and billed Defendants for those services in accordance with the ICA, Defendants paid BellSouth next to nothing from 2008 until issuance of final bills in April 2012. Instead, Defendants invented millions of dollars of specious promotional credit and discount requests and improperly offset the supposed value of those requests against millions of dollars otherwise due to BellSouth for the services Defendants ordered from BellSouth and resold to Defendants' own customers.

PARTIES

2. Plaintiff **BellSouth Telecommunications, LLC** (“BellSouth”) is a Georgia limited liability company with its principal place of business in Atlanta, Georgia. BellSouth has a single member, BellSouth Corporation, which owns 100% of the membership interests in BellSouth. BellSouth Corporation is a Georgia corporation with its principal place of business in Atlanta, Georgia, and is therefore a citizen of Georgia for purposes of this Court’s diversity jurisdiction.

Because BellSouth's only member is a citizen of Georgia, BellSouth is a citizen of Georgia. BellSouth Corporation is a wholly-owned subsidiary of AT&T Inc., a publicly-held Delaware corporation with its principal place of business in Dallas, Texas ("AT&T").

3. BellSouth does business in a 9-state region in the Southeastern United States. In Mississippi, BellSouth does business under the name "AT&T Mississippi." In Kentucky, BellSouth does business under the name "AT&T Kentucky." In Tennessee, BellSouth does business under the name "AT&T Tennessee." In North Carolina BellSouth does business under the name "AT&T North Carolina." AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and AT&T North Carolina are "incumbent local exchange carriers" ("incumbent LECs" or "ILECs"), as that term is defined in Section 251(h) of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the "1996 Act"), in their respective authorized service areas in Mississippi, Kentucky, Tennessee and North Carolina. AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and AT&T North Carolina are also telecommunications service providers that are certificated to provide, and have provided, at all times relevant to this Complaint, telecommunications services within the states of Mississippi, Kentucky, Tennessee, and North Carolina, respectively.

4. On information and belief, defendant **BLC** is a Tennessee limited liability company with its principal place of business in Melbourne, Florida. According to publicly available documents, including filings available on the website of the Tennessee Secretary of State and filings made, and documents produced, by BLC and its affiliates in other legal proceedings, BLC has only one member, BLC Acquisition Group, LLC (“BLC Acquisition”). BLC Acquisition is a Delaware limited liability company that also has only one member: Associated Telecommunications Management Services, LLC (“ATMS”), another Delaware limited liability company that is 100% owned by Thomas E. Biddix, an individual residing in Melbourne, Florida (“Biddix”). ATMS is a citizen of Florida because its 100% owner and sole member, Biddix, is a resident and citizen of Florida. Accordingly, BLC Acquisition is a citizen of Florida. Because defendant BLC’s citizenship is determined by the citizenship of its sole member, BLC Acquisition, BLC is a citizen of Florida and no other state.

5. At all relevant times through February 2012, BLC was certificated by the Mississippi Commission to provide telecommunications services in Mississippi. At all relevant times, BLC was also registered with the Kentucky Commission to provide telecommunications services in Kentucky and was certificated by the Tennessee Authority to provide telecommunications services in

Tennessee, and by the North Carolina Commission to provide telecommunications services in North Carolina. BLC was a reseller of AT&T Mississippi's, AT&T Kentucky's, AT&T Tennessee's, and AT&T North Carolina's telecommunications services, which BLC purchased from AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and AT&T North Carolina at wholesale rates in accordance with the ICA and the 1996 Act.

6. By order dated February 28, 2012 in Docket No. 2011-AD-371, the Mississippi Commission cancelled BLC's Certificate of Public Convenience and Necessity, revoked BLC's license to operate in Mississippi, and prohibited BLC from conducting telecommunications business in Mississippi. On September 11, 2012, the Kentucky Secretary of State revoked BLC's authority to transact business in Kentucky. On October 7, 2011, the Tennessee Secretary of State administratively dissolved BLC for failing to comply with applicable law. By order dated January 24, 2012, the Tennessee Authority revoked BLC's certificate for failure to pay required fees; the Tennessee Order (at 4) states that "[BLC] is no longer serving Tennessee customers." On December 12, 2012, the North Carolina Secretary of State notified BLC that its Certificate of Authority to do business in North Carolina would be revoked unless BLC filed its required annual report

within 60 days. According to the North Carolina Secretary of State's on-line database, as of March 25, 2013 BLC has not filed its annual report.

7. On information and belief, BLC has stopped doing business and no longer provides telecommunications services in Mississippi, Kentucky, Tennessee, North Carolina, or any other state.

8. On information and belief, Defendant **LifeConnex** is a Florida limited liability company with its principal place of business in Melbourne, Florida. According to publicly available documents, including filings available on the website of the Tennessee Secretary of State and filings made, and documents produced, by LifeConnex and its affiliates in other legal proceedings, LifeConnex has only one member, LifeConnex Acquisition Group, LLC ("LifeConnex Acquisition"). LifeConnex Acquisition is a Delaware limited liability company whose sole member is ATMS. ATMS is a citizen of Florida because its 100% owner and sole member, Thomas E. Biddix, is a resident and citizen of Florida. Accordingly, LifeConnex Acquisition is a citizen of Florida. Because defendant LifeConnex' citizenship is determined by the citizenship of its sole member, LifeConnex Acquisition, LifeConnex is a citizen of Florida and no other state.

9. LifeConnex was originally organized under the name "Swiftel," but changed its name to LifeConnex in April 2009. At all relevant times, LifeConnex

was registered with the Kentucky Commission to provide telecommunications service in Kentucky. On September 11, 2012, the Kentucky Secretary of State revoked LifeConnex's authority to transact business in Kentucky. On information and belief, LifeConnex has stopped doing business and no longer provides telecommunications services in Kentucky or any other state.

JURISDICTION AND VENUE

10. This Court has diversity jurisdiction under 28 U.S.C. § 1332, because this is a civil action between citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000. BellSouth, a limited liability company, is a citizen of Georgia because its only member, BellSouth Corporation, is a citizen of Georgia. BLC, a Tennessee limited liability company, is a citizen of Florida because its only member, BLC Acquisition, is a citizen of Florida. LifeConnex, a Florida limited liability company, is a citizen of Florida because its only member, LifeConnex Acquisition, is a citizen of Florida. Accordingly, there is complete diversity between the plaintiff, BellSouth (Georgia), and both defendants (Florida).

11. Venue in this district is proper under 28 U.S.C. § 1391(b) because Defendants BLC and LifeConnex reside in this district.

BACKGROUND ALLEGATIONS

A. Interconnection Agreements Under the 1996 Act

12. The 1996 Act reflects Congress's desire to open all telecommunications markets to competition. Among other things, the 1996 Act requires "incumbent" local exchange carriers (known as ILECs), like AT&T Mississippi, AT&T Kentucky, AT&T Tennessee, and AT&T North Carolina to negotiate "interconnection agreements" with competing local exchange carriers ("CLECs"), like BLC and LifeConnex. Interconnection agreements, or ICAs, are the primary mechanism by which the local competition provisions of Section 251 of the 1996 Act are implemented and enforced. For example, an ILEC must allow competing carriers to interconnect with its network for the "transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2). And under section 251(c)(4) of the 1996 Act, an ILEC has a duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications providers."

B. The Parties' Interconnection Agreements.

13. In 2004, BLC entered into an ICA with BellSouth, doing business as AT&T Mississippi, AT&T Kentucky, AT&T Tennessee, and AT&T North Carolina, under which AT&T Mississippi, AT&T Kentucky, AT&T Tennessee,

and AT&T North Carolina, agreed, among other things, to offer various telecommunications services for resale to BLC at specified wholesale rates and subject to specific terms and conditions.

14. In 2008, LifeConnex (then known as Swiftel) entered into an ICA with BellSouth, doing business as AT&T Kentucky, under which AT&T Kentucky agreed, among other things, to offer various telecommunications services for resale to LifeConnex at specified wholesale rates and subject to specific terms and conditions.

15. From December 2004 through April 2012, AT&T Mississippi provided services to BLC at wholesale rates and billed BLC for those services in accordance with the ICA.

16. From December 2004 through April 2012, AT&T Kentucky provided services to BLC at wholesale rates and billed BLC for those services in accordance with the ICA.

17. From December 2004 through April 2012, AT&T Tennessee provided services to BLC at wholesale rates and billed BLC for those services in accordance with the ICA.

18. From November 2007 through April 2012, AT&T North Carolina provided services to BLC at wholesale rates and billed BLC for those services in accordance with the ICA.

19. From August 2008 through April 2012, AT&T Kentucky provided services to LifeConnex at wholesale rates and billed LifeConnex for those services in accordance with the ICA.

20. BLC and LifeConnex, however, did not pay AT&T Mississippi's, AT&T Kentucky's, AT&T Tennessee's, or AT&T North Carolina's bills as required by their ICAs, but instead asserted specious claims for credits and discounts to which BLC and LifeConnex were not entitled.

21. For example, Defendant BLC contended that its claims for promotional credits and discounts offset the amounts it was billed each month by AT&T Mississippi. Indeed, BLC went so far as to claim that AT&T Mississippi owed BLC more than BLC owed AT&T Mississippi, even though BLC was purchasing services from AT&T Mississippi and was not selling anything in return. By the time BLC ceased operations and AT&T Mississippi completed the process of disconnecting BLC's end users, BLC had run up an unpaid balance due to AT&T Mississippi of more than \$12 million.

22. Similarly, BLC asserted that its claims for promotional credits and discounts offset the amounts it was billed by AT&T Kentucky, AT&T Tennessee, and AT&T North Carolina. At the time BLC stopped operating in Kentucky, it had run up an unpaid balance due to AT&T Kentucky of more than \$5.5 million. At the time BLC stopped operating in Tennessee, its unpaid balance due to AT&T Tennessee exceeded \$15 million. At the time BLC stopped operating in North Carolina, its unpaid balance due to AT&T North Carolina was \$11,396,305.

23. LifeConnex took a similar approach in Kentucky, asserting claims for promotional credits and discounts that, it claimed, exceeded the amounts it was billed by AT&T Kentucky. At the time LifeConnex stopped operating in Kentucky, its unpaid balance due to AT&T Kentucky was almost \$2 million.

C. Proceedings in the Mississippi, Kentucky and North Carolina Commissions and the Tennessee Authority.

24. On January 8, 2010, AT&T Mississippi commenced an action before the Mississippi Commission to resolve all billing disputes between AT&T Mississippi and BLC under the ICA, and to determine the amount BLC owed AT&T Mississippi. A copy of AT&T Mississippi's Complaint and Petition for Relief in the Mississippi Commission is attached as **Exhibit F**.

25. On January 21, 2010, AT&T Kentucky commenced similar actions against BLC and LifeConnex before the Kentucky Commission to determine the

amounts BLC and LifeConnex owed AT&T Kentucky under the ICA. A copy of AT&T Kentucky's Formal Complaint against BLC in the Kentucky Commission is attached as **Exhibit G**, and AT&T Kentucky's Formal Complaint against LifeConnex in the Kentucky Commission is attached as **Exhibit H**.

26. On January 8, 2010, AT&T Tennessee commenced an action against AT&T Tennessee before the Tennessee Authority to determine the amounts BLC owed AT&T Tennessee under the ICA. A copy of AT&T Tennessee's complaint against BLC in the Tennessee Authority is attached as **Exhibit I**.

27. On January 8, 2010, AT&T North Carolina commenced an action before the North Carolina Commission to determine the amounts BLC owed AT&T North Carolina under the ICA. A copy of AT&T North Carolina's complaint against BLC in the North Carolina Commission is attached as **Exhibit J**.

28. The ICA provides that disputes such as those described above are to be resolved in the first instance by the appropriate state commission.

29. BLC and LifeConnex answered each of the complaints and counterclaimed. Defendants denied that they owed AT&T Mississippi, AT&T Kentucky, AT&T Tennessee or AT&T North Carolina any payments for the services BLC and LifeConnex ordered from AT&T Mississippi, AT&T Kentucky, AT&T Tennessee, and/or AT&T North Carolina for resale, and alleged that BLC

and LifeConnex were entitled to credits in excess of the amounts otherwise due to AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and/or AT&T North Carolina. A copy of BLC's Answer and Counter-Claims to AT&T Mississippi's complaint is attached as **Exhibit K**. A copy of BLC's Answer and Counter-Claims to AT&T Kentucky's complaint is attached as **Exhibit L**. A copy of LifeConnex' Answer and Counter-Claims to AT&T Kentucky's complaint is attached as **Exhibit M**. A copy of BLC's Answer and Counter-Claims to AT&T Tennessee's complaint is attached as **Exhibit N**. A copy of BLC's Answer and Counter-Claims to AT&T North Carolina's complaint is attached as **Exhibit O**.

30. Defendants' position in each proceeding was based in significant part on Defendants' legally unsupportable method of calculating credits supposedly due to Defendants in connection with three promotions offered by BellSouth to its retail customers: *first*, Defendants contended that they were entitled to the full retail amount of any "cash back" promotion for which their customers qualified, without discounting the retail amount by the Commission-approved wholesale discount; *second*, Defendants asserted that BellSouth's customer referral marketing promotions (such as the "word-of-mouth" promotion) were subject to resale to Defendants' customers; and *third*, Defendants sought a credit for the full retail amount of BellSouth's promotional waiver of the line connection charge for new

retail customers, again without discounting the retail amount by the Commission-approved wholesale discount. The parties referred to these issues as the “Threshold Issues.” The Threshold Issues were litigated in a number of state utility commissions in the Southeast in complaint actions brought by BellSouth against various CLEC resellers, including BLC and LifeConnex.

31. After BellSouth prevailed on the Threshold Issues in a number of other forums, AT&T Mississippi filed a motion in its complaint case against BLC at the Mississippi Commission asking the Commission to find BLC liable to AT&T Mississippi for more than \$12 million in unpaid charges AT&T Mississippi had billed BLC under the ICA, to dismiss BLC’s counterclaims, and to close the docket.

32. Likewise, AT&T Tennessee filed a similar motion in its complaint case against BLC at the Tennessee Authority, asking the Authority to find BLC liable to AT&T Tennessee in the amount of \$15,894,723.

33. AT&T Kentucky filed similar motions against BLC and LifeConnex at the Kentucky Commission. AT&T Kentucky asked the Commission to find BLC liable to AT&T Kentucky for more than \$5.5 million in unpaid charges. In the alternative, AT&T Kentucky asked the Commission to find that AT&T Kentucky

is entitled to be paid the undisputed balance due of \$2,682,192, plus \$917,940 BLC withheld based on its rejected position on the Threshold Issues.

34. AT&T Kentucky asked the Kentucky Commission to find LifeConnex liable to AT&T Kentucky for almost \$2 million in unpaid charges; in the alternative, AT&T Kentucky asked the Commission to find that AT&T Kentucky is entitled to be paid the undisputed balance of \$576,777, plus \$335,590 LifeConnex withheld based on its rejected position on the Threshold Issues.

35. AT&T North Carolina filed a motion for summary judgment in the North Carolina Commission, asking the Commission to find that AT&T North Carolina is entitled to be paid \$6,035,973 in undisputed amounts, plus \$1,767,863 that BLC withheld based on its rejected position on the Threshold Issues.

36. BLC and LifeConnex did not respond to any of the motions.

D. The Commissions' Orders

37. In its January 8, 2013 Order, the Mississippi Commission found that "AT&T [Mississippi] has now prevailed in other forums on each of the Threshold Issues." Exhibit A at 4 (noting AT&T's success in the state commissions of Kentucky, Louisiana, North Carolina, and Texas and in federal court in Raleigh, North Carolina). The Mississippi Commission agreed with the other forums' resolution of the Threshold Issues and rejected BLC's claims for credits associated

with the Threshold Issues — an amount of “at least \$4,396,784” (Exhibit A at 5). In addition, the Mississippi Commission found that, “[e]ven if all of BLC’s disputed credits were valid,” BLC would still owe AT&T Mississippi \$2,253,769 in undisputed amounts that AT&T Mississippi had billed BLC and BLC had not paid. *Ibid.*

38. Accordingly, the Mississippi Commission found that BLC owes AT&T Mississippi \$6,650,553 under the ICA, consisting of \$2,253,769 in undisputed amounts and \$4,396,784 in amounts associated with claims for credits that the Mississippi Commission rejected. In calculating the undisputed amounts owed by BLC, the Commission effectively gave BLC an offset in the full amount of its unresolved credit claims. The Commission dismissed all of BLC’s counterclaims and defenses with prejudice for lack of prosecution and barred BLC “from asserting those defenses, or pursuing those Counter-Claims, in any other forum.” Exhibit A at 7.

39. Like the Mississippi Commission, the Kentucky Commission agreed with AT&T Kentucky on the Threshold Issues, dismissed Defendants’ counterclaims, and found that AT&T Kentucky is entitled to all undisputed amounts that BLC and LifeConnex withheld from AT&T Kentucky, as well as all amounts BLC and LifeConnex withheld based on their claims for credits based on

their rejected position on the Threshold Issues. Exhibit B at 7 (BLC); Exhibit C at 7 (LifeConnex).

40. The Tennessee Authority found that “[BLC] has failed to pay all amounts in issue, including both undisputed amounts and those for which [BLC] has raised Counter Claims and defenses, resulting in unpaid charges due and owing in the amount of \$15,894,723.” Exhibit D at 4.

41. The North Carolina Commission, having previously found in favor of AT&T North Carolina on the Threshold Issues, granted AT&T North Carolina’s motion for summary judgment, finding that BLC “clearly” owes AT&T North Carolina \$7,803,836, consisting of \$6,035,973 in undisputed amounts plus \$1,767,863 in amounts BLC withheld based on its rejected position on the Threshold Issues. Exhibit E at 5.

COUNT I
(AGAINST BLC FOR BREACH OF CONTRACT)

42. BellSouth repeats the allegations of paragraphs 1-41 above as if fully set forth herein.

43. BellSouth and BLC were at all relevant times parties to an ICA — a binding contract that established the terms and conditions under which AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and AT&T North Carolina were

required to offer for sale, and BLC was entitled to purchase, telecommunications services from AT&T Mississippi, AT&T Kentucky, AT&T Tennessee and AT&T North Carolina for resale to BLC's own end users.

44. The ICA required BLC to pay BellSouth for the telecommunications services BLC purchased from AT&T Mississippi, AT&T Kentucky, AT&T Tennessee, and AT&T North Carolina for resale.

45. AT&T Mississippi, AT&T Kentucky AT&T Tennessee, and AT&T North Carolina have fully complied with their obligations under the ICA and have sold telecommunications services to BLC in accordance with the terms and conditions of the ICA. AT&T Mississippi, AT&T Kentucky, AT&T Tennessee, and AT&T North Carolina billed BLC for those services monthly in accordance with the ICA.

46. BLC has breached the ICA by failing to pay AT&T Mississippi the following amounts, as determined by the Mississippi Commission in its January 8, 2013 Order: (a) **\$2,253,769** in amounts that AT&T Mississippi billed to BLC and that are undisputed; and (b) **\$4,396,784** in amounts that BLC has withheld based on claims for promotional credits that are not permitted by the ICA and that the Mississippi Commission has rejected in a final order.

47. BLC has breached the ICA by failing to pay AT&T Kentucky the following amounts, as determined by the Kentucky Commission in its February 19, 2013 Order: (a) **\$2,682,192** in amounts AT&T Kentucky billed to BLC and that are undisputed; and (b) **\$917,940** in amounts that BLC has withheld based on claims for promotional credits that are not permitted by the ICA and that the Kentucky Commission rejected in a final order.

48. BLC has breached the ICA by failing to pay AT&T Tennessee the amount of **\$15,894,723**, as found by the Tennessee Authority in its February 25, 2013 Order.

49. BLC has breached the ICA by failing to pay AT&T North Carolina the amount of **\$7,803,836**, as found by the North Carolina Commission in its March 22, 2013 Order.

50. Accordingly, BLC owes BellSouth **\$33,949,244** under the ICA.

COUNT II
(AGAINST LIFECONNEX FOR BREACH OF CONTRACT)

51. BellSouth repeats the allegations of paragraphs 1-50 above as if fully set forth herein.

52. BellSouth and LifeConnex were at all relevant times parties to an ICA — a binding contract that established the terms and conditions under which AT&T

Kentucky was required to offer for sale, and LifeConnex was entitled to purchase, telecommunications services from AT&T Kentucky for resale to LifeConnex' own end users.

53. The ICA required LifeConnex to pay BellSouth for the telecommunications services LifeConnex purchased from AT&T Kentucky for resale.

54. AT&T Kentucky has fully complied with its obligations under the ICA and has sold telecommunications services to LifeConnex in accordance with the terms and conditions of the ICA. AT&T Kentucky billed LifeConnex for those services monthly in accordance with the ICA.

55. LifeConnex has breached the ICA by failing to pay AT&T Kentucky the following amounts, as determined by the Kentucky Commission in its February 19, 2013 Order: (a) **\$576,777** in amounts that AT&T Kentucky billed to LifeConnex and that are undisputed; and (b) **\$335,590** in amounts that LifeConnex has withheld from AT&T Kentucky based on claims for promotional credits that are not permitted by the ICA and that the Kentucky Commission has rejected in a final order.

REQUEST FOR RELIEF

As relief for Defendants' breach of contract, BellSouth respectfully requests that the Court enter judgment in favor of BellSouth, and against Defendants, as follows:

- (1) Ordering BLC to pay AT&T Mississippi the amount of **\$6,650,553** plus interest as determined by the Court;
- (2) Ordering BLC to pay AT&T Kentucky the amount of **\$3,600,132** plus interest as determined by the Court;
- (3) Ordering BLC to pay AT&T Tennessee the amount of **\$15,894,723** plus interest as determined by the Court;
- (4) Ordering BLC to pay AT&T North Carolina the amount of **\$7,803,836** plus interest as determined by the Court;
- (5) Ordering LifeConnex to pay AT&T Kentucky the amount of **\$912,367** plus interest as determined by the Court; and
- (6) Granting BellSouth such other relief as may be necessary and proper.

Dated: April 15, 2013

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, LLC
d/b/a AT&T MISSISSIPPI, AT&T KENTUCKY,
AT&T TENNESSEE, AND AT&T NORTH
CAROLINA,

By: 
Carolyn S. Crichton, Trial Counsel

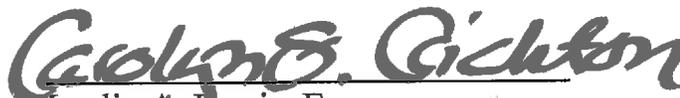
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: **BLC Management LLC d/b/a Angles Communications Solutions**, NRAI Services, Inc. , As Registered Agent, 515 East Park Avenue, Tallahassee, Florida 32301 and **LifeConnex Telecom, LLC, f/k/a Swiftel LLC**, NRAI Services, Inc. , As Registered Agent, 515 East Park Avenue, Tallahassee, Florida 32301.



Leslie A. Lewis, Esq.

Florida Bar No: 0897965

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Florida Bar No. 0980994

Attorney for Plaintiff

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PLEADINGS: attys@lewisfirm.com

EXHIBIT A

**BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION**

In the Matter of: BellSouth)	
Telecommunications, Inc. d/b/a AT&T	)	Docket No. 2010-AD-012
Southeast d/b/a AT&T Mississippi vs. BLC)	
Management LLC d/b/a Angles)	
Communications Solutions)	

ORDER GRANTING MOTION

HAVING COME ON before the Mississippi Public Service Commission (“Commission”) for the consideration of the Motion of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T Mississippi (“AT&T Mississippi”), requesting that the Commission find BLC Management LLC d/b/a Angles Communications Solutions (“BLC”) liable for \$12,537,708, Dismissing Counterclaims and Closing Docket, filed on October 31, 2012, (“Motion”), and the Commission finds as follows, to-wit:

I. Background and Procedural History

1. On January 8, 2010, AT&T Mississippi commenced this case by filing a Complaint and Petition to resolve all billing disputes between AT&T Mississippi and BLC under the parties’ interconnection agreement (“ICA”), and to determine the amount BLC owes AT&T Mississippi under the ICA. The ICA provides that disputes such as these are to be resolved in the first instance by the Commission¹. When the Complaint in this action was filed by AT&T Mississippi, the past-due and unpaid balance was more than \$1.8 million for services provided in this state alone. That past-due and unpaid balance has now grown to more than \$12 million.²

2. BLC filed an Answer and Counter-Claims asserting that it did not owe any monies to AT&T Mississippi under the terms of the ICA. BLC’s Answer denied that it owed

¹ ICA, General Terms and Conditions, p. 10 at §10.

² At the time AT&T Mississippi’s Complaint was filed, BLC had a past-due balance of over \$5 million across the southeastern states that comprise the Bell South’s ILEC operating territory. That total has now grown to more than \$90 million.

AT&T Mississippi any payments for the services it ordered from AT&T Mississippi for resale, and its Counter-Claims alleged that it was entitled to credits in excess of the amounts otherwise due AT&T Mississippi. BLC's positions were based in significant part upon BLC's method of calculating credits that it alleged were due to BLC in connection with three promotional credits offered by AT&T Mississippi to its retail customers, though there is no legal support for said calculation:

First, BLC contended that it was entitled to the full retail amount of any "cash back" promotion for which it qualified, without discounting the retail amount by the Commission-approved resale discount.

Second, BLC asserted that AT&T Mississippi's customer referral marketing promotions (such as the "word-of-mouth" promotion) were subject to resale to BLC's customers.

Third, BLC sought a credit for the full retail amount of AT&T Mississippi's promotional waiver of the line connection charge for new retail customers, again without discounting the retail amount by the Commission-approved resale discount.

Simultaneous with the filing of its Complaint with the Commission against BLC, AT&T Mississippi commenced separate actions with the Commission seeking similar relief against four other Resellers who were withholding monies due to AT&T based upon arguments and excuses substantially similar to those raised by BLC in this action. AT&T Mississippi commenced those four other actions against: (1) Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC ("Tennessee Telephone") (Docket No. 10-AD-009); (2) dPi Teleconnect, LLC ("dPi") (Docket No. 10-AD-0010); (3) Budget Prepay, Inc. d/b/a Budget Phone f/k/a Budget Phone, Inc. ("Budget Prepay") (Docket No. 10-AD-0011); and (4) Image Access, Inc. d/b/a New Phone ("Image Access") (Docket No. 10-AD-0013) (collectively, with this action, the "Mississippi Actions").

Each of the Mississippi Actions involved some or all of the following three issues: (a) how cash back credits to resellers should be calculated; (b) whether the word-of-mouth promotion is available for resale; and (c) how credits to resellers for waiver of the line connection charge should be calculated (the "Threshold Issues"). Three of the Mississippi Actions were settled between AT&T Mississippi and the respective respondent (namely, Budget Phone, dPi, and Image Access), and Tennessee Telephone filed for bankruptcy protection, leaving this action against BLC as the only remaining active Mississippi Action.

At the time this action was commenced, BLC was similarly refusing to pay substantial monies for services provided to it in other states. As a result, actions were commenced against BLC with the state regulatory authorities in Alabama, Tennessee, Louisiana, Kentucky, and North Carolina, and BLC defended those actions on substantially the same baseless grounds as those offered by BLC in this action. Thus, those other state regulatory authorities were similarly asked to address and determine, among other issues, the Threshold Issues with respect to BLC's claimed credits. In addition, similar regulatory actions were commenced in those forums against other unrelated Resellers. The defenses interposed by those Resellers similarly implicated the Threshold Issues presented here. In an effort to avoid duplication of effort in addressing multiple cases involving overlapping issues and common parties, it was determined that the hearings on the Threshold Issues in this action would be held in abeyance while the Threshold Issues were addressed in other forums.

3. On October 31, 2012, AT&T Mississippi filed its Motion alleging that BLC manufactured millions of dollars of specious promotional credit requests and improperly offset the value of those requests against millions of dollars otherwise due to AT&T Mississippi for the services BLC ordered from AT&T Mississippi and resold to its own customers. AT&T Mississippi also alleged that BLC's methods of calculating various credits have been soundly

rejected in other forums, and BLC has ceased operations and apparently abandoned the prosecution of its baseless counterclaims here, rather than pay undisputed amounts due to AT&T Mississippi.

II. Resolution of Threshold Issues in AT&T's favor in Other Forums

As explained below, AT&T has now prevailed in other forums on each of the Threshold Issues identified in this proceeding.

1. Cashback

The state commissions in Kentucky, Louisiana, North Carolina, and Texas have adopted AT&T's position on the "cashback" issue.³ In doing so, each of those commissions expressly rejected the arguments that BLC has raised in these proceedings with respect to the cashback calculation.⁴ These decisions are entirely consistent with the federal Telecommunications Act of 1996⁵, the Fourth Circuit's decision in *BellSouth Telecommunications, Inc. v. Sanford*⁶, and the North Carolina federal district court's order in *dPi Teleconnect, LLC v. Finley*⁷.

³ *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. dba AT&T Kentucky*, Docket No. 2009-00127 (Kentucky Public Service Commission), Orders dated January 19, 2012 and March 2, 2012, attached as Exhibit 1 to the Motion; *BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T Louisiana v. Image Access, Inc. dba New Phone, et al*, Docket No. U-31364-A (Louisiana Public Service Commission) Order dated May 25, 2012, at 17, attached as Exhibit 2 to the Motion ("LA Consolidated Phase Order"); *BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T North Carolina v. dPi Teleconnect, LLC, et al.*, Docket No. P-836, Sub 5, etc. (North Carolina Utilities Commission) Order Resolving Credit Calculation Dispute dated September 22, 2011, at 5, attached as Exhibit 3 to the Motion ("NC Consolidated Phase Order"); *Petition of Nexus Communications, Inc. for Post-Interconnection Dispute Resolution with Southwestern Bell Telephone Company dba AT&T Texas under FTA Relating to Recovery of Promotional Credit Due*, Docket No. 39028 (Texas Public Utility Commission) Order No. 15 Granting AT&T's Motion for Summary Decision dated April 5, 2012 at 4, attached as Exhibit 4 to the Motion, affirmed in Order on Motion for Reconsideration of Order No. 15 dated June 14, 2012, attached as Exhibit 5 to the Motion.

⁴ The Alabama Commission held an evidentiary hearing in January 2011 and has received post-hearing briefs, but it has not yet ruled.

⁵ See, e.g., *dPi Teleconnect, LLC v. Finley, et al*, Docket No. 5:10-CV-466-BO (USDC, EDNC, Western Div.), Order dated February 12, 2012, attached as Exhibit 6 to the Motion ("NC Fed Ct Order"), at 6 ("AT&T North Carolina's method properly makes wholesale discount adjustments to both relevant rates [the monthly retail price and the retail cashback amount] as dictated by the statute.").

⁶ 494 F.3d 439 (4th Cir. 2007). See, e.g., NC Consolidated Phase Order at 6 ("The Fourth Circuit's decision in [*Sanford*] supports the Commission's decision").

⁷ *dPi Teleconnect, LLC v. Finley, et al*, Docket No. 5:10-CV-466-BO (USDC, EDNC, Western Div.), Order dated February 12, 2012, at 6-7.

2. **Word of Mouth**

State commissions in Louisiana and North Carolina have adopted AT&T's position on the "word-of-mouth" issue.⁸ In doing so, these Commissions considered and rejected the same arguments that BLC has raised in this proceeding. No state commission has ruled otherwise.

3. **Line Connection Charge Waiver**

State Commissions in Louisiana and North Carolina have adopted AT&T's position on the "line connection charge waiver" issue.⁹ In doing so, these Commissions considered and rejected the same arguments that BLC has raised in this proceeding. No state commission has ruled otherwise.

2. **BLC's Past Due Balance**

After the commencement of this action, BLC continued to purchase telecommunication services from AT&T Mississippi for resale, but continued to refuse to make payments when due based upon its specious credit calculations which have since been rejected in other jurisdictions. As of May 31, 2012 when AT&T Mississippi's final bill was issued, the total amount BLC has failed to pay AT&T Mississippi is \$12,537,708.¹⁰ Even if all of BLC's disputed credits were valid, they total no higher than \$10,283,939¹¹. Accordingly, \$2,253,769 of BLC's unpaid balance is undisputed.¹²

BLC's claims for credits, however, are not valid. BLC has claimed credits associated with the Threshold Issues in the amount of at least \$4,396,784.¹³ Based upon rulings in other forums addressing BLC's contentions, BLC's claims based on the "cash back" promotions and the "word-of-mouth" or the "line connection charge waiver" issues are not valid.

⁸ LA Consolidated Phase Order at 18; NC Consolidated Phase Order at 11.

⁹ LA Consolidated Phase Order at 18-19; NC Consolidated Phase Order at 10-11.

¹⁰ Affidavit of David Egan, attached as Exhibit 8 to the Motion, at ¶4.

¹¹ The BLC dispute amounts are described in the Affidavit of Cynthia A. Clark, attached as Exhibit 9 to the Motion.

¹² The undisputed amount is calculated by deducting to total disputes from the unpaid balance.

¹³ Affidavit of Cynthia A. Clark, Exhibit 9 to the Motion, at ¶4.

3. BLC's Failure to Prosecute its Counterclaims

BLC's remaining disputes purportedly total approximately \$6 million and are encompassed in the Counterclaims BLC has asserted against AT&T Mississippi. The Commission finds that the ICA requires BLC to pay the amounts withheld on the basis of these disputes as well, because BLC has failed to prosecute its counterclaims against AT&T Mississippi and has refused to pay the undisputed amounts owed to AT&T Mississippi.

On February 28, 2012, in MPSC Docket No. 2011-AD-371, this Commission issued an order fining BLC a total of \$100,000 for violations of various state laws, revoking BLC's license to operate in Mississippi (cancelled its Certificate of Public Convenience and Necessity), and prohibiting BLC from conducting telecommunications business in the State of Mississippi. By letter dated June 28, 2012, the attorneys for BLC notified the Commission that they were withdrawing as counsel for BLC in this action, and BLC has not advised the Commission that it has retained new counsel. BLC's actions evidence an intent to abandon prosecution of the counterclaims that served as its reason for refusing to pay the "disputed" sums due to AT&T Mississippi.

No action other than dismissal of BLC's counterclaims is sufficient to avoid prejudice to AT&T Mississippi in its efforts to collect the millions of dollars owed by BLC under the ICA. The ICA provides that the issues BLC has presented in its counterclaims are to be decided in the first instance by this Commission. BLC should not be allowed to continue withholding payment of its final bill on the basis of the arguments it presented in its counterclaims while it deliberately evades a Commission determination of those counterclaims by refusing to participate in the docket.

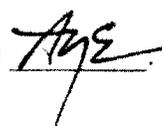
DOCKET NO. 2010-AD-012

BLC has failed to pay the sum of \$6,650,553, representing the undisputed amount due plus the amounts withheld by BLC based upon the assertion of claims resting upon BLC's unsustainable position with respect to the Threshold Issues.

IT IS, THEREFORE, ORDERED that the request of AT&T Mississippi is reasonable and should be granted. The Commission hereby finds that the parties' ICA requires that BLC pay for the services rendered under the ICA and, therefore, that AT&T Mississippi is entitled to be paid \$6,650,553, comprised of the undisputed balance of \$2,253,769, plus \$4,396,784 associated with the cash back, word-of-mouth, and LCCW claims. This Commission hereby finds that AT&T Mississippi is entitled to the sum of \$6,650,553, which amount represents the undisputed amount due plus the amounts withheld by BLC based upon the assertion of claims resting upon BLC's unsustainable position with respect to the Threshold Issues.

IT IS FURTHER ORDERED that BLC's Counter-Claims and defenses should be and are hereby dismissed with prejudice for lack of prosecution, and further that BLC should be and is barred from asserting those defenses, or pursuing those Counter-Claims, in any other forum.

This Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

Chairman Leonard Bentz voted ; Vice-Chairman Lynn Posey voted ; and Commissioner Brandon Presley voted .

DATED this the 8th day of January, 2013.

MISSISSIPPI PUBLIC SERVICE COMMISSION



[Signature]
LEONARD BENTZ, CHAIRMAN

[Signature]
LYNN POSEY, VICE-CHAIRMAN

[Signature]
BRANDON PRESLEY, COMMISSIONER

ATTEST: A TRUE COPY

[Signature]
BRIAN U. RAY
Executive Secretary

Effective this 8th day of January, 2013.

MISSISSIPPI PUBLIC SERVICE COMMISSION
HINDS COUNTY, MISSISSIPPI
I hereby certify that the foregoing is a true and correct copy of the original thereof as on file with the Commission.
BRIAN U. RAY, Executive Secretary

MISSISSIPPI PUBLIC SERVICE COMMISSION

[Signature]

 LARRY POPEY, VICE-CHAIRMAN

[Signature]

 BRANDON WELBY, COMMISSIONER



[Signature]

 BRIAN U. RAY
 Executive Secretary

**MISSISSIPPI PUBLIC SERVICE COMMISSION
 HINDS COUNTY, MISSISSIPPI**

I hereby certify that the foregoing is a true and correct copy of the original thereof now on file with the Commission.

Attest date: February 11, 2013
 BRIAN U. RAY, Executive Secretary

BY: *[Signature]*

EXHIBIT B

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)
D/B/A AT&T SOUTHEAST D/B/A AT&T)
KENTUCKY)

COMPLAINANT)

V.)

CASE NO. 2010-00023

BLC MANAGEMENT LLC D/B/A ANGLES)
COMMUNICATIONS SOLUTIONS)

DEFENDANT)

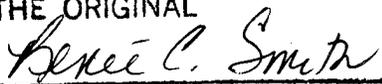
ORDER

This case arises out of alleged unpaid charges owed by BLC Management LLC d/b/a Angles Communications Solution ("Angles") to BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky"). The charges are from the parties' interconnection agreement where Angles purchased service from AT&T Kentucky and resold the service to its end users, usually on a prepaid basis. AT&T Kentucky alleges that Angles deliberately and incorrectly manufactured millions of dollars of promotional credit requests and improperly offset the values of those requests against what it owed to AT&T Kentucky for the services ordered from AT&T Kentucky.¹

Angles argued that it does not owe AT&T Kentucky any money under the terms of the interconnection agreement and alleged that it was entitled to additional credits

¹ Formal Complaint of AT&T Kentucky ("Complaint") filed Jan. 21, 2010, at 4.

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from AT&T Kentucky. However, Angles is no longer providing service in Kentucky and has not replied to recent Commission Orders or notices.

In order to resolve this case, the Commission must resolve two issues: (1) Should the "cash-back" and line connection charge waiver ("LCCW") promotions be subject to the wholesale discount; and (2) Should the "word-of-mouth" promotion be made available for resale?

BACKGROUND

On January 21, 2010, AT&T Kentucky filed four formal complaints against four telecommunications providers. The four providers are: (1) LifeConnex Telecom, LLC f/k/a Swiftel, LLC;² (2) Angles; (3) dPi Teleconnect, LLC;³ and (4) Budget Prepay, Inc. d/b/a Budget Phone ("Budget Phone").⁴ AT&T Kentucky subsequently reached settlements with both Budget Phone and dPi Teleconnect, LLC, and AT&T Kentucky voluntarily withdrew the complaints against those two carriers.

AT&T Kentucky alleges that Angles incorrectly calculated credits for three AT&T Kentucky promotions. First, AT&T Kentucky alleges that Angles erroneously did not discount the value of a "cash-back" promotion by the wholesale discount rate.⁵ Second, AT&T Kentucky alleges that Angles erroneously asserted that customer referral

² Case No. 2010-00026, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. LifeConnex Telecom, LLC f/k/a Swiftel, LLC*, filed Jan. 21, 2010.

³ Case No. 2010-00029, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. dPi Teleconnect, LLC* (Ky. PSC May 3, 2012).

⁴ Case No. 2010-00025, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. Budget Prepay, Inc. d/b/a Budget Phone* (Ky. PSC Feb. 11, 2011).

⁵ Complaint at 5.

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Gene C. Smith
PUBLIC SERVICE COMMISSION

marketing promotions are subject to resale.⁶ Third, AT&T Kentucky alleges that Angles incorrectly sought a credit based on the full retail amount of the LCCW instead of discounting it by the wholesale discount rate.⁷

Angles, in its answer, argued that: (1) The cash-back promotion should not be discounted by the wholesale discount;⁸ (2) The customer referral marketing program should be available for resale;⁹ and (3) The LCCW fee promotion should not be discounted by the wholesale discount.¹⁰

Angles and AT&T Kentucky agreed that the case should be placed in abeyance pending the outcome of the Commission's decision in Case No. 2009-00127¹¹ (which addressed whether promotions should be discounted by the wholesale discount) and litigation in several other states. The case was held in abeyance until July 2012, when it was removed from abeyance by motion of the parties.

Commission Staff scheduled a telephonic informal conference on July 31, 2012 to discuss establishing a procedural schedule. Counsel for AT&T Kentucky attended the conference; no representatives for Angles called in or attended the conference. Commission Staff subsequently confirmed that notice of the conference had been properly sent to Angles' listed contact.

⁶ *Id.* at 6-7.

⁷ AT&T Kentucky's Response to Angles Answer and Counterclaims, filed Apr. 9, 2010, at 2-3.

⁸ Angles' Answer and Counter-Claim, filed Feb. 25, 2010, at 4.

⁹ *Id.* at 5-6

¹⁰ *Id.* at 6-7.

¹¹ Case No. 2009-00127, *dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Dispute over Interpretation of the Parties' Interconnection Agreement Regarding AT&T Kentucky's Failure to Extend Cash-Back Promotions to dPi (Ky. PSC Jan. 19, 2012).

On October 1, 2012, AT&T Kentucky filed with the Commission a motion for an Order finding that Angles was liable for unpaid charges, dismissing counterclaims and closing docket. On October 26, 2012, the Commission issued an Order directing Angles to file a response, within 14 days of the date of the Order, to AT&T Kentucky's motion. Responses were due no later than November 12, 2012—no responses or filings have been received as of the date of this Order.

DISCUSSION

Under Federal Communication Commission ("FCC") regulations, if an incumbent, such as AT&T Kentucky, offers a promotion that lasts greater than 90 days, it must discount the wholesale price to a wholesale purchaser (such as Angles) if the wholesale purchaser's customers would have qualified for the promotional discounts had they been AT&T Kentucky customers.¹² AT&T Kentucky does not dispute that the "cash-back" promotion and the LCCW¹³ should be made available for resale. AT&T Kentucky, however, argues that the "word-of-mouth" promotion should not be made available for resale.¹⁴

The dispute over the LCCW and the "cash-back promotion" is whether the wholesale discount should be applied to those promotions. The wholesale discount serves to set the rate that AT&T Kentucky charges a reseller for service. For example, if AT&T Kentucky charges its customers \$16.00 for retail service, it must sell the service

¹² 47 C.F.R. § 51.613.

¹³ Under the LCCW, AT&T Kentucky waives a new customer's line connection charge if the customer ordered basic service in addition to purchasing two or more "Touchstar" features. If an Angles customer would purchase similar features, then AT&T Kentucky would have to provide the LCCW to Angles. The LCCW would appear as a credit on the bill that the carriers would pay to AT&T Kentucky for the purchase of wholesale services.

¹⁴ Answer at 6-7.

to a reseller minus the wholesale discount of 16.79 percent which would equal \$13.31. In Case No. 2009-00127, the Commission determined that this discount applies to all promotions that are made available to resellers. Therefore, if a reseller qualifies for a \$50.00 promotion, it will actually receive \$41.60 of the promotion; the \$50.00 promotion minus the 16.79 percent discount. Because the Commission previously has determined that the wholesale discount applies to promotions, AT&T Kentucky prevails on the issue of whether or not the LCCW and "cash-back" promotion should be discounted by the wholesale discount.

The remaining issue to be determined is whether or not AT&T Kentucky must make the "word-of-mouth" promotion available for resale. The "word-of-mouth" promotion functions as a reward to existing customers that convince friends and family members who are not currently AT&T Kentucky customers to purchase AT&T Kentucky services.¹⁵ The existing customers that convince friends or family members to purchase AT&T Kentucky services, then apply to AT&T Kentucky to receive cash or "near-cash" offerings (i.e., retail gift card.).

AT&T Kentucky does not make the "word-of-mouth" promotion available for resale, arguing that it is not a "telecommunications service" and, therefore, not subject to be made available for resale.¹⁶ 47 U.S.C. § 153(46) defines "telecommunications services" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public . . ." and 47

¹⁵ *Id.*

¹⁶ Complaint at 7.

U.S.C. § 153(43) defines “telecommunications” as the “transmission between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.”

47 C.F.R. § 51.605(a) provides, in relevant part that:

[A]n incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates . . .

The “word-of-mouth” promotion, unlike the LCCW and “cash-back” promotions, does not require the recipient of the promotion to subscribe to or purchase any particular services to receive a promotion. It appears to the Commission that there is no correlation between the referral program and services purchased from AT&T Kentucky by the recipient of the promotion; those services may remain unchanged regardless of the number of successful referrals. The benefit received is directly tied to telecommunications services purchased by other customers. In this scenario, the recipient of the benefit is essentially performing as a marketer for AT&T Kentucky and that expense to AT&T Kentucky does not result in a net decrease in the price to the new purchaser of AT&T Kentucky’s services. Based on the above, the Commission finds that the “word-of-mouth” promotion does not need to be made available for resale because it does not qualify as a “telecommunications service” as defined in 47 U.S.C. § 153(46).

CONCLUSION

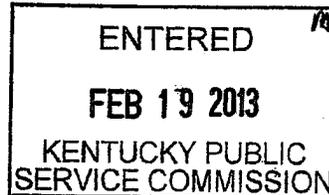
The Commission finds that on the issue of “cash-back” and LCCW promotions that AT&T correctly discounted the amount of the promotion by the wholesale discount rate.

The Commission also finds that on the issue of "word of mouth" promotions that AT&T has correctly restricted this promotion and not made it available for resale. Angles shall be liable for all unpaid balances to AT&T based on these decisions.

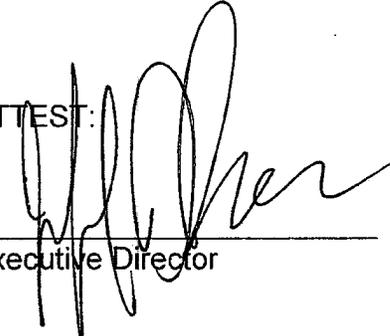
Based on the foregoing, IT IS THEREFORE ORDERED that:

1. The LCCW and "cash-back" promotions should be discounted by the wholesale discount.
2. The "word-of-mouth" promotion is not a telecommunications service that needs to be made available for resale.
3. Angles is liable to AT&T Kentucky for the undisputed balances that it withheld from AT&T Kentucky as well as the wrongfully withheld charges associated with the LCCW, "word-of-mouth," and "cash-back" promotions.
4. Angles' counter-claim is dismissed.
5. This is a final and appealable Order.

By the Commission

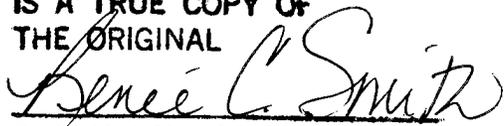


ATTEST:



Executive Director

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EXHIBIT C

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T SOUTHEAST D/B/A AT&T)	
KENTUCKY)	
)	
COMPLAINANT)	
V.	)	CASE NO. 2010-00026
)	
LIFECONNEX TELECOM, LLC)	
F/K/A SWIFTEL, LLC)	
)	
DEFENDANT)	

ORDER

This case arises out of alleged unpaid charges owed by LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") to BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky"). The charges are from the parties' interconnection agreement where LifeConnex purchased service from AT&T Kentucky and resold the service to its end users, usually on a prepaid basis. AT&T Kentucky alleges that LifeConnex deliberately and incorrectly manufactured millions of dollars of promotional credit requests and improperly offset the values of those requests against what it owed to AT&T Kentucky for the services ordered from AT&T Kentucky.¹

LifeConnex argued that it does not owe AT&T Kentucky any money under the terms of the interconnection agreement and alleged that it was entitled to additional

¹ Formal Complaint of AT&T Kentucky ("Complaint"), filed Jan. 21, 2010, at 4.

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credits from AT&T Kentucky. However, LifeConnex is no longer providing service in Kentucky and has not replied to recent Commission Orders or notices.

In order to resolve this case, the Commission must resolve two issues: (1) Should the "cash-back" and line connection charge waiver ("LCCW") promotions be subject to the wholesale discount; and (2) Should the "word-of-mouth" promotion be made available for resale?

BACKGROUND

On January 21, 2010, AT&T Kentucky filed four formal complaints against four telecommunications providers. The four providers are: (1) LifeConnex; (2) BLC Management, Inc. d/b/a Angles Communications Solutions;² (3) dPi Teleconnect, LLC;³ and (4) Budget Prepay, Inc. d/b/a Budget Phone ("Budget Phone").⁴ AT&T Kentucky subsequently reached settlements with both Budget Phone and dPi Teleconnect, LLC, and AT&T Kentucky voluntarily withdrew the complaints against those two carriers.

AT&T Kentucky alleges that LifeConnex incorrectly calculated credits for three AT&T Kentucky promotions. First, AT&T Kentucky alleges that LifeConnex erroneously did not discount the value of a "cash-back" promotion by the wholesale discount rate.⁵ Second, AT&T Kentucky alleges that LifeConnex erroneously asserted that customer

² Case No. 2010-00023, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. BLC Management, Inc. d/b/a Angles Communications Solutions*, filed Jan. 21, 2010.

³ Case No. 2010-00029, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. dPi Teleconnect, LLC* (Ky. PSC May 3, 2012).

⁴ Case No. 2010-00025, *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. Budget Prepay, Inc. d/b/a Budget Phone* (Ky. PSC Feb. 11, 2011).

⁵ Complaint at 5.

referral marketing promotions are subject to resale.⁶ Third, AT&T Kentucky alleges that LifeConnex incorrectly sought a credit based on the full retail amount of the LCCW instead of discounting it by the wholesale discount rate.⁷

LifeConnex, in its answer, argued that: (1) The cash-back promotion should not be discounted by the wholesale discount;⁸ (2) The customer referral marketing program should be available for resale;⁹ and (3) The LCCW promotion should not be discounted by the wholesale discount.¹⁰

LifeConnex and AT&T Kentucky agreed that the case should be placed in abeyance pending the outcome of the Commission's decision in Case No. 2009-00127¹¹ (which addressed whether promotions should be discounted by the wholesale discount) and litigation in several other states. The case was held in abeyance until July 2012, when it was removed from abeyance by motion of the parties.

Commission Staff scheduled a telephonic informal conference on July 31, 2012 to discuss establishing a procedural schedule. Counsel for AT&T Kentucky attended the conference; no representatives for LifeConnex called in or attended the conference. Commission Staff subsequently confirmed that notice of the conference had been properly sent to LifeConnex's listed contact.

⁶ *Id.* at 6-7.

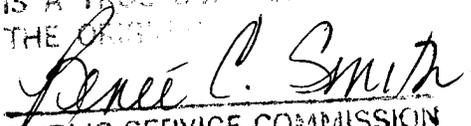
⁷ AT&T Kentucky's Response to LifeConnex Answer and Counterclaims ("Answer"), filed Apr. 9, 2010, at 2-3.

⁸ LifeConnex's Answer and Counter-Claim, filed Feb. 25, 2010, at 4.

⁹ *Id.* at 5-6

¹⁰ *Id.* at 6-7.

¹¹ Case No. 2009-00127, *dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Dispute Over Interpretation of the Parties' Interconnection Agreement Regarding AT&T Kentucky's Failure to Extend Cash-Back Promotions to dPi (Ky. PSC Jan. 19, 2012).

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THE ORIGINAL
Case No. 2010-00026

PUBLIC SERVICE COMMISSION

On October 1, 2012, AT&T Kentucky filed with the Commission a motion for an Order finding that LifeConnex was liable for unpaid charges, dismissing counter-claims, and closing docket. On October 26, 2012, the Commission issued an Order directing LifeConnex to file a response, within 14 days of the date of the Order, to AT&T Kentucky's Motion. Responses were due no later than November 12, 2012—no responses or filings have been received as of the date of this Order.

DISCUSSION

Under Federal Communication Commission ("FCC") regulations, if an incumbent, such as AT&T Kentucky, offers a promotion that lasts greater than 90 days, it must discount the wholesale price to a wholesale purchaser (such as LifeConnex) if the wholesale purchaser's customers would have qualified for the promotional discounts had they been AT&T Kentucky customers.¹² AT&T Kentucky does not dispute that the "cash-back" promotion and the LCCW¹³ should be made available for resale. AT&T Kentucky, however, argues that the "word-of-mouth" promotion should not be made available for resale.¹⁴

The dispute over the LCCW and the "cash-back promotion" is whether the wholesale discount should be applied to those promotions. The wholesale discount serves to set the rate that AT&T Kentucky charges a reseller for service. For example,

¹² 47 C.F.R. § 51.613.

¹³ Under the LCCW, AT&T Kentucky waives a new customer's line connection charge if the customer ordered basic service in addition to purchasing two or more "Touchstar" features. If a LifeConnex customer would purchase similar features, then AT&T Kentucky would have to provide the LCCW to LifeConnex. The LCCW would appear as a credit on the bill that the carriers would pay to AT&T Kentucky for the purchase of wholesale services.

¹⁴ Answer at 6-7.

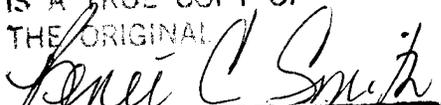
if AT&T Kentucky charges its customers \$16.00 for retail service, it must sell the service to a reseller minus the wholesale discount of 16.79 percent which would equal \$13.31. In Case No. 2009-00127, the Commission determined that this discount applies to all promotions that are made available to resellers. Therefore, if a reseller qualifies for a \$50.00 promotion, it will actually receive \$41.60 of the promotion; the \$50.00 promotion minus the 16.79 percent discount. Because the Commission previously has determined that the wholesale discount applies to promotions, AT&T Kentucky prevails on the issue of whether or not the LCCW and "cash-back" promotion should be discounted by the wholesale discount.

The remaining issue to be determined is whether or not AT&T Kentucky must make the "word-of-mouth" promotion available for resale. The "word-of-mouth" promotion functions as a reward to existing customers that convince friends and family members who are not currently AT&T Kentucky customers to purchase AT&T Kentucky services.¹⁵ The existing customers that convince friends or family members to purchase AT&T Kentucky services then apply to AT&T Kentucky to receive cash or "near-cash" offerings (i.e., retail gift card).

AT&T Kentucky does not make the "word-of-mouth" promotion available for resale, arguing that it is not a "telecommunications service" and, therefore, not subject to be made available for resale.¹⁶ 47 U.S.C. § 153(46) defines "telecommunications services" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public . . ." and 47

¹⁵ *Id.*

¹⁶ Complaint at 7.

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U.S.C. § 153(43) defines “telecommunications” as the “transmission between or among points specified by the user, of information of the user’s choosing without change in the form or content of the information as sent and received.”

47 C.F.R. § 51.605(a) provides, in relevant part that:

An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates

The “word-of-mouth” promotion, unlike the LCCW and “cash-back” promotions, does not require the recipient of the promotion to subscribe to or purchase any particular services to receive a promotion. It appears to the Commission that there is no correlation between the referral program and services purchased from AT&T Kentucky by the recipient of the promotion; those services may remain unchanged regardless of the number of successful referrals. The benefit received is directly tied to telecommunications services purchased by other customers. In this scenario, the recipient of the benefit is essentially performing as a marketer for AT&T Kentucky and that expense to AT&T Kentucky does not result in a net decrease in the price to the new purchaser of AT&T Kentucky’s services. Based on the above, the Commission finds that the “word-of-mouth” promotion does not need to be made available for resale because it does not qualify as a “telecommunications service” as defined in 47 U.S.C. § 153(46).

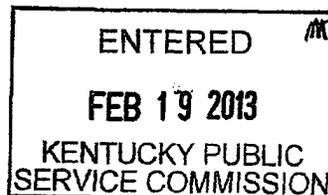
CONCLUSION

The Commission finds that on the issue of "cash-back" and LCCW promotions that AT&T Kentucky correctly discounted the amount of the promotion by the wholesale discount rate. The Commission also finds that on the issue of "word of mouth" promotions that AT&T has correctly restricted this promotion and not made it available for resale. LifeConnex shall be liable for all unpaid balances to AT&T based on these decisions.

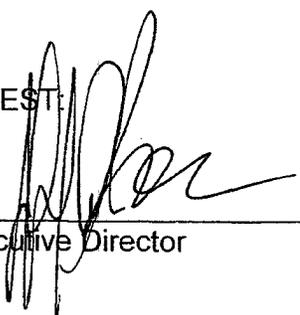
Based on the foregoing, IT IS THEREFORE ORDERED that:

1. The LCCW and "cash-back" promotions should be discounted by the wholesale discount.
2. The "word-of-mouth" promotion is not a telecommunications service that needs to be made available for resale.
3. LifeConnex is liable to AT&T Kentucky for the undisputed balances that it withheld from AT&T Kentucky as well as the wrongfully withheld charges associated with the LCCW, "word-of-mouth," and "cash-back" promotions.
4. LifeConnex's counterclaim is dismissed.
5. This is a final and appealable Order.

By the Commission



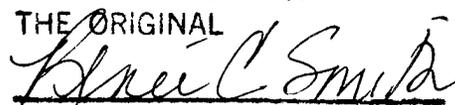
ATTEST:



Executive Director

Case No. 2010-00026
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PUBLIC SERVICE COMMISSION

EXHIBIT D

TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

CERTIFICATE OF RECORD

I, Sharla Dillon, Docket Manager of the Tennessee Regulatory Authority, Nashville, Tennessee, do hereby certify that the following item(s) herewith transmitted are true and correct copies of the documents on file in my office.

The requested record(s) is attached to this certificate.

This 27th day of February, 2013

A handwritten signature in cursive script that reads "Sharla Dillon".

Sharla Dillon
Docket Manager



BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 25, 2013

IN RE:

BELLSOUTH TELECOMMUNICATIONS, INC.)
D/B/A AT&T SOUTHEAST D/B/A AT&T TENNESSEE)
COMPLAINT AND PETITION FOR RELIEF VS.)
BLC MANAGEMENT, LLC D/B/A ANGLES)
COMMUNICATIONS SOLUTIONS)

DOCKET NO.
10-00008

ORDER GRANTING MOTION AND CLOSING DOCKET

This matter came before Vice-Chairman Herbert H. Hilliard, Director Kenneth C. Hill, and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”) at a regularly scheduled Authority Conference held on November 8, 2012, for consideration of the *Motion for Order Finding BLC Management LLC DBA Angles Communications Solutions Liable For \$15,894,723, Dismissing Counterclaims and Closing Docket* (“*Motion for Order*”) filed by Bellsouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T” or “AT&T Tennessee”) on June 29, 2012.

Relevant Background

AT&T filed several complaints with the TRA against various telecommunications services providers, including BLC Management, LLC d/b/a Angles Communication Solutions (“BLC” or “Angles”).¹ The complaints are a result of ongoing billing disputes between AT&T and Angles in several states, including Tennessee. On July 8, 2012, the Authority issued an

¹ See e.g. *In re: BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Tennessee Complaint and Petition for Relief vs. Budget PrePay, Inc. d/b/a Budget Phone f/k/a Budget Phone, Inc.*, Docket No. 10-00004 (January 8, 2010); *In re: BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Tennessee Complaint and Petition for Relief vs. dPi Teleconnect, LLC*, Docket No. 10-00007 (January 8, 2010).

Order consolidating several dockets with similar billing dispute issues, holding the dockets in abeyance until the consolidated docket is resolved and appointing a Hearing Officer.²

On June 29, 2012, AT&T filed its *Motion for Order*. Angles did not respond to AT&T's *Motion for Order*. On July 3, 2012, Henry Walker, the attorney who had been representing Angles in this matter, filed a letter withdrawing as the attorney for Angles and provided an address to send correspondence for Angles.³

AT&T's Motion for Order

In its *Motion for Order*, AT&T asserts that Angles has not paid for telecommunications services provided by AT&T to Angles for resale pursuant to an interconnection agreement approved by the TRA in Docket No. 05-00107 on July 27, 2005.⁴ AT&T claims that Angles has “manufactured millions of dollars of specious promotional credit requests and improperly offset the value of those requests against millions of dollars otherwise due to AT&T Tennessee for the services BLC ordered from AT&T Tennessee and resold to its own customers.”⁵ AT&T also asserts in its motion that “BLC has elected to cease operations and apparently abandon the prosecution of its baseless counterclaims here, rather than pay undisputed amounts due to AT&T Tennessee.”⁶ AT&T seeks an order from the TRA finding that Angles owes \$15,894,723 under the parties' interconnection agreement, dismissing with prejudice all counterclaims asserted by BLC and closing this docket.⁷

Since the timing of AT&T's *Motion for Order* and Mr. Walker's withdrawal were so close in time and since Angles had not filed a response, TRA General Counsel sent a letter to

² See *Order Holding Dockets in Abeyance, Convening a Consolidated Docket and Appointing a Hearing Officer* (July 8, 2010).

³ See Henry Walker and the Firm Bradley Arant Boult Cummings LLC are Withdrawing as Counsel for BLC (July 3, 2012).

⁴ See *In re: Petition for Approval of Interconnection Agreement Between BellSouth and BLC Management LLC d/b/a Angles Communication Solutions*, Docket No. 05-00107 (April 20, 2005).

⁵ See *Motion for Order*, p. 1 (June 29, 2012).

⁶ *Id.*

⁷ *Id.*

Angles at the address provided by Mr. Walker to be certain that Angles was aware of AT&T's *Motion for Order*.⁸ In the letter, Angles was given until July 31, 2012 to respond. Angles did not file a response.

In a letter from AT&T to TRA General Counsel, AT&T explained that while not required to do so, it sent its *Motion for Order* and other recent correspondence to Angles by regular and certified mail to each address Angles had used when corresponding with AT&T.⁹ In addition, AT&T stated that it "is serving a copy of this letter and attachments by certified and regular mail" upon the registered agent for Angles in Tennessee.¹⁰ In its letter, AT&T requested that since Angles had not responded to AT&T's motion, the Authority should consider Angles to have defaulted and should issue an order granting the relief AT&T seeks in its *Motion for Order*.¹¹ On October 2, 2012, AT&T filed the return receipts from the letters sent to Angles indicating that Angles and its registered agent received AT&T's *Motion for Order*.¹²

November 8, 2012 Authority Conference

At the regularly scheduled Authority Conference held on November 8, 2012, AT&T presented its *Motion for Order* to the panel. No one from Angles was present at the hearing. AT&T explained its efforts to contact Angles and stood on the arguments made in its *Motion for Order*. AT&T asserted that it was "entitled to a default judgment in the manner that has been set out in our motion."¹³

TRA Rule 1220-1-2-.17 states:

- (1) Failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of a contested case proceeding, after due notice thereof, shall be cause for finding such party in default, pursuant to

⁸ See *Notice of Filing of Motion* (July 24, 2012).

⁹ See Letter to Jean Stone from AT&T Tennessee (September 7, 2012).

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² See Return Receipts Inadvertently Omitted From 10/1/12 Filing (October 2, 2012).

¹³ See Transcript of Proceedings-Complete, p. 28 (November 8, 2012).

T.C.A. § 4-5-309. Failure to comply with an order of the Authority or a Hearing Officer may be deemed a failure to participate in a contested case and, therefore, be cause for finding a party in default.

- (2) (a) Upon entry into the record of the default of the petitioner at a contested case proceeding, the petition shall be dismissed.
- (b) Upon entry into the record of the default of a respondent at a contested case proceeding, the matter shall be tried as unopposed relative to such respondent.
- (3) Where the case is unopposed, the petitioner has the burden of making out a prima facie case, which may be done on the basis of written filings. In order to carry out statutory policies, however, the Authority or Hearing Officer may require further proof.

Based on TRA Rule 1220-1-2-.17 and the record in this docket, the panel made the following findings:

- 1) Angles is no longer serving Tennessee customers;
- 2) Angles has declined further participation in this proceeding; and
- 3) Angles has failed to pay all amounts in issue, including both undisputed amounts and those for which Angles had raised Counter Claims and defenses, resulting in unpaid charges due and owing in the amount of \$15,894,723.

Thereafter, the panel voted unanimously to grant AT&T's *Motion for Order* and close the docket. The panel noted that its decision should not be considered a decision on the merits of the telecommunications services and credits at issue in this docket.

IT IS THEREFORE ORDERED THAT:

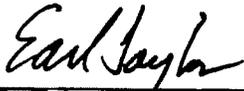
1. The *Motion for Order Finding BLC Management LLC DBA Angles Communications Solutions Liable For \$15,894,723, Dismissing Counterclaims and Closing Docket* filed by Bellsouth Telecommunications, Inc. d/b/a AT&T Tennessee is granted pursuant to TRA Rule 1220-1-2-.17.

2. The Tennessee Regulatory Authority Docket Manager is instructed to close Docket No. 10-00008.

3. The Authority decision in this docket shall not be considered as a decision on the merits of the telecommunications services and credits at issue in this docket.

Vice-Chairman Herbert H. Hilliard, Director Kenneth C. Hill, and Director Sara Kyle concur.

ATTEST:



Earl R. Taylor, Executive Director

EXHIBIT E

State of North Carolina Utilities Commission Certification

I, Patricia Swenson, Deputy Clerk of the North Carolina Utilities Commission, do hereby certify the attached (five 5 sheets) to be a true copy from the official records of this office viz;

**Order Issued in the Matter of
Bellsouth Telecommunications, Inc., d/b/a AT&T Southeast, d/b/a
AT&T North Carolina v. BLC Management, LLC, d/b/a Angles
Communications Solutions
Docket Number P-1415, Sub 2**

**Issued by the Order of the Commission
The 22nd day of March, 2013.**

*In Witness Whereof, I have hereunto set my hand
and affixed the official seal of the Commission.*

This, the 25th day of March, 2013.



Patricia Swenson

Patricia Swenson, Deputy Clerk

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-1415, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
BellSouth Telecommunications, Inc.,)	
d/b/a AT&T Southeast, d/b/a AT&T North)	
Carolina,)	
Complainant	)	ORDER DISMISSING ANGLES'
	)	COUNTERCLAIMS AND
v.	)	GRANTING AT&T'S RENEWED
	)	MOTION FOR SUMMARY
BLC Management, LLC, d/b/a Angles	)	JUDGMENT
Communications Solutions,)	
)	
Respondent)	

BY THE COMMISSION: On January 8, 2010, BellSouth Telecommunications, Inc., d/b/a AT&T Southeast, d/b/a AT&T North Carolina (AT&T or Complainant) filed a complaint and petition for relief against BLC Management, LLC, d/b/a Angles Communications Solutions (Angles or Respondent) requesting that the Commission resolve outstanding billing disputes that exist between Complainant and Respondent, determine the amount that Respondent owes Complainant under its interconnection agreement (ICA) with AT&T, and require Respondent to pay the amount to Complainant.

On February 25, 2010, Respondent filed its defensive pleading to AT&T's complaint. On April 9, 2010, Complainant filed its response to Respondent's defensive pleading. On April 30, 2010, Respondent filed its reply pleading to Complainant's April 9, 2010, responsive pleading.

On May 14, 2010, the Respondent, together with dPi Teleconnect, LLC (dPi) (Docket No. P-836, Sub 5), Image Access, Inc., d/b/a NewPhone (NewPhone) (Docket No. P-908, Sub 2), and Affordable Phone Services, Inc. (Affordable Phone) (Docket No. P-1272, Sub 1), (collectively Resellers) and Complainant filed a Joint Motion on Procedural Issues in which the parties requested that the Commission hold all other pending motions in abeyance and convene a consolidated proceeding to which the Complainants and all Resellers are parties to resolve the following issues: how cash-back credits to the resellers should be calculated; whether the word-of-mouth promotion is available for resale and, if so, how the credits to resellers should be calculated; and how credits to resellers for waiver of the line connection charge should be calculated. This Joint Motion was granted by Commission Order issued May 20, 2010.

On February 8, 2011, the Commission issued its Order Scheduling Hearing on April 15, 2011. The matter came on for hearing as scheduled on April 15, 2011.

On September 22, 2011, the Commission issued its Order Resolving Credit Calculation Dispute. In that Order, the Commission concluded that:

1. The credits to Resellers for the Cashback and Line Connection Charge Waiver promotions should be calculated by applying the Commission-approved 21.5% resale discount to the retail price of the underlying service; and
2. The Word-of-Mouth referral program does not have to be made available for resale.

On October 1, 2012, Complainant filed a verified Motion for Summary Judgment Finding BLC Management LLC, d/b/a Angles Communications Solutions Liable for Unpaid Charges and Motion Dismissing Counterclaims for Lack of Prosecution and Closing Docket. In the Summary Judgment Motion, Complainant averred that Respondent Angles had ordered services from the Complainant; that Angles had failed to pay for those services; and, that, pursuant to the terms of the ICA, Respondent Angles owed Complainant either \$7,803,836 or \$11,396,305 for the services provided. In support of the summary judgment motion, Complainant attached affidavits from Cynthia A. Clark and David J. Egan that established both of the balances requested and demonstrated how both balances were calculated.

On December 10, 2012, AT&T filed an Amendment for Clarification of Summary Judgment and Motion Dismissing Counterclaim for Lack of Prosecution and Closing Docket. In the Amendment, AT&T reiterated the arguments that it had previously made in support of its motion for summary judgment. In its arguments in support of summary judgment, AT&T renewed its claim that it was due \$11,396,305.

Angles did not respond.

On January 23, 2013, the Presiding Commissioner issued an Order Allowing Counsel [for Angles] to Withdraw, Denying Motions for Summary Judgment and to Dismiss Counterclaims and Scheduling Hearings (Summary Judgment Denial Order).

On February 4, 2013, AT&T filed its Motion for Reconsideration. In the Motion, AT&T requested that the Full Commission reconsider the Presiding Commissioner's denial of AT&T's request for summary judgment and for Angles' counterclaims to be dismissed for failure to prosecute. AT&T also revised its request for summary judgment by abandoning its request that the Commission grant it summary judgment in the amount of \$11,396,305.

On February 8, 2013, the Presiding Commissioner issued an Order Suspending the Procedural Schedule and Requiring Angles to Respond. In addition to suspending the procedural schedule, the Order stated the following:

2. An Attorney retained by Angles shall notify the Commission of Angles' intent to proceed on the remaining claims and counterclaims in this matter within twenty days of this Order;

3. Angles' remaining claims and counterclaims shall be dismissed with prejudice if Angles fails to notify the Commission that Angles intends to proceed in accordance with the requirements set forth in Ordering Paragraph 2; and

4. The remaining matters requested in the Motion are taken under advisement.

As of the date of this Order, Angles has not notified the Commission of its intent to proceed on the remaining claims and counterclaims.

As a result of the aforementioned, the Commission makes the following findings and conclusions:

Angles' Failure to Comply with Commission Order

G.S.1A-1, Rule 41, of the North Carolina Rules of Civil procedure permits a case to be dismissed "for failure of the plaintiff to prosecute or to comply with these rules or any order of court." Emphasis added. As noted above, in the February 8, 2013 Order Suspending Schedule, Angles was ordered to notify the Commission within 20 days of the order of its intent to proceed in this docket. According to the official records maintained by the Chief Clerk of the Commission, Angles or its representative signed the certified mail receipt to acknowledge receiving the Commission's Order on February 15, 2013. As of the date of this Order, Angles has not notified the Commission of its intent to proceed in this docket.

Based upon the preceding, the Commission finds:

- (1) That Angles has not complied with the February 8, 2013 Order of the Commission requiring Angles to notify the Commission of its intent to proceed in this docket;
- (2) That Angles and/or its representative received adequate notice of the Commission's order; and,
- (3) That good cause exists to dismiss the counterclaims filed by Angles in this docket.

AT&T's Motion for Reconsideration

On January 23, 2013, the Presiding Commissioner issued the Summary Judgment Denial Order.

In making the decision, the Presiding Commissioner observed that AT&T's affidavits indicated that AT&T was owed two different and inconsistent amounts. Further, the Presiding Commissioner observed that if the facts and the law of the case

were resolved in one manner, AT&T would be owed \$7,803,836. If the facts and the law were resolved in another manner, AT&T would be owed \$11,396,305. These observations highlighted the fact that AT&T's own pleadings demonstrated that the damages due are uncertain and cannot be determined without further fact finding proceedings. When the amount due cannot be determined with reasonable certainty, North Carolina law provides that summary judgment is inappropriate even if the non-moving party has not filed affidavits to counter the moving party's assertions.¹ *Connor v. Spanish Inns*, 294 N.C. 661, 242 S.E.2d 785 (1978) See also *Page v. Sloan*, 281 N.C. 697, 705, 190 S.E.2d 189, 194 (1972); *Kidd v. Early*, 289 N.C. 343, 222 S.E.2d 392 (1978) and *Pitts v. Village Inn Pizza, Inc.*, 296 N.C. 81, 249 S.E.2d 375, 379-380 (1978) overruled on other grounds *Best v. Duke University*, 337 NC 742, 751 (1994). The Presiding Commissioner so held.

The Presiding Commissioner also denied AT&T's summary judgment motion because AT&T did not provide any justification for its refusal to provide Angles with a comparable discount on bundled service offerings that AT&T provided to its retail customers. Federal law and policy provide that AT&T's refusal to provide Angles with a comparable discount is presumptively unreasonable. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶939 (1996). Because of the presumption, Angles' disputed amounts associated with these offerings which are set forth in AT&T's affidavits have to be viewed as valid and "specific, legally cognizable items of debit or credit not included in [AT&T's] statement [of account] demonstrating that the amount [AT&T] claimed due is inaccurate", *Connor v. Spanish Inns*, 294 N.C. 661, 677, 242 S.E.2d 785, 795 (1978), until the presumption is rebutted or otherwise invalidated. Summary judgment is not appropriate under those circumstances. Again, the Presiding Commissioner so held.

For the preceding reasons, the Presiding Commissioner denied AT&T's motion for summary judgment in the January 23, 2013 Order and scheduled AT&T's claim for trial so that the correct amount Angles owed AT&T under its contract could be determined.

On February 4, 2013, AT&T filed its motion requesting that the full Commission reconsider the Presiding Commissioner's denial of AT&T's request for summary judgment. Although AT&T styled its pleading as a Motion for Reconsideration of the Presiding Commissioner's denial of its motion for summary judgment, AT&T's pleading substantially revised its summary judgment request to reflect that it was abandoning its claim for recompense for amounts attributable to its bundled service offerings and only seeking the reduced amount² of \$7,803,836 for all other products, services, late fees

¹ "When supporting documents and materials are stipulated into evidence for consideration by the court upon motion for summary judgment, and the stipulated materials are in conflict and support opposing conclusions with respect to a material fact, the non-moving party may not be charged with failure to offer rebuttal evidence and thus incur dismissal by way of summary judgment." Citations omitted. *Pitts v. Village Inn Pizza, Inc.*, 296 N.C. 81, 87, 249 S.E.2d 375, 379-380 (1978)

² The reduced amount does not include any request for payments withheld by Angles for bundles service offerings which is/was the focus of Angles' counterclaims.

and penalties. Thus, the motion for reconsideration is more appropriately deemed as a reconfigured and renewed motion for summary judgment that AT&T is owed \$7,803,836 for the services that it has provided to Angles.

Because AT&T abandoned its claims for compensation for the contested bundled service offerings and the Commission invalidated Angles counterclaims relating to those offerings when the Commission dismissed those claims, the only issue remaining is the amount that AT&T is due for services for which there are no disputes and for those services for which the dispute has been resolved in favor of AT&T, i.e. Cashback and Line Connection Charge Waiver promotions, and the Word of Mouth referral program. As to those issues, there are now no genuine issues as to any material fact and AT&T's affidavits, as reconfigured, clearly indicate that AT&T is due \$7,803,836. Since Angles offered no counter-affidavits calling into question the accuracy of this amount, AT&T is entitled to summary judgment in the amount of \$7,803,836.

IT IS, THEREFORE, ORDERED that:

1. Angles counterclaims are hereby dismissed;
2. AT&T's renewed motion for summary judgment in the amount of \$7,803,836 is hereby granted;
3. The hearing scheduled on March 26, 2013 is hereby cancelled and this docket shall be closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of March, 2013.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

EXHIBIT F

JAN - 8 2010

BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION

MISS. PUBLIC SERVICE
COMMISSION

In the Matter of: BellSouth)
Telecommunications, Inc. d/b/a AT&T) Docket No.
Southeast d/b/a AT&T Mississippi vs. BLC)
Management LLC d/b/a Angles)
Communications Solutions)

70-AD- 12

AT&T MISSISSIPPI'S COMPLAINT AND
PETITION FOR RELIEF

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Mississippi ("AT&T Mississippi"), pursuant to the Public Utilities Rules of Practice and Procedure of the Mississippi Public Service Commission ("Commission") and Public Utilities Staff ("Staff") ("Rule"), including but not limited to Rule 6 and Rule 11 and Miss Code Ann. §77-1-53, respectfully requests that the Commission open a docket for the purposes of: resolving billing disputes between Defendant/Respondent BLC Management LLC d/b/a Angles Communications Solutions ("Angles") and AT&T Mississippi; determining the amount defendant Angles owes AT&T Mississippi under the parties' interconnection agreement(s);¹ and requiring Angles to pay that amount to AT&T Mississippi.²

¹ In September 2009, AT&T Mississippi began applying a new methodology for calculating the resale promotional credits it will provide Angles and other competitive local exchange carriers ("CLECs") with regard to the cashback component of certain retail promotional offerings. *AT&T Mississippi is not seeking any amounts billed under this new methodology in this Docket.*

² AT&T Mississippi is filing similar Complaints and Petitions against four other competitive local exchange carriers with the Commission. Because of the commonality of the issues set forth in Section IV of this Complaint and Petition with the issues set forth in Section IV of those other four Complaints and Petitions, AT&T Mississippi intends to file a motion to consolidate these five dockets for the purposes of resolving those common issues. AT&T Mississippi will file that motion in each of these dockets after the Commission assigns docket numbers to them.

I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION

Angles owes AT&T Mississippi a past-due and unpaid balance for telecommunications services AT&T Mississippi provided it for resale under the terms and conditions of applicable interconnection agreement(s). As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$1.8 million in the State of Mississippi.³ To the extent that Angles has disputed AT&T Mississippi's bills, AT&T Mississippi has denied those disputes as required by its interconnection agreement(s) with Angles. Angles, however, has declined to pay AT&T Mississippi the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of Angles' withholding payments to AT&T Mississippi for one or both of the following reasons:⁴ (1) Angles erroneously asserts that AT&T Mississippi cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T Mississippi makes available for resale;⁵ and (2) Angles erroneously asserts that AT&T Mississippi's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

The interconnection agreement(s) between AT&T Mississippi and Angles provide that disputes like these are to be resolved in the first instance by this Commission. AT&T Mississippi, therefore, respectfully requests that the Commission resolve the outstanding

³ As of November 9, 2009, Angles' unpaid and past-due balance is over \$5 million across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

⁴ A more detailed description of Angles' assertions, and a brief explanation of why they are erroneous, is set forth in Section IV below.

⁵ For one-time "cash back" promotions, AT&T contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-serve life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this docket because AT&T Mississippi is not seeking any amounts billed under this new methodology in this docket.

disputes, determine the amount that defendant Angles owes AT&T Mississippi under the parties' interconnection agreement(s), and require Angles to pay that amount to AT&T Mississippi.

II. PARTIES

1. AT&T Mississippi is a corporation organized under the laws of the state of Georgia. AT&T Mississippi is an incumbent local exchange carrier ("ILEC") as that term is defined by federal law⁶ and it is a "public utility" as that term is defined by state law.⁷

2. The full name and address of the authorized representative for AT&T Mississippi in this proceeding is:

Thomas B. Alexander
General Attorney-Mississippi
175 East Capitol Street
Suite 790, Landmark Center
Jackson, Mississippi 39201
(601) 961-1700
thomas.b.alexander@att.com

3. Defendant Angles is organized under the laws of the State of Tennessee. Angles is a "public utility" as that term is defined by state law, and it is authorized to provide resold local exchange telecommunications services within the State of Mississippi.

III. ANGLES' BREACH OF ITS INTERCONNECTION AGREEMENT(S)

4. In 2004, AT&T Mississippi and Angles entered into a negotiated interconnection agreement (the "Angles 2004 agreement") in which AT&T Mississippi agreed, among other things, to offer various telecommunications services for resale to Angles at specified wholesale rates and subject to specified terms and conditions. A copy of the Angles 2004 agreement is on a CD attached hereto as Exhibit A.⁸

⁶ See, e.g., 47 U.S.C. §251(h)(1) of the Federal Telecommunications Act of 1996 (the "1996 Act").

⁷ See Miss. Code Ann. §77-3-3.

⁸ AT&T will make copies of this CD available to the parties upon request.

5. As of November 9, 2009, Angles owes a past due and unpaid balance to AT&T Mississippi in the amount of \$1,884,273.29 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Mississippi billed Angles for telecommunications services provided to Angles in Mississippi pursuant to the parties' interconnection agreement(s) less: payments made by Angles; and credits provided by AT&T Mississippi to Angles in connection with valid disputes and approved promotional credit requests submitted by Angles as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by Angles, but not yet reviewed by AT&T Mississippi.

7. To the extent that the Past Due Balance includes any charges on AT&T Mississippi's invoices that Angles has disputed, AT&T Mississippi has denied those disputes as required by its interconnection agreement(s) with Angles.

8. Defendant Angles has breached the Angles 2004 agreement by refusing to pay amounts that are due and owing to AT&T under those Agreements.

IV. ANGLES' ERRONEOUS REASONS FOR NONPAYMENT

9. As noted above, a substantial amount of Angles' unpaid balance is the result of Angles' withholding payments to AT&T Mississippi for one or both of the following reasons.

A. Application of the resale discount to the "cashback" component of promotional offerings.

10. Angles asserts that AT&T Mississippi cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T Mississippi makes available for resale. Assume, for example, AT&T Mississippi's retail promotional offering provides a retail customer who purchases Telecommunications Service A under certain conditions a coupon that can be redeemed for a \$50 check. When Angles resells that promotional offering to qualifying end users and submits to AT&T Mississippi an

appropriate promotional credit request, AT&T Mississippi provides Angles a bill credit of \$42.13 (\$50 less the 15.75% resale discount established by this Commission). Angles, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

11. There is no basis in logic or law for Angles’ assertions. If AT&T Mississippi were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), Angles would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, Angles would receive a \$42.13 reduction – the \$50 face value of the reduction less the 15.75% avoided cost discount established by the Commission.⁹ Angles clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

12. The 1996 Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, such as AT&T Mississippi, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the

⁹ When the retail price of the service was \$200, Angles paid AT&T Mississippi \$168.50 (\$200 less the 15.75% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, Angles pays AT&T Mississippi \$126.37 (\$150 less the 15.75% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$42.13 reduction in the price Angles pays for the service (from \$168.50 to \$126.37), which is the \$50 “face value” of the reduction less the 15.75% resale discount.

wholesale discount from the face value of the promotion is exactly what is contemplated by the 1996 Act.

B. Customer Referral Marketing Promotions.

13. Angles asserts that AT&T Mississippi's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale. Assume, for example, that AT&T gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. Angles contends that it is entitled to resell this customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of Angles' end users refers others who purchase services from Angles.

14. Subject to certain conditions and limitations, AT&T Mississippi is required "to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Mississippi. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Mississippi's services to others who then purchase services from AT&T Mississippi. Angles obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Mississippi finance any such marketing programs that Angles may employ.

15. The 1996 Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange*

carrier.” 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that this Commission established (and that is incorporated in the Angles 2004 agreement) already excludes the costs of customer referral marketing promotions like the “word of mouth” promotion. To go further and also require AT&T Mississippi to give Angles additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Mississippi to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

V. JURISDICTION

16. The Commission has jurisdiction to interpret and enforce the terms of the interconnection agreement(s) at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,¹⁰ arbitrate interconnection agreements,¹¹ and approve or reject interconnection agreements.¹² In addition, the courts have held that Section 252 of the 1996 Act implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹³

VI. REQUEST FOR RELIEF

WHEREFORE, AT&T Mississippi respectfully requests that the Commission:

(1) Serve a copy of this Complaint and Petition upon Angles and require Angles to answer the Complaint and Petition;

¹⁰ 47 U.S.C. § 252(a)(2)

¹¹ *Id.* § 252(b)

¹² *Id.* § 252(e)

¹³ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) (“The critical question is not whether State commission have authority to interpret and enforce interconnection agreements – we believe they do”), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 65 (2002). See also *Core Commc’ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) (“[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements”)

(2) Find that Angles has breached the Angles 2004 agreement by wrongfully withholding amounts due and payable to AT&T Mississippi for services provided in accordance with the parties' interconnection agreement(s);

(3) Find that AT&T Mississippi has been financially harmed as a direct result of Angles' breach;

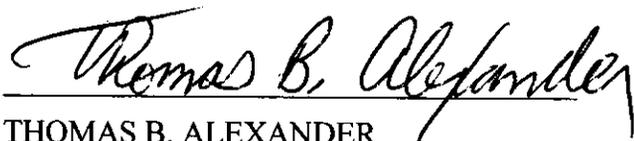
(4) Find that Angles is liable to AT&T Mississippi for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require Angles to pay AT&T Mississippi all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Mississippi such additional relief as the Commission may deem just and proper.

Respectfully submitted this 8th day of January, 2010.

AT&T MISSISSIPPI



THOMAS B. ALEXANDER
General Attorney-Mississippi
Suite 790, Landmark Center
175 E. Capitol Street
Jackson, Mississippi 39201
Phone: (601) 961-1700
thomas.b.alexander@att.com

VERIFICATION

STATE OF MISSISSIPPI

COUNTY OF HINDS

PERSONALLY APPEARED before me, the undersigned authority, William C. Harris, the Executive Director-Public Policy for BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi, who, after being duly sworn, deposes and says that he has reviewed the above and foregoing Complaint for and on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Mississippi, and that the statements contained in the Complaint are true and correct to the best of his knowledge, information, and belief.

William C. Harris
William C. Harris

SWORN TO AND SUBSCRIBED before me on this the 24th day of January, 2010.

Margaret Lack Stroud
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I, Thomas B. Alexander, attorney of record for BellSouth Telecommunications Inc. d/b/a AT&T Southeast d/b/a AT&T Mississippi hereby certify that I have this day caused to be hand-delivered the original and twelve (12) copies of the above and foregoing Complaint to Brian U. Ray, Executive Secretary of the Mississippi Public Service Commission, 2nd Floor, Woolfolk Building, Jackson, Mississippi.

I further certify that I have this day hand-delivered or mailed by United States Mail, postage prepaid, a copy of the Complaint to the following:

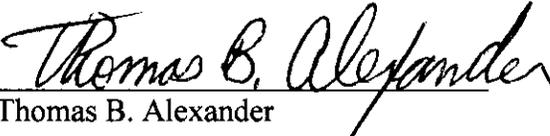
Katherine Collier
Attorney-Mississippi Public Service Commission
2nd Floor, Woolfolk Building
Jackson, Mississippi 39201

George M. Fleming, Esq.
General Counsel-Mississippi Public Utilities Staff
3rd Floor, Woolfolk Building
Jackson, Mississippi 39201

Robert G. Waites
Executive Director-Mississippi Public Utilities Staff
3rd Floor, Woolfolk Building
Jackson, Mississippi 39201

Ms. Rachel Laquitar
BLC Management LLC
11121 Highway 70
Suite 202
Arlington, TN 38002

This the 8th day of January, 2010.


Thomas B. Alexander

766635

EXHIBIT G

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
 BELLSOUTH TELECOMMUNICATIONS, INC.)
 d/b/a AT&T SOUTHEAST)
 d/b/a AT&T KENTUCKY)
)
 Complainant)
)
 v.)
)
 BLC MANAGEMENT LLC d/b/a ANGLES)
 COMMUNICATIONS SOLUTIONS)
)
 Defendant)

RECEIVED
 JAN 21 2010
 PUBLIC SERVICE
 COMMISSION

Case No.: 2010 - 00023

FORMAL COMPLAINT

Pursuant to KRS 278.260(1) and 807 KAR 5:001, Section 12, and 47 U.S.C. § 252, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully requests that the Public Service Commission of Kentucky ("the Commission") convene a docket for the purposes of: resolving billing disputes between BLC Management LLC d/b/a Angles Communications Solutions ("Angles") and AT&T Kentucky; determining the amount that Angles owes AT&T Kentucky¹ under the Parties' Interconnection Agreement, and requiring Angles to pay that amount to AT&T Kentucky.²

¹ In September 2009, AT&T Kentucky began applying a new methodology for calculating the resale promotional credits it will provide Angles and other CLECs with regard to the cashback component of certain retail promotional offerings. ***AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.***

² AT&T Kentucky is filing similar Complaints with the Commission against three other CLECs. Because of the commonality of the issues set forth in Section IV of this Complaint and those set forth in Section IV of the other three Complaints, AT&T Kentucky plans to file a motion to consolidate these four dockets for the purposes of resolving these common issues. AT&T

I. BACKGROUND AND SUMMARY OF COMPLAINT

Angles owes AT&T Kentucky a past-due and unpaid balance for telecommunications services that AT&T Kentucky provided to Angles for resale under the terms and conditions of the Parties' Interconnection Agreement entered into in 2004. As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$350,000 in the Commonwealth of Kentucky.³ To the extent that Angles has disputed AT&T Kentucky's bills, AT&T Kentucky has denied those disputes as required by its Interconnection Agreement with Angles. Angles, however, has declined to pay AT&T Kentucky the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of Angles' withholding payments to AT&T Kentucky for one or both of the following reasons:⁴ (1) Angles erroneously asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T Kentucky makes available for resale;⁵ and (2) Angles erroneously asserts that AT&T Kentucky's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

Kentucky will file that motion in each of these dockets after the Commission assigns them docket numbers.

³ As of November 9, 2009, Angles' unpaid and past-due balance is over \$5 million across the nine AT&T Southeast states.

⁴ A more detailed description of Angles' assertions, and a brief explanation of why they are erroneous, are set forth in Section IV of this Complaint.

⁵ For one-time "cashback" promotions, AT&T Kentucky contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-service life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this docket because AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.

The Interconnection Agreement between AT&T Kentucky and Angles provides that disputes like these are to be resolved in the first instance by this Commission. AT&T Kentucky, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that Angles owes AT&T Kentucky under the Parties' Interconnection Agreement, and require Angles to pay that amount to AT&T Kentucky.

II. PARTIES

1. AT&T Kentucky, a Georgia corporation, is an incumbent local exchange carrier providing telecommunications services in 78 counties in the Commonwealth of Kentucky. AT&T Kentucky's address in Kentucky is 601 W. Chestnut Street, Louisville, Kentucky, 40203.

2. The full name and address of the authorized representative for AT&T Kentucky in this proceeding is:

Mary K. Keyer
601 Chestnut Street, Suite 407
Louisville, KY 40203
(502) 582-8219
mary.keyer@att.com

3. Angles is organized under the laws of the State of Tennessee and is a competitive local exchange carrier ("CLEC") authorized to provide resold local exchange telecommunications services within the Commonwealth of Kentucky.

III. ANGLES' BREACH OF ITS INTERCONNECTION AGREEMENT

4. In 2004, AT&T Kentucky and Angles entered into a negotiated interconnection agreement ("Interconnection Agreement") in which AT&T Kentucky agreed, among other things, to offer various telecommunications

services for resale to Angles at specified wholesale rates and subject to specified terms and conditions. A copy of the Interconnection Agreement is on a CD attached hereto as **Exhibit A**.⁶

5. As of November 9, 2009, Angles owes a past due and unpaid balance to AT&T Kentucky in the amount of \$361,802.04 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Kentucky billed Angles for telecommunications services provided to Angles in Kentucky pursuant to the Parties' Interconnection Agreement less: payments made by Angles, and credits provided by AT&T Kentucky to Angles in connection with valid disputes and approved promotional credit requests submitted by Angles as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by Angles, but not yet reviewed by AT&T Kentucky.

7. To the extent that the Past Due Balance includes any charges on AT&T Kentucky's invoices that Angles has disputed, AT&T Kentucky has denied those disputes as required by the Interconnection Agreement with Angles.

8. Angles has breached the Interconnection Agreement by refusing to pay amounts that are due and owing to AT&T Kentucky under that agreement.

IV. ANGLES' ERRONEOUS REASONS FOR NONPAYMENT

9. As noted above, a substantial amount of Angles' unpaid balance is the result of Angles' withholding payments to AT&T Kentucky for one or both of the following reasons.

⁶ AT&T Kentucky will make copies of this CD available to the Parties upon request.

A. Application of the resale discount to the “cashback” component of promotional offerings.

10. Angles asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T Kentucky makes available for resale. Assume, for example, AT&T Kentucky’s retail promotional offering provides a coupon that can be redeemed for a \$50 check to a retail residential customer who purchases Telecommunications Service A under certain conditions. When Angles resells that promotional offering to qualifying end users and submits to AT&T Kentucky an appropriate promotional credit request, AT&T Kentucky provides Angles a bill credit of \$41.60 (\$50 less the 16.79% resale discount established by this Commission). Angles, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

11. There is no basis in logic or law for Angles’ assertions. If AT&T Kentucky were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), Angles would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, Angles would receive a \$41.60 reduction – the \$50 face value of the reduction less the 16.79% avoided cost discount established by the Commission.⁷ Angles clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

⁷ When the retail price of the service was \$200, Angles paid AT&T Kentucky \$166.42 (\$200 less the 16.79% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, Angles pays AT&T Kentucky \$124.82 (\$150 less the 16.79% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$41.60 reduction in the price Angles pays for the service (from \$166.42 to \$124.82), which is the \$50 “face value” of the reduction less the 16.79% resale discount.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under § 251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, AT&T Kentucky, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

B. Customer Referral Marketing Promotions.

13. Angles asserts that AT&T Kentucky’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T Kentucky gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. Angles contends that it is entitled to resell this customer referral marketing promotion and that it, therefore, is entitled to a \$50 bill credit when one of Angles’ end users refers others who purchase services from Angles.

14. Subject to certain conditions and limitations, AT&T Kentucky is required “to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. § 251(c)(4)(A) (emphasis added). Customer referral marketing

promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Kentucky. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Kentucky's services to others who then purchase services from AT&T Kentucky. Angles obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Kentucky finance any such marketing programs that Angles may employ.

15. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. § 252(d)(3). Accordingly, the resale discount rate that this Commission established (and that is incorporated in the Interconnection Agreement) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go further and also require AT&T Kentucky to give Angles additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Kentucky to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

V. JURISDICTION

17. The Commission has jurisdiction to interpret and enforce the terms of the Interconnection Agreement at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,⁸ arbitrate interconnection agreements,⁹ and approve or reject interconnection agreements.¹⁰ In addition, the courts have held that § 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹¹

VI. REQUEST FOR RELIEF

WHEREFORE, AT&T Kentucky respectfully requests that the Commission:

(1) Serve a copy of this Complaint upon Angles and require Angles to answer the Complaint;

(2) Find that Angles has breached the Interconnection Agreement by wrongfully withholding amounts due and payable to AT&T Kentucky for services provided in accordance with the Parties' Interconnection Agreement;

(3) Find that AT&T Kentucky has been financially harmed as a direct result of Angles' breach;

⁸ 47 U.S.C. § 252(a)(2)

⁹ *Id.* § 252(b)

¹⁰ *Id.* § 252(e)

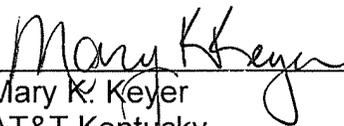
¹¹ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements").

(4) Find that Angles is liable to AT&T Kentucky for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require Angles to pay AT&T Kentucky all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Kentucky such additional relief as the Commission may deem just and proper.

Respectfully submitted,



Mary K. Keyer
AT&T Kentucky
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203
(502)582-8219

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.
d/b/a AT&T SOUTHEAST
d/b/a AT&T KENTUCKY

771395

EXHIBIT H

I. BACKGROUND AND SUMMARY OF COMPLAINT

LifeConnex owes AT&T Kentucky a past-due and unpaid balance for telecommunications services that AT&T Kentucky provided to LifeConnex for resale under the terms and conditions of the Parties' Interconnection Agreement entered into in 2007. As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$400,000 in the Commonwealth of Kentucky.³ To the extent that LifeConnex has disputed AT&T Kentucky's bills, AT&T Kentucky has denied those disputes as required by its Interconnection Agreement with LifeConnex. LifeConnex, however, has declined to pay AT&T Kentucky the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of LifeConnex's withholding payments to AT&T Kentucky for one or both of the following reasons:⁴ (1) LifeConnex erroneously asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T Kentucky makes available for resale;⁵ and (2) LifeConnex erroneously asserts that AT&T Kentucky's customer referral

Kentucky will file that motion in each of these dockets after the Commission assigns them docket numbers.

³ As of November 9, 2009, LifeConnex's unpaid and past-due balance is over \$6.2 million across the nine AT&T Southeast states.

⁴ A more detailed description of LifeConnex's assertions, and a brief explanation of why they are erroneous, are set forth in Section IV of this Complaint.

⁵ For one-time "cashback" promotions, AT&T Kentucky contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-service life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this docket because AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.

marketing promotions (such as the “word-of-mouth” promotion) are subject to resale.

The Interconnection Agreement between AT&T Kentucky and LifeConnex provides that disputes like these are to be resolved in the first instance by this Commission. AT&T Kentucky, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that LifeConnex owes AT&T Kentucky under the Parties’ Interconnection Agreement, and require LifeConnex to pay that amount to AT&T Kentucky.

II. PARTIES

1. AT&T Kentucky, a Georgia corporation, is an incumbent local exchange carrier providing telecommunications services in 78 counties in the Commonwealth of Kentucky. AT&T Kentucky’s address in Kentucky is 601 W. Chestnut Street, Louisville, Kentucky, 40203.

2. The full name and address of the authorized representative for AT&T Kentucky in this proceeding is:

Mary K. Keyer
601 Chestnut Street, Suite 407
Louisville, KY 40203
(502) 582-8219
mary.keyer@att.com

3. LifeConnex is organized under the laws of the State of Florida and is a competitive local exchange carrier (“CLEC”) authorized to provide resold local exchange telecommunications services within the Commonwealth of Kentucky.

III. LIFECONNEX'S BREACH OF ITS INTERCONNECTION AGREEMENT

4. In 2007, AT&T Kentucky and LifeConnex entered into a negotiated interconnection agreement ("Interconnection Agreement") in which AT&T Kentucky agreed, among other things, to offer various telecommunications services for resale to LifeConnex at specified wholesale rates and subject to specified terms and conditions. A copy of the Interconnection Agreement is on a CD attached hereto as **Exhibit A**.⁶

5. As of November 9, 2009, LifeConnex owes a past due and unpaid balance to AT&T Kentucky in the amount of \$424,964.07 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Kentucky billed LifeConnex for telecommunications services provided to LifeConnex in Kentucky pursuant to the Parties' Interconnection Agreement less: payments made by LifeConnex, and credits provided by AT&T Kentucky to LifeConnex in connection with valid disputes and approved promotional credit requests submitted by LifeConnex as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by LifeConnex, but not yet reviewed by AT&T Kentucky.

7. To the extent that the Past Due Balance includes any charges on AT&T Kentucky's invoices that LifeConnex has disputed, AT&T Kentucky has denied those disputes as required by the Interconnection Agreement with LifeConnex.

⁶ AT&T Kentucky will make copies of this CD available to the Parties upon request.

8. LifeConnex has breached the Interconnection Agreement by refusing to pay amounts that are due and owing to AT&T Kentucky under that agreement.

IV. LIFECONNEX'S ERRONEOUS REASONS FOR NONPAYMENT

9. As noted above, a substantial amount of LifeConnex's unpaid balance is the result of LifeConnex's withholding payments to AT&T Kentucky for one or both of the following reasons.

A. Application of the resale discount to the "cashback" component of promotional offerings.

10. LifeConnex asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T Kentucky makes available for resale. Assume, for example, AT&T Kentucky's retail promotional offering provides a coupon that can be redeemed for a \$50 check to a retail residential customer who purchases Telecommunications Service A under certain conditions. When LifeConnex resells that promotional offering to qualifying end users and submits to AT&T Kentucky an appropriate promotional credit request, AT&T Kentucky provides LifeConnex a bill credit of \$41.60 (\$50 less the 16.79% resale discount established by this Commission). LifeConnex, however, erroneously contends that it is entitled to a bill credit for the full \$50 "face value" of the cashback amount.

11. There is no basis in logic or law for LifeConnex's assertions. If AT&T Kentucky were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), LifeConnex would not receive the full \$50 "face value" of the reduction when it purchased that service for resale.

Instead, LifeConnex would receive a \$41.60 reduction – the \$50 face value of the reduction less the 16.79% avoided cost discount established by the Commission.⁷ LifeConnex clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under § 251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, AT&T Kentucky, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

B. Customer Referral Marketing Promotions.

13. LifeConnex asserts that AT&T Kentucky’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T Kentucky gives retail customers who qualify a

⁷ When the retail price of the service was \$200, LifeConnex paid AT&T Kentucky \$166.42 (\$200 less the 16.79% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, LifeConnex pays AT&T Kentucky \$124.82 (\$150 less the 16.79% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$41.60 reduction in the price LifeConnex pays for the service (*from* \$166.42 to \$124.82), which is the \$50 “face value” of the reduction less the 16.79% resale discount.

\$50 bill credit when they refer others who purchase AT&T services. LifeConnex contends that it is entitled to resell this customer referral marketing promotion and that it, therefore, is entitled to a \$50 bill credit when one of LifeConnex's end users refers others who purchase services from LifeConnex.

14. Subject to certain conditions and limitations, AT&T Kentucky is required "to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4)(A) (emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Kentucky. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Kentucky's services to others who then purchase services from AT&T Kentucky. LifeConnex obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Kentucky finance any such marketing programs that LifeConnex may employ.

15. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs state commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. § 252(d)(3). Accordingly, the resale discount rate that this Commission

established (and that is incorporated in the Interconnection Agreement) already excludes the costs of customer referral marketing promotions like the “word of mouth” promotion. To go further and also require AT&T Kentucky to give LifeConnex additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Kentucky to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

V. JURISDICTION

17. The Commission has jurisdiction to interpret and enforce the terms of the Interconnection Agreement at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,⁸ arbitrate interconnection agreements,⁹ and approve or reject interconnection agreements.¹⁰ In addition, the courts have held that § 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹¹

VI. REQUEST FOR RELIEF

WHEREFORE, AT&T Kentucky respectfully requests that the Commission:

⁸ 47 U.S.C. § 252(a)(2)

⁹ *Id.* § 252(b)

¹⁰ *Id.* § 252(e)

¹¹ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) (“The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do”), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 65 (2002). See also *Core Commc’ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) (“[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements”).

(1) Serve a copy of this Complaint upon LifeConnex and require LifeConnex to answer the Complaint;

(2) Find that LifeConnex has breached the Interconnection Agreement by wrongfully withholding amounts due and payable to AT&T Kentucky for services provided in accordance with the Parties' Interconnection Agreement;

(3) Find that AT&T Kentucky has been financially harmed as a direct result of LifeConnex's breach;

(4) Find that LifeConnex is liable to AT&T Kentucky for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require LifeConnex to pay AT&T Kentucky all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Kentucky such additional relief as the Commission may deem just and proper.

Respectfully submitted,



Mary K. Keyer
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203
(502)582-8219

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.
d/b/a AT&T SOUTHEAST
d/b/a AT&T KENTUCKY

EXHIBIT I

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T Tennessee vs. BLC Management, LLC dba Angles Communication Solutions*

Docket No. _____

**AT&T TENNESSEE'S COMPLAINT AND
PETITION FOR RELIEF**

Pursuant to 47 U.S.C. §252 and Tennessee Regulatory Authority (the "TRA" or "Authority") Rules 1220-1-2-.02, 1220-1-2-.05 and 1220-1-1-.08, Complainant/Petitioner BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T Tennessee ("AT&T Tennessee") respectfully requests that the Authority convene a docket for the purposes of: resolving billing disputes between Defendant/Respondent BLC Management, LLC dba Angles Communication Solutions ("BLC") and AT&T Tennessee; determining the amount defendant BLC owes AT&T Tennessee under the parties' interconnection agreement(s)¹ and requiring BLC to pay that amount to AT&T Tennessee.²

¹ In September 2009, AT&T Tennessee began applying a new methodology for calculating the resale promotional credits it will provide BLC and other CLECs with regard to the cashback component of certain retail promotional offerings. ***AT&T Tennessee is not seeking any amounts billed under this new methodology in this Docket.***

² AT&T Tennessee is filing similar Complaints and Petitions against four other competitive local exchange carriers with the Authority. Because of the commonality of the issues set forth in Section IV. of this Complaint and Petition with the issues set forth in Section IV. of those other four Complaints and Petitions, AT&T Tennessee intends to file a motion to consolidate these five dockets for the purposes of resolving those common issues. AT&T Tennessee will file that motion in each of these dockets after the Authority assigns them docket numbers.

I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION

BLC owes AT&T Tennessee a past-due and unpaid balance for telecommunications services AT&T Tennessee provided it for resale under the terms and conditions of applicable interconnection agreement(s). As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$462,000 in the State of Tennessee.³ To the extent that BLC has disputed AT&T Tennessee's bills, AT&T Tennessee has denied those disputes as required by its interconnection agreement(s) with BLC. BLC, however, has declined to pay AT&T Tennessee the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of BLC's withholding payments to AT&T Tennessee for one or both of the following reasons:⁴ (1) BLC erroneously asserts that AT&T Tennessee cannot apply the resale discount approved by the Authority to the cashback component of various promotional offers that AT&T Tennessee makes available for resale;⁵ and (2) BLC erroneously asserts that AT&T Tennessee's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

The interconnection agreement(s) between AT&T Tennessee and BLC provide that disputes like these are to be resolved in the first instance by the Authority. AT&T Tennessee, therefore, respectfully requests that the Authority resolve the outstanding

³ As of November 9, 2009, BLC's unpaid and past-due balance is over \$5 Million across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

⁴ A more detailed description of BLC's assertions, and a brief explanation of why they are erroneous, is set forth in Section IV. below.

⁵ For one-time "cash back" promotions, AT&T contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-serve life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings; but that issue is not before the Authority in this docket because AT&T Tennessee is not seeking any amounts billed under this new methodology in this docket.

disputes, determine the amount that defendant BLC owes AT&T Tennessee under the parties' interconnection agreement(s), and require BLC to pay that amount to AT&T Tennessee.

II. PARTIES

1. AT&T Tennessee is a corporation organized under the laws of the state of Georgia. AT&T Tennessee is an incumbent local exchange carrier ("ILEC") as that term is defined by federal⁶ and state law. For market regulated companies, including AT&T Tennessee, the Authority has jurisdiction to resolve carrier-to-carrier complaints based on federal law.⁷

2. The full name and address of the authorized representative for AT&T Tennessee in this proceeding is:

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615 214 6301
gh1402@att.com
jp3881@att.com

3. Defendant BLC is organized under the laws of the state of Tennessee. BLC is a "telecommunications service provider" and "reseller" under state law, and it is authorized to provide resold local exchange telecommunications services within the State of Tennessee.

III. BLC'S BREACH OF ITS INTERCONNECTION AGREEMENT(S)

4. In 2004, AT&T Tennessee and BLC entered into a negotiated interconnection agreement (the "BLC 2004 agreement") in which AT&T Tennessee

⁶ See, e.g., 47 U.S.C. §251(h)(1).

⁷ See Tenn. Code Ann. § 65-5-109.

agreed, among other things, to offer various telecommunications services for resale to BLC at specified wholesale rates and subject to specified terms and conditions. A copy of the BLC 2004 agreement is on a CD attached hereto as Exhibit A.⁸

5. As of November 9, 2009, BLC owes a past due and unpaid balance to AT&T Tennessee in the amount of \$462,164.12 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Tennessee billed BLC for telecommunications services provided to BLC in Tennessee pursuant to the parties' interconnection agreement(s) less: payments made by BLC; and credits provided by AT&T Tennessee to BLC in connection with valid disputes and approved promotional credit requests submitted by BLC as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by BLC, but not yet reviewed by AT&T Tennessee.

7. To the extent that the Past Due Balance includes any charges on AT&T Tennessee's invoices that BLC has disputed, AT&T Tennessee has denied those disputes as required by its interconnection agreement(s) with BLC.

8. Defendant BLC has breached the BLC 2004 agreement by refusing to pay amounts that are due and owing to AT&T under those agreements.

IV. BLC'S ERRONEOUS REASONS FOR NONPAYMENT

9. As noted above, a substantial amount of BLC's unpaid balance is the result of BLC's withholding payments to AT&T Tennessee for one or both of the following reasons.

⁸ AT&T will make copies of this CD available to the parties upon request.

A. Application of the resale discount to the “cashback” component of promotional offerings.

10. BLC asserts that AT&T Tennessee cannot apply the resale discount approved by the Authority to the cashback component of various promotional offerings that AT&T Tennessee makes available for resale. Assume, for example, AT&T Tennessee’s retail promotional offering provides a retail customer who purchases Telecommunications Service A under certain conditions a coupon that can be redeemed for a \$50 check. When BLC resells that promotional offering to qualifying end users and submits to AT&T Tennessee an appropriate promotional credit request, AT&T Tennessee provides BLC a bill credit of \$42 (\$50 less the 16% resale discount established by the Authority). BLC, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

11. There is no basis in logic or law for BLC’s assertions. If AT&T Tennessee were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), BLC would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, BLC would receive a \$42 reduction – the \$50 face value of the reduction less the 16% avoided cost discount established by the Authority.⁹ BLC clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

⁹ When the retail price of the service was \$200, BLC paid AT&T Tennessee \$168 (\$200 less the 16% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, BLC pays AT&T Tennessee \$126 (\$150 less the 16% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$42 reduction in the price BLC pays for the service (from \$168 to \$126), which is the \$50 “face value” of the reduction less the 16% resale discount.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, the Authority determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, such as AT&T Tennessee, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

B. Customer Referral Marketing Promotions.

13. BLC asserts that AT&T Tennessee’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. BLC contends that it is entitled to resell this customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of BLC’s end users refers others who purchase services from BLC.

14. Subject to certain conditions and limitations, AT&T Tennessee is required “to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing

telecommunications services from AT&T Tennessee. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Tennessee's services to others who then purchase services from AT&T Tennessee. BLC obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Tennessee finance any such marketing programs that BLC may employ.

15. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that the Authority established (and that is incorporated in the BLC 2004 Agreement) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go further and also require AT&T Tennessee to give BLC additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Tennessee to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

V. JURISDICTION

16. The Authority has jurisdiction to interpret and enforce the terms of the interconnection agreement(s) at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,¹⁰ arbitrate interconnection agreements,¹¹ and approve or reject interconnection

¹⁰ 47 U.S.C. § 252(a)(2)

¹¹ *Id.* § 252(b)

agreements.¹² In addition, the courts have held that section 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹³

VI. REQUEST FOR RELIEF

WHEREFORE, AT&T Tennessee respectfully requests that the Authority:

(1) Find and declare that BLC has breached the BLC 2004 Agreement by wrongfully withholding amounts due and payable to AT&T Tennessee for services provided in accordance with the parties' interconnection agreement(s);

(2) Find and declare that AT&T Tennessee has been financially harmed as a direct result of BLC's breach;

(3) Find that BLC is liable to AT&T Tennessee for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(4) Require BLC to pay AT&T Tennessee all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

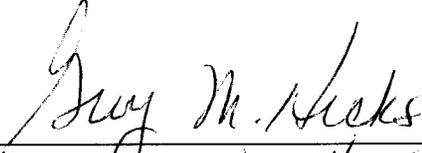
¹² *Id.* § 252(e)

¹³ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements").

(5) Grant AT&T Tennessee such additional relief as the Authority may deem just and proper.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T SOUTHEAST dba AT&T TENNESSEE

By: 
Guy M. Hicks *by Handwritten*
Joelle J. Phillips *with permission*
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615 214 6301
gh1402@att.com
jp3881@att.com

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2010, a copy of the foregoing document was served on the following, via the method indicated:

- Hand
- Mail
- Facsimile
- Overnight
- Electronic

Mr. Brian Cox
BLC Management, LLC
1121 Highway 70, Suite 202
Arlington, TN 38002



Carolyn Harwood

EXHIBIT J

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RECEIVED FILED #10

BEFORE THE

FILED

NORTH CAROLINA UTILITIES COMMISSION

JAN 08 2010

In the Matter of BellSouth)
Telecommunications, Inc. d/b/a AT&T)
Southeast d/b/a AT&T North Carolina vs.)
BLC Management, LLC d/b/a Angles)
Communications Solutions.)

Docket No. P-55, Sub 1787

P-1415, Sub 2

Clerk's Office
N.C. Utilities Commission

JAN 08 2010

Clerk's Office
N.C. Utilities Commission

AT&T NORTH CAROLINA'S COMPLAINT AND
PETITION FOR RELIEF

Pursuant to G.S. 62-74, NCUC Rule R1-9, and 47 U.S.C. §252, Complainant/Petitioner BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina ("AT&T North Carolina") respectfully requests that the North Carolina Utilities Commission ("the Commission") convene a docket for the purposes of: resolving billing disputes between BLC Management, LLC d/b/a Angles Communications Solutions ("BLC") and AT&T North Carolina; determining the amount defendant BLC owes AT&T North Carolina under the parties' interconnection agreement(s),¹ and requiring BLC to pay that amount to AT&T North Carolina.²

¹ In September 2009, AT&T North Carolina began applying a new methodology for calculating the resale promotional credits it will provide BLC and other competing local providers (CLPs) with regard to the cashback component of certain retail promotional offerings. *AT&T North Carolina is not seeking any amounts billed under this new methodology in this Docket.*

² AT&T North Carolina is filing similar Complaints and Petitions against three other CLPs with the Commission. Because of the commonality of the issues set forth in Section V. of this Complaint and Petition with the issues set forth in Section V. of those other three Complaints and Petitions, AT&T North Carolina intends to file a motion to consolidate these four dockets for the purposes of resolving those common issues. AT&T North Carolina will file that motion in each of these dockets after the Commission serves the Complaints/Petitions on the respondent CLPs.

J Bennis
Long
Sessions
Pascha
Wigfall
2/13 Legal
2/13 Comm

Clerk's
Al
Foster
1/13 Legal
1/13 Comm
Hoover

I. BACKGROUND AND SUMMARY OF PETITION

BLC owes AT&T North Carolina a past-due and unpaid balance for telecommunications services AT&T North Carolina provided it for resale under the terms and conditions of applicable interconnection agreement(s). As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$500,000 in the State of North Carolina.³ To the extent that BLC has disputed AT&T North Carolina's bills, AT&T North Carolina has reviewed and denied those disputes in accordance with its interconnection agreement(s) with BLC and thus considers the amounts associated with such disputes to be owed by BLC. BLC, however, has declined to pay AT&T North Carolina the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of BLC's withholding payments to AT&T North Carolina for one or both of the following reasons:⁴ (1) BLC erroneously asserts that AT&T North Carolina cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T North Carolina makes available for resale;⁵ and (2) BLC erroneously asserts that AT&T North Carolina's

³ As of November 9, 2009, BLC's unpaid and past-due balance exceeds \$5.1 million across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

⁴ A more detailed description of BLC's assertions, and a brief explanation of why they are erroneous, is set forth in Section V. below.

⁵ For one-time "cash back" promotions, AT&T contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-service life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this Docket because AT&T North Carolina is not seeking any amounts billed under this new methodology in this Docket.

customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale.

As explained below, the interconnection agreement(s) between AT&T North Carolina and BLC provide that disputes like these are to be resolved in the first instance by this Commission. AT&T North Carolina, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that defendant BLC owes AT&T North Carolina under the parties’ interconnection agreement(s), and require BLC to pay that amount to AT&T North Carolina.

II. AT&T’S COMPANION LAWSUIT

While the interconnection agreement(s) between AT&T North Carolina and BLC provide that disputes like these are to be resolved in the first instance by this Commission, BLC may argue that the Commission is not authorized to award money damages and, therefore, ultimately is unable to order it to pay AT&T North Carolina the amounts due under an interconnection agreement. In order to protect itself against such arguments and to address any associated statute of limitations issues, AT&T North Carolina has filed or will file a civil action against BLC in state court seeking payment of money damages under the interconnection agreement(s). AT&T North Carolina has asked or will ask the state court to hold that civil action in abeyance pending action by the Commission in this docket.

III. PARTIES

1. AT&T North Carolina is a corporation organized under the laws of the state of Georgia and is an incumbent local exchange carrier (“ILEC”) in North Carolina.

2. The full name and address of the authorized representative for AT&T North Carolina in this proceeding is:

John T. Tyler
150 Fayetteville Street Mall, Suite 800
Raleigh, NC 27601
(919) 835-1495
Jt9523@att.com

3. Defendant BLC is organized under the laws of the state of Tennessee and is authorized to provide resold local exchange telecommunications services within the State of North Carolina (Docket No. P-1415, Sub 1)

IV. BLC’S BREACH OF ITS INTERCONNECTION AGREEMENT(S)

4. In 2004, AT&T North Carolina and BLC entered into a negotiated interconnection agreement (the “BLC 2004 agreement”) in which AT&T North Carolina agreed, among other things, to offer various telecommunications services for resale to BLC at specified wholesale rates and subject to specified terms and conditions. A copy of the BLC 2004 agreement is on a CD attached hereto as Exhibit A.

5. As of November 9, 2009, BLC owes a past due and unpaid balance to AT&T North Carolina in the amount of \$549,143.73 (the “Past Due Balance”). The Past Due Balance represents the amounts AT&T North Carolina billed BLC for telecommunications services provided to BLC in North Carolina pursuant to the parties’ interconnection agreement(s) less: payments made by BLC; and credits provided by

AT&T North Carolina to BLC in connection with valid disputes and approved promotional credit requests submitted by BLC as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by BLC but not yet reviewed by AT&T North Carolina.

7. To the extent that the Past Due Balance includes any charges on AT&T North Carolina's invoices that BLC has disputed, AT&T North Carolina has denied those disputes in accordance with the dispute provisions in its interconnection agreement(s) with BLC.

8. Defendant BLC has breached the BLC 2004 agreement by refusing to pay amounts that are due and owing to AT&T North Carolina under those agreements.

V. BLC'S ERRONEOUS REASONS FOR NONPAYMENT

9. As noted above, a substantial amount of BLC's unpaid balance is the result of BLC's withholding payments to AT&T North Carolina for one or both of the following reasons.

A. Application of the resale discount to the "cashback" component of promotional offerings.

10. BLC asserts that AT&T North Carolina cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T North Carolina makes available for resale. Assume, for example, AT&T North Carolina's retail promotional offering provides a retail customer who purchases Telecommunications Service A under certain conditions a coupon that can be redeemed for a \$50 check. When BLC resells that promotional offering to qualifying end users and submits to AT&T North Carolina an appropriate promotional credit request,

AT&T North Carolina provides BLC a bill credit of \$39.25 (\$50 less the 21.5% resale discount established by this Commission). BLC, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

11. There is no basis in logic or law for BLC’s assertions. If AT&T North Carolina were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), BLC would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, BLC would receive a \$39.25 reduction – the \$50 face value of the reduction less the 21.5% avoided cost discount established by the Commission.⁶ BLC clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, such as AT&T North Carolina, is to sell its services to CLPs

⁶ When the retail price of the service was \$200, BLC paid AT&T North Carolina \$157 (\$200 less the 21.5% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, BLC pays AT&T North Carolina \$117.75 (\$150 less the 21.5% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$39.25 reduction in the price BLC pays for the service (from \$157 to \$117.75), which is the \$50 “face value” of the reduction less the 21.5% resale discount.

for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

B. Customer Referral Marketing Promotions.

13. BLC asserts that AT&T North Carolina's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale. Assume, for example, that AT&T gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. BLC contends that it is entitled to resell this customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of BLC's end users refers others who purchase services from BLC.

14. Subject to certain conditions and limitations, AT&T North Carolina is required "to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T North Carolina. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T North Carolina's services to others who then purchase services from AT&T North Carolina. BLC obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T North Carolina finance any such marketing programs that BLC may employ.

15. The federal Act makes it clear that CLPs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on

the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that this Commission established (and that is incorporated in the BLC 2004 agreement) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go further and also require AT&T North Carolina to give BLC additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T North Carolina to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

VI. JURISDICTION

16. The Commission has jurisdiction to interpret and enforce the terms of the interconnection agreement(s) at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,⁷ arbitrate interconnection agreements,⁸ and approve or reject interconnection agreements.⁹ In addition, the courts have held that section 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹⁰

⁷ 47 U.S.C. § 252(a)(2)

⁸ *Id.* § 252(b)

⁹ *Id.* § 252(e)

¹⁰ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commission have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements")

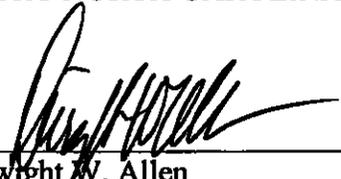
VII. REQUEST FOR RELIEF

WHEREFORE, AT&T North Carolina respectfully requests that the Commission:

- (1) Serve a copy of this Complaint and Petition upon BLC pursuant to G.S. 62-74 and NCUC Rule R1-9 and require BLC to answer the Complaint and Petition;
- (2) Find that BLC has breached the BLC 2004 agreement by wrongfully withholding amounts due and payable to AT&T North Carolina for services provided in accordance with the parties' interconnection agreement(s);
- (3) Find that AT&T North Carolina has been financially harmed as a direct result of BLC's breach;
- (4) Find that BLC is liable to AT&T North Carolina for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;
- (5) Require BLC to pay AT&T North Carolina all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and
- (6) Grant AT&T North Carolina such additional relief as the Commission may deem just and proper.

Respectfully submitted this 8th day of January, 2010

AT&T NORTH CAROLINA



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EXHIBIT K

FILED

**BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION**

FEB 25 2010

**MISS. PUBLIC SERVICE
COMMISSION**

In the Matter of: BellSouth)
Telecommunications, Inc., d/b/a AT&T)
Southeast d/b/a AT&T Mississippi vs.)
BLC Management LLC d/b/a Angles)
Communications Solutions)

Docket No. 2010-AD-12

**ANSWER AND COUNTER-CLAIMS OF BLC MANAGEMENT LLC
D/B/A ANGLES COMMUNICATIONS SOLUTIONS**

BLC Management LLC d/b/a Angles Communications Solutions ("Angles Communications Solutions" or "Respondent") responds to the Complaint filed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T Mississippi ("AT&T") concerning a billing dispute between the parties.

NARRATIVE SUMMARY

Angles Communications Solutions is a local exchange telephone company providing service to approximately 27,000 subscribers in Mississippi, most of whom are low income, residential customers. Angles Communications Solutions resells the services of AT&T. As a reseller, Angles Communications Solutions is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discount are usually sufficient to offset, in large part, Angles Communications Solutions' monthly bills from AT&T.¹

¹ AT&T's complaint implies that since Angles Communications Solutions pays little or nothing to AT&T each month for the purchase of wholesale services, the Respondent must be behind on its bills. That implication is incorrect. Angles Communications Solutions is currently up-to-date on its bills and regularly pays AT&T all amount owed, less the promotional discounts and rebates owed by AT&T to Angles Communications Solutions.

Like a grocery shopper with a pocket full of coupons, Angles Communications Solutions primarily purchases AT&T services which qualify for rebates and discounts. The rebates are often larger than the wholesale price of the service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars, the Respondent may purchase wholesale services at very little net cost. This litigation is not about whether Angles Communications Solutions pays its bills, but about the proper amount of those bills and whether AT&T is giving Angles Communications Solutions the full amount of the discounts and rebates to which a reseller is entitled under federal law. *Footnote continued on next page ...*

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes Angles Communications Solutions a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

For example, when AT&T offers new customers a rebate of "\$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "\$50 cash back."

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand,

Footnote continued from previous page

There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including Angles Communications Solutions, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of dispute between the parties. These disputes are not before the Commission at this time.

Respondent receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same \$50 rebate that AT&T offers new retail customers. Like AT&T, Respondent is no better or worse off than Respondent would be if AT&T was not offering the \$50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserve competitive neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

But AT&T does not follow the rules. When AT&T offers its retail customers a \$50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only \$40 instead of \$50, gaining a \$10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of \$30 per month, the reseller pays a wholesale rate of \$24 a month for the line (Retail rate less 20%.) If AT&T pays a \$50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of \$40 (\$50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of \$16 (the \$40 credit to the reseller less the \$24 payment to AT&T). The retail customer, on the other hand, has a net credit of \$20 at the end of the month (the \$50 credit less the \$30 tariffed price). Using AT&T's approach, the

"retail" rate is actually \$4 less than the "Wholesale" rate, a classic, illegal price squeeze. If, on the other hand, AT&T gave the reseller credit for the full, \$50 rebate, the reseller would have a net credit of \$26 (the \$50 credit to the reseller less the \$24 payment to AT&T) and the net wholesale price would, as it should, be six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Respondent contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Respondent's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of \$100, \$50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger the windfall, the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in BellSouth v. Sanford, 197 F.3d 663 (4th Circuit, 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated wholesale customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring

new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The Sanford court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer*. The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, \$50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. Freedom Communications believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends

that it is not required to offer this promotion to resellers and that it owes Freedom Communications nothing for bringing new, wholesale business to AT&T.

Finally, Angles Communications Solutions brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

- a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.
- b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.
- c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in Mississippi who resell a "\$50 cash back" promotion are entitled to receive a rebate of only \$4.66. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R. §51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T's version of the situation and require no response from Respondent. Unless below Respondent specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. Respondent is a competitive local exchange carrier certified by the Commission to offer intrastate telecommunications services. The Respondent currently serves approximately 27,000 customers in Mississippi, primarily through the resale of AT&T's services. The address of Respondent's corporate headquarters is 11121 Highway 70, Suite 202, Arlington, Tennessee 38002.

4. Because of the voluminous Exhibits to AT&T's Complaint, Respondent has not been yet able to review each page of those exhibits and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied. However, Respondent also states that it has no reason to dispute AT&T's assertion that the Exhibits are accurate copies of the interconnection agreement between AT&T and the Respondent.

5. Denied.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Respondent denies that AT&T is owed an unpaid balance. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

10. Admitted. It is AT&T, not Freedom, that has erroneously interpreted AT&T's resale obligation.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. Admitted.

AFFIRMATIVE DEFENSE

17. Respondent asks that Commission to dismiss this Complaint in deference to the primary jurisdiction of the Federal Communications Commission which currently has before it a Petition requesting a declaratory ruling on the same issues raised in this Complaint. FCC Docket 06-129.

18. In the alternative, Respondent asks that this Complaint be held in abeyance pending the outcome of two federal lawsuits pending in the United States Court of Appeals for the Fifth Circuit, *Budget PrePay, Inc. v. AT&T Inc. f/k/a SBC Communications, Inc.*, Case No. 3:09-cv-1494-P (N.D. TX), Fifth Circuit Court of Appeals, Case Nos. 09-11188 and 09-11099, oral argument scheduled for March 1, 2010, and in the United States District Court for the Western District of North Carolina, *CGM, LLC v. BellSouth Telecommunications, Inc.*, Case No. 3:09-cv-00377 (W.D.N.C.).

COUNTERCLAIMS

19. For its own retail customers, AT&T offers to waive the line connection charge, a one-time payment of about \$40. AT&T, however, refuses to give Respondent the full value of that \$40 credit, offering instead only about \$32 (the value of the retail credit less the wholesale discount). The reseller is entitled to receive the full value of the line connection waiver.

Here is a simple example, based on the assumption that the wholesale discount is 20%: When a reseller orders a new line, he pays AT&T a wholesale rate of \$32 for the line connection fee (the tariffed rate of \$40 less the 20% wholesale discount.) If AT&T waives the line connection charges for its retail customer, AT&T will give the reseller a credit of \$32 (\$40 credit less the wholesale discount). Since the \$32 charge to be reseller is offset by the \$32 credit, the reseller is charged \$0 for the line connection. If, as Respondent claims, AT&T is required to give the reseller the full, \$40 value of the waiver, the reseller would end up with a credit of \$8 instead of \$0 (the \$40 credit less the \$32 charge). Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

20. AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its

telephone services for resale at a comparable discounted rate. Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

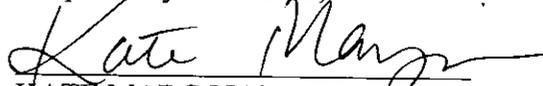
21. AT&T has recently informed Respondent that AT&T intends to reduce from approximately \$40 to \$4.66 the amount paid to resellers under AT&T's "\$50 cash back" rebate offer. Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

RELIEF SOUGHT

WHEREFORE, Respondent respectfully requests that the Commission issue an Order

1. Denying the relief sought by AT&T;
2. Dismissing this Complaint in deference to the primary jurisdiction of the FCC or, in the alternative, holding this Complaint in abeyance pending the outcome of two federal lawsuits addressing the same issues raised in this Complaint;
3. Granting Respondent's Counter Claims and such further relief as the Commission deems fair and equitable.

Respectfully Submitted,



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*ATTORNEY FOR ANGLES COMMUNICATIONS
SOLUTIONS*

CERTIFICATE OF SERVICE

I, Kate Margolis, attorney of record for BLC Management LLC d/b/a Angles Communications Solutions hereby certify that I have this day caused to be hand-delivered the original and twelve (12) copies of the above and foregoing to Brian U. Ray, Executive Secretary of the Mississippi Public Service Commission, 2nd Floor, Woolfolk Building, Jackson, Mississippi.

I further certify that I have this day served a true and correct copy by hand-delivery or by United States mail, postage prepaid, on the following:

Katherine Collier, Esq.
Attorney – Mississippi Public Service Commission
2nd Floor, Woolfolk Building
Jackson, MS 39201

George M. Fleming, Esq.
General Counsel – Mississippi Public Utilities Staff
3rd Floor, Woolfolk Building
Jackson, MS 39201

Robert G. Waites, Esq.
Executive Director – Mississippi Public Utilities Staff
3rd Floor, Woolfolk Building
Jackson, MS 39201

Thomas B. Alexander, Esq.
AT&T Mississippi
175 East Capitol Street
790 Landmark Center
Jackson, MS 39201

THIS, the 25th day of February, 2010.


KATE MARGOLIS

EXHIBIT L

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Bellsouth Telecommunications, Inc. d/b/a)	
Southeast d/b/a AT&T Kentucky)	
)	
Complainant)	
)	
v.	)	Case No. 2010-00023
)	
BLC Management LLC d/b/a Angles)	
Communications Solutions)	
)	
Defendant)	

BLC MANAGEMENT LLC D/B/A ANGLES COMMUNICATIONS SOLUTIONS
("ANGLES") ANSWER AND COUNTER-CLAIMS

BLC Management LLC d/b/a Angles Communications Solutions ("Angles" or "Defendant") responds to the Complaint filed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T") concerning a billing dispute between the parties.

NARRATIVE SUMMARY

Angles is a local exchange telephone company providing service to approximately 4,200 subscribers in Kentucky, most of whom are low income, residential customers. Angles resells the services of AT&T. As a reseller, Angles is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discount are usually sufficient

to offset, in large part, Angle's monthly bills from AT&T.¹

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes Angles a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

For example, when AT&T offers new customers a rebate of "\$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that

¹ AT&T's Complaint implies that since Angles pays little or nothing to AT&T each month for the purchase of wholesale services, the Defendant must be behind on its bills. That implication is incorrect. Angles is currently up-to-date on its bills and regularly pays AT&T all amounts owed, less the promotional discounts and rebates owed by AT&T to Angles.

There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including Angles, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of disputes between the parties. These disputes are not before the Commission at this time.

is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "\$50 cash back."²

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand, Defendant receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same \$50 rebate that AT&T offers new retail customers. Like AT&T, Defendant is no better or worse off than Defendant would be if AT&T was not offering the \$50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserves competitive neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

² Like a careful and selective grocery shopper with a pocket full of coupons, Angles primarily purchases AT&T services that qualify for rebates and discounts, then uses those services as any other reseller would. *AT&T designs its own rebates*, which are sometimes larger than the wholesale price for the first month of the required service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars (even when it intends to resell the purchased items), the Defendant may purchase wholesale services at a low net cost. This litigation is not about whether Angles pays its bills, but about whether AT&T is giving Angles the full amount of the discounts and rebates to which a reseller is entitled under federal law. When AT&T opens its "grocery store" and beckons with aggressive, competitive pricing, federal law entitles Angles to walk through the door too.

But AT&T does not follow the rules. When AT&T offers its retail customers a \$50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only \$40 instead of \$50, gaining a \$10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of \$30 per month, the reseller pays a wholesale rate of \$24 a month for the line (Retail rate less 20%.) If AT&T pays a \$50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of \$40 (\$50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of \$16 (the \$40 credit to the reseller less the \$24 payment to AT&T). The retail customer, on the other hand, has a net credit of \$20 at the end of the month (the \$50 credit less the \$30 tariffed price). Using AT&T's approach, the "retail" rate is actually \$4 less than the "wholesale" rate—a classic, illegal price squeeze. If, on the other hand, AT&T gave the reseller credit for the full, \$50 rebate, the reseller would have a net credit of \$26 (the \$50 credit to the reseller less the \$24 payment to AT&T) and the net wholesale price would, as it should, be six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Defendant contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the

wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Defendant's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of \$100, \$50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger is the windfall, and the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in *BellSouth v. Sanford*, 197 F.3d 663 (4th Cir. 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated wholesale customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The Sanford court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to

its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer*. The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, \$50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. Angles believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends that it is not required to offer this promotion to resellers and that it owes Angles nothing for bringing new, wholesale business to AT&T.

Finally, Angles brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

- a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of

equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.

- b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.
- c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in Kentucky who resell a "\$50 cash back" promotion are entitled to receive a rebate of only \$5.92. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R. §51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T Kentucky's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T Kentucky's version of the situation and require no response from Defendant. Unless below Defendant specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. The Defendant is a competitive local exchange carrier certified by the Commission to offer intrastate telecommunications services. The Defendant currently serves approximately 4,200 customers in Kentucky, primarily through the resale of AT&T's services. The address of Defendant's corporate headquarters is 11121 Highway 70, Suite 202, Arlington, TN 38002.

4. Defendant has not been yet able to review each page of Exhibit A and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied. However, Defendant also states that it has no reason to dispute AT&T's assertion that the Exhibit is an accurate copy of the interconnection agreement between AT&T and the Defendant.

5. Denied.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Defendant denies that AT&T is owed an unpaid balance. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of

the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

10. Defendant admits that it disagrees with AT&T's erroneous calculation of the rebate.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. [AT&T-KY's complaint does not include a Paragraph 16]

17. Admitted.

AFFIRMATIVE DEFENSE

18. Defendant asks that Commission to dismiss this Complaint in light of a pending Petition for Declaratory Ruling at the FCC on the same issues raised in this Complaint. *See In the matter of Petition of Image Access, Inc. d/b/a NewPhone for Declaratory Ruling Regarding Incumbent Local Exchange Carrier Promotions Available for Resale Under the Communications Act of 1934, as Amended, and Sections 51.601 et seq. of the Commission's Rules*, WC Dkt. No. 06-129. AT&T-KY's parent is an active participant in that proceeding, which is fully briefed and ripe for decision. Were this Commission to issue an order in any way inconsistent with an FCC decision in that

declaratory ruling proceeding, AT&T-KY might assert, as is its habit, that the Commission has been preempted.

19. In the alternative, Defendant asks that this Complaint be held in abeyance pending the outcome of federal lawsuits pending in the United States Court of Appeals for the Fifth Circuit, *Budget PrePay, Inc. v. AT&T Corp et al*, Case No. 09-11188, oral argument scheduled for March 1, 2010, and in the United States District Court for the Western District of North Carolina, *CGM, LLC v. BellSouth Telecommunications, Inc.*, Case No. 3:09-cv-00377 (W.D. N.C.).

COUNTERCLAIMS

20. For its own retail customers, AT&T offers to waive the line connection charge, a one-time payment of about \$40. AT&T, however, refuses to give Defendant the full value of that \$40 credit, offering instead only about \$32 (the value of the retail credit less the wholesale discount). The reseller is entitled to receive the full value of the line connection waiver.

Here is a simple example, based on the assumption that the wholesale discount is 20%: When a reseller orders a new line, he pays AT&T a wholesale rate of \$32 for the line connection fee (the tariffed rate of \$40 less the 20% wholesale discount.) If AT&T waives the line connection charges for its retail customer, AT&T will give the reseller a credit of \$32 (\$40 credit less the wholesale discount). Since the \$32 charge to be reseller is offset by the \$32 credit, the reseller is charged \$0 for the line connection. If, as Defendant claims, AT&T is required to give the reseller the full, \$40 value of the waiver, the reseller would end up with a credit of \$8 instead of \$0 (the \$40 credit less the \$32 charge). Defendant asks the Commission to declare that AT&T cannot impose this

condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

21. AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its telephone services for resale at a comparable discounted rate. Defendant asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

22. AT&T has recently informed Defendant that AT&T intends to reduce from approximately \$40 to \$5.92 the amount paid to resellers under AT&T's "\$50 cash back" rebate offer. Defendant asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

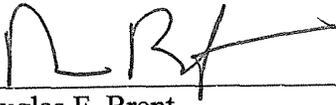
RELIEF SOUGHT

WHEREFORE, Defendant respectfully requests that the Commission issue an Order

1. Denying the relief sought by AT&T;
2. Dismissing this Complaint in deference to the primary jurisdiction of the FCC or, in the alternative, holding this Complaint in abeyance pending the outcome of two federal lawsuits addressing the same issues raised in this Complaint;
3. Granting Defendant's Counter Claims and such further relief as the Commission deems fair and equitable.

February 25, 2010

Respectfully submitted,

By:  _____

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STOLL KEENON OGDEN PLLC
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500 West Jefferson Street
Louisville, Kentucky 40202
Telephone: (502) 333-6000

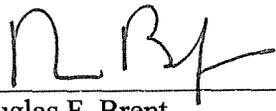
and

Henry M. Walker
(admission under SCR 3.030 to be
obtained)
BRADLEY ARANT BOULT CUMMINGS
LLP
1600 Division Street
Suite 700
Nashville, TN 37203
Telephone: (615) 244-2582

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 25th day of February, 2010.

Mary K. Keyer
AT&T Kentucky
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203



Douglas F. Brent

EXHIBIT M

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Bellsouth Telecommunications, Inc. d/b/a)	
Southeast d/b/a AT&T Kentucky)	
)	
Complainant)	
)	
v.	)	Case No. 2010-00026
)	
LifeConnex Telecom, LLC f/k/a Swiftel, LLC)	
)	
)	
Defendant)	

LIFECONNEX TELECOM, LLC'S ANSWER AND COUNTER-CLAIMS

LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex" or "Defendant") responds to the Complaint filed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T") concerning a billing dispute between the parties.

NARRATIVE SUMMARY

LifeConnex is a local exchange telephone company providing service to approximately 4,200 subscribers in Kentucky, most of whom are low income, residential customers. LifeConnex resells the services of AT&T. As a reseller, LifeConnex is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and

discount are usually sufficient to offset, in large part, LifeConnex's monthly bills from AT&T.¹

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes LifeConnex a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

¹ AT&T's Complaint implies that since LifeConnex pays little or nothing to AT&T each month for the purchase of wholesale services, the Defendant must be behind on its bills. That implication is incorrect. LifeConnex is currently up-to-date on its bills and regularly pays AT&T all amounts owed, less the promotional discounts and rebates owed by AT&T to LifeConnex.

There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including LifeConnex, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of disputes between the parties. These disputes are not before the Commission at this time.

For example, when AT&T offers new customers a rebate of "\$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "\$50 cash back."²

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand, Defendant receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same \$50 rebate that AT&T offers new retail customers. Like AT&T, Defendant is no better or worse off than Defendant would be if AT&T was not offering the \$50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserves competitive

² Like a careful and selective grocery shopper with a pocket full of coupons, LifeConnex primarily purchases AT&T services that qualify for rebates and discounts, then uses those services as any other reseller would. *AT&T designs its own rebates*, which are sometimes larger than the wholesale price for the first month of the required service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars (even when it intends to resell the purchased items), a telecommunications reseller may purchase wholesale services at a low net cost. This litigation is not about whether LifeConnex pays its bills, but about whether AT&T is giving LifeConnex the full amount of the discounts and rebates to which a reseller is entitled under federal law. When AT&T opens its "grocery store" and beckons with aggressive, competitive pricing, federal law entitles LifeConnex to walk through the door too.

neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

But AT&T does not follow the rules. When AT&T offers its retail customers a \$50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only \$40 instead of \$50, gaining a \$10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of \$30 per month, the reseller pays a wholesale rate of \$24 a month for the line (Retail rate less 20%.) If AT&T pays a \$50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of \$40 (\$50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of \$16 (the \$40 credit to the reseller less the \$24 payment to AT&T). The retail customer, on the other hand, has a net credit of \$20 at the end of the month (the \$50 credit less the \$30 tariffed price). Using AT&T's approach, the "retail" rate is actually \$4 less than the "wholesale" rate—a classic, illegal price squeeze. If, on the other hand, AT&T gave the reseller credit for the full, \$50 rebate, the reseller would have a net credit of \$26 (the \$50 credit to the reseller less the \$24 payment to AT&T) and the net wholesale price would, as it should, be six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Defendant contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Defendant's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of \$100, \$50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger is the windfall, and the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in *BellSouth v. Sanford*, 197 F.3d 663 (4th Cir. 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated wholesale customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The *Sanford* court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer*. The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, \$50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. LifeConnex believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends that it is not required to offer this promotion to resellers and that it owes LifeConnex nothing for bringing new, wholesale business to AT&T.

Finally, LifeConnex brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

- a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.
- b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.
- c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in Kentucky who resell a "\$50 cash back" promotion are entitled to receive a rebate of only \$5.92. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R. §51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T Kentucky's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T Kentucky's version of the situation and require no response from Defendant. Unless below Defendant specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. The Defendant is a competitive local exchange carrier certified by the Commission to offer intrastate telecommunications services. The Defendant currently serves approximately 20,000 customers in Kentucky, primarily through the resale of AT&T's services. The address of Defendant's corporate headquarters is 13700 Perdido Key Drive, Unit B222, Perdido Key, Florida 32057.

4. Defendant has not been yet able to review each page of Exhibit A and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied. However, Defendant also states that it has no reason to dispute AT&T's assertion that the Exhibit is an accurate copy of the interconnection agreement between AT&T and the Defendant.

5. Denied.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Defendant denies that AT&T is owed an unpaid balance. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

10. Defendant admits that it disagrees with AT&T's erroneous calculation of the rebate.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. [AT&T-KY's complaint does not include a Paragraph 16]

17. Admitted.

AFFIRMATIVE DEFENSE

18. Defendant asks that Commission to dismiss this Complaint in light of a pending Petition for Declaratory Ruling at the FCC on the same issues raised in this Complaint. *See In the matter of Petition of Image Access, Inc. d/b/a NewPhone for*

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RELIEF SOUGHT

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3. Granting Defendant's Counter Claims and such further relief as the Commission deems fair and equitable.

February 25, 2010

Respectfully submitted,

By: 

Douglas F. Brent
STOLL KEENON OGDEN PLLC
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500 West Jefferson Street
Louisville, Kentucky 40202
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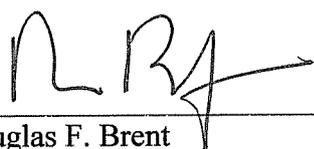
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1600 Division Street
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Telephone: (615) 244-2582

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 25th day of February, 2010.

Mary K. Keyer
AT&T Kentucky
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203



Douglas F. Brent

EXHIBIT N

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

BellSouth Telecommunications, Inc.)			
d/b/a AT&T Southeast d/b/a AT&T Tennessee)			
	)	Docket	No.	10-00008
vs.)			
)			
BLC Management, LLC d/b/a Angles)			
Communications Solutions)			

**ANSWER AND COUNTER-CLAIMS OF BLC MANAGEMENT, LLC D/B/A ANGLES
COMMUNICATIONS SOLUTIONS**

BLC Management, LLC, d/b/a Angles Communications Solutions ("Angles" or "Respondent") responds to the Complaint filed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T Tennessee ("AT&T") concerning a billing dispute between the parties.

NARRATIVE SUMMARY

Angles is a local exchange telephone company providing service to approximately 29,000 subscribers in Tennessee, most of whom are low income, residential customers. Angles resells the services of AT&T. As a reseller, Angles is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discount are usually sufficient to offset, in large part, Angles' monthly bills from AT&T.¹

¹ AT&T's Complaint implies that since Angles pays little or nothing to AT&T each month for the purchase of wholesale services, the Respondent must be behind on its bills. That implication is incorrect. Angles is currently up-to-date on its bills and regularly pays AT&T all amounts owed, less the promotional discounts and rebates owed by AT&T to Angles.

Like a grocery shopper with a pocket full of coupons, Angles primarily purchases AT&T services which qualify for rebates and discounts. The rebates are often larger than the wholesale price of the service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars, the Respondent may purchase wholesale services at very little net cost. This litigation is not about whether Angles pays its bills, but about whether AT&T is giving Angles the full amount of the discounts and rebates to which a reseller is entitled under federal law.

(footnote continued on following page ...)

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes Angles a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

For example, when AT&T offers new customers a rebate of "\$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "\$50 cash back."

(... footnote continued from previous page)

There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including Angles, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of disputes between the parties. These disputes are not before the Authority at this time.

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand, Respondent receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same \$50 rebate that AT&T offers new retail customers. Like AT&T, Respondent is no better or worse off than Respondent would be if AT&T was not offering the \$50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserves competitive neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

But AT&T does not follow the rules. When AT&T offers its retail customers a \$50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only \$40 instead of \$50, gaining a \$10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of \$30 per month, the reseller pays a wholesale rate of \$24 a month for the line (Retail rate less 20%.) If AT&T pays a \$50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of \$40 (\$50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of \$16 (the \$40 credit to the reseller less

the \$24 payment to AT&T). The retail customer, on the other hand, has a net credit of \$20 at the end of the month (the \$50 credit less the \$30 tariffed price). Using AT&T's approach, the "retail" rate is actually \$4 less than the "Wholesale" rate -- a classic, illegal price squeeze. If, on the other hand, AT&T gave the reseller credit for the full, \$50 rebate, the reseller would have a net credit of \$26 (the \$50 credit to the reseller less the \$24 payment to AT&T) and the net wholesale price would be (as it should be) six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Respondent's contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Respondent's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of \$100, \$50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger the windfall, the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in BellSouth v. Sanford, 197 F.3d 663 (4th Circuit, 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated wholesale customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring

new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The Sanford court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer*. The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, \$50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. Angles believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends that it is not required to offer this promotion to resellers and that it owes Angles nothing for bringing new, wholesale business to AT&T.

Finally, Angles brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

- a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.
- b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.
- c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in Tennessee who resell a "\$50 cash back" promotion are entitled to receive a rebate of only \$3.65. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R. §51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T's version of the situation and require no response from

Respondent. Unless below Respondent specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. The Respondent is a competitive local exchange carrier certified by the Authority to offer intrastate telecommunications services. The Respondent currently serves approximately 29,000 customers in Tennessee, primarily through the resale of AT&T's services. The address of Respondent's corporate headquarters is 1121 Highway 70, Suite 207, Arlington, Tennessee 38002.

4. Respondent has not been yet able to review each page of Exhibit A and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. However, Respondent also states that it has no reason to dispute AT&T's assertion that the Exhibit is an accurate copy of the interconnection agreement between AT&T and the Respondent.

5. Denied

6. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Respondent denies that AT&T is owed an unpaid balance. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

10. Admitted. AT&T, not Respondent, has erroneously interpreted AT&T's resale obligation.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. Admitted.

AFFIRMATIVE DEFENSE

17. Respondent asks the Authority to dismiss this Complaint in deference to the primary jurisdiction of the Federal Communications Commission which currently has before it a Petition requesting a declaratory ruling on the same issues raised in this Complaint. FCC Docket WC 06-129, *In the matter of Petition of Image Access, Inc., d/b/a NewPhone for Declaratory Ruling Regarding Incumbent Local Exchange Carrier Promotions Available for Resale Under the Communications Act of 1934, as Amended, and Sections 51.601 et seq. of the Commission's Rules.*

18. In the alternative, Respondent asks that this Complaint be held in abeyance pending the outcome of two federal lawsuits. One is pending in the United States Court of Appeals for the Fifth Circuit, *Budget PrePay, Inc., v. AT&T f/k/a SBC Communications, Inc.*, Case No. 3:09-cv-1494-P (N.D. TX), where oral argument is scheduled for March 1, 2010. The other is pending in the United States District Court for the Western District of North Carolina, *CGM, LLC v. BellSouth Telecommunications, Inc.*, Case No. 3:09-cv-00377 (W.D.N.C.).

COUNTERCLAIMS

19. For its own retail customers, AT&T offers to waive the line connection charge, a one-time payment of about \$40. AT&T, however, refuses to give Respondent the full value of that \$40 credit, offering instead only about \$32 (the value of the retail credit less the wholesale discount). The reseller is entitled to receive the full value of the line connection waiver.

Here is a simple example, based on the assumption that the wholesale discount is 20%: When a reseller orders a new line, he pays AT&T a wholesale rate of \$32 for the line connection fee (the tariffed rate of \$40 less the 20% wholesale discount.) If AT&T waives the line connection charges for its retail customer, AT&T will give the reseller a credit of \$32 (\$40 credit less the wholesale discount). Since the \$32 charge to be reseller is offset by the \$32 credit, the reseller is charged \$0 for the line connection. If, as Respondent claims, AT&T is required to give the reseller the full, \$40 value of the waiver, the reseller would end up with a credit of \$8 instead of \$0 (the \$40 credit less the \$32 charge). Respondent asks the Authority to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

20. AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its telephone services for resale at a comparable discounted rate. Respondent asks the Authority to

declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

21. AT&T has recently informed Respondent that AT&T intends to reduce from approximately \$40 to \$3.65 the amount paid to resellers under AT&T's "\$50 cash back" rebate offer. Respondent asks the Authority to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

RELIEF SOUGHT

WHEREFORE, Respondent respectfully requests that the Authority issue an Order

1. Denying the relief sought by AT&T;
2. Dismissing this Complaint in deference to the primary jurisdiction of the FCC or, in the alternative, holding this Complaint in abeyance pending the outcome of two federal lawsuits addressing the same issues raised in this Complaint;
3. Granting Respondent's Counter Claims and such further relief as the Authority deems fair and equitable.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS, LLP

By: 

Henry Walker (No. 000272)
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363
*Attorneys for BLC Management, LLC
dba Angles Communications Solutions*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to Guy Hicks, AT&T Tennessee, 330 Commerce Street, Nashville, TN 37219 on this the 25 day of February, 2010.

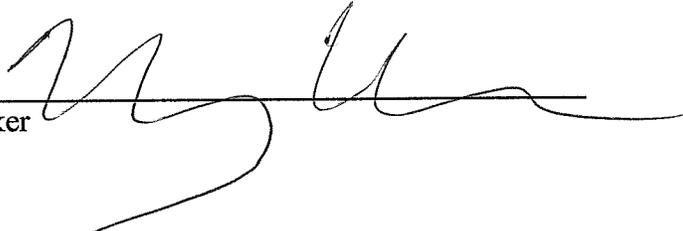
Henry Walker 

EXHIBIT O

OFFICIAL COPY

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

IN THE MATTER OF:)
BELLSOUTH TELCOMMUNICATIONS,)
INC., D/B/A AT&T SOUTHEAST D/B/A)
AT&T NORTH CAROLINA)

DOCKET NO. P-1415, SUB 2

vs.)
)
BLC MANAGEMENT, LLC, d/b/a)
ANGLES COMMUNICATIONS)
SOLUTIONS)

FILED
FEB 25 2010
Clerk's Office
N.C. Utilities Commission

ANSWER AND COUNTER-CLAIMS OF BLC MANAGEMENT, LLC, D/B/A ANGLES COMMUNICATIONS SOLUTIONS

BLC Management, LLC d/b/a Angles Communications Solutions (“Angles”) responds to the Complaint and Petition for Relief (“Complaint”) filed by Bellsouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina (“AT&T”), and further asserts the following Counter-Claims.

NARRATIVE SUMMARY

Angles is a local exchange telephone company providing service to approximately 9,700 subscribers in North Carolina, most of whom are low income, residential customers. Angles resells the services of AT&T. As a reseller, Angles is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discount are usually sufficient to offset, in large part, Angles' monthly bills from AT&T.¹

¹ AT&T's Complaint implies that since Angles pays little or nothing to AT&T each month for the purchase of wholesale services, the Respondent must be behind on its bills. That implication is incorrect. Angles is currently up-to-date on its bills and regularly pays AT&T all amounts owed, less the promotional discounts and rebates owed by AT&T to Angles.

Like a grocery shopper with a pocket full of coupons, Angles primarily purchases AT&T services which qualify for rebates and discounts. The rebates are often larger than the wholesale price of the service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars, the Respondent may purchase wholesale services at very little net cost. This litigation is not about whether Affordable pays its bills, but about whether AT&T is giving Angles the full amount of the discounts and rebates to which a reseller is entitled under

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes Angles a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

For example, when AT&T offers new customers a rebate of "\$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "\$50 cash back."

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand,

federal law. There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including Angles, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of disputes between the parties. These disputes are not before the Commission at this time.

Respondent receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same \$50 rebate that AT&T offers new retail customers. Like AT&T, Respondent is no better or worse off than Respondent would be if AT&T was not offering the \$50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserves competitive neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

But AT&T does not follow the rules. When AT&T offers its retail customers a \$50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only \$40 instead of \$50, gaining a \$10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of \$30 per month, the reseller pays a wholesale rate of \$24 a month for the line (Retail rate less 20%.) If AT&T pays a \$50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of \$40 (\$50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of \$16 (the \$40 credit to the reseller less the \$24 payment to AT&T). The retail customer, on the other hand, has a net credit of \$20 at the end of the month (the \$50 credit less the \$30 tariffed price). Using AT&T's approach, the "retail" rate is actually \$4 less than the "wholesale" rate - a classic, illegal price squeeze. If, on

the other hand, AT&T gave the reseller credit for the full, \$50 rebate, the reseller would have a net credit of \$26 (the \$50 credit to the reseller less the \$24 payment to AT&T) and the net wholesale price would be (as it should be) six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Respondent's contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Respondent's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of \$100, \$50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger the windfall, the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in BellSouth v. Sanford, 197 F.3d 663 (4th Circuit, 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The Sanford court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer*. The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, \$50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. Angles believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends that it is not required to offer this promotion to resellers and that it owes Angles nothing for bringing new, wholesale business to AT&T.

Finally, Angles brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

- a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.
- b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.
- c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in North Carolina who resell a "\$50 cash back" promotion are entitled to receive a rebate of only \$4.55. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R. §51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T's version of the situation and require no response from Respondent. Unless below Respondent specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. The Respondent is a competitive local exchange carrier certified by the Commission to offer intrastate telecommunications services. The Respondent currently serves approximately 9,700 customers in North Carolina, primarily through the resale of AT&T's services. The address of Respondent's corporate headquarters is 11121 Highway 70, Suite 202, Arlington, Tennessee, 38002.

4. Because of the voluminous Exhibits to AT&T's Complaint, Respondent has not been yet able to review each page of those exhibits and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied. However, Respondent also states that it has no reason to dispute AT&T's assertion that the Exhibits are accurate copies of the interconnection agreement between AT&T and the Respondent.

5. Denied.

6. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Respondent denies that AT&T is owed an unpaid balance.

10. Respondent admits that it disagrees with AT&T's erroneous calculation of the rebate.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. Admitted

AFFIRMATIVE DEFENSE

17. Respondent asks the Commission to dismiss this Complaint in deference to the primary jurisdiction of the Federal Communications Commission, which currently has before it a Petition requesting a declaratory ruling on the same issues raised in this Complaint. FCC Docket WC 06-129, *In the Matter of Petition for Image Access, Inc., d/b/a NewPhone, for declaratory ruling regarding incumbent local exchange carrier promotions available for resale under the communications act of 1934, as amended, and Sections 51.601 et sec of the Commission's Rules.*

18. In the alternative, Respondent asks that this Complaint be held in abeyance pending the outcome of two federal lawsuits. One is pending in the United States Court of Appeals for the Fifth Circuit, *Budget PrePay, Inc. v. AT&T*, Case No. 3:09-CV-1494-P (Northern District of Texas). Oral argument scheduled for March 1, 2010. The other case is pending in the United States District Court for the Western District of North Carolina, *CGM v. Bellsouth Telecommunications, Inc.*, Case No. 3:09-CV-00377 (Western District North Carolina).

COUNTERCLAIMS

19. For its own retail customers, AT&T offers to waive the line connection charge, a one-time payment of about \$40. AT&T, however, refuses to give Respondent the full value of that \$40 credit, offering instead only about \$32 (the value of the retail credit less the wholesale discount). The reseller is entitled to receive the full value of the line connection waiver.

Here is a simple example, based on the assumption that the wholesale discount is 20%: When a reseller orders a new line, he pays AT&T a wholesale rate of \$32 for the line connection fee (the tariffed rate of \$40 less the 20% wholesale discount.) If AT&T waives the line connection charges for its retail customer, AT&T will give the reseller a credit of \$32 (\$40 credit less the wholesale discount). Since the \$32 charge to be reseller is offset by the \$32 credit, the reseller is charged \$0 for the line connection. If, as Respondent claims, AT&T is required to give the reseller the full, \$40 value of the waiver, the reseller would end up with a credit of \$8 instead of \$0 (the \$40 credit less the \$32 charge). Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

20. AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its

telephone services for resale at a comparable discounted rate. Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

21. AT&T has recently informed Respondent that AT&T intends to reduce from approximately \$40 to \$4.55 the amount paid to resellers under AT&T's "\$50 cash back" rebate offer. Respondent asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

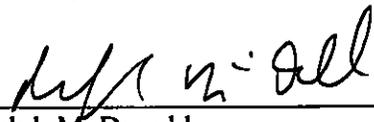
RELIEF SOUGHT

WHEREFORE, Respondent respectfully requests that the Commission issue an Order

1. Denying the relief sought by AT&T;
2. Dismissing this Complaint in deference to the primary jurisdiction of the FCC or, in the alternative, holding this Complaint in abeyance pending the outcome of two federal lawsuits addressing the same issues raised in this Complaint;
3. Granting Respondent's Counter Claims and such further relief as the Commission deems fair and equitable.

Respectfully submitted this 25th day of February, 2010.

Respectfully submitted,

By: 
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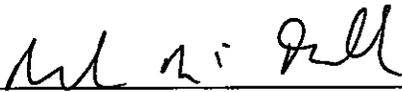
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ANGLES COMMUNICATIONS SOLUTIONS

CERTIFICATE OF SERVICE

The undersigned attorney for BLC Management, LLC d/b/a Angles Communications Solutions certifies that on this day the foregoing Answer and Counterclaim was served upon the parties in this docket by depositing a copy in the United States mail.

February 25, 2010.



Ralph McDonald

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