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Sent: Monday, October 08, 2012 3:06 PM
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Subject: Docket No. 120231- TP
Attachments: Budget Motion to Dismiss-Final 10.8.12.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 120231- TP.
- c. The document is filed on behalf of Budget Prepay, Inc.
- d. The total pages in the document are 15 pages.
- e. The attached document is BUDGET PREPAY, INC'S MOTION TO DISMISS COUNTERCLAIM.

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DOCUMENT NUMBER-DATE

06843 OCT-8 2012

FPSC-COMMISSION CLERK

10/8/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BUDGET PREPAY, INC.

DOCKET NO. 120231- TP

Filed: October 8, 2012

BUDGET PREPAY, INC'S MOTION TO DISMISS COUNTERCLAIM

Budget Prepay, Inc. ("Budget"), by and through its undersigned counsel, pursuant to rule 28-106.204(2), Florida Administrative Code, files this motion to dismiss the counterclaim filed by BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T"). As grounds for this motion, Budget states:

I. Introduction

1. On August 28, 2012, Budget filed a Complaint against AT&T, due to AT&T's failure to *inter alia* apply the resale discount to services Budget purchases from AT&T, as required by the parties' Interconnection Agreement ("ICA"), by federal law and by applicable state law.
2. On September 17, 2012, AT&T filed a counterclaim, in which AT&T alleged that Budget has breached the parties' ICA by failing to pay certain amounts AT&T claims are due under the ICA.¹
3. AT&T's counterclaim fails to state a cause of action for which relief can be granted and must be dismissed or held in abeyance for the reasons set forth below.

II. AT&T Has Failed to State a Cause of Action for Which Relief Can Be Granted

- A. *AT&T Has Failed to Follow the Required Dispute Resolution Process Prior to Filing Its Counterclaim.*
4. AT&T has attempted to state a cause of action against Budget for an alleged breach of the parties' ICA. AT&T claims that Budget has failed to pay certain billed amounts AT&T

¹ AT&T's Answer and Counterclaim summarizes AT&T's position on substantive issues being raised by Budget in its Complaint. Budget intends to address the merits of AT&T's allegations and requests (including AT&T's request for withheld billings to be escrowed) at the appropriate time should Budget's Motion to Dismiss be denied.

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FPSC-COMMISSION CLERK

claims are due and owing. (AT&T counterclaim, ¶¶ 18-22.). However, AT&T's counterclaim must be dismissed because AT&T has failed to follow the required procedures in the parties' ICA which are conditions precedent to bringing a billing dispute before this Commission.

5. Specifically, Section 2.1, Attachment 7 of the ICA states:

Each party agrees to notify the other Party in writing upon discovery of a billing dispute. Level 3² shall report all billing disputes to BellSouth using the Billing Adjustment Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

A copy of Section 2 of Attachment 7 quoted above is attached as Exhibit 1 to this motion.

6. Section 10 of the General Terms and Conditions section of the ICA, to which Section 2.1 above refers, is entitled Resolution of Disputes. It provides in pertinent part that:

10.1 ...each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. If the Parties are unable to resolve the issues relating to the dispute in the normal course of business within (30) days after delivery of notice of the dispute, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of the Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.

10.2 If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the appointment of designated representatives pursuant to Section 10.1, then either Party may file a complaint with the Commission to resolve such issues, or as explicitly otherwise provided for in this Agreement, may proceed with any other remedy pursuant to law or equity.

A copy of Section 10 of the General Terms and Conditions referenced and quoted above is attached as Exhibit 2 to this motion.

² Budget adopted the Level 3 ICA. See, Docket No. 080675-TP, memo to file, Feb. 2, 2012.

7. AT&T has failed to provide Budget written notification of a billing dispute as the parties' ICA requires. AT&T has failed to provide Budget written notification of any dispute concerning the ICA as the parties' ICA requires. Furthermore, AT&T has failed to appoint a designated representative as set forth in the ICA dispute resolution provisions. Finally, no meeting has taken place as required by the ICA. These steps – written notice, appointment of a designated representative and significant attempts, including a meeting, to resolve the dispute for at least 30 days before filing a complaint with the Commission -- are conditions precedent to AT&T filing a complaint with the Commission, as detailed in section 10.2 of the General Terms and Conditions of the ICA.

8. Florida law is clear that dispute resolution is a condition precedent to maintaining a formal legal action must be performed before formal legal action may be pursued. *See, Auchter v. Zagloul*, 949 So.2d 1189, 1194 (Fla. 1st DCA 2007) (holding that dispute resolution procedures of parties' agreement should be enforced; motion to dismiss for failure to pursue alternative dispute resolution should have been granted and dispute resolution terms of parties' agreement should be given effect). Furthermore, as a matter of policy, the Commission should enforce contractual provisions that compel the parties to sit down in good faith and work toward resolution of a disputed issue.

9. AT&T has recognized the contractual obligation of a party to follow the dispute resolution process in the ICA to escalate and preserve a claim. In a post-interconnection dispute initiated by Nexus Communications, Inc., AT&T Texas moved to dismiss Nexus' petition, arguing that Nexus failed to comply with the ICA's provisions regarding informal dispute resolution.³ AT&T Texas stated in its response to the petition that “[p]ursuant to the parties' interconnection

³ *See, Petition of Nexus Communications, Inc. for Post-Interconnection Dispute Resolution with Southwestern Bell Tel. Co. d/b/a AT&T Tex. under FTA Relating to Recovery of Promotional Credit Due*, Docket No. 39028, AT&T Texas' Response to Nexus' Petition for Post-Interconnection Dispute at 7 (Tex. P.U.C. Jan. 7, 2011). (*See Exhibit 3 to this Motion to Dismiss*).

agreement, prior to the filing of a formal complaint, the disputing party is required to engage in the informal resolution of disputes.”⁴ AT&T Texas further stated that not only is doing so legally required under the terms of the ICA, the informal dispute resolution process of the ICA provides value to the case:

Engaging in informal dispute resolution would shed some much-needed light on the scope and specifics of Nexus’ claims, and would grant the parties the opportunity to attempt to resolve the dispute or at least narrow the issues.⁵

Other AT&T ILECs have made similar claims in asserting affirmative defenses to complaints. In answering a complaint filed by dPi Teleconnect, LLC (“dPi”), AT&T North Carolina argued that dPi had a “contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the applicable provisions of the parties’ ICA(s).”⁶ In briefing, AT&T North Carolina relied upon the provision in Attachment 7, §2.1 of its 2007 ICA with dPi, to support its claim that dPi was required to “pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth’s Interconnection Services Web site, or the billing dispute shall be considered denied and closed.”⁷ AT&T Kentucky also raised the contractual obligations of parties to an ICA to escalate and pursue claims under the terms of the ICA in response to a complaint filed by dPi.⁸

⁴ *Id.*

⁵ *Id.*

⁶ See *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc.*, Docket No. P-55, Sub 1577, Answer of BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina at 4-5 (N.C.U.C. May 2, 2008). (See Exhibit 4 to this Motion to Dismiss.)

⁷ See *dPi Teleconnect, LLC v. BellSouth Telecomms., Inc.*, Docket No. P-55, Sub 1577, AT&T North Carolina’s Post-Hearing Brief at 20 (N.C.U.C. Feb. 19, 2010). (See Exhibit 5 to this Motion to Dismiss.)

⁸ *dPi Teleconnect, LLC. v. BellSouth Telecommunications., Inc., d/b/a AT&T Kentucky.*, Case No. 2009-00127, Answer of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky to Complaint at 5 (Ky. P.S.C. June 11, 2009). (See Exhibit 6 to this Motion to Dismiss.)

10. Budget, before filing its complaint, complied or made its best efforts to comply with the dispute resolution provisions of the parties' ICA.⁹ In contrast, AT&T has opted to disregard those very same contractual provisions.

11. AT&T has failed to comply with the express terms of the ICA which make dispute resolution a condition precedent before it can seek relief from this Commission.

WHEREFORE, Budget respectfully requests that:

1. AT&T's counterclaim be dismissed or held in abeyance pending fulfillment of the ICA's dispute resolution provisions; and
2. The Commission grants such other relief as appropriate.

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⁹ AT&T has not suggested that Budget has failed to comply with the dispute resolution terms of the contract, and thus Budget's compliance is not at issue.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Dismiss has been furnished by Electronic Mail (*) and U.S. Mail to the following, this 8th day of October 2012:

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s/ Jon C. Moyle, Jr.
Jon C. Moyle, Jr.

1.8.5 In the event Level 3 fails to remit to BellSouth any deposit requested pursuant to this Section, service to Level 3 may be terminated in accordance with the terms of Section 1.7 of this Attachment, and any security deposits will be applied to Level 3's account(s). In the event Level 3 defaults on its account, service to Level 3 will be terminated in accordance with the terms of Section 1.7 and any security deposits will be applied to Level 3's account.

1.9 Notices. Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, including notices relating to security deposits, disconnection of services for nonpayment of charges, and rejection of additional orders from Level 3, shall be forwarded to the individual and/or address provided by Level 3 in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by Level 3 as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, upon written request from Level 3 to BellSouth's billing organization, the notice of discontinuance of services purchased by Level 3 under this Agreement provided for in Section 1.7.2 of this Attachment shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.

1.10 Rates. Rates for Optional Daily Usage File (ODUF), Access Daily Usage File (ADUF), Enhanced Optional Daily Usage File (EODUF) and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. BILLING DISPUTES

2.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. Level 3 shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

2.2 For purposes of this Section 2, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party in good faith, and supported by written documentation as set forth in Section 2.1 above, which clearly shows the basis for disputing charges. A billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute,

nor shall a billing dispute include the refusal to pay other undisputed amounts owed by the billed Party until the dispute is resolved. Level 3 may withhold disputed amounts until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved ultimately in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute and including any late payments applied to the disputed amounts, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute in accordance with this section 2. In the event the billing dispute is ultimately resolved in favor of the disputing party, the disputing Party shall not be liable for any of the disputed amounts or any of the associated late payments

- 2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge and interest, where applicable, shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date multiplied by the late factor as set forth in the following BellSouth tariffs: for services purchased from the General Subscribers Services Tariff for purposes of resale and for ports and non-designed loops, Section A2 of the General Subscriber Services Tariff; for services purchased from the Private Line Tariff for purposes of resale, Section B2 of the Private Line Service Tariff; and for designed network elements and other services and local interconnection charges, Section E2 of the Access Service Tariff.

3. RAO HOSTING

- 3.1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to Level 3 by BellSouth will be in accordance with the methods and practices regularly applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 3.2 Level 3 shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 3.3 Charges or credits, as applicable, will be applied by BellSouth to Level 3 on a monthly basis in arrears. Amounts due (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.

- 9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser who has the legal authority to possess and disclose the Information; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith; Recipient will give notice as required by the state or federal rules or by regulatory agency rules/requirements, or if there is no requirement, in a commercially reasonable time.
- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.
- 9.8 Each Party shall comply with rules regarding the use of Customer Proprietary Network Information (as that term is described in the Act) as set forth in Section 222 of the Act and in effective and applicable FCC rules and orders.
10. **Resolution of Disputes**
- 10.1 Except for procedures that outline the resolution of billing disputes which are set forth in Section 2 of Attachment 7, each Party agrees to notify the other Party in writing of a dispute concerning this Agreement. If the Parties are unable to resolve the issues relating to the dispute in the normal course of business within thirty (30) days after delivery of notice of the dispute, each of the parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility

for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute.

10.2 If the Parties are unable to resolve issues related to the dispute within thirty (30) days after the Parties' appointment of designated representatives pursuant to Section 10.1, then either Party may file a complaint with the Commission to resolve such issues, or as explicitly otherwise provided for in this Agreement, may proceed with any other remedy pursuant to law or equity.

10.3 Except as otherwise stated in this Agreement, or for such matters which lie outside the jurisdiction or expertise of the Commission or FCC, if any dispute arises as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, the aggrieved party, to the extent seeking resolution of such dispute, must seek such resolution before the Commission or the FCC in accordance with the Act. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Either Party may seek expedited resolution by the Commission. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however, that neither Party shall be required to act in an unlawful fashion.

10.4 Except to the extent the Commission is authorized to grant temporary equitable relief with respect to a dispute arising as to the enforcement of terms and conditions of this Agreement, and/or as to the interpretation of any provision of this Agreement, this Section 10 shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order, in a court of competent jurisdiction.

10.5 In addition to Sections 10.1 and 10.2 above, each Party shall have the right to seek legal and equitable remedies on any and all legal and equitable theories in any court of competent jurisdiction for any and all claims, causes of action, or other proceedings not arising: (i) as to the enforcement of any provision of this Agreement, or (ii) as to the enforcement or interpretation under applicable federal or state telecommunications law. Moreover, if the Commission would not have authority to grant an award of damages after issuing a ruling finding fault or liability in connection with a dispute under this Agreement, either Party may pursue such award in any court of competent jurisdiction after such Commission finding.

11. Taxes

11.1 **Definition.** For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether

*bill) is not the 'retail rate charged to subscribers' under §252(d)(3) because the nominal tariff does not reflect the value of the incentives."*¹¹

II.
NEXUS HAS FAILED TO COMPLY WITH ICA PROVISIONS REGARDING
INFORMAL DISPUTE RESOLUTION

Pursuant to the parties' interconnection agreement, prior to the filing of a formal complaint, the disputing party is required to engage in the informal resolution of disputes.¹² Nexus has made no such request, choosing instead to file a complaint at the Commission in the first instance. For this reason, AT&T Texas contends that based on the requirements of the parties' agreement, Nexus should withdraw its complaint until such time as the parties have had an opportunity to engage in informal dispute resolution discussions. Not only is doing so legally required under the terms of the ICA, it would also have positive practical effects in this case. Nexus' Complaint is long on broad generalizations and short on specifics. While Nexus challenges "each and every one" of AT&T Texas' cashback promotions, going back to the "parties' first ICA," it never identifies which promotions it is referring to, nor does it allege or explain how its service was subject to the promotions. There is simply no specification or quantification of Nexus' claims. Moreover, challenges going back that far may well be outside the interconnection agreement's 24 month limitation on such disputes.¹³ Engaging in informal dispute resolution would shed some much-needed light on the scope and specifics of Nexus' claims, and would grant the parties the opportunity to attempt to resolve the dispute or to at least narrow the issues.

¹¹ *Id.* at 450 (emphasis added).

¹² See Attachment A, General Terms and Conditions Section 11.3.

¹³ See Attachment A, General Terms and Conditions Section 11.1.

dPi in this case are "cash back" promotions. Except as expressly admitted herein, the remaining allegations of Paragraph 8 of the Complaint are denied.

8. Responding to the allegations set forth in Paragraph 9 of the Complaint, AT&T North Carolina denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. Except as expressly admitted herein, the remaining allegations of Paragraph 9 of the Complaint are denied.

9. AT&T North Carolina denies the allegations set forth in Paragraph 10 of the Complaint and demands strict proof thereof.

DPI TELECONNECT'S FIRST CAUSE OF ACTION

10. Responding to the allegations set forth in Paragraph 11 of the Complaint, AT&T North Carolina incorporates by reference Paragraphs 1 through 9 of this Answer. AT&T North Carolina denies the allegations set forth in Paragraph 11 of the Complaint and demands strict proof thereof.

CONCLUSION AND PRAYER FOR RELIEF

11. Responding to the "CONCLUSION AND PRAYER FOR RELIEF" portion of the Complaint, AT&T North Carolina denies that dPi is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

12. dPi has failed to state a claim upon which relief can be granted.
13. dPi's claims are barred by the doctrines of laches, estoppel, and waiver.
14. dPi's claims are barred by the statute of limitations.
15. dPi has (or had) a contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the

applicable provisions of the parties' ICA(s). Upon information and belief, dPi failed to do so. Accordingly, dPi should be barred from pursuing claims that it failed to contractually preserve.

WHEREFORE, having responded to the Complaint, AT&T North Carolina respectfully requests that the Commission issue an Order dismissing the Complaint and granting such further relief as the Commission deems just and proper.

Respectfully submitted this 2nd Day of May, 2008

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In the 2007 interconnection agreement, dPi agrees to "pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services Web site, or the billing dispute shall be considered denied and closed." (Exhibit PLF-2, Attachment 7, Page 9, §2.1). AT&T North Carolina's witness Scot Ferguson testifies that to the best of his knowledge, dPi did not follow the escalation process required and defined by the 2007 interconnection agreement. (Tr. at 203-04; 213-14). In response, dPi's witness offers conclusory testimony that dPi's former in-house attorney (who did not testify) "escalated and attempted to resolve this issue" with an AT&T representative. (Tr. at 51-52). dPi's witness, however, conceded that he did not speak with the AT&T representative, that he was not there when dPi's former in-house attorney spoke to the AT&T representative, and that he has "no personal knowledge of anything that was said between" those two persons. (Tr. at 99-100). The Commission, therefore, should give no weight to dPi's testimony regarding that conversation. Even if it does, however, this testimony provides no details that even approach satisfying dPi's burden of proving that it followed the escalation process required and defined by the 2007 interconnection agreement. The Commission, therefore, should find that all of dPi's claims "are barred by the contract."

In the 2007 interconnection agreement, dPi further unequivocally "agrees not to submit billing disputes for amounts billed more than twelve (12) months prior to submission of a billing dispute filed for amounts billed." (*Id.*, §2.2).¹⁵ dPi stipulated that

¹⁵ Controlling Georgia law allows parties to contractually agree to a limitation period shorter than that provided by general statutes. See *Bullington v. Blakely Crop Hail, Inc.*, 668 S.E.2d 732, 735 (2008), *cert. denied* (2009) (Bullington contends that this action is subject to the six-year statute of limitation for actions on simple contracts in writing, set out in OCGA § 9-3-24, and, therefore, that the trial court erred in applying a

III. DPI TELECONNECTS'S FIRST CAUSE OF ACTION

AT&T Kentucky denies the allegations set forth in Paragraph 1 of Section III of the Complaint and demands strict proof thereof.

IV. CONCLUSION AND PRAYER FOR RELIEF

Responding to the "CONCLUSION AND PRAYER FOR RELIEF" portion of the Complaint contained in Section IV, AT&T Kentucky denies that dPi is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. dPi has failed to state a claim upon which relief can be granted.
2. dPi's claims are barred by the doctrines of laches, estoppel, and waiver.
3. dPi's claims are barred by the statute of limitations.
4. dPi has (or had) a contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the applicable provisions of the Parties' ICA(s). Upon information and belief, dPi failed to do so. Accordingly, dPi should be barred from pursuing claims that it failed to contractually preserve.
5. The Commission lacks jurisdiction to order any relief regarding non-Kentucky accounts.

WHEREFORE, having responded to the Complaint, AT&T Kentucky respectfully requests that the Commission issue an Order dismissing the Complaint and granting such further relief as the Commission deems just and proper.