Eric Fryson

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Monday, October 15, 2012 4:01 PM
To: Filings@psc.state.fl.us
Subject: 120231-TP AT&T Florida's Response in Opposition to Budget Prepay's Motion to Dismiss Counterclaim

Importance: High

Attachments: Document.pdf

Document.pdf
(10 MB)

A. Vickie Woods
BellSouth Telecommunications, LLC d/b/a AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5560
vf1979@att.com

B. Docket No. 120231-TP Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida

C. BellSouth Telecommunications, LLC d/b/a AT&T Florida
on behalf of Suzanne L. Montgomery

D. 26 pages total (includes letter, certificate of service, pleading and Exhibit Nos. 1 thru 5)

E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Budget Prepay's Motion to Dismiss Counterclaim

.pdf

at&t

Suzanne L. Montgomery
General Attorney-Florida

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5558
F : (305) 577-4491
sm6526@att.com

October 15, 2012

Ms. Ann Cole
Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 120231-TP
Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Budget Prepay's Motion to Dismiss Counterclaim, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

Suzanne L. Montgomery

cc: Parties of Record
Gregory R. Follensbee

1046045

CERTIFICATE OF SERVICE
Docket No. 120231-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 15th day of October, 2012 to the following:

Charles Murphy
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
cmurphy@psc.state.fl.us

Jon C. Moyle, Jr.
Moyle Law Firm, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, Fl 32301
Tel. No. (850) 681-3828
jmoyle@moylelaw.com
Atty. for Budget Prepay

Budget Phone
Ms. Lakisha Taylor
1325 Barksdale Blvd., Suite 200
Bossier City, LA 71111-4600
Tel. No.: (318) 671-5706
Fax No.: (318) 671-5024
davidd@budgetprepay.com

Kean Miller LLP
King/Young/Cangelosi/Tournillon
400 Convention Street, Suite 700
Baton Rouge, LA 70802
Tel. No.: (225) 389-3723
Fax No.: (225) 405-8671
Katherine.king@keanmiller.com
Randy.young@keanmiller.com
Randy.cangelosi@keanmiller.com
Carrie.tournillon@keanmiller.com
Attys. for Budget Prepay

Suzanne L. Montgomery

1046042

FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, LLC d/b/a AT&T Florida	)	Docket No. 120231-TP
	)	Filed: October 15, 2012

AT&T FLORIDA'S RESPONSE IN OPPOSITOIN TO BUDGET'S MOTION TO DISMISS COUNTERCLAIM

I. Introduction

Budget commenced this proceeding seeking a ruling from the Commission that AT&T Florida somehow breached the parties' interconnection agreement ("ICA") because Budget has not been able to obtain for resale long distance services offered by BellSouth Long Distance, Inc. The services at issue are not provided by AT&T Florida. They are not available under the ICA. Budget never tried to order them from BellSouth Long Distance, Inc. and, therefore, has never been billed for them. Yet, based on Budget's assertion that AT&T Florida has denied Budget services that AT&T Florida does not offer and that are not available to Budget under the ICA, Budget has withheld nearly three quarters of a million dollars in payments owed to AT&T Florida for local services that actually were provided under the ICA. AT&T Florida's response has been to deny the allegations in Budget's Complaint and to file a one count Counterclaim seeking payment from Budget for the amounts improperly withheld.

Budget argues that this Counterclaim is somehow not ripe because, in its view, AT&T Florida has not followed a dispute resolution process. That argument is meritless. First, the ICA does not require a dispute resolution where, as here, AT&T Florida is pursuing a collection case against Budget for failing to pay its bills in full. Second, even though it was not required to do so, AT&T Florida gave Budget every opportunity to engage in an informal dispute resolution on several occasions in the last year and a half with regard to Budget's willful contract breach of withholding payments due, and those efforts proved unsuccessful. Finally, it is nonsensical for

Budget to assert that its claim can go forward on the merits while AT&T Florida's Counterclaim – essentially the mirror image of Budget's claim – cannot. By filing its claim against AT&T Florida, Budget waived any argument it might otherwise have had to require AT&T Florida to engage in informal dispute resolution.

Budget's motion should not delay this case from going forward. The Commission should deny Budget's motion to dismiss, order Budget to answer the Counterclaim, set this matter for an issue identification meeting, and establish a procedural schedule.

II. Argument

A. The ICA Does Not Require Dispute Resolution Before Pursuing a Collection Action

At its core, AT&T Florida's Counterclaim is the regulatory equivalent of a collection action against Budget: it seeks a Commission determination that the ICA requires Budget to pay AT&T Florida nearly three quarters of a million dollars for local services Budget ordered from AT&T Florida and AT&T Florida provided to Budget. Budget may disagree with the merits of AT&T Florida's claim and may believe that it has defenses obviating its obligation to pay, but any such disagreements would not impact AT&T Florida's rights under the ICA to pursue its Counterclaim. It is apparent from the allegations in Budget's Complaint that Budget has willfully withheld payments that are due to AT&T Florida under the ICA and that AT&T Florida had to file this Counterclaim seeking a Commission determination that the ICA requires Budget to pay these amounts to AT&T Florida. Indeed, the Counterclaim is squarely connected to Budget's Complaint:

> 14. Starting in or about September, 2010, Budget has withheld from its payment of each month's bill from AT&T Florida for resale services an amount, determined unilaterally by Budget, that Budget contends represents the amount of benefits of certain long distance retail promotions to which Budget claims it is entitled.

> 15. The promotional benefits to which Budget claims it is entitled are the subject of Budget's Complaint in this matter.
>
> * * *
>
> 20. The parties' interconnection agreement does not authorize Budget to withhold payment, in full or in part, of AT&T Florida's accurate bills on the ground of a claim that Budget is entitled to promotional benefits that are not in any way tied to those bills. Consequently, even if Budget were entitled to any portion of the promotional benefits to which it claims it is entitled, Budget's refusal to pay AT&T Florida's bills in full constitutes a breach of the parties' interconnection agreement.

Counterclaim ¶¶ 14, 15, 20.

Budget argues that AT&T Florida's Counterclaim is a "billing dispute" under the ICA and, therefore, a pre-litigation dispute resolution effort is a prerequisite to filing the Counterclaim. Nowhere in Budget's motion, however, does Budget provide the ICA's definition of a "billing dispute." That definition squarely refutes Budget's position:

> 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. . . .

ICA, Attach. 7, § 2.2 (emphasis added).[1] AT&T Florida's Counterclaim is not a "billing dispute" as that term is defined in the ICA. The plain the language of Section 2.2 makes clear that a "billing dispute" is a claim made by the billed party that it disputes an "amount of money actually billed" to it. AT&T Florida does not dispute a specific amount of money that Budget

[1] The relevant pages of the ICA are attached to Budget's motion as Exhibit 1. Budget adopted the ICA between AT&T Florida and Level 3 Communications, LLC. A copy of the adoption agreement between AT&T Florida and Budget is available at http://www.psc.state.fl.us/library/FILINGS/06/00154-06/00154-06.PDF, and the Level 3 ICA is available at http://www.psc.state.fl.us/library/FILINGS/04/07202-04/07202-04.PDF.

has billed to AT&T Florida. For that matter, AT&T Florida does not dispute an amount of money it has billed to Budget. To the contrary, AT&T Florida is seeking a Commission determination that the ICA requires Budget to pay AT&T Florida the entire amount AT&T Florida has billed to Budget. Thus, Budget is flat out wrong in its argument that AT&T Florida's Counterclaim is a "billing dispute" under the ICA.

To the extent Budget asserts that its claims for credits from AT&T Florida for the long distance promotional offering of AT&T Florida's long distance affiliate are billing disputes by AT&T Florida, that argument also fails because Budget's claims are not "billing disputes" under the ICA. AT&T Florida has not billed Budget one penny for any of the long distance offerings that are the subject of Budget's complaint and thus Budget's claims are not "dispute[s] of a specific amount of money actually billed by either party." ICA, Attach. 7, § 2.2.

Instead, Budget's claims for rewards under long distance service offerings that are not subject to the ICA (and that are offered by an entity that is not a party to the ICA) are meritless claims for damages supposedly arising from the fact that AT&T Long Distance's promotions were not made available to Budget for resale. The ICA unambiguously provides that "***[c]laims by the billed party for damages of any kind will not be considered a billing dispute*** for purposes of this Section." *Id.* § 2.2 (emphasis added). Budget has improperly withheld nearly three quarters of a million dollars from payments due to AT&T Florida based upon the notion that its claims for rewards under long distance service offerings constitute "billing disputes," rather than a "claim[s] by the billed party for damages" under the ICA. That same unsupported reading of the ICA provisions relating to "billing disputes" now serves as the purported basis for Budget's motion to dismiss AT&T Florida's Counterclaim. The ICA does not grant Budget the right to unilaterally withhold payments for properly billed services based upon its speculative claim for

damages, and it does not require AT&T Florida to engage in informal dispute resolution prior to asserting a counterclaim regarding those withheld payments.

Of course, it is the plain language of the contract that controls, not the language that Budget wishes was there. *See Medical Ctr. Health Plan v. Brick*, 572 So.2d 548, 551 (Fla. 1st DCA 1990) ("A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract.") (citation omitted); *see also Applica Inc. v. Newtech Electronics Indus., Inc.*, 980 So. 2d 1194, 1194 (Fla. 3d DCA 2009) (holding that contract terms are enforceable even if they are perceived to be harsh or disadvantageous to one party). For this reason, the cases Budget referenced involving AT&T Florida's affiliates in other jurisdictions, different allegations, and different contract terms have no application here.[2]

B. AT&T Florida Sought Dispute Resolution of These Claims

Without waiving the foregoing, the Commission does not have to reach the contract interpretation issue because even assuming the ICA somehow requires pre-litigation dispute resolution for AT&T Florida's collections Counterclaim (and it does not), the parties did in fact engage in those efforts (albeit without reaching a resolution). Forcing AT&T Florida to go

[2] It appears that Budget has scoured administrative records throughout the country to find cases where an AT&T affiliate has argued that a CLEC bringing a claim was required to engage in dispute resolution, and was able to find only three cases from other states going back four years. In none of those cases did AT&T bring a claim against the CLEC and argue that the CLEC's mirror-image counterclaim against AT&T was somehow barred for failure to engage in dispute resolution. Instead, one of those cases concerns a filing made by AT&T Texas on a contract that had a very specific Informal Dispute Resolution provision which is completely different from the contract language here. The North Carolina and Kentucky pleadings that Budget attached were affirmative defenses to claims brought by a CLEC for local service promotions offered by the AT&T ILECs. That is completely different than here where Budget is claiming long distance promotions that are not offered by AT&T Florida or provided under the ICA. To be clear, by arguing here that the ICA between AT&T Florida and Budget did not require AT&T Florida to engage in pre-litigation dispute resolution prior to filing its collections counterclaim, AT&T Florida is not waiving the right to argue that dispute resolution is a mandatory prerequisite for different contracts and/or under different facts.

through the steps again would accomplish nothing more than delaying this matter even further than Budget's meritless motion has already done.

Specifically, on March 31 and April 1, 2011, Budget sent a series of letters to AT&T Florida and certain of its ILEC affiliates regarding "Credits for Bundled Cash Back Promotions."[3] In its letter directed to BellSouth Telecommunications, Inc. for various states (including Florida), Budget claimed that it "previously submitted notice of billing dispute and claim for credits associated for the resale of services for which AT&T has and is offering a bundled cash back promotion to its retail customers." *See* April 1, 2011 Letter from Budget to AT&T, attached as Exhibit 1. AT&T responded to this letter (and the three other letters) with a letter dated April 25, 2011, which generally denied Budget's claims and appointed a dispute resolution contact on its behalf. Of particular note to the motion currently before the Commission, AT&T responded:

> Finally, we recognize that in your letter[] to . . . BellSouth Telecommunications, Inc. Budget purported to invoke the billing dispute informal dispute resolution ("IDR") process under its Interconnection Agreements with those ILECs. IDR, of course, is limited to disputes with the ILECs arising under the Interconnection Agreements. Because the long distance promotions are offers of interexchange carriers, it is questionable whether this dispute belongs in the IDR process. That said, Budget appears to have informed the AT&T ILECs that it has and intends to continue breaching the payment provisions of its Interconnection Agreements based on its meritless claim that the AT&T ILECs are somehow obligated to resale *[sic.]* promotions offered by their interexchange carrier affiliates. Putting aside the highly questionable validity of Budget's refusal to pay for local services provided, ***the AT&T ILECs are willing to engage in informal dispute resolution discussions in a good faith effort to try to resolve this dispute quickly.***
>
> Further, although there is no specific informal dispute resolution process in the Interconnection Agreement between Budget and BellSouth Telecommunications, Inc., in the interest of efficiency and cooperation, ***AT&T is willing to include***

[3] Budget sent four letters to the AT&T ILEC affiliates at this time, including an April 1, 2011 letter to BellSouth Telecommunications, Inc. for the nine states in the BellSouth region including Florida. *See* Exhibit 1. The other three letters addressed other states in other regions.

Budget's claims under that Interconnection Agreement in the IDR for Oklahoma.

See April 25, 2011 Letter from AT&T to Budget, attached as Exhibit 2 (emphasis added). Thereafter, AT&T had a series of conversations and correspondence with Budget, in which the parties specifically discussed Budget's improper withholding of payments due to AT&T in the Southeast (including Florida) and Budget's obligation to pay those charges. *See* Affidavit of Janice Mullins ¶ 3, attached as Exhibit 3.

In response, Budget expressly refused to engage in dispute resolution concerning Florida and the other eight states in the former BellSouth region. Specifically, Budget responded:

> Regarding dispute resolution, Budget is always receptive to meaningful efforts to resolve disputes in an amicable and timely manner and we welcome AT&T to proceed as such in addressing this matter. However, please note that Budget does not agree to the proposal contained in your letter that would expand Interconnection Agreement provisions that are applicable in one state to become effective in other states, relative to dispute resolution or otherwise. Budget reserves and maintains all of its rights and options provided under each and every Interconnection Agreement between AT&T and Budget, without limitation, including Budget's rights to pursue complaint filings in applicable jurisdictions.

See May 12, 2011 Letter from Budget to AT&T, attached as Exhibit 4.[4]

Despite Budget's position that dispute resolution was not appropriate with regard to Florida and the other eight states in former BellSouth region, the parties continued to engage in efforts to resolve the disagreements between them. There were subsequent letters, conversations and other communications between the parties on these issues continuing through July 2012, and Budget's refusal to pay its billed charges to AT&T for its Florida accounts and its accounts in the other states in the Southeast region were one of the topics discussed during those

[4] Incredibly, Budget is now asking this Commission to allow it to have its cake and eat it too. Having initially refused to engage in dispute resolution regarding the subject matter of AT&T Florida's Counterclaim, Budget is asking the Commission to rule that AT&T Florida cannot file this Counterclaim (which is the mirror-image of the very claims Budget has filed against AT&T Florida) without first asking Budget once again to do what Budget initially refused to do.

communications. *See* Affidavit of Marc Cathey ¶ 2, attached as Exhibit 5. Ultimately, however, those efforts did not result in a mutually-agreeable resolution.

Budget's position that these dispute resolution efforts only covered Budget's claims for credits of the promotion, but not AT&T Florida's mirror-image claim for payment, is absurd and belied by the records of those communications. Indeed, if AT&T Florida were required to have independent dispute resolution discussions on its claim for payment, the only way those discussions would have any success would be if Budget conceded some or all of its positions in its Complaint. Those discussions already occurred; they did not result in a mutually-acceptable resolution of these disputes, and the case is now properly before the Commission. Indeed, Budget clearly believes that the parties reached an impasse in those negotiations because it commenced this proceeding here and in several other state commissions seeking commission rulings on its position.

The parties have engaged in dispute resolution on both Budget's claim against AT&T Florida and AT&T Florida's counterclaim against Budget. To the extent the ICA required such efforts (and for the reasons discussed above, it does not), that prerequisite has been met. There is no basis to delay this proceeding any further.

C. Budget Has Waived Any Right to Demand Informal Dispute Resolution

Even if a pre-filing dispute resolution obligation could be read into the ICA for AT&T Florida's Counterclaim (and it cannot) and even if the discussions that occurred between the parties over more than a year did not constitute sufficient efforts toward dispute resolution (and they do), Budget has waived any right to enforce that obligation by filing its Complaint against AT&T Florida.

As discussed above, AT&T Florida's Counterclaim seeks a Commission determination that Budget owes AT&T Florida the very same amounts Budget has withheld based on Budget's erroneous position that it is entitled to credits from AT&T Florida for the long distance promotional offerings of AT&T Florida's long distance affiliate. *See* Counterclaim ¶¶ 14, 15, 20. Budget's Complaint and AT&T Florida's Counterclaim are mirror images of one another. Budget's position that its claims can go forward while AT&T Florida's counterclaim cannot is absurd, and Florida courts routinely reject such arguments. *See Owens & Minor Med., Inc. v. Innovative Mktg. & Distribution Servs., Inc.*, 711 So. 2d 176, 177 (Fla. 4th DCA 1998) (rejecting plaintiff's motion to compel arbitration of counterclaim because there is a "close relationship between the claims of the parties" and the "matters raised in the counterclaim are intertwined with issues raised in the amended complaint"); *Condominium Owners Org. of Century Village E., Inc. v. Cenvill Invs., Inc.*, 584 So. 2d 33, 34 (Fla. 4th DCA 1991). In fact, by filing its Complaint on the merits, Budget has acted inconsistently with its subsequent assertion that the parties have not engaged in dispute resolution regarding the subject matter of AT&T Florida's Counterclaim. *See Raymond James Fin. Servs. v. Saldukas*, 896 So. 2d 707, 711 (Fla. 2005) (holding that a party waives its right to require dispute resolution by acting "inconsistently with the right" and "by actually participating in a lawsuit or taking action inconsistent with that right").

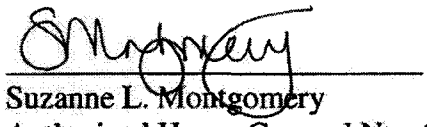
III. Conclusion

The ICA imposes no requirement for a pre-litigation dispute resolution before AT&T Florida pursues a collection case against Budget for nonpayment of charges for local services provided by AT&T Florida. Regardless, even if it did, the parties have engaged in such dispute resolution. Forcing AT&T Florida to go through the steps again would accomplish nothing more than delaying this matter.

For the foregoing reasons, AT&T Florida respectfully requests that the Commission deny Budget's motion to dismiss, order Budget to answer the Counterclaim, set this matter for an issue identification meeting, and establish a procedural schedule.

Respectfully submitted this 15th day of October, 2012.

AT&T Florida



Suzanne L. Montgomery
Authorized House Counsel No. 94116
Tracy W. Hatch
c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558
sm6526@att.com
th9467@att.com

Patrick W. Turner
1600 Williams Street
Suite 5200
Columbia, SC 29201-2220
(803)401-2900
pt1285@att.com

Budget PrePay Inc.

telecommunications :: clear :: simple

April 1, 2011

CERTIFIED MAIL NO. 70110470000053652010
RETURN RECEIPT REQUESTED

AT&T Contract Management
ATTN: Notices Manager
311 S. Akard, 9th Floor
Dallas, TX 75202-5398

AT&T Business Markets Attorney
Suite 4300
675 W. Peachtree Street
Atlanta, GA 30375

RE: Budget Prepay, Inc./Credits for Bundled Cash Back Promotion

Dear Notices Manager:

Budget PrePay, Inc. ("Budget") submits this notice of appointment of designated representative as follow-up to its previously submitted notice of billing dispute and claim for credits associated with the resale of services for which AT&T has and is offering a bundled cash back promotion to its retail customers. Budget submitted notice of such dispute and claim by electronic Exclaim Portal submission on February 17, 2011, and by letter dated and mailed February 23, 2011.

The Interconnection Agreement in effect between Budget and AT&T requires that if the parties are unable to resolve issues relating to a dispute within thirty days after delivery of notice, each of the parties shall appoint a designated representative who has the 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.[1]

Budget appoints as its designated representatives:

David Donahue
Chief Financial Officer
Budget PrePay, Inc.
1325 Barksdale Blvd
Bossier City, LA 71111
(318) 671-5706
(318) 671-5024 fax

Thad Pellino
Smart Telecom Concepts LLC
2300 Cabot Drive, Suite 410
Lisle, IL 60532
Office: 630-245-9070

[1] Interconnection Agreement between Budget PrePay, Inc. and Bellsouth Communications, Inc, October 2, 2008, Section 10, Resolution of Disputes.

2325682-1

Budget PrePay Inc.

telecommunications :: clear :: simple

Budget requests that AT&T likewise appoint and notify Budget of its designated representative.

Budget is a certified reseller of telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Budget contracts with AT&T's subsidiary operating companies in each of those states[2] to resell AT&T's services pursuant to the Telecommunications Act of 1996.

Thank you for your attention to this matter.

Sincerely,

R. Daniel Hyde, III
Budget PrePay, Inc.

[2] Bellsouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee ("AT&T").

2325682-1

From: MULLINS, JANICE K (ATTASIATT)
Sent: Monday, April 25, 2011 5:09 PM
To: dhyde@budgetprepay.com
Subject: Budgets IDR request

Danny,

Please see AT&T's response to Budget's IDR request. I will send a hard copy via USPS.

ATT's response
Budget Letters ...

Thank You,

Janice K Mullins
AT&T Wholesale Customer Care
Sr Carrier Account Manager (SrCAM)
216-476-6251 (O)

216-246-8067 (C)
216-476-6013 (F)
janice.k.mullins@att.com

April 25, 2011

R. Daniel Hyde, III
Budget PrePay, Inc.
1325 Barksdale Blvd.
Bossier City, LA 71111

Re: March 31, 2011 and April 1, 2011 Letters Regarding "Credits for Bundled Cash Back Promotion"

Dear Mr. Hyde:

This letter is to follow-up to the email that Tony Jackson of AT&T sent to you on April 11, 2011 and is in further response to the four letters from Budget PrePay, Inc. ("Budget") dated March 31, 2011 and April 1, 2011 to various AT&T incumbent local exchange company ("ILEC") affiliates regarding "Credits for Bundled Cash Back Promotion."[1]

Three of your letters claim that "AT&T has failed to provide an electronic template procedure for Budget to be able to seek appropriate credits associated with the resale of services for which AT&T has and is offering a bundled cash back promotion to its retail customers," and the fourth simply states that Budget has "previously submitted notice of billing dispute and claim for credits associated for the resale of services for which AT&T has and is offering a bundled cash back promotion to its retail customers." However, none of the letters specify the "bundled cash back promotion" that Budget claims AT&T is offering. Your letters further do not provide any analysis or explanation for which Budget believes such promotion is subject to resale.

None of the AT&T ILECs, in the specified states or elsewhere, are currently offering any cash back promotion of any kind (whether bundled or otherwise) to their retail customers on local exchange service or any other telecommunications service and have not offered any such cash back promotion in 2011.

The interexchange service affiliates of the AT&T ILECs that do business in the relevant states (SBC Long Distance, LLC for Kansas, Oklahoma and Michigan; BellSouth Long Distance, Inc. for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee) are currently offering promotions on the sale of select long distance service offerings. Those promotions involve gift cards to new retail customers of SBC Long Distance, LLC or BellSouth Long Distance, Inc. for the purchase of select long distance service offerings. The interexchange service that is the subject of these promotions is not offered by the AT&T ILECs. It is interexchange service that is available to new customers of SBC Long Distance, LLC and BellSouth Long Distance, Inc., who can be either new or existing local exchange customers of the AT&T ILECs. The AT&T ILECs pay no portion of the cost associated with the gift cards their long distance affiliates are offering. If a retail end user signs up for

[1] We are aware of four letters from Budget to AT&T ILEC affiliates on this issue: (1) March 31, 2011 letter to AT&T Kansas; (2) March 31, 2011 letter to AT&T Oklahoma; (3) March 31, 2011 letter to AT&T Michigan; and (4) April 1, 2011 letter to BellSouth Telecommunications, Inc. for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. If Budget sent letters regarding claims for other states, please forward them to my attention.

local service with an AT&T ILEC without subscribing to a qualifying long distance service from SBC Long Distance, LLC or BellSouth Long Distance, Inc., he is not eligible for and do not receive the gift cards.

To the extent your letters are referring to these promotions offered by SBC Long Distance, LLC and BellSouth Long Distance, Inc., those promotions are long distance offerings of interexchange carriers and are not telecommunications services offered by a local exchange carrier subject to resale under Section 251(c)(4) of the Telecommunications Act of 1996. Quite simply, the resale obligations under section 251(c)(4) of the Federal Act apply only to ILECs, not to interexchange carriers. Budget is free to offer to its end users whatever long distance plans, and any incentives to promote those plans, it chooses, but the AT&T ILECs have absolutely no obligation to fund Budget's efforts to pursue that line of business. To the extent Budget is making claims to the AT&T ILECs for these long distance promotions offered by SBC Long Distance, LLC and BellSouth Long Distance, Inc., those claims have no merit whatsoever and are certainly not subject to the terms of the Interconnection Agreements between Budget Phone and the relevant AT&T ILECs.

Similarly, to the extent Budget has withheld payments and intends to withhold future payments due to AT&T ILECs for services those ILECs provided to Budget under its Interconnection Agreements on the basis of Budget's meritless claims for the long distance promotions offered by entities other than the AT&T ILECs, there is no legitimate basis under the Interconnection Agreements for Budget to do so and Budget's failure to pay constitutes a breach of those Agreements.

If you have information that you believe supports Budget's position that these promotions offered by SBC Long Distance, LLC and BellSouth Long Distance, Inc. are subject to the 251(c)(4) obligation of the AT&T ILECs, we will be happy to review that information.

If we have misinterpreted your letters and you are referring to another promotion, please provide a more complete explanation of the promotion and copies of any relevant marketing materials, and we will review them.

Finally, we recognize that in your letters to AT&T Oklahoma and BellSouth Telecommunications, Inc., Budget purported to invoke the billing dispute informal dispute resolution ("IDR") process under its Interconnection Agreements with those ILECs. IDR, of course, is limited to disputes with the ILECs arising under the Interconnection Agreements. Because the long distance promotions are offers of interexchange carriers, it is questionable whether this dispute belongs in the IDR process. That said, Budget appears to have informed the AT&T ILECs that it has and intends to continue breaching the payment provisions of its Interconnection Agreements based on its meritless claim that the AT&T ILECs are somehow obligated to resale promotions offered by their interexchange carrier affiliates. Putting aside the highly questionable validity of Budget's refusal to pay for local services provided, the AT&T ILECs are willing to engage in informal dispute resolution discussions in a good faith effort to try resolve this dispute quickly.

Further, although there is no specific informal dispute resolution process in the Interconnection Agreement between Budget and BellSouth Telecommunications, Inc., in the interest of efficiency and cooperation, AT&T is willing to include Budget's claims under that Interconnection Agreement in the IDR for Oklahoma. Similarly, although Budget did not specifically invoke IDR for Kansas and Michigan in its letters, as Mr. Jackson indicated in his April 11, 2011 response email, it seems that it would be most efficient to address Budget's disputes with AT&T Kansas and AT&T Michigan in the same IDR proceeding. Please let us know as soon as possible if you disagree with that approach.

I have been appointed by the AT&T ILECs as their billing dispute resolution negotiator for this IDR, and I can be reached at jm7567@att.com or (216) 476-6251. As Mr. Jackson previously requested, please ask Mr. Donahue and Mr. Pellino to contact me to schedule the first IDR meeting. Because of the apparent anticipatory breach of the payment terms of the Interconnection Agreements by Budget, we would like to have the call as soon as possible and no later than April 29, 2011.

Please feel free to call me if you would like to discuss the contents of this letter.

Thank you,

Janice Mullins
Sr. Carrier Account Manager

FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, LLC d/b/a AT&T Florida	) Docket No. 120231-TP)) Filed: October 15, 2012

AFFIDAVIT OF JANICE MULLINS

COMES NOW Affiant and swears under oath as follows:

1. My name is Janice Mullins. I am currently a Senior Carrier Accounts Manager for AT&T Services, Inc., and provide support for the wholesale services provided by the AT&T incumbent local exchange carriers ("ILECs"), including BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"). Specifically, my responsibilities include handling informal dispute resolution negotiations for disputes between the AT&T ILECs and their Wholesale customers. This Affidavit is made upon my personal knowledge and belief and is filed in support of AT&T Florida's Response to the Motion to Dismiss filed by Budget Prepay, Inc. ("Budget").

2. In April 2011, I was assigned to handle the informal dispute resolution negotiations begun by Budget with various AT&T ILECs concerning Budget's claim that it is entitled to resell long distance promotional offerings offered by SBC Long Distance, LLC and BellSouth Long Distance, Inc.

3. Those informal dispute resolution negotiations occurred over several months, with myself and others on behalf of the AT&T ILECs, and included written communications and telephone discussions. During the telephone discussions I participated in, I discussed with Budget the topic of Budget withholding payments due to AT&T Florida and other AT&T ILECs in breach of the interconnection agreements between the parties. Those negotiations did not result in a mutually-agreeable resolution.

FURTHER, Affiant sayeth not.

This 15th day of October, 2012.

Janice Mullins
Janice Mullins

ROBIN L. BRANTLEY
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga County
My Comm. Exp. 10/29/12

Subscribed and sworn to
Before me this 15 day of October, 2010.

Robin L. Brantley
Notary Public

My commission expires: 10/29/2012

10483-15

Budget PrePay INC.

telecommunications :: clear :: simple

May 12, 2011

Janice K. Mullins
AT&T Wholesale Customer Care
Sr. Carrier Account Manager (SrCAM)

RE: Budget Prepay, Inc./Credits for Bundled Cash Back Promotion

Dear Ms. Mullins:

As a follow-up to our telephone discussion on April 27, 2011, the following provides the response of Budget PrePay, Inc. ("Budget") to your letter of April 25, 2011 on behalf of AT&T, regarding the captioned matter.

As background, Budget submitted notice of billing dispute and claim for credits associated with resale rights due Budget for the retail value of bundled promotions offered by AT&T, minus the avoided cost discount percentage, for the period August 29, 2010 forward, via Exclaim Portal submissions beginning in February 2011, for the BellSouth states (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee), and in Michigan, Oklahoma, Kansas, Illinois, Texas, Arkansas, Indiana, Missouri, Ohio and Wisconsin. The dates of each of the Exclaim Portal notices are confirmed by such submissions. Following initial notice by Exclaims Portal, Budget submitted additional written notice of dispute, including that Budget would withhold amounts due until appropriate credits are redeemed, by letter to AT&T dated February 23, 2011 for the BellSouth states, and by separate letters for Michigan, Oklahoma and Kansas dated March 31, 2011. Also, for the BellSouth states, Budget submitted notice of appointment of a designated representative regarding the billing dispute and claim by letter to AT&T dated April 1, 2011. As we discussed during our telephone call, Budget has to date implemented withholding of amounts due in only the BellSouth states.

Also, as confirmed during our call, the billing dispute and Budget's claim relates to a bundled promotion offered by AT&T effective beginning March 21, 2010, and continuing thereafter through multiple extensions by AT&T to date. The AT&T promotion provides that customers subscribing to certain service offerings provided by AT&T shall qualify for a $100 or $50 reward. The AT&T service offerings included in the promotion require local service to be provided to the customer by an AT&T affiliated Incumbent Local Exchange Carrier ("ILEC").

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As AT&T is aware, Budget's claim is fully supported by the Federal Telecommunications Act and the Interconnection Agreements entered between Budget and AT&T pursuant thereto. ILECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.[1] ILECs have a duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.[2] Only the following types of restrictions on resale may be imposed: (i) cross-class selling; (ii) short term promotions of a duration of 90 days or less; and (iii) a restriction that the ILEC has proved to the state commission is reasonable and non-discriminatory.[3] Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates.[4] An ILEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.[5] Except as provided in 47 C.F.R. § 51.613, an ILEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the ILEC.[6] Moreover, the FCC has confirmed that: "Section 251(c)(4) provides that incumbent LECs must offer for resale at wholesale rates 'any telecommunications service' that the carrier provides at retail to noncarrier subscribers. This language makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."[7] The FCC has also concluded that: ". . . the plain language of the 1996 Act requires that the incumbent LEC make available [to competing carriers] at wholesale rates retail services that are actually composed of other retail services, i.e., bundled service offerings."[8]

In this matter, AT&T has unilaterally restricted bundled promotions from resale, contrary to Federal law and the Interconnection Agreement between AT&T and Budget. The telecommunications services offered by AT&T as part of the bundled promotions are subject to resale. Federal law prohibits AT&T from evading its resale obligations by placing these telecommunications services in bundles, discounting these services, and then restricting the promotional offering from resale. A contrary result would permit AT&T to avoid the statutory resale obligation by shifting their retail customers to bundled offerings, thereby eviscerating the resale provisions of the Telecommunications Act.

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[1] 47 U.S.C. § 251(c)(4)(A).
[2] 47 U.S.C. § 251(c)(4)(B).
[3] 47 C.F.R. § 51.613(a)(2).
[4] 47 U.S.C. § 251(c)(4)(A).
[5] 47 C.F.R. § 51.603(a).
[6] 47 C.F.R. § 51.605(c).
[7] FCC Order 96-325, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket Nos. 96-98 and 95-185, 11 FCC Rec. 15499, ¶¶ 948 (August 8, 1996).
[8] FCC Order 96-325, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket Nos. 96-98 and 95-185, 11 FCC Rec. 15499, ¶¶ 877 (August 8, 1996).

2394200-1

Budget PrePay INC.

telecommunications :: clear :: simple

No basis exists for the arguments by AT&T contained in your letter which suggest that the referenced promotion is not subject to resale under the Telecommunications Act, or that Budget's claim has no merit or does not have a legitimate basis under the Interconnection Agreements between the parties. Additionally, notice of dispute and withholding of credits by Budget pursuant to the terms of the Interconnection Agreements does not in any manner constitute a breach of the Agreements. Withholding provisions are specifically set forth in the Interconnection Agreements for the BellSouth states as well as for Michigan, Oklahoma and Kansas.

Regarding dispute resolution, Budget is always receptive to meaningful efforts to resolve disputes in an amicable and timely manner an d we welcome AT&T to proceed as such in addressing this matter. However, please note that Budget does not agree to the proposal contained in your letter that would expand Interconnection Agreement provisions that are applicable in one state to become effective in other states, relative to dispute resolution or otherwise. Budget reserves and maintains all of its rights and options provided under each and every Interconnection Agreement between AT&T and Budget, without limitation, including Budget's rights to pursue complaint filings in applicable jurisdictions.

Please feel free to contact me if you have any additional questions regarding Budget's claim, or if AT&T would like to pursue meaningful efforts toward resolution of this matter.

Sincerely,

R. Daniel Hyde, III
Budget PrePay, Inc.

2394200-1

FLORIDA PUBLIC SERVICE COMMISSION

Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, LLC d/b/a AT&T Florida	) Docket No. 120231-TP)) Filed: October 15, 2012

AFFIDAVIT OF MARC CATHEY

COMES NOW Affiant and swears under oath as follows:

1. My name is Marc Cathey. I am currently an Executive Director-Corporate Strategy for AT&T Services, Inc., and provide support to the AT&T incumbent local exchange carriers ("ILECs"), including BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), with regard to their business relationships with various competitive local exchange carriers ("CLECs"). Among other things, my responsibilities include conducting negotiations with CLEC customers regarding various business disputes between the CLECs and the AT&T ILECs. This Affidavit is made upon my personal knowledge and belief and is filed in support of AT&T Florida's Response to the Motion to Dismiss filed by Budget Prepay, Inc. ("Budget").

2. During 2011 and 2012, I engaged in negotiations with Budget on behalf of various AT&T ILECs, including AT&T Florida, concerning Budget's claim that it is entitled to resell long distance promotional offerings offered by SBC Long Distance, LLC and BellSouth Long Distance, Inc. Those negotiations occurred over several months and included written communications via electronic mail and telephone discussions. My discussions with Budget included negotiations concerning payments due from Budget to AT&T Florida and other AT&T ILECs, which Budget was withholding based on its claims concerning the long distance promotional offerings. Those negotiations did not result in a mutually-agreeable resolution.

FURTHER, Affiant sayeth not.

This 15th day of October, 2012.

Marc Cathey

Subscribed and sworn to
Before me this 15th day of October, 2012.

Carrie N Duckworth
Notary Public

My commission expires: 12/10/14

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