

## Eric Fryson

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**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Monday, September 17, 2012 3:21 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 120231-TP AT&T Florida's Answer and Counterclaim

**Importance:** High

**Attachments:** Document.pdf



Document.pdf  
(5 MB)

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- 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. 18 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Answer and Counterclaim  
.pdf



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September 17, 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 Answer and 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



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**CERTIFICATE OF SERVICE**  
**Docket No. 120231-TP**

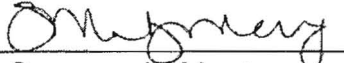
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 17th day of September, 2012 to the following:

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Suzanne L. Montgomery

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Complaint of Budget Prepay, Inc. against BellSouth ) Docket No. 120231-TP  
Telecommunications, LLC d/b/a AT&T Florida )  
\_\_\_\_\_ ) Filed: September 17, 2012

**ANSWER AND COUNTERCLAIM OF AT&T FLORIDA**

BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida”), pursuant to Rule 28-106.203, Fla. Admin. Code, respectfully submits its Answer and Counterclaim to the Complaint of Budget Prepay, Inc. (“Budget”), which was filed with the Commission on August 28, 2012.

**I. SUMMARY OF AT&T FLORIDA’S ANSWER AND COUNTERCLAIM**

**A. AT&T Florida is not required to make its long distance affiliate’s offerings available to Budget for resale.**

Budget alleges that AT&T Florida has breached the parties’ interconnection agreement (“ICA”) by not making certain long distance service offerings available to Budget for resale. *See* Complaint ¶¶ 8, 9, 14, 18(a).<sup>1</sup> Specifically, Budget contends that when AT&T Florida bills Budget for local service Budget has purchased from AT&T Florida under the ICA, AT&T Florida must reduce those bills to take into account certain long distance gift card promotions offered by AT&T Florida’s long-distance affiliate – BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service (“AT&T Long Distance”) – to its new retail customers who purchase

<sup>1</sup> Budget also alleges that AT&T Florida has violated 47 U.S.C. §§ 251(b) and (c) and certain FCC Rules and Orders implementing those subsections (*see* Complaint ¶¶ 12(a)-(g)), but the general obligations of Section 251 do not govern this dispute. Instead, the specific provisions of the parties’ Commission-approved ICA govern this dispute. *See* 47 U.S.C. § 252(a)(1) (permitting carriers to “negotiate and enter into a binding [interconnection] agreement . . . without regard to the standards set forth in subsections (b) and (c) of Section 251 . . . .”); *Mich. Bell Tel. Co. v. MCIMetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, the[ ] general duties [under the 1996 Act] do not control”; parties are “governed by the interconnection agreement” and “the general duties of [the 1996 Act] no longer apply.”); *Verizon Md., Inc. v. Global NAPS*, 377 F.3d 355, 364 (4th Cir. 2004) (“Once the [interconnection agreement] is approved, the 1996 Act requires the parties to abide by its terms. Interconnection agreements are thus the vehicles chosen by Congress to implement the duties imposed in § 251.”).

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certain of its long distance service offerings.<sup>2</sup> See Complaint ¶¶ 8-9; Exhibit A. One of the offerings described in Exhibit A to Budget's Complaint, for example, was available in September 2010, and it offered qualifying new AT&T Long Distance customers who subscribed to AT&T Long Distance's Unlimited Nationwide Calling<sup>®</sup> One plan a \$100 Visa<sup>®</sup> Reward Card. AT&T Florida, however, does not offer these long distance services or gift cards to its own retail customers, nor does AT&T Florida fund any portion of the gift cards that AT&T Long Distance offers in connection with its promotions. Accordingly, if a retail customer signs up for local service with AT&T Florida without subscribing to a qualifying long distance service from AT&T Long Distance, that AT&T Florida retail customer is not eligible for, and does not receive, a gift card.

AT&T Florida is an incumbent local exchange carrier ("ILEC"); it provides local service to its end users, and it resells those local services to Budget in accordance with the ICA. AT&T Long Distance is a separate company from AT&T Florida. AT&T Long Distance is not an ILEC, and it is not a party to an ICA with Budget. Instead, AT&T Long Distance offers interexchange long distance service to retail customers under the terms and conditions set out in its "Residential Service Guide," a publicly available document that sets forth the terms and conditions on which AT&T Long Distance services are sold and that applies to everyone who wants to purchase those services. Budget does not, and cannot, allege that AT&T Florida offers any of the qualifying long distance services – much less any long distance promotions at issue in this case – to AT&T Florida's own end users. Nor does Budget allege that its own retail customers purchase any long distance services from AT&T Long Distance, or that its end users are eligible for the promotions offered by AT&T Long Distance.

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<sup>2</sup> These retail customers who are new to AT&T Long Distance can be either new or existing local exchange customers of AT&T Florida.

The parties' ICA, which Budget chose to adopt and that this Commission approved, requires AT&T Florida to make available to Budget for resale *only* the telecommunications services *AT&T Florida* offers its own retail customers; it does not require AT&T Florida to make available for resale long distance services of a different company. See ICA, Attach. 1, § 3.1. While Budget's complaint masquerades as a "billing dispute" under the ICA, Budget's alleged grievance in fact has nothing to do with local telecommunications services that AT&T Florida offers its retail customers and that Budget orders for resale pursuant to the ICA. It is telling that the complaint does not cite to Budget's ICA with AT&T Florida, but instead attaches pages from the AT&T Long Distance Residential Service Guide for *Interexchange Interstate, and International Services* – services that AT&T Florida does not offer.

AT&T Florida does not have a duty (much less the ability) to resell a long distance service it does not offer. Because AT&T Florida does not offer its retail customers the promotions that are the subject of Budget's complaint, the ICA does not require AT&T Florida to make those promotions available to Budget for resale.

**B. AT&T Florida's actions are not anticompetitive.**

Budget also alleges that "AT&T's actions are preferential, discriminatory and anti-competitive," and that "AT&T seeks to impair competition, enhance its competitive position and gain a competitive advantage through an inappropriate intra-corporate transaction and/or tying arrangement with its affiliate long distance company." Complaint ¶ 16. These allegations are without merit.<sup>3</sup>

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<sup>3</sup> It is not clear whether Budget is attempting to allege a violation of federal or Florida antitrust law or if it is simply padding its straight-forward breach of contract claim with unnecessary allegations. To the extent Budget is seeking to allege violations of federal or Florida antitrust law, the Commission lacks subject matter jurisdiction to consider such allegations, see *In re: Petition to investigate, claim for damages, complaint, and other statements against respondents Evercom Sys., Inc. d/b/a Correctional Billing Servs. & BellSouth Corp., by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP, at 4, 10 (Apr. 16, 2007) (dismissing antitrust claims for lack of jurisdiction), and even if that were not

There is nothing inherently “anti-competitive” about AT&T Long Distance offering discounts to its retail customers, even if the discounts are not available to Budget on a wholesale basis. As the Supreme Court has noted, “cutting prices in order to increase business often is the very essence of competition,” *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986), and under the antitrust laws there generally “is no duty to aid competitors.” *Verizon Comm’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 412 (2004). Thus, Budget is free to offer long distance service to its customers and to offer them incentives, including gift cards, to purchase that service, but AT&T Florida has no duty to fund Budget’s marketing initiatives.

In any event, Budget’s accusation that AT&T Florida is engaged in anticompetitive conduct fails on its face. The promotion Budget complains of is provided by AT&T Long Distance, not AT&T Florida, and hence is not a rate or service provided by AT&T Florida and does not involve any action by AT&T Florida.

Even if the promotion were somehow attributable to AT&T Florida (and it is not), the fact that AT&T Florida does not provide these long distance promotional credits to Budget for the local services Budget purchases for resale is not anticompetitive. Nothing prohibits a telecommunications company from making reasonable distinctions between different classes of customers and different classes of services. Budget’s complaint alleges no unreasonable distinctions on the part of AT&T Florida.

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the case, Budget has failed to plead any such claim with the particularity required by Rule 28-106.201(2), Fla. Admin. Code.

**C. Budget has breached the ICA by withholding payment for services it has ordered from AT&T Florida under the ICA.**

Budget has submitted promotional credit requests to AT&T Florida based on its erroneous argument that AT&T Florida must resell these AT&T Long Distance offerings. AT&T Florida has properly denied these promotional credit requests in accordance with the ICA, and Budget has wrongfully resorted to self-help by withholding in excess of \$739,000 from its payments to AT&T Florida for the local exchange services it has ordered and AT&T Florida has provided pursuant to the ICA. In other words, Budget has withheld nearly three quarters of a million dollars in payments it owes AT&T Florida for *local* services it has ordered under the ICA because Budget claims it is entitled to rewards under *long distance* service offerings that are not subject to the ICA and that are not offered by AT&T Florida.

Budget claims this self-help is authorized by the “billing dispute” provisions of the ICA, which allow Budget to “withhold disputed amounts until the dispute is resolved.” ICA, Attach. 7, § 2.2. The ICA, however, narrowly defines a “billing dispute” as “a reported dispute *of a specific amount of money actually billed by either party,*” *id.* § 2.2 (emphasis added). AT&T Florida has not billed Budget one penny for any of the long distance offerings that are the subject of Budget’s complaint.<sup>4</sup> Clearly, 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 not “billing disputes” that allow Budget to withhold payments it owes AT&T Florida pursuant to the ICA. Instead, they 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

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<sup>4</sup> Budget does not allege that AT&T Florida has billed it for any long distance service, nor does Budget allege that it has ordered any long distance services for resale from AT&T Florida or, for that matter, from AT&T Long Distance.



*be considered a billing dispute* for purposes of this Section.” *Id.* § 2.2 (emphasis added). Budget cannot withhold payment for the local exchange services that it has ordered from AT&T Florida and that AT&T Florida has provided under the ICA any more than a consumer can withhold mortgage payments from a bank because he claims the bank’s affiliate owes him rewards under a credit card program.

**D. The Commission should require Budget to pay AT&T Florida the full amount it has wrongfully withheld, or at least pay the amount into escrow pending the outcome of this proceeding.**

No state commission has required an ILEC to resell promotions offered by its long distance affiliate, and several commissions – including this Commission – have rejected resellers’ positions on other “billing disputes” that, like Budget’s spurious “billing dispute,” were asserted as purported justifications for unlawfully withholding payment from AT&T ILECs.<sup>5</sup> Despite the numerous state commissions that have rejected meritless “billing disputes” manufactured by resellers, the AT&T ILECs have consistently recovered only a tiny fraction of the amounts resellers have wrongfully withheld. To date, at least 16 resellers have declared

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<sup>5</sup> See *dPi Teleconnect, LLC v. BellSouth Telecomms., Inc.*, Order PSC-08-0598-FOF-TP, Docket No. 050863 (Fla. P.S.C. Sept. 16, 2008), *aff’d dPi Teleconnect, LLC v. Florida Pub. Serv. Comm’n*, No. 4:08-cv-509/RS-WCS, 2009 WL 2603144 (N.D. Fla. Aug. 21, 2009); see, also, e.g., Order No. 15 Granting AT&T’s Motion for Summary Disposition, *In re: Petition of Nexus Commc’ns, 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, 2012 WL 2366729 (Tex. P.U.C. Apr. 5, 2012); Order, *In Re Consolidated Proceedings to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31259, and U-31260*, Docket No. U-31364 (La. P.S.C. May 25, 2012); Order, *In the Matter of: dPi Teleconnect, LLC v. BellSouth Telecomms., Inc., d/b/a AT&T Ky.*, Case No. 2009-00127, 296 P.U.R.4th 123, 2012 WL 182217 (Ky. P.S.C. Jan. 19, 2012); Order Resolving Credit Calculation Dispute, *In the Matter of BellSouth Telecomms., Inc. d/b/a AT&T North Carolina v. Image Access, Inc.*, Docket Nos. No. P-836, Sub 5 et al., 2011 WL 4448873 (N.C.U.C. Sept. 22, 2011); Order, *In the Matter of dPi Teleconnect, LLC v. BellSouth Telecomms., Inc. d/b/a AT&T Kentucky*, Case No. 2005-00455, 2011 WL 490903 (Ky. P.S.C. Feb. 1, 2011); Recommended Order, *In the Matter of dPi Teleconnect, LLC v. BellSouth Telecomms., Inc., d/b/a AT&T North Carolina*, Docket No. Docket No. P-55, Sub 1744, 2010 WL 1922679 (N.C.U.C. May 7, 2010), *aff’d sub nom. dPi Teleconnect, LLC v. Finley*, 844 F. Supp. 2d 664 (E.D.N.C. 2012); Order Denying Motion to Reconsider, *In re dPi Teleconnect, LLC v. BellSouth Telecomms., Inc.*, Docket No. P-55, Sub 1577, 2008 WL 2880723 (N.C.U.C. July 18, 2008), *aff’d sub nom. dPi Teleconnect LLC v. Sanford*, 2007 WL 2818556 (E.D.N.C. 2007), *aff’d sub nom. dPi Teleconnect LLC v. Owens*, 2011 WL 327071 (4th Cir. 2011).

bankruptcy or ceased doing business while owing, in the aggregate, more than \$150,000,000.00 they wrongfully withheld from AT&T ILECs.

AT&T Florida should not have to bear the risk of non-payment of the substantial amounts Budget owes, especially since the ICA does not even arguably allow Budget to withhold payment under these circumstances. Instead, the Commission should immediately require Budget to either pay AT&T Florida all amounts it has wrongfully withheld or to pay into escrow all amounts it has wrongfully withheld pending the outcome of this proceeding.

## II. ANSWER

1. AT&T Florida admits the allegations in Paragraph 1 of the Complaint.
2. Upon information and belief, AT&T Florida admits the allegations in Paragraph 2 of the Complaint.
3. Upon information and belief, AT&T Florida admits the allegations in Paragraph 3 of the Complaint.
4. Upon information and belief, AT&T Florida admits the allegations in Paragraph 4 of the Complaint.
5. AT&T Florida admits that it is a Georgia limited liability company, with its principal place of business in Atlanta, Georgia. To the extent not expressly admitted herein, AT&T Florida denies the allegations in the first sentence of Paragraph 5 of the Complaint. AT&T Florida admits the allegations in the second sentence of Paragraph 5 of the Complaint. Answering further, AT&T Florida hereby notifies the parties that its legal representatives for purposes of this proceeding are:

Suzanne L. Montgomery  
Tracy W. Hatch  
c/o Gregory R. Follensbee  
AT&T Florida  
150 South Monroe Street

Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
[sm6526@att.com](mailto:sm6526@att.com)  
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Patrick W. Turner  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201-2220  
(803)401-2900  
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6. AT&T Florida admits the allegations in Paragraph 6 of the Complaint.
7. AT&T Florida admits the first sentence of Paragraph 7 of the Complaint. AT&T Florida refers to Docket No. 080657-TP for its contents, and denies any allegations in the second and third sentences of Paragraph 7 of the Complaint that are inconsistent therewith.
8. AT&T Florida admits that certain marketing materials for the promotions alleged in Paragraph 8 of the Complaint (hereinafter, the "AT&T Long Distance Promotions") use the brand name "AT&T" without specifying the AT&T entity that provides a particular service; that a customer must be a local service customer of AT&T Florida to qualify for the AT&T Long Distance Promotions; and that the AT&T Long Distance Promotions are not available to customers without AT&T Florida local service. AT&T Florida denies all allegations of Paragraph 8 not expressly admitted herein.
9. The AT&T Long Distance Promotions are not available to customers without AT&T local service. AT&T Florida denies the allegations in Paragraph 9 of the Complaint not expressly admitted herein.
10. AT&T Florida admits that Budget has notified AT&T Florida that Budget claims to be entitled to credits for purported resale rights associated with the AT&T Long Distance Promotions, but AT&T Florida denies that this constitutes a "billing dispute" under the ICA.

AT&T Florida denies the allegations in Paragraph 10 of the Complaint not expressly admitted herein.

11. AT&T Florida denies the allegations in Paragraph 11 of the Complaint and specifically denies that the parties' interconnection agreement or applicable law requires AT&T Florida to provide to Budget for resale the AT&T Long Distance Promotions offered by a separate AT&T affiliate not a party to the interconnection agreement.

12. The allegations in Paragraph 12 of the Complaint, including all subparagraphs thereof, merely identify and characterize law that Budget alleges are "applicable" and therefore require no response, as the identified statutes, rules, and orders speak for themselves. To the extent a response is required, AT&T Florida directs the Commission to the statutes, rules and orders cited in Paragraph 12 of the Complaint and denies any allegation or characterization inconsistent therewith.

13. The allegations in Paragraph 13 of the Complaint merely identifies and selectively quotes from an FCC order and therefore require no response, as the order speaks for itself. To the extent a response is required, AT&T Florida directs the Commission to the FCC order cited in Paragraph 13 of the Complaint in its entirety and denies any allegation or characterization inconsistent therewith.

14. AT&T Florida denies the allegations in Paragraph 14 of the Complaint.

15. The allegations in Paragraph 15 of the Complaint assert only legal conclusions, to which no answer is required. AT&T Florida denies the allegations in Paragraph 15 of the Complaint not specifically admitted herein.

16. AT&T Florida denies the allegations in Paragraph 16 of the Complaint.

17. AT&T Florida is without information or knowledge sufficient to admit or deny what Budget is aware of, and therefore denies the allegations in Paragraph 17 of the Complaint.

18. AT&T Florida denies the allegations in Paragraph 18 of the Complaint, including all subparagraphs thereof.

19. AT&T Florida denies the allegations in Paragraph 19 of the Complaint, and denies that the specified statutes and regulations entitle Budget to any relief.

20. AT&T Florida denies that Budget is entitled to the relief requested in the subsection of its Complaint entitled "Relief Requested," or any relief whatsoever. AT&T Florida denies the remaining allegations, if any, of this subsection of the Complaint.

21. Any and all allegations in the Complaint that are not expressly admitted herein are denied.

### III. AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Commission lacks jurisdiction over some or all of the claims alleged in the Complaint.
3. The Complaint is barred, in whole or in part, by the applicable statute of limitations, by laches or by other doctrines relating to the passage of time.
4. The Complaint is barred because it is not a "billing dispute" within the meaning of the parties' interconnection agreement.
5. The Complaint is barred because AT&T Florida does not offer the AT&T Long Distance Promotions that are the subject of the Complaint.
6. The Complaint is barred, in whole or in part, because even if Budget were otherwise entitled to obtain the AT&T Long Distance Promotions for resale, Budget's customers do not satisfy the eligibility requirements for receipt of the AT&T Long Distance Promotions, as they would have to in order for Budget to obtain the promotions for resale to those customers.

7. The Complaint is barred, in whole or in part, because even if Budget were entitled to obtain the AT&T Long Distance Promotions for resale, Budget would be entitled to only a portion of the amounts it has withheld from its payments to AT&T Florida.

WHEREFORE, having fully responded to the Complaint, AT&T Florida respectfully requests that the Commission enter an Order denying the relief requested and granting AT&T Florida such further relief as the Commission deems just and proper.

#### **IV. COUNTERCLAIM AND PETITION FOR RELIEF**

Pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code, BellSouth Telecommunications, LLC d/b/a AT&T Florida hereby files the following Counterclaim and Petition for Relief against Budget Prepay, Inc.:

#### **PARTIES**

1. The name and address of the affected agency is the Florida Public Service Commission ("Commission"), 2540 Shumard Oak Blvd., Tallahassee, Florida 32399.

2. BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida") is a Georgia limited liability company and its principal place of business is 675 W. Peachtree Street, NE, Atlanta, Georgia 30375.

3. AT&T Florida is an incumbent local exchange carrier ("ILEC") under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (the "Act").

4. All pleadings, notices and other documents filed in this proceeding should be directed to AT&T Florida's representatives as follows:

Suzanne L. Montgomery  
Tracy W. Hatch  
c/o Gregory R. Follensbee  
AT&T Florida  
150 South Monroe Street

Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558  
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Patrick W. Turner  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201-2220  
(803)401-2900  
[pt1285@att.com](mailto:pt1285@att.com)

5. Budget is a Louisiana corporation with its principal place of business is 1325 Barksdale Blvd., Bossier City, LA 71111. Budget is a competitive local exchange carrier (“CLEC”) under the Act.

#### JURISDICTION

6. The Commission has jurisdiction to interpret and enforce the terms of the ICA. The Telecommunications Act of 1996 expressly authorizes state commissions to mediate interconnection agreement negotiations, arbitrate interconnection agreements, and approve or reject interconnection agreements. *See* 47 U.S.C. § 252(a)(2), (b), (e).

7. The Commission recognizes that § 252 authorizes it to interpret and enforce interconnection agreements. *See In re: Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida*, Docket No. 110234-TP, Order No. -12-0129-FOF-TP, at 6-7 (Mar. 20, 2012) (collecting authorities).

#### FACTS

8. Budget and AT&T Florida are parties to an interconnection agreement, entered on October 16, 2008, and entered into pursuant to the Act, under which AT&T Florida is required to

provide certain wholesale telecommunications services to Budget for resale by Budget to retail end-users (the "ICA").

9. Budget adopted the interconnection agreement between AT&T Florida and Level 3 Communications, LLC, which was approved by the Commission in Docket No. 040680-TP.

10. The Commission approved the ICA between AT&T Florida and Budget pursuant to 47 U.S.C. § 252(e) on February 2, 2009 through Docket No. 080657-TP. A copy of the adoption agreement between AT&T Florida and Budget is publicly available as part of Docket No. 080657-TP, at <http://www.psc.state.fl.us/library/FILINGS/06/00154-06/00154-06.PDF>, and a copy of the interconnection agreement that Budget adopted is publicly available as part of Docket No. 040680-TP, at <http://www.psc.state.fl.us/library/FILINGS/04/07202-04/07202-04.PDF>.

11. Pursuant to the ICA, Budget has ordered and AT&T Florida has provided telecommunications services to Budget for resale by Budget to retail end-users ("resale services").

12. AT&T Florida has billed Budget monthly for the resale services that Budget ordered and AT&T Florida provided to Budget.

13. Budget has paid only in part the amounts AT&T Florida has billed it for resale services.

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.

16. In withholding payments based its claim that it is entitled to the promotional benefits that are the subject of its Formal Complaint, Budget has not disputed the accuracy of the AT&T Florida bills or contended that it did not order the services reflected in the AT&T Florida bills; or that AT&T Florida failed to provide the resale services reflected in those bills; or that the rates AT&T Florida has charged Budget are incorrect; or that there are calculational errors in AT&T Florida's invoices. Rather, Budget has unilaterally withheld payment for services provided by, and properly billed by, AT&T Florida based solely upon its claim to promotional benefits unrelated to those services and those bills.

17. Budget is not entitled to the promotional benefits to which it claims it is entitled.

#### COUNT 1

18. AT&T Florida realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 as if more fully stated herein.

19. Budget's withholding of and refusal to pay amounts billed by AT&T Florida as set forth above is a breach of the parties' interconnection agreement.

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.

21. AT&T Florida has been harmed by Budget's conduct and breach of the parties' interconnection agreement.

22. The amount that Budget has wrongfully withheld is in excess of \$739,000.

DISPUTED ISSUES OF MATERIAL FACT

23. AT&T Florida is not aware of any disputed issues of material fact as to Budget breaching the interconnection agreement by withholding and refusing to pay amounts billed by AT&T Florida.

STATUTES AND RULES ENTITLING AT&T FLORIDA TO RELIEF

24. AT&T Florida is entitled to relief under Chapters 120 and 364, Florida Statutes, Chapters 25-22 and 28-106, Florida Administrative Code, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

PRAYER FOR RELIEF

WHEREFORE, AT&T Florida respectfully requests that the Commission grant AT&T Florida the following relief:

(a) Find that Budget has breached the ICA by wrongfully withholding amounts due and payable to AT&T Florida for services ordered and provided in accordance with the ICA;

(b) Find that AT&T Florida has been financially harmed as a direct result of Budget's breach of the ICA;

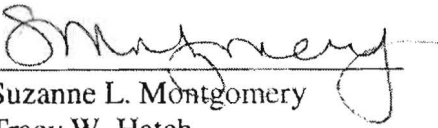
(c) Find that Budget is liable to AT&T Florida for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

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

(e) Grant such additional relief as the Commission deems just and proper.

Respectfully submitted this 17th day of September, 2012.

AT&T Florida



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