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August 7, 2007

Honorable Gary Hotvedt, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

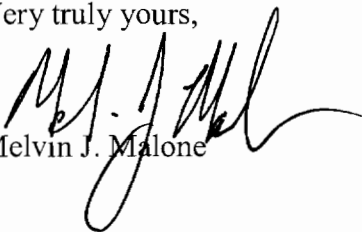
**RE: Complaint by Hilton Suites Brentwood Against BellSouth  
Telecommunications, Inc., TRA Docket No. 06-00223**

Dear Hearing Officer Hotvedt:

Enclosed are the original and thirteen (13) copies of the *Amended Complaint of Hilton Suites Brentwood*. In the interest of judicial economy, the parties have agreed as follows: (1) that Hilton may submit this Amended Complaint without submitting a motion requesting permission to do so; (2) that BellSouth Telecommunications, Inc. (AT&T Tennessee) shall have thirty (30) days to respond to the Amended Complaint; and (3) that BellSouth Telecommunications, Inc. reserves the right to assert any and all arguments, including any and all affirmative defenses, in response to the Amended Complaint. We trust that the Hearing Officer will accept the agreement of the parties.

If you have any questions or require additional information, please let me know.

Very truly yours,



Melvin J. Malone

cc: Parties of Record

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>COMPLAINT BY HILTON SUITES</b>	)	
<b>BRENTWOOD</b>	)	<b>DOCKET NO. 06-00223</b>
<b>AGAINST BELL SOUTH</b>	)	
<b>TELECOMMUNICATIONS, INC.</b>	)	
	)	

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**AMENDED COMPLAINT OF HILTON SUITES BRENTWOOD**

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Hilton Suites Brentwood (hereinafter referred to as "Hilton" or "Petitioner"), by and through its undersigned counsel, hereby submits its Amended Complaint in the above-captioned matter against BellSouth Telecommunications, Inc. (hereinafter referred to as "BellSouth").<sup>1</sup> In support of its Amended Complaint, Petitioner states as follows:

**I. THE PARTIES**

1. Petitioner is a hotel property located at 9000 Overlook Blvd., Brentwood, TN 37027. All correspondence, notices, inquiries and orders regarding this Amended Complaint should be directed to Petitioner's counsel:

Melvin J. Malone  
James A. Beakes III  
Miller & Martin PLLC  
1200 One Nashville Place  
150 4<sup>th</sup> Avenue North  
Nashville, Tennessee 37219-2423  
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<sup>1</sup> It is Petitioner's understanding that BellSouth currently operates in Tennessee as AT&T Tennessee.

2. Upon information and belief, BellSouth is an incumbent local exchange company (“ILEC”) and is certified to provide telecommunications services in the State of Tennessee. BellSouth maintains its principal place of business in Tennessee at 333 Commerce Street, Nashville, Tennessee.

## **II. JURISDICTION**

3. The Tennessee Regulatory Authority (“TRA” or “Authority”) has jurisdiction over the claims asserted herein under Tenn. Code Ann. § 65-4-101, *et seq.*

## **III. FACTUAL BACKGROUND**

4. Prior to January 31, 2002, Hilton decided to cancel its telecommunications service from BellSouth on account 615-370-0111 and to transfer such services to another local telecommunications provider. Hilton requested that BellSouth disconnect PRI circuit 80.IPZD.502015, through which BellSouth had been providing service on account 615-370-0111, and participate in the porting of the 61 telephone numbers associated with this circuit, including the main number (Billing Telephone Number) 615-370-0111, to the other local telecommunications service provider that Hilton had chosen.

5. At that time, BellSouth represented and promised that it would disconnect PRI circuit 80.IPZD.502015 and port the 61 telephone numbers associated with this circuit, including the main number (Billing Telephone Number) 615-370-0111.

6. On January 31, 2002, BellSouth represented to Hilton that it had accomplished the requested disconnection and porting, in accordance with BellSouth Port Out Number (PON) BRENTWOOD0111. This work was performed by Xeta Technologies, as evidenced by Service Ticket # 02001431.

7. Though Hilton had determined to disconnect PRI circuit 80.IPZD.502015 and to port the 61 telephone numbers associated with this circuit, which were provided by BellSouth, including the main number (Billing Telephone Number) 615-370-0111, subsequent to January 31, 2002, Hilton continued to receive, and did not seek to disconnect at that time, other telecommunications services from BellSouth, namely on 6 other accounts. None of these 6 accounts that Hilton continued with BellSouth at that time were associated with either PRI circuit 80.IPZD.502015 or BTN 615-370-0111.

8. Although BellSouth actively participated in the disconnection of services and porting, the circuit at issue in this matter was not disconnected, despite BellSouth's knowledge of Petitioner's intent to disconnect PRI circuit 80.IPZD.502015.

9. After January 31, 2002, nothing was plugged into BellSouth circuit 80.IPZD.502015 at the Hilton hotel. During this time, BellSouth knew or should have known that nothing was plugged into the subject circuit and that the circuit was not otherwise being utilized by Hilton.

10. In fact, after January 31, 2002, the subject circuit was in "alarm status" at BellSouth's central offices.

11. On or about March 2, 2002, without having been requested or authorized by Hilton, and without Hilton's knowledge, BellSouth intentionally and willfully created a new invoice for Billing Telephone Number (BTN), account number 615-370-4077, for the sole purpose of billing for PRI circuit 80.IPZD.502015, which should have been completely disconnected by BellSouth as of January 31, 2002.

12. BellSouth intentionally created the new Billing Telephone Number, account number 615-370-4077, in order to continue billing with respect to PRI circuit 80.IPZD.502015, contrary to Hilton's specific request and intent.

13. The effective date of BellSouth's unilateral and unauthorized creation of the new Billing Telephone Number, account number 615-370-4077, was the same day as the port of Hilton's telephone service to the other local carrier, namely January 31, 2002.

14. Upon information and belief, prior to January 31, 2002, account number 615-370-4077 was never associated with PRI circuit 80.IPZD.502015.

15. Upon receipt of the new BellSouth invoices related to account number 615-370-4077, Hilton's accounts payable personnel paid the invoices in the normal course of business, which includes processing several hundred invoices per month, including the invoices on the legitimately remaining accounts with BellSouth.

16. During the time period beginning on or about July 25, 2005, and ending on or about July 26, 2005, a telecommunications audit of Hilton Suites Brentwood's telephone service was performed by Excelsior Communications Services, Inc. (hereinafter referred to as "Excelsior") at the request of Hilton Suites Brentwood.

17. During this telecommunications audit, Excelsior discovered that a single circuit, PRI circuit 80.IPZD.502015, was located alone inside of a smart jack on the wall of Hilton's telephone room with nothing plugged into it.

18. Excelsior contacted BellSouth on or about August 8, 2005, and per Order # TB550375, Excelsior requested that BellSouth perform a circuit utilization study on PRI circuit 80.IPZD.502015 to determine and validate whether any activity was occurring on this circuit.

19. BellSouth confirmed that no activity had occurred on this circuit during the last 30 day period and that it was in “alarm status” as far back as BellSouth’s database showed.

20. On or about August 18, 2005, Excelsior canceled PRI circuit 80.IPZD.502015 with BellSouth and requested a refund of the improper charges paid by Hilton since January 31, 2002, on the new Billing Telephone Number, account number 615-370-4077.

21. Between August 18, 2005 and February 2006, Excelsior attempted to rectify this issue with BellSouth through various telephone and e-mail correspondence with various departments at BellSouth, including the customer service and legal departments, to no avail.

22. Due to BellSouth’s failure to reasonably respond, Hilton was forced to thereafter bring this matter to the attention of the Tennessee Regulatory Authority.

23. It was Hilton’s intention that PRI circuit 80.IPZD.502015 be disconnected and that the 61 telephone numbers associated with this circuit be ported, including the main number (Billing Telephone Number) 615-370-0111. Hilton never requested for PRI circuit 80.IPZD.502015 from BellSouth to continue after January 31, 2002 or that Hilton be billed by BellSouth under the newly generated account 615-370-4077.

**IV. COUNT I – VIOLATION OF TENN. CODE ANN. § 65-4-125 AND  
AUTHORITY RULE 1220-4-2-.58 – CRAMMING**

24. The allegations contained in paragraphs 1 through 23 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

25. BellSouth violated Tenn. Code Ann. § 65-4-125 and Authority Rule 1220-4-2-.58 by billing and collecting funds from Hilton for services that BellSouth knew or reasonably should have known Hilton had not subscribed to or otherwise requested.

Specifically, BellSouth's violation of the foregoing occurred when BellSouth failed to disconnect PRI circuit 80.IPZD.502015 after porting the 61 telephone numbers associated with this circuit, including the main number (Billing Telephone Number) 615-370-0111, after being requested to do by Hilton and instead created a new Billing Telephone Number, account number 615-370-4077, for the sole purpose of billing for the circuit that should have been disconnected by BellSouth as of January 31, 2002.

26. BellSouth's conduct was unauthorized, misleading, deceptive and unfair.

27. Hilton Suites Brentwood is, therefore, entitled to compensatory damages for BellSouth's violation of Tenn. Code Ann. § 65-4-125 and Authority Rule 1220-4-2-.58 in an amount equal to all charges and fees for services for which Hilton Suites Brentwood did not subscribe, and any and all costs incurred by Hilton Suites Brentwood in discovering, investigating, and remedying the aforementioned violations by BellSouth.

28. Pursuant to Tenn. Code Ann. § 65-4-125(f), the Authority should also subject BellSouth to a civil penalty at the highest amount permitted under the law.

**V. COUNT II – INTENTIONAL MISREPRESENTATION/ PROMISSORY FRAUD**

29. The allegations contained in paragraphs 1 through 28 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

30. On or before, January 31, 2002, at the request of Hilton, BellSouth promised and represented that it would disconnect PRI circuit 80.IPZD.502015 and port the 61 telephone numbers billing on PRI circuit 80.IPZD.502015, including the main number (BTN) 615-370-0111, to another local telecommunications service provider. Implicit in this representation and promise was that after January 31, 2002, Hilton's telephone service related to PRI circuit

80.IPZD.502015 and main number 615-370-0111 would be closed and that Hilton would not incur any further charges from BellSouth for such telephone service.

31. However, BellSouth knew that this representation was false when it was made or was reckless as to the truth or falsity of this representation when it was made, and, further, BellSouth did not intend to carry out its promise to disconnect PRI circuit 80.IPZD.502015.

32. BellSouth intended for Hilton to rely upon these false representations and promises and intended for Hilton to act in reliance thereon.

33. Hilton did not know that the representations made by BellSouth were false when they were made, and Hilton did not know that BellSouth had no intention to carry out its promises. Therefore, Hilton was justified in relying upon the perceived truth of BellSouth's representations and promises.

34. Hilton suffered damages as a result of BellSouth's intentional misrepresentations and promissory fraud and BellSouth is liable to Hilton in an amount to be proven at the hearing of this matter.

#### **VI. COUNT III – NEGLIGENT MISREPRESENTATION**

35. The allegations contained in paragraphs 1 through 34 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

36. BellSouth negligently promised and represented on January 31, 2002, that it would disconnect PRI circuit 80.IPZD.502015 and port the 61 telephone numbers billing on PRI circuit 80.IPZD.502015, including the main number (BTN) 615-370-0111. By making these false representations and promises, BellSouth negligently represented that after January 31, 2002, Hilton's telephone service related to PRI circuit 80.IPZD.502015 and main number 615-



370-0111 would be closed and that Hilton would not incur any further charges from BellSouth for such telephone service.

37. Hilton detrimentally relied on BellSouth's false promises and representations that its telephone service related to PRI circuit 80.IPZD.502015 and main number 615-370-0111 would be closed and that Hilton would not incur any further charges from BellSouth for such telephone service.

38. As a result of Hilton's detrimental reliance on BellSouth's false promises and representations, damages resulted in the form of payments for service that was not requested by Hilton.

39. Hilton Suites Brentwood suffered damages as a result of BellSouth's negligent misrepresentations, and BellSouth is liable to Hilton in an amount to be proven at the hearing of this matter.

## **VII. COUNT IV – CONVERSION**

40. The allegations contained in paragraphs 1 through 39 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

41. BellSouth has appropriated funds paid to it by Hilton for its own use and benefit by exercising dominion over it in defiance of Hilton's rights to these funds. BellSouth has provided no services in return for these funds paid by Hilton nor are they entitled to the funds under any theory of equity.

42. BellSouth has provided no services that were either utilized by Hilton or of value to Hilton in return for these funds paid by Hilton nor are they entitled to the funds under any theory of equity..

43. By failing to return the funds as repeatedly requested by Hilton, BellSouth is liable to Hilton for conversion in an amount to be proven at the hearing of this matter.

**VIII. COUNT V – UNJUST ENRICHMENT/ ASSUMPSIT/  
MONEY HAD AND RECEIVED**

44. The allegations contained in paragraphs 1 through 43 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

45. Following Hilton's request, BellSouth knew or should have known that PRI circuit 80.IPZD.502015 was to be disconnected, that the 61 telephone numbers billing on PRI circuit 80.IPZD.502015, including the main number (BTN) 615-370-0111, were to be ported to a different local telecommunications provider and that Hilton was to no longer be billed for any service related to this circuit.

46. BellSouth's subsequent intentional and improper creation of a new Billing Telephone Number, account number 615-370-4077, on January 31, 2002, without Hilton's authorization or knowledge, for the sole purpose of billing for PRI circuit 80.IPZD.502015, caused Hilton to mistakenly make certain payments to BellSouth for telephone service that it had discontinued and was not using.

47. These payments from Hilton to BellSouth, which were made based on billings from BellSouth under Billing Telephone Number 615-370-4077 from January 31, 2002 through approximately August 18, 2005, were accepted and allowed by Bellsouth.

48. BellSouth has received money under circumstances that in equity and good conscience they ought not to retain and in justice and fairness belongs to Hilton. In equity, they should not be allowed to retain those funds paid by Hilton after January 31, 2002, on this newly created account while providing no services utilized by Hilton for the value paid.

49. Accordingly, BellSouth has been unjustly enriched by receiving money or its equivalent and its retention of such money under such circumstances that in equity and good conscience, it should not have received or retained. BellSouth's retention of such value, benefits, and funds is inequitable, and it is unconscionable to allow BellSouth to maintain acceptance of these funds.

50. Hilton is, therefore, entitled to compensatory damages under the theories of unjust enrichment, assumpsit, and/or money had and received, in an amount to be proven at the hearing of this matter.

#### **IX. COUNT VI – OTHER STATUTORY VIOLATIONS**

51. The allegations contained in paragraphs 1 through 50 of this Amended Complaint are hereby incorporated by reference into this count of the Amended Complaint as if set forth verbatim herein.

52. BellSouth's actions constitute a violation of Tenn. Code Ann. § 65-4-115 for adopting, maintaining or enforcing a regulation, practice or measurement that is unjust and unreasonable and for maintaining a service that is improper.

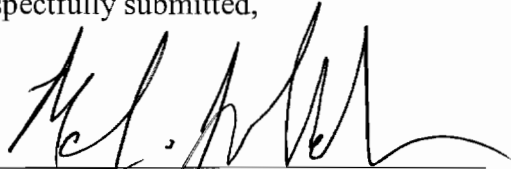
WHEREFORE, premises considered, Hilton Suites Brentwood, prays for the following relief:

1. A judgment for compensatory damages against BellSouth in the amount to be proven at the hearing of this matter, plus pre- and post-judgment interest;
2. A judgment for punitive damages against BellSouth in an amount determinable by the Authority for the intentional, fraudulent and reprehensible conduct that is the subject of this matter;
3. An appropriate civil penalty be levied against BellSouth by the Authority

pursuant to Tenn. Code Ann. § 65-4-125(f); and

4. An award of the costs of this cause and such other and further relief as the Authority deems just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mel. J. Malone', written over a horizontal line.

Melvin J. Malone  
James A. Beakes III  
MILLER & MARTIN PLLC  
150 Fourth Avenue North  
1200 First Union Tower  
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(615) 244-9270

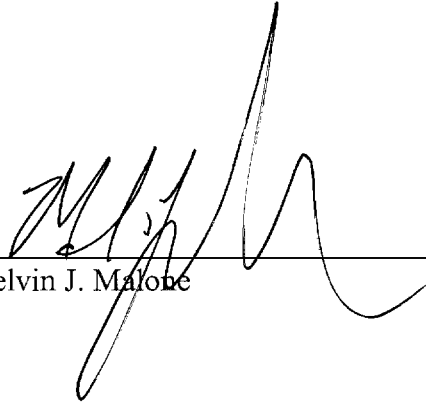
*Attorneys for Hilton Suites Brentwood*

## CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2007, a true and correct copy of the foregoing has been served on the parties set forth below, via the method(s) indicated below:

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
d/b/a AT&T Tennessee  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300  
gh1402@att.com

**U.S. Mail and Electronically**



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Melvin J. Malone