



Guy M. Hicks
General Attorney - TN

AT&T Tennessee
333 Commerce Street
Suite 2101
Nashville, TN 37201-1800

T: 615.214.6301
F: 615-214-7406
gh1402@att.com

April 9, 2010

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

filed electronically in docket office on 04/09/10

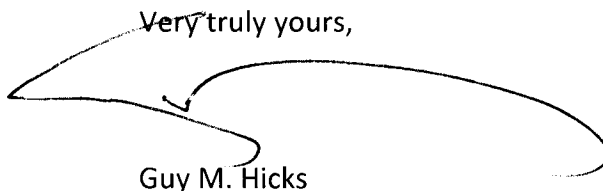
Re: *BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T Tennessee vs. Tennessee Telephone Service, LLC dba Freedom Communications, LLC, dba Freedom Communications USA, LLC*
Docket No. 10-00005

Dear Chairman Kyle:

Enclosed for filing in the referenced dockets are the original and four copies of AT&T's *Response to Freedom's Answer/Counterclaims*.

Copies have been provided to counsel of record.

Very truly yours,



Guy M. Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. dba AT&T Southeast dba AT&T Tennessee vs. Tennessee Telephone Service, LLC dba Freedom Communications, LLC, dba Freedom Communications USA, LLC*
Docket No. 10-00005

AT&T TENNESSEE’S RESPONSE TO FREEDOM’S ANSWER/COUNTERCLAIMS

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T Tennessee”) respectfully submits this Response to the Answer and Counter-Claims (“Answer/Counterclaims”) filed by Tennessee Telephone Service, Inc. d/b/a Freedom Communications, USA, LLC (“Freedom”) on or about February 25, 2010.

1. Any allegation in the Answer/Counterclaims to which a response is required of AT&T Tennessee is denied unless expressly and explicitly admitted herein.
2. The “Narrative Summary” at pages 1-6 of the Answer/Counterclaims is Freedom’s version of the situation, and it requires no response from AT&T Tennessee.
3. The “Specific Responses to AT&T’s Complaint” at pages 6-9 of the Answer/Counterclaims requires no response from AT&T Tennessee.
4. For the reasons set forth in AT&T Tennessee’s Response to Motions to Dismiss and/or Stay, AT&T Tennessee objects to Freedom’s requests, in Paragraphs 20-21 of its Answer/Counterclaims, that the Authority dismiss AT&T Tennessee’s Complaint or delay these proceedings, and AT&T Tennessee denies that Freedom is entitled to anything it requests in those paragraphs.

ANSWER TO “LINE CONNECTION CHARGE WAIVER” COUNTERCLAIM

5. For the reasons set forth in AT&T Tennessee’s Motion to Dismiss or Sever Certain Counterclaims, AT&T Tennessee respectfully requests that the Authority dismiss the Counterclaim in Paragraph 22 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Tennessee’s Complaint.

6. In the alternative, in response to the allegations of Paragraph 22 of the Answer/Counterclaims, AT&T Tennessee asserts that some of its retail promotional offerings waive the line connection charge for qualifying end users. When a reseller like Freedom buys the telecommunications services associated with those offerings for resale, AT&T Tennessee initially bills the reseller the retail charge for the line connection less the applicable wholesale discount. Assuming a retail line connection charge of \$40 and a wholesale discount of 20%, for example, AT&T Tennessee initially bills the reseller \$32. If the reseller timely submits a request for a promotional credit and otherwise satisfies the qualifications of a specific retail promotional offering, AT&T Tennessee then credits the reseller’s bill in the same amount it initially billed the reseller for the line connection charge. In the example above, for instance, AT&T Tennessee would credit a qualifying reseller’s bill in the amount of \$32. As a result, a qualifying reseller pays \$0 for the line connection, just as a qualifying retail customer pays \$0 for the line connection. AT&T Tennessee denies the remaining allegations of Paragraph 22 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Tennessee denies that in this example, it is “required to give the reseller the full, \$40 value of the waiver,” that the process described above (which has been in place for

years) is a condition or restriction on resale, and that AT&T Tennessee was required to make any showing to the Authority prior to implementing the process described above. AT&T Tennessee further denies that Freedom has disputed any of the outstanding balance described in AT&T Tennessee's Complaint on the grounds alleged in Paragraph 22 of the Answer/Counterclaims.

7. AT&T Tennessee further denies that Freedom has disputed any of the outstanding balance described in AT&T Tennessee's Complaint on the grounds alleged in Paragraph 22 of the Answer/Counterclaims.

ANSWER TO "BUNDLED OFFERING" COUNTERCLAIM

8. For the reasons set forth in AT&T Tennessee's Motion to Dismiss or Sever Certain Counterclaims, AT&T Tennessee respectfully requests that the Authority dismiss the Counterclaim in Paragraph 23 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Tennessee's Complaint.

9. In the alternative, in response to the allegations of Paragraph 23 of the Answer/Counterclaims, AT&T Tennessee asserts that some retail offerings bundle telecommunications services offered by AT&T Tennessee with non-telecommunications services offered by AT&T Tennessee, its affiliates, and/or other entities, often at a single price. AT&T Tennessee denies the remaining allegations of Paragraph 23 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Tennessee denies that it has improperly refused to offer telecommunications services included in such bundled offerings for resale, that it has billed Freedom an inappropriate amount for any telecommunications services Freedom has purchased for resale;

that it has not complied with 47 C.F.R. §51.613(b), and that it was required to make any showing pursuant to 47 C.F.R. §51.613(b) with regard to the offerings described in Paragraph 23 of the Answer/Counterclaims.

10. AT&T Tennessee further denies that Freedom has disputed any of the outstanding balance described in AT&T Tennessee's Complaint on the grounds alleged in Paragraph 23 of the Answer/Counterclaims.

ANSWER TO "NEW METHODOLOGY" COUNTERCLAIM

11. For the reasons set forth in AT&T Tennessee's Motion to Dismiss or Sever Certain Counterclaims, AT&T Tennessee respectfully requests that the Authority dismiss the Counterclaim in Paragraph 24 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Tennessee's Complaint.

12. In the alternative, in response to the allegations of Paragraph 24 of the Answer/Counterclaims, AT&T Tennessee admits that on July 1, 2009 it issued Accessible Letter No. CLECSE09-100 (a copy of which is attached to this Response as Exhibit A) informing competitive local exchange carriers ("CLECs") of its intent to change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers that are available for resale. AT&T Tennessee admits that on July 1, 2009, it also issued Accessible Letter No. CLECSE09-112 (a copy of which is attached to this Response as Exhibit B) informing CLECs that effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$3.65 using the methodology announced in Accessible Letter No. CLECSE09-100. AT&T Tennessee denies the remaining allegations of Paragraph 24 of the Answer/Counterclaims to

the extent they are inconsistent with the assertions herein. Specifically, AT&T Tennessee denies that it has imposed any condition or restriction on the resale of telecommunications services associated with retail cashback offerings, that it was required to make any showing to the Authority regarding the new methodology, that it is seeking any amounts billed under the new methodology in this Docket, and that it currently is billing Freedom for any amounts calculated under this new methodology.

13. AT&T Tennessee further denies that Freedom has disputed any of the outstanding balance described in AT&T Tennessee's Complaint on the grounds alleged in Paragraph 24 of the Answer/Counterclaims.

ANSWER TO "RELIEF SOUGHT"

14. AT&T Tennessee denies that Freedom is entitled to any of the relief it seeks in its Answer/Counterclaims, including without limitation the relief sought in the "wherefore" clause at page 10.

AFFIRMATIVE DEFENSES

15. Each Counterclaim fails to state a cause of action upon which relief can be granted.

16. To the extent it is not dismissed, each Counterclaim should be addressed separate and apart from the claims presented in AT&T Tennessee's Complaint.

17. Each Counterclaim is barred, in whole or in part, by the doctrines of unclean hands, laches, forbearance, waiver, and/or estoppel.

18. Each Counterclaim is barred, in whole or in part, by the applicable statute of limitations and/or the applicable "dispute" provisions of the parties' interconnection

agreement(s), including without limitation provisions addressing the presentment, pursuit, escalation, and preservation of billing disputes.

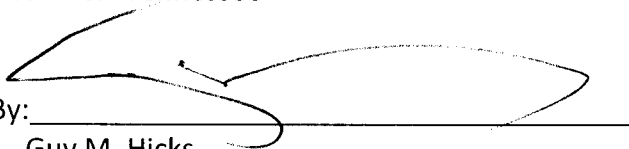
19. Each Counterclaim is barred, in whole or in part, by Freedom's failure to mitigate any damages allegedly sustained.

20. To the extent the Authority awards Freedom any relief with regard to its Counterclaims (and it should not), such relief should be only prospective in nature.

WHEREFORE, AT&T Tennessee respectfully requests that the Authority enter an Order denying all relief sought by Freedom, dismissing all Counterclaims, and granting such further relief as the Authority deems appropriate.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee

By: 

Guy M. Hicks
Joelle Phillips
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301
Attorneys for AT&T



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-100**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Resale of Cash-Back Promotions**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee**

Issuing AT&T ILECS: **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 (collectively referred to, for purposes of this Accessible Letter, as "AT&T Southeast Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southeast Region is sending this letter to provide notice that it will change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers (including but not limited to promotional offers involving checks, coupons, and other similar items) that are available for resale.

The change will be implemented initially for residential acquisition cash-back promotion offers requested on or after September 1, 2009, in all AT&T ILEC states, regardless of whether the underlying promotion is new or existing.

Details regarding the specific resale credits available for applicable promotions will be communicated via separate Accessible Letters. The formulae AT&T Southeast Region will use to calculate these credits is available in the Resale Product section of the CLEC Handbook on CLEC Online at:

<https://clec.att.com/clec/hb/index.cfm>

AT&T Southeast Region reserves the right to make any modifications to or to cancel the above information prior to the proposed effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Southeast Region will send additional notification at the time of cancellation. AT&T Southeast Region will incur no liability to the CLECs if the above mentioned information and/or approach is modified or discontinued for any reason.

Exhibit A



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-112**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Win-back Cash Back Promotion - TN**

Related Letters: **CLECSE09-100**

Attachment: **NA**

States Impacted: **Tennessee**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

Effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$3.65 using the methodology announced in **CLECSE09-100**, dated July 1, 2009.

AT&T Tennessee reserves the right to modify or cancel the above information. Should any such action be taken, it will be reflected in a subsequent letter to CLECs. AT&T Tennessee will incur no liability for the foregoing.

Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2010, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire
Bradley Arrant Boulton Cummings
1600 Division Street, Suite 700
P. O. box 340025
Nashville, TN 37203
hwalker@babbc.com

