

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**In the matter of:**

**BellSouth Telecommunications, Inc.**

**d/b/a AT&T Southeast d/b/a AT&T Tennessee v.**

**dPi Teleconnect, L.L.C.**

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**Case No. 10-00007**

**dPi TELECONNECT, L.L.C.'s MOTION FOR EMERGENCY INTERIM RELIEF**

dPi Telecommunications, L.L.C. ("dPi") seeks an emergency order enjoining BellSouth Telecommunications, Inc. ("AT&T") from halting dPi's provisioning and terminating service to dPi in violation of the parties' interconnection agreement. dPi respectfully requests that this issue be taken up by the Authority during its regularly scheduled July 11, 2011, meeting.

**BACKGROUND**

1. On June 28, 2011, AT&T served dPi with a notice that it intends to suspend dPi's provisioning on July 13, 2011, unless dPi pays AT&T \$288,428 connected to disputes over lifeline subsidies in Tennessee. A copy of this letter was sent by AT&T to the Authority and another copy is attached hereto as Exhibit A.<sup>1</sup>
2. The parties' interconnection agreement provides that amounts in dispute need not be paid. AT&T recognizes this, but asserts that the dPi's disputes regarding the lifeline subsidies in Tennessee were not made in good faith, and as a consequence the contract provision excusing non-payment of disputed amounts does not apply. Thus, the sole question at this stage of the proceedings is whether dPi has disputed these charges in good faith. dPi has: dPi's disputes are in good faith and supported by both the law and its

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<sup>1</sup> It is unclear how or where AT&T's letter relating to dPi was filed at the Authority. However, dPi notes that a substantively identical letter concerning another reseller, BLC Management, LLC d/b/a Angles Communications Solutions, was filed in the sister docket to this one (Case No. 10-00008). Consequently, dPi sees no reason to anticipate dissimilar treatment of the filing of AT&T's letter to dPi, and expects that when filed, it will be filed with the papers of this case.

interconnection agreement. Furthermore, dPi expects that upon careful consideration of this issue, the Authority will agree that dPi is entitled to the subsidy.

3. The Authority's power to act in this instance stems from, among others, the following statutes:

**65-2-104. Petition for declaratory ruling by the authority.** On the petition of any interested person, the authority may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it or with respect to the meaning and scope of any order of the authority. ...

**65-2-121. Liberal construction of chapter.** This chapter shall not be construed as in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power.

**65-4-104. Authority's jurisdiction and control of public utilities.** The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter....

**65-4-114. Service requirements.** The authority has the power, after hearing, upon notice, by order in writing, to require every public utility, as defined in § 65-4-101, to: (1) Furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so; ...

**65-4-115. Unjust practices and unsafe services prohibited.** No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.

*dPi's disputes are in good faith and supported by the law*

4. AT&T is the dominant carrier in Tennessee; it is a matter of public record that AT&T has 80% or more of the land line accounts in the state. AT&T sells lifeline service pursuant to its tariffs on file with the Authority. The price for AT&T lifeline

service reflects a \$7.00 federal subsidy and a \$3.50 state “self funded” subsidy. AT&T’s regular retail rates, established in 1993, and substantially unchanged through the beginning of resale competition, contained an inherent subsidy for the state portion of the lifeline credit.

5. 47 U.S.C. § 251(c)(4)(A) requires AT&T to resell and service it offers at retail at wholesale, that is at the retail price less AT&T’s avoided costs. 47 U.S.C. § 251(c)(4)(B) similarly imposes upon ILECs a duty not to “prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.” These concepts are elaborated upon at 47 C.F.R. § 51.605(a) and 47 C.F.R. § 51.603(b). 47 C.F.R. § 51.605(a) provides that ILECs “shall offer to any requesting telecommunications carrier any telecommunications service that the [ILEC] offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates....” In turn, 47 C.F.R. § 51.603(b) provides: “A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, *subject to the same conditions*, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.” [Emphasis added.]

6. With regard to its lifeline service, however, AT&T has refused to follow these core legal principles. AT&T claims that it is not required to pass through the \$3.50 “self funded” state lifeline credit that is implicitly reflected in its lifeline pricing, and claims that its position has been sustained by the Authority. AT&T insists that dPi and the other resellers, all of whom have ICAs which allow them to withhold disputed charges, are acting in bad faith by disputing the Lifeline subsidy issue in Tennessee. AT&T demands

that unless the resellers immediately pay all the Lifeline subsidy money that they have withheld, AT&T will disconnect the service of all of the resellers' Tennessee customers.

7. The substance of the "State Lifeline Credit" dispute between AT&T and the resellers concerns whether the "interim" policy adopted by the TRA eleven years ago (Complaint of Discount Communications, Inc., Docket 00-00230, ordered issued Sept. 20, 2000) is still controlling today. In 2000, the TRA decided by a two-to-one vote that, on an interim basis, BellSouth (now AT&T) was not required to pass on to resellers the \$3.50 Lifeline subsidy that had been built into BellSouth (now AT&T)'s rate structure at the time of deregulation.

8. Implicitly acknowledging that this decision might, in the long run, raise concerns about whether resellers could compete for Lifeline customers, the majority emphasized that this was only an "interim" decision and that the \$3.50 subsidy "shall be funded from the state Universal Service Fund once the fund is established and becomes operations." Order at 11.<sup>2</sup> This decision was controversial at the time. Chairman Kyle dissented and noted that BellSouth should be required to pass on the \$3.50 subsidy to resellers because the subsidy "has been built into BellSouth's rates." Dissent, at 1. The situation has not improved over time, as (for various reasons) the Tennessee Universal Service Fund was never created which would otherwise have provided the \$3.50 subsidy as anticipated eleven years ago.

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<sup>2</sup> Note that whether the credit is supplied by AT&T or by a Universal Service Fund is largely a distinction without a difference. Because AT&T has captured such a high percentage of the land line market share, the contributions to the fund would ultimately come from AT&T lines regardless of the fund is named or administered.

9. As a practical consequence of this holding, AT&T gets a \$3.50 windfall for every month that a Lifeline customer secures service through a reseller. This is because AT&T collects from all its customers – retail and wholesale alike – moneys originally intended to fund the state lifeline credit. However, when a reseller of AT&T's services provides lifeline service, AT&T refuses to disburse the state credit, instead keeping that money for itself. The Reseller's implicit subsidy of the fund (by paying rates to AT&T intended to build the fund) is disregarded, and to add insult to injury, the Reseller is required to pay a second time from its own pocket the amounts constituting the state subsidy.
10. Chairman Kyle remains at the TRA. The two Directors who adopted the "interim" policy in 2000 are no longer there. It is certainly not "bad faith" for the resellers to believe that if this dispute were presented to the TRA today, the agency might well reach a different conclusion. In fact, dPi expects that the agency to rule that, in the absence of a universal service fund, the "interim" decision adopted in 2000 should not have remained in effect for eleven years.
11. Moreover, dPi's interconnection agreement appears to implicitly recognize that AT&T will pass on to dPi the full amount of lifeline credits, giving further support to dPi's argument that it is entitled to the state lifeline credit.

***dPi's disputes are in good faith and supported by the interconnection agreement***

12. Unlike Discount Communications Inc.'s interconnection agreement, dPi's interconnection agreement includes two percentage discounts: 16% for lifeline services, and 21.56% for non-lifeline services. *See* Attachment 1, Resale:

3.2.2 In Tennessee, if dPi does not resell Lifeline service to any end users, and if dPi agrees to order an appropriate Operator Services/Directory Assistance block as set forth in BellSouth's GSST, the discount shall be twenty-one point fifty-six percent (21.56%)

3.2.2.1 In the event dPi resells Lifeline service to any end user in Tennessee, BellSouth will begin applying the sixteen percent (16%) discount rate to all services. Upon dPi and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate OCN is established for billing of Lifeline service end users, the discount shall be applied as set forth in Section 3.2.2 above for the non-Lifeline affected Master Account (Q-account).

13. The main justification for having one (lesser) avoided cost discount associated with Lifeline, and another (greater) avoided costs discount associated with non-Lifeline services, is precisely because the state subsidy is to included as part of the resale price. This is further borne out by the text stating that the Lifeline discount will apply to "all [Lifeline] services."

WHEREFORE, dPi's disputes are made in good faith and supported by the law, facts, and interconnection agreement. dPi accordingly respectfully requests that the Authority issue an Order enjoining AT&T from interrupting or otherwise affecting service it provides to dPi in connection with the disputes relating to the state lifeline subsidy until such disputes can be considered and determined by this Authority. dPi further requests such further relief as dPi is entitled to in law and equity.

Respectfully submitted,

Malish & Cowan, P.L.L.C.  
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Austin, Texas 78703  
(512) 476-8591/ (512) 477-8657/fax

By: /s/Chris Malish  
Christopher Malish  
State Bar No. 00791164  
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Attorneys for dPi Teleconnect, L.L.C.

**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing document has been served on AT&T through its attorneys on this July 8, 2011, via facsimile and First Class Mail.

Guy M. Hicks  
General Attorney - AT&T TN  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300  
Fax: (615) 214-7406

\_\_\_\_\_/s/Chris Malish  
Christopher Malish

# **EXHIBIT A**





June 28, 2011

VIA FED EX, Tracking No. 8750 3078 5240

Charles Hartley, Vice President of Operations  
dPi Teleconnect  
1330 Capital Parkway  
Carrollton, TX 75006

VIA FED EX, Tracking No. 8750 3078 5251

Kelly King, Director ILEC Relationships  
dPi Teleconnect  
2997 LBJ Freeway, Ste. 225  
Dallas, TX 75234

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Hartley and Ms. King:

AT&T Tennessee's records show that dPi Teleconnect ("dPi") has an outstanding balance on its Tennessee account in excess of \$2.3 million. This amount is listed on Attachment A hereto. Of that amount, our records indicate that dPi is withholding \$288,428.00 in sums attributable to dPi's "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to dPi from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.4, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and dPi requires dPi to pay AT&T Tennessee for all services billed. While dPi may have the right to withhold payment on disputed sums, any such right is subject to Section 26 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. dPi's withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this

very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

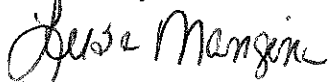
Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.5 *et seq.*, including without limitation 1.5.3, 1.5.4 and 1.5.5, Attachment 7, Billing, AT&T Tennessee hereby notifies dPi that, in the event dPi fails to make payment to AT&T Tennessee in the amount of \$288,428.00 as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, will discontinue the provision of existing services as of thirty (30) days following the date of this letter, and will terminate services as of thirty-seven (37) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

  
Leisa Mangina

Attachment

## Attachment A

DPI TELECONNECT INC	Prev Mth Billed	Payments	Adjusted	Past due balance	Current charges	Late Payment chrgs	Total billed
Jun-08	\$465,715.00	(\$34,930.00)	\$488.00	\$431,273.00	\$106,490.00	\$0.00	\$537,763.00
Jul-08	\$537,763.00	(\$131.00)	(\$39,131.00)	\$498,501.00	\$114,882.00	\$0.00	\$613,383.00
Aug-08	\$613,383.00	(\$238.00)	(\$745.00)	\$612,399.00	\$129,933.00	\$1.00	\$742,333.00
Sep-08	\$742,333.00	(\$448.00)	(\$30,331.00)	\$711,554.00	\$149,941.00	(\$1.00)	\$861,494.00
Oct-08	\$861,494.00	(\$20.00)	(\$21.00)	\$861,453.00	\$173,167.00	\$0.00	\$1,034,620.00
Nov-08	\$1,034,620.00	\$0.00	(\$111,492.00)	\$923,128.00	\$195,558.00	(\$1.00)	\$1,118,685.00
Dec-08	\$1,118,685.00	(\$100,000.00)	(\$64,120.00)	\$954,565.00	\$195,733.00	\$0.00	\$1,150,298.00
Jan-09	\$1,150,298.00	(\$20,000.00)	(\$106,442.00)	\$1,023,856.00	\$216,211.00	\$0.00	\$1,240,067.00
Feb-09	\$1,240,067.00	(\$140.00)	(\$80,065.00)	\$1,159,862.00	\$214,718.00	(\$1.00)	\$1,374,579.00
Mar-09	\$1,374,579.00	(\$25,000.00)	(\$84,480.00)	\$1,265,100.00	\$180,018.00	\$0.00	\$1,445,118.00
Apr-09	\$1,445,118.00	(\$285,000.00)	(\$123,503.00)	\$1,036,615.00	\$184,208.00	\$0.00	\$1,220,823.00
May-09	\$1,220,823.00	\$0.00	(\$28,218.00)	\$1,192,605.00	\$181,129.00	(\$1.00)	\$1,373,733.00
Jun-09	\$1,373,733.00	(\$105,000.00)	(\$54,942.00)	\$1,213,791.00	\$159,945.00	\$0.00	\$1,373,736.00
Jul-09	\$1,373,736.00	(\$302,361.00)	(\$122,097.00)	\$949,278.00	\$158,683.00	\$0.00	\$1,107,961.00
Aug-09	\$1,107,961.00	(\$112.00)	(\$285.00)	\$1,107,565.00	\$157,641.00	\$0.00	\$1,265,206.00
Sep-09	\$1,265,206.00	\$0.00	(\$117,352.00)	\$1,147,854.00	\$153,636.00	\$0.00	\$1,301,490.00
Oct-09	\$1,301,490.00	(\$52.00)	(\$86,912.00)	\$1,214,526.00	\$145,659.00	(\$1.00)	\$1,360,184.00
Nov-09	\$1,360,184.00	\$0.00	(\$64,009.00)	\$1,296,176.00	\$149,847.00	\$0.00	\$1,446,023.00
Dec-09	\$1,446,023.00	(\$112.00)	(\$35,104.00)	\$1,410,807.00	\$139,018.00	\$0.00	\$1,549,825.00
Jan-10	\$1,549,825.00	\$0.00	(\$92.00)	\$1,549,733.00	\$118,895.00	\$0.00	\$1,668,628.00
Feb-10	\$1,668,628.00	(\$72.00)	(\$119,254.00)	\$1,549,302.00	\$119,222.00	\$0.00	\$1,668,524.00
Mar-10	\$1,668,524.00	(\$40,050.00)	(\$20,966.00)	\$1,607,509.00	\$110,951.00	(\$1.00)	\$1,718,459.00
Apr-10	\$1,718,459.00	(\$72.00)	(\$61,502.00)	\$1,656,885.00	\$120,360.00	\$0.00	\$1,777,245.00
May-10	\$1,777,245.00	(\$102.00)	(\$21,023.00)	\$1,756,119.00	\$160,595.00	\$0.00	\$1,916,714.00
Jun-10	\$1,916,714.00	\$0.00	(\$41,364.00)	\$1,875,350.00	\$164,773.00	\$0.00	\$2,040,123.00
Jul-10	\$2,040,123.00	\$0.00	(\$79,235.00)	\$1,960,889.00	\$198,690.00	\$0.00	\$2,159,579.00
Aug-10	\$2,159,579.00	(\$62.00)	(\$61,023.00)	\$2,098,494.00	\$202,245.00	(\$1.00)	\$2,300,738.00
Sep-10	\$2,300,738.00	(\$41.00)	(\$48,869.00)	\$2,251,829.00	\$167,746.00	\$0.00	\$2,419,575.00
Oct-10	\$2,419,575.00	\$0.00	(\$35,038.00)	\$2,384,537.00	\$166,565.00	\$1.00	\$2,551,103.00
Nov-10	\$2,551,103.00	(\$50.00)	(\$40,074.00)	\$2,510,979.00	\$90,873.00	\$0.00	\$2,601,852.00
Dec-10	\$2,601,852.00	\$0.00	(\$8,747.00)	\$2,593,104.00	\$68,601.00	\$0.00	\$2,661,705.00
Jan-11	\$2,661,705.00	\$0.00	(\$3,328.00)	\$2,658,377.00	\$69,322.00	\$0.00	\$2,727,699.00
Feb-11	\$2,727,699.00	\$0.00	(\$3,778.00)	\$2,723,921.00	\$60,978.00	(\$1.00)	\$2,784,898.00
Mar-11	\$2,784,898.00	(\$17,585.00)	(\$3,797.00)	\$2,763,516.00	\$58,438.00	\$0.00	\$2,821,953.00
Apr-11	\$2,821,953.00	(\$20,000.00)	(\$4,126.00)	\$2,797,828.00	\$54,162.00	\$0.00	\$2,851,990.00
		(\$951,578.00)	(\$1,700,977.00)		\$5,038,833.00	(\$6.00)	



Guy M. Hicks  
General Attorney - TN

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T: 615.214.6301  
F: 615-214-7406  
[gh1402@att.com](mailto:gh1402@att.com)

June 28, 2011

VIA HAND DELIVERY

Hon. Mary Freeman, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Notice of Commencement of Treatment Pursuant to Current  
Interconnection Agreements

Dear Chairman Freeman:

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") respectfully notifies the Tennessee Regulatory Authority ("the Authority") that on June 28, 2011, AT&T Tennessee sent five Resellers<sup>1</sup> letters informing them that AT&T Tennessee will suspend, discontinue, and/or terminate their service in Tennessee unless they promptly pay, in the aggregate, nearly \$1.7 million of AT&T Tennessee billings they have "disputed" on grounds that are flatly refuted by an Authority Order and a Tennessee Court of Appeals opinion.<sup>2</sup> Exhibit A to this Notice contains redacted copies of those letters and their Attachments. AT&T Tennessee respectfully submits the following additional information to provide the Authority a more complete understanding of the basis for AT&T Tennessee's delivery of these letters to the Resellers.

#### I. DESCRIPTION OF THE "DISPUTES"

The Resellers' respective interconnection agreements ("ICAs") generally allow them to withhold payments to AT&T Tennessee based on bona fide billing disputes until such disputes are resolved. Relying on these provisions, these Resellers have "disputed"

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<sup>1</sup> These Resellers are BLC Management LLC dba Angles Communications Solutions ("Angles"), dPi Teleconnect, LLC ("dPi"), Ganoco, Inc. dba American Dial Tone ("Ganoco"), Image Access, Inc. dba NewPhone ("NewPhone"), and OneTone Telecom, Inc. ("OneTone") (the "Resellers").

<sup>2</sup> This estimate grows by the month.

– and refused to pay – the vast majority of the amounts they have been billed by AT&T Tennessee for a variety of reasons. For instance, the Resellers collectively have refused to pay more than 90% of the more than \$16 million AT&T Tennessee has billed them. Some of their “disputes” present issues the Authority has not squarely addressed to date, and neither this Notice nor the demand letters in Exhibit A address those types of disputes or the dollar amounts associated with them. Instead, this Notice and the letters in Attachment A specifically address the nearly \$1.7 million the Resellers have refused to pay on the basis of “disputes” that the Authority has already considered and squarely resolved in AT&T Tennessee’s favor.

When the Resellers order service from AT&T Tennessee for resale to their end users who qualify for the Lifeline program,<sup>3</sup> AT&T Tennessee credits or “flows through” the \$10 federal Lifeline credits to the Resellers. AT&T Tennessee, however, does not “flow through” the \$3.50 state Lifeline credit to the Resellers because there are no state-funded Lifeline credits to “flow through”. The Resellers ignore this critical fact, lodge numerous “disputes” claiming that AT&T Tennessee is required to “flow through” the \$3.50 state Lifeline credit to them, and withhold payment of \$3.50 for each such “dispute.” In total, these Resellers have withheld nearly \$1.7 million in payments from AT&T Tennessee on the basis of their “\$3.50 state Lifeline credit flow-through” disputes.

## **II. THESE “DISPUTES” CLEARLY ARE INVALID AND NOT LODGED IN GOOD FAITH**

The Resellers clearly are not acting in good faith when they lodge these “\$3.50 state Lifeline credits” disputes. As explained below, the Authority has entered an Order making clear that it is the policy of this state that each individual reseller must fully fund the \$3.50 state Lifeline credit from its own internal sources and that AT&T Tennessee is not required to fund the \$3.50 state Lifeline credit for a reseller.<sup>4</sup> This Order was

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<sup>3</sup> The Lifeline program is designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service for qualifying residential subscribers. See G.S.S.T. Tariff A3.31.1.A, now found in AT&T Tennessee’s publicly available General Exchange Guidebook, at A3.31.1.A. The maximum available Lifeline credit in Tennessee currently is \$13.50, and it is composed of \$10.00 in credit that AT&T Tennessee recovers from the federal USF (“federal Lifeline credit”), and \$3.50 in credit that AT&T Tennessee funds itself (“state Lifeline credit”). See *Id.*

<sup>4</sup> See Order, *In Re Complaint of Discount Communications, Inc. Against BellSouth Telecommunications Inc.*, Docket No. 00-00230 at 11, 13 (September 28, 2000).

affirmed by the Tennessee Court of Appeals.<sup>5</sup> The Resellers are fully aware of the Authority's Order and the Court of Appeals' opinion affirming it – AT&T Tennessee sent them letters explaining these rulings.<sup>6</sup> Yet the Resellers have refused to pay the amounts they have withheld based on this bad-faith "\$3.50 state Lifeline credit" dispute.

**A. AT&T Tennessee's Tariff Makes Clear that AT&T Tennessee is Not Required to Flow the \$3.50 State Lifeline Credit Through to the Resellers.**

Each Reseller has contractually agreed to resell services subject to the terms and conditions of AT&T Tennessee's Tariffs. Section 4.2 of the Resale attachment (Attachment 1) to the Authority-approved ICA between AT&T Tennessee and BLC Management, for example, provides in pertinent part:

[R]esold services can only be used in the same manner as specified in [AT&T Tennessee's] Tariffs. ***Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of [AT&T Tennessee] in the appropriate section of [AT&T Tennessee's] Tariffs.*** (Emphasis added).

The ICA between AT&T Tennessee and each of the other Resellers contain substantively identical provisions. AT&T Tennessee's Tariff, in turn, expressly provides:

The non-discounted ***federal*** Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. ***The additional credit to the end user will be the responsibility of the reseller.*** Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs.

See Guidebook, §A3.31.2.A.9.

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<sup>5</sup> *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, 2002 WL 1255674 at \*3 (Tenn. Ct. App. 2002).

<sup>6</sup> Exhibit B to this Notice is a copy of these letters.

**B. The Authority's Orders Make Clear that AT&T Tennessee is Not Required to Fund the \$3.50 State Lifeline Credit for the Resellers.**

Each Reseller represented to the Authority during its certification process that it would adhere to all applicable orders of the Authority.<sup>7</sup> Moreover, Section 3.1 of the Resale attachment (Attachment 1) to the Authority-approved ICA between AT&T Tennessee and BLC Management provides in pertinent part:

***Subject to effective and applicable FCC and Commission rules and orders***, BellSouth shall make available to BLC Management for resale those telecommunications services BellSouth makes available, pursuant to its General Subscriber Services Tariff and Private Line Services Tariff, to customers who are not telecommunications carriers. (Emphasis added.)

The ICA between AT&T Tennessee and each of the other Resellers contain substantively identical provisions.

Among the "effective and applicable ... [Authority] rules and orders" is an Order providing that "it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources" and that "[AT&T Tennessee] was not required to flow through the disputed \$3.50 state credit to [a reseller], but instead that [reseller] should provide the \$3.50 state Lifeline portion to its customers." See Order, *In Re Complaint of Discount Communications, Inc. Against BellSouth Telecommunications Inc.*, Docket No. 00-00230 at 11, 13 (September 28, 2000). The Tennessee Court of Appeals affirmed this Order, finding that "the TRA is free to continue its policy of placing the burden of the state [Lifeline credit] on the carriers that sell the services to the Lifeline customer." *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, 2002 WL 1255674 at \*3 (Tenn. Ct. App. 2002).

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<sup>7</sup> See the Order granting a certificate of convenience and necessity in Docket No. 03-00575 ("Angles"); Docket No. 08-00025 ("dPi"); Docket No. 01-00733 ("Ganoco"), Docket No. 03-00270 ("NewPhone"), and Docket No. 06-00307 ("OneTone").

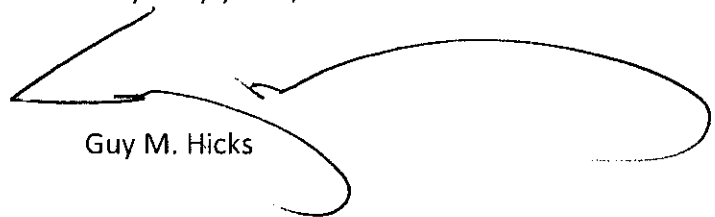
**III. IF ANY OF THE RESELLERS FAIL TO TIMELY PAY THE AMOUNTS OWED AND THEIR SERVICE IS TERMINATED BY AT&T, AT&T WILL COMPLY WITH THE AUTHORITY-APPROVED EMERGENCY SERVICE CONTINUITY PLAN.**

The Authority has approved an emergency service continuity plan for customers who have lost service due to a service provider's termination of service. The plan provides that ILECs like AT&T Tennessee will provide basic local exchange service to the end users of resellers for at least seven days after the service termination date or until the end user selects a new service provider, whichever is less.<sup>8</sup> AT&T Tennessee will comply with this plan if any of the Resellers' service is terminated. The Resellers have not presented any basis (and there is none) on which to require more from AT&T in this case than the TRA's rules would require in any other case.

Consistent with AT&T Tennessee's June 28, 2011 letters to the Resellers, should a reseller fail to make payment of all billings it has "disputed" on Lifeline on or before the deadlines set forth in those letters, AT&T Tennessee will take further action, including ceasing to accept or complete orders or discontinuance of service.

A copy of this Notice is being provided to each of the Resellers.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks". The signature is stylized with a large, sweeping loop that extends to the right and then curves back down and to the left, ending under the name.

Guy M. Hicks

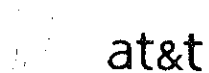
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<sup>8</sup> See G.S.S.T. Tariff A5.8.3, now found in AT&T Tennessee's publicly-available General Exchange Guidebook at A5.8.3.



## Exhibit A

Angles



June 28, 2011

VIA FED EX, Tracking No. 8750 3078 5192

Danny Michael  
President  
BLC Management LLC d/b/a Angles Communications Solutions  
11121 Hwy 70, Ste. 202  
Arlington, TN 38002

VIA FED EX, Tracking No. 8750 3078 5207

Thomas Biddix  
Manager  
BLC Management LLC  
6905 N. Wickham Road  
Suite 403  
Melbourne, FL 32940

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Michael and Mr. Biddix:

AT&T Tennessee's records show that BLC Management LLC d/b/a Angles Communications Solutions ("Angles") has an outstanding balance on its Tennessee account in excess of [REDACTED]. This amount is listed on Attachment A hereto. Of that amount, our records indicate that Angles is withholding [REDACTED] in sums attributable to Angles' "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to Angles from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.2.2, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and Angles requires Angles to pay AT&T Tennessee for all services billed. While Angles may withhold disputed sums per Section 2, Attachment 7, that right is subject to Section 27 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. Angles' withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

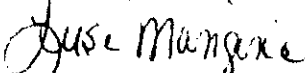
Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.7, and including 1.7.1 and 1.7.2, Attachment 7, Billing, AT&T Tennessee hereby notifies Angles that, in the event Angles fails to make payment to AT&T Tennessee in the amount of [REDACTED] as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, and will discontinue the provision of existing services as of thirty (30) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

  
Leisa Mangina

Attachment

Attachment A

BLC MANAGEMENT	Prev Mth Billed	Payments	Adjustments	Past due balance	Curr Chrgs	Late Payment Charges	Total Billed
Jun-08							
Jul-08							
Aug-08							
Sep-08							
Oct-08							
Nov-08							
Dec-08							
Jan-09							
Feb-09							
Mar-09							
Apr-09							
May-09							
Jun-09							
Jul-09							
Aug-09							
Sep-09							
Oct-09							
Nov-09							
Dec-09							
Jan-10							
Feb-10							
Mar-10							
Apr-10							
May-10							
Jun-10							
Jul-10							
Aug-10							
Sep-10							
Oct-10							
Nov-10							
Dec-10							
Jan-11							
Feb-11							
Mar-11							
Apr-11							

dPi

June 28, 2011

VIA FED EX, Tracking No. \_\_\_\_\_

Charles Hartley, Vice President of Operations  
dPi Teleconnect  
1330 Capital Parkway  
Carrollton, TX 75006

Kelly King, Director ILEC Relationships  
dPi Teleconnect  
2997 LBJ Freeway, Ste. 225  
Dallas, TX 75234

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Hartley and Mr. King:

AT&T Tennessee's records show that dPi Teleconnect ("dPi") has an outstanding balance on its Tennessee account in excess of [REDACTED]. This amount is listed on Attachment A hereto. Of that amount, our records indicate that dPi is withholding [REDACTED] in sums attributable to dPi's "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to dPi from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.4, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and dPi requires dPi to pay AT&T Tennessee for all services billed. While dPi may have the right to withhold payment on disputed sums, any such right is subject to Section 26 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. dPi's withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.5 *et seq.*, including without limitation 1.5.3, 1.5.4 and 1.5.5, Attachment 7, Billing, AT&T Tennessee hereby notifies dPi that, in the event dPi fails to make payment to AT&T Tennessee in the amount of [REDACTED] as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, will discontinue the provision of existing services as of thirty (30) days following the date of this letter, and will terminate services as of thirty-seven (37) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

Leisa Mangina

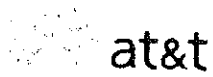
Attachment



Attachment A

DPI TELECONNECT INC	Prev Mth Billed	Payments	Adjusted	Past due balance	Current charges	Late Payment chrgs	Total billed
Jun-08							
Jul-08							
Aug-08							
Sep-08							
Oct-08							
Nov-08							
Dec-08							
Jan-09							
Feb-09							
Mar-09							
Apr-09							
May-09							
Jun-09							
Jul-09							
Aug-09							
Sep-09							
Oct-09							
Nov-09							
Dec-09							
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Aug-10							
Sep-10							
Oct-10							
Nov-10							
Dec-10							
Jan-11							
Feb-11							
Mar-11							
Apr-11							

**Ganoco**



June 28, 2011

VIA FED EX, Tracking No. 8750 3078 5229

Stephen D. Klein, President  
Ganoco, Inc.  
2323 Curlew Rd., Ste 7C  
Dunedin, FL 34698

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Klein:

AT&T Tennessee's records show that Ganoco, Inc. d/b/a American Dial Tone ("Ganoco") has an outstanding balance on its Tennessee account in excess of [REDACTED]. This amount is listed on Attachment A hereto. Of that amount, our records indicate that Ganoco is withholding [REDACTED] in sums attributable to Ganoco's "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to Ganoco from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.4, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and Ganoco requires Ganoco to pay AT&T Tennessee for all services billed. While Ganoco may have the right to withhold payment on disputed sums, any such right is subject to Section 26 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. Ganoco's withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

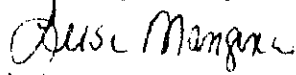
Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.5 *et seq.*, including without limitation 1.5.3, 1.5.4 and 1.5.5, Attachment 7, Billing, AT&T Tennessee hereby notifies Ganoco that, in the event Ganoco fails to make payment to AT&T Tennessee in the amount of [REDACTED] as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, will discontinue the provision of existing services as of thirty (30) days following the date of this letter, and will terminate services as of thirty-seven (37) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leisa Mangina".

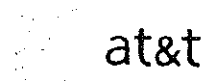
Leisa Mangina

Attachment

Attachment A

GANOCO INC	Prev Mth Billed	Payments	Adjusted	Past due balance	Current Charges	Late Payment Chrgs	Total Billed
Jun-08							
Jul-08							
Aug-08							
Sep-08							
Oct-08							
Nov-08							
Dec-08							
Jan-09							
Feb-09							
Mar-09							
Apr-09							
May-09							
Jun-09							
Jul-09							
Aug-09							
Sep-09							
Oct-09							
Nov-09							
Dec-09							
Jan-10							
Feb-10							
Mar-10							
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Sep-10							
Oct-10							
Nov-10							
Dec-10							
Jan-11							
Feb-11							
Mar-11							
Apr-11							

NewPhone



June 28, 2011

VIA FED EX, Tracking No. 8750 3078 5218

Gene Dry  
Image Access Inc.  
3525 N. Causeway Blvd., Ste 501  
Metairie, LA 70002

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Dry:

AT&T Tennessee's records show that Image Access, Inc. d/b/a NewPhone ("NewPhone") has an outstanding balance on its Tennessee account in excess of [REDACTED]. This amount is listed on Attachment A hereto. Of that amount, our records indicate that NewPhone is withholding [REDACTED] in sums attributable to NewPhone's "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to NewPhone from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.4, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and NewPhone requires NewPhone to pay AT&T Tennessee for all services billed. While NewPhone may have the right to withhold payment on disputed sums, any such right is subject to Section 26 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. NewPhone's withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

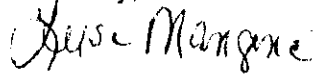
Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.5 *et seq.*, including without limitation 1.5.5, 1.5.6 and 1.5.9.1, Attachment 7, Billing, AT&T Tennessee hereby notifies NewPhone that, in the event NewPhone fails to make payment to AT&T Tennessee in the amount of [REDACTED] as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, will discontinue the provision of existing services as of thirty (30) days following the date of this letter, and will terminate services as of thirty-seven (37) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

A handwritten signature in cursive script that reads "Leisa Mangina".

Leisa Mangina

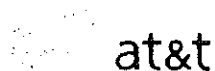
Attachment



Attachment A

IMAGE ACCESS INC	Prev Mth Billed	Payments	Adjusted	Past due balance	Current charges	Late Payment chrgs	Total billed
Jun-08							
Jul-08							
Aug-08							
Sep-08							
Oct-08							
Nov-08							
Dec-08							
Jan-09							
Feb-09							
Mar-09							
Apr-09							
May-09							
Jun-09							
Jul-09							
Aug-09							
Sep-09							
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Nov-09							
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Nov-10							
Dec-10							
Jan-11							
Feb-11							
Mar-11							
Apr-11							

OneTone



June 28, 2011

VIA FED EX, Tracking No. 8750 3078 5230

Scott Loggins, President  
One Tone Telecom Inc.  
100 Century Plaza, Ste. 9-1  
Seneca, SC 29672

Re: NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Loggins:

AT&T Tennessee's records show that OneTone Telecom Inc. ("OneTone") has an outstanding balance on its Tennessee account in excess of [REDACTED]. This amount is listed on Attachment A hereto. Of that amount, our records indicate that OneTone is withholding [REDACTED] in sums attributable to OneTone's "disputes" regarding the carrier's self-funded state Lifeline subsidy, which has been the subject of prior correspondence to OneTone from AT&T Tennessee dated November 22, 2010 and May 18, 2011.

Section 1.4, Attachment 7 Billing of the interconnection agreement in effect between AT&T Tennessee and OneTone requires OneTone to pay AT&T Tennessee for all services billed. While OneTone may have the right to withhold payment on disputed sums, any such right is subject to Section 26 of the GT&Cs of the parties' ICA, which requires performance of duties under the ICA to be conducted in good faith. OneTone's withholding of sums at issue herein is not in good faith, given the order of the Tennessee Regulatory Authority on this very issue, which was subsequently affirmed by the Tennessee Court of Appeals, as discussed in AT&T Tennessee's prior correspondence.

Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Pursuant to Section 1.5 *et seq.*, including without limitation 1.5.5, 1.5.6 and 1.5.9.1, Attachment 7, Billing, AT&T Tennessee hereby notifies OneTone that, in the event OneTone fails to make payment to AT&T Tennessee in the amount of [REDACTED] as demanded herein, AT&T will cease accepting or completing orders as of fifteen (15) days following the date of this letter, will discontinue the provision of existing services as of thirty (30) days following the date of this letter, and will terminate services as of thirty-seven (37) days following the date of this letter.

If you have questions, please contact me directly at (205) 244-6716.

Sincerely,

  
Leisa Mangina

Attachment

## Attachment A

ONE TONE TELECOM	Prev Mth Billed	Payments	Adjusted	Past due balance	Current charges	Late Payment chrgs	Total billed
Jun-08							
Jul-08							
Aug-08							
Sep-08							
Oct-08							
Nov-08							
Dec-08							
Jan-09							
Feb-09							
Mar-09							
Apr-09							
May-09							
Jun-09							
Jul-09							
Aug-09							
Sep-09							
Oct-09							
Nov-09							
Dec-09							
Jan-10							
Feb-10							
Mar-10							
Apr-10							
May-10							
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Aug-10							
Sep-10							
Oct-10							
Nov-10							
Dec-10							
Jan-11							
Feb-11							
Mar-11							
Apr-11							

## Exhibit B

Angles



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

May 18, 2011

Danny Michael  
President  
BLC Management LLC d/b/a Angles Communications Solutions  
11121 Hwy 70, Ste. 202  
Arlington, TN 38002

Thomas Biddix  
Manager  
BLC Management LLC  
6905 N. Wickham Road  
Suite 403  
Melbourne, FL 32940

Re: Lifeline Subsidy disputes; final request for discussions in an effort to avoid legal proceedings

Dear Mr. Michael and Mr. Biddix:

This letter follows my November 22, 2010 letter (copy attached), which sought discussion and resolution with BLC Management LLC d/b/a Angles Communications Solutions ("BLC") regarding disputes raised by BLC pertaining to the various state Lifeline programs. As I explained in my November 22 letter and repeat below, BLC's disputes in connection with these state Lifeline programs, particularly in the State of Tennessee, have no legitimate basis in the law. To date, BLC has not responded to that letter and has continued to submit claims and disputes regarding these programs.

AT&T Tennessee's records show that through March 2011, BLC has filed disputes of at least \$ Redacted relating to this issue for its Tennessee accounts and that BLC is withholding payment due AT&T Tennessee of a commensurate amount.<sup>1</sup> BLC has no legitimate contractual or legal basis for raising these disputes or withholding payment.

In Tennessee, telecommunications service providers are required to self-fund the \$3.50 state portion of the Lifeline subsidy. AT&T Tennessee self-funds this state

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<sup>1</sup> AT&T's records show that BLC has submitted similar disputes regarding state lifeline subsidies for other states. As explained in my November 22 letter, those disputes are equally without merit. AT&T fully intends to pursue recovery of those amounts from BLC.



portion for its own end-users. BLC, as the telecommunications service provider to its own end-users, must do likewise. That BLC has this obligation is a matter of clear, unambiguous law and is required by tariff and the parties' interconnection agreement.

This issue has already been definitively addressed by the Tennessee Regulatory Authority ("TRA") and the Tennessee Court of Appeals.<sup>2</sup> In *Discount Communications*, the Court of Appeals affirmed a TRA decision refusing to require AT&T Tennessee to credit a CLEC the amount of the state Lifeline subsidy. In affirming the order, the Court found that ". . . BellSouth was not required to pass through the state Lifeline credit to [CLEC]," and further, in two arbitrations for ICAs, that ". . . it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources."<sup>3</sup> This decision unequivocally rejects BLC's position.

Similarly, section A3.31.2.A 9 of AT&T Tennessee's General Subscriber Services Tariff unambiguously states:

*The non-discounted federal Lifeline credit amount will be passed along to resellers* ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. *The additional credit to the end user will be the responsibility of the reseller.* Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs. (emphasis added).

BLC has contractually agreed that this tariff provision and the TRA decision are binding terms and conditions in connection with services that AT&T Tennessee sells to BLC for resale. Section 3.1, Attachment 1 (Resale) of the interconnection agreement provides:

Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to BLC Management for resale those telecommunications services BellSouth makes available, *pursuant to its General Subscriber Services Tariff and Private Line Services Tariff*, to customers who are not telecommunications carriers. (emphasis added).

In light of the clear authorities noted above, BLC's continued disputes associated with its claim that AT&T Tennessee must credit BLC for the state portion of the lifeline program is not in good faith and its withholding of payment due to AT&T

<sup>2</sup> See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

<sup>3</sup> *Id.* at 10-11.

Mr. Michael  
Mr. Biddix  
May 18, 2011  
Page 3 of 3

Tennessee for services rendered under the interconnection agreement is a blatant breach of the parties' interconnection agreement.

AT&T Tennessee would like to resolve this issue without formal regulatory or legal action. Through this letter, AT&T Tennessee is granting one final opportunity to BLC to try to resolve this issue with regard to BLC's disputes on the Lifeline program on its Tennessee accounts on a business to business basis. Please contact me with respect to the issues raised herein by May 27, 2011 to begin discussions. If we have not heard from you by this date, we reserve our right to pursue any and all appropriate remedies.

Sincerely,

Marc Cathey

attachment



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

November 22, 2010

Danny Michael  
President  
BLC Management, Inc.  
11121 Hwy 70, Ste. 202  
Arlington, TN 38002

Re: Lifeline Subsidy in states of Alabama, Florida, Georgia, Kentucky and  
Tennessee

Dear Mr. Michael:

I am writing on behalf of AT&T<sup>1</sup> regarding the disputes submitted by BLC Management, Inc. ("BLC") in connection with AT&T's denial of BLC's request that AT&T pass through to the state component of the Lifeline subsidy for BLC's accounts in the states referenced in the footnote below. Our records show that, through October 10, 2010, BLC has disputed at least \$ Redacted in connection with this issue. We do not believe that BLC has adequate justification for disputing these sums. Our position in denying these disputes is supported by court precedent, the parties' interconnection agreement, and the applicable tariffs.

In each of the below-noted states, telecommunications service providers are required to self-fund the state portion of the Lifeline subsidy (\$3.50) for their end-user customers. Unlike the federal portion of the Lifeline program, there is no fund in these states to reimburse the service provider for this subsidy; instead, providing this subsidy is an unreimbursed cost to the service provider. Consistent with the applicable state requirements, AT&T self-funds the state subsidy to its end-users at a loss to AT&T. BLC, as the service provider to its end-users, must do likewise. Put another way, while AT&T passes through the federal portion of the Lifeline subsidy to BLC and is reimbursed by the USF program in doing so, AT&T has no obligation to pass on the state portion, because that subsidy is BLC's obligation to fund on behalf of its own end-users.

The outcome BLC appears to suggest through its disputes on this issue would effectively require AT&T to subsidize BLC's customers' Lifeline service. That is clearly not intended or required under the Lifeline program, the tariffs, or the

---

<sup>1</sup> BellSouth Telecommunications, Inc., doing business in the states listed above as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, and AT&T Tennessee ("AT&T").

Mr. Michael  
November 22, 2010  
Page 2 of 2

parties' interconnection agreement. In short, there is no legal authority to support BLC's position that AT&T must subsidize BLC's participation in this program.

We direct your attention to a 2002 decision of the Tennessee Court of Appeals, *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674 (Tenn. Ct. App. Jun. 7, 2002) (a copy is attached for your convenience). In *Discount Communications*, the court upheld a decision of the Tennessee Regulatory Authority ("TRA") which refused to require AT&T to credit a CLEC the amount of the state Lifeline subsidy. In reaching that decision, the court agreed that the TRA's "policy of placing the burden of the state subsidy on the carriers that sell the services to the Lifeline customers" was a valid interpretation of the federal Lifeline program. *Id.* at \*3.

BLC's position is likewise contrary to the parties' interconnection agreement and AT&T's tariffs, all of which clearly indicate that BLC is responsible for the portion of the subsidy at issue. Your resale attachment clearly points to the tariffs, which in turn clearly indicate that the state portion of the subsidy is the responsibility of BLC, as the reseller.

AT&T would like to resolve this issue without formal regulatory or legal action. I would like to discuss this matter with you at your very earliest convenience. Please understand that AT&T stands willing to discuss reasonable payment arrangements with BLC with respect to this issue.

Please call me to discuss, and I ask that you do so by Friday, December 3, 2010. I look forward to speaking with you.

Sincerely,

Marc Cathey

attachment

dPi



Marc Cathey  
Executive Director-Wholesale

AT&T  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

June 1, 2011

Charles Hartley, Vice President of Operations  
dPi Teleconnect  
1330 Capital Parkway  
Carrollton, TX 75006

Kelly King, Director ILEC Relationships  
dPi Teleconnect  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234

Re: Lifeline Subsidy disputes; final request for discussions in an effort to avoid legal proceedings

Dear Sirs:

This letter follows my November 22, 2010 letter (copy attached), which sought discussion and resolution with dPi Teleconnect ("dPi") regarding disputes raised by DPI pertaining to the various state Lifeline programs. As I explained in my November 22 letter and repeat below, dPi's disputes in connection with these state Lifeline programs, particularly in the State of Tennessee, have no legitimate basis in the law. To date, dPi has not responded to that letter and has continued to submit claims and disputes regarding these programs.

AT&T Tennessee's records show that through March 2011, dPi has filed disputes of at least Redacted relating to this issue for its Tennessee accounts and that dPi is withholding payment due AT&T Tennessee of a commensurate amount.<sup>1</sup> dPi has no legitimate contractual or legal basis for raising these disputes or withholding payment.

In Tennessee, telecommunications service providers are required to self-fund the \$3.50 state portion of the Lifeline subsidy. AT&T Tennessee self-funds this state portion for its own end-users. dPi, as the telecommunications service provider to its own end-users, must do likewise. That dPi has this obligation is a matter of

---

<sup>1</sup> AT&T's records show that dPi has submitted similar disputes regarding state lifeline subsidies for other states. As explained in my November 22 letter, those disputes are equally without merit. AT&T fully intends to pursue recovery of those amounts from dPi.

clear, unambiguous law and is required by tariff and the parties' interconnection agreement.

This issue has already been definitively addressed by the Tennessee Regulatory Authority ("TRA") and the Tennessee Court of Appeals.<sup>2</sup> In *Discount Communications*, the Court of Appeals affirmed a TRA decision refusing to require AT&T Tennessee to credit a CLEC the amount of the state Lifeline subsidy. In affirming the order, the Court found that "... BellSouth was not required to pass through the state Lifeline credit to [CLEC]," and further, in two arbitrations for ICAs, that "... it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources."<sup>3</sup> This decision unequivocally rejects dPi's position.

Similarly, section A3.31.2.A 9 of AT&T Tennessee's General Subscriber Services Tariff unambiguously states:

The non-discounted federal Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. The additional credit to the end user will be the responsibility of the reseller. Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs. (emphasis added).

dPi has contractually agreed that this tariff provision and the TRA decision are binding terms and conditions in connection with services that AT&T Tennessee sells to dPi for resale. Section 3.1, Attachment 1 (Resale) of the interconnection agreement provides:

Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to dPi for resale those telecommunications services BellSouth makes available, *pursuant to its General Subscriber Services Tariff and Private Line Services Tariff*, to customers who are not telecommunications carriers. (emphasis added).

In light of the clear authorities noted above, dPi's continued disputes associated with its claim that AT&T Tennessee must credit dPi for the state portion of the lifeline program is not in good faith and its withholding of payment due to AT&T Tennessee for services rendered under the interconnection agreement is a blatant breach of the parties' interconnection agreement.

AT&T Tennessee would like to resolve this issue without formal regulatory or legal action. Through this letter, AT&T Tennessee is granting one final opportunity to

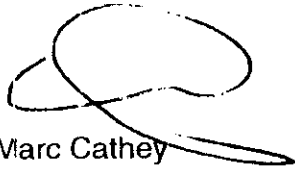
<sup>2</sup> See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

<sup>3</sup> *Id.* at 10-11.

June 1, 2011  
Page 3 of 3

dPi to try to resolve this issue with regard to dPi's disputes on the Lifeline program on its Tennessee accounts on a business to business basis. Please contact me with respect to the issues raised herein by June 10, 2011 to begin discussions. If we have not heard from you by this date, we reserve our right to pursue any and all appropriate remedies.

Sincerely,

A handwritten signature in black ink, appearing to be 'Marc Cathey', with a large, stylized loop at the end.

Marc Cathey

attachment





Marc Cathey  
Executive Director-Wholesale

AT&T  
600 19<sup>th</sup> St. North, 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

November 22, 2010

David Pikoff, Vice President  
dPi Teleconnect  
2997 LBJ Freeway, Ste 225  
Dallas, TX 75234

Re: Lifeline Subsidy in states of Alabama, Florida, Georgia, Kentucky and  
Tennessee

Dear Mr. Pikoff:

I am writing on behalf of AT&T<sup>1</sup> regarding the disputes submitted by dPi Teleconnect ("dPi") in connection with AT&T's denial of dPi's request that AT&T pass through to the state component of the Lifeline subsidy for dPi's accounts in the states referenced in the footnote below. Our records show that, through October 10, 2010, dPi has disputed at least \$ Redacted in connection with this issue. We do not believe that dPi has adequate justification for disputing these sums. Our position in denying these disputes is supported by court precedent, the parties' interconnection agreement, and the applicable tariffs.

In each of the below-noted states, telecommunications service providers are required to self-fund the state portion of the Lifeline subsidy (\$3.50) for their end-user customers. Unlike the federal portion of the Lifeline program, there is no fund in these states to reimburse the service provider for this subsidy; instead, providing this subsidy is an unreimbursed cost to the service provider. Consistent with the applicable state requirements, AT&T self-funds the state subsidy to its end-users at a loss to AT&T. dPi, as the service provider to its end-users, must do likewise. Put another way, while AT&T passes through the federal portion of the Lifeline subsidy to dPi and is reimbursed by the USF program in doing so, AT&T has no obligation to pass on the state portion, because that subsidy is dPi's obligation to fund on behalf of its own end-users.

The outcome dPi appears to suggest through its disputes on this issue would effectively require AT&T to subsidize dPi's customers' Lifeline service. That is clearly not intended or required under the Lifeline program, the tariffs, or the parties' interconnection agreement. In short, there is no legal authority to support dPi's position that AT&T must subsidize dPi's participation in this program.

---

<sup>1</sup> BellSouth Telecommunications, Inc., doing business in the states listed above as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, and AT&T Tennessee ("AT&T").

Mr. Pikoff  
November 22, 2010  
Page 2 of 2

We direct your attention to a 2002 decision of the Tennessee Court of Appeals, *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674 (Tenn. Ct. App. Jun. 7, 2002) (a copy is attached for your convenience). In *Discount Communications*, the court upheld a decision of the Tennessee Regulatory Authority ("TRA") which refused to require AT&T to credit a CLEC the amount of the state Lifeline subsidy. In reaching that decision, the court agreed that the TRA's "policy of placing the burden of the state subsidy on the carriers that sell the services to the Lifeline customers" was a valid interpretation of the federal Lifeline program. *Id.* at \*3.

dPi's position is likewise contrary to the parties' interconnection agreement and AT&T's tariffs, all of which clearly indicate that dPi is responsible for the portion of the subsidy at issue. Your resale attachment clearly points to the tariffs, which in turn clearly indicate that the state portion of the subsidy is the responsibility of dPi, as the reseller.

AT&T would like to resolve this issue without formal regulatory or legal action. I would like to discuss this matter with you at your very earliest convenience. Please understand that AT&T stands willing to discuss reasonable payment arrangements with dPi with respect to this issue.

Please call me to discuss, and I ask that you do so by Friday, December 3, 2010. I look forward to speaking with you.

Sincerely,

Marc Cathey

attachment

Ganoco



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

May 18, 2011

Stephen D. Klein, President  
Ganoco, Inc.  
2323 Curlew Rd., Ste 7C  
Dunedin, FL 34698

Thomas Biddix  
Manager  
Ganoco, Inc.  
6905 N. Wickham Road  
Suite 403  
Melbourne, FL 32940

Re: Lifeline Subsidy disputes; final request for discussions in an effort to avoid legal proceedings

Dear Mr. Klein and Mr. Biddix:

This letter follows my November 22, 2010 letter (copy attached), which sought discussion and resolution with Ganoco, Inc. ("Ganoco") regarding disputes raised by Ganoco pertaining to the various state Lifeline programs. As I explained in my November 22 letter and repeat below, Ganoco's disputes in connection with these state Lifeline programs, particularly in the State of Tennessee, have no legitimate basis in the law. To date, Ganoco has not responded to that letter and has continued to submit claims and disputes regarding these programs.

AT&T Tennessee's records show that through March 2011, Ganoco has filed disputes of at least \$ Redacted relating to this issue for its Tennessee accounts and that Ganoco is withholding payment due AT&T Tennessee of a commensurate amount.<sup>1</sup> Ganoco has no legitimate contractual or legal basis for raising these disputes or withholding payment.

In Tennessee, telecommunications service providers are required to self-fund the \$3.50 state portion of the Lifeline subsidy. AT&T Tennessee self-funds this state portion for its own end-users. Ganoco, as the telecommunications service provider to its own end-users, must do likewise. That Ganoco has this obligation

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<sup>1</sup> AT&T's records show that Ganoco has submitted similar disputes regarding state lifeline subsidies for other states. As explained in my November 22 letter, those disputes are equally without merit. AT&T fully intends to pursue recovery of those amounts from Ganoco.

Mr. Klein  
Mr. Biddix  
May 18, 2011  
Page 2 of 3

is a matter of clear, unambiguous law and is required by tariff and the parties' interconnection agreement.

This issue has already been definitively addressed by the Tennessee Regulatory Authority ("TRA") and the Tennessee Court of Appeals.<sup>2</sup> In *Discount Communications*, the Court of Appeals affirmed a TRA decision refusing to require AT&T Tennessee to credit a CLEC the amount of the state Lifeline subsidy. In affirming the order, the Court found that "... BellSouth was not required to pass through the state Lifeline credit to [CLEC]," and further, in two arbitrations for ICAs, that "... it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources."<sup>3</sup> This decision unequivocally rejects Ganoco's position.

Similarly, section A3.31.2.A 9 of AT&T Tennessee's General Subscriber Services Tariff unambiguously states:

*The non-discounted federal Lifeline credit amount will be passed along to resellers* ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. *The additional credit to the end user will be the responsibility of the reseller.* Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs. (emphasis added).

Ganoco has contractually agreed that this tariff provision and the TRA decision are binding terms and conditions in connection with services that AT&T Tennessee sells to Ganoco for resale. Section 3.1, Attachment 1 (Resale) of the interconnection agreement provides:

Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to [Ganoco] for resale those telecommunications services BellSouth makes available, *pursuant to its General Subscriber Services Tariff and Private Line Services Tariff*, to customers who are not telecommunications carriers. (emphasis added).

In light of the clear authorities noted above, Ganoco's continued disputes associated with its claim that AT&T Tennessee must credit Ganoco for the state portion of the lifeline program is not in good faith and its withholding of payment due to AT&T Tennessee for services rendered under the interconnection agreement is a blatant breach of the parties' interconnection agreement.

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<sup>2</sup> See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

<sup>3</sup> *Id.* at 10-11.

Mr. Klein  
Mr. Biddix  
May 18, 2011  
Page 3 of 3

AT&T Tennessee would like to resolve this issue without formal regulatory or legal action. Through this letter, AT&T Tennessee is granting one final opportunity to Ganoco to try to resolve this issue with regard to Ganoco's disputes on the Lifeline program on its Tennessee accounts on a business to business basis. Please contact me with respect to the issues raised herein by May 27, 2011 to begin discussions. If we have not heard from you by this date, we reserve our right to pursue any and all appropriate remedies.

Sincerely,

Marc Cathey

attachment



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North, 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

November 22, 2010

Stephen D. Klein, President  
Ganoco, Inc.  
2323 Curlew Rd., Ste 7C  
Dunedin, FL 34698

Re: Lifeline Subsidy in states of Alabama, Florida, Georgia, Kentucky and  
Tennessee

Dear Mr. Klein:

I am writing on behalf of AT&T<sup>1</sup> regarding the disputes submitted by Ganoco, Inc. ("Ganoco") in connection with AT&T's denial of Ganoco's request that AT&T pass through to the state component of the Lifeline subsidy for Ganoco's accounts in the states referenced in the footnote below. Our records show that, through October 10, 2010, Ganoco has disputed at least \$Redacted in connection with this issue. We do not believe that Ganoco has adequate justification for disputing these sums. Our position in denying these disputes is supported by court precedent, the parties' interconnection agreement, and the applicable tariffs.

In each of the below-noted states, telecommunications service providers are required to self-fund the state portion of the Lifeline subsidy (\$3.50) for their end-user customers. Unlike the federal portion of the Lifeline program, there is no fund in these states to reimburse the service provider for this subsidy; instead, providing this subsidy is an unreimbursed cost to the service provider. Consistent with the applicable state requirements, AT&T self-funds the state subsidy to its end-users at a loss to AT&T. Ganoco, as the service provider to its end-users, must do likewise. Put another way, while AT&T passes through the federal portion of the Lifeline subsidy to Image Access and is reimbursed by the USF program in doing so, AT&T has no obligation to pass on the state portion, because that subsidy is Image Access' obligation to fund on behalf of its own end-users.

The outcome Image Access appears to suggest through its disputes on this issue would effectively require AT&T to subsidize Ganoco's customers' Lifeline service. That is clearly not intended or required under the Lifeline program, the tariffs, or the parties' interconnection agreement. In short, there is no legal authority to support Image Access' position that AT&T must subsidize Image Access' participation in this program.

---

<sup>1</sup> BellSouth Telecommunications, Inc., doing business in the states listed above as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, and AT&T Tennessee ("AT&T").

We direct your attention to a 2002 decision of the Tennessee Court of Appeals, *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674 (Tenn. Ct. App. Jun. 7, 2002) (a copy is attached for your convenience). In *Discount Communications*, the court upheld a decision of the Tennessee Regulatory Authority ("TRA") which refused to require AT&T to credit a CLEC the amount of the state Lifeline subsidy. In reaching that decision, the court agreed that the TRA's "policy of placing the burden of the state subsidy on the carriers that sell the services to the Lifeline customers" was a valid interpretation of the federal Lifeline program. *Id.* at \*3.

Ganoco position is likewise contrary to the parties' interconnection agreement and AT&T's tariffs, all of which clearly indicate that Ganoco is responsible for the portion of the subsidy at issue. Your resale attachment clearly points to the tariffs, which in turn clearly indicate that the state portion of the subsidy is the responsibility of Ganoco, as the reseller.

AT&T would like to resolve this issue without formal regulatory or legal action. I would like to discuss this matter with you at your very earliest convenience. Please understand that AT&T stands willing to discuss reasonable payment arrangements with Ganoco with respect to this issue.

Please call me to discuss, and I ask that you do so by Friday, December 3, 2010. I look forward to speaking with you.

Sincerely,

Marc Cathey

attachment



NewPhone



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

May 18, 2011

Gene Dry  
Image Access Inc.  
3525 N. Causeway Blvd., Ste 501  
Metairie, LA 70002

Re: Lifeline Subsidy disputes; final request for discussions in an effort to avoid legal proceedings

Dear Mr. Dry:

This letter follows my November 22, 2010 letter (copy attached), which sought discussion and resolution with Image Access Inc. ("Image Access") regarding disputes raised by Image Access pertaining to the various state Lifeline programs. As I explained in my November 22 letter and repeat below, Image Access's disputes in connection with these state Lifeline programs, particularly in the State of Tennessee, have no legitimate basis in the law. To date, Image Access has not responded to that letter and has continued to submit claims and disputes regarding these programs.

AT&T Tennessee's records show that through March 2011, Image Access has filed disputes of at least Redacted relating to this issue for its Tennessee accounts and that Image Access is withholding payment due AT&T Tennessee of a commensurate amount.<sup>1</sup> Image Access has no legitimate contractual or legal basis for raising these disputes or withholding payment.

In Tennessee, telecommunications service providers are required to self-fund the \$3.50 state portion of the Lifeline subsidy. AT&T Tennessee self-funds this state portion for its own end-users. Image Access, as the telecommunications service provider to its own end-users, must do likewise. That Image Access has this obligation is a matter of clear, unambiguous law and is required by tariff and the parties' interconnection agreement.

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<sup>1</sup> AT&T's records show that Image Access has submitted similar disputes regarding state lifeline subsidies for other states. As explained in my November 22 letter, those disputes are equally without merit. AT&T fully intends to pursue recovery of those amounts from Image Access.

This issue has already been definitively addressed by the Tennessee Regulatory Authority ("TRA") and the Tennessee Court of Appeals.<sup>2</sup> In *Discount Communications*, the Court of Appeals affirmed a TRA decision refusing to require AT&T Tennessee to credit a CLEC the amount of the state Lifeline subsidy. In affirming the order, the Court found that "... BellSouth was not required to pass through the state Lifeline credit to [CLEC]," and further, in two arbitrations for ICAs, that "... it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources."<sup>3</sup> This decision unequivocally rejects Image Access's position.

Similarly, section A3.31.2.A 9 of AT&T Tennessee's General Subscriber Services Tariff unambiguously states:

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Image Access has contractually agreed that this tariff provision and the TRA decision are binding terms and conditions in connection with services that AT&T Tennessee sells to Image Access for resale. Section 3.1, Attachment 1 (Resale) of the interconnection agreement provides:

Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to Image Access] for resale those telecommunications services BellSouth makes available, *pursuant to its General Subscriber Services Tariff and Private Line Services Tariff*, to customers who are not telecommunications carriers. (emphasis added).

In light of the clear authorities noted above, Image Access's continued disputes associated with its claim that AT&T Tennessee must credit Image Access for the state portion of the lifeline program is not in good faith and its withholding of payment due to AT&T Tennessee for services rendered under the interconnection agreement is a blatant breach of the parties' interconnection agreement.

AT&T Tennessee would like to resolve this issue without formal regulatory or legal action. Through this letter, AT&T Tennessee is granting one final opportunity to Image Access to try to resolve this issue with regard to Image Access's disputes on the Lifeline program on its Tennessee accounts on a business to business

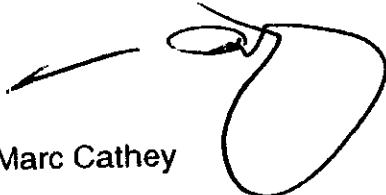
<sup>2</sup> See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

<sup>3</sup> *Id.* at 10-11.

Mr. Dry  
May 18, 2011  
Page 3 of 3

basis. Please contact me with respect to the issues raised herein by May 27, 2011 to begin discussions. If we have not heard from you by this date, we reserve our right to pursue any and all appropriate remedies.

Sincerely,

  
Marc Cathey

attachment



Marc Cathey  
Executive Director-Wholesale

AT&T  
600 19<sup>th</sup> St. North, 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

November 22, 2010

Gene Dry  
Image Access Inc  
3525 N. Causeway Blvd., Ste 501  
Metairie, LA 70002

Re: Lifeline Subsidy in states of Alabama, Florida, Georgia, Kentucky and  
Tennessee

Dear Mr. Dry:

I am writing on behalf of AT&T<sup>1</sup> regarding the disputes submitted by Image Access Inc. ("Image Access") in connection with AT&T's denial of Image Access's request that AT&T pass through to the state component of the Lifeline subsidy for Image Access's accounts in the states referenced in the footnote below. Our records show that, through October 10, 2010, Image Access has disputed at least Redacted in connection with this issue. We do not believe that Image Access has adequate justification for disputing these sums. Our position in denying these disputes is supported by court precedent, the parties' interconnection agreement, and the applicable tariffs.

In each of the below-noted states, telecommunications service providers are required to self-fund the state portion of the Lifeline subsidy (\$3.50) for their end-user customers. Unlike the federal portion of the Lifeline program, there is no fund in these states to reimburse the service provider for this subsidy; instead, providing this subsidy is an unreimbursed cost to the service provider. Consistent with the applicable state requirements, AT&T self-funds the state subsidy to its end-users at a loss to AT&T. Image Access, as the service provider to its end-users, must do likewise. Put another way, while AT&T passes through the federal portion of the Lifeline subsidy to Image Access and is reimbursed by the USF program in doing so, AT&T has no obligation to pass on the state portion, because that subsidy is Image Access's obligation to fund on behalf of its own end-users.

The outcome Image Access appears to suggest through its disputes on this issue would effectively require AT&T to subsidize Image Access's customers' Lifeline service. That is clearly not intended or required under the Lifeline program, the

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<sup>1</sup> BellSouth Telecommunications, Inc., doing business in the states listed above as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, and AT&T Tennessee ("AT&T").

Mr. Dry  
November 22, 2010  
Page 2 of 2

tariffs, or the parties' interconnection agreement. In short, there is no legal authority to support Image Access's position that AT&T must subsidize Image Access's participation in this program.

We direct your attention to a 2002 decision of the Tennessee Court of Appeals, *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674 (Tenn. Ct. App. Jun. 7, 2002) (a copy is attached for your convenience). In *Discount Communications*, the court upheld a decision of the Tennessee Regulatory Authority ("TRA") which refused to require AT&T to credit a CLEC the amount of the state Lifeline subsidy. In reaching that decision, the court agreed that the TRA's "policy of placing the burden of the state subsidy on the carriers that sell the services to the Lifeline customers" was a valid interpretation of the federal Lifeline program. *Id.* at \*3.

Image Access's position is likewise contrary to the parties' interconnection agreement and AT&T's tariffs, all of which clearly indicate that Image Access is responsible for the portion of the subsidy at issue. Your resale attachment clearly points to the tariffs, which in turn clearly indicate that the state portion of the subsidy is the responsibility of Image Access, as the reseller.

AT&T would like to resolve this issue without formal regulatory or legal action. I would like to discuss this matter with you at your very earliest convenience. Please understand that AT&T stands willing to discuss reasonable payment arrangements with Image Access with respect to this issue.

Please call me to discuss, and I ask that you do so by Friday, December 3, 2010. I look forward to speaking with you.

Sincerely,

Marc Cathey

attachment

OneTone



**Marc Cathey**  
Executive Director-Wholesale

**AT&T**  
600 19<sup>th</sup> St. North 9<sup>th</sup> Floor  
Birmingham, AL 35203  
Phone: 205.321.4900  
Fax: 205.321.4334  
Email: marcus.cathey@att.com

May 18, 2011

Scott Loggins, President  
One Tone Telecom Inc.  
100 Century Plaza, Ste. 9-1  
Seneca, SC 29672

Re: Lifeline Subsidy disputes; final request for discussions in an effort to avoid legal proceedings

Dear Mr. Loggins:

This letter follows my November 22, 2010 letter (copy attached), which sought discussion and resolution with One Tone Telecom Inc. ("One Tone") regarding disputes raised by One Tone pertaining to the various state Lifeline programs. As I explained in my November 22 letter and repeat below, One Tone's disputes in connection with these state Lifeline programs, particularly in the State of Tennessee, have no legitimate basis in the law. To date, one Tone has not responded to that letter and has continued to submit claims and disputes regarding these programs.

AT&T Tennessee's records show that through March 2011, One Tone has filed disputes of at least Redacted relating to this issue for its Tennessee accounts and that One Tone is withholding payment due AT&T Tennessee of a commensurate amount.<sup>1</sup> One Tone has no legitimate contractual or legal basis for raising these disputes or withholding payment.

In Tennessee, telecommunications service providers are required to self-fund the \$3.50 state portion of the Lifeline subsidy. AT&T Tennessee self-funds this state portion for its own end-users. One Tone, as the telecommunications service provider to its own end-users, must do likewise. That One Tone has this obligation is a matter of clear, unambiguous law and is required by tariff and the parties' interconnection agreement.

---

<sup>1</sup> AT&T's records show that One Tone has submitted similar disputes regarding state lifeline subsidies for other states. As explained in my November 22 letter, those disputes are equally without merit. AT&T fully intends to pursue recovery of those amounts from One Tone.



This issue has already been definitively addressed by the Tennessee Regulatory Authority ("TRA") and the Tennessee Court of Appeals.<sup>2</sup> In *Discount Communications*, the Court of Appeals affirmed a TRA decision refusing to require AT&T Tennessee to credit a CLEC the amount of the state Lifeline subsidy. In affirming the order, the Court found that "... BellSouth was not required to pass through the state Lifeline credit to [CLEC]," and further, in two arbitrations for ICAs, that "... it is the policy of this state that each individual reseller fully fund the state portion of the Lifeline assistance program from the reseller's internal sources."<sup>3</sup> This decision unequivocally rejects One Tone's position.

Similarly, section A3.31.2.A 9 of AT&T Tennessee's General Subscriber Services Tariff unambiguously states:

The non-discounted federal Lifeline credit amount will be passed along to resellers ordering local service at the prescribed resale discount from this Tariff, for their eligible end users. The additional credit to the end user will be the responsibility of the reseller. Eligible Telecommunications Carriers, as defined by the FCC, are required to establish their own Lifeline programs. (emphasis added).

One Tone has contractually agreed that this tariff provision and the TRA decision are binding terms and conditions in connection with services that AT&T Tennessee sells to One Tone for resale. Section 3.1, Attachment 1 (Resale) of the interconnection agreement provides:

Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to [One Tone] for resale those telecommunications services BellSouth makes available, *pursuant to its General Subscriber Services Tariff and Private Line Services Tariff*, to customers who are not telecommunications carriers. (emphasis added).

In light of the clear authorities noted above, One Tone's continued disputes associated with its claim that AT&T Tennessee must credit One Tone for the state portion of the lifeline program is not in good faith and its withholding of payment due to AT&T Tennessee for services rendered under the interconnection agreement is a blatant breach of the parties' interconnection agreement.

AT&T Tennessee would like to resolve this issue without formal regulatory or legal action. Through this letter, AT&T Tennessee is granting one final opportunity to One Tone to try to resolve this issue with regard to One Tone's disputes on the Lifeline program on its Tennessee accounts on a business to business basis.

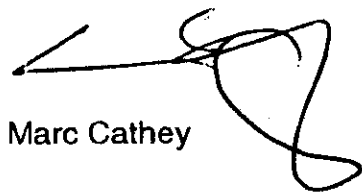
<sup>2</sup> See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

<sup>3</sup> *Id.* at 10-11.

Mr. Loggins  
May 18, 2011  
Page 3 of 3

Please contact me with respect to the issues raised herein by May 27, 2011 to begin discussions. If we have not heard from you by this date, we reserve our right to pursue any and all appropriate remedies.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the left.

Marc Cathey

attachment



**Marc Cathey**  
Executive Director

**AT&T**  
600 19<sup>th</sup> St. North, 9<sup>th</sup> Floor  
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November 22, 2010

Scott Loggins, President  
One Tone Telecom Inc.  
100 Century Plaza, Ste. 9-1  
Seneca, SC 29672

Re: Lifeline Subsidy in states of Alabama, Florida, Georgia, Kentucky and  
Tennessee

Dear Mr. Loggins:

I am writing on behalf of AT&T<sup>1</sup> regarding the disputes submitted by OneTone Telecom Inc. ("OneTone") in connection with AT&T's denial of OneTone's request that AT&T pass through to the state component of the Lifeline subsidy for OneTone's accounts in the states referenced in the footnote below. Our records show that, through October 10, 2010, OneTone has disputed at least \$ Redacted in connection with this issue. We do not believe that OneTone has adequate justification for disputing these sums. Our position in denying these disputes is supported by court precedent, the parties' interconnection agreement, and the applicable tariffs.

In each of the below-noted states, telecommunications service providers are required to self-fund the state portion of the Lifeline subsidy (\$3.50) for their end-user customers. Unlike the federal portion of the Lifeline program, there is no fund in these states to reimburse the service provider for this subsidy; instead, providing this subsidy is an unreimbursed cost to the service provider. Consistent with the applicable state requirements, AT&T self-funds the state subsidy to its end-users at a loss to AT&T. OneTone, as the service provider to its end-users, must do likewise. Put another way, while AT&T passes through the federal portion of the Lifeline subsidy to OneTone and is reimbursed by the USF program in doing so, AT&T has no obligation to pass on the state portion, because that subsidy is OneTone's obligation to fund on behalf of its own end-users.

The outcome OneTone appears to suggest through its disputes on this issue would effectively require AT&T to subsidize OneTone's customers' Lifeline service. That is clearly not intended or required under the Lifeline program, the tariffs, or the parties' interconnection agreement. In short, there is no legal authority to support OneTone's position that AT&T must subsidize OneTone's participation in this program.

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<sup>1</sup> BellSouth Telecommunications, Inc., doing business in the states listed above as AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, and AT&T Tennessee ("AT&T").

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We direct your attention to a 2002 decision of the Tennessee Court of Appeals, *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674 (Tenn. Ct. App. Jun. 7, 2002) (a copy is attached for your convenience). In *Discount Communications*, the court upheld a decision of the Tennessee Regulatory Authority ("TRA") which refused to require AT&T to credit a CLEC the amount of the state Lifeline subsidy. In reaching that decision, the court agreed that the TRA's "policy of placing the burden of the state subsidy on the carriers that sell the services to the Lifeline customers" was a valid interpretation of the federal Lifeline program. *Id.* at \*3.

OneTone's position is likewise contrary to the parties' interconnection agreement and AT&T's tariffs, all of which clearly indicate that OneTone is responsible for the portion of the subsidy at issue. Your resale attachment clearly points to the tariffs, which in turn clearly indicate that the state portion of the subsidy is the responsibility of OneTone, as the reseller.

AT&T would like to resolve this issue without formal regulatory or legal action. I would like to discuss this matter with you at your very earliest convenience. Please understand that AT&T stands willing to discuss reasonable payment arrangements with OneTone with respect to this issue.

Please call me to discuss, and I ask that you do so by Friday, December 3, 2010. I look forward to speaking with you.

Sincerely,

Marc Cathey

attachment