BRADLEY ARANT
BOULT CUMMINGS
LLP

Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@babc.com

February 25, 2010

VIA HAND DELIVERY

filed electronically in docket office on 10/25/10

Hon. Sara Kyle, Chairman
c/o Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238

Re: BellSouth Telecommunications, Inc, d/b/a AT&T Southeast d/b/a AT&T Tennessee vs. BLC Management, LLC d/b/a Angles Communications Solutions
Docket No. 10-00008

Dear Chairman Kyle:

Please find enclosed the original and four (4) copies of the Answer and Counter- Claims of BLC Management, LLC d/b/a Angles Communications Solutions.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:
Henry Walker,
Counsel for BLC Management, LLC
d/b/a Angles Communications Solutions

HW/dnr

2305040 v1
107332-001

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Tennessee	)))	Docket No. 10-00008
vs.	))	
BLC Management, LLC d/b/a Angles Communications Solutions	))	

ANSWER AND COUNTER-CLAIMS OF BLC MANAGEMENT, LLC D/B/A ANGLES COMMUNICATIONS SOLUTIONS

BLC Management, LLC, d/b/a Angles Communications Solutions ("Angles" or "Respondent") responds to the Complaint filed by BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T Tennessee ("AT&T") concerning a billing dispute between the parties.

NARRATIVE SUMMARY

Angles is a local exchange telephone company providing service to approximately 29,000 subscribers in Tennessee, most of whom are low income, residential customers. Angles resells the services of AT&T. As a reseller, Angles is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discount are usually sufficient to offset, in large part, Angles' monthly bills from AT&T.[1]

---

[1] AT&T's Complaint implies that since Angles pays little or nothing to AT&T each month for the purchase of wholesale services, the Respondent must be behind on its bills. That implication is incorrect. Angles is currently up-to-date on its bills and regularly pays AT&T all amounts owed, less the promotional discounts and rebates owed by AT&T to Angles.

Like a grocery shopper with a pocket full of coupons, Angles primarily purchases AT&T services which qualify for rebates and discounts. The rebates are often larger than the wholesale price of the service. Just as a shopper with coupons may purchase a cart full of goods for only a few dollars, the Respondent may purchase wholesale services at very little net cost. This litigation is not about whether Angles pays its bills, but about whether AT&T is giving Angles the full amount of the discounts and rebates to which a reseller is entitled under federal law.

(footnote continued on following page ...)

AT&T is not entitled to any relief sought in its Complaint. To the contrary, AT&T owes Angles a substantial amount of money in unpaid -- or underpaid -- rebates and discounts which AT&T offers its own retail customers but refuses to pay its wholesale customers in violation of federal law and the parties' interconnection agreement.

Under the Federal Telecommunications Act and the rules and orders of the Federal Communications Commission, AT&T is required to offer its services for resale (1) "subject to the same conditions" that AT&T offers its own end users and at (2) "the rate for the telecommunications service less avoided retail costs." 47 CFR §51.603(b) and 47 CFR §51.607. Other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T "proves to the state commission that the restriction is reasonable and non-discriminatory." 47 CFR §51.613.

For example, when AT&T offers new customers a rebate of "$50 cash back" for subscribing to residential telephone, AT&T must make the same offer available to resellers. In other words, the reseller will still pay AT&T the normal wholesale rate, that is, the tariffed price less the wholesale discount as determined by the state regulators. The reseller is also, however, entitled to purchase this service "under the same conditions" as an AT&T retail customer, that is, with a rebate of "$50 cash back."

(... footnote continued from previous page)

There have also been, and continue to be, disagreements between the parties over the time it takes AT&T to calculate the rebates and discounts and credit them to the reseller's account. AT&T has, at various times, been months behind while many resellers, including Angles, typically deduct the amounts owed by AT&T when paying their monthly bills. Although AT&T has worked on reducing these delays, operational problems remain a continuing source of disputes between the parties. These disputes are not before the Authority at this time.

In this example, the rebate offer does not change the competitive balance between the carriers. On the one hand, AT&T earns exactly the same margin – the tariffed rate less the wholesale discount – whether or not AT&T offers new customers a rebate. On the other hand, Respondent receives exactly the same benefit that it normally receives from the avoided cost discount – the tariffed rate less the wholesale discount – and the same $50 rebate that AT&T offers new retail customers. Like AT&T, Respondent is no better or worse off than Respondent would be if AT&T was not offering the $50 rebate. Neither carrier gains a competitive advantage or a financial windfall as a result of the rebate program.

That is the way the resale obligation is supposed to work. Assuming that the avoided retail costs are calculated correctly, the resale rules preserves competitive neutrality. Neither AT&T nor the reseller gains a competitive advantage whether a service is sold at retail or wholesale and neither gains an advantage whether AT&T is selling at the tariffed rate or offering a cash rebate.

But AT&T does not follow the rules. When AT&T offers its retail customers a $50 rebate, AT&T will not offer the same rebate to a reseller. Instead, AT&T subtracts the wholesale discount from the rebate before giving it to the reseller. If, for example, the wholesale discount is 20%, AT&T will pay the reseller only $40 instead of $50, gaining a $10 windfall – and a competitive advantage – each time a line is sold at wholesale rather than retail.

Here is a simple example, which assumes that the wholesale discount is 20%:

When AT&T sells a residential telephone service for a tariffed rate of $30 per month, the reseller pays a wholesale rate of $24 a month for the line (Retail rate less 20%.) If AT&T pays a $50 rebate in connection with the sale of the line to a new customer, AT&T only gives the reseller a credit of $40 ($50 less the 20% wholesale discount). When the first month's credits and payments are balanced, the reseller has a net credit of $16 (the $40 credit to the reseller less the $24 payment to AT&T). The retail customer, on the other hand, has a net credit of $20 at the end of the month (the $50 credit less the $30 tariffed price). Using AT&T's approach, the "retail" rate is actually $4 less than the "Wholesale" rate -- a classic, illegal price squeeze. If, on the other hand, AT&T gave the reseller credit for the full, $50 rebate, the reseller would have a net credit of $26 (the $50 credit to the reseller less the $24 payment to AT&T) and the net wholesale price would be (as it should be) six dollars less than the retail price.

This, then, is the first issue raised in AT&T's Complaint: When AT&T offers its retail customers a cash rebate, what is proper amount of the rebate AT&T must offer to resellers? Respondent's contends AT&T must offer the same cash rebate to a reseller. AT&T contends that it is only required to offer the amount of the rebate minus the wholesale discount. In either case, the reseller is still charged for the line itself at the regular tariffed rate, less the wholesale discount. Under Respondent's approach, the competitive balance reflected in the calculation of the avoided cost discount is preserved whether or not AT&T offers a rebate of $100, $50, or any other amount. Under AT&T's approach, AT&T gains a competitive advantage by giving the reseller only a percentage of the rebate. The larger the rebate, the larger the windfall, the larger AT&T's competitive advantage.

The second issue raised in the Complaint is not about calculating the amount of a rebate owed to a reseller but about determining whether a particular AT&T promotion is even subject to the resale requirement.

Since the 2007 decision of the US Court of Appeals for the Fourth Circuit in <u>BellSouth v. Sanford</u>, 197 F.3d 663 (4th Circuit, 2007), BellSouth (now AT&T) has not disputed that when it offers a cash rebate to attract new retail customers, the company must also offer a rebate – at least of some amount – to resellers serving similarly situated wholesale customers. But when the cash is offered, not to the new user but to an existing AT&T customer as a reward for referring new business to the company, AT&T argues that this "referral" promotion is not subject to resale and that AT&T owes nothing to a reseller serving similarly situated customers.

The Sanford court held that when AT&T offers cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, AT&T has, in effect, reduced the price of that service and must offer that same price reduction, along with the value of the avoided cost discount, to resellers. In an apparent attempt to evade the Court's holding, AT&T has decided to offer cash, gift cards, or other items of value to its retail customers in exchange for the purchase of regulated service, *not by the existing customer, but by a new customer who is referred to AT&T by the existing customer.* The rebate, in other words, goes to an existing customer, not for purchasing services himself, but as a reward for persuading someone else to purchase AT&T's telephone service. The impact on AT&T is the same, of course, as if AT&T had paid the new customer directly. In exchange for a payment of, for example, $50, AT&T has gained a new subscriber. But the impact on a reseller is quite different, according to AT&T. The company contends that this promotion is not subject to resale and refuses to pay anything when an existing customer of an AT&T reseller refers new business to the reseller. The advantage to AT&T is the same whether the referral brings a new retail customer or a new wholesale customer to AT&T. But in the retail market, AT&T pays a fee for getting a new customer, while in the wholesale market, AT&T gets the same new business but pays nothing at all.

This is the second issue raised in the Complaint. Angles believes it is entitled to resell AT&T's referral promotion and collect a rebate equal to the value of the payment offered by AT&T to its retail customers for referring new business. AT&T contends that it is not required to offer this promotion to resellers and that it owes Angles nothing for bringing new, wholesale business to AT&T.

Finally, Angles brings its own counter-claims against AT&T concerning some of AT&T's other restrictions on the resale of regulated services.

a. AT&T offers to waive the line connection charge for new retail customers and is, therefore, required to offer resellers a waiver of equal value. Instead, AT&T offers resellers only a portion of the value of the waiver of the line connection fee.

b. AT&T offers retail customers a discount on the purchase of regulated telephone service if the customer purchases a bundle of regulated and non-regulated services. AT&T, however, refuses to offer unbundled telephone service for resale at a comparable discount.

c. AT&T has recently announced its intention to eliminate almost entirely the cash rebates paid to resellers. For example, AT&T has stated that competitive carriers in Tennessee who resell a "$50 cash back" promotion are entitled to receive a rebate of only $3.65. Implementation of this proposal has been enjoined by a Federal District Court in Texas. That decision is now under review by the Fifth Circuit. Oral argument is scheduled for March 1, 2010.

In each case, AT&T has imposed, or tried to impose, a restriction on the resale of its service without first "prov[ing] to the state commission that the restriction is reasonable and non-discriminatory" as AT&T is required to do under the FCC's rules. 47 C.F.R.§51.613(b).

SPECIFIC RESPONSES TO AT&T'S COMPLAINT

The Section of AT&T's Complaint entitled "Background and Summary of Petition" and all included footnotes are AT&T's version of the situation and require no response from

Respondent. Unless below Respondent specifically admits any of the matters asserted, those matters are denied.

1. Admitted.

2. Admitted.

3. Admitted. The Respondent is a competitive local exchange carrier certified by the Authority to offer intrastate telecommunications services. The Respondent currently serves approximately 29,000 customers in Tennessee, primarily through the resale of AT&T's services. The address of Respondent's corporate headquarters is 1121 Highway 70, Suite 207, Arlington, Tennessee 38002.

4. Respondent has not been yet able to review each page of Exhibit A and is thus without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4 of the Complaint and therefore cannot either admit or deny the same. However, Respondent also states that it has no reason to dispute AT&T's assertion that the Exhibit is an accurate copy of the interconnection agreement between AT&T and the Respondent.

5. Denied

6. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 6 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

7. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 7 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

8. Denied.

9. Respondent denies that AT&T is owed an unpaid balance. Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint and therefore cannot either admit or deny the same. Thus, such allegations stand denied.

10. Admitted. AT&T, not Respondent, has erroneously interpreted AT&T's resale obligation.

11. Denied.

12. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

13. Admitted.

14. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

15. The language of the Federal Telecommunications Act speaks for itself. Otherwise, this allegation is denied.

16. Admitted.

AFFIRMATIVE DEFENSE

17. Respondent asks the Authority to dismiss this Complaint in deference to the primary jurisdiction of the Federal Communications Commission which currently has before it a Petition requesting a declaratory ruling on the same issues raised in this Complaint. FCC Docket WC 06-129, *In the matter of Petition of Image Access, Inc., d/b/a NewPhone for Declaratory Ruling Regarding Incumbent Local Exchange Carrier Promotions Available for Resale Under the Communications Act of 1934, as Amended, and Sections 51.601 et seq. of the Commission's Rules*.

18. In the alternative, Respondent asks that this Complaint be held in abeyance pending the outcome of two federal lawsuits. One is pending in the United States Court of Appeals for the Fifth Circuit, *Budget PrePay, Inc., v. AT&T f/k/a SBC Communications, Inc.*, Case No. 3:09-cv-1494-P (N.D. TX). where oral argument is scheduled for March 1, 2010. The other is pending in the United States District Court for the Western District of North Carolina, *CGM, LLC v. BellSouth Telecommunications, Inc.*, Case No. 3:09-cv-00377 (W.D.N.C.).

COUNTERCLAIMS

19. For its own retail customers, AT&T offers to waive the line connection charge, a one-time payment of about $40. AT&T, however, refuses to give Respondent the full value of that $40 credit, offering instead only about $32 (the value of the retail credit less the wholesale discount). The reseller is entitled to receive the full value of the line connection waiver.

Here is a simple example, based on the assumption that the wholesale discount is 20%: When a reseller orders a new line, he pays AT&T a wholesale rate of $32 for the line connection fee (the tariffed rate of $40 less the 20% wholesale discount.) If AT&T waives the line connection charges for its retail customer, AT&T will give the reseller a credit of $32 ($40 credit less the wholesale discount). Since the $32 charge to be reseller is offset by the $32 credit, the reseller is charged $0 for the line connection. If, as Respondent claims, AT&T is required to give the reseller the full, $40 value of the waiver, the reseller would end up with a credit of $8 instead of $0 (the $40 credit less the $32 charge). Respondent asks the Authority to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

20. AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its telephone services for resale at a comparable discounted rate. Respondent asks the Authority to

declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

21. AT&T has recently informed Respondent that AT&T intends to reduce from approximately $40 to $3.65 the amount paid to resellers under AT&T's "$50 cash back" rebate offer. Respondent asks the Authority to declare that AT&T cannot impose this condition on resale unless and until AT&T "proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

RELIEF SOUGHT

WHEREFORE, Respondent respectfully requests that the Authority issue an Order

1. Denying the relief sought by AT&T;

2. Dismissing this Complaint in deference to the primary jurisdiction of the FCC or, in the alternative, holding this Complaint in abeyance pending the outcome of two federal lawsuits addressing the same issues raised in this Complaint;

3. Granting Respondent's Counter Claims and such further relief as the Authority deems fair and equitable.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS, LLP

By: ______________________________

Henry Walker (No. 000272)
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363
Attorneys for BLC Management, LLC dba Angles Communications Solutions

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to Guy Hicks, AT&T Tennessee, 330 Commerce Street, Nashville, TN 37219 on this the 25th day of February, 2010.

Henry Walker