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July 20, 2011

VIA HAND DELIVERY

FILED ELECTRONICALLY IN DOCKET OFFICE ON 07/20/11

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

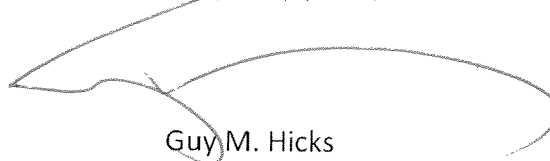
Re: *Examination of issues Surrounding BellSouth Telecommunications, Inc. dba AT&T Tennessee's Notice of June 28, 2011 Concerning BLC Management, LLC dba Angles Communication Solutions, dPi Teleconnect, LLC, Ganoco, Inc. dba American Dial Tone, Image Access, Inc. dba NewPhone and OneTone Telecom, Inc.*
Docket No. 11-00109

Dear Chairman Freeman:

Enclosed for filing in the referenced docket are the original and four copies of AT&T Tennessee's *Brief*.

A copy has been provided to counsel of record.

Very truly yours,



Guy M. Hicks

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: *Examination of Issues Surrounding BellSouth Telecommunications, Inc. dba AT&T Tennessee's Notice of June 28, 2011 Concerning BLC Management, LLC dba Angles Communication Solutions, dPi Teleconnect, LLC, Ganoco, Inc. dba American Dial Tone, Image Access, Inc. dba NewPhone and OneTone Telecom, Inc.*

Docket No. 11-00109

BRIEF OF AT&T TENNESSEE

BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T Tennessee")¹ respectfully submits its Brief addressing the issue designated in the Hearing Officer's Notice to the parties dated July 14, 2011. The issue is whether the Resellers have acted in good faith in withholding Lifeline credits from payments to AT&T Tennessee. In addressing this issue, the Hearing Officer requested that the parties address (1) whether the parties' respective Interconnection Agreements ("ICAs") allow the Resellers to withhold Lifeline credits while a dispute over payment of those credits is being adjudicated and (2) whether AT&T Tennessee is allowed to terminate service to the Resellers for failure to make payment of Lifeline credits if it is determined that those credits have been withheld in bad faith.

As explained below, the Resellers' respective ICAs provide that Tennessee law governs the substantive telecommunications issue of whether AT&T Tennessee is required to provide the state \$3.50 Lifeline credit to Resellers. Under controlling Tennessee law, AT&T Tennessee is **not** required to do so – this is plainly stated in an Order of the Authority that was affirmed on

¹ Effective July 1, 2011, BellSouth Telecommunications Inc. was converted to BellSouth Telecommunications, LLC by operation of Georgia law (the law of the state in which the former BellSouth Telecommunications, Inc. was incorporated).

appeal by the Tennessee Court of Appeals. In defiance of this controlling authority, the Resellers have withheld nearly \$1.7 million in payment from AT&T Tennessee based solely on their contention that AT&T Tennessee must provide the state \$3.50 Lifeline credit to Resellers no matter what the Authority and the Court of Appeals say. In doing so, the Resellers have blatantly breached the covenant of good faith and fair dealing that is implied in their ICAs, and AT&T Tennessee is entitled to terminate their service as a result of this breach. If these Resellers do not cure this breach and AT&T Tennessee terminates service, AT&T Tennessee will comply with the Authority-approved service continuity plan.

I. INTRODUCTION

On June 28, 2011, AT&T Tennessee notified the Tennessee Regulatory Authority (“the Authority”) that on the same date, AT&T Tennessee sent five Resellers² letters informing them that AT&T Tennessee will suspend, discontinue, and/or terminate their service in Tennessee unless they paid, in the aggregate, nearly \$1.7 million of AT&T Tennessee billings they have withheld on the basis of the state \$3.50 Lifeline credit issue that is the subject of this docket.³ The Resellers have been provided ample notice. The attachments to AT&T’s June 28 letter include copies of similar demand letters sent to the Resellers in November, 2010 and May, 2011, summarizing Tennessee law regarding state Lifeline credits.⁴ Two Resellers (NewPhone and OneTone) recently submitted payments to AT&T Tennessee while reserving their rights to

² 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”).

³ As explained below, the Resellers have withheld much more than this amount on the basis of various other “disputes” that are equally invalid, but that have not yet been squarely addressed by the Authority. These other disputes are not the subject of this docket.

⁴ Exhibit 1 to this Brief contains redacted copies of those letters and their attachments.

participate in this proceeding, but neither Angles, dPi nor Ganoco have submitted any payment whatsoever to AT&T Tennessee in response to the collection letters.

AT&T Tennessee and the Hearing Officer agreed upon a schedule for briefing this matter, and the Hearing Officer ordered AT&T Tennessee not to terminate service to the Resellers prior to August 18, 2011. The Hearing Officer declined AT&T Tennessee's request that it be protected during this time by an escrow account – notably, while these Resellers all charge their end users substantially more than the wholesale prices for these services and require them to pay in advance, and even though the Resellers are withholding such large amounts of payment from AT&T Tennessee, counsel for Angles stated that Angles could not pay any amount of money into an escrow account. The Hearing Officer also rejected Angles' argument that it should be able to continue to order new service from AT&T Tennessee during this period. Accordingly, AT&T Tennessee suspended Angles', dPi's, and Ganoco's ordering capability on July 15, 2010. This suspension prevents these Resellers from ordering new service or making changes to existing service, ***but it does not interrupt service to any of their end user customers.***

li. DESCRIPTION OF THE SO-CALLED "DISPUTES"

The Resellers' respective 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" – and refused to pay – the vast majority of the amounts they have been billed by AT&T Tennessee for a variety of reasons. The Resellers collectively have refused to pay more than 90% of the more than \$16 million AT&T Tennessee

has billed them over the past 34 months.⁵ Many of these “disputes” – while meritless – have not yet been squarely addressed by the Authority, and such disputes are not the subject of this docket. Instead, this docket addresses only the \$1.7 million in “disputes” that are based on the state \$3.50 Lifeline credit issue that the Authority and the Court of Appeals have already decided in favor of AT&T Tennessee.

When the Resellers order service from AT&T Tennessee for resale to their end users who qualify for the Lifeline program,⁶ AT&T Tennessee credits or “flows through” the \$10 federal Lifeline credits to the Resellers. Consistent with the controlling decisions of the Authority and the Court of Appeals, however, AT&T Tennessee does not “flow through” any amount reflecting the state \$3.50 Lifeline credit to the Resellers because there are no state-funded Lifeline credits to “flow through.” Instead, each local exchange carrier bears the responsibility to fund the state Lifeline credit for their respective Lifeline customers. Despite the Authority Order and Court of Appeals decision making clear that AT&T Tennessee is not required to provide the Resellers the state \$3.50 Lifeline credit, the Resellers defiantly lodge numerous unfounded “disputes” claiming that AT&T Tennessee is required to do so, and they

⁵ Angles is the worst offender by far – it is engaged in concerted and ongoing efforts to “dispute,” and withhold payment of, nearly every penny that AT&T bills it under the parties’ ICAs. Incredibly, over the past 32 months, **Angles has paid AT&T less than one-half of one percent (0.43%) of the amounts billed by AT&T.** AT&T understands and appreciates that bona fide billing disputes will arise in the ordinary course of business. But when a reseller disputes, in the aggregate, more than 99% of the amounts it is billed by AT&T, there is simply no way to conclude that the reseller is acting in good faith. And Angles’ misconduct is not limited to its interaction with AT&T. On March 29, 2011, in Florida Public Service Commission Docket Nos. 100340-TP and 110082-TP, the Staff of the Florida Public Service Commission recommended that the ATMS companies, of which Angles is a part, be fined more than \$16,000,000 by the Commission, based on apparent violation of numerous requirements applicable to the federal Universal Service Fund (“USF”) in connection with the ordering of Lifeline services from AT&T.

⁶ 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.*

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.

III. THESE “DISPUTES” CLEARLY ARE INVALID AND NOT LODGED IN GOOD FAITH.

As explained below, Tennessee law governs the substantive telecommunications issue of whether AT&T Tennessee must provide Resellers the state \$3.50 Lifeline credit. The Authority has entered an Order making clear that AT&T Tennessee is not required to do so but that, instead, 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.⁷ This Order was affirmed by the Tennessee Court of Appeals,⁸ and the Resellers are fully aware of the Authority’s Order and the Court of Appeals’ opinion affirming it – AT&T Tennessee sent each Reseller three letters explaining these rulings.⁹ The Resellers, however, have withheld \$1.7 million of payments based on their “dispute” that AT&T Tennessee must provide them this state \$3.50 Lifeline credit no matter what the Authority and the Court of Appeals say. This simply is not a good-faith dispute. The Authority’s orders are not optional, and Resellers are not permitted to pick and choose which orders they will follow and which they will ignore.

The Resellers’ eleventh-hour attempt to characterize the Authority’s long-standing Order, which was affirmed by the Court of Appeals, as “interim” is as transparent as it is meritless. It is not for the Resellers to decide if and when that Order (or any other Order of the Authority) is no longer in effect. Instead, that Order remains effective, lawful, and binding

⁷ See Order, *In Re Complaint of Discount Communications, Inc. Against BellSouth Telecommunications Inc.*, Docket No. 00-00230 at 11, 13 (September 28, 2000).

⁸ *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, 2002 WL 1255674 at *3 (Tenn. Ct. App. 2002).

⁹ See Exhibit 1.

unless and until Congress, the General Assembly, or the Authority takes action to change the law on a prospective basis. The Resellers' suggestion to the contrary is not only bad policy, but it is also completely inconsistent with the Authority's history and precedent for following its own rules and orders.

A. The Interconnection Agreements and Tennessee Tariffs Make Clear that AT&T Tennessee is Not Required to Flow the \$3.50 State Lifeline Credit Through to the Resellers.

The Resellers' respective ICAs provide, in pertinent part:

Governing Law. Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.¹⁰

Whether AT&T Tennessee must provide Resellers the state \$3.50 Lifeline credit is a question of substantive telecommunications law. Accordingly, it is governed by Tennessee law, and the Resellers cannot credibly contend otherwise.¹¹

Further, 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

¹⁰ See, e.g., § 18 of General Terms and Conditions of the Angles / AT&T Tennessee ICA approved by the Authority on June 27, 2005 in Docket No. 05-00107. A subsequent amendment was approved by the Authority on December 17, 2007 in Docket No. 07-00247. The ICA of each of the other Resellers contains a substantively-identical provision.

¹¹ In the context of this proceeding, the "appropriate Commission" to address this issue of substantive telecommunications law clearly is the Tennessee Regulatory Authority. To rule otherwise would mean that the Authority should ignore its own Order and the Tennessee Court of Appeals' opinion, both of which are directly on point, and allow the Georgia Commission and Georgia courts to determine how the state Lifeline credit is funded in Tennessee. That is nonsensical – particularly in light of the fact that Georgia, unlike Tennessee, has a state USF. There can be no dispute that the Authority's Order, the Tennessee Court of Appeals' opinion resolving the previous state Lifeline credit litigation, and applicable Tennessee tariffs are the state substantive telecommunications law that the Authority must apply.

1) to the Authority-approved ICA between AT&T Tennessee and Angles, 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 contains 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.¹²

Each Reseller, therefore, has contractually agreed that it, and not AT&T Tennessee, must provide the state \$3.50 Lifeline credit. That clear and unequivocal language should itself end the inquiry into the issues that are the subject of this proceeding. But, even if it were necessary to look beyond that clear language, the language is indisputably consistent with Tennessee law on the subject, as explained below.

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

Each Reseller represented to the Authority during its certification process that it would adhere to ***all applicable orders of the Authority.***¹³ Moreover, Section 3.1 of the Resale

¹² See Tariff / Guidebook, §A3.31.2.A.9 (emphasis added).

¹³ 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").

attachment (Attachment 1) to the Authority-approved ICA between AT&T Tennessee and Angles provides in pertinent part:

Subject to effective and applicable FCC and Commission rules and orders, [AT&T Tennessee] shall make available to BLC Management for resale those telecommunications services [AT&T Tennessee] 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

[I]t 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.¹⁴

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.¹⁵

¹⁴ See Order, *In Re Complaint of Discount Communications, Inc. Against BellSouth Telecommunications Inc.*, Docket No. 00-00230 at 11, 13 (September 28, 2000). (Emphasis added.)

¹⁵ *Discount Communications, Inc. v. BellSouth Telecommunications, Inc.*, 2002 WL 1255674 at *3 (Tenn. Ct. App. 2002).

The Resellers do not attempt to argue that the Authority's order and the Court of Appeals opinion are not on point. To the contrary, the Resellers understand that their withholding of Lifeline credits is flatly contrary to both the Authority's order and the Court's opinion.

What the Resellers attempt to argue is that they can now ignore the Authority's Order because it was an "interim" order reflecting a "policy" decision.¹⁶ This argument, of course, lacks any merit whatsoever. An "interim" order remains the law of the state until it is set aside by lawful means. A "policy" order remains binding until the agency changes the policy on a prospective basis through lawful means. In other words, it is not for the Resellers to decide if and when an Order they do not like is no longer in effect. Instead, an Order remains effective, lawful, and binding unless and until Congress, the General Assembly, or the Authority takes action to change the law on a prospective basis.

C. The Resellers' "disputes" – which defiantly ignore controlling Tennessee substantive telecommunications law – clearly breach the covenant of good faith and fair dealing that is implied in their respective ICAs.

Under the Georgia law that governs the payment terms in the ICA and therefore governs the resolution of this matter,¹⁷ it is clear the Resellers have a duty to act in good faith in exercising their rights and performing their duties under their respective ICAs. Under Georgia law, "every contract imposes upon each party a duty of good faith and fair dealing in the

¹⁶ The Resellers are quick to observe that the Authority's Order was subject to one dissenting vote, but they conveniently ignore the fact that there was no dissenting vote on the three-judge panel of the Court of Appeals that reviewed the Order – the Court's opinion affirming the Order was unanimous.

¹⁷ See Angles' ICA, General Terms and Conditions, §18 ("Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles."). Substantively identical language appears in § 17 of the ICAs between AT&T Tennessee and dPi (Docket No. 10-00002), Ganoco (Docket No. 10-00098), NewPhone (Docket No. 06-00117) and OneTone (Docket No. 10-00038).

performance of their respective duties and obligations.” *Kennedy v. Droughton Trust*, 627 S.E.2d 837, 840 (Ga. Ct. App. 2006).¹⁸ It is equally clear that the Resellers are not acting in good faith when they submit “disputes” and withhold payments based on their contention that AT&T Tennessee must provide them a \$3.50 state Lifeline credit. Under Georgia law, “[i]t is too well settled to require citation of authority that bad faith means a frivolous or unfounded refusal to pay.”¹⁹ In this case, the sole reason the Resellers have refused to pay the amounts at issue in this docket is because they contend that AT&T Tennessee is required to provide the Resellers the \$3.50 state Lifeline credit. As explained above, this is an issue of substantive telecommunications law that the controlling ICAs make clear is governed by Tennessee law, and both the Authority and the Court of Appeals have made clear that under Tennessee’s substantive telecommunications law, AT&T Tennessee is **not** required to provide the Resellers a \$3.50 state Lifeline credit.²⁰

The Resellers are well aware of these decisions – AT&T Tennessee informed them of these decisions in writing before this docket was convened.²¹ Even if AT&T Tennessee had not reminded the Resellers about the applicable Tennessee law, they are charged with knowledge of it. The Resellers, however, obstinately and in bad faith refuse to act in accordance with this controlling law. Instead, they effectively cross their arms in defiance and say, “we know about

¹⁸ The same is true under Tennessee law. See *Wallace v. Nat'l Bank of Commerce*, 938 S.W.2d 684, 686 (Tenn. 1996); *Elliott v. Elliott*, 149 S.W.3d 77, 84-85 (Tenn. Ct. App. 2004); A contract obligee’s dispute must exist in good faith and may not be simulated to escape liability. *Rode Oil Co.*, 2008 WL 4367300, at *10; *German v. Ford*, 300 S.W.3d 692, 704 (Tenn. Ct. App. 2009).

¹⁹ *St. Paul Fire & Marine Ins. Co. v. Postell*, 149 S.E.2d 864, 866 (Ga. Ct. App. 1966). Tennessee law is the same. See pp. 3-4 of this Brief.

²⁰ While Georgia courts have held that “no ‘bad faith’ exists where there is a doubtful question of law involved,” *United States Fidelity & Guaranty Co. v. Woodward*, 164 S.E.2d 878, 881 (Ga. Ct. App. 1968), that provides no assistance to the Resellers. There can be no reasonable argument the Authority’s Order and the Tennessee Court of Appeals Decision require the Resellers, and not AT&T Tennessee, to fund the \$3.50 state Lifeline credit at issue in this docket.

²¹ See Exhibit 1.

those decisions, we do not like those decisions, and we are not going to follow those decisions.”

Under no stretch of the imagination can this be considered acting in good faith as required by their ICAs.²²

IV. THE TERMS OF THE INTERCONNECTION AGREEMENTS ALLOW AT&T TENNESSEE TO TERMINATE SERVICE FOR NON-PAYMENT.

Because the Resellers’ “disputes” are without merit and were not lodged in good faith, AT&T Tennessee is entitled to terminate service under the terms of the ICAs. The plain and unequivocal language of the parties’ ICAs requires the Resellers to pay for the services they order from AT&T Tennessee. The Resellers, however, refuse to pay. The parties’ Authority-approved ICAs require the Resellers to pay for resale services provided by AT&T Tennessee:

Payment of all charges will be the responsibility of reseller.²³

AT&T reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of AT&T service **or any other violation or noncompliance by reseller of AT&T’s tariffs.**²⁴

If payments due from reseller are not received by AT&T within 30 days following written notice, AT&T may Discontinue service to reseller.²⁵

If within 7 days after reseller’s service has been discontinued and reseller fails to pay all past due charges, then reseller’s service will be Terminated.²⁶

²² The implications of the Resellers’ arguments to the contrary extend far beyond this single docket. If the Authority were to rule that these Resellers are acting in good faith when they refuse to honor a decision of the Authority that has been upheld by the Tennessee Court of Appeals, what is to stop any person or entity from refusing to comply with a ruling of the Authority on the basis that it believes in “good faith” that the ruling was wrong when rendered or that it is “too old” to be honored anymore?

²³ ICA, Attachment 7, p. 6, § 1.4.

²⁴ ICA, Attachment 7, p. 7, § 1.5.2 (emphasis added). As explained above, AT&T Tennessee’s tariffs require the Resellers – not AT&T Tennessee – to provide the state \$3.50 state Lifeline credit.

²⁵ ICA, Attachment 7, p. 8, § 1.5.4.

²⁶ ICA, Attachment 7, p. 9, § 1.5.5

This language is unambiguous, clear, and explicit. As explained by the Supreme Court of Tennessee, “[w]hen a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used.”²⁷ Moreover, “[t]he judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.”²⁸ Accordingly, as a matter of law, AT&T Tennessee is entitled to terminate service to the Resellers when they breach their respective ICAs by refusing to pay \$1.7 million in the aggregate because they simply do not like the lawful decisions of the Authority.

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

While the Resellers’ actions have made clear that they are concerned solely with their own finances and not the well-being of their end users, the Authority’s questions and concerns in this case demonstrate the agency’s focus on what will happen to the consumers who have chosen to buy service from these Resellers. Fortunately, the Authority long ago made plans for exactly this sort of situation, and the agency’s foresight in adopting rules and approving tariffs protects these end users. Those rules and tariffs provide notice to assist consumers, and, as the

²⁷ See *Yancey v. H&H Gas and Oil Co.*, 1992 Tenn. App. LEXIS 1022, *5 (TN Ct. App. 1992).

²⁸ *Id.* The same fundamental principles apply with equal force to interconnection agreements that are approved pursuant to federal law. An interconnection agreement is “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,” *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003), and once a carrier enters “into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement.” *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev’d in part on other grounds sub nom; Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). See also, *Mich. Bell Tel. Co. v. MCI Metro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”).

Authority Staff noted during the status conference, end users have many choices for their telephone service.

The Authority has approved a Service Continuity Plan for customers who have lost service due to a service provider's termination of service.²⁹ 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.³⁰ The Plan also provides that if a reseller fails to provide notification of service termination to its customers as required by the Plan, the underlying carrier will provide reasonable assistance to assist the Authority in notifying the end user customers. AT&T Tennessee will comply with this Plan if any of the Resellers' service is terminated.

Consistent with the terms of the Parties' ICAs, AT&T Tennessee intended to terminate service to the Resellers on July 28, 2011. At the Hearing Officer's request, however, AT&T Tennessee agreed to extend the termination date from July 28 to August 18, 2011 in order to provide the Authority Staff additional time to issue notices to the Reseller's customers.³¹ Moreover, AT&T Tennessee has agreed, at the request of the Staff and pursuant to the Authority's Plan, to provide Reseller customer contact information, including customer names, addresses, and telephone numbers, to assist the Staff.

²⁹ See Exhibit 2 to this Brief.

³⁰ 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.

³¹ NewPhone has recently paid AT&T the amounts it had previously withheld in connection with the \$3.50 state Lifeline credit. OneTone has also recently submitted payments to AT&T. Service to NewPhone and OneTone will not be terminated on August 18, 2011. Neither Reseller waived its rights to participate in this proceeding.

VI. CONCLUSION

The Resellers have breached their contractual obligations by withholding \$3.50 for each Lifeline service they provision from payments to AT&T Tennessee in defiance of clear and controlling Tennessee law. AT&T Tennessee, therefore, is entitled to terminate service to the Resellers. AT&T Tennessee has worked in good faith with the Hearing Officer and Staff to provide additional time for the Resellers' end user customers to be notified and choose a new telecommunications service provider.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, LLC
dba AT&T Tennessee

By:  _____

Guy M. Hicks

Joelle Phillips

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

615 214-6301

Attorneys for AT&T Tennessee

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2011, a copy of the foregoing document was served on the following, via hand delivery, facsimile, overnight, electronic mail or US Mail, addressed as follows:

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

Henry Walker, Esquire
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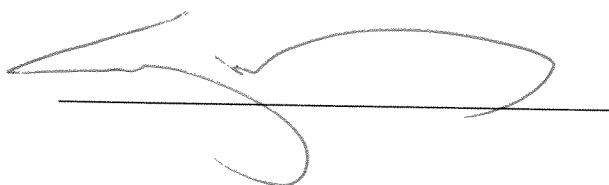
A handwritten signature in black ink, appearing to be 'H. Walker', is written over a horizontal line.

Exhibit 1



Guy M. Hicks
General Attorney - TN

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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 Resellers¹ 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.² 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"

¹ 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").

² 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,³ 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.⁴ This Order was

³ 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.*

⁴ 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.⁵ 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.⁶ 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.

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

⁶ 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.⁷ 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 Lifeline 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).

⁷ 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.⁸ 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,



Guy M. Hicks

⁸ 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

at&t

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.

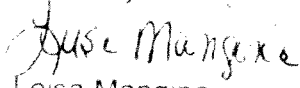
Please remit payment to AT&T Tennessee at the following address:

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

BIC MANAGE VIN	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							
Jan 10							
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Oct 10							
Nov 10							
Dec 10							
Jan 11							
Feb 11							
Mar 11							
Apr 11							

Ganoco

at&t

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.

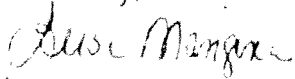
Please remit payment to AT&T Tennessee at the following address

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,



Leisa Mangina

Attachment

Attachment A

CANON 0740

Prev. Month 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						
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Apr 10						
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Jun 10						
Jul 10						
Aug 10						
Sep 10						
Oct 10						
Nov 10						
Dec 10						
Jan 11						
Feb 11						
Mar 11						
Apr 11						

NewPhone

at&t

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.

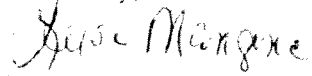
Please remit payment to AT&T Tennessee at the following address:

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							
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Jun 09							
Jul 09							
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Oct 09							
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Oct 10							
Nov 10							
Dec 10							
Jan 11							
Feb 11							
Mar 11							
Apr 11							

OneTone

at&t

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.

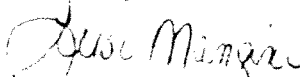
Please remit payment to AT&T Tennessee at the following address:

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

001700071100V

	Prev Mth billed	Payments	Adjusted	Past due balance	Current charges	Late Payment chrgs	Total billed
Jan 08							
Jul 08							
Aug 08							
Sep 08							
Oct 08							
Nov 08							
Dec 08							
Jan 09							
Feb 09							
Mar 09							
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Jan 10							
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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 19th St. North 9th 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.¹ 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

¹ 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.

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

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.² 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."³ 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

² 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).

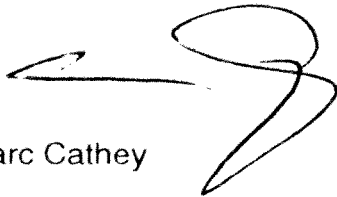
³ *Id.* at 10-11.

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,

A handwritten signature in black ink, appearing to read 'Marc Cathey'. The signature is stylized with a large loop and a horizontal stroke.

Marc Cathey

attachment



Marc Cathey
Executive Director-Wholesale

AT&T
600 19th St. North 9th 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&T¹ 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

¹ 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 19th St. North 3rd 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.¹ 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

¹ 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.² 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."³ 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

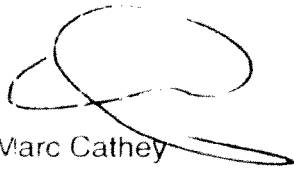
² See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

³ *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, consisting of a large, stylized 'C' followed by a horizontal stroke.

Marc Cathey

attachment



Marc Cathey
Executive Director-Wholesale

AT&T
600 19th St. North, 9th 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&T¹ 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.

¹ 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 19th St. North 9th 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.¹ 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

¹ 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.² 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."³ 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.

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

³ *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

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

attachment



Marc Cathey
Executive Director-Wholesale

AT&T
600 19th St. North, 9th 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&T¹ 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.

¹ 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. Klein
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.

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 19th St. North 9th 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.¹ 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.

¹ 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.² 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."³ 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:

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).

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

² 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).

³ *Id.* at 10-11.

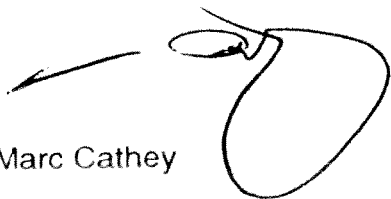
Mr. Dry
May 18, 2011
Page 3 of 3

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

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a large, loopy 'C' that ends in a small flourish.



Marc Cathey
Executive Director-Wholesale

AT&T
600 19th St. North, 9th 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&T¹ 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

¹ 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 19th St. North 9th 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.¹ 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.

¹ 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.² 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."³ 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.

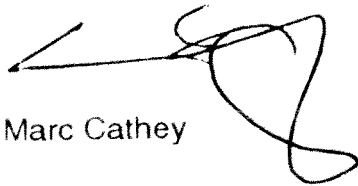
² See *Discount Comm'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, TRA No. 00-00230 (Tenn. Ct. App. Jan. 7, 2002).

³ *Id.* at 10-11.

Mr. Loggins
May 18, 2011
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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, appearing to read 'Marc Cathey'. The signature is stylized with a large, looping 'C' and a horizontal line extending to the left.

Marc Cathey

attachment



Marc Cathey
Executive Director

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

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&T¹ 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.

¹ 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. Loggins
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.

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

Exhibit 2

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**A5.7 Reserved For Future Use****A5.8 Emergency Service Continuity Plan****A5.8.1 General**

- A. The Company will provide Emergency Service Continuity, subject to the rates, terms and conditions stated herein. This service is provided in the event that service to a customer of a reseller is terminated without adequate notice, as provided in the Rules of the Tennessee Regulatory Authority.

A5.8.2 Definition of Terms**EMERGENCY SERVICE CONTINUITY**

The service(s) provided pursuant to this tariff.

NEW SERVICE PROVIDER

The service provider affirmatively chosen by an abandoned customer of a reseller. A new service provider can be any service provider that is properly authorized by the Tennessee Regulatory Authority to offer telecommunications service in Tennessee

RESALE

Occurs when an entity purchases telecommunications service(s) on a wholesale basis from the Company and resells those service(s) to its customers.

RESELLER

Any person or entity possessing a certificate of authority to resell local exchange or exchange access services

SERVICE TERMINATION DATE

The date on which the Company, as the underlying carrier, terminates wholesale service(s) to a certified reseller

UNDERLYING CARRIER

Any properly certified telecommunications service provider who provides telecommunications services on a wholesale basis to another company for resale to that company's customers.

A5.8.3 Application

- A. The Company, as the underlying carrier, shall provide, at a minimum, basic local exchange service, as defined in Tenn. Code Annotated § 65-5-108, to the customers of the reseller for at least seven (7) days after the service termination date, or until the customer selects a new service provider, whichever is less.
- B. If a customer selects a new service provider, the Company may charge the new provider for the service provided at its tariffed rate.
- C. At the end of the seven (7) day transition period, the Company may terminate the service unless the customer has either transitioned to a new service provider or has placed an order to transition to the Company.
- D. The Company will provide its standard maintenance and repair services, where applicable, during the time period it provides Emergency Service Continuity.

A5.8.4 Notice

- A. The Company has no responsibility to notify any customer of a reseller that service provided by the reseller may be interrupted.
- B. Should the reseller fail or refuse to provide notice to its customers as required by the Rules of the Tennessee Regulatory Authority, BellSouth, as the underlying carrier, shall, at the TRA's request, provide reasonable assistance to the Authority in notifying the customers of the reseller.
- C. Use of Company facilities may be discontinued without notice at any time after a customer of a reseller has transitioned to a new service provider that does not require use of Company facilities.

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**A5.8 Emergency Service Continuity Plan (Cont'd)****A5.8.5 Conditions**

- A. Emergency Service Continuity will be provided where the Company has been the underlying facilities provider through a resale arrangement with a properly certified reseller.
- B. To provide Emergency Service Continuity, the Company is authorized, through the Rules of the Tennessee Regulatory Authority, to use the customer service record information of abandoned customers of a reseller.
- C. All other non-rate terms and conditions applicable to general subscriber service (including, without limitation, the limits on the Company's liability for failure to provide service) apply to Emergency Service Continuity.

A5.8.6 Rates

- A. For each customer that selects a new service provider other than the Company, the Company will charge the new service provider the published retail rate for service(s) provided to the abandoned customer.
- B. For each abandoned customer that selects the Company as its new service provider, the Company may charge from the service termination date the rates applicable to the services provided to the customer by the Company consistent with the Company's published retail rates.