

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

AUGUST 25, 2011

*In re: Complaint of Access Point, Inc. Against AT&T Tennessee
and AT&T Long Distance Service for Unreasonable
and Anti-Competitive Conduct*

Docket No. 11-00141

**COMPLAINT OF ACCESS POINT, INC. AGAINST AT&T TENNESSEE AND
AT&T LONG DISTANCE SERVICE
FOR UNREASONABLE AND ANTI-COMPETITIVE CONDUCT**

Summary

Pursuant to T.C.A. §§ 65-6-104, 65-4-119 and 65-5-109(m) Access Point, Inc. files this complaint against BellSouth Telecommunication, Inc., d/b/a AT&T Tennessee, and BellSouth Long Distance, Inc., d/b/a AT&T Long Distance Service, for unreasonable and anti-competitive conduct in charging a Tennessee customer rates of \$0.57 per minute and \$1.39 per minute on calls which were accidentally routed to the AT&T long distance network. Based on AT&T's tariffs, the normal AT&T retail rate for interstate and intrastate toll calls appears to be \$0.07 per minute. The unusually high rates charged by AT&T for these calls seem to be based on AT&T's "casual calling" plan which is used by customers who make infrequent toll calls and must dial "10288" at the beginning of each long-distance call. The customer did not subscribe to this plan, and no business would knowingly select this type of calling plan for making regular toll calls. AT&T arbitrarily chose to apply these very high rates apparently in retaliation because the customer switched from AT&T Tennessee to Access Point for local telephone service. This is an "unreasonable" and "anti-competitive" act by AT&T which this Authority can and should remedy. Access Point asks that AT&T be ordered to reduce its long distance charges to the normal retail rate.

I. Parties

1. Access Point, Inc. ("Access Point") is a competitive local exchange carrier operating in Tennessee pursuant to a certificate issued by the Tennessee Regulatory Authority, Docket No. 00-00783. Access Point is headquartered at 1100 Crescent Green, Suite 109, Carey, North Carolina.

2. AT&T Tennessee is an incumbent local exchange carrier operating in Tennessee under the jurisdiction of the Tennessee Regulatory Authority.

3. AT&T Long Distance Service is a competitive local exchange carrier operating pursuant to a certificate issued by the Tennessee Regulatory Authority, Docket No. 03-00620.

4. Upon information and belief, AT&T Long Distance Service and AT&T Tennessee are affiliated entities and both are authorized to provide local exchange access and interexchange telephone service, both interstate and intrastate, to customers in Tennessee. In this complaint, the actions of one or both carriers are attributed to "AT&T."

II. Jurisdiction

5. The Authority has jurisdiction over the claims asserted in this complaint under T.C.A. § 65-4-115, § 65-4-119, and § 65-5-109(m).

III. Designated Contact

6. Communication regarding this complaint should be directed to:

Henry Walker
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

IV. Statement of Facts

7. On August 5, 2010, Access Point entered into a contract to provide local and long distance telephone service to Matheson Tri-Gas, a business located at 1700 Scepter Road,

Waverly, Tennessee. At the time, Matheson Tri-Gas was receiving local telephone service from AT&T Tennessee. The contract provided that Access Point would charge Matheson Tri-Gas \$0.049 per minute for intrastate long distance calls and \$0.039 per minute for interstate long distance calls.

8. After the contract was signed, Access Point notified AT&T Tennessee to switch the local service of Matheson Tri-Gas from AT&T Tennessee to Access Point and to switch the customer's long distance service to a carrier selected by Access Point. As the result of an error in the provisioning department of Access Point, customer's long distance calls were accidentally routed to the AT&T long distance network.

9. For three months, December, 2010 through February, 2011, Matheson Tri-Gas received bills from AT&T charging the customer \$1.39 per minute for interstate calls and \$0.57 per minute for intrastate calls.

10. Upon information and belief, AT&T charged Matheson Tri-Gas the "casual calling" rate, which applies to customers who dial "10288" to access the AT&T network before dialing a long distance number. This "casual calling" plan is designed for customers who are not pre-subscribed to AT&T. Matheson Tri-Gas callers did not dial "10288" when making toll calls, and no business would intentionally use the "casual calling" tariff for normal long distance calling.

11. Upon information and belief, the normal retail charged by AT&T Long Distance Service on interstate and intrastate traffic, without regard to volume discounts, is no more than \$0.07 per minute.

12. After the customer received these bills from AT&T, the customer notified Access Point of these unreasonable and unexpected charges. Access Point has asked AT&T to re-rate

the customer's calls at a just and reasonable rate. Access Point also asked that Access Point be listed on the account as the party responsible for payment of these long distance charges.

13. AT&T refused the request of Access Point to re-rate the calls and also refused to substitute Access Point for Matheson Tri-Gas as the party responsible for the toll charges. When Matheson Tri-Gas refused to pay these unreasonable and unexpected charges, AT&T turned the matter over to a debt collection agency which has attempted to collect \$21,432.63 from Matheson Tri-Gas. Under AT&T's normal retail rate of \$0.07 per minute, the bill would be \$1,344.46. Under the rates set forth in the contract between Matheson Tri-Gas and Access Point, the bill would be \$801.47. See Exhibit 1, affidavit of Lavarus Kornegay.

14. As a result of the actions of AT&T, Access Point has suffered substantial competitive harm. Access Point has lost the trust of its customer and the independent agent who brought the customer to Access Point has threatened to cease referring customers to Access Point. See Exhibit 2, affidavit Richard Brown.

V. Applicable Law

15. Both AT&T Tennessee and AT&T Long Distance Service have elected "market regulation" under T.C.A. § 65-5-109(m). That statute provides, inter alia, that the Authority "shall continue to exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and to issue orders to resolve such complaints."

16. In adjudicating a complaint by one carrier against another under T.C.A. § 65-5-109(m), the Authority applies "federal . . . substantive law" which, like state law, prohibits unjust and unreasonable practices. 47 U.S.C. § 201(b).

VI. Claims for Relief

17. Despite knowing that the customer did not intend to use the AT&T's long distance services and that Access Point had accidentally routed the customer's calls to the AT&T network, AT&T has unreasonably refused to re-rate the calls at the normal AT&T retail rate and unreasonably refused to substitute Access Point for Matheson Tri-Gas as the party responsible for these charges.

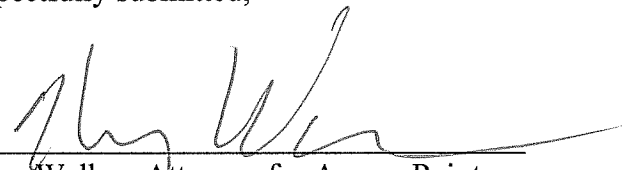
18. As set forth in Exhibit 2, affidavit of Richard Brown, these unreasonable practices have caused, and will continue to cause, competitive harm to Access Point.

19. Access Point asks the Authority to order AT&T to substitute Access Point for Matheson Tri-Gas as the responsible party on the account of Matheson Tri-Gas during the period when the customer's long distance calls were being unintentionally routed to the AT&T network.

20. Access Point further asks the Authority to order AT&T to re-rate the calls of Matheson Tri-Gas at \$0.07 per minute or such other rate as the Authority determines is just and reasonable under the circumstances.

21. Access Point requests such other relief as the Authority deems appropriate.

Respectfully submitted,



Henry Walker, Attorney for Access Point
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Affidavit of Lavarus Kornegay

My name is Lavarus Kornegay, and I am Carrier Relations Manager for Access Point Inc. I have analyzed the long distance bills of Matheson Tri-Gas for December, 2010, January, 2011 and February, 2011. I determined based on the bills that AT&T was charging \$0.57 per minute for intrastate toll calls and \$1.39 per minute for interstate toll calls. I estimated based on a sampling of the traffic that 85% of the calls were interstate and 15% were intrastate. I then re-rated the bills using the Access Point rate and using the AT&T Business Preferred rate plan. I determined the AT&T retail rate based on the carrier's retail, interstate and intrastate price lists without consideration of any volume discounts for which the customer may have been eligible.


LAVARUS KORNEGAY

SWORN TO and subscribed
before me this 15th day of
August, 2011.

Wake County NC
Notary Public Amanda J DeMarco
Amanda J DeMarco

My Commission Expires: 7/29/15

AMANDA J DEMARCO
Notary Public, North Carolina
Wake County
My Commission Expires
July 29, 2015

Matheson Tri Gas Usage Cost Comparison

Component	AT&T Invoiced	Access Point	AT&T Retail
Interstate Mins	10,292.9	10,292.9	10,292.9
Intralata/Intrastate Mins	4,429.5	4,429.5	4,429.5
Interstate Rate	\$1.39	\$0.039	\$0.07
Intralata/Intrastate Rate	\$0.57	\$0.049	\$0.07
Interstate Amount	\$14,307.17	\$401.42	\$720.50
Intralata/Intrastate Amount	\$2,524.79	\$217.04	\$310.06
Surcharge Amount	\$3,058.77	\$126.35	\$219.48
Taxes	\$1,541.90	\$56.65	\$94.41
Total Amount	\$21,432.63	\$801.47	\$1,344.46

*Note: The AT&T invoice did not have a summarization of the minutes of use. The minutes in this analysis is a percentage of a snapshot that was taken from the invoice. Assumptions are 85% of minutes are interstate and 15% are intrastate/intralata

Affidavit of Richard Brown

My name is Richard Brown, and I am the chief executive officer of Access Point Inc. Earlier this year, I became aware that our provisioning department had inadvertently switched the long distance service of Matheson Tri-Gas to the AT&T network instead of to another carrier that we have contracts with. Upon learning of this event, we immediately contacted AT&T and told them of the error and asked them to send those bills directly to Access Point instead of the customer as this was our error. AT&T told us that they couldn't change the address of the bills and that the name on the bill would remain in the customer's name. We have tried to engage AT&T into discussions regarding the charges and outstanding balance in order to reach a reasonable settlement on this error however have not found anyone interested in negotiating a settlement. Instead of calling Access Point to discuss the bill, AT&T's Collection Agency continues to call the customer requesting payment even though AT&T has agreed twice to stop those calls.

By AT&T's failure to acknowledge this as a "Carrier to Carrier" issue, they have severely damaged Access Point's reputation not only with the customer but also with the Telecom Agent that brought us the customer. Access Point sells its services through Third Party Agents and it took us over 3 years to persuade this Agent to represent Access Point's services. Unfortunately, one of the first accounts sold by the Agent was Matheson Tri-Gas and this event has caused a tremendous amount of regret on behalf of the Agent and a loss of faith in our ability to execute upon a simple sale and may very well impact untold amounts of future revenue.

We are willing to pay AT&T a reasonable rate per minute in order to resolve this matter in a timely manner but thus far AT&T has refused to negotiate the rate and is standing firm on an interstate rate of \$1.39 per minute and an intrastate rate of \$0.57 per minute. By the time USF taxes and Federal Excise Taxes are applied to this billing, it represents over \$2.00 per minute for a service that Access Point sells in the market for \$0.039 for Interstate and \$0.049 Intrastate. AT&T's own retail rate for this type of service is \$.07 per minute per its tariffs. They are basing their outlandish charges on the representation that these are "Casual Dial" minutes hitting their network. In the past, Casual Dial was defined as when a customer picked up their phone and dialed 10288 in front of the long distance number being dialed. In this case, the customer's lines were electronically picked to AT&T's service in error and should be rated differently. Also given that Access Point has a long standing business relationship with AT&T and spends approximately \$6,000,000 annually with them we expected to be treated as a business partner and not a "Casual Dial" customer.


RICHARD BROWN

SWORN TO and subscribed
before me this 15th day of
August, 2011.
Wake County, NC
Notary Public Ammanda J DeMarco
Amanda J DeMarco
My Commission Expires: 7/29/15

