

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**Nashville, Tennessee**

IN RE:	)	
BUDGET PREPAY, INC.	)	
	)	
v.	)	DOCKET NO. 12-00102
	)	
BELLSOUTH TELECOMMUNICATIONS,	)	
INC. LLC d/b/a AT&T Tennessee	)	

**AMENDED COMPLAINT**

Budget Prepay, Inc. ("Budget") brings this Amended Complaint before the Tennessee Regulatory Authority ("Authority" or "TRA") against BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") alleging that AT&T is imposing an unlawful restriction on resale of bundled local and long distance cash back promotions (collectively "Bundled Promotions"); that AT&T's actions are preferential, discriminatory and anti-competitive as AT&T seeks to impair competition, enhance its competitive position, and gain a competitive advantage through an inappropriate intra-corporate transaction and/or tying arrangement with its affiliate long distance company; that AT&T is required, during the times that the Bundled Promotions were and are offered to its retail customers, to offer the Bundled Promotions for resale to Budget; and for determination of the amounts due Budget with respect to such Bundled Promotions. In support of this Amended Complaint, Budget states as follows:

**Identification of Parties**

1. Budget is a Louisiana corporation with its principal place of business in Bossier City, Louisiana.

2. AT&T is a Georgia corporation with its principal place of business in Atlanta, Georgia. AT&T is an “incumbent local exchange carrier” (“ILEC”) as defined by the Telecommunications Act. 47 U.S.C. § 251(h).

3. Budget and AT&T are parties to an Interconnection Agreement entered pursuant to the Telecommunications Act, under which AT&T is required to provide certain wholesale telecommunications services to Budget for resale by Budget to retail end-users.

### **Facts and Nature of Dispute**

4. AT&T has since March 21, 2010, and is currently, offering and providing retail residential customers in Tennessee a cash back promotion available to certain qualifying new and existing customers and subscribers, and applicable to purchases of certain bundled qualifying services that includes local service and also long distance service (the “Bundled Promotions”). The Bundled Promotions are being marketed by “AT&T”, and provide that customers subscribing to certain service offerings provided by AT&T shall qualify for a \$100 or \$50 reward. The service offerings included in the Bundled Promotions specifically require local service to be provided to the customer by an AT&T affiliated ILEC. The cash back promotion is not available to customers without the local service provided by the ILEC. Copies of AT&T materials relevant to the Bundled Promotion are included in Exhibit A attached to and made a part hereof.

5. At all relevant times that AT&T has provided the Bundled Promotions to retail customers, AT&T has not provided the Bundled Promotions at resale to Budget as required by the Interconnection Agreement and applicable law. AT&T is purportedly restricting the Bundled Promotions from availability to Budget on grounds that the promotion is offered by an

affiliate AT&T long distance company, even though the service offerings underlying the Bundled Promotions specifically require local service.

6. Budget has submitted notices of billing disputes and claims for credits to AT&T for resale rights associated with the Bundled Promotions, and is currently withholding payment of disputed amounts pursuant to its Interconnection Agreement with AT&T.

### **Law**

7. Applicable law includes:

a. ILECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. 47 U.S.C. § 251(c)(4)(A);

b. ILECs have a duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, nor engage in discriminatory and anti-competitive practices in, the resale of such telecommunications service. 47 U.S.C. § 251(b)(1) and 47 U.S.C. § 251(c)(4)(B); T.C.A. §§ 65-5-109(m).

c. Only the following types of restrictions on resale may be imposed: (i) cross-class selling; (ii) short term promotions of a duration of 90 days or less; and (iii) a restriction that the ILEC has proved to the state commission is reasonable and non-discriminatory. 47 C.F.R. § 51.613(a)(2);

d. Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates. 47 U.S.C. § 251(c)(4)(A). Federal Communications Commission (“FCC”) Order 96-325, August 8, 1996, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* (“*Local Competition Order*”);<sup>1</sup>

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<sup>1</sup> First Report and Order, FCC 96-325, CC Docket Nos. 96-98 and 95-185, 11 FCC Rec. 15499 (August 8, 1996).

e. An ILEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory. 47 C.F.R. § 51.603(a); and

f. Except as provided in 47 C.F.R. § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC. 47 C.F.R. § 51.605(e).

g. To the extent that AT&T provides interLATA or intraLATA services to its interLATA affiliate, AT&T must make those services available to all carriers at the same rates and on the same terms and conditions. 47 USC § 272(e)(4).

8. The FCC has confirmed:

“Section 251(c)(4) provides that incumbent LECs must offer for resale at wholesale rates ‘any telecommunications service’ that the carrier provides at retail to noncarrier subscribers. **This language makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs.** A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.”<sup>2</sup>

“We conclude that the plain language of the 1996 Act requires that the incumbent LEC make available [to competing carriers] at wholesale rates retail services that are actually composed of other retail services, **i.e., bundled service offerings.**”<sup>3</sup>

9. Tennessee law provides that Telecommunications Service Providers (“TSPs”) electing market regulation (which AT&T has elected) are subject to the TRA’s authority to adjudicate complaints between certificated carriers, including any jurisdiction delegated to it by

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<sup>2</sup> First Report and Order, FCC 96-325, CC Docket Nos. 96-98 and 95-185, 11 FCC Rec. 15499, ¶¶ 948 (August 8, 1996)(emphasis added).

<sup>3</sup> First Report and Order, FCC 96-325, CC Docket Nos. 96-98 and 95-185, 11 FCC Rec. 15499, ¶¶ 877 (August 8, 1996)(emphasis added).

the federal 1996 Telecommunications Act, in 47 U.S.C. § 214(e), or FCC orders or rules; and complaints to prohibit anti-competitive practices. T.C.A. § 65-5-109(m).

10. The dispute brought forth in this Amended Complaint arises because AT&T has unilaterally restricted the Bundled Promotions from resale, contrary to the Interconnection Agreement between AT&T and Budget and applicable law.

11. The local telecommunications services offered by AT&T as part of the Bundled Promotions are subject to resale. Applicable law prohibits AT&T from evading its resale obligations by placing these telecommunications services in bundles, discounting these services, and then restricting the promotional offering from resale. A contrary result would permit AT&T to avoid the statutory resale obligation by shifting its retail customers to bundled offerings, thereby eviscerating the resale provisions of the Telecommunications Act.

12. AT&T has not sought or obtained a ruling from the TRA prior to imposing the restriction on resale of the Bundled Promotions.

### **Cause of Action**

13. Budget incorporates Paragraphs 1 through 12 as if fully set forth herein.

14. AT&T is required, during all relevant times the Bundled Promotions were and are offered to its retail customers, to offer the Bundled Promotions for resale to Budget.

15. AT&T's failure to make the Bundled Promotions available to Budget violates its Interconnection Agreement with Budget and applicable law requiring resale rights be made available for promotional offerings, and is preferential, discriminatory and anti-competitive as AT&T seeks to impair competition, enhance its competitive position, and gain a competitive


advantage through an inappropriate intra-corporate transaction and tying arrangement with its affiliate long distance company.

### **Request for Relief**

Wherefore, based upon the foregoing, Budget respectfully asks that the Authority make the following findings and grant the following relief:

1. Convene a contested case;
2. Find that AT&T is required to offer the Bundled Promotions for resale to Budget during the times that the Bundled Promotions were and are offered by AT&T to its retail customers;
3. Find that AT&T has imposed and is imposing an unlawful restriction on resale of its Bundled Promotions;
4. Declare that AT&T's actions are preferential, discriminatory and anticompetitive as AT&T seeks to impair competition, enhance its competitive position, and/or gain a competitive advantage through an inappropriate intra-corporate transaction and/or tying arrangement with its affiliate long distance company;
5. Declare the amounts due Budget by AT&T with respect to the Bundled Promotions, for the period August 29, 2010 forward, plus interest, as resolution of the disputed claims and associated late payment charges assessed by AT&T related thereto; and
6. Grant such other and further relief to which Budget is entitled under the premises.

Respectfully submitted,



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***Attorneys for Budget Prepay, Inc.***

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has this date been served via e-mail or U.S. Mail, postage prepaid, to:

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This 18<sup>th</sup> day of September 2012.

