

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

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

**ANSWER OF BUDGET PREPAY, INC. TO COUNTERCLAIM OF BELLSOUTH
TELECOMMUNICATIONS, LLC d/b/a AT&T TENNESSEE**

Budget Prepay, Inc. ("Budget"), through its counsel of record, hereby submits this Answer to the Counterclaim of BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T") and states as follows:

FIRST DEFENSE

The allegations set forth in the "Summary" section of AT&T's Answer and Counterclaim set out AT&T's position on substantive issues raised by Budget in its Complaint, and require no responsive pleading; Budget intends to address the merits of AT&T's stated positions at an appropriate time. Without waiving the foregoing, Budget denies the allegations set forth in the "Summary" section of AT&T's Answer and Counterclaim unless expressly admitted herein.

SECOND DEFENSE

Budget responds to the allegations of each of the numbered paragraphs of the Counterclaim as follows:

1. Upon information and belief, Budget admits the allegations set forth in Paragraph 1 of the Counterclaim.

2. Budget admits the allegations set forth in Paragraph 2 of the Counterclaim.

3. Budget admits the allegations set forth in Paragraph 3 of the Counterclaim.

4. Budget denies that it is properly a defendant to the Counterclaim and denies any liability therefore; however, Budget admits only the allegations set forth in Paragraph 4 of the Counterclaim as to Budget's principal place of business and that it is a CLEC under the Telecommunications Act of 1996 (the "Act").

5. Budget denies the allegations set forth in Paragraph 5 of the Counterclaim, including the extent to which it seeks admission as to a point of law, and further denies any allegations or characterizations inconsistent with the Act, except to admit only that the TRA has jurisdiction to interpret and enforce the terms of the ICA. Further responding, the Act speaks for itself.

6. T.C.A. § 65-5-109(m) speaks for itself, but Budget generally admits the allegation in Paragraph 6. To the extent a response is required, Budget denies any allegations or characterizations inconsistent with such statute.

7. Budget admits the allegations set forth in Paragraph 7 of the Counterclaim.

8. Budget admits the allegations set forth in Paragraph 8 of the Counterclaim

9. Budget admits the allegations set forth in Paragraph 9 of the Counterclaim.

10. Budget denies the allegations set forth in Paragraph 10 of the Counterclaim, except to admit only that AT&T has provided some but not all of the services that Budget has ordered.

11. Budget denies the allegations set forth in Paragraph 11 of the Counterclaim, except to admit only that AT&T has billed Budget monthly for some services ordered and that AT&T has provided some of the services that Budget has ordered.

12. Budget denies the allegations set forth in Paragraph 12 of the Counterclaim, except to admit only that Budget has not paid amounts that were improperly billed by AT&T. Further responding, Budget states that it has submitted to AT&T notices of billing disputes and claims for credit, and that it is withholding payment of disputed amounts pursuant to Section 2 of Attachment 7 of the Interconnection Agreement between AT&T and Level 3 Communications, LLC, dated June 23, 2004, the terms of which Agreement and all amendments thereto AT&T and Budget adopted in their Interconnection Agreement fully executed on October 16, 2008 (“ICA”).

13. Budget denies the allegations set forth in Paragraph 13 of the Counterclaim, except to admit that Budget has reported a dispute of specific amounts of money actually billed by AT&T and has withheld payment of those disputed amounts.

14. Budget denies the characterization of its Amended Complaint in Paragraph 14 of the Counterclaim, and notes that the Amended Complaint is part of the public record in this case and speaks for itself.

15. Budget denies the allegations set forth in Paragraph 15 of the Counterclaim. Further responding, Budget has reported a dispute of specific amounts of money actually billed by AT&T and has withheld payment of disputed amounts pursuant to Section 2 of Attachment 7 of the ICA. The disputed amounts relate to the resale of promotional offerings of AT&T’s local service that were made available for more than 90 days to AT&T’s retail local service customers, thus affecting the rates of AT&T’s local service offerings, but that AT&T refused to make available for resale to Budget.

16. Budget denies the allegations set forth in Paragraph 16 of the Counterclaim.

17. Budget denies the allegations set forth in Paragraph 17 of the Counterclaim, and in further answer to Paragraph 17, Budget incorporates its answers to Paragraphs 1 through 16.

18. Budget denies the allegations set forth in Paragraph 18 of the Counterclaim.
19. Budget denies the allegations set forth in Paragraph 19 of the Counterclaim.
20. Budget denies the allegations set forth in Paragraph 20 of the Counterclaim.
21. Budget denies the allegations set forth in Paragraph 21 of the Counterclaim.

Budget has lawfully withheld disputed amounts pursuant to Attachment 7, Section 2.2 of the ICA. Further responding, Budget states that through its allegations in Paragraph 21, AT&T has further violated the ICA.

22. Budget denies the allegations set forth in Paragraph 22 of the Counterclaim.

23. The last unnumbered paragraph of AT&T's Counterclaim, that being a prayer for relief with subparts a-e, do not require an answer by Budget; however, in the event a response is deemed to be required, Budget denies all of said last unnumbered paragraph.

THIRD DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

Section 2.1 of Attachment 7 to the ICA sets forth an informal dispute resolution procedure that a party must follow to try to resolve any billing dispute before that party can proceed with any complaint to this Commission. The Counterclaim is barred, in whole or in part, because AT&T failed to follow the contractual dispute resolution procedure, which was necessary to preserve its claim against Budget and was a condition precedent to the assertion here of its Counterclaim.

FIFTH DEFENSE

At all times, Budget's actions were reasonable and in good faith under the circumstances. Before filing its Complaint with the Commission, Budget complied or made its best efforts to comply with the dispute resolution provisions of the ICA.

SIXTH DEFENSE

The Counterclaim is barred, in whole or in part, by the applicable statute of limitations, by laches or by other doctrines relating to the passage of time.

SEVENTH DEFENSE

The Counterclaim is barred, in whole or in part, by one or more contractual provisions and/or by equitable doctrines of estoppel, waiver, or unclean hands.

REQUEST FOR RELIEF

WHEREFORE, Budget Prepay, Inc. respectfully requests that the Authority:

1. Enter a procedural schedule, developed in consultation with the parties, that provides, *inter alia*, for a full opportunity to discover and develop relevant facts, including through depositions and data requests, and for a public hearing on this matter;
2. Dismiss AT&T's Counterclaim with prejudice;
3. Find that AT&T's actions with respect to Budget and the bundled promotional offerings are in violation of applicable law and in breach of the ICA;
4. Direct AT&T to remit to Budget any amounts found to be due and owing to Budget with respect to the bundled promotional offerings;

5. Award any and all relief to which Budget is entitled under the ICA or by statute;
and
6. Award any other relief to which it may be entitled and/or for which Budget has already prayed.

Respectfully submitted,



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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 13th day of November 2012.


H. LaDon Baltimore