at&t

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November 15, 2012

VIA HAND DELIVERY

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

filed electronically in docket office on 11/15/12

Re: *Budget Prepay v AT&T Tennessee*
Docket No. 12-00102

Dear Chairman Allison:

Enclosed are the original and four copies of AT&T Tennessee's Motion for Summary Judgment.

AT&T Tennessee is entitled to judgment for a simple and indisputable reason: Budget's customers do not qualify for the promotions at issue, and Budget is not entitled to credits on account of promotions for which its customers do not qualify. The promotions at issue are available only to customers who purchase a new qualifying long distance service from AT&T Long Distance (a different company than AT&T Tennessee), and Budget neither alleges nor can present evidence that any of its customers ever purchased a qualifying service from AT&T Long Distance while the promotions at issue were in effect. Indeed, in a related Florida proceeding involving the same promotions, Budget has admitted it has not purchased long distance service at retail from AT&T Long Distance. Moreover, AT&T's records confirm that Budget has not purchased *any* long distance service from AT&T Long Distance, much less a qualifying long distance service required for issuance of a reward card. Budget therefore cannot have resold a qualifying long distance service to its customers.

The Authority should spare itself, and the parties, the burden and expense of further litigation that can serve no purpose because Budget cannot recover on the claim it has alleged.

Very truly yours,

Joelle Phillips

1050029

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Budget Prepay, Inc. v. AT&T Tennessee*

Docket No. 12-00102

AT&T TENNESSEE'S MOTION FOR SUMMARY JUDGMENT

In accordance with Rule 1220-1-2-.03 and .06 of the Tennessee Regulatory Authority ("TRA" or "Authority") Rules and Regulations and Tenn. Rules of Civil Procedure 56.02, BellSouth Telecommunications, LLC d/b/a AT&T Tennessee ("AT&T Tennessee") respectfully moves the Authority for summary judgment in favor of AT&T Tennessee and against Budget Prepay, Inc. ("Budget") on Budget's claim for promotional credits. AT&T Tennessee is entitled to judgment for a simple and indisputable reason: Budget's customers do not qualify for the promotions at issue, and Budget is not entitled to credits on account of promotions for which its customers do not qualify. The promotions at issue are available only to customers who purchase a new qualifying long distance service from AT&T Long Distance (a different company than AT&T Tennessee), and Budget neither alleges nor can present evidence that any of its customers ever purchased a qualifying service from AT&T Long Distance while the promotions at issue were in effect. Indeed, in a related Florida proceeding involving the same promotions, Budget has admitted it has not purchased long distance service at retail from AT&T Long Distance. Moreover, AT&T's records confirm that Budget has not purchased *any* long distance service from AT&T Long Distance, much less a qualifying long distance service required for issuance of a reward card. Budget therefore cannot have resold a qualifying long distance

service to its customers. The Authority should spare itself, and the parties, the burden and expense of further litigation that can serve no purpose because Budget cannot recover on the claim it has alleged.

Standard for Summary Judgment

Summary judgment procedures in Tennessee are governed by the Authority Rules, the Tennessee Rules of Civil Procedure and Tennessee Code Annotated. Under the Authority Rules, AT&T Tennessee may move for summary judgment, with or without supporting affidavits at any time prior to a hearing on the merits.[1] Because AT&T Tennessee "does not bear the burden of proof at trial, [AT&T Tennessee] shall prevail on its motion for summary judgment if it (1) [s]ubmits affirmative evidence that negates an essential elements of [Budget's] claim; or (2) [d]emonstrates to the [Authority] that [Budget's] evidence is insufficient to establish an essential element of [Budget's] claim."[2] Rule 1 of the Tennessee Rules of Civil Procedure states that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action," and specifically with regard to summary judgment motions, "the judgment sought shall be rendered forthwith if ... there is no genuine issue as to material fact, and [AT&T Tennessee] is entitled to judgment as a matter of law."[3]

Background and Summary of Argument

Budget purchases local services for resale from AT&T Tennessee pursuant to the terms and conditions of its interconnection agreement ("ICA") with AT&T Tennessee. Budget claims it is entitled to credits on its local service bills from AT&T Tennessee based on certain long

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[1] TRA Rule 1220-1-2-.06(1)
[2] Tenn. Code Ann. § 20-16-101.
[3] Tenn. Rules Civ. Proc. Rule 56.04

distance reward card promotions that a long distance company that is affiliated with AT&T Tennessee – namely, BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service ("AT&T Long Distance") – offered to new long distance customers who met specific eligibility requirements.[4] Based on this claim, since September, 2010, Budget has withheld from its monthly local service payments to AT&T Tennessee more than $1.7 million that Budget contends represents the amount of the benefits of the long distance retail promotions to which it asserts it is entitled.

In a single-count complaint, Budget asks the Authority to declare that the parties' ICA and the Telecommunications Act of 1996 ("1996 Act") require AT&T Tennessee to issue credits to Budget for the long distance promotions and to "[d]eclar[e] the amounts due Budget by AT&T" on account of those promotions.[5] AT&T Tennessee has answered Budget's Amended Complaint, denying that Budget is entitled to any credits on account of the long distance promotions, and has filed a Counterclaim seeking, among other things, a ruling that Budget must pay the more than $1.7 million it has wrongfully withheld from its payments due to AT&T Tennessee for local services that Budget resold to its customers.

One reason that Budget's claim must fail is that the long distance promotions were offered and funded not by AT&T Tennessee, an incumbent local exchange carrier ("ILEC"), but by a different company, AT&T Long Distance, and that AT&T Tennessee has no legal duty to give Budget credits based on promotions AT&T Tennessee did not, and indeed could not, offer anyone, including its own retail customers. As AT&T Tennessee's Answer and Counterclaim

[4] The promotions were in effect from March, 2010 through September 30, 2012.
[5] Amended Complaint at 6 (prayer for relief).

explain, the parties' ICA, which Budget chose to adopt and this Authority approved,[6] requires AT&T Tennessee to make available to Budget for resale *only* those telecommunications services that AT&T Tennessee offers its own retail customers; it does not require AT&T Tennessee to make available for resale long distance services offered by a different company.[7] Accordingly, AT&T Tennessee is not required to give Budget a credit for promotions offered and funded by AT&T Tennessee's long distance affiliate.

The present motion is not directed at that deficiency in Budget's case, however, because the Authority can immediately dispose of the case – without ever having to consider that deficiency – for one clear-cut and indisputable reason: Even if AT&T Tennessee were required to make the long distance promotions available to Budget for resale, *Budget's customers do not qualify for them in any event.* And Budget cannot claim credits based on promotions for which its customers do not qualify.

Budget asserts that one of the eligibility requirements for receipt of the long distance promotions is that the customer must have local service with AT&T Tennessee, and Budget resells AT&T Tennessee's local service.[8] That is correct, but in focusing exclusively on the local service requirement, Budget ignores another of the promotions' eligibility requirements – that to receive the reward, the customer must purchase a qualifying *long distance* service from the

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[6] Effective November 18, 2008, Budget adopted in its entirety the interconnection agreement between AT&T Tennessee and Level 3 Communications, which the Authority approved on August 9, 2004, in Docket No. 04-00059. Budget's adoption of the Level 3 agreement was approved on December 15, 2008, in Docket No. 08-00215.

[7] *See* ICA, Attachment 1, p. 4, § 3.1, attached hereto as Exhibit 1. It is because Budget adopted the Level 3 ICA (*see supra* n. 6) that the ICA provisions refer to Level 3 rather than to Budget.

[8] *See* Amended Complaint, ¶ 5 ("the service offerings underlying the [long distance] Promotions specifically require local service").

long distance affiliate.[9] There is no allegation or evidence that any of Budget's customers satisfy that requirement. To the contrary, AT&T's records show that, while Budget has purchased certain long distance internet protocol-based services from AT&T Corp. – a different company from AT&T Long Distance – Budget has not purchased any *qualifying* long distance services, which are offered only by AT&T Long Distance.[10] And in a pending Florida proceeding involving the same promotions at issue here, Budget itself has admitted that it has not purchased any long distance service at retail from AT&T Long Distance.[11] Budget cannot possibly have resold a qualifying AT&T Long Distance service to its own end users when it did not purchase a qualifying service from AT&T Long Distance.

Because neither Budget nor its customers have purchased a qualifying long distance service, Budget would not be entitled to any credits based on those long distance promotions even if AT&T Tennessee were required to make those promotions available for resale. Accordingly, AT&T Tennessee is entitled to judgment on Budget's claim as a matter of law, and the Authority will have no occasion to decide the hypothetical question whether or not AT&T *Tennessee would be* obligated to make its affiliate's long distance promotions available *if Budget had* any customers that qualified for those promotions.

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[9] *See, e.g.,* AT&T Long Distance Service Guide pages included in Exhibit A to Budget's Complaint at p. 2, § 7.2.1(B)(2) (to qualify for AT&T Visa Reward Card Promotion, customers must newly subscribe to specific long distance plans offered by AT&T Long Distance); p. 3, § 7.2.2(A)(2) (to qualify for AT&T Reward Visa Prepaid Card Promotion, customers must subscribe to one or more long distance plans offered by AT&T Long Distance); p. 17, § 4.2 (AT&T Reward Cards are available to qualifying residential customers who purchase one or more long distance plans offered by AT&T Long Distance).

[10] *See* Affidavit of Marc Cathey, attached hereto as Exhibit 2.

[11] *See* Budget Prepay, Inc.'s Responses to Florida Public Service Commission Staff's First Set of Data Requests (November 7, 2012), attached as Exhibit 3 hereto. Because AT&T Long Distance is an interexchange carrier and not a local exchange carrier, AT&T Long Distance is not subject to the resale requirements of the Telecommunications Act of 1996, including the requirement that an ILEC's telecommunications services are to be sold at a wholesale price reflecting the "avoided cost" discount percentage established by the various state commissions. Accordingly, if Budget were to purchase long distance services from AT&T Long Distance, it would have to pay retail prices.

Statement of Undisputed Facts[12]

AT&T Tennessee is an ILEC, it provides local service to its retail customers, and it sells those same local services to Budget for resale in accordance with the ICA.[13] The promotions at issue here are offered by AT&T Long Distance – a separate company from AT&T Tennessee [14] – to its retail customers pursuant to that company's "Residential Service Guide," a publicly available document that sets forth the terms and conditions on which AT&T Long Distance services are sold and that applies to everyone who wants to purchase them.

The terms of the long distance promotions for which Budget seeks credits under the ICA are included in the pages from AT&T Long Distance's Residential Service Guide attached as part of Exhibit A to Budget's Complaint. These promotions (all of which have now ended) offered qualifying new AT&T Long Distance customers a prepaid Visa® Reward Card in an amount of either $100 or $50, depending on which long distance service the customer purchased. To be eligible for the reward card, the AT&T Long Distance customer had to meet the following requirements, among others:

1. The customer had to sign up for one of the specific "qualifying" long distance plans listed in the Residential Service Guide (for instance, the "AT&T Unlimited Nationwide Calling™ One" plan, or the "AT&T ONE RATE® Nationwide Calling 1" plan).

2. The customer had to retain the qualifying long distance service for at least 30 days.

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[12] This Motion assumes the truth of Budget's factual allegations in its Amended Complaint.

[13] Amended Complaint, ¶ 2.

[14] While both AT&T Tennessee and AT&T Long Distance ultimately share the same parent company, AT&T, Inc., it is an undisputed fact that BellSouth Telecommunications, LLC d/b/a AT&T Tennessee and BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service are two different companies. BellSouth Telecommunications, LLC d/b/a AT&T Tennessee, an incumbent local exchange company, has been doing business in Tennessee for decades. In contrast, the separate entity BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service has provided long distance services in the state of Tennessee since 2003, pursuant to a Certificate of Convenience and Necessity issued by the Authority on January 28, 2003, in Docket No. 02-01169.

3. The customer had to have local dial tone service with AT&T Tennessee.[15]

There is no evidence – and Budget does not allege – that any of Budget's customers purchased any qualifying long distance services from AT&T Long Distance, or that Budget's customers satisfied the eligibility criteria for the AT&T Long Distance promotions. To the contrary, Budget admits that it has not purchased any long distance service from AT&T Long Distance at retail.[16] And AT&T's records show that Budget has not purchased any qualifying long distance service from AT&T Long Distance. While Budget has purchased certain internet protocol-based long distance services from AT&T Corp., those services are not "qualifying" long distance services offered by AT&T Long Distance or AT&T Tennessee.[17]

Argument

Budget's claim rests on the proposition that because the AT&T Long Distance promotions required customers to have local service provided by AT&T Tennessee, Budget is automatically entitled to credits based on those promotions because its customers purchase local service from AT&T Tennessee through Budget (as a reseller of AT&T Tennessee's local service).[18] But Budget's argument is foreclosed by the terms of the promotions themselves. Budget misconstrues the promotions as a reward for the purchase of local service only. In fact, the rewards from the promotions are, on their face, rewards for the purchase of new long distance service from AT&T Long Distance by customers who have local service with AT&T Tennessee. Budget's customers cannot purchase the qualifying long distance services from

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[15] *See, e.g.*, the pages of the BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service Residential Service Guide cited in footnote 6.

[16] *See* Budget Prepay, Inc.'s Responses to Florida Public Service Commission Staff's First Set of Data Requests (November 7, 2012), attached as Exhibit 3 hereto.

[17] *See* Affidavit of Marc Cathey, attached hereto as Exhibit 2.

[18] Amended Complaint, ¶ 5.

AT&T Tennessee (because AT&T Tennessee does not sell those services), and there is no evidence that they ever purchased any qualifying long distance service from AT&T Long Distance. Because Budget's customers have not purchased qualifying long distance service from AT&T Long Distance, they are not entitled to a reward that requires the purchase of long distance service. And Budget cannot claim a credit for a promotion for which its customers do not qualify.

Both the parties' ICA and the law confirm that Budget cannot claim a credit for which its customers do not qualify. Section 4.2 of the Resale Attachment in the parties' ICA provides, "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."[19] Furthermore, and directly controlling here, Exhibit A to the Resale Attachment of the ICA also provides, "***Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T Tennessee] directly***."[20] Based on an identical provision in a similar interconnection agreement, the North Carolina Utilities Commission dismissed a claim for promotional credits on precisely the ground that AT&T Tennessee asserts here – namely, that customers of the reseller that asserted the claim were not themselves eligible for the promotion because they did not satisfy the requirements for the promotion – and its decision was affirmed by a federal district court and then by the United Sates Court of Appeals for the Fourth Circuit.[21] The Fourth Circuit sustained the state commission's dismissal of the reseller's

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[19] Exhibit 1 hereto.

[20] *Id.* (emphasis added).

[21] *dPi Teleconnect LLC v. Owens,* 413 Fed. Appx. 641, 2011 U.S. App. LEXIS 2233 (4th Cir. Feb. 3, 2011).

complaint because "[t]he ICA stated that 'promotions will be made available only to End Users who would have qualified for the promotion" and because the "face of the promotion" showed that the resellers' customers did not qualify for the promotion. [22] That is equally true here.[23]

AT&T Long Distance's Residential Service Guide provides that a reward card will be issued only to a customer who has new or existing local service with AT&T Tennessee ***and who purchases a new qualifying long distance service from AT&T Long Distance.*** Thus, if a retail customer were to sign up for local service with AT&T Tennessee without subscribing to a qualifying long distance service from AT&T Long Distance, that AT&T Tennessee retail customer would not be eligible for, and would not receive, a gift card.[24] Budget must be treated no differently. Just as AT&T Tennessee's own customers cannot receive a long distance reward card for the purchase of local service alone, the fact that Budget's customers purchase AT&T Tennessee local service cannot, by itself, entitle Budget to a promotional credit that requires a purchase of *both* local and long distance service. Like AT&T Tennessee's retail customers, Budget's customers also have to purchase a qualifying long distance service from AT&T Long Distance. And there is no evidence, nor has Budget even alleged, that any of its end users ever purchased a qualifying service from AT&T Long Distance while the promotions at issue were in effect.

In short, even if AT&T Tennessee were required to make the long distance promotions available to Budget (which it is not), the "availability" of the reward would not mean that any and every local customer would be entitled to receive it, or that Budget always could claim a

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[22] 413 Fed. Appx. at 644-645, 2011 U.S. App. LEXIS at **8-10.

[23] See *also CMC Telecom Inc. v. Michigan Bell Tel. Co.*, 637 F.3d 626, 631-32 (6th Cir. 2011) (recognizing that the 1996 Act's resale obligations require the reseller's customer to be "similarly situated" to the ILEC's customer.)

[24] *See* Complaint, Exhibit A.

credit for it. *At most*, AT&T Tennessee would be required to issue credits *only* with respect to Budget's customers who meet all the eligibility requirements of the promotions – who are, in other words, similarly situated to the AT&T Long Distance customers who receive the promotions.[25] Budget does not allege it has any such customers, and there is no evidence that it does. Budget therefore is not entitled to any credits for the long distance promotions at issue in this proceeding.

Conclusion

For the foregoing reasons, the Authority should enter summary judgment in favor of AT&T Tennessee on Budget's claim for long distance promotional credits.

Respectfully submitted,

AT&T TENNESSEE

By: _____

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[25] *See dPi Teleconnect*, 413 Fed. Appx. at 644-645, 2011 U.S. App. LEXIS at **8-10; CMC *Telecom, Inc.*, 637 F. 3d at 631-32.

Attachment 1

Resale

Exhibit 1

Table of Contents

RESALE

1. Discount Rates

1.1 The discount rates applied to Level 3 purchases of BellSouth Telecommunications Services for the purpose of resale shall be as set forth in Exhibit E. Such discounts have been determined by the applicable Commission.

1.2 The telecommunications services available for purchase by Level 3 for the purposes of resale to Level 3's End Users shall be available at BellSouth's tariffed rates less the discount set forth in Exhibit E to this Agreement and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.

2. Definition of Terms

2.1 COMPETITIVE LOCAL EXCHANGE COMPANY (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

2.2 CUSTOMER OF RECORD means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.

2.3 DEPOSIT means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by BellSouth.

2.4 END USER means the ultimate user of the Telecommunications Service.

2.5 END USER CUSTOMER LOCATION means the physical location of the premises where an End User makes use of the telecommunications services.

2.6 NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.

2.7 RESALE means an activity wherein a certificated CLEC, such as Level 3, subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public.

3. General Provisions

3.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and

Commission rules and orders. BellSouth shall make available to Level 3 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.

3.1.1 When Level 3 provides Resale service in a cross boundary area (areas that are part of the local serving area of another state's exchange) the rates, regulations and discounts for the tariffing state will apply. Billing will be from the serving state

3.1.2 In Tennessee, if Level 3 does not resell Lifeline service to any end users, and if Level 3 agrees to order an appropriate Operator Services/Directory Assistance block as set forth in BellSouth's General Subscriber Services Tariff, the discount shall be 21.56%.

3.1.2.1 In the event Level 3 resells Lifeline service to any end user in Tennessee, BellSouth will begin applying the 16% discount rate to all services. Upon Level 3 and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate Operating Customer Number (OCN) is established for billing of Lifeline service end users, the discount shall be applied as set forth in 3.1.2 preceding for the non-Lifeline affected Master Account (Q-account).

3.1.2.2 Level 3 must provide written notification to BellSouth within 30 days prior to either providing its own operator services/ directory services or orders the appropriate operator services/directory assistance blocking, to qualify for the higher discount rate of 21.56%.

3.2 Level 3 may purchase resale services from BellSouth for its own use in operating its business. The resale discount will apply to those services under the following conditions:

3.2.1 Level 3 must resell services to other End Users.

3.2.2 Level 3 cannot be a competitive local exchange telecommunications company for the single purpose of selling to itself.

3.3 Level 3 will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and receive payment from Level 3 for said services.

3.4 Level 3 will be BellSouth's single point of contact for all services purchased pursuant to this Agreement. BellSouth shall have no contact with the End User except to the extent provided for herein. Each Party shall provide to the other a nation wide (50 states) toll-free contact number for purposes of repair and maintenance.

3.5 BellSouth will continue to bill the End User for any services that the End User specifies it wishes to receive directly from BellSouth. BellSouth maintains the right to serve directly any End User within the service area of Level 3. BellSouth will continue to market directly its own telecommunications products and services and in doing so may establish independent relationships with End Users of Level 3. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

3.5.1 When an End User of Level 3 or BellSouth elects to change his/her carrier to the other Party, both Parties agree to release the End User's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the End User's requested service as set forth in Attachment 6 of this Agreement.

3.5.2 BellSouth and Level 3 will refrain from contacting an End User who has placed or whose selected carrier has placed on the End User's behalf an order to change the End User's service provider from BellSouth or Level 3 to the other Party until such time that the order for service has been completed.

3.6 Current telephone numbers may normally be retained by the End User and are assigned to the service furnished. However, neither Party nor the End User has a property right to the telephone number or any other call number designation associated with services furnished by BellSouth or Level 3, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BellSouth deems it necessary to do so in the conduct of its business and in accordance with BellSouth practices and procedures, consistent with applicable law, on a nondiscriminatory basis.

3.7 Where BellSouth provides resold services to Level 3, BellSouth will provide Level 3 with on-line access to intermediate telephone numbers in accordance with Attachment 5, Section 1.

3.8 BellSouth will allow Level 3 to designate up to 100 intermediate telephone numbers per CLLIC, for Level 3's sole use. Assignment, reservation and use of telephone numbers shall be in accordance with Attachment 5, Section 1.

3.9 Service is furnished subject to the condition that it will not be used for any unlawful purpose.

3.10 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

3.11 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.

3.12 BellSouth will cooperate with law enforcement agencies with subpoenas and court orders relating to Level 3's End Users, pursuant to Section 6 of the General Terms and Conditions.

3.13 If Level 3 or its End Users utilize a BellSouth resold telecommunications service as described in the BellSouth retail tariff in violation of BellSouth's retail tariffs, Level 3 has the responsibility, to the extent that it is aware of such violation, to notify BellSouth. BellSouth will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service on a nondiscriminatory basis. .

3.14 Facilities and/or equipment utilized by BellSouth to provide service to Level 3 remain the property of BellSouth.

3.15 White page directory listings for Level 3 End Users will be provided in accordance with Section 5 of the General Terms and Conditions.

3.16 Service Ordering and Operational Support Systems (OSS)

3.16.1 Level 3 must order services through resale interfaces, i.e., the Local Carrier Service Center (LCSC) and/or appropriate Complex Resale Support Group (CRSG) pursuant to this Agreement. BellSouth has developed and made available the interactive interfaces by which Level 3 may submit a Local Service Request (LSR) electronically as set forth in Attachment 2 of this Agreement. Service orders will be in a standard format designated by BellSouth.

3.16.2 LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic charge as set forth in Exhibit E to this Agreement. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). LSRs submitted by means other than one of these interactive interfaces (Mail, fax, courier, etc.) will incur a manual order charge as set forth in Exhibit E to this Agreement. Supplements or clarifications to a previously billed LSR will not incur another OSS charge.

3.16.3 Denial/Restoral OSS Charge. In the event Level 3 provides a list of customers to be denied and restored, rather than an LSR, each location on the list will require a separate PON and therefore will be billed as one LSR per location.

3.16.4 Cancellation OSS Charge. Level 3 will incur an OSS charge for an accepted LSR that is later canceled provided BellSouth has processed the LSR in accordance with Attachment 6, Sections 3.4 through 3.6.

3.17 Where available to BellSouth's End Users, BellSouth shall provide the following telecommunications services at a discount to allow for voice mail services:

- Message Waiting Indicator ("MWI"), stutter dialtone and message waiting light feature capabilities

- Call Forward Busy Line ("CF/B")

- Call Forward Don't Answer ("CF/DA")

Further, BellSouth messaging services set forth in BellSouth's Messaging Service Information Package shall be made available for resale without the wholesale discount.

3.18 BellSouth shall provide branding for, or shall unbrand, voice mail services for Level 3 per the Bona Fide Request/New Business Request process as set forth in Attachment 11 of this Agreement.

3.19 BellSouth's Inside Wire Maintenance Service Plan is available for resale at rates, terms and conditions as set forth by BellSouth and without the wholesale discount.

3.20 In the event Level 3 acquires an end user whose service is provided pursuant to a BellSouth Special Assembly, BellSouth shall make available to Level 3 that Special Assembly at the wholesale discount at Level 3's option. Level 3 shall be responsible for all terms and conditions of such Special Assembly including but not limited to termination liability if applicable.

3.21 BellSouth shall provide 911/E911 for Level 3 customers in the same manner that it is provided to BellSouth customers. BellSouth shall provide and validate Level 3 customer information to the PSAP. BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the Level 3 customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services.

3.22 BellSouth shall bill, and Level 3 shall pay, the End User line charge associated with implementing Number Portability as set forth in BellSouth's FCC No. 1 tariff. This charge is not subject to the wholesale discount.

3.23 Pursuant to 47 CFR Section 51.617, BellSouth shall bill to Level 3, and Level 3 shall pay, the End User common line charges identical to the End User common line charges BellSouth bills its End Users.

4. BellSouth's Provision of Services to Level 3

4.1 Resale of BellSouth services shall be as follows:

4.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.

4.1.2 Hotel and Hospital PBX services are the only telecommunications services available for resale to Hotel/Motel and Hospital End Users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Payphone Service Provider (PSP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's A23 Shared Tenant Service Tariff in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

4.1.3 BellSouth reserves the right to periodically audit services purchased by Level 3 to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Level 3 shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit. Any information provided by Level 3 for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.

4.2 Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services. Exclusions and limitations on services available for resale are defined in Exhibit A of this Attachment.

4.3 Level 3 may resell services in accordance with the rules and regulations of the Commission.

4.4 If Level 3 cancels an order for resold services, any costs incurred by BellSouth in conjunction with provisioning of such order will be recovered in accordance with BellSouth's General Subscriber Services Tariffs and Private Line Services Tariffs.

4.5 Service Jointly Provisioned with an Independent Company or Competitive Local Exchange Company Areas

4.5.1 BellSouth will in some instances provision resold services in accordance with the General Subscriber Services Tariff and Private Line Tariffs jointly with an Independent Company or other Competitive Local Exchange Carrier.

4.5.2 When Level 3 assumes responsibility for such service, all terms and conditions defined in the Tariff will apply for services provided within the BellSouth service area only.

4.5.3 Service terminating in an Independent Company or other Competitive Local Exchange Carrier area will be provisioned and billed by the Independent Company or other Competitive Local Exchange Carrier directly to Level 3.

4.5.4 Level 3 must establish a billing arrangement with the Independent Company or other Competitive Local Exchange Carrier prior to assuming an end user account where such circumstances apply.

4.5.5 Specific guidelines regarding such services are available on BellSouth's website @ www.interconnection.bellsouth.com.

5. Maintenance of Services

5.1 Services resold pursuant to this Attachment and BellSouth's General Subscriber Service Tariff and Private Line Service Tariff and facilities and equipment provided by BellSouth shall be maintained by BellSouth.

5.2 Level 3 or its End Users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth except with the written consent of BellSouth.

5.3 Level 3 accepts responsibility to notify BellSouth of situations that arise that may result in a service problem.

5.4 Level 3 will contact the appropriate repair centers in accordance with procedures established by BellSouth.

5.5 For all repair requests, Level 3 shall adhere to BellSouth's prescreening guidelines prior to referring the trouble to BellSouth.

5.6 BellSouth will bill Level 3 for handling troubles that are found not to be in BellSouth's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.

5.7 BellSouth reserves the right to contact Level 3's End Users, if deemed necessary, for maintenance purposes. During contacts with Level 3's End Users for maintenance or repair of services under this Attachment, BellSouth shall not attempt to sell or market any BellSouth service, nor shall BellSouth in any way disparage Level 3.

6. Establishment of Service

6.1 After receiving certification as a local exchange carrier from the applicable regulatory agency, Level 3 will provide the appropriate BellSouth Advisory team manager the necessary documentation to enable BellSouth to establish accounts for resold services ("master account"). Level 3 is required to provide the following before a master account is established: blanket letter of authorization, misdirected number form, proof of PSC/PUC certification, the Application for Master Account, an Operating Company Number ("OCN") assigned by the

National Exchange Carriers Association ("NECA") and a deposit and tax exemption certificate, if applicable.

6.1.1 If Level 3 needs to change its OCN(s) under which it operates when Level 3 has already been conducting business utilizing those OCN(s), BellSouth may charge Level 3 its tariffed rate for OCN conversion charges as found in the appropriate section of BellSouth tariff to convert Level 3 to the new OCN(s). OCN conversion charges include all time required to make system updates to all of Level 3's end user customer records. Appropriate charges will appear in the OC&C section of Level 3's bill.

6.2 Level 3 shall provide to BellSouth a blanket letter of authorization ("LOA") certifying that Level 3 will have End User authorization prior to viewing the End User's customer service record or switching the End User's service. BellSouth will not require End User confirmation prior to establishing service for Level 3's End User customer.

6..3 BellSouth will accept a request directly from the End User for conversion of the End User's service from Level 3 to BellSouth or will accept a request from another CLEC for conversion of the End User's service from Level 3 to such other CLEC. Upon completion of the conversion BellSouth will notify Level 3 that such conversion has been completed.

7. Discontinuance of Service

7.1 The procedures for discontinuing service to an End User are as follows:

7.1.1 BellSouth will deny service to Level 3's End User on behalf of, and at the request of, Level 3. Upon restoration of the End User's service, restoral charges will apply and will be the responsibility of Level 3.

7.1.2 At the request of Level 3, BellSouth will disconnect a Level 3 End User customer.

7.1.3 All requests by Level 3 for denial or disconnection of an End User for nonpayment must be in writing.

7.1.4 Level 3 will be made solely responsible for notifying the End User of the proposed disconnection of the service.

7.1.5 BellSouth will continue to process calls made to the Annoyance Call Center and will advise Level 3 when it is determined that annoyance calls are originated from one of its End User's locations. BellSouth shall be indemnified, defended and held harmless by Level 3 and/or the End User against any claim, loss or damage arising from providing this information to Level 3. It is the responsibility of Level 3 to take the corrective action necessary with its End Users who make annoying calls. (Failure to do so will result in BellSouth's disconnecting the End User's service.)

8. Operator Services (Operator Call Processing and Directory Assistance)

8.1 Operator Call Processing provides: (1) operator handling for call completion (for example, collect, third number billing, and manual calling-card calls). (2) operator or automated assistance for billing after the end user has dialed the called number (for example, calling card calls); and (3) special services including but not limited to Busy Line Verification and Emergency Line Interrupt (ELI), Emergency Agency Call and Operator-assisted Directory Assistance.

8.1 Upon request for BellSouth Operator Call Processing, BellSouth shall:

8.1.1 . Process 0+ and 0- dialed local calls

8.1.3 .2 Process 0+ and 0- intraLATA toll calls.

8.1.4 Process calls that are billed to Level 3 end user's calling card that can be validated by BellSouth.

8.1.5 Process person-to-person calls.

8.1.6 Process collect calls.

8.1.7 Provide the capability for callers to bill a third party and shall also process such calls.

8.1.8 Process station-to-station calls.

8.1.9 Process Busy Line Verify and Emergency Line Interrupt requests.

8.1.10 Process emergency call trace originated by Public Safety Answering Points.

8.1.11 Process operator-assisted directory assistance calls.

8.1.12 Adhere to equal access requirements, providing Level 3 local end users the same IXC access that BellSouth provides its own operator service.

8.1.13 Exercise at least the same level of fraud control in providing Operator Service to Level 3 that BellSouth provides for its own operator service.

8.1.14 Perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-To-Third-Party calls.

8.1.15 Direct customer account and other similar inquiries to the customer service center designated by Level 3.

8.1.16 Provide call records to Level 3 in accordance with ODUF standards.

8.1.17 The interface requirements shall conform to the interface specifications for the platform used to provide Operator Services as long as the interface conforms to industry standards.

8.2 Directory Assistance Service

8.2.1 Directory Assistance Service provides local and non-local end user telephone number listings with the option to complete the call at the caller's direction separate and distinct from local switching.

8.2.2 Directory Assistance Service shall provide up to two listing requests per call, if available and if requested by Level 3's end user. BellSouth shall provide caller-optional directory assistance call completion service at rates set forth in BellSouth's General Subscriber Services Tariff to one of the provided listings.

8.3.1 Directory Assistance Service Updates

8.3.1 BellSouth shall update end user listings changes daily. These changes include:

8.3.2 New end user connections

8.3.3 End user disconnections

8.3.4 End user address changes

8.3.5 These updates shall also be provided for non-listed and non-published numbers for use in emergencies.

8.4 Branding for Operator Call Processing and Directory Assistance

8.4.1 BellSouth's branding feature provides a definable announcement to Level 3 end users using Directory Assistance (DA)/ Operator Call Processing (OCP) prior to placing such end users in queue or connecting them to an available operator or automated operator system. This feature allows Level 3's name on whose behalf BellSouth is providing Directory Assistance and/or Operator Call Processing. Rates for the branding features are set forth in Exhibit E of this Attachment.

8.4.2 BellSouth offers three branding offering options to Level 3 when ordering BellSouth's Directory Assistance and Operator Call Processing: BellSouth Branding, Unbranding and Custom Branding.

8.4.3 Upon receipt of the branding order from Level 3, the order is considered firm after ten (10) business days. Should Level 3 decide to cancel the order, written notification to Level 3's BellSouth Account Executive is required. If Level 3 decides to cancel after ten (10) business days from receipt of the branding order, Level 3 shall pay all charges per the order.

8.4.4 Branding via Originating Line Number Screening (OLNS)

8.4.4.1 BellSouth Branding, Unbranding and Custom Branding are also available for Directory Assistance, Operator Call Processing or both via OLNS software. When utilizing this method of Unbranding or Custom Branding Level 3 shall not be required to purchase dedicated trunking.

8.4.4.2 BellSouth Branding is the default branding offering.

8.4.4.3 For BellSouth to provide Unbranding or Custom Branding via OLNS software for Operator Call Processing or for Directory Assistance Level 3 must have its Operating Company Number ("OCN(s)") and telephone numbers reside in BellSouth's LIDB; however, a BellSouth LIDB Storage Agreement is not required. To Implement Unbranding and Custom Branding via OLNS software, Level 3 must submit a manual order form which requires, among other things, Level 3's OCN and a forecast for the traffic volume anticipated for each BellSouth TOPS during the peak busy hour. Level 3 shall provide updates to such forecast on a quarterly basis and at any time such forecasted traffic volumes are expected to change significantly. Upon Level 3's purchase of Unbranding and Custom Branding using OLNS software for any particular TOPS, all Level 3 end users served by that TOPS will receive the Unbranded "no announcement" or the Custom Branded announcement.

8.4.4.4 Rates for Unbranding and Custom Branding via OLNS software for Directory Assistance and for Operator Call Processing are as set forth in Exhibit E of this Attachment. In addition to the charges for Unbranding and Custom Branding via OLNS software, Level 3 shall continue to pay BellSouth applicable labor and other charges for the use of BellSouth's Directory Assistance and Call Processing platforms as set forth in Exhibit E of this Attachment.

8.4.5 Selective Call Routing using Line Class Codes (SCR-LCC)

8.4.5.1 Where Level 3 resells BellSouth's services and utilizes an operator services provider other than BellSouth, BellSouth will route Level 3's end user calls to that provider through Selective Call Routing.

8.4.5.2 Selective Call Routing using Line Class Codes (SCR-LCC) provides the capability for Level 3 to have its OCP/DA calls routed to BellSouth's OCP/DA platform for BellSouth provided Custom Branded or Unbranded OCP/DA or to its own or an alternate OCP/DA platform for Self-Branded OCP/DA. SCR-LCC is only available if line class code capacity is available in the requested BellSouth end office switches.

8.4.5.3 Custom Branding for Directory Assistance is not available for certain classes of service, including but not limited to Hotel/Motel services, WATS service and certain PBX services.

8.4.5.4 Where available, Level 3 specific and unique line class codes are programmed in each BellSouth end office switch where Level 3 intends to service end users with customized OCP/DA branding. The line class codes specifically identify Level 3's end users so OCP/DA calls can be routed over the appropriate trunk group to the requested OCP/DA platform. Additional line class codes are required in each end office if the end office serves multiple NPAs (i.e., a unique LCC is required per NPA), and/or if the end office switch serves multiple rate areas and Level 3 intends to provide Level 3-branded OCP/DA to its end users in these multiple rate areas.

8.4.5.5 BellSouth Branding is the default branding offering.

8.4.5.6 SCR-LCC supporting Custom Branding and Self Branding require Level 3 to order dedicated transport and trunking from each BellSouth end office identified by Level 3, either to the BellSouth Traffic Operator Position System (TOPS) for Custom Branding or to the Level 3 Operator Service Provider for Self Branding. Separate trunk groups are required for Operator Services and for Directory Assistance. Rates for transport and trunks are set forth in applicable BellSouth Tariffs.

8.4.5.7 The rates for SCR-LCC are as set forth in Exhibit E of this Attachment. There is a nonrecurring charge for the establishment of each Line Class Code in each BellSouth central office.

8.4.5.8 Unbranded Directory Assistance and/or Operator Call Processing calls ride common trunk groups provisioned by BellSouth from those end offices identified by Level 3 to the BellSouth Tops. The calls are routed to "No Announcement."

8.4.6 Customized Branding includes charges for the recording of the branding announcement and the loading of the audio units in each TOPS Switch and Network Applications Vehicle (NAV) equipment for which Level 3 requires service.

8.4.6.1 Directory Assistance customized branding uses:

8.4.6.2 the recording of Level 3

8.4.6.3 the loading of the recording in each switch.

8.4.6.4 Operator Call Processing customized branding uses:

8.4.6.5 the recording of Level 3

8.4.6.6 2 the loading of the recording in each switch.

8.4.6.7 the loading on the Network Applications Vehicle (NAV). All NAV shelves within the region where the customer is offering service must be loaded.

9. Line Information Database (LIDB)

9.1 BellSouth will store in its Line Information Database (LIDB) records relating to service only in the BellSouth region. The LIDB Storage Agreement is included in this Attachment as Exhibit B.

9.2 BellSouth will provide LIDB Storage upon written request to Level 3's Account Manager stating a requested activation date.

10. RAO Hosting

10.1 RAO Hosting is not required for resale in the BellSouth region.

11. Optional Daily Usage File (ODUF)

11.1 The Optional Daily Usage File (ODUF) Agreement with terms and conditions is included in this Attachment as Exhibit C. Rates for ODUF are as set forth in Exhibit E of this Attachment.

11.2. BellSouth will provide ODUF service upon written request to its Account Manager stating a requested activation date.

12. Enhanced Optional Daily Usage File (EODUF)

12.1 The Enhanced Optional Daily Usage File (EODUF) service Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for EODUF are as set forth in Exhibit E of this Attachment.

12.2 BellSouth will provide EODUF service upon written request to its Account Manager stating a requested activation date.

EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE (Note 3)

	Type of Service	AL		FL		GA		KY		LA		MS		NC		SC		TN	
		Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount
1	Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Promotions - > 90 Days(Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Promotions - ≤ 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4	Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6	N11 Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
7	MemoryCall Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8	Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10	Non-RecurCharges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
11	End User Line Chg-Number Portability	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12	Public Telephone Access Svc(PTAS)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
13	Inside Wire Maint Service Plan	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

Applicable Notes:

1. **Grandfathered services** can be resold only to existing subscribers of the grandfathered service.
2. Where available for resale, **promotions** will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly
3. Some of BellSouth's local exchange and toll telecommunications services are not available in certain central offices and areas.

LINE INFORMATION DATA BASE (LIDB)

RESALE STORAGE AGREEMENT

I. **Definitions (from Addendum)**

A. Billing number - a number used by BellSouth for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.

B. Line number - a ten-digit number assigned by BellSouth that identifies a telephone line associated with a resold local exchange service.

C. Special billing number - a ten-digit number that identifies a billing account established by BellSouth in connection with a resold local exchange service.

D. Calling Card number - a billing number plus PIN number assigned by BellSouth.

E. PIN number - a four-digit security code assigned by BellSouth that is added to a billing number to compose a fourteen-digit calling card number.

F. Toll billing exception indicator - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by Level 3.

G. Billed Number Screening - refers to the query service used to determine whether a toll billing exception indicator is present for a particular billing number.

H. Calling Card Validation - refers to the query service used to determine whether a particular calling card number exists as stated or otherwise provided by a caller.

I. Billing number information - information about billing number or Calling Card number as assigned by BellSouth and toll billing exception indicator provided to BellSouth by Level 3.

J. Get-Data - refers to the query service used to determine, at a minimum, the Account Owner and/or Regional Accounting Office for a line number. This query service may be modified to provide additional information in the future.

K. Originating Line Number Screening ("OLNS") - refers to the query service used to determine the billing, screening and call handling indicators, station type and Account Owner provided to BellSouth by Level 3 for originating line numbers.

L. Account Owner - name of the local exchange telecommunications company that is providing dialtone on a subscriber line.

II. General

A. This Agreement sets forth the terms and conditions pursuant to which BellSouth agrees to store in its LIDB certain information at the request of Level 3 and pursuant to which BellSouth, its LIDB customers and Level 3 shall have access to such information. In addition, this Agreement sets forth the terms and conditions for Level 3's provision of billing number information to BellSouth for inclusion in BellSouth's LIDB. Level 3 understands that BellSouth provides access to information in its LIDB to various telecommunications service providers pursuant to applicable tariffs and agrees that information stored at the request of Level 3, pursuant to this Agreement, shall be available to those telecommunications service providers. The terms and conditions contained herein shall hereby be made a part of this Resale Agreement upon notice to Level 3's account team and/or Local Contract Manager activate this LIDB Storage Agreement. The General Terms and Conditions of the Resale Agreement shall govern this LIDB Storage Agreement. The terms and conditions contained in the attached Addendum are hereby made a part of this LIDB Storage Agreement as if fully incorporated herein.

B. BellSouth will provide responses to on-line, call-by-call queries to billing number information for the following purposes:

1. Billed Number Screening

   BellSouth is authorized to use the billing number information to determine whether Level 3 has identified the billing number as one that should not be billed for collect or third number calls.

2. Calling Card Validation

   BellSouth is authorized to validate a 14-digit Calling Card number where the first 10 digits are a line number or special billing number assigned by BellSouth, and where the last four digits (PIN) are a security code assigned by BellSouth.

3. OLNS

   BellSouth is authorized to provide originating line screening information for billing services restrictions, station type, call handling indicators, presubscribed interLATA and local carrier and account owner on the lines of Level 3 from which a call originates.

4. GetData

   BellSouth is authorized to provide, at a minimum, the account owner and/or Regional Accounting Office information on the lines of Level 3 indicating the local

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Budget Prepay, Inc. v. AT&T Tennessee*

Docket No. 12-00102

AFFIDAVIT OF MARC CATHEY

Marc Cathey, being first duly sworn, under oath states as follows:

1. My name is Marc Cathey. I am currently employed as an Executive Director-Corporate Strategy for AT&T Services, Inc., a shared services subsidiary of AT&T Inc., a publicly held Delaware corporation headquartered in Dallas, Texas. AT&T Inc. is a holding company with certain operating subsidiaries (these operating subsidiaries are collectively referred to herein as "the AT&T operating companies"). I provide support to the AT&T operating companies, including BellSouth Telecommunications, LLC d/b/a AT&T Tennessee and other incumbent local exchange carriers ("ILECs") with regard to their business relationships with various competitive local exchange carriers ("CLECs"). In this position, I am responsible for overseeing collection of CLEC accounts, and I conduct negotiations with CLEC customers regarding various business disputes between those CLECs and the AT&T ILECs. This Affidavit is made upon my personal knowledge and belief.

2. I am familiar with the resale provisions in the interconnection agreement between Budget Prepay, Inc. ("Budget") and AT&T Tennessee and I have reviewed, and am familiar with, the allegations asserted by Budget in the Complaint filed in this proceeding. In particular, I am familiar with the promotions described in Attachment A to the Complaint, for which Budget is claiming credits.

Exhibit 2

3. These promotions were offered by BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service ("AT&T Long Distance"). Under AT&T Long Distance's Residential Service Guide, a publicly available document that sets out the terms of the promotions, AT&T Long Distance offered qualifying new AT&T Long Distance customers a prepaid Visa® Reward Card in an amount of either $100 or $50, depending on which long distance service the customer purchased. To be eligible for the reward card, the AT&T Long Distance customer had to meet the following requirements, among others:

- The customer had to sign up for one of the specific "qualifying" long distance plans listed in the AT&T Long Distance Residential Service Guide.
- The customer had to retain the qualifying long distance service for at least 30 days.
- The customer had to have local dial tone service with AT&T Louisiana.

4. The following is a complete list of the qualifying long distance plans listed in the AT&T Long Distance Residential Service Guide pages attached as Exhibit A to the Complaint, which states that customers had to purchase one of these plans to be eligible to receive a reward card:

- AT&T Unlimited Nationwide Calling℠ One
- AT&T Unlimited Nationwide Calling℠ Advantage 1
- AT&T Unlimited Nationwide Calling℠ Advantage 2
- AT&T Unlimited Nationwide Calling℠ Advantage 3
- AT&T ONE RATE® Nationwide 5 Cents Advantage
- AT&T ONE RATE® Nationwide Calling 1
- AT&T ONE RATE® Nationwide Advantage

In this Affidavit I refer to these as the "Qualifying AT&T Long Distance Plans."

5. I directed a review of the relevant records of the AT&T operating companies ("AT&T's records"). Nothing in AT&T's records shows that Budget has purchased a Qualifying AT&T Long Distance Plan. In addition, nothing in AT&T's records shows that Budget has purchased any long distance service for resale from AT&T Long Distance.

6. AT&T's records do show that Budget has purchased certain internet protocol-based ("VoIP") long distance services from AT&T Corp., a different company from both AT&T Long Distance and BellSouth Telecommunications, LLC d/b/a AT&T Tennessee. Those VoIP services that Budget purchased from AT&T Corp. are not Qualifying AT&T Long Distance Plans, and they are not offered by AT&T Long Distance or by AT&T Tennessee.

7. In my current position, I have dealt with a number of CLECs that have withheld payments based upon alleged promotional credit disputes. To date, at least 16 of those CLECs have either declared bankruptcy or ceased doing business while owing, in the aggregate, more than $150,000,000.00 they wrongfully withheld from AT&T ILECs.

8. This concludes my affidavit.

Marc Cathey

Subscribed and sworn to before me
this 14th day of November, 2012

Notary Public
My commission expires

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 19, 2016
BONDED THRU NOTARY PUBLIC UNDERWRITERS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BUDGET PREPAY, INC. Against BellSouth Telecommunications, LLC d/b/a AT&T Florida

Docket No. 120231-TP

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BUDGET PREPAY, INC.'S RESPONSES TO FLORIDA PUBLIC SERVICE COMMISSION STAFF'S FIRST SET OF DATA REQUESTS

On October 30, 2012, Staff of the Florida Public Service Commission ("Staff") served its first set of data requests on Budget PrePay, Inc. ("Budget") in the captioned matter, requesting Budget's response by November 7, 2012. Budget has made a good-faith attempt to quickly comply with Staff's deadline and will supplement its responses as information becomes available to Budget, including through Budget's ongoing review of its own records and through discovery by Budget on AT&T Florida pursuant to its Complaint filing. In consideration of the foregoing, Budget submits its response to Staff's first set of data requests regarding the captioned matter, as follows.

General Objections

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** that were made available to AT&T Florida retail customers, but that AT&T Florida has refused to make available to Budget.

Budget's Complaint relates to the actions of AT&T Florida – the ILEC – that are preferential, discriminatory and anti-competitive.

Exhibit 3

Budget's Complaint is directly associated with telecommunication services provided by AT&T as a local service, not long distance service. Two thirds (2/3) of the monthly retail cost of the telecommunication service associated with the Bundled Promotion in dispute is for local service sold by the AT&T ILEC. Budget's claims for credits are directly associated and related to invoices issued by the AT&T ILEC for local service resold to Budget. Budget disputes the amounts billed by the AT&T ILEC to Budget for local service because AT&T fails to apply promotion credits associated with ILEC local service that is required for the Bundled Promotions. The failure of the AT&T ILEC to make the promotions available to Budget has an anti-competitive effect on Budget.

The Bundled Promotion required local service that makes up roughly two thirds (2/3) of the value, and was marketed to retail customers by "AT&T" and sold by the AT&T ILEC . AT&T seeks and obtains new local service customers for the AT&T ILEC as a result of the promotion. These new AT&T ILEC local service customers obtained a direct benefit from the promotion based on the price reduction from the promotions. Budget's claim is based on AT&T's efforts to inappropriately circumvent the resale requirements for the promotion's value associated with the local service by offering the benefit through a long-distance affiliate. To the extent AT&T has a long-distance affiliate pay for promotions that require local service from an AT&T ILEC, then the AT&T ILEC gains an even larger competitive advantage.

Budget's Complaint is not a dispute about long-distance service or lifeline service.

Budget objects to Staff's data requests to the extent they seek information that is not relevant to Budget's Complaint. Budget further objects to Staff's data requests to the extent they seek information that is otherwise beyond the scope of permissible discovery pursuant to FPSC

Rules and Florida law, or that is protected from discovery by attorney-client privilege or work-product doctrine.

Responses

Subject to the above General Objections, Budget further responds as follows.

1. Has AT&T Long Distance billed Budget for its services provided to Florida customers? If yes, please provide the complete billing record for June, July, and August 2012, specifying which itemized amounts are in dispute in Florida, and which amounts are not in dispute.

RESPONSE:

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** as set forth in Budget's General Objections above. Subject to and without waiver of its General Objections, Budget further responds as follows. No; AT&T Long Distance does not offer long distance service to Budget at retail, although Budget includes long distance service in its product offerings to its customers for which it has claimed credits for the Bundled Promotions and some of such long distance service is obtained from AT&T long distance at wholesale.

2. Does AT&T Florida bill Budget for AT&T Long Distance's services that are provided in Florida? If yes, please provide the complete billing record for June, July, and August 2012, specifying which itemized amounts are in dispute, and which amounts are not in dispute.

RESPONSE:

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** as set forth in Budget's General Objections above. Subject to and without waiver of its General Objections, Budget further responds as follows. No; AT&T Florida does not offer long-distance service at retail or to resellers at wholesale. By bundling its local services with a promotion offered by its long-distance affiliate, AT&T Florida is circumventing its resale obligations relating to its local services under the ICA and federal law, which has an anti-

competitive effect on Budget. Budget does include long distance service in its product offerings to its customers for which it has claimed credits for the Bundled Promotions and some of such long distance service is obtained from AT&T long distance at wholesale.

3. Does AT&T Florida or any of its affiliates or subsidiaries bill Budget for any service(s) other than long distance? If yes, please identify those services and provide the complete billing record for June, July, and August 2012, specifying which itemized amounts are in dispute, and which amounts are not in dispute.

RESPONSE:

Yes; Budget receives bills from AT&T Florida for local service in electronic format. Portions of AT&T Florida's bills to Budget have been disputed by Budget pursuant to billing dispute provisions of its Interconnection Agreement with AT&T Florida. Budget's billing dispute is based on AT&T Florida's failure to provide credits associated with the resale of services for which AT&T has offered a bundled cash back promotion to its retail customers that requires AT&T local service. Budget submitted notices of billing disputes and claim for such credits for resale rights due Budget by electronic Exclaim Portal submission beginning February 17, 2011, and monthly thereafter through September 2012, at which time AT&T discontinued the Bundled Promotion. Budget will review the AT&T electronic billing submissions to determine a manner in which it can produce to Staff copies of the requested billing records for June, July, August 2012, subject to confidentiality protections, and will further coordinate with Staff regarding response to this request.

4. Does AT&T Florida bill Budget's end users for AT&T Long Distance's Services?

RESPONSE:

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** as set forth in Budget's General Objections above. Subject to and without waiver of its General Objections, Budget further responds as follows. No; neither AT&T Florida nor AT&T Long Distance offer long distance service to Budget at retail, although Budget includes long distance service in its product offerings to its customers for which it has claimed credits for the Bundled Promotions and some of such long distance service is obtained from AT&T long distance at wholesale.

5. Does AT&T Long Distance bill Budget's end users for AT&T Long Distance's Services?

RESPONSE:

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** as set forth in Budget's General Objections above. Subject to and without waiver of its General Objections, Budget further responds as follows. No; AT&T Long Distance does not offer long distance service to Budget at retail, although Budget includes long distance service in its product offerings to its customers for which it has claimed credits for the Bundled Promotions and some of such long distance service is obtained from AT&T long distance at wholesale.

6. How many customers did Budget have in Florida during each of the following months: June, July, and August 2012?

RESPONSE:

June: 1474 customers; July: 1439 customers; August: 1519 customers

7. How many Budget end users subscribed to AT&T Long Distance in Florida during each of the following months: June, July, and August 2012?

RESPONSE:

Budget's Complaint relates to promotional credits associated with AT&T Florida's ***local service offerings*** as set forth in Budget's General Objections above. Subject to and without waiver of its General Objections, Budget further responds as follows. AT&T Long Distance does not offer long distance service to Budget at retail, although Budget includes long distance service in its product offerings to its customers for which it has claimed credits for the Bundled Promotions and some of such long distance service is obtained from AT&T long distance at wholesale.

8. How many Budget customers in Florida received Lifeline discounts in Florida during each of the following months: June, July, and August 2012?

RESPONSE:

Budget's Complaint does not relate to Lifeline discounts. Subject to the General Objections referenced above, Budget responds as follows. Lifeline credits were received from AT&T for eight (8) Budget customers in the referenced months. Overall, the number of customers receiving lifeline credits were June: 1,373; July: 1,330; August: 1,326.

9. Has Budget notified its customers of its impending discontinuance of service? (a) If yes, on what date was the notification provided to customers?; (b) If yes, please provide a copy of the notice.

RESPONSE: No; Budget will file a reply to AT&T's notice of commencement of collection action and proposal to discontinue service to Budget and its customers issued by AT&T in response to Budget's efforts to resolve this billing dispute pursuant to the Interconnection Agreement between the parties and Budget's Complaint filed with the Commission.

10. Please provide all documentation Budget provided to AT&T Florida which supports Budgets position regarding the disputed amount(s) that are at issue in this docket for June, July, and August 2012.

RESPONSE:

See attached correspondence between Budget and AT&T dated: February 23, 2011; April 1, 2011; April 25, 2011; May 12, 2011; May 18, 2011; and May 20, 2011. Budget will also coordinate with Staff to produce, subject to confidentiality protections, copies of Budget's dispute submissions via AT&T Exclaims Portal website for June, July, and August 2012. Budget will also coordinate with Staff to produce, subject to confidentiality protections, email correspondence dated February 3, 2012 and April 26, 2012, in which Marc Cathey, Sales Assistant Vice President for AT&T ILEC, sent via email spreadsheets produced by AT&T ILEC that reflected Budget's Bundled promotion claims as disputed amounts.

Budget objects to Staff's data requests to the extent it is overly broad in requesting "all documentation" as Budget's billing dispute with AT&T Florida has been ongoing for approximately two years, since February 17, 2011; however, the referenced documents provide an overview of the claims for credits submitted by Budget and the billing dispute subject of Budget's Complaint.

Budget also notes that fact information remains to be discovered from AT&T regarding the billing dispute. Questions of fact exist that must be developed through appropriate discovery, including written discovery and depositions, testimony, and a hearing. For example, to what extent did AT&T benefit from the promotions that bundled AT&T Florida's local service with its affiliate's long-distance service; how much of the revenue realized from those bundled promotions was directly related to the sale of local service; and to what extent did AT&T Florida's customers benefit and receive reduced prices for local service through the bundled

promotions? Budget submitted data requests to AT&T in Louisiana which seek fact discovery relevant to all states in which the Bundled Promotions are in dispute, including Florida. The data requests were served September 21, 2012. AT&T requested extension of time to respond, and answers are due November 9. It is not known at this time to what extent AT&T will fully and completely respond, or the extent of follow-up discovery that will be needed.

11. Please provide all documentation Budget provided to AT&T Long Distance which supports Budget's position regarding the disputed amount(s) that are at issue in this docket for June, July, and August 2012.

RESPONSE:

See Budget's response to Staff Data Request 1 and 10.

12. Please identify all services included on the bills that AT&T Florida provides to Budget.

RESPONSE:

See Budget's response to Staff Data Request 3.

13. Are the promotions in dispute in this docket monthly credits?

RESPONSE: No, they are one time credits.

14. Are the promotions in dispute in this docket one-time credits associated with establishing new service?

RESPONSE: Yes; Budget claimed the promotional credits for only the new lines that it sold that had the exact same features as the local service that AT&T required and included in its Bundled Promotion.

15. Are the promotions in dispute in this docket one-time credits associated with adding new services?

RESPONSE: No

16. Are the promotions in dispute in this docket some combination of monthly and one-time credits?

RESPONSE: No

17. To the extent that the promotions in dispute in this docket represent some combination of monthly and one-time credits, please identify the disputed amounts by category for each of the following months: June, July, and August 2012.

RESPONSE: Not applicable

s/ Jon C. Moyle, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Budget Prepay, Inc.'s Response to the Florida Public Service Commission Staff's First Set of Data Requests has been served by electronic mail on all parties on the Official Service List this 7th day of November 2012.

s/ Jon C. Moyle, Jr.
Jon C. Moyle, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2012, a copy of the foregoing document was served on the following, via the method indicated:

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