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January 18, 2013

**VIA OVERNIGHT MAIL**

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

RECEIVED  
JAN 22 2013  
PUBLIC SERVICE  
COMMISSION

Re: Petition of Cumberland Cellular, Inc. d/b/a Duo County Telecom for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996  
PSC 2012-00529

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Reply in Support of Motion to Dismiss Improperly Joined Claim for Compensation for Interim Services.

Please let me know if you have any questions.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Party of Record

1054024

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of Cumberland Cellular, Inc. d/b/a	)	
Duo County Telecom for Arbitration of	)	
Certain Terms and Conditions of Proposed	)	
Interconnection Agreement with BellSouth	)	Case No. 2012-00529
Telecommunications, Inc., d/b/a AT&T	)	
Kentucky, Pursuant to the Communications	)	
Act of 1934, as Amended by the	)	
Telecommunications Act of 1996	)	

**AT&T KENTUCKY’S REPLY IN SUPPORT OF MOTION TO DISMISS  
IMPROPERLY JOINED CLAIM FOR COMPENSATION FOR INTERIM SERVICES**

AT&T Kentucky respectfully submits this reply brief in support of its motion to dismiss the claim for retroactive compensation for interim services that Duo improperly included in its Petition for Arbitration.

**ARGUMENT**

**I. DUO’S CLAIM FOR COMPENSATION FOR INTERIM SERVICES IS NOT SUBJECT TO ARBITRATION UNDER THE 1996 ACT.**

Duo effectively concedes that its compensation claim is not governed by section 251 of the Telecommunications Act of 1996 (“1996 Act” or “Act”). Duo argues, however, that the claim is nonetheless subject to arbitration under section 252 of the 1996 Act because the parties included the subject in their interconnection agreement negotiations. Duo is wrong on both the law and the facts. As we demonstrate in subsection A below, the only “open issues” that the 1996 Act authorizes carriers to submit for arbitration under section 252 are disagreements concerning the matters governed by section 251. And as we demonstrate in subsection B, even if the law were

as Duo mistakenly claims it is, Duo's claim for compensation for interim services still would not be subject to arbitration in this docket, because AT&T Kentucky refused to include that claim in the parties' negotiations.

**A. Parties that Discuss Matters not Governed by Section 251 of the 1996 Act in the Course of their Interconnection Agreement Negotiations Do not Thereby Render those Matters Subject to Arbitration under Section 252.**

Duo states that if the parties discussed the purchase and sale of used computer parts, "it would be appropriate to address that matter here, as well."<sup>1</sup> That cannot be correct, because sales of used computer parts have nothing to do with the 1996 Act, and the Commission would therefore have no standard under which to resolve the parties' disagreement. The 1996 Act provides that the Commission must decide arbitration issues in a manner that "meet[s] the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251."<sup>2</sup> The Commission could not possibly comply with that requirement if it were asked to arbitrate a disagreement about prices for used computer parts, because neither section 251 nor any FCC regulation implementing the 1996 Act sheds any light on what AT&T Kentucky should charge Duo for used computer parts. Nor, for that matter, does any other source of law.

Why, Duo asks, are we discussing used computer parts?<sup>3</sup> To demonstrate that Duo is wrong about what can and cannot be arbitrated under the 1996 Act. According

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<sup>1</sup> Duo County Telecom's Response to AT&T Kentucky's Motion to Dismiss Claim for Interim Services ("Duo Br."), at 3 n.1.

<sup>2</sup> 47 U.S.C. § 252(c)(1).

<sup>3</sup> Duo Br. at 3-4 n.1.

to Duo, the 1996 Act authorizes state commissions to arbitrate anything and everything parties may discuss in the course of their negotiations of the terms and conditions of an interconnection agreement (“ICA”). That simply is not so. There are myriad matters that carriers might negotiate that are not subject to state commission arbitration under section 252(b); the price of used computer parts is just one example. What state commissions are authorized to arbitrate under the 1996 Act are issues about the duties imposed by sections 251(b) and 251(c) of the Act. That is what the 1996 Act means by “open issues”<sup>4</sup> arising out of negotiations of terms and conditions to “fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection [(c)].”<sup>5</sup>

Duo’s argument to the contrary is based on section 252(a)(1), which provides,

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting communications carrier or carriers ***without regard to the standards set forth in subsections (b) and (c) of section 251.***<sup>6</sup>

According to Duo, that language “anticipates that the parties’ negotiations will go beyond Section 251(b) and (c) duties,” and thus supports Duo’s position that the 1996 Act contemplates that state commissions will arbitrate anything the parties discuss in the course of their negotiations.<sup>7</sup> Duo is misreading the statute. What section 252(a)(1) plainly means is that when carriers are negotiating an ICA, they can negotiate around the requirements set forth in sections 251(b) and (c). Thus, for example, they can agree

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<sup>4</sup> 47 U.S.C. § 252(b)(1)

<sup>5</sup> *Id.* § 251(c)(1).

<sup>6</sup> 47 U.S.C. § 252(a)(1) (emphasis added).

<sup>7</sup> Duo Br. at 3.

to interconnect at a point that is not within the incumbent carrier's network even though section 251(c)(2)(B) states that interconnection is to be "within the [incumbent] carrier's network,"<sup>8</sup> or they can agree that the requesting carrier will not use unbundled network elements in combination even though section 251(c)(3) says it may.<sup>9</sup> In other words, section 252(a) anticipates that negotiating carriers may depart from the requirements imposed by sections 251(b) and 251(c) when they are negotiating terms and conditions for the matters covered by sections 251(b) and 251(c). It does *not*, as Duo contends, anticipate that they will negotiate about matters that have nothing whatsoever to do with the subjects addressed by the 1996 Act.<sup>10</sup>

The language of the statute makes this clear, and the courts have recognized as much. The statute speaks of negotiations that follow "a request for interconnection, services, or network elements pursuant to section 251," not a request for things not covered by section 251. And, more important, the statute states that the parties may reach agreement "without regard to the *standards* set forth in subsections (b) and (c) of section 251," not without regard to the *subject matters* covered by subsections (b) and (c). Thus, the United States Court of Appeals for the Fifth Circuit has explained,

[T]he parties are specifically permitted by the Act to negotiate an ICA "without regard to the standards set forth in subsections (b) and (c) of section 251" – *that is, to negotiate around the substantive*

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<sup>8</sup> 47 U.S.C. § 251(c)(2)(B).

<sup>9</sup> 47 U.S.C. § 251(c)(3) requires incumbent carriers to "provide . . . unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service."

<sup>10</sup> The Commission Order in Case No. 2009-00438 to which Duo cites (Duo Br. at 2-3) does not support Duo's position here. As Duo correctly states, that Order states that the Commission has "the authority to arbitrate 'any open issues' presented in the arbitration petition," but it does not suggest that a non-section 251 issue can be an "open issue" within the meaning of section 252(b)(1). On the contrary, the issues the Commission said it would arbitrate in that case were section 251 issues.

**requirements** of the resale and interconnection provisions in the Act. 47 U.S.C. § 252(a)(1).<sup>11</sup>

The Fourth Circuit reads section 252(a)(1) the same way:

Congress made clear . . . that “an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting [competitive LEC or competitive LECs] *without regard to the standards set forth in subsections (b) and (c) of section 251 of this title.*” 47 U.S.C § 252(a) (emphasis added). In other words, Congress expressly allowed incumbent LECs and competitive LECs entering into negotiated (as opposed to arbitrated) interconnection agreements to contract freely around the resale obligations.<sup>12</sup>

The Second Circuit agrees:

[I]nterconnection agreements do not necessarily reiterate the duties enumerated in section 251. Instead, the ILEC and requesting carrier have the option of contracting around the obligations set forth in subsections (b) and (c) of section 251. Section 252(a)(1) of the Telecommunications Act provides: “upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers *without regard to the standards set forth in subsections (b) and (c) of section 251. . . .*” 47 U.S.C. § 252 (a)(1) (emphasis added).<sup>13</sup>

Thus, section 252(a)(1) anticipates that carriers negotiating terms and conditions for interconnection, access to network elements and resale may agree to depart from the requirements governing those matters that are set forth in sections 251(b) and (c) and the FCC’s implementing regulations, not, as Duo contends, that they will negotiate matters with which the 1996 Act does not concern itself at all. Duo’s assertion that section 252 “has generally been understood to apply to *all* open issues presented in *all*

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<sup>11</sup> *Budget Prepay, Inc. v. AT&T Corp.*, 605 F.3d 273, 276 (5th Cir. 2010) (emphasis added).

<sup>12</sup> *CGM, LLC v. BellSouth Telcoms.*, 664 F.3d 46, 54 (4th Cir. 2011).

<sup>13</sup> *Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atl. Corp.*, 305 F.3d 89, 103 (2d Cir. 2002), *rev'd on other grounds sub nom. Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

section 251 agreements, and not just issues involving Section 251(b) and (c) duties” (Duo Br. at 3) is false.<sup>14</sup>

Duo’s misreading is supported by one court decision, but that decision is an outlier and is not controlling here. The decision, *Coserv Ltd. Liab. Corp. v. Sw. Bell Tel Co.*, 350 F.3d 482 (5th Cir. 2003),<sup>15</sup> misreads section 252(a)(1) in the same way Duo does.<sup>16</sup> The *Coserv* court’s reading of section 252(a)(1) is dictum in any event, because what the court actually decided was that a state commission had correctly refused to arbitrate an issue that the parties had not negotiated.<sup>17</sup> Thus, the holding of the case is that issues that are not negotiated cannot be arbitrated, not that anything and everything that carriers discuss during their negotiations can be arbitrated. Furthermore, in its 2010 decision in *Budget Prepay*, quoted above at page 4, the Fifth Circuit correctly read section 252(a)(1) as permitting negotiating carriers to negotiate around the requirements imposed by sections 251(b) and (c) and thus departed from its misreading seven years earlier in *Coserv*.

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<sup>14</sup> To be clear, AT&T Kentucky is not saying that the 1996 Act prohibits carriers negotiating ICAs to discuss provisions that are not within the scope of the 1996 Act and to agree to include such provisions in their ICAs. If the parties do not reach agreement on such provisions, however, their disagreements are not subject to arbitration under section 252(b) – and section 252(a)(1) does not support Duo’s contrary position.

<sup>15</sup> Duo Br. at 3.

<sup>16</sup> Having noted section 252(a)(1), the *Coserv* court stated, “An ILEC is *required* by the Act to negotiate about those duties listed in § 251(b) and (c). During negotiations, however, the parties are free to make any agreement they want without regard to the requirements of § 251(b) and (c). To that extent, the parties are free to include interconnection issues that are not listed in § 251(b) and (c) in their negotiations. If the voluntary negotiations result in only a partial agreement, or in no agreement at all, either party can petition for compulsory arbitration of any open issue.” 350 F.3d at 487. As explained, the “without regard to” language in section 252(a)(1) does not address what the *Coserv* court apparently thought it did.

<sup>17</sup> See 350 F.3d at 486 (explaining that the case was an appeal from district court decision sustaining state commission refusal to arbitrate an issue that incumbent carrier refused to negotiate).

Duo asserts that its claim for retroactive compensation is “central to the disputed terms of the interconnection agreement,”<sup>18</sup> and is “part and parcel of the terms the Commission has been petitioned to arbitrate.”<sup>19</sup> That is incorrect. The purpose of the interconnection agreement is to govern the parties’ business relationship going forward. Duo’s interim compensation claim concerns the past. Duo has tried to transform its claim into a dispute about what the parties’ ICA should say by proposing a sentence that, if accepted, would be the only provision in a 49-page contract that imposes a retrospective duty on one of the parties past, but Duo’s machinations do not make its claim for retroactive compensation “central to” or “part and parcel” of the ICA.

**B. AT&T Kentucky Did not Negotiate Duo’s Claim for Compensation for Interim Services in the Parties’ Interconnection Agreement Negotiations.**

Duo asserts that “the parties have engaged in long-running negotiations regarding this matter”<sup>20</sup> and that “this issue has been the subject of continued negotiations between the parties.”<sup>21</sup> That assertion is misleading. To be sure, AT&T Kentucky and Duo did discuss Duo’s claim, *but not as part of the negotiations concerning the interconnection agreement*. On the contrary, AT&T Kentucky made clear to Duo that it was not willing to discuss Duo’s interim compensation claim as part of the parties’ ICA negotiations; AT&T Kentucky *never* agreed to include that claim, or

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<sup>18</sup> Duo Br. at 2.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> Duo Br. at 5.

<sup>21</sup> *Id.* at 6. Duo states that “AT&T does not deny” this, citing to AT&T’s Motion to Dismiss at 9-10. But there is nothing on those pages or anything else in AT&T Kentucky’s motion that remotely suggests that AT&T Kentucky agrees the parties had long-running or continued negotiations about addressing Duo’s interim compensation claim in the ICA.



Duo's proposed language concerning retroactive compensation, in the negotiations; and AT&T Kentucky understood, based on its communications with Duo, that Duo would be filing a separate complaint asserting that claim, exactly as Duo should have done. Specifically, and as AT&T Kentucky's lead negotiator for the negotiations with Duo attests in the attached Affidavit.<sup>22</sup>

AT&T Kentucky first learned during an October 10, 2012, negotiation session with Duo that Duo wanted to address its interim compensation claim in the ICA the parties were negotiating.<sup>23</sup> AT&T Kentucky was aware of the claim before that session, but understood that because the claim concerned the period before the Effective Date of the ICA, it would not be addressed by the ICA and so was not a subject of the ICA negotiations.<sup>24</sup> During the October 10 session, however, Duo made apparent that it wished to address the compensation claim in the ICA; in fact, Duo indicated that it intended to propose language for the ICA that would address that claim.<sup>25</sup>

Once AT&T Kentucky understood that Duo wished to include the Compensation Claim in the ICA negotiations, it made clear to Duo that AT&T Kentucky was unwilling to do that. Specifically, AT&T Kentucky told the Duo representatives at the October 10 meeting that the ICA would cover only compensation for the period commencing with the Effective Date of the ICA; that the subject of compensation for interim services

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<sup>22</sup> Affidavit of Jennifer Bracken ("Bracken Affid.") (**Exhibit 1** hereto), ¶ 4.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

rendered in the past was not part of the ICA negotiations; and that any discussions of that subject must be handled outside the ICA negotiations.<sup>26</sup>

Duo and AT&T Kentucky had another meeting by telephone five days later, on October 15, 2012. On that call, AT&T Kentucky reiterated its position that Duo's interim compensation claim was not a proper subject for the parties' ICA negotiations, and identified Tony Jackson as the AT&T representative who Duo should contact in order to discuss that claim. AT&T Kentucky followed up with a confirming email, which is Attachment 1 to the Bracken Affidavit. Tony Jackson was not involved in the ICA negotiations between Duo and AT&T Kentucky. Thus, the assignment of the Compensation Claim to Mr. Jackson was consistent with, and again was intended to convey to Duo, that the discussion of the Compensation Claim was separate and apart from the ICA negotiations.<sup>27</sup>

After its communications with Duo on October 10 and 15, 2012, it was AT&T Kentucky's understanding that Duo would be filing a separate complaint against AT&T Kentucky for the compensation claim.<sup>28</sup> AT&T Kentucky never agreed that Duo's claim for interim compensation would be or should be included in the ICA negotiations or in any ensuing arbitration.<sup>29</sup> This is significant because Duo's premise is that parties can voluntarily bring non-section 251 issues within the scope of the Commission's arbitration authority under section 252(b). AT&T Kentucky did no such thing.

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at ¶ 6.

<sup>28</sup> *Id.* at ¶ 6.

<sup>29</sup> *Id.* at ¶ 7.

It was only on November 29, 2013, the day before Duo filed its arbitration petition, that Duo first proposed ICA language that would entitle Duo to retroactive compensation. AT&T Kentucky summarily rejected Duo's proposal within a few hours of receiving it; there was no negotiation.<sup>30</sup>

Thus, even if the Commission were to decide that parties can voluntarily bring non-section 251 issues within the scope of a state commission's arbitration authority, which it should not for the reasons set forth above in subsection A, it still should not address Duo's Compensation Claim in this proceeding, because AT&T Kentucky did nothing that could be construed as agreeing to include the parties' disagreement about retroactive compensation in the ICA negotiations.<sup>31</sup>

## **II. SECTION 252(e)(3) OF THE 1996 ACT DOES NOT AUTHORIZE ARBITRATION OF DUO'S CLAIM FOR COMPENSATION FOR INTERIM SERVICES.**

Duo contends that "Section 252(e)(3) allows the Commission to consider relevant state law when reviewing an interconnection agreement."<sup>32</sup> That is correct, but it is also irrelevant because section 252(e)(3) has nothing to do with what issues a state commission can or cannot arbitrate. Section 252(e) concerns state commission review of an ICA that parties submit for approval *after* they arrive at complete terms and conditions via negotiation or arbitration. Specifically, section 252(e)(1) requires the

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<sup>30</sup> *Id.* at ¶ 8.

<sup>31</sup> Although AT&T Kentucky made clear to Duo that it was unwilling to include Duo's claim for interim compensation in the ICA negotiations, Duo has it backwards when it asserts that AT&T Kentucky was required to affirmatively limit the parties' negotiations to section 251 if that was its intention. Duo Br. at 3. Since Duo's theory is that AT&T Kentucky voluntarily included a non-section 251 issue in the ICA negotiations (and thus in the issues eligible for arbitration), Duo should be required to prove that AT&T Kentucky in fact did so.

<sup>32</sup> Duo Br. at 4.

parties to submit all ICAs for state commission review for approval or rejection.<sup>33</sup>

Section 252(e)(2) identifies the limited circumstances under which the state commission may reject the ICA, with some circumstances applicable to negotiated ICAs<sup>34</sup> and others applicable to arbitrated ICAs.<sup>35</sup> Then, section 252(e)(3) provides, “[N]othing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law *in its review of an agreement* . . . .”<sup>36</sup> Thus, section 252(e)(3) comes into play only after a complete ICA has been submitted to the state commission. It has no bearing on what issues are or are not subject to arbitration.

**III. THE COMMISSION SHOULD NOT ALLOW DUO TO EVADE THE REQUIREMENT THAT IT ESTABLISH A *PRIMA FACIE* CASE BEFORE THE COMMISSION ENTERTAINS ITS CLAIM.**

AT&T Kentucky demonstrated in its motion that Duo has not established a *prima facie* case for its interim compensation claim.<sup>37</sup> Duo does not dispute this. Instead, Duo contends that it could do so if it were required to, and that AT&T Kentucky “all but acknowledges” this.<sup>38</sup> That is not correct. AT&T Kentucky said nothing in its motion that came anywhere near to acknowledging that Duo could establish a *prima facie* case, and doubts that Duo can.

More to the point, 807 KAR 5:001 requires that a party with a claim like Duo’s interim compensation claim establish a *prima facie* case in its initial pleading so that the

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<sup>33</sup> 47 U.S.C. § 252(e)(1).

<sup>34</sup> 47 U.S.C. § 252(e)(2)(A).

<sup>35</sup> 47 U.S.C. § 252(e)(2)(B).

<sup>36</sup> 47 U.S.C. § 252(e)(3) (emphasis added).

<sup>37</sup> AT&T Motion at 8-10.

<sup>38</sup> *Id.* at 6.

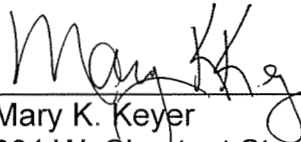
Commission can determine how to proceed.<sup>39</sup> Duo argues that AT&T Kentucky is “bootstrapping” when it argues that Duo has not complied with that requirement<sup>40</sup> but that misses the point: Duo should not be allowed to evade the procedural requirements that apply to claims like Duo’s – and that serve a useful purpose – by camouflaging its claim as a disagreement about what an interconnection agreement should say.

Duo is incorrect when it asserts that a proper complaint setting forth its claim for interim compensation would be “duplicative.”<sup>41</sup> The question of what compensation Duo may be entitled to under the parties’ ICA going forward is by no means the same as the question of what compensation Duo may be entitled to for the past, when the parties had no ICA.

### **CONCLUSION**

The Commission should dismiss Duo’s claim for compensation for interim services for the reasons set forth above and in AT&T Kentucky’s motion.

Respectfully submitted,



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<sup>39</sup> See AT&T Motion at 8-10.

<sup>40</sup> Duo Br. at 6.

<sup>41</sup> Duo Br. at 6.

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KENTUCKY

1054081

**AFFIDAVIT OF JENNIFER BRACKEN**

**STATE OF TEXAS  
COUNTY OF DALLAS**

**§  
§**

Jennifer Bracken, being first duly sworn, states as follows under oath:

1. I am a Lead Interconnection Manager employed by Southwestern Bell Telephone Company (now doing business as AT&T) since 1997. I have been in this or similar positions in AT&T Wholesale since 1998.

2. I have been, and am, the lead negotiator for AT&T Kentucky in its negotiations with Cumberland Cellular, Inc. d/b/a Duo County Telecom ("Duo") for an interconnection agreement ("ICA") between AT&T Kentucky and Duo. I have played this role throughout the entirety of the parties' negotiations of the ICA that is the subject of this arbitration. (At two points during the negotiation period, another AT&T negotiator, Eric Peterson, filled in for me; relatively little negotiation occurred in my absence.)

3. This Affidavit concerns Duo's claim against AT&T Kentucky for interim compensation for the period before the Effective Date of the ICA. I will refer to this as the "Compensation Claim."

4. Although I was aware of Duo's Compensation Claim before October 10, 2012, it was on that date that I first understood that Duo wanted to address that claim in the ICA we were negotiating. It was my understanding before October 10, 2012 that because the Compensation Claim concerned the period before the Effective Date, it would not be addressed by the ICA and so was not a subject of the ICA negotiations. On October 10, 2012, however, during the course of a telephonic negotiation session,

Duo made apparent that it wished to address the Compensation Claim in the ICA, and in fact indicated that it intended to propose language for the ICA that would address the Compensation claim. Once I understood that Duo wished to include the Compensation claim in the ICA negotiations, I made clear to Duo that AT&T Kentucky was unwilling to do so. Specifically, I told the Duo representatives at the October 10 meeting that the ICA would cover only compensation for the period commencing with the Effective Date of the ICA; that the subject of compensation for interim services rendered in the past was not part of the ICA negotiations; and that any discussions of that subject must be handled outside the ICA negotiations. The Duo representatives at this meeting were Eileen Bodamer and Tip Depp.

5. Duo and AT&T Kentucky had another meeting by telephone five days later, on October 15, 2012. On that call, I reiterated AT&T Kentucky's position that Duo's Compensation Claim was not a proper subject for the parties' ICA negotiations, and I identified Tony Jackson, Senior Carrier Accounts Manager, as the AT&T representative who Duo should contact in order to discuss its Compensation Claim. I followed up with a confirming email, which is Attachment 1 hereto. Tony Jackson was not involved in the ICA negotiations between Duo and AT&T Kentucky. Thus, the assignment of the Compensation Claim to Mr. Jackson was consistent with, and again was intended to convey to Duo, that the discussion of the Compensation Claim was separate and apart from the ICA negotiations.

6. After my discussions with Duo representatives Eileen Bodamer and Tip Depp on October 10 and 15, 2012, it was my understanding that Duo would be filing a separate complaint against AT&T Kentucky for the Compensation Claim. I have spoken



about this with Bob Sutherland, the AT&T attorney who represented me in the ICA negotiations with Duo, and he shared my understanding.

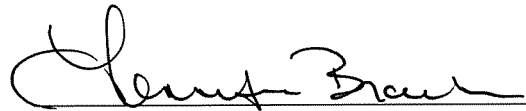
7. Throughout the course of my dealings with Duo, it was AT&T Kentucky's position that Duo's interim compensation claim was not a proper subject for the parties' ICA or the parties' ICA negotiations. At no time did I or any other AT&T representative in my presence (or to my knowledge outside my presence) agree that Duo's claim for interim compensation would be or should be included in the ICA negotiations or in any ensuing arbitration.

8. It was only on November 29, 2012, the day before Duo filed its arbitration petition, that Duo first proposed ICA language that would entitle Duo to retroactive compensation. AT&T Kentucky summarily rejected Duo's proposal within a few hours of receiving it; there was no negotiation.

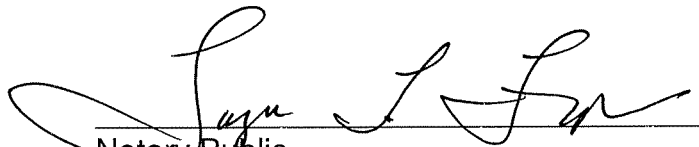
FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS       §  
COUNTY OF DALLAS   §

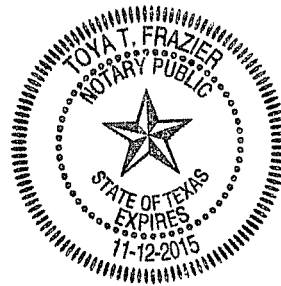
I, Jennifer Bracken, of lawful age, being duly sworn, now state that I am authorized to provide the foregoing statements on behalf of AT&T Kentucky, that I have read the foregoing statement and the information contained in the foregoing is true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Jennifer Bracken

Subscribed and sworn to before me  
this 17 day of January, 2013

  
\_\_\_\_\_  
Notary Public

My commission expires 11-12-2015



# Attachment 1

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**From:** BRACKEN, JENNIFER  
**Sent:** Monday, October 15, 2012 8:27 PM  
**To:** Eileen Bodamer  
**Cc:** PETERSON, ERIC; JACKSON, TONY L.  
**Subject:** Contact

Eileen,

As we discussed on our call earlier today, Tony Jackson will be the AT&T representative that will discuss the past billing from DUO. Tony can be reached at: [tj2263@att.com](mailto:tj2263@att.com) or (214) 464-5209.

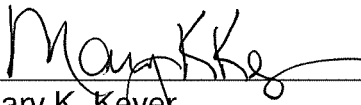
Have a good evening!  
Jennifer

This e-mail and any files transmitted with it are the property of AT&T, Inc. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please notify the sender at 214-858-0720 and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

CERTIFICATE OF SERVICE – PSC 2012-00529

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof via U.S. Mail, this 18th day of January 2013.

John E. Selent  
Edward T. Depp  
Jerrad T. Howard  
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