

YUNKER & PARK plc

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October 16, 2012

Mr. Jeff Derouen  
Executive Director  
PUBLIC SERVICE COMMISSION  
P.O. Box 615  
Frankfort, KY 40602-0615

**RECEIVED**

OCT 19 2012

**PUBLIC SERVICE  
COMMISSION**

Re: PSC Case Nos. 2012-00392

Dear Mr. Derouen:

Enclosed please find an original and ten copies of Budget PrePay Inc.'s Reply to Counterclaim for filing on behalf of Budget PrePay, in the above-referenced proceeding. Also enclosed is an extra copy of the Reply to be file-stamped and returned in the enclosed self-addressed stamped envelope. Please let me know if you have any questions.

Sincerely,



Doris J. Elliott  
Paralegal

Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

OCT 18 2012

PUBLIC SERVICE  
COMMISSION

BUDGET PREPAY, INC.

vs.

Case No. 2012-00392

BELLSOUTH TELECOMMUNICATIONS, LLC  
d/b/a AT&T KENTUCKY

**REPLY TO COUNTERCLAIM**

Now Comes Budget PrePay, Inc. ("Budget"), through its counsel of record, and hereby replies to the Counterclaim of BellSouth Telecommunications, LLC d/b/a AT&T Kentucky ("AT&T"). Budget states as follows:

**FIRST DEFENSE**

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

**SECOND DEFENSE**

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

1. Upon information and belief, Budget admits the allegations set forth in Paragraph 1 of the Counterclaim.
2. Budget admits the allegations set forth in Paragraph 2 of the Counterclaim.
3. Budget admits the allegations set forth in Paragraph 3 of the Counterclaim.

4. Budget denies the allegations set forth in Paragraph 4 of the Counterclaim, except to admit that AT&T has provided some but not all of the services that Budget has ordered.

5. Budget denies the allegations set forth in Paragraph 5 of the Counterclaim, except to admit that AT&T has billed Budget monthly for some services ordered and that AT&T has provided some of the services that Budget has ordered.

6. Budget denies the allegations set forth in Paragraph 6 of the Counterclaim, except to admit that Budget has not paid amounts that were improperly billed by AT&T. Further responding, Budget states that it has submitted to AT&T notices of billing disputes and claims for credit, and that it is withholding payment of disputed amounts pursuant to Section 2 of Attachment 7 of the Interconnection Agreement between AT&T and Level 3 Communications, LLC, dated June 23, 2004, the terms of which Agreement and all amendments thereto AT&T and Budget adopted in their Interconnection Agreement fully executed on October 16, 2008 (“ICA”).

7. Budget denies the allegations set forth in Paragraph 7 of the Counterclaim, except to admit that Budget has reported a dispute of specific amounts of money actually billed by AT&T and has withheld payment of disputed amounts.

8. Budget denies the characterization of its Complaint in Paragraph 8 of the Counterclaim, and notes that the Complaint is part of the public record in this case and speaks for itself.

9. Budget denies the allegations set forth in Paragraph 9 of the Counterclaim. Further responding, Budget has reported a dispute of specific amounts of money actually billed by AT&T and has withheld payment of disputed amounts pursuant to Section 2 of Attachment 7 of the ICA. The disputed amounts relate to the resale of promotional offerings of AT&T’s local

service that were made available for more than 90 days, thus affecting the rates of AT&T's local service offerings, but that AT&T refused to resell to Budget.

10. Budget denies the allegations set forth in Paragraph 10 of the Counterclaim.

11. Budget denies the allegations set forth in Paragraph 11 of the Counterclaim.

12. Budget denies the allegations set forth in Paragraph 12 of the Counterclaim.

13. Budget denies the allegations set forth in Paragraph 13 of the Counterclaim. Further responding, Budget states that through its allegations in Paragraph 13, AT&T has further violated the ICA.

#### THIRD DEFENSE

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

#### FOURTH DEFENSE

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

#### FIFTH DEFENSE

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

SIXTH DEFENSE

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


SEVENTH DEFENSE

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

WHEREFORE, Budget PrePay, Inc. prays the Commission:

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

Respectfully submitted



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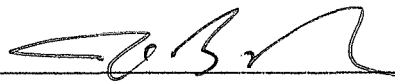
CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 16th day of October, 2012, the original and ten (10) copies of the foregoing were mailed to the Commission for filing, and a copy was sent, via U.S.

Mail, first-class, postage prepaid, to:

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