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APR 26 2013

PUBLIC SERVICE  
COMMISSION

April 26, 2013

**Via Hand Delivery**

Hon. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40601

**Re: *In the Matter of Cumberland Cellular, Inc. d/b/a Duo County Telecom  
v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky***

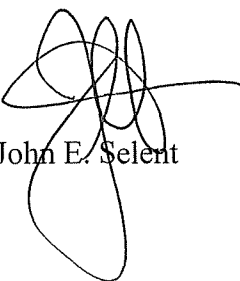
Dear Mr. Derouen:

With this letter I am enclosing one (1) original and eleven (11) copies of the (1) Petition for Confidentiality of Certain Information Included in the Complaint of Cumberland Cellular, Inc. d/b/a Duo County Telecom, (2) Formal Complaint and (3) Redacted Formal Complaint.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosures

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PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CUMBERLAND CELLULAR, INC. D/B/A	)
DUO COUNTY TELECOM	)
	)
COMPLAINANT	)
	)
v.	)
	)
BELLSOUTH TELECOMMUNICATIONS, INC.	)
D/B/A AT&T KENTUCKY	)
	)
DEFENDANT	)

Case No. 2013 - \_\_\_\_\_

FORMAL COMPLAINT

Cumberland Cellular, Inc. d/b/a Duo County Telecom ("Duo County Telecom"), by counsel, for its formal complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") pursuant to KRS 278.260 and 278.030, hereby states as follows.

1. The full name and address of Duo County Telecom is Cumberland Cellular, Inc. d/b/a Duo County Telecom, P.O. Box 80, Jamestown, Kentucky 42629. Duo County Telecom is a Kentucky corporation, and it is authorized by the Commission to provide competitive local exchange service in Kentucky. Duo County Telecom is, and at all times relevant has been, a competitive local exchange carrier ("CLEC") under the terms of the Telecommunications Act of 1996.

2. The full name and address of AT&T Kentucky is BellSouth Telecommunications, Inc. D/B/A/ AT&T Kentucky, 675 West Peachtree Street, NW, Suite 4514, Atlanta, Georgia 30375. AT&T Kentucky's principal place of business in

Kentucky is 601 West Chestnut Street, Room 407, Louisville, Kentucky 40203. AT&T Kentucky is a foreign corporation registered to do business in Kentucky. AT&T Kentucky is an incumbent local exchange carrier ("ILEC") under the terms of the Telecommunications Act of 1996. Within its operating territory, AT&T Kentucky has, at all relevant times, been a dominant provider of telephone exchange service.

3. This Formal Complaint concerns AT&T Kentucky's failure to compensate Duo County Telecom for intrastate access services provided to AT&T Kentucky in connection with the transport and termination of intraLATA toll traffic in accordance with Cumberland Cellular, Inc. D/B/A Duo County Telecom PSC Kentucky Tariff No. 2 (the "Duo County Telecom Tariff"), as filed with the Commission.

#### **APPLICABLE LAW**

4. Pursuant to KRS 278.040, the Public Service Commission of Kentucky (the "Commission") has exclusive jurisdiction "over the regulation of rates and service of utilities" within the Commonwealth.

5. Pursuant to KRS 278.260, the Commission is vested with original jurisdiction over any "complaint[ ] as to [the] rates or service of any utility" and is empowered to investigate and remedy such complaints.

6. Pursuant to KRS 278.030(1), "[e]very utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person." Subsection (3) of KRS 278.030 allows a utility to "employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates."

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REDACTED

**STATEMENT OF FACTS**

7. Duo County Telecom provides and has provided intrastate access services to AT&T Kentucky for the transport and termination of intraLATA toll traffic from AT&T Kentucky (the “Services”).

8. The Services are consistent with those provided to and paid for by other carriers in accordance with the Duo County Telecom Tariff.

9. Section 2 of the Duo County Telecom Tariff sets forth the applicable rates at which Duo County Telecom bills AT&T Kentucky for the Services.

10. Pursuant to that tariff, Duo County Telecom has billed AT&T Kentucky for Service charges in the amounts and on the dates specified below:

<b>Date</b>	<b>Current</b>
1/20/2008	
2/20/2008	
3/20/2008	
4/20/2008	
5/20/2008	
6/20/2008	
7/20/2008	
8/20/2008	
9/20/2008	
10/20/2008	
11/20/2008	
12/20/2008	
1/20/2009	
2/20/2009	
3/20/2009	
4/20/2009	
5/20/2009	
6/20/2009	
7/20/2009	
8/20/2009	
9/20/2009	

REDACTED

10/20/2009		
11/20/2009		
12/20/2009		
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4/20/2012		
5/20/2012		
6/20/2012		
7/20/2012		
8/20/2012		
9/20/2012		
10/20/2012		
11/20/2012		
12/20/2012		

REDACTED

1/20/2013	[REDACTED]
2/20/2013	[REDACTED]
3/20/2013	[REDACTED]
11/20/2012	[REDACTED]
12/20/2012	[REDACTED]
1/20/2013	[REDACTED]
2/20/2013	[REDACTED]
3/20/2013	[REDACTED]

11. Since January 2008, Duo County Telecom has engaged in good faith attempts to collect compensation pursuant to the Duo County Telecom Tariff for the Services provided to AT&T Kentucky. It has done so by sending monthly invoices detailing the Services provided to AT&T Kentucky, attempting to discuss payment for the Services with AT&T Kentucky, and attempting to negotiate a traffic exchange agreement between Duo County Telecom and AT&T Kentucky.

12. In response to Duo County Telecom's demand to be compensated for the Services pursuant to the Duo County Telecom Tariff, by email on May 20, 2008, AT&T Kentucky notified Duo County Telecom that it would need to negotiate an agreement to receive any compensation for the Services and that, in order to negotiate such an agreement, Duo County Telecom was required to submit AT&T Kentucky's negotiation form.

13. Duo County Telecom submitted the applicable negotiation form that same day. Since that time, Duo County Telecom's efforts to negotiate such an agreement with AT&T Kentucky have been unfruitful.

14. AT&T Kentucky has continuously denied that it is required to compensate Duo County Telecom for AT&T Kentucky's use of the Services without any agreement in place, despite AT&T Kentucky's obligation to compensate Duo County Telecom

pursuant to the Duo County Telecom Tariff. Even so, AT&T Kentucky has been unwilling to enter an agreement obligating it to pay for these Services at the tariffed rate, despite the fact that other carriers compensate Duo County Telecom pursuant to the Duo County Telecom Tariff for these same services.

15. As of the date of the filing of this Formal Complaint, AT&T Kentucky owes Duo County Telecom [REDACTED] for Services provided pursuant to the Duo County Telecom Tariff.

16. Given the ongoing dispute with AT&T Kentucky and AT&T Kentucky's continued failure to pay Duo County Telecom for Services provided pursuant to the Duo County Telecom Tariff, Duo County Telecom is compelled to file this complaint.

**WHEREFORE**, Cumberland Cellular, Inc. d/b/a Duo County Telecom respectfully requests that the Commission take the following actions.

1. Order BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky to pay the full amount of its outstanding balance for service provided by Cumberland Cellular, Inc. d/b/a Duo County Telecom;
2. Order BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky to abide by the Duo County Telecom Tariff and remit payment for all tariffed charges assessed by Cumberland Cellular, Inc. d/b/a Duo County Telecom; and

3. Grant Cumberland Cellular, Inc. d/b/a Duo County Telecom any and all other legal and equitable relief to which it is entitled.

Respectfully submitted,



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*Counsel to Duo County Telecom*



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DUO COUNTY TELECOM	)
	)
Complainant	)
	)
	)
v.	)
	)
BELLSOUTH TELECOMMUNICATIONS, INC.	)
D/B/A AT&T KENTUCKY	)
	)
Defendant	)
	)

Case No. 2013 - \_\_\_\_\_

**PETITION FOR CONFIDENTIALITY OF CERTAIN INFORMATION  
INCLUDED IN THE COMPLAINT OF  
CUMBERLAND CELLULAR, INC. D/B/A DUO COUNTY TELECOM**

Cumberland Cellular, Inc. D/B/A Duo County Telecom ("Duo County Telecom"), by counsel, petitions the Public Service Commission of the Commonwealth of Kentucky (the "Commission") pursuant to 807 KAR 5:001 § 13 and KRS 61.878(1)(c)(1) to provide confidential treatment to certain confidential and proprietary business information contained in Duo County Telecom's complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"). In support of this petition for confidentiality, Duo County Telecom states as follows.

**I. APPLICABLE LAW.**

807 KAR 5:001 § 13(2)(a) sets forth the procedure by which certain information filed with the Commission may be treated as confidential. Specifically, 807 KAR 5:001 §13(2)(a) requires that the party seeking confidential treatment of certain information must:

1. Establish specific grounds pursuant to KRS 61.878, upon which the commission should classify that material as confidential;
2. State the time period in which the material should be treated as confidential and the reasons for the time period; and
3. Include[ ] in a separate sealed envelope marked confidential, one (1) copy of the material . . . which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material.

The Kentucky Open Records Act, KRS 61.870, *et seq.*, exempts certain records from the requirement of public inspection. In particular, KRS 61.878(c)(1) provides the following exemption from the requirement of public inspection:

records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

## **II. DUO COUNTY TELECOM'S PETITION FOR CONFIDENTIAL TREATMENT OF FORMAL COMPLAINT AND EXHIBITS.**

The highlighted information contained in Duo County Telecom's complaint against AT&T Kentucky would result in an "unfair commercial advantage to competitors" of Duo County Telecom if disclosed. This information for is not known outside of its company (with the exception of AT&T Kentucky), and within Duo County Telecom, it is known only by those employees who have a legitimate business need to know and act upon the confidential information.

Duo County Telecom, as a participant in the telecommunications market, faces economic competition from other entities in the same market. Duo County Telecom competes in the telecommunications market to sell telecommunication services to customers. Duo County Telecom's ability to successfully compete against other entities in the telecommunications market would be adversely affected by the disclosure of its billing mechanisms and total fees charged any

particular customer. Therefore, Duo County Telecom has “competitors” as is contemplated under the statute and faces actual competition from other market participants.

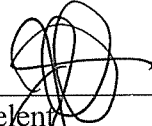
The confidential information for which Duo County Telecom seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law. In particular, information about a company’s detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Ky. Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary . . . .’”); *Marina Mgmt. Servs. v. Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) (“The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with the acquisition of such information about privately owned organizations.”).

The information contained in Duo County Telecom’s complaint against AT&T Kentucky includes the monthly and cumulative fees charged to a particular customer for a particular service in the telecommunication industry. The disclosure of this confidential and proprietary information would provide competitors an unfair competitive advantage, allowing them to determine how much of Duo County’s revenues are derived from the provision of access services and, thereby, giving them the ability to unfairly tailor their competitive efforts against Duo County in light of this confidential information.

Disclosure of this proprietary and confidential information poses a significant risk to Duo County Telecom’s competitive commercial position. Consequently, Duo County Telecom asks that the confidential material be maintained as confidential for a period of five (5) years, after which this information will be of significantly less value to competitors of Duo County Telecom. In the event

that the Commission disagrees that Duo County Telecom is entitled to confidential protection, due process requires that the Commission hold an evidentiary hearing regarding this petition. *Utility Regulatory Comm'n v. Ky. Water Serv. Co.*, 642 S.W.2d 591 (Ky. App. 1982).

Respectfully submitted,



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