



KIPLEY J. McNALLY, PLC
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August 29, 2022

RECEIVED

SEP 06 2022

PUBLIC SERVICE
COMMISSION

Ms. Linda C. Bridwell, PE
Executive Director
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Kipley J. McNally, PLC
Formal Complaint

Dear Ms. Bridwell:

Pursuant to 807 KAR 5:020, the undersigned submits a Formal Complaint for the Commission's consideration, along with two copies plus a service copy.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in blue ink that reads "Kipley J. McNally".

Kipley J. McNally

KJM:jlr
Enclsoure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:)	
)	
Kipley J. McNally, PLC)	
)	
COMPLAINANT)	CASE NO. 2022- <u>00323</u>
VS.)	
)	
Bell South Telecommunications, Inc.)	
d/b/a AT&T Kentucky)	
)	
DEFENDANT)	

FORMAL COMPLAINT

Kipley J. McNally, PLC (“McNally”), by counsel, for its formal complaint against Bell South Telecommunications, Inc. d/b/a AT&T Kentucky (collectively “AT&T”) pursuant to KRS 278.030, 278.040 and 278.280, hereby states as follows:

- 1 The full name and address of McNally is Kipley J. McNally, PLC, 2527 Nelson Miller Parkway, Suite 104, Louisville, Kentucky 40223. McNally is a business customer of AT&T and is a Kentucky professional limited liability company.

- 2 The full name and address of the entity identified as AT&T is as follows:

AT&T is Bell South Telecommunications, Inc. d/b/a AT&T Kentucky, 601 W. Chestnut Street, Suite 408, Louisville, Kentucky 40203. AT&T is an authorized utility to provide telecommunications services in the Commonwealth of Kentucky. AT&T is a foreign corporation.

- 3 The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns AT&T’s false and misleading marketing actions, including intentional efforts to compel transfer to an internet phone service based on false

and misleading statements. In addition, to multiple service issues, there are multiple billing disputes.

APPLICABLE LAW

4. KRS 278.040 vests the Commission with exclusive jurisdiction “over the regulation of rates and service of utilities” within the Commonwealth.

5. KRS 278.260 further vests the Commission with original jurisdiction over any “complaint as to [the] rate or service of any utility” and empowers the Commission to investigate and remedy such complaint.

6. As a utility subject to the jurisdiction of the Commission, AT&T must engage in “just, reasonable, safe, proper, adequate, [and] sufficient practice. KRS 278.280(1)

STATEMENT OF FACTS

7. McNally has been a continuous business customer of AT&T since May of 2005.

8. McNally has received phone service using the copper landline, analog phone system maintained by AT&T.

9. During calendar year 2017, an employee of AT&T called the undersigned promising substantial savings in McNally’s monthly billing if McNally switched to internet-based phone service (“VOIP”).

10. McNally agreed to the proposal contingent upon:
a) phone lines 1,2 and 3 would continue to rollover when busy (Hunt”).
b) that voicemail service would be provided on the same basis as the previous twelve (12) years.

11. At that time, the field technician was unable to make calls rollover and could only make one line work. In addition, voicemail was unavailable.

12. After much discussion with the field technician, the undersigned requested that the old landline service be restored often referred to as "POTTS".

13. Due to the failure to provide the promised phone services (hereinafter "2017 debacle"), AT&T agreed to provide internet service at the rate of \$40.00 per month, which the undersigned understands is a favorable rate.

14. From 2017 to 2022, McNally continued to use the older landline system paying an amount for service as agreed upon.

15. Then on May 20, 2022, McNally received marketing material that stated the contract could be renewed for \$65.00 per line.

16. Due to demands of McNally's business, McNally was unable to renew the contract in accordance with the marketing material until July 7, 2022.

17. In the meantime, McNally received several calls from AT&T employees and contract sales personnel stating that they would renew the contract.

18. On June 30, 2022, Catherine Green, an AT&T representative called and left a voicemail message that AT&T was moving customers on the old landline system to VOIP in my area and that if I did not switch, my phone service would be terminated.

19. Being alarmed over the threat, I promptly returned her call, as requested, multiple time. There was no answer and no opportunity to leave a message. Those return calls were made to (888) 764-1033.

20. Then on July 3, 2022, Michael Williams called leaving a message that he was Ms. Green’s supervisor and requested that I return his call at (888) 732-1041, which the undersigned did. None of the calls were answered.

21. Then on July 25, 2022, Eric Kirby (“Kirby”) called wanting to discuss contract renewal. Of course, he stated that he could get the undersigned a better monthly rate using VOIP. Then the undersigned explained the 2017 debacle, and that I was concerned that the 2017 debacle would be repeated.

22. Kirby made the following hybrid proposal

Description	Monthly Cost
Line 245-6133 remaining analog	\$ 90.00
Line 245-6134 moved to digital and have voicemail with *98 access	24.00
Line 245-1974 dedicated fax line	24.00
Unlimited Long Distance	7.00
Voicemail and Other Services	23.00
Retain existing fiber optic internet	<u>40.00</u>
	<u>\$208.00</u>

Taxes and regulatory fees would be added based on \$208.00/month fee.

Based on the foregoing proposal, Kirby adjusted the outstanding bills dated July 14th, but due August 5th to \$333.94, which was promptly paid. The amount paid was significantly in excess of the total charges for previous months.

23. The installation was scheduled for July 29, 2022. On the day of the installation, the field technician moved lines (502) 245-6134 and (502) 245-1974 to VOIP, but was unable to re-establish the Hunt feature. The field technician tried multiple times to reach Kirby to have the voicemail re-established but was unable to make contact.

24. The following service and rate failures have occurred:

- a) Voicemail does not work. This has caused some problems for clients.

b) Three-way calling no longer works.

c) Multiple unauthorized charges have been billed by AT&T (hereinafter, the “2022 debacle”).

25. There are multiple billing and rate problems as follows:

A. McNally’s bill dated August 14, 2022, was for \$414.56, which includes charges for services not provided.

B. The separate bill for internet due August 27, 2022, was for \$53.00. The additional charge of \$13.00 is for “DNS Security Advance.” By letter dated August 15, 2022, McNally paid \$40.00, and prepared a letter disputing the additional charge for services not wanted or received.

26. The undersigned sent e-mails to Kirby on July 29th, August 2nd, August 5th, and August 9th requesting various services be re-established. No response to any of these e-mails has been received.

27. Again, by letter dated August 15, 2022, the undersigned requested that voicemail be re-established. No response has been received.

28. However, the undersigned has received multiple calls from contracted sales personnel wanting to re-new my contract. Usually, they hang-up on me after I ask multiple questions to determine whether they are a contractor or an ATT employee.

29. On August 25, 2022, another contractor called to sell me managed internet backup for \$15.00 per month. The undersigned told her, that I was not interested.

30. On August 29, 2022, I first learned that an insurance agent direct dialed (502) 245-6134 (the second line), and the phone in the office did not ring and he was unable to leave a message.

MODIFICATION OR EXTENSION OF LAW

31. McNally requests that the Commission extend its jurisdiction over all aspects of Kirby's proposal because the proposal created an inducement to switch some service from analog to digital and in order to provide complete relief for the 2022 Debacle. Utilizing the jurisdictional extension made over non-regulated utilities with contracts with regulated utilities under Simpson County Water District v. City of Franklin, 872 S.W. 2d 460 (Ky. 1994). Since AT&T is partially regulated, the extension of jurisdiction would not be over a non-regulated entity, but over a non-regulated service by a regulated utility.

BILLING DISPUTES

32. AT&T has charged \$15.00 for managed back-up for the internet that was not part of Kirby's proposal. McNally has paid the most recent bill by tendering a check for \$40.00 but disputed the remainder of the bill.


33. The current bill dated August 14, 2022, is overstated and should be \$208.00 plus applicable taxes and fees, less a reasonable amount for the services not provided.

34. Line 502-245-1974 is a dedicated fax only line, but AT&T has been charging McNally for three-way calling, call forwarding, call forwarding does doesn't answer, caller-ID Name and Anonymous Call Blocking for that line. None of these alleged services are available or used but billed for. Please find attached a copy of the current bill and a copy of McNally's check in the amount of \$208.00, in payment of the undisputed charges.

WHEREFORE, McNally respectfully requests that the Commission take the following actions:

- A. Order AT&T to re-establish the analog services utilized before the 2022 Debacle, except for unneeded and unused services for line (502) 245-1974;
- B. Order AT&T to bill McNally at the base rate on the proposed hybrid service at the monthly rate of \$208.00 plus applicable taxes and regulatory fees;
- C. Extend the Commission's jurisdiction to non-regulated aspects of AT&T business in order to provide complete relief for the 2022 Debacle that is still ongoing; and
- D. Grant McNally any and all other legal and equitable relief to which it may be entitled.

Respectfully Submitted:



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