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March 30, 2012

***VIA HAND DELIVERY***
Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Blvd
P.O. Box 615
Frankfort, KY 40602-0615

***Re: In the Matter of Duo County Telephone Cooperative Corporation, Inc. v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky; AT&T Communications of the South Central States, LLC; and BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service.***

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case, please find one original and eleven (11) copies of Duo County Telephone Cooperative Corporation, Inc.'s formal complaint.

Please file-stamp one copy and return it to our delivery person.

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

Sincerely,

Edward T. Depp/KKP
Edward T. Depp

ETD/lb
Enclosures
cc: Tom Preston
Daryl Hammond

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**COMMONWEALTH OF KENTUCKY**
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

| | | |
|---|---|---|
| **Duo County Telephone Cooperative Corporation, Inc.** | ) | |
| **Complainant** | ) | **Case No. 2012-_____** |
| **v.** | ) | |
| **BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky; AT&T Communications of the South Central States, LLC; and BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service** | ) | |
| **Defendants** | ) | |

## FORMAL COMPLAINT

Duo County Telephone Cooperative Corporation, Inc. ("Duo County"), by counsel, for its formal complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), AT&T Communications of the South Central States, LLC ("AT&T Communications"), and BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service ("AT&T Long Distance Service") (collectively, "AT&T"), pursuant to KRS 278.030, 278.040, 278.260, 278.280, 807 KAR 5:001 and KAR 5:006, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, hereby state as follows.

1. The full name and address of Duo County is Duo County Telephone Cooperative Corporation, Inc., P.O. Box 80, 2150 N. Main Street, Jamestown KY 42629. Duo County is a rural incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. Duo County is a Kentucky corporation.

2. The full name and address of the entities identified collectively as AT&T are as follows:

(a) AT&T Kentucky is BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky, 601 W. Chestnut St., Suite 408, Louisville, KY 40203. AT&T Kentucky is an incumbent local exchange carrier authorized to provide telecommunications services in the Commonwealth of Kentucky. AT&T Kentucky is a foreign corporation.

(b) AT&T Communications is AT&T Communications of the South Central States, LLC, 601 W. Chestnut St., Suite 408, Louisville, KY 40203. AT&T Communications of the South Central States is identified on the Commission's website as a provider of long distance services in the Commonwealth of Kentucky. AT&T Communications is a foreign limited liability company.

(c) AT&T Long Distance Service is BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service, 601 W. Chestnut St., Suite 408, Louisville, KY 40203. BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service is identified on the Commission's website as a provider of long distance services in the Commonwealth of Kentucky. AT&T Long Distance Service is a foreign corporation.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns AT&T's unlawful refusal to pay tariffed and approved charges of Duo County. Specifically, AT&T has failed to pay Duo County's tariffed and approved non-traffic sensitive revenue charges ("NTSR").[1]

[1] As a result of the complex and ongoing corporate restructuring within AT&T, it is difficult to be certain which AT&T entity is the appropriately-named defendant. The unpaid charges at issue in this complaint were properly billed to the AT&T entity possessing ACNA "ATX" and CIC "288," and this complaint is directed at the AT&T entity associated with that ACNA and CIC.

## 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] rates or service of any utility" and empowers the Commission to investigate and remedy such complaints.

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

7. Similarly, Kentucky law permits the RLECs to "establish reasonable rules governing the conduct of [their] business[es] and the conditions under which [they] shall be required to render service." KRS 278.030(2). The RLECs may also "employ in the conduct of [their] business[es] suitable and reasonable classifications of [their] service ... [that] take into account the nature of the use ... the quantity used ... the purpose for which used, and any other reasonable consideration." KRS 278.030(3).

8. Pursuant to 807 KAR 5:006(14)(1)(a), (e), (f), and (g) the RLECs "may refuse or terminate service to" AT&T for: (i) "noncompliance with the utility's tariffed rules or commission administrative regulations:" (ii) "noncompliance with state, local or other codes;" (iii) "nonpayment of bills;" and/or (iv) "illegal use or theft of service."

## STATEMENT OF FACTS

9. AT&T is delivering switched access traffic to Duo County, and Duo County is providing service to AT&T by terminating the switched access traffic delivered to it by AT&T.

10. Duo County's switched access tariff provides for the recovery of NTSR charges in connection with switched access services rendered to a carrier (here, AT&T) delivering

switched access traffic for termination by Duo County. Specifically, Duo County's tariff provides:

> 3.9 Non-Traffic Sensitive Revenue Charge
>
> All customers of the Telephone Company's Switched Access Services provided in Section 6, excluding Feature Group A Access Service provided to end users for intraLATA Foreign Exchange (FX) service, will be subject to a Non-Traffic Sensitive Revenue (NTSR) charge.

(*Id.* at PSC KY NO. 2A, Original Page 3-21.)

11. Section 3.9.3 of the tariff further permits Duo County to bill its access customers for the NTSR charge pursuant to one of two methods: (i) a percent distribution method; or (ii) a per minute rate method. *Id.* at Original Page 3-22.

12. Duo County bills AT&T and other carriers on the "per minute rate method," which is further described in Section 3.9.3(B) of the tariff.

13. Pursuant to the tariffed "per minute rate method," bills are rendered monthly, but Duo County is required to "perform a true-up calculation for each customer on an annual basis." *Id.* at Original Page 3-23.

14. Upon completion of Duo County's most recent annual true-up calculation, Duo County invoiced AT&T for the NTSR charges that are owed to Duo County. Those charges exceed $300,000.

15. AT&T has not timely paid the NTSR charges that it owes to Duo County as a result of the annual true-up, and there are no just grounds for its refusal to do so.

16. AT&T has received the benefit of Duo County terminating the switched access traffic delivered to it by AT&T. AT&T should not be allowed to deliver this traffic to Duo

County without paying the tariffed NTSR charges for the services that Duo County provides in terminating this traffic.

17. AT&T should, therefore, be required to pay Duo County's tariffed NTSR charges associated with the switched access traffic AT&T has delivered to Duo County.

**Count I**

**Failure to Pay Tariffed Charges**

18. Duo County restates and incorporates by reference each of the preceding allegations, as if fully set forth herein.

19. The filed-rate doctrine, codified at KRS § 278.160(1)-(2), provides that telephone service provided in this Commonwealth shall be provided in accordance with a telephone utility's filed and approved tariff.

20. Duo County's switched access tariff provides that customers receiving switched access services from Duo County "will be subject to a Non-Traffic Sensitive Revenue (NTSR) charge." (*See supra*) (emphasis added).

21. Because AT&T is receiving switched access services from Duo County, the tariff requires AT&T to pay Duo County's switched access charges, including the NTSR charges.

**WHEREFORE**, Duo County respectfully requests that the Commission take the following actions.

A. Order AT&T to pay Duo County's tariffed NTSR charges associated with the switched access traffic Duo County has terminated for AT&T;

B. In the alternative, declare that Duo County is authorized to – consistent with applicable regulations and the terms of its tariffs – terminate service to AT&T for refusing to pay its tariffed NTSR charges; and

C. Grant Duo County any and all other legal and equitable relief to which it may be entitled.

Respectfully submitted,

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