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January 20, 2010

**VIA OVERNIGHT MAIL**

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

2010-00023

RECEIVED

JAN 21 2010

PUBLIC SERVICE  
COMMISSION

Re: BellSouth Telecommunications, Inc., d/b/a AT&T Southeast d/b/a AT&T  
Kentucky, Complainant v. BLC Management LLC d/b/a Angles  
Communications Solutions, Defendant

Dear Mr. Derouen:

Enclosed for filing in the above-reference case are the original and five (5) copies of AT&T Kentucky's Formal Complaint along with a CD containing the applicable Interconnection Agreement.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Registered Agent for BLC Management LLC d/b/a Angles Communications  
Solutions

772235

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )  
 )  
 BELLSOUTH TELECOMMUNICATIONS, INC. )  
 d/b/a AT&T SOUTHEAST )  
 d/b/a AT&T KENTUCKY )  
 )  
 Complainant )  
 )  
 v. )  
 )  
 BLC MANAGEMENT LLC d/b/a ANGLES )  
 COMMUNICATIONS SOLUTIONS )  
 )  
 Defendant )

RECEIVED  
 JAN 21 2010  
 PUBLIC SERVICE  
 COMMISSION

Case No.: 2010 - 00023

FORMAL COMPLAINT

Pursuant to KRS 278.260(1) and 807 KAR 5:001, Section 12, and 47 U.S.C. § 252, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully requests that the Public Service Commission of Kentucky ("the Commission") convene a docket for the purposes of: resolving billing disputes between BLC Management LLC d/b/a Angles Communications Solutions ("Angles") and AT&T Kentucky; determining the amount that Angles owes AT&T Kentucky<sup>1</sup> under the Parties' Interconnection Agreement, and requiring Angles to pay that amount to AT&T Kentucky.<sup>2</sup>

<sup>1</sup> In September 2009, AT&T Kentucky began applying a new methodology for calculating the resale promotional credits it will provide Angles and other CLECs with regard to the cashback component of certain retail promotional offerings. **AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.**

<sup>2</sup> AT&T Kentucky is filing similar Complaints with the Commission against three other CLECs. Because of the commonality of the issues set forth in Section IV of this Complaint and those set forth in Section IV of the other three Complaints, AT&T Kentucky plans to file a motion to consolidate these four dockets for the purposes of resolving these common issues. AT&T

## I. BACKGROUND AND SUMMARY OF COMPLAINT

Angles owes AT&T Kentucky a past-due and unpaid balance for telecommunications services that AT&T Kentucky provided to Angles for resale under the terms and conditions of the Parties' Interconnection Agreement entered into in 2004. As of November 9, 2009, this past-due and unpaid balance totals, in the aggregate, more than \$350,000 in the Commonwealth of Kentucky.<sup>3</sup> To the extent that Angles has disputed AT&T Kentucky's bills, AT&T Kentucky has denied those disputes as required by its Interconnection Agreement with Angles. Angles, however, has declined to pay AT&T Kentucky the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of Angles' withholding payments to AT&T Kentucky for one or both of the following reasons:<sup>4</sup> (1) Angles erroneously asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offers that AT&T Kentucky makes available for resale;<sup>5</sup> and (2) Angles erroneously asserts that AT&T Kentucky's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

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Kentucky will file that motion in each of these dockets after the Commission assigns them docket numbers.

<sup>3</sup> As of November 9, 2009, Angles' unpaid and past-due balance is over \$5 million across the nine AT&T Southeast states.

<sup>4</sup> A more detailed description of Angles' assertions, and a brief explanation of why they are erroneous, are set forth in Section IV of this Complaint.

<sup>5</sup> For one-time "cashback" promotions, AT&T Kentucky contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-service life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is *not before the Commission in this docket* because AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.

The Interconnection Agreement between AT&T Kentucky and Angles provides that disputes like these are to be resolved in the first instance by this Commission. AT&T Kentucky, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that Angles owes AT&T Kentucky under the Parties' Interconnection Agreement, and require Angles to pay that amount to AT&T Kentucky.

## **II. PARTIES**

1. AT&T Kentucky, a Georgia corporation, is an incumbent local exchange carrier providing telecommunications services in 78 counties in the Commonwealth of Kentucky. AT&T Kentucky's address in Kentucky is 601 W. Chestnut Street, Louisville, Kentucky, 40203.

2. The full name and address of the authorized representative for AT&T Kentucky in this proceeding is:

Mary K. Keyer  
601 Chestnut Street, Suite 407  
Louisville, KY 40203  
(502) 582-8219  
mary.keyer@att.com

3. Angles is organized under the laws of the State of Tennessee and is a competitive local exchange carrier ("CLEC") authorized to provide resold local exchange telecommunications services within the Commonwealth of Kentucky.

## **III. ANGLES' BREACH OF ITS INTERCONNECTION AGREEMENT**

4. In 2004, AT&T Kentucky and Angles entered into a negotiated interconnection agreement ("Interconnection Agreement") in which AT&T Kentucky agreed, among other things, to offer various telecommunications

services for resale to Angles at specified wholesale rates and subject to specified terms and conditions. A copy of the Interconnection Agreement is on a CD attached hereto as **Exhibit A**.<sup>6</sup>

5. As of November 9, 2009, Angles owes a past due and unpaid balance to AT&T Kentucky in the amount of \$361,802.04 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Kentucky billed Angles for telecommunications services provided to Angles in Kentucky pursuant to the Parties' Interconnection Agreement less: payments made by Angles, and credits provided by AT&T Kentucky to Angles in connection with valid disputes and approved promotional credit requests submitted by Angles as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by Angles, but not yet reviewed by AT&T Kentucky.

7. To the extent that the Past Due Balance includes any charges on AT&T Kentucky's invoices that Angles has disputed, AT&T Kentucky has denied those disputes as required by the Interconnection Agreement with Angles.

8. Angles has breached the Interconnection Agreement by refusing to pay amounts that are due and owing to AT&T Kentucky under that agreement.

#### **IV. ANGLES' ERRONEOUS REASONS FOR NONPAYMENT**

9. As noted above, a substantial amount of Angles' unpaid balance is the result of Angles' withholding payments to AT&T Kentucky for one or both of the following reasons.

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<sup>6</sup> AT&T Kentucky will make copies of this CD available to the Parties upon request.

**A. Application of the resale discount to the “cashback” component of promotional offerings.**

10. Angles asserts that AT&T Kentucky cannot apply the resale discount approved by this Commission to the cashback component of various promotional offerings that AT&T Kentucky makes available for resale. Assume, for example, AT&T Kentucky’s retail promotional offering provides a coupon that can be redeemed for a \$50 check to a retail residential customer who purchases Telecommunications Service A under certain conditions. When Angles resells that promotional offering to qualifying end users and submits to AT&T Kentucky an appropriate promotional credit request, AT&T Kentucky provides Angles a bill credit of \$41.60 (\$50 less the 16.79% resale discount established by this Commission). Angles, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

11. There is no basis in logic or law for Angles’ assertions. If AT&T Kentucky were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), Angles would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, Angles would receive a \$41.60 reduction – the \$50 face value of the reduction less the 16.79% avoided cost discount established by the Commission.<sup>7</sup> Angles clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

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<sup>7</sup> When the retail price of the service was \$200, Angles paid AT&T Kentucky \$166.42 (\$200 less the 16.79% resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, Angles pays AT&T Kentucky \$124.82 (\$150 less the 16.79% resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$41.60 reduction in the price Angles pays for the service (from \$166.42 to \$124.82), which is the \$50 “face value” of the reduction less the 16.79% resale discount.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under § 251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, this Commission determined a state-wide percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, AT&T Kentucky, is to sell its services to CLECs for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

**B. Customer Referral Marketing Promotions.**

13. Angles asserts that AT&T Kentucky’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T Kentucky gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. Angles contends that it is entitled to resell this customer referral marketing promotion and that it, therefore, is entitled to a \$50 bill credit when one of Angles’ end users refers others who purchase services from Angles.

14. Subject to certain conditions and limitations, AT&T Kentucky is required “to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. § 251(c)(4)(A) (emphasis added). Customer referral marketing

promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Kentucky. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Kentucky's services to others who then purchase services from AT&T Kentucky. Angles obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Kentucky finance any such marketing programs that Angles may employ.

15. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. § 252(d)(3). Accordingly, the resale discount rate that this Commission established (and that is incorporated in the Interconnection Agreement) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go further and also require AT&T Kentucky to give Angles additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Kentucky to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.



## V. JURISDICTION

17. The Commission has jurisdiction to interpret and enforce the terms of the Interconnection Agreement at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,<sup>8</sup> arbitrate interconnection agreements,<sup>9</sup> and approve or reject interconnection agreements.<sup>10</sup> In addition, the courts have held that § 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.<sup>11</sup>

## VI. REQUEST FOR RELIEF

WHEREFORE, AT&T Kentucky respectfully requests that the Commission:

- (1) Serve a copy of this Complaint upon Angles and require Angles to answer the Complaint;
- (2) Find that Angles has breached the Interconnection Agreement by wrongfully withholding amounts due and payable to AT&T Kentucky for services provided in accordance with the Parties' Interconnection Agreement;
- (3) Find that AT&T Kentucky has been financially harmed as a direct result of Angles' breach;

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<sup>8</sup> 47 U.S.C. § 252(a)(2)

<sup>9</sup> *Id.* § 252(b)

<sup>10</sup> *Id.* § 252(e)

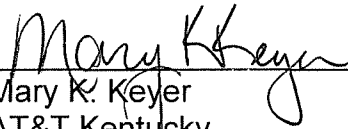
<sup>11</sup> See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements").

(4) Find that Angles is liable to AT&T Kentucky for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require Angles to pay AT&T Kentucky all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Kentucky such additional relief as the Commission may deem just and proper.

Respectfully submitted,

  
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