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May 22, 2008

VIA HAND-DELIVERY

Ms. Stephanie Stumbo
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc.
KPSC 2005-00455

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Motion to Compel.

Thank you for your attention to this matter.

Sincerely,

Mary K. Keyer
General Counsel/Kentucky

Enclosures

cc: Parties of Record

711841

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In Re:

dPi Teleconnect, LLC	)	
Complainant	)	
	)	
v.	)	**Case No. 2005-00455**
	)	
BellSouth Telecommunications, Inc.	)	
Defendant	)	
	)	

AT&T KENTUCKY'S MOTION TO COMPEL

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), submits this Motion to Compel dPi Teleconnect, LLC ("dPi") to respond to AT&T Kentucky's First Data Requests Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 38. For the following reasons, the Kentucky Public Service Commission ("Commission") should compel dPi to respond to AT&T Kentucky's discovery.

I. Factual Background

In 2005, dPi filed this action before the Commission and alleged that AT&T Kentucky failed to make available three particular retail promotions to dPi.[1] To the contrary, AT&T Kentucky makes its retail promotions available to reseller CLECs, such as dPi, by giving them a credit for the value of the promotion, ***if*** the CLEC's end user customer meets the same criteria that an AT&T Kentucky retail customer must meet in order to qualify for the promotion. For example, the primary promotion at issue in this proceeding is the Line Connection Charge Waiver ("LCCW"), which gives an AT&T Kentucky retail customer a credit for the line connection charge if the customer, among

[1] dPi is a resale CLEC that buys services at wholesale from AT&T Kentucky at a legally-mandated discount price and resells these services at a marked up price to end users/customers.

other requirements, purchases at least basic service and two features, such as caller ID or call waiting. If a CLEC end user purchases basic service plus two features (and meets other applicable criteria), AT&T Kentucky will provide the CLEC a credit under the promotion for the line connection charge.

Examples of the features that qualify for this promotion are call return and repeat dialing. An AT&T Kentucky retail customer who purchases two of these services on a subscription basis qualifies for the Line Connection Waiver promotion. These features are also available to customers on a per usage basis. Customers also have the ability to order "blocks" of these features, so that they cannot be activated on a "per usage" basis. The blocks are available to customers at no charge.

dPi places on the line of each of its end users that orders basic service, blocks that prevent the end user from using certain features, such as call return and repeat dialing. dPi routinely does so without the customer requesting the block, or consenting to it, and dPi does not inform the end user of the presence of these blocks. These line usage blocks are provided by AT&T Kentucky to dPi and its customers free of charge. However, dPi claims in this proceeding that it is entitled to a credit under the LCCW promotion when it places these two blocks on a customer's basic service, even though these blocks are not "features" as that term is commonly understood and these services are not "purchased" by the end user (or by dPi).

II. Argument

AT&T Kentucky is aware of the facts set forth in the preceding paragraph, which are central to the resolution of this matter, because dPi admitted to these facts after being compelled to do so by four different state commissions. Specifically, dPi objected

to questions related to these facts during the hearing before the North Carolina Utilities Commission, and dPi's objections were overruled. Subsequently, AT&T propounded discovery that was substantively identical to the Data Requests in this case in comparable proceedings before Public Service Commissions in Florida, Louisiana, and Alabama. In each state, dPi made objections that were substantially the same as those dPi makes in this proceeding. AT&T filed a Motion to Compel before each State Commission and each respective State Commission granted AT&T's motion.[2]

In this proceeding, dPi is raising the same invalid objections yet again. Specifically, dPi objected to 24 of the 41 Data Requests propounded by AT&T Kentucky. In some instances, dPi objected, then provided an answer, notwithstanding the objection. However, in most instances, these answers are non-responsive. In other instances, dPi objected and provided no other response. Accordingly, AT&T Kentucky moves to compel responses to Data Request Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 38. (*See* AT&T Kentucky's First Data Requests and dPi's Response to AT&T Kentucky's First Data Requests, attached hereto as Exhibit "A").

dPi has stated the following objection in response to almost every one of the above-referenced discovery requests:

> OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.
>
> The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether **AT&T** is required to extend promotional pricing for which **AT&T's retail** customers qualify to **dPi** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2)

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[2] In Louisiana, AT&T moved to compel responses to 16 comparable requests and the Commission granted the motion as to 14 of the 16. In Florida and Alabama, AT&T's Motion to Compel was granted in its entirety.

> AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into **dPi's** relations with **third parties** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.
>
> Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Specifically, in response to every Data Request except Nos. 21 and 22, dPi made this identical objection. dPi's objections to Request Nos. 21 and 22 contained identical language, plus an additional objection on the claimed basis of vagueness.

On May 2, 2008, the undersigned counsel for AT&T Kentucky transmitted a letter to counsel for dPi to request dPi to reconsider its objections to this discovery. A copy of this letter is attached hereto as Exhibit "B". dPi did not respond to this letter.

The central issue in this case is whether dPi end users meet the *same* promotional criteria that AT&T Kentucky's end users must meet in order to receive the benefits of the promotion. The parties' Interconnection Agreement ("Agreement") states: "Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly." (Interconnection Agreement, p. 40 of 1735, fn. 2) (A copy of the page of the Interconnection Agreement that contains this language is attached hereto as Exhibit "C".) Under the clear language in the Agreement, dPi is entitled to promotional credits only for dPi end users that meet the *same* promotional criteria that AT&T Kentucky end users must meet in order to receive the benefits of a promotion.

Judged by the above-stated standard, dPi fails to qualify for this promotion for at least three reasons: First, blocks are not features. If dPi has submitted only blocks, rather than features, it is not entitled to the promotional discount. Second, the promotion requires the purchase of features. Because blocks are available at no charge, there is no purchase. Third, and perhaps most importantly, the contractual requirement in the Interconnection Agreement is to treat the dPi customer the same as an AT&T Kentucky customer, i.e., if the order by a dPi customer would qualify him for a discount if he were an AT&T Kentucky retail customer, then the dPi customer must be given the discount. In this case, AT&T Kentucky believes (based on evidence submitted, over dPi's objections, in proceedings before other state Commissions) that there was no actual order of features or blocks by dPi end users. Instead, dPi simply added blocks to customer lines to attempt to generate discounts, which dPi kept (when it was successful), rather than passing the discounts on to its customers. The subject discovery is designed to address these facts.

Specifically, AT&T Kentucky's First Data Requests Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26 and 38 are designed to elicit information on: (1) whether dPi's customers elect to have blocks placed on their lines; (2) how dPi places blocks on its customers' lines; (3) how much dPi charges its customers for placing the blocks on their lines; (4) whether dPi's customers are similarly situated to AT&T Kentucky's customers. These areas of inquiry are directly relevant to the issue of whether dPi end users meet the *same* promotion criteria that AT&T Kentucky end users must meet in order to receive the benefits of the promotions.

For example, dPi admitted in response to Request Nos. 3 and 4 that dPi's "normal practice" is to place call blocks on the lines of its customers who order only basic local service. Request No. 6 inquires specifically whether on the orders at issue in this case, the blocks were placed at the customers' request. Request No. 7 addresses whether dPi informs its customers that dPi has placed blocks on their lines. Request No. 8 follows up on No. 7 and inquires how (if at all) dPi informs customers that it has placed blocks on their lines. Request No. 9 merely requests copies of documents identified in response to Request No. 8. dPi responded to Request Nos. 6 and 7, after objecting, by referring to its answers to Request Nos. 3, 4 and 5. No other response is provided. However, dPi's answers to these Requests do not address the questions posed in Request No. 6 (whether any dPi customers requested the call blocks dPi placed in this case) and 7 (whether dPi informs customers that it is placing blocks). dPi objected and made no further response to Request Nos. 8 and 9.

Request No. 16 goes to the question of whether the dPi customer is truly similarly situated to an AT&T Kentucky end user, and inquires whether dPi passes on to its customers any promotional discounts it obtains. Request No. 17 merely follows up on No. 16 by asking, if dPi claims to pass promotional discounts on to its end users, how it does so. Request No. 18 asks the more specific question of whether dPi passes promotional discounts received pursuant to the LCCW promotion on to its customers, and Request No. 19 inquires specifically as to whether dPi claims to do so in Kentucky. dPi objected to these four requests and provided no answers.

In response to Request No. 21, which inquires whether any of the waiver claims at issue are based on orders of features, dPi makes its standard objection then claims

the question is confusing and goes into a statement of how it considers features to be the same as blocks. This statement, however, merely demonstrates that dPi is perfectly aware of the distinction that AT&T Kentucky is making between features that may qualify for the promotion and blocks (which AT&T Kentucky contends do not qualify). The fact that dPi has a different theory of the case does not entitle it to refuse to answer the question, which dPi obviously understands. dPi's response to Request No. 22, which asks if the disputed credit requests are based on call blocks ordered by the end user, is to, again, generally object, then to make the same claim of vagueness described above. This objection is invalid for the same reasons as described above regarding Request No. 21.

Request No. 23 inquires whether dPi contends that an end user that orders local service is also necessarily ordering call blocks. dPi objected and provided no response. Request No. 24 inquires as to whether dPi contends that a customer that orders basic service knows that blocks will be added to his line. Request No. 25 inquires whether the customer takes any affirmative action to order call blocks (apart from ordering basic local service). dPi objected to each request, then referred to its previous answers to Request Nos. 3, 4 and 5. dPi's answers to these earlier Requests, however, are non-responsive to the questions of what dPi contends its customers know, and whether dPi contends that its customers take any affirmative action to "order" these blocks. Request No. 26 is a follow up to Request No. 25, which inquires whether dPi has records to show which, if any, blocks are ordered by dPi customers, as opposed to placed by dPi without a customer order. dPi objected and did not respond.

The language of the LCCW promotion specifically requires the purchase of basic local service and two features. dPi claims that blocks are features. Thus, Request No. 38 inquires whether dPi charges its customers for call blocking. Again, the language of the Interconnection Agreement requires an order by the dPi customer. Further, the language of the LCCW promotion requires a *purchase* of features. The purpose of this Request is to determine whether the customer pays for the blocks, i.e., whether the customer makes a purchase.

The frivolousness of dPi's objections is illustrated by two facts. First, dPi claims that answering would be burdensome, even though it is obvious that the subject discovery can mostly be answered with a "yes" or a "no" and a brief explanation. Second, and more importantly, dPi continues to make these objections in every case in every State despite the uniform rejection of these objections by every commission that has ruled on this issue.

dPi is fully aware that its already tenuous interpretation of the Interconnection Agreement and of the promotion language filed with this Commission will be weakened further if the facts of dPi's practices come to light in this proceeding. dPi is, in essence, attempting to play "keep away" with the facts by refusing to answer the discovery at issue. By objecting to the aforementioned discovery, dPi, attempts to keep this Commission from learning of the facts that the North Carolina Utilities Commission ("NCUC") found relevant, and which were referenced in its Order Dismissing dPi's Complaint. *See* NCUC Order Dismissing Complaint, Docket No. P-55, Sub 1577, issued June 7, 2006, p. 7.

In Florida, AT&T Florida propounded discovery that addresses exactly the same subject matter as that which AT&T Kentucky propounded in this case. As here, dPi repeatedly made the same form objection in Florida. On September 27, 2007, the Florida Public Service Commission issued its *PreHearing Order* (Order No. PSC-07-0787-PHO-TP), which granted AT&T's Motion to Compel dPi to respond to this same discovery. This Order expressly stated the following:

> [T]he information AT&T seeks is relevant to the subject matter of the issues in this proceeding. The information sought appears reasonably calculated to lead to the discovery of admissible evidence. Specifically, the discovery requests at issue appear to seek information that can be used to argue whether the promotion was applied equally by dPi and AT&T.[3]

Subsequently, dPi made these same objections before the Louisiana Public Service Commission. The Louisiana Commission rejected dPi's position and granted AT&T's motion to compel as to 14 of the 16 comparable discovery requests encompassed by AT&T's motion.[4]

Finally, dPi made the same objections to AT&T's discovery before the Alabama Public Service Commission, AT&T moved to Compel, and a hearing was held April 16, 2008. Although an order has not been issued, the presiding Administrative Law Judge announced at the conclusion of the hearing that he intended to grant AT&T's motion in its entirety.

At this juncture, four state commissions (out of four) have rejected dPi's position that the information AT&T has requested is irrelevant. There is no reasonable basis for dPi to continue to maintain these objections.

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[3] Prehearing Order, p. 11.

[4] *Ruling on AT&T's Motion to Compel*, entered February 15, 2008, Louisiana Docket U-29172.

Again, on May 2, 2008, the undersigned counsel for AT&T Kentucky sent a letter to counsel for dPi (attached hereto as Exhibit "B") requesting that dPi reconsider its objections, especially in light of the decisions by each of the four above-described State Commissions. This letter further informed counsel for dPi that this Motion would be filed if dPi declined to reconsider its responses. dPi never responded to this correspondence.

dPi should be compelled to respond to AT&T Kentucky's First Data Requests Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 38. This discovery is relevant, is reasonably calculated to lead to the discovery of admissible evidence and is not burdensome or harassing.

III. Conclusion

AT&T Kentucky is in need of the information requested in the above-referenced discovery to properly prepare its case for hearing and respectfully requests that the Commission grant its Motion to Compel

WHEREFORE, for the foregoing reasons, AT&T Kentucky respectfully requests that the Commission grant its Motion to Compel.

Respectfully submitted this 22nd day of May 2008.

Respectfully submitted,

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COUNSEL FOR BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T KENTUCKY

711549

CERTIFICATE OF SERVICE – 2005-00455

It is hereby certified that a true and correct copy of the foregoing was served on the following individuals by mailing a copy thereof, this 22nd day of May, 2008.

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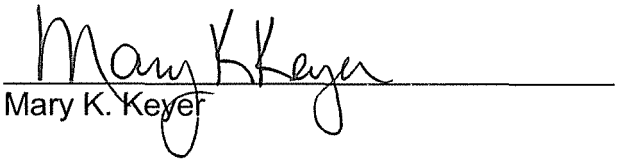

Mary K. Keyer

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DPI TELECONNECT, LLC v. BELLSOUTH TELECOMMUNICATIONS, INC.	)))	Case No. 2005-00455

dPi TELECONNECT, LLC'S RESPONSE TO AT&T KENTUCKY'S FIRST DATA REQUESTS

Please find attached dPi Teleconnect, LLC's Response to AT&T Kentucky's First Data Requests.

Respectfully Submitted,

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Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing document has been filed with the Kentucky Public Service Commission and served upon Defendant BellSouth through its below-listed attorneys on this 4th day of March 2008.

Douglas F. Brent

Attorneys for Defendant

J. Philip Carver, Sr. Attorney
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Via email: pc0755@att.com and via first-class mail

Mary K. Keyer (hand delivery)
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Room 407
Louisville, KY 40203
Via email: mary.keyer@att.com and via first-class mail

AT&T KENTUCKY'S FIRST DATA REQUESTS

1. **What rate(s) does dPi charge its residential end users in Kentucky for basic local service?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T***'s ***retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi refers BellSouth to its tariffs duly filed with the Commission.

Responsible Witness: Brian Bollinger

2. **Describe the processes that dPi, Lost Key, or any third party acting on behalf of dPi utilizes to ensure that its requests for promotional credit comply with the requirements of the respective promotion, including, without limitation, whether dPi has any role in this process and, if so, what that role is, and whether this process is performed entirely by Lost Key.**

RESPONSE:

Lost Key Telecom, on behalf of dPi, used an automated system for evaluating data for all credit requests it submitted to BellSouth. The evaluation process compares each service request to the promotions. The request is reviewed to see if it was made at a time a promotional credit was available, and if so, it is reviewed to determine if it meets the other qualifying criteria; e.g., for the LCCW

promotion, whether it includes at least two Touchstar features, and whether it was a win-over account or a new service.

The results of the automated system are visually inspected each time to see if, on the whole, they trend as they have in the past and there are no gross discrepancies. Should such a discrepancy manifest itself, the data (orders) would be sampled and inspected/verified manually to check for potential errors. If there were any errors found, Lost Key Telecom examined the programming code and ran through orders one at a time to determine the source of the error. Once errors were found and corrected, the credits were re-run before submission to AT&T.

dPi does have a role in this process, including sending data to Lost Key and helping identify which promotions are to be claimed.

Responsible Witness: Steve Watson

3. **When a dPi end user orders basic local service, does dPi have a routine practice of placing on the end user's line blocks on call return, repeat dialing and/or call tracing (hereinafter "call blocks")?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties -- is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers -- have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi's service offerings do not directly mirror AT&T's. dPi's basic package includes those TouchStar Blocking Features. Thus, dPi's normal procedure is to place the necessary

universal service order codes that limit a customer from experiencing usage charges such as call return, repeat dialing and/or call tracing on such orders – unless the end users chooses a level of service that would entitle him or her to one or another of those features that would otherwise be blocked.

Responsible Witness: Brian Bollinger

4. **When a dPi customer orders basic local service, does dPi place blocks on call return, repeat dialing and/or call tracing in every case? In some cases?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to this objection and without waiving it, please see above. Generally the blocks are placed on the order in every case. It is dPi's normal procedure to place the necessary universal service order codes that limit a customer from experiencing usage charges such as call return, repeat dialing and/or call tracing on the order unless the end users chooses a level of service that would entitle him or her to one or another of those features.

Responsible Witness: Brian Bollinger

5. **If you answered Data Request No. 4 by stating that dPi places blocks on end users' lines in some cases or that dPi generally places blocks on the lines of end users who order basic local service, identify every circumstance under which dPi does not place blocks on the lines of its end users who order basic local service.**

RESPONSE:

Please see above. dPi does not place blocks on the lines of its end users only when the end user specifically requests a different level of service.

Responsible Witness: Brian Bollinger

6. **Of the Line Connection Charge Waiver ("LCCW") promotional requests at issue in this proceeding, did dPi submit any requests that included call blocking placed in response to an affirmative request by a dPi end user for the placement of these blocks? If so, how many credit requests were based on dPi end user lines/accounts that had block(s) which were placed in response to an affirmative request by the dPi end user for the block(s)?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to this objection and without waiving it, please see the responses to Interrogatories 3, 4, and 5, above.

Responsible Witness: Brian Bollinger

7. **When dPi places call blocks on an end user's line, does it specifically and expressly inform the end user that is doing so? If so, does dPi do so at the time the end user initially orders service? At any time?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to this objection, please see the responses to Interrogatories 3, 4, and 5, above.

Responsible Witness: Brian Bollinger

8. **If you answered Data Request No. 7 affirmatively, please describe every communication from dPi to its end users that specifically informs the end user of dPi's practices of placing blocks on end users' lines, including, but not limited to the following: print advertisements, advertisements in other media, information on dPi's website (or any other website through which dPi's service can be ordered), scripts utilized by representatives of dPi who receive customer service orders.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing

for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether or how dPi advertises or communicates with its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

9. **Please provide copies of all materials identified in response to Data Request No. 8.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

10. **Of the requests for credit under the LCCW promotion that dPi submitted to AT&T in Kentucky, and which AT&T denied, did any have added to the end users' service, anything other than call blocking (e.g., call return, call tracing)?**

RESPONSE:

Yes.

Responsible Witness: Brian Bollinger

11. **If you answered Data Request No. 10 in the affirmative, were these features added at the end users' request in any instances? Were these features added at the end users' request in all instances?**

RESPONSE:

They were added at the end users' request in all instances.

Responsible Witness: Brian Bollinger

12. **If you responded to Data Request No. 11 by stating that these features were added at customers' requests in some, but not all instances, then in how many instances did the end user request these features? In how many instances did dPi add these features without a request to do so from the end user?**

RESPONSE:

Not applicable.

Responsible Witness: Brian Bollinger

13. **Does dPi offer its users the ability to subscribe to call return? If yes, at what rate?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; .

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi's Kentucky Tariff No. 1 permits subscription to call return.

Responsible Witness: Brian Bollinger

14. **Does dPi offer its end users the ability to subscribe to call tracing? If yes, at what rate?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence. See above.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi's tariffs do not include call tracing.

Responsible Witness: Brian Bollinger

15. **Does dPi offer its end users the ability to subscribe to repeat dialing? If yes, at what rate?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T***'s ***retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi's tariffs do not include repeat dialing.

Responsible Witness: Brian Bollinger

16. **In general, when dPi receives a promotional discount on wholesale services purchased from AT&T, does it pass this discount on to its end users?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T***'s ***retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the

questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

17. **If you answered Data Request No. 16 in the affirmative, explain the process by which dPi passes these promotional discounts on to its end users.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

18. **If a dPi customer qualifies for the LCCW promotion, and dPi receives a promotional discount, does dPi pass any portion of the discount on to its end user? If you answered "yes," what is the amount passed on to the dPi end user and how is the discount passed on to the end user?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

19. **Has dPi submitted any credit requests to AT&T Kentucky for promotional discounts pursuant to the LCCW promotion that AT&T has sustained (i.e., that AT&T has paid to dPi)?**

RESPONSE:

Yes.

If so, did dPi pass the promotional discount on to its end users? If so, please provide all documents that demonstrate that dPi passed the promotional discount on to its end users.

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

20. **Has dPi submitted requests for promotional credit under the LCCW promotion in which the customer's line has only one block, and no other additional blocks or features?**

RESPONSE:

No; dPi places at least two Touchstar features on each order submitted for LCCW credit. If such a thing has ever happened, it would have been an idiosyncratic "glitch."

Responsible Witness: Brian Bollinger

21. **Does dPi contend that every LCCW promotional credit request that it submitted to AT&T Kentucky was based on an order of basic local service and two or more features of any sort, which were ordered/added by the end user? If so, identify every action by the end user that constituted the ordering of call blocks?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T***'s ***retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

dPi also objects on the grounds that the question is vague and confusing, considered in context with Data Request 22. The emphasis of the question indicates that BellSouth tries to distinguish between a feature and a call block. To the extent that dPi can answer and without waiving its objection, dPi simply contends that it complied with the promotional language given for LCCW by BellSouth. The call blocks are Touchstar features, and thus no real distinction can be drawn between the two questions. Moreover, these TouchStar Blocking

Features are always included in the basic service calling package that dPi offers, and thus when the customer selects the basic calling package, the TouchStar Blocking Features are included.

Responsible Witness: Brian Bollinger

22. **Does dPi contend that every disputed LCCW promotional credit request that it submitted to AT&T Kentucky was based on an order of local service and two or more call blocks, which were ordered/added by the end user? If so, identify every action by the end user that constituted the ordering of call blocks?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

dPi further objects on the grounds that the question is vague and confusing, considered in context with Data Request 21. The emphasis of the question indicates that BellSouth tries to distinguish between a feature and a call block. To the extent that dPi can answer and without waiving its objection, dPi simply contends that it complied with the promotional language given for LCCW, as written in the tariff by BellSouth. The call blocks are Touchstar features, and thus no real distinction can be drawn between the two questions. Moreover, these TouchStar Blocking Features are always included in the basic service calling package that dPi offers, and thus when the customer selects the basic calling package, the TouchStar Blocking Features are included.

Subject to this objection and without waiving it, see responses to Interrogatories 3, 4, and 5, above.

Responsible Witness: Brian Bollinger

23. **Does dPi contend that when an end user orders basic local service, the end user is also necessarily ordering call blocking?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi's service offerings do not directly mirror AT&T's. dPi's basic package includes those TouchStar Blocking Features. Thus, dPi's normal procedure is to place the necessary universal service order codes that limit a customer from experiencing usage charges such as call return, repeat dialing and/or call tracing on such orders – unless the end users chooses a level of service that would entitle him or her to one or another of those features that would otherwise be blocked.

Responsible Witness: Brian Bollinger

24. **Do you contend that every end user that "orders" call blocking by ordering basic local service is actually aware of the existence of call blocks and that call blocks will be placed by dPi on his/her line(s)? Please fully explain the basis of your answer.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to this objection and without waiving it, see responses to Interrogatories 3, 4, and 5, above.

Responsible Witness: Brian Bollinger

25. **Identify every affirmative action in the ordering process by which the dPi end user specifically orders call blocking, i.e., apart from ordering basic local service.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the

promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to this objection and without waiving it, please see responses to Interrogatories 3, 4, and 5 above.

Responsible Witness: Brian Bollinger

26. **Does dPi have any records, documents, or files, including electronically stored information, that identifies blocks and/or features that are ordered by dPi's end users, as opposed to blocks or features added by dPi without a request from the end user? If so, please produce all such documents.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

27. **Does dPi own any telecommunications facilities in the Commonwealth of Kentucky? If so, please identify all such facilities.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The only issues in this case are the promotions and services BellSouth offers to its end users at retail and CLECs at wholesale, and the amount BellSouth charges its retail end users and CLECs for said offerings. dPi's equipment cannot be relevant to any issue in this case.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi is a reseller.

Responsible Witness: Brian Bollinger

28. **Does dPi own any telecommunications facilities anywhere? If "yes," identify all such facilities.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The only issues in this case are the promotions and services BellSouth offers to its end users at retail and CLECs at wholesale, and the amount BellSouth charges its retail end users and CLECs for said offerings. dPi's equipment cannot be relevant to any issue in this case.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi is a reseller.

Responsible Witness: Brian Bollinger

29. **Does dPi serve any customers in the Commonwealth of Kentucky other than residential customers?**

RESPONSE:

dPi has only residential customers in Kentucky.

Responsible Witness: Brian Bollinger

30. **In the Commonwealth of Kentucky, does dPi provide only pre-paid telecommunications services? Please explain.**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** – e.g., whether dPi passes on all or some of the promotional savings to its customers – have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Subject to the objection above and without waiving it, dPi provides only prepaid service in Kentucky.

Responsible Witness: Brian Bollinger

31. **Does dPi resell AT&T services pursuant to the Resale provisions of the Interconnection Agreement between the parties?**

RESPONSE:

Yes.

Responsible Witness: Brian Bollinger

32. **Does dPi place call return blocking on the line of every end user that does not subscribe to call return?**

RESPONSE:

dPi places such blocking on the account of every customer who orders dPi's basic service package, because the package includes such blocking.

Responsible Witness: Brian Bollinger

33. **Does dPi place repeat dialing blocking on the line of every end user that does not subscribe to repeat dialing?**

RESPONSE:

dPi places such blocking on the account of every customer who orders dPi's basic service package, because the package includes such blocking.

Responsible Witness: Brian Bollinger

34. **Does dPi place call tracing blocking on the line of every end user that does not subscribe to call tracing?**

RESPONSE:

dPi places such blocking on the account of every customer who orders dPi's basic service package, because the package includes such blocking.

Responsible Witness: Brian Bollinger

35. **When purchasing services for resale, does dPi pay AT&T <u>any</u> amount for call blocking on the lines of its end user? If so, state the amount that dPi contends it pays to AT&T for each call block?**

RESPONSE:

Yes. The amount cannot be itemized because the basic service plus the blocks are billed together as one, for which dPi pays the contract price.

Responsible Witness: Brian Bollinger

36. **When dPi obtains basic local service from AT&T for resale, does it pay for this service? How much?**

RESPONSE:

Yes. The contract amount.

Responsible Witness: Brian Bollinger

37. **When dPi orders from AT&T Kentucky basic local service plus call blocks, does it pay AT&T any <u>additional</u> amount for the call blocks, i.e., in addition to what it pays for basic local service? If so, what is the additional amount?**

RESPONSE:

dPi pays a single price for the basic local service and the blocks combined.

Responsible Witness: Brian Bollinger

38. **Does dPi charge its end users for call blocking?**

RESPONSE:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence.

The information sought – information related to dPi's interactions with third parties – is utterly irrelevant and inadmissible in this case. The ONLY question before this tribunal is whether is ***AT&T*** is required to extend promotional pricing for which ***AT&T's retail*** customers qualify to ***dPi*** as a wholesaler. Thus, the sole areas of appropriate inquiry in this case are: (1) the meaning and construction of the LCCW promotion at issue; and (2) AT&T's past practices in making the promotion pricing available to its retail and other wholesale customers. Inquiries into ***dPi's*** relations with ***third parties*** have absolutely no bearing on the questions this tribunal must answer and are nothing more than a sideshow and a diversion.

Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence. Here, because it is utterly irrelevant, the probative value of the information requested is zero, and thus the burden of producing the material obviously exceeds the zero probative value of the information requested.

Responsible Witness: Brian Bollinger

39. **Please produce any and all documents which dPi reviewed, relied upon, which support, evidence, pertain, or are otherwise related to dPi's responses to these data requests.**

RESPONSE:

dPi relied on its discovery responses to BellSouth in Florida and Louisiana, which have been produced to BellSouth already.

Responsible Witness: Brian Bollinger

40. **Please produce a copy of the contract between dPi and Lost Key by which Lost Key became dPi's agent for the purpose of submitting requests for promotional credits.**

RESPONSE:

This has been previously produced pursuant to a confidentiality agreement.

Responsible Witness: Brian Bollinger

41. **Please produce all documents identified in response to any of these Data Requests.**

RESPONSE:

To the extent such data request is answered and unobjected to, these documents are produced, with the exception of dPi tariffs filed with the Commission.

Responsible Witness: Brian Bollinger

at&t

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May 2, 2008

VIA U.S. MAIL AND ELECTRONIC MAIL

Christopher Malish
Foster Malish Blair & Cowan LLP
1403 West Sixth Street
Austin, TX 78703

Re: Case No. 2005-00455 (Before the Kentucky Public Service Commission); In Re: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.

Dear Mr. Malish:

I am writing this letter to request that you reconsider the objections that dPi filed in this proceeding on March 4, 2008 in response to AT&T's discovery. If you do not do so by Friday, May 8, 2008, then AT&T will file a Motion to Compel. AT&T propounded 41 Data Requests to dPi, and dPi objected to 24. In some instances, dPi has objected and answered, but the answers are (with few exceptions) non-responsive. Many refer to other non-responsive answers in the same discovery responses.

Almost every one of these requests goes to the issue of what (if anything) dPi's customers ordered. This information is directly related to the question of whether dPi's customers qualify for credit under the line connection charge waiver promotion. Further, you have raised these same objections in North Carolina, Florida, Louisiana and Alabama. In every state, your objections were overruled, and the information was deemed to be relevant by each Commission.

Here, as in the other states, you have made essentially the same objection in response to every discovery request. This objection includes the claim that these requests are burdensome and harassing. However, when AT&T moved to compel responses to its discovery requests in Florida, Louisiana and Alabama, you did not even address in your responses how these requests could conceivably be burdensome or harassing. Instead, your argument was based entirely on the assertion that the requests are not relevant. Again, this position has been rejected by every State Commission that has ruled on this issue.

The Interconnection Agreement between the parties specifically states AT&T's duty to provide promotional discounts as follows: "Where available for resale, promotions will be made available only to end users who would have qualified for the

Exhibit B

promotion had it been provided by BellSouth directly." (Interconnection Agreement, p. 40 of 1735, fn 2). Given this, AT&T is clearly entitled to inquire as to the specifics of what dPi's customers order, how they order and what they are told (or not told) when they place orders. When AT&T asked questions during the North Carolina hearing on this same topic, you objected. The North Carolina Commission overruled the objection, and the facts went into evidence.

In Florida, AT&T propounded discovery that covers almost exactly the same subject matter as that which has been propounded in Kentucky. You made similarly extensive objections in Florida. On September 27, 2007, the Florida Commission issued its *PreHearing Order* (Order No. PSC-07-0787-PHO-TP), which granted AT&T's Motion to Compel dPi to respond to this same discovery. This Order expressly stated the following:

> [T]he information AT&T seeks is relevant to the subject matter of the issues in this proceeding. The information sought appears reasonably calculated to lead to the discovery of admissible evidence. Specifically, the discovery requests at issue appear to seek information that can be used to argue whether the promotion was applied equally by dPi and AT&T[1].

Subsequently, Louisiana also issued an Order granting AT&T's Motion to Compel. Finally, at the conclusion of the hearing held on April 16, 2008, the Administrative Law Judge in Alabama informed both parties that he intends to issue an Order granting AT&T Alabama's Motion to Compel this same discovery.

At this juncture, there is no justification for you to continue to object to the production of this information. In a case that turns on whether dPi's customers ordered features that would qualify them to receive a promotional credit if they were AT&T customers, questions as to what (if anything) dPi's customers actually ordered are clearly at the heart of the case. Moreover, four state commissions (out of four) have rejected your position that this information is irrelevant. There is no reasonable basis for you to believe that any other state commission will decide this issue differently.

If you do not reconsider your position and agree to provide this information, then it will be necessary for AT&T to file yet another Motion to Compel. Doing so, of course, will require an otherwise unnecessary imposition upon the time and resources of the Kentucky Public Service Commission. I do not believe that there is any justification for you to force me to take this route, given the fact that it is clear that this information is relevant to the case. Thus, once again, I request that you reconsider your refusal to

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[1] Prehearing Order, p. 11.

provide this information. Please advise me of your decision at your earliest convenience. In the absence of a response by May 9, 2008, AT&T will proceed with its Motion to Compel.

Sincerely,

J. Phillip Carver

cc: Mary Keyer (via Electronic Mail)

EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE (Note 3)

	Type of Service	AL		FL		GA		KY		LA		MS		NC		SC		TN	
		Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount
1	Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2	Promotions - > 90 Days(Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3	Promotions - ≤ 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4	Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5	911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
6	N11 Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	Yes	No	Yes	No	Yes	No
7	MemoryCall® Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8	Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9	Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10	Non-RecurCharges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
11	End User Line Chg-Number Portability	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12	Public Telephone Access Svc(PTAS)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
13	Inside Wire Maint Service Plan	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

Applicable Notes:

1. **Grandfathered services** can be resold only to existing subscribers of the grandfathered service.
2. Where available for resale, **promotions** will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly.
3. Some of BellSouth's local exchange and toll telecommunications services are not available in certain central offices and areas.

Exhibit C