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July 3, 2008

VIA FEDERAL EXPRESS

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

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**PUBLIC SERVICE
COMMISSION**

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 Reply to the Response of dPi to 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

715221

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In Re:)
)
dPi TELECONNECT, L.L.C.)
Complainant)
v.) No. 2005-00455
)
BELLSOUTH TELECOMMUNICATIONS, INC.)
Defendant)

**AT&T KENTUCKY'S REPLY TO THE
RESPONSE OF dPi TO AT&T KENTUCKY'S MOTION TO COMPEL**

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky"), submits this Reply To the Response of dPi Teleconnect, L.L.C. ("dPi") to AT&T Kentucky's Motion to Compel on AT&T Kentucky.

1. The gravamen of dPi's Response to AT&T Kentucky's Motion to Compel is that, because dPi disagrees with AT&T's theory of the case, dPi should be allowed to refuse to provide the discovery that AT&T Kentucky needs to prove its case. dPi has made this same argument before three other state Commissions, and each of them has rejected dPi's argument, granted AT&T's Motion to Compel and ordered dPi to produce the requested information.¹ The Kentucky Public Service Commission ("Commission") should do the same.

2. It is uncontroverted that AT&T Kentucky makes the line connection charge waiver ("LCCW") promotion available to dPi pursuant to the terms of the Interconnection Agreement between the parties. Specifically, in one of the few data requests to which dPi did respond, dPi acknowledged that dPi resells "AT&T services pursuant to the

¹ dPi's position has been rejected by the Florida, Louisiana, and Alabama Commission, each of which granted AT&T's Motion to Compel. In North Carolina, dPi objected to questions at the hearing on this same subject. The North Carolina Utilities Commission overruled dPi's objections, and required dPi's witness to answer the questions.

Resale conditions of the Interconnection Agreement between the parties” (dPi’s Response to Data Request No. 31). It is also uncontroverted that the interconnection agreement provides the following: “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, footnote 2). The purpose of the discovery propounded by AT&T Kentucky is to determine whether dPi failed to comply with this provision of the interconnection agreement.

3. Based on discovery and cross examination questions that dPi was compelled to respond to in North Carolina, Florida, Alabama and Louisiana, it was obvious that dPi failed to comply in those states with the above-quoted provision of the Interconnection Agreement because dPi’s end users did not order any services. Instead, dPi placed upon the lines of its end users blocks of available features. dPi did so without requesting its customers’ permission or informing its customers of what it had done. dPi then submitted these call blocks to AT&T and claimed that they qualified dPi to receive the LCCW promotion that is at issue in this case. By the subject discovery, AT&T Kentucky merely seeks to determine whether dPi took the same action in Kentucky that it did in the other states. This information is clearly central to the issues in this case, and dPi’s claim that the information is irrelevant is wholly without merit.

4. dPi’s Response to AT&T’s Motion to Compel is devoted primarily to an argument that dPi is not legally bound by the terms of the Interconnection Agreement. Apparently, dPi contends that AT&T Kentucky must give dPi credit under the LCCW promotion, even when dPi does not qualify for the promotion. Otherwise, under dPi’s theory, AT&T Kentucky has failed to make the promotion “available” as required by federal law. In point of fact, AT&T Kentucky does make the promotion available to dPi,

and it does so pursuant to the terms of the Interconnection Agreement. The only question is whether dPi qualifies for the available promotion based on the orders it submits. Thus, dPi's argument is flatly wrong.

5. Although dPi's legal argument on this point is exceedingly weak, the real issue at this junction is not whether dPi is right or wrong. dPi is, after all, entitled to make its argument. At the same time, AT&T Kentucky is entitled to make its argument as well. The real problem with dPi's position is the untenable notion that dPi can argue that AT&T's theory of the case is wrong, then use this argument as justification to refuse to provide to AT&T Kentucky the information that it needs to make its case before the Commission. Moreover, dPi has tried this same approach before, and failed repeatedly.

6. As noted in AT&T's Motion to Compel, the Commissions in Florida and Louisiana have both granted comparable motions by AT&T to compel the production of the same discovery, and the North Carolina Commission Ordered dPi to answer the same questions at the hearing. On June 12, 2008, the Alabama Commission became the fourth (out of four) Commissions to deny dPi's attempt to improperly refuse to disclose the subject information. Specifically, the presiding Administrative Law Judge ruled as follows:

Upon review, it appears that BellSouth's Motion to Compel is due to be granted. The burden imposed on dPi is minimal, and while dPi's legal theory of the case may ultimately prevail, BellSouth is entitled to present their own competing legal theory and therefore is entitled to discovery of facts relevant to its theory of the case.

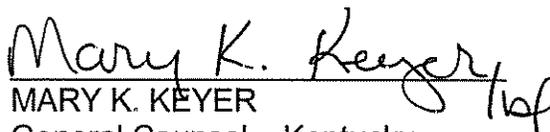
(Procedural Ruling, p. 2)

7. Again, dPi is attempting to deny AT&T Kentucky discovery responses that AT&T Kentucky needs to prepare its case for hearing. The requested information is relevant and the production of the information is not burdensome. Moreover, dPi's

similar attempts to obstruct the conduct of proper discovery have been rejected by each of the four state Commissions that has previously considered this matter.

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

Respectfully submitted this 3rd day of July, 2008.


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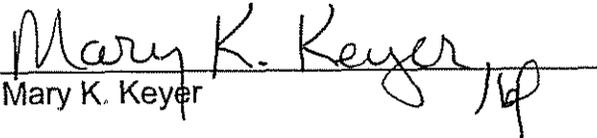
COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.,
D/B/A AT&T KENTUCKY

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 3rd day of July 2008.

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