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July 20, 2007

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JUL 20 2007

**PUBLIC SERVICE
COMMISSION**

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602

RE: *dPi Teleconnect v. BellSouth Telecommunications*
Case No. 2005-00455

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of dPi Teleconnect's Response to BellSouth's Answer and Request for Hearing in the above-captioned case.

Please indicate receipt of this filing by your office by placing a file stamp on the extra copy and returning to me via our runner.

Sincerely yours,

Douglas F. Brent

cc: Mary K. Keyer

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:)
)
dPi Teleconnect, L.L.C. v.) Case No. 2005-00455
BellSouth Telecommunications, Inc.)

**DPI TELECONNECT, L.L.C.'S RESPONSE TO
BELLSOUTH TELECOMMUNICATION'S ANSWER**

1. dPi Teleconnect LLC ("dPi") filed its original complaint in the above styled cause November 9, 2005. BellSouth answered on February 15, 2007. Pursuant to order of the Public Service Commission of the Commonwealth of Kentucky ("Commission") of June 19, 2007, dPi files this response and requests a hearing on the merits.

RESPONSE TO THE SUMMARY OF BELLSOUTH'S POSITION

2. The dispute in this matter arises from a disagreement regarding BellSouth Telecommunications, Inc.'s ("BellSouth") resale obligations under 47 U.S.C. §§ 251(c)(4)(A) and 252(d)(3). These statutes require incumbents like BellSouth to offer their retail services to competitors like dPi at a wholesale discount, so that dPi can attempt to resell those services in furtherance of its own business. More specifically, the question is whether BellSouth must extend to dPi "promotional" pricing for services which would be eligible for the promotion pricing under the plain reading of certain promotions BellSouth offered in Kentucky.

Background

3. In order to understand this case, one must understand its origins – namely, BellSouth’s “promotion process” which, at the time relevant to this case operated in practice if not by design to enrich BellSouth at the expense of its small competitors.
4. At the times relevant to this complaint, BellSouth was unable to bill resellers the correct amount (including promotional discounts) for the services they ordered when the order was submitted. By comparison, SBC’s systems allow one to apply for a promotional credit as part of the provisioning order, and reject the order if it does not qualify for the promotion. The credit is applied to the price immediately and the discount reflected on the same bill; the CLEC pays no more than what it actually owes for the service from the beginning.
5. In contrast, the practical effect of BellSouth’s “inability” or refusal to bill these charges correctly on the front end means that BellSouth automatically overcharges every reseller for every service the reseller orders that is subject to a promotional discount. Then BellSouth shifts the burden on to the reseller to (i) figure out how much BellSouth has overcharged the reseller, and (ii) dispute BellSouth’s bills accordingly. If a CLEC is not aware that this is how the system is supposed to work and does not know to apply for these promotions, BellSouth retains their money.
6. For those CLECs who generally understand that they must apply for these credits, BellSouth’s system makes it as difficult as possible for the reseller to dispute the bills to BellSouth’s satisfaction. First, the credit request must be meticulously documented,

listing details of every order for which credit is requested. But getting the data to populate these forms is a Herculean task in itself: it must come from BellSouth's billing and ordering data, which BellSouth has traditionally provided to resellers only on either a paper bill, or electronically in a "DAB" file, which has data locks built into it, making downloading of the raw data exceptionally difficult. To make matters worse, in dPi's experience next to no one at BellSouth can explain how to get the data out of the "DAB" files, because BellSouth does not maintain its own data in such files, and its employees simply are not equipped with the knowledge to answer questions about how to unlock its secrets. Figuring out how, as a practical matter, to apply for these credits takes a large amount of resources in time and money. Some CLECs appear to have simply thrown their hands in the air and given up.

7. Next, if a CLEC spends the time and resources to figure out a way to get at their data, and create systems for electronically scouring it to identify those orders that ought to qualify for promotional credits, and write and re-write programs that will populate BellSouth's forms (which it changes from time to time as it sees fit), BellSouth will examine the requests for credit to see if it will honor them. There is no deadline for BellSouth to act on these credit requests. When it finally approves or denies credits – which can take months – it makes no explanation for what credits it accepts, and what credits it rejects, and why. If the credit is rejected, the CLEC has no way of auditing the rejection to see if it is merited or not. If the credit is accepted, BellSouth has kept the CLEC's money for months, without interest, before returning it.

8. This system is backwards, failure prone, and grossly inefficient. And at every step of the way, whether consciously designed to that end or not, the system works to enrich BellSouth at the CLEC's expense.
9. This case arises from this flawed system. dPi denies that all credits owed dPi have been paid by BellSouth. Particular qualifying criteria exist for each of these promotions and dPi has strictly followed these criteria. However, contrary to BellSouth's assertions, dPi was not paid for owed credits.
10. After completing an audit, dPi found that BellSouth had failed to reimburse dPi with hundreds of thousands of dollars worth of promotional credits to which dPi was entitled (system-wide, not just in Kentucky). However the Commission is only asked to resolve disputes over those credits which were denied stemming from orders in Kentucky.
11. As an example, one such promotion is the Line Connection Charge Waiver ("LCCW"). Pursuant to the LCCW promotion, BellSouth waives the line connection charge for those customers who switch to BellSouth and take at least basic service with two TouchStar features. Thus all – *ALL* – dPi had to do to qualify for the line connection charge waiver is purchase basic service with one or more TouchStar features. *This is precisely what dPi did.*
12. In every situation in which dPi applied for this promotional credit, dPi had purchased through a single order a package consisting of at least basic service plus two or more TouchStar features. This is because dPi's basic offering always includes at least two TouchStar blocks, including the call return block (known by its Universal Service

Ordering Code [“USOC”] of “BCR”); the repeat dialing block (“BRD”); and the call tracing block, or “HBG” block. There is no dispute that dPi ordered these TouchStar blocks, and there should be no dispute that promotional rates are owed for it. However, BellSouth denied credit requests for LCCW.

13. Despite BellSouth’s assertions to the contrary, under a precise reading of the promotions, dPi is entitled to receive promotional rates. BellSouth’s contentions that no credit is owed ignore the very language, rules and qualifications that it itself created. dPi requests this Commission to find that BellSouth improperly denied credits in an amount to be determined at hearing.

14. The LCCW example is but one of the promotions offered by BellSouth for which dPi’s orders qualified, but for which it was denied credit.

DPI’S RESPONSE TO BELL SOUTH’S SPECIFIC ALLEGATIONS

15. In response to the first unnumbered paragraph in BellSouth’s Summary of Position, dPi denies that it is seeking reimbursement for credits outside the jurisdiction of this Commission. The nature and amount of the credits owed dPi which fall under the jurisdiction of the Commission are to be determined at hearing.

16. In response to the second unnumbered paragraph, dPi admits that, as a general matter, it is responsible for determining the eligibility for promotions.

17. In response to the third unnumbered paragraph, dPi admits that it electronically submits a local service request to BellSouth to establish service and that it submits a credit request form. To the extent that this paragraph refers to the facts of this case, dPi

denies that BellSouth evaluates the requests for accuracy and eligibility and applies the appropriate credit to dPi's bill.

18. In response to the fourth unnumbered paragraph, dPi denies that the volume of the requests is the reason that BellSouth took several months to process the requests. dPi denies that BellSouth took a random sampling of telephone numbers to determine how much credit to award dPi.

19. In response to the fifth unnumbered paragraph, dPi denies that BellSouth awards credit to accounts satisfying the eligibility requirements and denies the others.

20. In response to the sixth unnumbered paragraph, dPi denies that credits were denied on the basis that the accounts did not qualify for the promotion in question.

RESPONSE TO BELLSOUTH'S ANSWER TO NUMBERED PARAGRAPHS

1-15. dPi reasserts all of its factual contentions in all numbered paragraphs of its Original Complaint and specifically denies all contrary factual contentions in BellSouth's Answer. Everything not specifically admitted herein is denied.

REQUEST FOR HEARING

dPi requests this Commission to schedule a hearing on the merits, and entry of judgment in favor of dPi.

Respectfully Submitted,

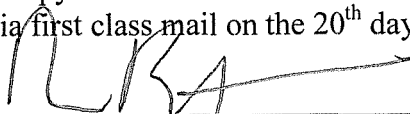
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above instrument was transmitted to Counsel for Defendants at the below address via first class mail on the 20th day of July, 2007.



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