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PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602-0615

Re: dPi v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky  
KPSC 2009-00127

Dear Mr. Derouen:

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully submits this brief letter to address the description by dPi Teleconnect, L.L.C. ("dPi") of the subsequent history of a federal district court opinion upon which dPi relies in its Reply Brief submitted on March 11, 2010.


In support of its argument that AT&T Kentucky is required to secure pre-approval from the Commission for any restrictions it may place on resale, dPi relies heavily on "the only known federal case on this issue" (dPi's Reply Brief at 4) which it cites as "*Budget Prepay, Inc. et al. v. AT&T Inc., f/k/a SBC Communications, Inc. et al.*, Case No. 3:09-CV-1494 in the U.S. District Court, Northern District of Texas, Dallas Division (**reversed on other grounds**)." dPi Reply Brief at 6 (emphasis added). AT&T Kentucky believes this description of the subsequent history of the case is inaccurate and potentially misleading.

On appeal of that order, the Fifth Circuit found that "the district court **was without subject matter jurisdiction to entertain the claims under the Telecommunications Act raised by Budget Prepay**," and for that reason the appellate court found that "[t]he judgment of the district court as to the motion to dismiss for lack of subject matter jurisdiction is REVERSED and the preliminary injunction is VACATED." See *Budget Prepay, Inc. v. AT&T Corp.*, 605 F.3d 273, 281 (5th Cir. 2010) (emphasis added). In fact, on remand, the district court dismissed the case on February 28, 2011, for lack of subject matter jurisdiction.

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AT&T Kentucky, therefore, respectfully submits that the district court order upon which dPi relies was not "reversed on other grounds" such that certain portions of the order remain valid. Instead, because the district court lacked subject matter jurisdiction to address the claims under the Telecommunications Act, no portion of the order that addresses the Telecommunications Act remains valid.

Sincerely,



Mary K. Keyer

cc: Parties of Record

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