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June 11, 2009

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PUBLIC SERVICE
COMMISSION

VIA OVERNIGHT MAIL

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

Re: dPi Teleconnect, L.L.C, Complainant v. BellSouth
Telecommunications, Inc., d/b/a AT&T Kentucky, Defendant
PSC 2009-00127

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of Answer of BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky.

Sincerely,



Mary K. Keyer

Enclosures

cc: Parties of Record

737284

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the matter of:)
)
dPi Teleconnect, L.L.C. v.) Docket No. 2009-00127
BellSouth Telecommunications, Inc.)
d/b/a AT&T Kentucky)
)
Dispute over Interpretation of the Parties')
Interconnection Agreement)
regarding BellSouth's failure to extend)
Cash Back promotions to dPi)
_____)

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T KENTUCKY

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T Kentucky") hereby answers the Original Complaint ("Complaint") filed by dPi Teleconnect, L.L.C. ("dPi"). AT&T Kentucky and dPi are collectively referred to herein as the "Parties." In response to the specific allegations set forth in the Complaint, AT&T Kentucky states as follows:

All allegations of the Complaint not expressly admitted are denied.

I. IDENTIFICATION OF THE PARTIES

Paragraph 1 of Section I of the Complaint requires no response from AT&T Kentucky.

The allegations set forth in Paragraph 2 of Section I of the Complaint are admitted.

II. FACTS AND NATURE OF THE DISPUTE

Responding to the allegations set forth in Paragraph 1 of Section II of the Complaint, AT&T Kentucky admits that it provides resale services to dPi – including qualifying promotional credits (if any) -- pursuant to an interconnection agreement (“ICA”)¹ between the Parties. Except as expressly admitted herein, the remaining allegations of Paragraph 1 of Section II of the Complaint are denied.

Subparts 1 through 4 of Paragraph 1 of Section II of the Complaint purport to quote (or summarize) certain portions of the Parties’ ICA(s). AT&T Kentucky respectfully refers the Kentucky Public Service Commission (“Commission”) to the Parties’ ICA(s) for its contents, and denies all inconsistent allegations or characterizations. AT&T Kentucky denies that dPi has cited all applicable portions of the Parties’ ICA(s).

Subparts 1 through 3 of Paragraph 2 of Section II of the Complaint purport to quote (or summarize) certain federal statutes and rules of the Federal Communications Commission (“FCC”) regarding the resale of telecommunications services. AT&T Kentucky respectfully refers the Commission to such statutes and FCC rules for their contents, and denies all inconsistent allegations or characterizations.

Responding to the allegations set forth in Paragraph 3 of Section II of the Complaint, AT&T Kentucky admits that over the years it has offered for resale telecommunications service promotions which lasted for more than 90 days to competitive local exchange carriers (“CLECs”), such as dPi, in accordance with a CLEC’s ICA and applicable law. AT&T Kentucky admits that a CLEC (like dPi) pays for

¹ The Parties executed an ICA in March 2003. The Parties executed dPi’s current ICA in April 2007. Accordingly, it appears that most of the promotional credits dPi seeks in the case were submitted when the Parties’ prior ICA was in effect.

services at the retail rate less the resale discount and must submit requests for promotional credits. Such requests are reviewed by AT&T Kentucky to determine if a CLEC is entitled to the requested promotional credit. AT&T Kentucky denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. Except as expressly admitted herein, the remaining allegations of Paragraph 3 of Section II of the Complaint are denied.

Responding to the allegations set forth in Paragraph 4 of Section II of the Complaint, AT&T Kentucky admits that over the years it has offered a number of “cash back” promotions that have lasted more than 90 days. AT&T Kentucky denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. In Paragraph 4 of Section II of the Complaint, dPi seeks to characterize an opinion issued by the United States Court of Appeals for the Fourth Circuit – *BellSouth Telecommunications, Inc. v. Sanford, et al.*, 494 F.3d 439 (4th Cir. 2007)(“*BellSouth v. Sanford*”). AT&T Kentucky respectfully refers the Commission to *BellSouth v. Sanford* for its contents, and denies all inconsistent allegations or characterizations.

In the *BellSouth v. Sanford* opinion, the Fourth Circuit upheld two decisions issued by the North Carolina Utilities Commission (“North Carolina Commission”) in North Carolina Commission Docket No. P-100, Sub 72b.² As an initial matter, the Commission is not bound by the aforementioned Fourth Circuit opinion and North Carolina Commission decisions. In any event, in the North Carolina Commission decisions upheld by the Fourth Circuit, the North Carolina Commission held that if a restriction on the resale of a promotion is challenged, then such restriction must be

² *BellSouth v. Sanford* at 453; see North Carolina Commission Order Ruling on Motion Regarding Promotions (December 22, 2004) and North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay (June 3, 2005).

reviewed on a promotion-by-promotion basis to determine if such restriction is reasonable and nondiscriminatory.³ Moreover, the North Carolina Commission observed, in *dicta*, that it would be inclined to find that AT&T's (then known as BellSouth) restriction on the resale of a "cash back" promotion was reasonable and nondiscriminatory.⁴ The promotions challenged by dPi in this case are "cash back" promotions. Except as expressly admitted herein, the remaining allegations of Paragraph 4 of Section II of the Complaint are denied.

Responding to the allegations set forth in Paragraph 5 of Section II of the Complaint, AT&T Kentucky denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. Except as expressly admitted herein, the remaining allegations of Paragraph 5 of Section II of the Complaint are denied.

Paragraph 6 of Section II of the Complaint purports to quote (or summarize) certain portions of the Parties' ICA(s) and sections of state statutes. AT&T Kentucky respectfully refers the Commission to such statutes and the ICA(s) for their contents, and denies all inconsistent allegations or characterizations. AT&T Kentucky denies any other allegations set forth in Paragraph 6 of Section II of the Complaint and demands strict proof thereof.

AT&T Kentucky denies the allegations set forth in Paragraph 7 of Section II of the Complaint and demands strict proof thereof.

³ North Carolina Commission Order Ruling on Motion Regarding Promotions at 12-13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.

⁴ North Carolina Commission Order Ruling on Motion Regarding Promotions at 13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.

III. DPI TELECONNECTS'S FIRST CAUSE OF ACTION

AT&T Kentucky denies the allegations set forth in Paragraph 1 of Section III of the Complaint and demands strict proof thereof.

IV. CONCLUSION AND PRAYER FOR RELIEF

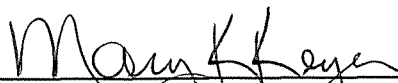
Responding to the "CONCLUSION AND PRAYER FOR RELIEF" portion of the Complaint contained in Section IV, AT&T Kentucky denies that dPi is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. dPi has failed to state a claim upon which relief can be granted.
2. dPi's claims are barred by the doctrines of laches, estoppel, and waiver.
3. dPi's claims are barred by the statute of limitations.
4. dPi has (or had) a contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the applicable provisions of the Parties' ICA(s). Upon information and belief, dPi failed to do so. Accordingly, dPi should be barred from pursuing claims that it failed to contractually preserve.
5. The Commission lacks jurisdiction to order any relief regarding non-Kentucky accounts.

WHEREFORE, having responded to the Complaint, AT&T Kentucky respectfully requests that the Commission issue an Order dismissing the Complaint and granting such further relief as the Commission deems just and proper.

Respectfully submitted this 11th day of June, 2009.



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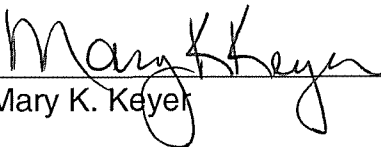
COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC., D/B/A AT&T
KENTUCKY

732811

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individual by mailing a copy thereof, this 11th day of June 2009.

Honorable Douglas F. Brent
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202-2828


Mary K. Keyer