



Mary K. Keyer  
General Counsel  
Kentucky Legal Department

AT&T Kentucky  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

T 502-582-8219  
F 502-582-1573  
[mary.keyer@att.com](mailto:mary.keyer@att.com)

December 14, 2009

**RECEIVED**

**VIA E-MAIL AND OVERNIGHT MAIL**

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

DEC 15 2009

**PUBLIC SERVICE  
COMMISSION**

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

Dear Mr. Derouen:

AT&T Kentucky files this letter to clarify the description of AT&T Kentucky's possible defenses that appears in the Commission's Intra-Agency Memorandum dated December 8, 2009, summarizing the Informal Conference held in this case on November 3, 2009.

Consistent with AT&T Kentucky's recollection of the discussions during the Informal Conference, AT&T respectfully submits that the defenses AT&T Kentucky would possibly submit to dPi Teleconnect's complaint include the following. The first defense is that the cashback components of the promotional offerings at issue are not "telecommunications services" and thus are not subject to any resale obligations AT&T Kentucky may have under either federal law or the parties' interconnection agreement(s). The second defense is that even if they were, AT&T Kentucky's decision not to make the cashback components of the promotional offerings at issue available to dPi was a reasonable and nondiscriminatory (and thus permissible) restriction on resale. The third defense, if the first two defenses failed, is that AT&T Kentucky disputes the amount of the credit that dPi Teleconnect alleged it was due: specifically, the Commission should award dPi no more than the amount of credits (if any) that dPi sought and disputed within one year of being billed for the underlying services, reduced by both: (1) the residential resale discount rate established by this Commission; and (2) the error rate in the cashback credit requests dPi has submitted since AT&T Kentucky began making cashback available for resale in July 2007.

AT&T Kentucky, of course, reserves its right to refine these defenses and/or raise additional defenses to address the evidence that is admitted into the record of this proceeding.

AT&T Kentucky respectfully requests that the comments made herein be reflected in the Commission's Intra-Agency Memorandum. The original and five (5) copies of this letter are enclosed for filing.

Thank you for the opportunity to file these comments.

Sincerely,

  
Mary K. Keyer

cc: Party of Record

762433