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August 26, 2010

VIA OVERNIGHT MAIL

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

RECEIVED

AUG 27 2010

PUBLIC SERVICE
COMMISSION

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

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of Rebuttal Testimony of P. L. (Scot) Ferguson on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record


843413

CERTIFICATE OF SERVICE – PSC 2009-00127

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 26th day of August 2010.

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

Christopher Malish
Foster Malish Blair & Cowan, L.L.P.
1403 W. 6th Street
Austin, TX 78703



Mary K. Keyer

COMMONWEALTH OF KENTUCKY
KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF Fulton

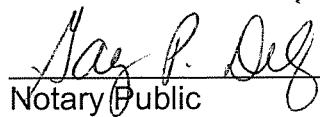
STATE OF Georgia

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared P. L. (Scot) Ferguson, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00127, *In the Matter of: dPi Teleconnect, L.L.C., Complainant v. BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky, Defendant, Dispute Over Interpretation of the Parties' Interconnection Agreement Regarding AT&T Kentucky's Failure to Extend Cash-Back Promotions to dPi* and if present before the Commission and duly sworn, his statements would be set forth in the annexed rebuttal testimony consisting of 6 pages and 0 exhibits.



P. L. (Scot) Ferguson

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 20th DAY OF AUGUST, 2010



Notary Public

My Commission Expires: _____

Gay P. Ditz
Notary Public, DeKalb County, Georgia
My Commission Expires February 9, 2011

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AT&T KENTUCKY
REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 2009-00127
AUGUST 27, 2010

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T, AND YOUR BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. As such, I am responsible for certain issues related to wholesale policy, primarily related to the terms and conditions of interconnection agreements throughout AT&T's operating regions, including Kentucky. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME SCOT FERGUSON WHO PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?

A. Yes. On August 13, 2010, I filed 34 pages of direct testimony and 11 exhibits.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 A. I have reviewed the direct testimony of dPi Teleconnect's ("dPi's") witness,
2 Mr. Tom O'Roark, that was filed in this docket on August 13, 2010. My
3 rebuttal testimony addresses a number of erroneous assertions made by
4 Mr. O'Roark in his testimony, specifically with respect to policy positions at
5 issue in this proceeding.

6

7 As I stated in my direct testimony, AT&T Kentucky's counsel will present
8 legal arguments supporting AT&T Kentucky's policy positions in post-
9 hearing submissions.

10

11 **Q. MR. O'ROARK DEVOTES MUCH OF HIS DIRECT TESTIMONY TO**
12 **PRESENTING HIS VIEWS OF THE PROCESS BY WHICH DPI**
13 **REQUESTS PROMOTIONAL CREDITS. DOES THAT TESTIMONY**
14 **HAVE ANYTHING TO DO WITH WHETHER DPI IS ENTITLED TO THE**
15 **PROMOTIONAL CREDITS IT SEEKS IN THIS DOCKET?**

16

17 A. No. In this docket, dPi is seeking a determination that it is owed a specific
18 amount of promotional bill credits. The manner in which the companies
19 exchange information and process promotional credit requests has no
20 bearing on whether dPi qualifies for the credits it seeks.

21

22 Moreover, the process Mr. O'Roark discusses has been in place for years
23 in the former BellSouth region, and it has not been the subject of any
24 Commission complaint filed by dPi or any other CLEC.

25

1 Finally, as the Commission is aware, the Change Management Process,
2 or CMP,¹ has been and remains available to CLECs who want to raise
3 issues regarding AT&T's wholesale systems and processes. That
4 collaborative process is in place to ensure that no individual CLEC has the
5 opportunity to put its preferences ahead of the needs of the CLEC
6 community as a whole.

7

8 **Q. ON PAGES 7-8 OF HIS DIRECT TESTIMONY, MR. O'ROARK**
9 **COMPARES HIS UNDERSTANDING OF HOW AT&T BILLED**
10 **RESELLERS FOR THE PROMOTIONS AT ISSUE TO HIS**
11 **UNDERSTANDING OF HOW AT&T BILLED RETAIL END USERS FOR**
12 **THE PROMOTIONS AT ISSUE. DID AT&T PROVIDE RETAIL END**
13 **USERS THE BENEFIT OF CASHBACK "FOR THE SERVICES THEY**
14 **ORDERED WHEN THE ORDER WAS SUBMITTED" AS MR. O'ROARK**
15 **SUGGESTS?**

16

17 **A.** No. As I described on pages 7-10 of my direct testimony, AT&T Kentucky
18 sent a coupon to its retail end users whose service orders qualified for the
19 cashback promotions at issue in this proceeding. Those end users did not
20 receive a "cashback" check unless they returned the completed coupon to
21 AT&T within the requisite time.

22

23 **Q. DO YOU AGREE WITH MR. O'ROARK'S CHARACTERIZATION (AT**
24 **PAGES 2 THROUGH 5 OF HIS DIRECT TESTIMONY) OF FEDERAL**
25 **RESALE REQUIREMENTS?**

26

¹ The CMP was formerly known as the BellSouth Change Control Process, or CCP.

1 A. No. As neither of us is an attorney, however, I will not attempt to address
2 his contentions about federal resale law. Instead, I will defer to AT&T
3 Kentucky's attorneys to address the relevant law in post-hearing
4 submissions.

5

6 **Q. ON PAGE 9 OF HIS DIRECT TESTIMONY, MR. O'ROARK CLAIMS**
7 **THAT AT&T "ISSUES OR DENIES CREDIT AS IT SEES FIT." IS THAT**
8 **AN ACCURATE STATEMENT?**

9

10 A. No. AT&T Kentucky grants promotional credit requests to which dPi is
11 entitled, and it denies promotional credit requests to which dPi is not
12 entitled. AT&T Kentucky denied the cashback promotional credit requests
13 at issue in this docket because, as I explain in my direct testimony, dPi
14 was not entitled to those credits.

15

16 **Q. BEGINNING AT PAGE 11 OF HIS DIRECT TESTIMONY, MR. O'ROARK**
17 **TESTIFIES THAT THE RELEVANT TIME LIMIT FOR THE CLAIMS AT**
18 **ISSUE IN THE CASE IS THE SIX-YEAR STATUTE OF LIMITATIONS,**
19 **AND THAT THESE CLAIMS ARE GOVERNED BY THE PARTIES' 2003**
20 **ICA INSTEAD OF THE 2007 ICA (WHICH CONTAINS A**
21 **REQUIREMENT THAT CLAIMS BE BROUGHT WITHIN 12 MONTHS).**
22 **DOES THE 2007 ICA BETWEEN AT&T KENTUCKY AND DPI SAY**
23 **ANYTHING ABOUT THIS?**

24

25 A. Yes. The relevant portions of Section 30.1 of the General Terms and
26 Conditions portion of the 2007 ICA state:

27 This Agreement sets forth the entire understanding and supersedes
28 prior agreements between the Parties relating to the subject matter
29 in this Agreement and merges all prior discussions between them.
30 Any orders placed under prior agreements between the Parties
31 shall be governed by the terms of this Agreement and DPI

1 acknowledges and agrees that any and all amounts and obligations
2 owed for services provisioned or orders placed under prior
3 agreements between the Parties, related to the subject matter
4 hereof, shall, as of the Effective Date, be due and owing under this
5 Agreement and be governed by the terms and conditions of this
6 Agreement as if such services or orders were provisioned or placed
7 under this Agreement.

8
9 This language appears in Exhibit PLF-3 to my direct testimony.

10

11 **Q. WHAT TIME LIMITATION DOES THE 2007 ICA IMPOSE ON THE**
12 **PARTIES REGARDING BILLING DISPUTES?**

13

14 A. As explained at page 27 of my direct testimony, the 2007 ICA requires dPi
15 to submit a billing dispute within 12 months of an actual amount billed that
16 is subject to dispute.²

17

18 **Q. MR. O'ROARK CONCLUDES HIS TESTIMONY WITH THE ASSERTION**
19 **THAT AT&T KENTUCKY "ADMITTED DPI IS ENTITLED TO THESE**
20 **KINDS OF PROMOTIONAL CREDITS ... BY PAYING THESE CREDITS**
21 **FROM JULY 2007 FORWARD." IS HE CORRECT?**

22

23 A. No. As I explained at pages 13 and 16 of my direct testimony, AT&T
24 Kentucky's decision to pay cashback credits beginning in July 2007 was
25 the result of a decision by the recently-merged AT&T to standardize its
26 resale position across the 22 states in which it operates as an incumbent
27 local exchange carrier ("ILEC"). That decision was not a suggestion that
28 the pre-merger BellSouth position was not legally permissible, and,
29 despite Mr. O'Roark's assertion, the voluntary change in policy is not an

² See Exhibit PLF-3, Attachment 7, Section 2.2.

1 admission that dPi was entitled to these promotional credits prior to July
2 2007

3

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5

6 A. Yes.

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