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May 4, 2010

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

*Re: BellSouth Telecommunications, Inc. d/b/a Southeast d/b/a AT&T Kentucky
v. dPi Teleconnect, LLC
Case No. 2010-00029*

Dear Mr. DeRouen:

Enclosed please find an original and ten copies each of dPi Teleconnect, LLC's ("dPi") Response to AT&T's Motion to Dismiss or Sever Counterclaims in the above referenced case.

Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies of each filing and return them to me via the enclosed, self-addressed stamped envelope.

Sincerely yours,

Douglas F. Brent

DFB:jms
Enclosures

cc: Parties of Record

110945.130744/619132.1

107513.133828/619143.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

Bellsouth Telecommunications, Inc. d/b/a)	
Southeast d/b/a AT&T Kentucky)	
)	
Complainant)	
)	
v.)	Case No. 2010-00029
)	
dPi Teleconnect, LLC)	
Defendant)	

dPi's RESPONSE TO AT&T'S MOTION TO DISMISS OR SEVER COUNTERCLAIMS

dPi's counterclaim should not be dismissed nor severed, since it is inextricably intertwined with AT&T's original claim, and its determination will involve consideration of the same facts, law, and argument to be considered in deciding AT&T's original claim.

In its original pleadings as they pertain to dPi, AT&T seeks a determination that, if it is required to extend cash back promotions to CLECs at all, then it should not be required to extend to CLECs the entire amount of the promotion, but rather a lesser amount derived by reducing the promotional amount by the resale discount. AT&T also claims that it has been underpaid for services rendered under the contract(s) between the parties as a result of miscalculation of the amounts that should be paid by CLECs in general, and dPi in particular, for services rendered by AT&T that are subject to promotional rebates. Thus, at core, this case between AT&T and dPi is a case to determine (1) how to calculate amounts CLECs are entitled to in connection with cash back promotions, and (2) who owes who what in relation to services the subject of retail promotions.

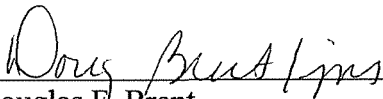
Given the core issue in this case, dPi counterclaimed – because *it* is the party which has been injured in connection with these cash back promotional rebates. dPi is in fact charged the full wholesale price for services subject to the cash back promotions, and must dispute its bills using AT&T's Billing Adjustment Request (“BAR”) forms to get credits for these promotions. dPi's counterclaim explained that dPi had been credited not the full amount of the cash back promotions to which it is entitled by law, but instead by that amount less the wholesale discount; dPi is thus entitled recover the difference, and seeks it in this case through its counterclaim.

dPi is somewhat nonplussed that AT&T has moved to sever or dismiss dPi's counterclaim; after all, dPi's counterclaim is essentially the mirror image of AT&T's claim, and involves the same two core issues: (1) how to calculate amounts CLECs are entitled to in connection with cash back promotions, and (2) who owes who what in relation to services the subject of retail promotions. Determining both AT&T's and dPi's claims will thus involve a review of the same law, argument, and evidence – including a review of the same disputed fact issues, such as the amount of services rendered and billed and whether disputes were appropriately made, granted, or denied. In short, dPi's counterclaim is the very model of a compulsory counterclaim, and should neither be dismissed nor severed into another docket.

May 4, 2010

Respectfully submitted,

Christopher Malish
MALISH & COWAN, P.L.L.C.
(admission under SCR 3.030 to be obtained)
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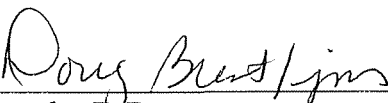
By: 
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Attorneys for dPi Teleconnect, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 4th day of May, 2010.

Mary K. Keyer
AT&T Kentucky
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203


Douglas F. Brent