



Legal Counsel.

DINSMORE & SHOHL LLP
101 South Fifth Street ^ Suite 2500
Louisville, KY 40202
www.dinsmore.com

Caroline L. Pieroni
(502) 540-2324
caroline.pieroni@dinsmore.com

May 1, 2020

RECEIVED

MAY 01 2020

PUBLIC SERVICE
COMMISSION

Hon. Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601
Via e-mail at PSCED@ky.gov

*In the Matter of Associates in Dermatology, PLLC v. Bellsouth
Telecommunications, LLC d/b/a AT&T Kentucky, Case No. 2019-00047*

Dear Ms. Pinson:

Attached is the response brief, in the above-referenced matter, of Associates in Dermatology, PLLC to AT&T Kentucky’s Notice of Arbitration Filing and Supplemental Motion to Dismiss. Pursuant to the Commission’s emergency order in Case No. 2020-00085, Associates in Dermatology is submitting this brief via e-mail to the Commission and opposing counsel, and will follow up with an original in the mail.

Thank you and if you have any questions, please call me at (502) 540-2324.

Sincerely,

DINSMORE & SHOHL LLP

Caroline L. Pieroni

CLP/rk
Enclosures

cc: Ben Bellamy ben.bellamy@ky.gov
Mark R. Overstreet moverstreet@stites.com

16388526.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ASSOCIATES IN DERMATOLOGY, PLLC)	
)	
COMPLAINANT)	
)	CASE NO. 2019-00047
V.)	
)	
BELLSOUTH TELECOMMUNICATIONS, LLC)	
dba AT&T KENTUCKY)	
)	
DEFENDANT)	

**ASSOCIATES IN DERMATOLOGY, PLLC’S RESPONSE TO
AT&T’S NOTICE OF FILING AND SUPPLEMENTAL MOTION TO DISMISS**

Associates in Dermatology, PLLC (“AID”) submits this response to the Notice of Demand for Arbitration and Supplemental Motion to Dismiss filed by Bellsouth Telecommunications, LLC d/b/a/ AT&T Kentucky (“AT&T”). In support of its opposition to dismissal, AID states as follows:

1. AT&T has taken the position that certain contracts filed in this matter, including the August 2016 contract¹, govern some or all of the disputes between the parties.
2. AID disagrees with that position, given that many of the disputed services were billed outside the contract and AT&T charged for other services that AID never requested (or continued billing after AID ended the relationship).
3. The August 2016 contract and other contracts between the parties contain an arbitration provision and purport to shorten the statute of limitations related to claims against AT&T.

¹ Exhibit 1 to AT&T’s previously filed January 10, 2020 Data Responses.

4. Out of an abundance of caution, AID initiated arbitration² to protect claims in case the Kentucky Public Service Commission (“PSC” or “Commission”) decides it does not have jurisdiction over this matter.³

5. Alternatively, if the PSC determines it has jurisdiction over some disputes, but not others (such as those related to locations in Indiana), AID will pursue in arbitration resolution over the claims over which the PSC determines it does not have jurisdiction.

6. As explained in AID’s brief on jurisdiction, the existence of a contract between private parties has no bearing on the PSC’s jurisdiction over the dispute before it.⁴ In considering the exact issue of whether an arbitration provision in a private contract can divest a state utility of jurisdiction, the court in *Board of Education v. William Dohrman, Inc.*, held that “the Commission ha[s] the right and duty to regulate rates and services, no matter what a contract provide[s].” 620 S.W.2d 328, 329 Ky. App. 1981). Accordingly, neither the arbitration provision or an action in arbitration is a factor in whether the Commission has jurisdiction over this matter.

7. For all of these reasons, AID respectfully requests that the PSC proceed to adjudicate this matter since the arbitration filing has no bearing on the Commission and the parties have already spent significant time and money to resolve.

Respectfully submitted,

DINSMORE & SHOHL LLP

/s/ Caroline L. Pieroni

R. Kenyon Meyer
Caroline L. Pieroni

² AT&T has been on notice of AID’s intent to file arbitration. For example, AID sent a notice to AT&T last year of its intent to file an arbitration with the American Arbitration Association.

³ See Notice of Arbitration Filing, Paragraph 15, attached as Exhibit 1 to AT&T’s Motion.

⁴ See AID’s Brief in Support of Jurisdiction, filed with the Commission on February 21, 2020.

101 South Fifth Street, Suite 2500
Louisville, KY 40202
E-mail: Kenyon.meyer@dinsmore.com
E-mail: caroline.pieroni@dinsmore.com
Phone: (502) 540-2300

and

Paul Schurman
115 N. Watterson Trail
Louisville, KY 40243
E-mail: paul@louisvillelaw.com
Phone: (502) 244-8099
Attorneys for Complainants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served on the following, via e-mail and U.S. Mail on this the 1st day of May, 2020, as indicated below:

Mark R. Overstreet
STITES & HARBISON
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
moverstreet@stites.com

/s/ Caroline L. Pieroni

Attorneys for Complainant AID

16386421.1