

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DPI TELECONNECT, L.L.C.)	CASE NO.
)	2005-00455
COMPLAINANT)	
V.)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T KENTUCKY)	
DEFENDANT)	

O R D E R

On May 22, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T") filed a motion to compel dPi Teleconnect, L.L.C. ("dPi") to respond to AT&T's First Data Request Item Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 38.

The issue in this case is whether dPi is entitled to the Line Connection Charge Waiver ("LCCW") promotional credit, in which AT&T gives its customers credit for the line connection charge if the customer purchases at least the basic service plus two features, among other requirements.

AT&T states that it gives a competitive local exchange carrier ("CLEC") the credit if the CLEC end-user meets the same requirements as an AT&T customer. dPi states that it is entitled to the credit because "blocks" are features. AT&T states that "blocks" are not features and "blocks" are available to customers at no extra charge and, therefore, cannot be purchased.

An interconnection agreement governs the relationship between AT&T and dPi. AT&T argues that the language of the interconnection agreement provides that dPi will receive promotional credits only for dPi's end-users that meet the same promotional requirements that AT&T's end-users must meet to receive the promotional credits. dPi argues that AT&T's interpretation of the language in the interconnection agreement is wrong because it contradicts the remainder of the contract and violates federal law.

AT&T argues that the information sought in its first data request is relevant, is reasonably calculated to lead to the discovery of admissible evidence, and is not overly burdensome. dPi argues that the information sought is irrelevant and is not likely to lead to any admissible evidence since it relates to dPi's interactions with third parties. dPi further states that AT&T is seeking this information for an improper purpose and that the only question in this case is whether AT&T has to extend promotional pricing for which AT&T retail customers qualify to dPi as a wholesaler.

The scope of discovery in Kentucky is very broad. Kentucky Rules of Civil Procedure provide:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.¹

¹ Ky. Civil Rule 26.02(1).

Therefore, generally speaking, AT&T would have a right to discover of dPi any relevant information that is not privileged. There has been no claim by dPi that any of the information sought by AT&T is privileged.

The subject matter of this case is whether, according to the interconnection agreement, dPi is entitled to promotional discounts from AT&T. CR 26.02(1) states that “parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action” Kentucky Rules of Evidence 401 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

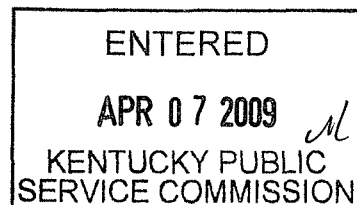
The information being sought by AT&T pertains to dPi’s credit requests and what information these credit requests were based on: the elements of the promotion at issue; the parties’ interpretation of the elements of the promotion at the time the requests were made; the interactions of the parties with their end-users; and any actions taken by the parties in implementing the promotion. The Commission finds that the information being sought by AT&T is relevant to the subject matter of this proceeding and that dPi shall answer the requests at issue in this case. It does not appear that requiring dPi to answer the questions at issue would be burdensome or expensive. It appears that most of the questions at issue could be answered with a simple “yes” or “no” response, possibly accompanied by a brief explanation.

IT IS HEREBY ORDERED THAT:

1. dPi is to provide responses to AT&T’s data request, Item Nos. 6, 7, 8, 9, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, and 38.

2. dPi shall provide the responses within 20 days of the date of this Order.

By the Commission



ATTEST:



Executive Director

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

Honorable Mary K Keyer
General Counsel/Kentucky
BellSouth Telecommunications, Inc. dba AT&T
601 West Chestnut Street, Room 408
Louisville, KY 40203

Honorable Christopher Malish
Attorney at Law
Foster Malish & Cowan, LLP
1403 West Sixth Street
Austin, TX 78703