

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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| In the matter of: |) | dPi Teleconnect's Original Complaint |
| |) | regarding BellSouth's failure to extend |
| dPi Teleconnect, L.L.C. v. |) | Cash Back promotions to dPi |
| BellSouth Telecommunications, Inc. |) | |
| dba AT&T Tennessee |) | Case No. 08-00063 |

CERTIFICATE OF SERVICE FOR dPi's ORIGINAL COMPLAINT

I hereby certify that I have this the 16th day of July, 2008, served a true and correct copy of the dPi's Original Complaint, filed April 20, 2008, to the following via electronic mail and first-class mail:

J. Philip Carver, Sr. Attorney
AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

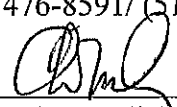
*Via First-Class Mail and
Via Electronic Mail: pc0755@att.com*

Guy M. Hicks, General Counsel - TN
BellSouth Telecommunications, Inc.
dba AT&T Tennessee
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

*Via First-Class Mail and
Via Electronic Mail: guy.hicks@att.com*

Respectfully submitted,

Foster Malish & Cowan, L.L.P.
1403 West Sixth Street
Austin, Texas 78703
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Christopher Malish
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Attorneys for Complainant

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TO THE HONORABLE UTILITIES COMMISSION:

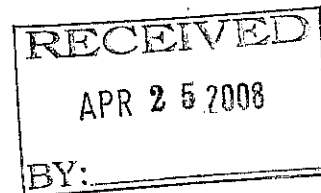
08-00063

1. dPi Teleconnect, LLC. ("dPi Teleconnect," or "dPi") brings this complaint seeking to recover cash back promotional credits from BellSouth Telecommunications, Inc. dba AT&T Tennessee ("BellSouth") and in support thereof, shows as follows:

I. IDENTIFICATION OF PARTIES

2. Complainant dPi Teleconnect, L.L.C. is a Texas corporation headquartered at 2997 LBJ Freeway, Suite 225, Dallas, Texas 75234. Designated representative for complainant is:

Christopher Malish
cmalish@fostermalish.com
Steven Tepera
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3. BellSouth is an "incumbent local exchange carrier" ("ILEC") as defined by the Act. 47 U.S.C. §251(h). It is a Georgia corporation with its principal place of business in Atlanta.

II. FACTS AND NATURE OF THE DISPUTE

4. The parties' dispute arises under their interconnection agreement and centers on credits which are due from BellSouth to dPi Teleconnect as a result of dPi Teleconnect's reselling

of services subject to BellSouth promotional discounts.

5. Among other things, the parties' contract provides in relevant part the following:
 1. That the parties wish to interconnect "pursuant to Sections 251 and 252 of the Act" GTC p.1;
 2. Parity: "When DPI purchases Telecommunications Services from BellSouth pursuant to ... this Agreement for the purposes of resale to End Users, such services shall be ... subject to the same conditions... that BellSouth provides to its ...End Users." GTC p. 3
 3. Governing Law: "... this agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC...." GTC p. 15.
 4. Resale Attachment's General Provision sections 3.1: p. 4: "...Subject to effective and applicable FCC and Commission rules and orders, *BellSouth shall make available to DPI for resale those telecommunications services BellSouth makes available...to customers who are not telecommunications carriers.*"
6. Federal law provides, among other things, the following:
 1. 47 U.S.C. § 251(c)(4)(A). ILECs have the duty to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."
 2. 47 U.S.C. § 251(c)(4)(B). ILECS have a duty not to "prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service."
 3. 47 C.F.R. § 51.613(a)(2). "The following types of restrictions on resale may be imposed: Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:
 - (i) Such promotions involve rates that will be in effect for no more than 90 days; and
 - (ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates."

7. This dispute arises because BellSouth has over the past months and years sold its retail services at a discount to its end users under various promotions that have lasted for more than 90 days. dPi Teleconnect is entitled to purchase and resell those same services at the promotional rate, less the wholesale discount. As a practical matter, dPi Teleconnect has bought these services at the regular retail rate less the resale discount, then been credited the difference between that rate and the promotional rate pursuant to "promotion credit requests."
8. Of concern in this particular case, BellSouth has provided a number of "cash back" promotions going back to late 2003.¹ Although dPi met the same qualifications as BellSouth's retail end users, and applied for these promotional credits, it has to this point not been notified one way or the other that BellSouth would pay the credits requested for the periods ending June 8, 2007. BellSouth has, however, paid the credits requested for service rendered after June 2007. The timing appears to coincide with the 4th Circuit's decision in *BellSouth Telecommunications Inc. v. Sanford et al.*, 494 F3d 439 (C.A. 4 – N.C., 2007), in which the 4th Circuit upheld the North Carolina Commission's decision that promotions that tend to reduce the retail price paid by retail customers must be made available to CLECs.
9. Although BellSouth has failed to either deny or accept dPi's promotional credit requests despite multiple inquiries by dPi, at this point it seems unlikely that BellSouth will make the promotion payments unless compelled to do so by the judiciary or the state commissions,

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The three promotions involved through July 2007 are designated by BellSouth as Cash Back \$100 Two Features - C2TF; Cash Back \$100 Discount Complete Choice \$100; and Cash Back \$50 2 Pack Plan (PAMA6) - CBP6

making the filing of this case necessary.

10. Here in Tennessee, dPi qualified and applied for, but was not paid, approximately \$96,150 in cash back promotions. Across the 9 state BellSouth region, the total figure that dPi qualified and applied for, but was not paid, \$465,950, in cash back promotion credits.

III. DPI TELECONNECT'S FIRST CAUSE OF ACTION

11. dPi is entitled to the above mentioned promotional credits on these telecommunications services its has purchased from BellSouth, and BellSouth has admitted as much by paying them from July 2007 forward. However, BellSouth has neither accepted nor denied dPi's claims for identical credits for earlier periods; this, for all practical purposes, must now be treated as a denial or refusal to pay these credits to which dPi is entitled. dPi accordingly requests that this Commission enter an order directing BellSouth to pay the credits together with interest at the contract rate.

IV. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, based upon the foregoing, dPi Teleconnect respectfully requests and prays that following a hearing on the merits of the issues set forth above, the Commission issue a ruling:

1. that dPi is entitled to the cash back promotion credits it seeks to collect;
2. ordering BellSouth pay or credit dPi those amounts, plus interest at the contract rate;
and
3. such other and further relief to which dPi may show itself entitled.

Respectfully submitted,

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