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VIA HAND DELIVERY

filed electronically in docket office on 08/14/08

Hon. Tre Hargett, Chairman  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. dba AT&T  
Tennessee*  
Docket No. 08-00063

Dear Chairman Hargett:

Enclosed for filing in the referenced docket are the original and four copies of the Answer of BellSouth Telecommunications, Inc. dba AT&T Tennessee.

A copy has been provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop that starts under the word "Very", goes up and around, and then loops back down to the word "Guy".

Guy Hicks

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee**

In Re: *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. dba AT&T Tennessee*

Docket No. 08-00063

**ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.  
d/b/a AT&T TENNESSEE**

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") hereby answers the Complaint filed by dPi Teleconnect, L.L.C. ("dPi"). In response to the specific allegations set forth in the Complaint, AT&T Tennessee states as follows. All allegations of the Complaint not expressly admitted are denied.

**IDENTIFICATION OF THE PARTIES**

1. Paragraphs 1 and 2 of the Complaint require no response from AT&T Tennessee.
2. The allegations set forth in Paragraph 3 of the Complaint are admitted.

**FACTS AND NATURE OF THE DISPUTE**

3. Responding to the allegations set forth in Paragraph 4 of the Complaint, AT&T Tennessee admits that it provides resale services to dPi – including qualifying promotional credits (if any) -- pursuant to an interconnection

agreement ("ICA")<sup>1</sup> between the parties. Except as expressly admitted herein, the remaining allegations of Paragraph 4 of the Complaint are denied.

4. Paragraph 5 of the Complaint purports to quote (or summarize) certain portions of the parties' ICA(s). AT&T Tennessee respectfully refers the Tennessee Regulatory Authority ("Authority") to the parties' ICA(s) for its contents, and denies all inconsistent allegations or characterizations. AT&T Tennessee denies that dPi has cited all applicable portions of the parties' ICA(s).

5. Paragraph 6 of the Complaint purports to quote (or summarize) certain federal statutes and rules of the Federal Communications Commission ("FCC") regarding the resale of telecommunications services. AT&T Tennessee respectfully refers the Authority to such statutes and FCC rules for its contents, and denies all inconsistent allegations or characterizations.

6. Responding to Paragraph 7 of the Complaint, AT&T Tennessee admits that over the years it has offered for resale telecommunications service promotions which lasted for more than 90 days to competitive local exchange carriers ("CLECs"), such as dPi, in accordance with a CLEC's ICA and applicable law. AT&T Tennessee admits that a CLEC (like dPi) must submit requests for promotional credits. Such requests are reviewed by AT&T Tennessee to determine if a CLEC is entitled to the requested promotional credit. AT&T Tennessee denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint.

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<sup>1</sup> The parties executed an ICA in March 2003. The parties executed dPi's current ICA in April 2007. Accordingly, it appears that most of the promotional credits dPi seeks in the case were submitted when the parties' prior ICA was in effect.

Except as expressly admitted herein, the remaining allegations of Paragraph 7 of the Complaint are denied.

7. Responding to the allegations set forth in Paragraph 8 of the Complaint, AT&T Tennessee admits that over the years it has offered a number of “cash back” promotions that have lasted more than 90 days. AT&T Tennessee denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. In Paragraph 8 of the Complaint, dPi seeks to characterize an opinion issued by the United States Court of Appeals for the Fourth Circuit – *BellSouth Telecommunications, Inc. v. Sanford, et al.*, 494 F.3d 439 (4<sup>th</sup> Cir. 2007)(“*BellSouth v. Sanford*”). AT&T Tennessee respectfully refers the Authority to *BellSouth v. Sanford* for its contents, and denies all inconsistent allegations or characterizations.

In the *BellSouth v. Sanford* opinion, the Fourth Circuit upheld two decisions issued by the North Carolina Utilities Commission (“North Carolina Commission”) in North Carolina Commission Docket No. P-100, Sub 72b.<sup>2</sup> As an initial matter, the Authority is not bound by the aforementioned Fourth Circuit opinion and North Carolina Commission decisions. In any event, in the North Carolina Commission decisions upheld by the Fourth Circuit, the North Carolina Commission held that if a restriction on the resale of a promotion is challenged, then such restriction must be reviewed on a promotion-by-promotion basis to determine if such restriction is

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<sup>2</sup> *BellSouth v. Sanford* at 453; see *North Carolina Commission Order Ruling on Motion Regarding Promotions* (December 22, 2004) and *North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay* (June 3, 2005).

reasonable and non-discriminatory.<sup>3</sup> Moreover, the North Carolina Commission observed, in *dicta*, that it would be inclined to find that AT&T's (then known as BellSouth) restriction on the resale of a "cash back" promotion was reasonable and nondiscriminatory.<sup>4</sup> The promotions challenged by dPi in this case are "cash back" promotions. Except as expressly admitted herein, the remaining allegations of Paragraph 8 of the Complaint are denied.

8. Responding to the allegations set forth in Paragraph 9 of the Complaint, AT&T Tennessee denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. Except as expressly admitted herein, the remaining allegations of Paragraph 9 of the Complaint are denied.

9. AT&T Tennessee denies the allegations set forth in Paragraph 10 of the Complaint and demands strict proof thereof.

10. AT&T Tennessee denies the allegations set forth in Paragraph 11 of the Complaint and demands strict proof thereof.

### **CONCLUSION AND PRAYER FOR RELIEF**

11. Responding to the "CONCLUSION AND PRAYER FOR RELIEF" portion of the Complaint, AT&T Tennessee denies that dPi is entitled to any relief whatsoever.

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<sup>3</sup> North Carolina Commission Order Ruling on Motion Regarding Promotions at 12-13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.

<sup>4</sup> North Carolina Commission Order Ruling on Motion Regarding Promotions at 13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.


## **AFFIRMATIVE DEFENSES**

12. dPi has failed to state a claim upon which relief can be granted.
13. dPi's claims are barred by the doctrines of laches, estoppel, and waiver.
14. dPi's claims are barred by the statute of limitations.
15. dPi has (or had) a contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the applicable provisions of the parties' ICA(s). Upon information and belief, dPi failed to do so. Accordingly, dPi should be barred from pursuing claims that it failed to contractually preserve.

WHEREFORE, having responded to the Complaint, AT&T Tennessee respectfully requests that the Authority issue an Order dismissing the Complaint and granting such further relief as the Authority deems just and proper.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.  
d/b/a ~~AT&T~~ TENNESSEE



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## CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2008, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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