

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In Re:)	
)	
dPi Teleconnect, LLC v. BellSouth)	Docket No. 05-00310
Telecommunications, Inc. d/b/a AT&T)	
Tennessee)	
)	Docket No. 08-00063
dPi Teleconnect, LLC v. BellSouth)	
Telecommunications, Inc. d/b/a AT&T)	
Tennessee)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff dPi Teleconnect, LLC, (“dPi”) respectfully submits as supplemental authority the attached commission directive just issued by the Public Service Commission of South Carolina in proceedings virtually identical to those in the instant matter now before this Commission.¹

As in the instant matter, the South Carolina Commission was tasked with resolving the issue of how the promotional wholesale rate for telecommunications services should be calculated when a cash back promotion is offered for more than 90 days. In a 7-0 directive issued on November 9, 2011, the South Carolina Commission characterizes cash back promotions as rebates and states:

[S]ince the retail customer gets his rebate after keeping the service for thirty days, this Commission finds that ***thirty days should be the basis for calculating the rebate.*** . . . In the case where the rebate is greater than the first month’s charges,

¹ *Complaint and Petition for Relief of BellSouth Telecommunications, Inc. d/b/a/ AT&T Southeast d/b/a AT&T South Carolina v. Affordable Phone Services, Inc. d/b/a High Tech Communications; Dialtone& More, Inc.; Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC; OneTone Telecom, Inc.; dPi Teleconnect, LLC; and Image Access, Inc. d/b/a New Phone; in Docket Nos. 2010-14-C, 2010-15-C, 2010-16-C, 2010-17-C, 2010-18-C, and 2010-19-C before the Public Service Commission of South Carolina.*

discounting the rebate means that the [AT&T] retail customer in effect gets a better price than the CLEC. ***This is definitely not what we believe the Telecommunications Act of 1996 intended.*** Therefore, in the special cases where the rebate exceeds the first month's cost of service, we find that ***the retail discount should not be applied to [the] rebate.***

(Emphasis added.) See Exhibit A, Public Service Commission of South Carolina Commission Directive, November 9, 2011, p. 2.

In essence, the South Carolina Commission recognizes (as dPi has advocated in this proceeding): (1) that because the cash back promotion/rebate is payable in a single lump sum after completing just 30 days of telecommunications service, it is improper to presume that the promotion is paid out over a period of multiple months; (2) that for this 30-day period to which the rebate applies, AT&T's method results in AT&T's retail customers receiving a better price than AT&T's resale customers, a result which contradicts the intent of the Telecommunications Act; and (3) as a consequence, in situations (such as the one at hand) where the cash back promotion/rebate exceeds the monthly charge for telecommunications service, it is improper to discount the amount of the cash back promotion/rebate. Although directives issued by the Public Service Commission of South Carolina are not binding on this Commission, they do provide persuasive authority that merits careful consideration.

Respectfully submitted,

Malish & Cowan, P.L.L.C.
1403 West Sixth Street
Austin, Texas 78703
(512) 476-8591
(512) 477-8657 – facsimile
cmalish@malishcowan.com

/s/ Chris Malish
Christopher Malish
Texas State Bar No. 00791164

Attorneys for dPi Teleconnect, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2011, a true and correct copy of the forgoing was served upon the parties of record via electronic mail and/or United States mail.

Joelle J. Phillips
333 Commerce Street, Room 2101
Nashville, Tennessee 37201
(615) 214-6311
joelle.phillips@att.com

Guy M. Hicks
333 Commerce Street, Room 2101
Nashville, Tennessee 37201
(615) 214-6301
guy.hicks @att.com

/s/ Chris Malish
Christopher Malish

EXHIBIT A

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>November 09, 2011</u>
			<u>2010-14-C/2010-15-C</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2010-16-C/2010-17-C</u>
			<u>2010-18-C/2010-19-C</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	_____

SUBJECT:

DOCKET NO. 2010-14-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Affordable Phones Services, Incorporated d/b/a High Tech Communications;

DOCKET NO. 2010-15-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Dialtone & More, Incorporated;

DOCKET NO. 2010-16-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC;

DOCKET NO. 2010-17-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. OneTone Telecom, Incorporated;

DOCKET NO. 2010-18-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC;

-and-

DOCKET NO. 2010-19-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Image Access, Incorporated d/b/a New Phone - Discuss this Matter with the Commission.

COMMISSION ACTION:

My motion addresses the consolidated complaints by BellSouth Telecommunications against various telecommunications service resellers for amounts allegedly owed to BellSouth in connection with certain promotions offered by BellSouth to end users. Federal law requires that former Bell System companies offer these promotions to competitive local exchange carriers (CLECs). Other federal law requires that retail services purchased for resale by CLECs be provided at the same terms and conditions, less an appropriate discount representing avoided costs by the RLEC. Under South Carolina law, that discount has been established at 14.8%.

The disputed amounts relate to three types of offers:

I. Cash Back Offers. These are rebates to the purchasing consumer that require the purchaser to remain on the BellSouth network for thirty days before the rebate check is forwarded to the customer. These rebates could be for more or less than the first month's service. BellSouth claims that the cash back promotions should be the amount provided to the BellSouth customer less the 14.8% resale discount. The CLECs argue that in order to be on the same terms and conditions as sales to BellSouth Customers, the cash back offer should not be

discounted.

This Commission finds that the rebates should be subject to the resale discount. However since the retail customer gets his rebate after keeping the service for thirty days, this Commission finds that thirty days should be the basis for calculating the rebate. If the rebate is less than the first month's charges the discount should apply to the rebate, since this has the effect of keeping that month's charges to the CLEC within the 85.2% ratio of CLEC charges to the retail rates. In the case where the rebate is greater than the first month's charges, discounting the rebate means that the BellSouth retail customer in effect gets a better price than the CLEC. This is definitely not what we believe the Telecommunications Act of 1996 intended. Therefore, in the special cases where the rebate exceeds the first month's cost of service, we find that the retail discount should not be applied to rebate.

II. Line Connection Charge Waivers. In this promotion, BellSouth offers a waiver of the Line Connection charge to the new customer. BellSouth claims that it is meeting the requirements of equal terms and conditions by waiving the Line Connection Charges. The CLECs argue that the same terms and condition clause requires BellSouth to rebate to them the difference between the BellSouth retail charge and the discounted charge that is being waived.

We find that federal law and regulations do not require the full retail amount of the Line Connection Charge to be credited to the reseller.

III. Word of Mouth Promotions. BellSouth also offers current customers a cash payment for referring new customers to BellSouth. BellSouth argues that these payments are sales promotion activities that are already included in the 14.8% discount and are therefore not available for resale. The CLECs argue that the payment is a reduction of price for the retail service and is subject to resale requirements.

We find that Word of Mouth Promotions are indeed a marketing expense included in the resale discount. It is also important that the payment goes to the referrer and not to the new retail customer. Therefore we find that Word of Mouth Promotions are not included in the resale obligation and are not subject to being paid to the reseller.

PRESIDING: Howard

SESSION: Regular

TIME: 1:30 p.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WRIGHT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding

