

ORIGINAL

Timolyn Henry

**From:** Slaughter, Brenda [Brenda.Slaughter@BellSouth.COM]  
**Sent:** Monday, February 05, 2007 3:34 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Holland, Robyn P; Shore, Andrew; Woods, Vickie; Randa, Johna A; Felicia Banks; Christopher Malish; dpi-Teleconnect  
**Subject:** Docket 050863-TP  
**Importance:** High  
**Attachments:** 050863-TP Order PSC-07-0015-PCO-TP.pdf

CMP \_\_\_\_\_  
 COM \_\_\_\_\_  
 CTR \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 RCA \_\_\_\_\_  
 SCR \_\_\_\_\_  
 SGA \_\_\_\_\_  
 SEC \_\_\_\_\_  
 OTH \_\_\_\_\_

- A. Brenda Slaughter  
 Legal Secretary to Andrew D. Shore  
 BellSouth Telecommunications, Inc.  
 150 South Monroe Street  
 Suite 400  
 Tallahassee, Florida 32301  
 (404) 335-0714  
[brenda.slaughter@bellsouth.com](mailto:brenda.slaughter@bellsouth.com)
- B. Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.  
 on behalf of Andrew D. Shore
- D. 3 pages total (includes Letter and certificate of service)
- E. BellSouth Telecommunications, Inc.'s Response to Order No. PSC-07-0015-PCO-TP to be filed in referenced docket.

<<050863-TP Order PSC-07-0015-PCO-TP.pdf>>

Brenda Slaughter  
 BellSouth Telecommunications, Inc.  
 d/b/a AT&T Southeast  
 Suite 4300  
 675 W. Peachtree Street  
 Atlanta, GA 30375-0001  
 Phone: (404) 335-0714

\*\*\*\*\*

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA622

DOCUMENT NUMBER-DATE

01207 FEB-5 5

2/5/2007

FDSC COMMISSION OF EDU

ANDREW D. SHORE  
Senior Attorney  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0765

February 5, 2007

Commissioner Isilio Arriaga  
Pre-Hearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: **Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.; Order No. PSC-07-0015-PCO-TP**

Dear Commissioner Arriaga:

We are submitting this memorandum in response to your Order dated January 4, 2007. As summarized in your Order, dPi and BellSouth recently litigated this exact case before the North Carolina Utilities Commission ("NCUC"). The issue is whether dPi is entitled under its interconnection agreement with BellSouth to resell at the wholesale discount certain promotions that BellSouth makes available to its retail customers. The NCUC, following an evidentiary hearing and the submission of briefs, entered an Order rejecting dPi's claims and dismissing dPi's complaint. The NCUC subsequently denied dPi's motion for reconsideration.

The facts in this case are identical to the facts in the parallel North Carolina proceeding: The pertinent language in the dPi-BellSouth Florida interconnection agreement is identical to the language in the parties' North Carolina contract; and the promotions that are the purported basis for dPi's claims are the same in Florida as they were in North Carolina.

The facts and the law require that this Commission, like the NCUC, reject and dismiss dPi's claims. This Commission should look to the NCUC's orders, as they most certainly are persuasive authority.

The NCUC's determination does not, however, have preclusive effect here. The common law principles of issue preclusion do not apply because of the state-by-state allocation of authority over interconnection agreements under the Telecommunications Act of 1996. State commissions are not bound by decisions reached by other state commissions, even in considering similar or identical terms. *Global NAPS, Inc. v. Mass. Dep't of Telecomms. & Energy*, 427 F.3d34 (1st Cir. 2005); see also *Connect Communications Corp. v. Southwestern Bell*, 467 F.3d 703 (8th Cir. 2006).

DOCUMENT NUMBER-DATE

01207 FEB-5 06


FPSC-COMMISSION CLERK

Commissioner Arriaga  
Docket 050863-TP  
February 5, 2007  
Page 2

Although the NCUC decision does not have preclusive effect as a matter of law, there is only one reasonable outcome that can be reached in this case. We look forward to presenting the issues to the Florida Commission and are confident that it will reach the same conclusion that the NCUC reached after a full evidentiary hearing in that forum.

Thank you for your consideration.

Sincerely,

  
Andrew D. Shore (BHS)

Enclosures

cc: All Parties of Record  
Jerry Hendrix  
E. Earl Edenfield, Jr.  
James Meza III

**CERTIFICATE OF SERVICE  
DOCKET NO. 050683-TP**


I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and First Class U. S. Mail this 5th day of February 2007 to the following:

Felicia Banks  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Tel. No. (850) 413-6191  
[fbanks@psc.state.fl.us](mailto:fbanks@psc.state.fl.us)

Christopher Malish  
Foster Malish Blair & Cowan LLP  
1403 Weest Sixth Street  
Austin, TX 78703  
Tel. No. (512) 476-8591  
Fax. No. (512) 477-8657  
[chrismalish@fostermalish.com](mailto:chrismalish@fostermalish.com)  
Counsel for dPi

DPI-Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234-7627  
Tel. No. (972) 488-5500  
Fax No (972) 488-8636  
[dpikoff@dpiteleconnect.com](mailto:dpikoff@dpiteleconnect.com)

  
Andrew D. Shore (BAS)