Timolyn Henry

From: Jennifer Gunter [jennifer@fostermalish.com]
Sent: Monday, February 05, 2007 6:48 PM
To: Filings@psc.state.fl.us
Cc: fbanks@psc.state.fl.us; andrew.shore@bellsouth.com
Subject: Docket No. 0508630-TP; dPi Teleconnect v. BellSouth; dPi's Response to Order No. PSC-07-0015-PCO-TP

Attachments: Dkt. 050863-TP.effect of NC case.2-5-07.pdf

Dkt.
363-TP.effect of NC

Please file and let me know if you need anything else. Thank you.

A. Jennifer L. Gunter, CP
Paralegal
Foster Malish Blair & Cowan, LLP
1403 West Sixth Street
Austin, TX 78703
(512) 476-8591
(512) 477-8657/fax
jennifer@fostermalish.com
B. dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. - Docket No. 0508630-TP
C. dPi Teleconnect, LLC
D. 3 pages including letter and certificate of service
E. dPi Teleconnect, LLC's Response to Order No. PSC-07-0015-PCO-TP

<<Dkt. 050863-TP.effect of NC case.2-5-07.pdf>>

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC _____
OTH _____

ORIGINAL

FOSTER MALISH & BLAIR, L.L.P.
ATTORNEYS AT LAW
A REGISTERED LIMITED LIABILITY PARTNERSHIP
1403 WEST SIXTH STREET
AUSTIN, TEXAS 78703
(512) 476-8591
FAX (512) 477-8657
www.fostermalish.com

CHRISTOPHER MALISH

WRITERS EMAIL:
chrismalish@fostermalish.com

February 5, 2007

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

Re: dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc., Docket No. 050863-TP before the Florida Public Service Commission

Dear Commissioner Arriaga:

You have requested a memorandum on the consequence to this case of the North Carolina Commission's decision in Docket No. P-55, Sub 1577, *In the Matter of the Complaint of dPi Teleconnect, L.L.C. Against BellSouth Telecommunications, Inc. Regarding Credit for Resale of Services Subject to Promotional Discounts*. The short answer is, for now, none.

First, although the concepts in both this case and the North Carolina case are factually very similar, there may be distinct differences the tariffs or promotion language involved; the background state law; and of course the numbers will be completely different as between the two states.

Next, the results of the North Carolina case cannot be substituted into this case, as the North Carolina case is under appeal at the present time in *dPi Teleconnect, LLC. v. Jo Anne Sanford et al.*, Cause No. 5:06-CV-463-D, in the United States District Court for the Eastern District of North Carolina Western (Raleigh) Division, making it basically unfinished business.

Finally, even were the North Carolina case complete, state commissions are not bound by the decisions of other state commissions. *Global NAPS, Inc. v. Mass. Dep't of Telecomms. & Energy*, 427 F.3d 34 (1st Cir. 2005). Thus, the North Carolina has no preclusive effect in this case.

At the end of the day, this case will have to tried on its own merits in Florida. We are confident that when that happens, reason and careful analysis will result in a decision in dPi's favor.

Very truly yours,

Christopher Malish

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2007, a true and correct copy of the foregoing was served via electronic mail to the following:

Felicia Banks, Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
fbanks@psc.state.fl.us

Andrew Shore, Senior Attorney
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Room 400
Tallahassee, FL 32301
andrew.shore@bellsouth.com

Christopher Malish