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Subject: Docket No. 050863-TP: dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. - Response to BellSouth's Motion to Strike dPi's Posthearing Statement

Attachments: dPi's response to mtn to strike.rtf



dPi's response
to mtn to strik...

Please file this Response to BellSouth's Motion to Strike dPi's Posthearing Statement and let me know if you need anything else. Thank you.

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- B. dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. - Docket No. 050863-TP
- C. dPi Teleconnect, LLC
- D. 4 pages including certificate of service
- E. Response to BellSouth's Motion to Strike dPi's Posthearing Statement

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03871-08 05/09/08
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:) DOCKET NO. 050863-TP
)
dPi Teleconnect, L.L.C. v.)
BellSouth Telecommunications, Inc.)

RESPONSE TO BELLSOUTH'S
MOTION TO STRIKE dPi's POSTHEARING STATEMENT

BellSouth's Motion to Strike must be denied because dPi's statement is less than 25 pages, and the appendix complained of contains not evidence, but *analysis* of the evidence contained in Exhibit 13 -- not just appropriate, but *classic* closing argument material.

The page limit issue: the body of dPi's filing is no more than 24 pages.

An examination of dPi's Posthearing Statement shows that it consists of the following 24 pages:

- 18 pages of text;
- 3 pages dedicated to an appendix; and
- 3 pages of graphs or charts.

In addition, the filing contains

- 1 signature page with text approximately 1/4 of the page,
- 1 page for the certificate of service with text on approximately 1/2 of the page.

In the unlikely event this Commission elects to depart from general legal practice of not counting tables of contents, tables of authorities, signature blocks, and certificates of service toward page limits, dPi is happy to resubmit its filing with the signature page and certificate of service on a single page, which will bring the total down to 25.

The appendix contains nothing more nor less than an analysis of evidence already in the record – Exhibit 13 -- and is thus perfect posthearing statement argument material

BellSouth complains the appendix to dPi's posthearing statement must be stricken because of its similarity to testimony proffered but not accepted as evidence in this case. This objection is utterly without merit.

The Appendix contains not evidence, but *analysis, description, and explanation of the significance of evidence already in the record* – the evidence contained in Exhibit 13. Far from being objectionable, this kind of information is *classic* closing argument material.

Conclusion and Prayer

BellSouth's motion to strike imposes on the credulity of the Commission; its goal can only be to hide from the Commission legitimate information that is potentially useful to the Commission in its analysis so as to prevent a fair and just resolution of this case. The motion is patently without merit: it complains without justification that dPi has overshot the page limit, and complains of dPi's analysis, description, and explanation of the significance of evidence already in the record – material traditionally permitted in closing statements.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the above document was served on counsel below as indicated on the 9th day of May, 2008

/s/ Chris Malish
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