

Matilda Sanders

060020 - TP

From: Jennifer Gunter [jennifer@fostermalish.com]
Sent: Monday, January 09, 2006 2:22 PM
To: Filings@psc.state.fl.us
Subject: In the Matter of the Complaint of dPi Teleconnect against Verizon... - Motion for Emergency Relief and Temporary Order

Importance: High

Attachments: AR-M450_20060109_141517.pdf



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9_141517.pc

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Please file this today and call me upon receipt. Thank you.

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ORIGINAL

BEFORE
THE PUBLIC SERVICE COMMISSION OF FLORIDA

In the matter of the Complaint of dPi)
Teleconnect, L.L.C. Against Verizon for) Case No. 060020-TP
Unlawfully Terminating Service Provisioning.)
)

**MOTION FOR EMERGENCY RELIEF AND TEMPORARY ORDER REQUIRING
VERIZON TO CEASE AND DESIST FROM SUSPENDING DPI'S PROVISIONING**

dPi Teleconnect, L.L.C., ("dPi") submits this Motion to the Public Service Commission of Florida (the "Commission") requesting that the Commission issue an immediate order preserving the status quo and enjoining Verizon from suspending or otherwise affecting dPi's provisioning ability.

FACTS AND NATURE OF THE DISPUTE

The parties' dispute arises under the parties' interconnection agreement and centers on a deadline imposed by Verizon for dPi to comply with a demand for assurance. Verizon's demand was made by letter dated December 15, 2005, and provides that it will suspend dPi's provisioning beginning January 9, 2006, if a letter of credit in the amount of \$57,000.00 "from a financial institution acceptable to Verizon" is not provided by January 6, 2006. The letter is attached as Exhibit A.

The demand was sent just before the holidays in response to a late payment that was the result of an oversight on dPi's part. dPi immediately submitted payment when the oversight was brought to its attention, which made it current on all bills.

The dispute has arisen because the unreasonably short amount of time allowed by Verizon paired with the timing in relation to the holidays made it impossible for dPi to comply with

DOCUMENT NUMBER-DATE

00173 JAN-9 8

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Verizon's demand despite diligent efforts to do so. dPi's efforts at an informal dispute resolution were frustrated by the fact that the Verizon personnel with the authority to discuss the possibility of extending the deadline to comply with Verizon's demand were out of the office over the holidays.

dPi has been unable to identify a provision in the interconnection agreement that requires it comply with a demand for a letter of credit in the amount of time allocated by Verizon and, even if such a provision exists, dPi submits that the deadline is unreasonable under the circumstances. dPi has every intention of complying with Verizon's request for a letter of credit but maintains that it is entitled to a reasonable amount of time in which to do so.

ANALYSIS

dPi IS ENTITLED TO EMERGENCY RELIEF

dPi is entitled to emergency injunctive relief in this case because:

1. dPi has a substantial likelihood of success on the merits;
2. It faces a substantial threat of irreparable injury without the relief;
3. The threatened injury to dPi outweighs any threatened harm to Verizon from a preservation of the status quo; and
4. Injunctive relief is necessary to prevent the threatened harm.

dPi has a substantial likelihood of success on the merits:

As noted earlier, the dispute relates to a circumstance that is not addressed by the terms of the interconnection agreement. Consequently, a reasonable term must be applied. Verizon's arbitrarily imposed deadline is not permitted by the contract and is unreasonable under the circumstances. Consequently, dPi has a substantial likelihood of prevailing on the merits in this case.

dPi faces imminent harm if injunctive relief is not granted:

Verizon's demand letter clearly threatens suspension and termination of service if dPi does not immediately meet its arbitrary and unreasonable deadline for paying the requested deposit. *See Exhibit A.* Any such suspension or termination would seriously compromise dPi's ability to process new customer orders, change orders or orders for suspension or restoral of service. dPi's customers would not be provided telecommunications services at the rates and quality of service ordinarily provided by dPi, which would have a serious impact on dPi's good will with its customers. dPi would quickly sustain irreparable damage and could be put out of business altogether.

In order to avoid the dire consequences of suspension of service order provisioning and to allow the parties' legitimate disputes regarding the ambiguous terms of the interconnection agreement to proceed to hearing and decision on the merits, injunctive relief is needed. Specifically, the Commission should order Verizon to cease and desist from its efforts to suspend order provisioning.

The threatened injury to dPi outweighs any threatened harm to Verizon from preserving the status quo.

Maintaining the status quo will not harm Verizon. dPi is current on its existing bills and will be able to comply with Verizon's demand for assurance fairly quickly. It needs only a reasonable amount of time in which to do so and, in fact, believes that it can do so within two weeks. Verizon will not be harmed by continuing to provide provisioning to dPi for such a short time. As shown above, dPi, on the other hand, will quickly sustain irreparable damage if it is disconnected or otherwise unable to provision its customers' accounts and could be put out of business altogether.

Injunctive relief is necessary; without it dPi faces wrongful and irreparably damaging suspension and termination.

Injunctive relief is necessary because Verizon has threatened to suspend or terminate dPi's provisioning unless dPi meets an arbitrary and unreasonable deadline for paying the deposit.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, based upon the foregoing and attachments hereto, dPi respectfully requests and prays that:

- a) A temporary order be issued immediately that directs Verizon to cease and desist from its threatened action to discontinue service order provisioning during the pendency of this proceeding and that this temporary order continue in full force and effect until such time as a ruling can be made after a full hearing may be held on this matter;
- b) Following hearing on the merits of the issues set forth above, the interconnection agreement be read to impose a reasonable deadline for compliance with a demand for assurance; and
- c) dPi be awarded any other and further legal and equitable relief to which it is entitled.

Respectfully submitted,

/s/ Brian A. Bolinger

Brian A. Bolinger
Vice President Legal Affairs
dPi TeleConnect, LLC
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By: /s/ Christopher Malish

Christopher Malish
Texas Bar No. 00791164
ATTORNEYS FOR DPI

CERTIFICATE OF SERVICE

I hereby certify that I have this the 9th day of January, 2006, served a true and correct copy of the foregoing to the following via facsimile or certified mail, return receipt requested:

Verizon Florida, Inc.
David Christian, Vice-President
106 E. College Ave.
Tallahassee, FL 32301-7748

/s/ Chris Malish
Chris Malish

EXHIBIT A



Deb K. Hill
Manager - Wholesale Collections

Mail Code: TXD01S11
2701 S Johnson St
San Angelo, TX 76904
(325) 942-4613
deb.hill@verizon.com

VIA OVERNIGHT MAIL

December 15, 2005

Brian A. Bolinger
Vice President of Legal Affairs
dPi Teleconnect, LLC
2997 LBJ Freeway
Dallas, TX 75234

David Pikoff
Vice President
dPi Teleconnect, LLC
2997 LBJ Freeway, Suite 225
Dallas, TX 75234

Re: Notice of Payment Default and Pending Termination of Service - Florida

Dear Messrs. Bolinger and Pikoff:

Please take notice that dPi Teleconnect, LLC ("dPi") is again in default of its bill payment obligations in Florida under its Amended, Extended, and Restated Agreement (the "Agreement") with Verizon Florida Inc. ("Verizon").

dPi is now in default with respect to such charges owed to Verizon in the amount of \$57,498.27. This default arises from dPi's failure to pay undisputed past due resold service charges. Attached please find account information current as of December 12, 2005. As noted in the attached chart, Verizon has deducted from its payment demand all disputes that Verizon has received.¹ As you know, Verizon and its telephone operating company affiliates previously sent dPi payment default notices on June 10, 2004 in several states, including Florida, so this is now the second such notice that Verizon and its affiliates have had to send dPi in less than two years.

Verizon sends this formal notice of payment default pursuant to Section 12 of the Agreement. dPi must cure this payment default by electronic payment of \$57,498.27 received on or before January 17, 2006. If dPi fails to pay its cure amount, then Verizon will suspend its acceptance of any dPi service orders (except disconnects)², and will terminate all existing service provided under the Agreement beginning on or after January 18, 2006.

Section 9.2 of the Agreement requires payments to be transmitted by "electronic funds transfer or in a manner that is and continues to be otherwise mutually agreeable between the Parties." Because dPi has

¹ Verizon understands that dPi has asserted that it has additional disputes, but it has not provided these to Verizon through the standard claims process.

² Assuming that service order acceptance has not already been suspended for failure to provide adequate assurance as further explained below.

dPi Teleconnect, LLC
December 15, 2005
Page 2 of 4

repeatedly failed to pay its bills on time, payment by check is no longer agreeable to Verizon. Therefore, Verizon hereby demands that dPi comply with its obligations under the Agreement by rendering all payments from now on by electronic means. Instructions for sending wire, EDI or ACH payments are attached.

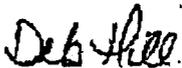
Pursuant to Section 13 of the Agreement, if dPi will actually discontinue its customer service for any reason, it is dPi's sole responsibility to provide written notice of such service discontinuance to its customers, Verizon, and the Florida Public Service Commission. Therefore, if dPi does not intend to cure its defaults, it must ensure that its customers are notified as soon as possible so that they can select an alternate local service carrier.

As a result of dPi's failure to timely pay bills rendered, under Section 6.2 of the Agreement, Verizon is entitled to demand adequate assurance of payments due and to become due in the amount of two months' anticipated charges. Per Section 6.8³ of the Agreement, if Verizon demands this assurance of payment and dPi fails to provide it, Verizon is entitled to suspend its performance obligations.

Accordingly, Verizon hereby exercises its adequate assurance rights under Section 6 of the Agreement, and demands that dPi furnish an irrevocable standby letter of credit in the amount of \$57,000.00⁴, naming Verizon as the beneficiary thereof in form and substance acceptable to Verizon from a financial institution acceptable to Verizon. This letter of credit must be delivered to Verizon no later than January 6, 2006. If the letter of credit is not delivered by that date, then Verizon will suspend in part its provision of service to dPi and will refuse all new or pending service orders (except disconnects) to add or to change existing service at any time on or after January 9, 2006.

Verizon reserves all of its rights to exercise any or all of its cumulative remedies, and will continue to exercise any and all available legal rights to collect payment for all services rendered and to limit its risk of accruing additional unpaid service charges. Please contact me immediately to arrange payment in cure of this dPi breach of payment obligations in Florida.

Sincerely,



Deb K. Hill

³ Section 6.8 "Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as dPi has provided Verizon with such assurance of payment, provided, however, that Verizon shall give dPi a minimum of ten (10) business days to respond to a request for assurance of payment before invoking this paragraph."

⁴ This amount is based on the average of dPi's monthly service charges billed in October, November and December 2005, multiplied by two.