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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.3d 34 (1st Cir. 2005); see also *Connect Communications Corp. v. Southwestern Bell*, 467 F.3d 703 (8th Cir. 2006).

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 (BSH)

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:

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