

7/20/2007 1:52 PM

Office of Commission Clerk Official Filing

ORIGINAL

Ruth Nettles

From: Jennifer Washington [jennifer@fostermalish.com]
 Sent: Friday, July 20, 2007 1:50 PM
 To: Filings@psc.state.fl.us
 Cc: mg2708@att.com; jm5803@att.com; andrew.shore@bellsouth.com; Nancy Pruitt; Lee Eng Tan; Malish, Chris; Steven Tepera
 Subject: Docket No. 0508630-TP; dPi Teleconnect v. BellSouth - dPi Teleconnect, LLC's Motion for Continuance

Attachments: Motion for Continuance 7-20-07.wpd; Motion for Continuance 7-20-07.pdf



Motion for
 Continuance 7-20-07.wpd
 Motion for
 Continuance 7-20-07.pdf

Please file the attached continuance (attached in .wpd format and .pdf format for your convenience) and let me know if you need anything else. Thank you.

- A. Jennifer L. Washington, 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. 050863-TP
- C. dPi Teleconnect, LLC
- D. 5 pages including certificate of conference and certificate of service
- E. dPi Teleconnect, LLC's Motion for Continuance

<<Motion for Continuance 7-20-07.wpd>> <<Motion for Continuance 7-20-07.pdf>>

Jennifer L. Washington, CP
 Paralegal
 Foster Malish Blair & Cowan, LLP
 1403 West Sixth Street
 Austin, TX 78703
 (512) 476-8591
 (512) 477-8657/fax
 jennifer@fostermalish.com

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (512) 476-8591 and permanently delete the original and any copy of any e-mail and any printout thereof.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

MOTION FOR CONTINUANCE

dPi Teleconnect, L.L.C. ("dPi"), Complainant in the above numbered and styled cause, moves the Florida Public Service Commission ("Commission") to continue the cause to allow adequate discovery before direct testimony is filed.

This case has been either held in abeyance or continued essentially from the time it was filed until July 9, 2007, when the Commission issued a scheduling order requiring direct testimony to be filed July 23, 2007. dPi requests a continuance to allow development of the facts of the case.

Background

The issue in dispute is whether dPi, a CLEC who resells telecommunications services, is entitled to credit for certain promotions offered BellSouth Telecommunications, Inc.'s ("BellSouth") end users. This is one of several parallel proceedings before the Public Service Commissions of states in the southern and southeastern United States. The legal theories in each state are similar, but each state has its own state specific facts, including the length of time promotions were offered, the amount of credits requested by dPi, and the eligibility terms of the promotions.

This matter was held in abeyance pending resolution of similar litigation in North Carolina from soon after its filing until the Commission ceased holding the case in abeyance pursuant to an order dated January 4, 2007. During the time it was held in abeyance, all parties were blocked from proceeding in any way, including discovery. Subsequent to the Commission's order of January 4,

2007, discovery disputes arose in several states, including Louisiana. BellSouth refused to produce certain documents, dPi filed a motion to compel, and argument over the motion was heard by the Louisiana Public Commission April 19, 2007.

On May 11, 2007, between the time the Louisiana Public Service Commission heard argument on the motion to compel and issued its ruling, dPi and BellSouth agreed in this case to jointly continue the matter. The reason for this was to use the Louisiana PSC ruling to guide the parties as to their obligations in discovery. This agreed continuance had the benefit of allowing each party to only spend the resources on a single hearing in anticipation that the ruling of the Louisiana PSC would aid the parties in avoid similar disputes in other states.

June 13, 2007, BellSouth withdrew its joint motion for continuance. dPi does not complain of this and is prepared to proceed with discovery. However, the Commission issued an order July 9, 2007, that requires direct testimony to be filed Monday, July 23, 2007. This quick two-week period prevents dPi from using any discovery materials from BellSouth in its direct testimony. dPi can file its testimony without the discovery materials, but no exhibits will be included and none can be included until discovery has been conducted.

Because this suit has been either continued or held in abeyance essentially since its inception, the parties were not able to conduct discovery. This continuance is requested to (1) allow for discovery and (2) build in a time to resolve any disputes concerning discovery so that no future continuances need be requested.

dPi respectfully requests this Commission continue the current matter pursuant to the below schedule.

- | | |
|-------------------------------------|--------------------|
| (1) Direct testimony and exhibits | September 21, 2007 |
| (2) Rebuttal testimony and exhibits | October 12, 2007 |
| (3) Prehearing statements | October 26, 2007 |
| (4) Prehearing Conference | November 9, 2007 |
| (5) Discovery Deadline | November 15, 2007 |
| (6) Hearing | November 29, 2007 |
| (7) Briefs | December 6, 2007 |

Prayer

dPi prays the Commission continues the above styled cause pursuant to the included schedule. This motion is not solely for delay but that justice may be done in resolving the case on its facts.

Respectfully Submitted,

FOSTER MALISH BLAIR & COWAN, LLP

/s/ Chris Malish
Chris Malish
Texas Bar No. 00791164
cmalish@fostermalish.com
Steven Tepera
Texas Bar No. 24053510
stepera@fostermalish.com
1403 West Sixth Street
Austin, Texas 78703
Phone: (512) 476-8591
Fax: (512) 477-8657

Certificate of Conference

I hereby certify that counsel for dPi conferred with counsel for BellSouth on Thursday, July 19, 2007, and Friday July 20, 2007, via telephone regarding the contents of this motion and could not reach an agreement.

/s/ Chris Malish _____

Chris Malish

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above instrument was transmitted to Counsel for Defendants at the below address via electronic mail and first class mail on July 20, 2007.

/s/ Chris Malish_____

Chris Malish

cc: Manuel A. Gurdian, Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street, Room 400
Tallahassee, Florida 32301

Andrew Shore, Senior Regulatory Counsel
BellSouth Telecommunications, Inc.
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375