

Matilda Sanders

From: Smith, Debbie N. [ds3504@att.com]
Sent: Friday, August 24, 2007 3:51 PM
To: Filings@psc.state.fl.us
Cc: Carver, J; Woods, Vickie; Gurdian, Manuel; Holland, Robyn P; Follensbee, Greg; Eller, Perry
Subject: Florida Docket No. 050863-TP
Importance: High
Attachments: motiontostrike.pdf

- A. Debbie N. Smith
Assistant to J. Phillip Carver
AT&T Southeast
150 South Monroe Street
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(404) 335-0772
debbie.n.smith@att.com
- B. Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.
on behalf of J. Phillip Carver
- D. 15 pages total (includes letter, pleading (with attachments) and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Strike

<<motiontostrike.pdf>>

Debbie N. Smith (sent on behalf of J. Phillip Carver)
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Please note my new email address is debbie.n.smith@att.com

DOCUMENT NUMBER-DATE

07605 AUG 24 5

FPSC-COMMISSION CLERK

8/24/2007



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August 24, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

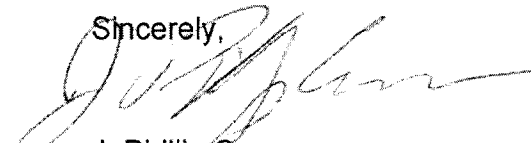
**Re: Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth
Telecommunications, Inc.**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Strike, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



J. Phillip Carver

cc: All parties of record
Chris Malish
Jerry Hendrix
James Meza III
E. Earl Edenfield, Jr.

**CERTIFICATE OF SERVICE
DOCKET NO. 050863-TP**

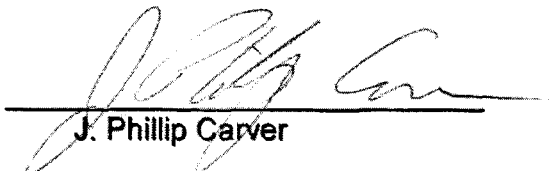
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and Federal Express this 24th day of August, 2007 to the following:

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

Christopher Malish
Foster Malish Blair & Cowan LLP
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Counsel for dPi

DPI-Teleconnect, LLC
2997 LBJ Freeway, Suite 225
Dallas, TX 75234-7627
Tel. No. (972) 488-5500 x4001
Fax No (972) 488-8636
ddorwart@dpiteleconnect.com



J. Phillip Carver

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|--------------------------------------|------------------------|
| In re: dPi Teleconnect, L.L.C. v.) | Docket No. 050863-TP |
| BellSouth Telecommunications, Inc.) | |
|) | Filed: August 24, 2007 |

MOTION TO STRIKE

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”), hereby files, pursuant to Florida Public Service Commission (“Commission”) Rule 25-22.037(2), its Motion to Strike. AT&T Florida herein requests that the Commission strike the portions of dPi’s rebuttal testimony identified below, and prohibit the amendment of dPi’s rebuttal testimony. AT&T Florida states as grounds in support thereof, the following:

1. On August 20, 2007, dPi filed the Rebuttal Testimony of its witnesses, Brian Bolinger and Steve Watson. Both of these witnesses’ testimonies state the contention that dPi could not file complete rebuttal testimony because responses to discovery had been withheld by AT&T Florida. In each instance, the witness also states that when dPi receives the information, the respective witness will amend his testimony¹.
2. The nominal justification offered by these witnesses for dPi’s failure to file complete testimony on August 20, 2007 is simply not true. More specifically, AT&T Florida provided dPi with all discovery responses that are relevant to the issues discussed in the dPi witnesses’ testimony by August 10, 2007, ten days before rebuttal testimony was due. dPi should not be allowed to amend its testimony in a way that does not conform to the Commission’s rules and to the Order Establishing Procedure entered in

¹ Of course, dPi has no right to file amended testimony and, would, therefore, be required to file a motion seeking leave from the Commission to do so.

this proceeding (Order No. PSC-07-0322-PCO-TP), especially when dPi's nominal justification for doing so is simply not true. Therefore, the Commission should strike the portion of the rebuttal testimony of each witness that contains inaccurate statements and should also prohibit dPi from filing amended testimony.

3. In the Rebuttal Testimony of Steve Watson, filed on behalf of dPi, he states that in the North Carolina proceeding most of the credit requests in dispute related to the line connection charge waiver ("LCCW") promotion. In this promotion, the line connection charge is waived when a residential customer orders local service and two features. Mr. Watson notes (albeit in a somewhat inaccurate manner) that the dispute involves the fact that dPi has ordered the blocking of features on its customer's lines, which are available at no cost. dPi contends that these "call blocks" are themselves features that qualify dPi for a credit under the LCCW promotion. As Mr. Watson notes, AT&T Florida's position is that dPi's order of call blocking does not qualify it (or its end users) to receive credit under this promotion. In this context, Mr. Watson's testimony states the following:

It is likely that this is the same excuse BellSouth is using here in Florida. However, we cannot be sure at this time because BellSouth withheld its reasons for denial and its discovery responses submitted August 9, 2007, until a proprietary agreement was executed. It has since been executed but dPi has not received the proprietary documents. My testimony will be amended once dPi receives these documents.

(Rebuttal Testimony of Steve Watson, p. 5, lines 15 through 18).

4. Similarly, Mr. Bollinger stated in his testimony his view of the dispute between the parties. After noting that AT&T denied credit requests when the ostensible features were actually call blocking "selected by dPi," (Bolinger Rebuttal Testimony, p. 1) Mr. Bolinger then stated the following:

It is likely that a similar excuse is being used here in Florida: however, I must amend my testimony to reflect the exact percentage in the future because this information was withheld from discovery produced on August 9, 2007, until a protective agreement is executed. This has been executed by dPi [sic] has not received the proprietary document.

(Bollinger Testimony, p. 1, line 27 through p. 2, line 4).

5. Despite these assertions by dPi's witnesses, AT&T has, in fact, not withheld any documents that are relevant to the topic addressed in the above-quoted testimony. When AT&T responded to dPi's "Request for Information" on August 9, 2007, it designated four responses as containing proprietary information, Nos. 1-3, 1-16, 1-17 and 1-22. AT&T electronically delivered to counsel for dPi on August 9, 2007 all non-proprietary discovery responses and a letter in which AT&T explained that three of the four proprietary responses (1-3, 1-16 and 1-17) were confidential, but only because they contained customer specific information. In this case, the customer in question is dPi. Accordingly, as AT&T stated in the letter, AT&T did not withhold any of these documents from dPi, and it did not require counsel for dPi to execute a confidentiality agreement before receiving these documents. Instead, the responses to these three requests were sent to counsel for dPi via Federal Express, and were received by counsel for dPi on August 10, 2007. These documents contained the only requested confidential information that relates to the reasons for denial of credit requests.²

6. Both Mr. Watson and Mr. Bolinger complained that, as of August 20, 2007, they did not know how the amounts in dispute related to the various promotions and the reasons for denial. However, the only confidential response to dPi's Request for

² Attached hereto as Composite Attachment 1 is the aforescribed letter, the e-mail by which this letter was originally transmitted to counsel for dPi on August 9, an electronic receipt showing that counsel for dPi read this e-mail on August 10, 2007, and the Federal Express receipt showing that the documents in question (along with a paper copy of the aforementioned letter) were delivered to counsel for dPi at 9:50 a.m. on August 10, 2007.

Information that relates to this issue is No. 1-17. The following is Request 1-17 and

AT&T's response:

REQUEST: For each of the reasons identified as a reason why dPi Teleconnect, LLC, was not eligible for a particular credit in response to RFI 1-15, please identify the total dollar amount of credits applied for but denied for the particular reason given.

RESPONSE: This information is proprietary and confidential pursuant to the applicable Florida Statute and is being produced pursuant to the Notice of Intent that is being filed simultaneously with these responses.

Again, AT&T produced the responsive document to dPi, and dPi received it the morning of August 10, 2007, ten days before dPi's Rebuttal Testimony was due to be filed. This response was in the form of a CD, which identified every request, and provided for each request, the promotion, the reason for denial and the amount of the requested credit.

7. The only proprietary materials that were not in the hands of dPi's counsel by the morning of August 10 were responses to Request for Information 1-22, which contained AT&T internal documents that are unrelated to the issues addressed in the above-described portions of dPi's rebuttal testimony³. Counsel for dPi requested the confidential response to 1-22 for the first time at approximately 1:00 p.m. Thursday, August 16, 2007. Within three hours of this request, AT&T sent to dPi a Florida specific confidentiality agreement. Counsel for dPi executed the agreement, and AT&T transmitted the documents electronically to dPi in a password protected file at approximately 1:00 p.m. Friday, August 17, 2007, i.e., 25 hours after the first time that dPi requested the remaining confidential information (copies of the above-described e-mails are attached as Composite Attachment 2).

³ Request for Information 1-22 calls for copies of "BellSouth's internal documents relating to BellSouth's promotions."

8. Since the responsive, confidential information was sent over the internet, AT&T protected it with a password. Counsel for dPi was informed by email at the time he received the password protected file that he could call a representative of AT&T to obtain the password. Counsel for dPi did not request the password until approximately 3:30 p.m. on Wednesday, August 22, 2007, two days after rebuttal testimony was due. Thus, to the extent dPi did not have information responsive to Request No. 1-22 when it filed its rebuttal testimony, it is entirely due to dPi's lack of diligence.

9. More to the point, the confidential information that AT&T has provided in response to the Request for Information No. 1-22 is not related to the incomplete areas of dPi's Rebuttal Testimony. Instead, as noted above, all confidential information that related to the incomplete areas of the rebuttal testimony were provided on August 10, 2007.

10. Given the foregoing, the claim of dPi's witnesses that they lacked information needed to prepare their testimony is simply not true. dPi should not be allowed to ignore the rules of the Commission or the requirement of the *Order Establishing Procedure* that testimony be timely filed. Moreover, dPi certainly should not be allowed to avoid the rules by giving as its nominal justification an obvious misstatement of the discovery that has been propounded to date by dPi, and of AT&T's timely and appropriate responses.

WHEREFORE, AT&T requests that the Commission strike the above-quoted portions of page 5, lines 15 through 18 of the Rebuttal Testimony of Steve Watson and page 1, line 27 through page 2, line 4 of the Rebuttal Testimony of Brian Bolinger. AT&T also requests that the Commission prohibit dPi from amending its Rebuttal

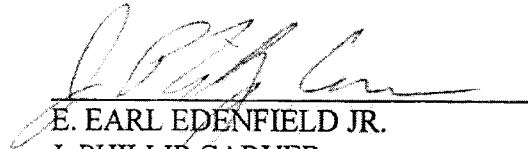
Testimony, and that it also strike any unauthorized Amended Rebuttal Testimony that dPi may file.

Respectfully submitted this 24th day of August, 2007.

AT&T FLORIDA



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AUTHORIZED HOUSE COUNSEL NO. 464260
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c/o Nancy H. Sims
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688705

J. PHILLIP CARVER
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(404) 335-0710

August 9, 2007

VIA FEDERAL EXPRESS

Christopher Malish
Foster Malish Blair & Cowan LLP
1403 West Sixth Street
Austin, TX 78703

**Re: Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth
Telecommunications, Inc.**

Dear Mr. Malish:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Responses and Objections to dPi's First Request for Information.

AT&T Florida has requested from the Commission confidential classification of information responsive to request numbers 1-3, 1-16, 1-17, and 1-22. The proprietary information that is responsive to the first three requests is either dPi's information or information of dPi's customers. Accordingly, these documents are enclosed, and there is no need for you to execute a confidentiality agreement for these documents. Documents responsive to 1-22, however, are AT&T's confidential business information, which I will be glad to send to you after you execute and send to me an appropriate confidentiality agreement.

Sincerely,



J. Phillip Carver

cc: All parties of record

COMPOSITE ATTACHMENT 1

Smith, Debbie N.

From: Smith, Debbie N.
Sent: Thursday, August 09, 2007 4:20 PM
To: 'ltan@psc.state.fl.us'; 'chrismalish@fostermalish.com'; 'Steventepera@fostermalish.com'; 'ddorwart@dpiteleconnect.com'
Cc: Carver, J; Gurdian, Manuel; Woods, Vickie; Holland, Robyn P; Eller, Perry; Slaughter, Brenda
Subject: Florida Docket No. 050863-TP

Importance: High

Please find attached an electronic copy of today's filings on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Florida in the referenced docket. A hard copy will be sent by Federal Express.

Debbie N. Smith (sent on behalf of J. Phillip Carver)
Legal Assistant to J. Phillip Carver and John Tyler
AT&T Southeast
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, Georgia 30375
(404) 335-0772



responses.pdf (799 KB) NOI.pdf (83 KB) malish.pdf (32 KB)

| Tracking: | Recipient | Delivery |
|-----------|---------------------------------|-----------------------------|
| | 'ltan@psc.state.fl.us' | |
| | 'chrismalish@fostermalish.com' | |
| | 'Steventepera@fostermalish.com' | |
| | 'ddorwart@dpiteleconnect.com' | |
| | Carver, J | |
| | Gurdian, Manuel | Delivered: 8/9/2007 4:20 PM |
| | Woods, Vickie | Delivered: 8/9/2007 4:20 PM |
| | Holland, Robyn P | |
| | Eller, Perry | |
| | Slaughter, Brenda | Delivered: 8/9/2007 4:20 PM |

Smith, Debbie N.

From: Malish, Chris [chrismalish@FOSTERMALISH.com]
To: Smith, Debbie N.
Sent: Friday, August 10, 2007 10:20 AM
Subject: Read: Florida Docket No. 050863-TP

Your message

To: chrismalish@FOSTERMALISH.com
Subject:

was read on 8/10/2007 10:20 AM.

Carver, J

From: Steven Tepera [steventepera@fostermalish.com]
Sent: Thursday, August 16, 2007 1:20 PM
To: Smith, Debbie N.; Itan@psc.state.fl.us; Malish, Chris; ddorwart@dpiteleconnect.com
Cc: Carver, J; Gurdian, Manuel; Woods, Vickie; Holland, Robyn P; Eller, Perry; Slaughter, Brenda
Subject: RE: Florida Docket No. 050863-TP

Dear all,

Please find attached an protective agreement with accompanying executed signature pages. This protective agreement is one that was suggested by BellSouth in Louisiana and modified to fit this docket.

If it satisfies AT&T, please forward all withheld documents from the response to request for information.

If you have any questions, please contact me.

Thanks,

Steven Tepera
512.476.8591

-----Original Message-----

From: Smith, Debbie N. [mailto:ds3504@att.com]
Sent: Thursday, August 09, 2007 3:20 PM
To: Itan@psc.state.fl.us; Malish, Chris; Steven Tepera; ddorwart@dpiteleconnect.com
Cc: Carver, J; Gurdian, Manuel; Woods, Vickie; Holland, Robyn P; Eller, Perry; Slaughter, Brenda
Subject: Florida Docket No. 050863-TP
Importance: High

Please find attached an electronic copy of today's filings on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Florida in the referenced docket. A hard copy will be sent by Federal Express.

Debbie N. Smith (sent on behalf of J. Phillip Carver)
Legal Assistant to J. Phillip Carver and John Tyler
AT&T Southeast
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, Georgia 30375
(404) 335-0772

<<responses.pdf>> <<NOI.pdf>> <<malish.pdf>>

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intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA622

Carver, J

From: Eller, Perry
Sent: Thursday, August 16, 2007 4:02 PM
To: 'Steven Tepera'
Cc: Carver, J; Gurdian, Manuel; Malish, Chris
Subject: Non-disclosure Agreement (FPSC Docket No. 050863-TP)

Steven,

Please execute and return the attached non-disclosure agreement. I hate to ask you to do this again, but we have more specific requirements for the protection of proprietary material in Florida than in other states.

Thank you,

Perry Eller
AT&T
Manager - CRCM
Regulatory Operations
Service & Quality Matter! We Deliver!
Office: (404) 330-0480
Fax: (404) 529-5122
Cell: (404) 345-1199
E-mail: perry.eller@bellsouth.com

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8/24/2007

Carver, J

From: Eller, Perry
Sent: Friday, August 17, 2007 1:55 PM
To: 'Steven Tepera'
Cc: Carver, J
Subject: AT&T Florida Response to Item No. 22 of dPI's 1st RFI (FPSC Docket No. 050863-TP)

Steven,

I received your executed non-disclosure agreement for FPSC Docket No. 050863-TP. You should be able to access the Proprietary Attachment to Item No. 22 of dPI's 1st Request for Information from the attached file.

You will need to call me at 404-330-0480 for the password.

Thank you,

Perry Eller
AT&T
Manager - CRCM
Regulatory Operations
Service & Quality Matter! We Deliver !
Office: (404) 330-0480
Fax: (404) 529-5122
Cell: (404) 345-1199
E-mail: perry.eller@bellsouth.com

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8/24/2007