BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTION TO STRIKE

dPi Teleconnect, LLC, moves the Florida Public Service Commission for a one-day extension of time to file its response to AT&T's Motion to Strike.

AT&T's Motion to Strike, initially filed on August 24, 2007, was amended through a corrected attachment on August 28, 2007. Pursuant to Florida Public Service Commission Rules, dPi's deadline for responding to this Motion was not September 4, 2007, but September 5, 2007, making this pleading timely.

In the event that September 4 was the correct response date, dPi's failure to respond was inadvertent and caused by a misunderstanding about the rule, and dPi moves for permission to respond to AT&T's Motion to Strike. No party will be prejudiced by this one-day extension.

dPi's proposed response to AT&T's Motion to Strike is included.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document has been served upon counsel for Florida Public Service Commission and served upon Defendant through its below-listed attorneys on this 5th day of September, 2007.

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dPi Teleconnect's Response to Motion to Strike

AT&T's Motion to Strike should be denied because AT&T comes to the Commission with unclean hands: the problems AT&T complains of (lack of information in the testimony) was occasioned by ***AT&T's*** delay in providing dPi with the discovery responses containing the information needed to complete the testimony .

BACKGROUND

1. In order to have the testimony in question timely filed, it had to be transmitted to the Commission by the end of business on Friday, August 17, 2007.

2. Much of the relevant detail concerned with the case in Florida – such as the amounts in controversy, and which credits were denied, and for what reason – could not be provided by dPi, because AT&T never provided this information to dPi during the regular course of business; such information on these issues as dPi has acquired, it has had to acquire through the discovery process in this case or sister cases in other forums.

3. In this case, dPi made certain requests for information to AT&T, which information was crucial to dPi's presentation of its case. AT&T did not provide the requested information on the due date, claiming it was confidential proprietary information in its response to Requests for Information on August 9, 2007. The paper copy was received

August 10, 2007. AT&T's response requested that dPi execute a confidentiality agreement in order to receive portions of the discovery. Note that AT&T could have, but did not, inform dPi prior to the answer date that a confidentiality agreement would be necessary to disclose the requested information in a timely manner.

4. By August 16, 2007 (five business days after receiving the electronic copy and four business days of verifying that no confidentiality agreement was sent via paper copy), AT&T had still not sent it's proposed confidentiality agreement, so dPi "cut and pasted" an AT&T drafted confidentiality agreement from a sister case in another state, executed same, and returned said confidentiality agreement to AT&T so that dPi could obtain the withheld discovery responses. Upon doing so, dPi was informed that its confidentiality agreement was inadequate, because AT&T Florida has specific requirements in its confidentiality agreements. This negated all the work done by dPi in drafting the agreement (and begged the question why AT&T would not send its already-drafted confidentiality agreement itself to begin with). AT&T sent its own confidentiality agreement to dPi on Thursday, August 16, 2007. Due to email filtering, it was received by dPi Friday, August 17, 2007.

5. dPi executed for a second time a confidentiality agreement to send to AT&T. This was done just 24 minutes after receiving the confidentiality agreement sent by AT&T. AT&T responded by sending the proprietary information *which was still password protected* on the afternoon of Friday, August 17, 2007.

6. In order to have the testimony timely filed, it had to be transmitted to the Commission by the end of business on Friday, August 17, 2007. Needless to say, dPi's counsel was engaged in preparations of the testimony and had no time to jump through more hoops to

obtain the requested discovery, digest it, and include the results in the testimony of its witnesses before the deadline at the end of the day.

ARGUMENT

AT&T's Motion to Strike should be denied because of the delay in dPi producing complete testimony was caused by AT&T itself.

7. AT&T moves to strike under "Rule 25-22.037(2);" however, no such rule exists, and AT&T is not under any circumstances entitled to have dPi's testimony stricken.

8. AT&T is engaging in gamesmanship to attempt to avoid a decision on the merits. It has attempted to use the tight time constraints to its advantage by placing unnecessary hurdles in front of dPi in its attempt to conduct discovery. The lack of information in dPi's testimony arises not from dPi's lack of diligence in attempting to secure and present the information, but from AT&T's intransigence in providing the information requested to begin with.

9. AT&T could have sent its preferred proprietary agreement to dPi at the time it answered its discovery responses. It did not. Instead, it left dPi to draft the agreement itself. Once it did so, AT&T's answer was essentially that dPi had wasted its efforts because AT&T had a preferred confidentiality agreement and would not agree to another. AT&T's legal maneuvering with respect to the confidentiality agreement did nothing but increase the legal fees for dPi and waste time – both of which seem to be goals of AT&T's throughout this

dispute.[1]

10. AT&T should not be able to complain of delays that it had a substantial hand in causing.

AT&T's Motion to Strike should be denied because discovery produced by AT&T before testimony was filed was not complete.

11. AT&T attempts to have the testimony struck on the basis that part of the discovery was produced. This fails for two reasons: the discovery that was produced was inadequate and incomplete; and the discovery that was withheld could interplay with what was produced.

12. In its RFI 1-17, dPi requested documents showing the reason for denial for each denied credit. dPi agreed that discovery responses would be satisfactory if AT&T produced line connection charge waiver (LCCW) credit requests and their denials in the form of color highlighting and a notation on the side for the reason for denial, similar to what was produced by AT&T in other states. However, AT&T's produced documents do not comply with the agreement from the other forumse. They differ so much, in fact that the response is unusable. On some of the credit requests, shorthand notations on the side of the page (e.g., LT1, NRW, LT2) are placed without any legend as to the meaning of these codes. dPi is forced to guess (1) if these are the reasons for denial and (2) what these mean. Even worse, on some of the credit requests there are no notations at all, and thus dPi is no closer to

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For example, dPi has attempted to discover what AT&T charged its end users for the same service dPi provides (basic service plus two blocks). This simple request has been answered by AT&T with references to discovery disputes in other states, reliance on agreements that were never made, passing dPi's attorneys back and forth between AT&T's attorneys on the grounds that "the other one knows the answer," and demands that dPi do the impossible and invent sampling strategies for AT&T's data when dPi has no idea what the data is. The end result is that AT&T has avoided giving a response to a simple request that could be as short as one dollar figure.

discovering the reason for denial than when it first began.

13. AT&T also ignores that its response to RFI 1-22 (the one which dPi could not access until August 22, 2007), could have bearing on the testimony concerning the credits. In RFI 1-22, dPi requested "all internal documents" relating to the promotions. These documents would show instructions on how to interpret the promotions, instructions to employees to deny promotions, admissions that some credits are proper, etc. Assuming (contrary to fact) that AT&T's response to RFI 1-17 was complete, without the response to RFI 1-22 dPi is simply left with AT&T's assertion as to why any credits were denied.

14. dPi should not be forced to forfeit its position because it has the discovery AT&T has chosen to provide does not show the entire picture.

AT&T's Motion to Strike should be denied because it is moot.

15. Finally, it should be pointed out that AT&T concedes that dPi was correct on the very testimony it attempts to strike. The portion of Brian Bolinger's testimony that AT&T attempts to have struck is the underlined portion below:

> In the parallel proceeding in North Carolina, the vast majority of the time dPi was denied credit under [LCCW] because Bellsouth refused to "count" as Touchstar features those features selected by dPi, such as Touchstar blocks. It is likely that a similar excuse is being used here in Florida; however, I must amend my testimony to reflect the exact percentages in the future because this information was withheld from discovery produced on August 9, 2007, until a protective agreement was executed. This has been executed by dPi [but dPi] has not received the proprietary document.[2]

16. AT&T responds in its Responses to Staff's Interrogatories No. 5(a) that $59,210 of the $78,947 (75%) credits denied were denied because there were not two qualifying

2 AT&T moves to strike substantially similar testimony in Steve Watson's testimony.

features. Thus, Mr. Watson and Mr. Bolinger's assertions that the excuse AT&T used the majority of time in North Carolina was also used in Florida is conceded by AT&T.

CONCLUSION

17. AT&T's Motion to Strike should be denied. AT&T attempts to prevent dPi from filing its testimony based entirely on problems that AT&T itself created. Because of its delays and incomplete discovery responses, AT&T has prevented dPi from giving complete testimony. It should not be rewarded for this gamesmanship by preventing dPi from presenting its case.

Respectfully Submitted,

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