

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

MOTION TO STRIKE TESTIMONY OF PAM TIPTON

dPi Teleconnect, LLC, (“dPi”) moves the Commission to strike the testimony of BellSouth / AT&T Florida’s representative Pam Tipton (“Tipton”) in its entirety.

Tipton has no personal knowledge of the facts contained within her testimony and is not presented or qualified as an expert.

Tipton is identified in the requests for production as a person who has “knowledge of dPi’s complaint and has been involved in responding to the promotion credit complaint.” In her testimony, Tipton identifies herself as Director of Regulatory Policy and Support, Wholesale Operations.” She follows that by listing position over twenty years with BellSouth. None of the positions indicate in any way that she was involved in the crediting process, much the less with dPi’s crediting issues.

Tipton was never involved with dPi in the crediting process. dPi lists all persons with whom it dealt in crediting, including Kristy Seagle, Stanley Messinger, and Keith Deason. Each is (or was) an employee of BellSouth. None mentioned that Tipton was involved in the process at all. In fact, dPi had not heard of Tipton until she was identified as a witness in the parallel proceeding in North Carolina.

Argument

A witness may only testify to facts within their personal knowledge. F.S. 90.604. Tipton has gained all of her knowledge of the facts of this matter through her conversations with other persons. None of her testimony is based on personal knowledge, but hearsay. This is incompetent testimony pursuant to Commission Rule 28-106.213 and F.S. 90.801 *et seq.*

While dPi is offering up witnesses with complete knowledge of the crediting history, dPi is placed in the position of only being about to question an opposing party through a witness that has only knowledge of selected facts from conversations with other people. The Commission will get an incomplete picture of the situation, unfairly slanted toward BellSouth / AT&T because AT&T will be able to meaningfully cross-examine dPi’s witnesses while dPi will not because Tipton will have no knowledge of the basics of dPi’s questioning.

This is worst kind of rank hearsay and an example of why hearsay is specifically disallowed in the Commission rules. Because there is no hearsay exception to Tipton’s testimony, it must be stricken.

Respectfully Submitted,

FOSTER MALISH BLAIR & COWAN, LLP

/s/ Chris Malish

Chris Malish

Texas Bar No. 00791164

chrismalish@fostermalish.com

Steven Tepera

Texas Bar No. 24053510

steventepera@fostermalish.com

1403 West Sixth Street

Austin, Texas 78703

Phone: (512) 476-8591

Fax: (512) 477-8657

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing document has been served upon Defendant BellSouth through its below-listed attorneys on this 17th day of September, 2007.

/s/ Chris Malish
Christopher Malish

J. Phillip Carver, Sr. Attorney
AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

Via Electronic Mail: pc0755@att.com

Manuel A. Gurdian, Attorney
AT&T Florida
150 South Monroe Street, Room 400
Tallahassee, Florida 32301

Via Electronic Mail: mg2708@att.com

Lee Eng Tan, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Via Electronic Mail: ltan@psc.state.fl.us