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Sent: Wednesday, September 26, 2007 2:28 PM
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Subject: Docket No. 050863-TP; dPi Teleconnect v. BellSouth - Motion for Continuance

Attachments: Motion for Continuance.9-26-07.wpd; Motion for Continuance.9-26-07.pdf



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Please file dPi Teleconnect, LLC's Motion for Continuance and let me know if you need anything else. Thank you.

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- B. dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. - Docket No. 050863-TP
- C. dPi Teleconnect, LLC
- D. 5 pages including certificate of service
- E. Motion for Continuance

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

MOTION FOR CONTINUANCE

1. 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 pursuant to FLA. ADMIN. COMM'N. UNIV. R. 28-106.210 to allow adequate discovery of evidence on potentially key issues in this case.

Facts and argument

2. One of the key contentions in this case that the Line Connection Charge Waiver promotion at issue in this case was never provided by BellSouth to its retail end users who ordered basic service plus the Touchstar blocking features known by their acronyms BCR, BRD, and HBG. BellSouth makes this contention notwithstanding the fact that from January through August of 2004 it made the promotion available under these terms to at least Teleconnex and Budget Phones; and this is the way that dPi qualified for the promotion at the times relevant to this dispute. This issue of how and whether the promotion was offered a certain way is relevant because BellSouth is required to extend only those promotional offers that it tenders to its own customers to dPi.
3. This key contention is made in the hearsay testimony of BellSouth's Pam Tipton – despite her admitted lack of personal knowledge of the facts. Ms. Tipton admits in her deposition that she did not become involved with the facts of this case until after dPi filed

its complaint in 2005; that all her knowledge of the relevant facts in this dispute comes not from her personal knowledge, but from interviews with other individuals, or through reading emails or other documents relating to the case. In short, Ms. Tipton has established that she would not be legally competent to testify on the matters in this case were it held in any federal or state court in Florida.

4. If BellSouth is permitted to advance its contention that it does not offer the promotion as described to its own end users, dPi is entitled test such a key contention and on July 20, 2007, requested through its discovery requests documentary evidence of actual orders from 2003 and 2004 showing (1) those instances in which its end users purchased new service under the configuration at issue, and (2) what those end users were charged for the service they purchased.

5. BellSouth admits it has the data requested, but refused to provide the data on the grounds that was difficult to extract the data from its systems. Procedural wrangling and negotiations followed. BellSouth offered instead to provide data from 2005 and afterwards – but this data was created *after* the dispute had been worked internally by BellSouth and its position revamped; the best indicator of what BellSouth's initial interpretation of the promotional offering would come from how it applied the promotion *prior* to the filing of the dispute over the LCCW.

6. dPi moved to compel the production of the evidence requested, and it is believed that an order has been or will be issued on September 26, 2007 requiring the production of information from 2005, but not 2003 or 2004. As noted above, the 2005 information has nowhere near the probative value of the information from 2003-2004, as it was compiled

after the BellSouth re-arranged its business practices in response to the dispute. Accordingly, dPi will be seeking reconsideration of that decision.

7. In any event, any information that will be produced (even if just from 2005) will have to be analyzed, and the sheer volume of orders expected to be produced cannot be analyzed in time to make a meaningful presentation at the hearing currently scheduled for October 1, 2007.
8. Accordingly, dPi requests that this hearing be continued until after such time as is necessary for it to secure and evaluate the production of the relevant documents requested, expected to be between four to eight weeks. 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

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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 September 26, 2007.

/s/ Chris Malish

Chris Malish

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