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Subject: 050863-TP AT&T's Response in Opposition to dPi's Motion to Compel
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- B. Docket No. 050863-TP: dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.
- C. BellSouth Telecommunications, Inc.
on behalf of Manuel A. Gurdian
- D. 7 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to dPi's Motion for Continuance
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- <<050863-T.pdf>>

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9/27/2007



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September 27, 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 Response in Opposition to dPi's Motion for Continuance, 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,



Manuel A. Gurdian

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

**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 27th day of September, 2007 to the following:

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Manuel A. Gurdian

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: dPi Teleconnect, L.L.C. v.
BellSouth Telecommunications, Inc.

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)

Docket No. 050863-TP
Filed: September 27, 2007

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO
MOTION FOR CONTINUANCE**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") submits this Response in Opposition to dPi Teleconnect, L.L.C.'s ("dPi") Motion for Continuance. In response, AT&T Florida requests that the Florida Public Service Commission ("Commission") deny dPi's request for continuance of the hearing date "to allow adequate discovery of evidence on potentially key issues in this case." In support of this Response in Opposition, AT&T Florida states the following:

1. On or about July 20, 2007, dPi filed its first Motion for Continuance on the basis that the case has been "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."

2. On or about August 30, 2007, in Order No. PSC-07-0712-PCO-TP, the prehearing officer denied dPi's first Motion for Continuance and held that "dPi's argument that it was not afforded sufficient time to properly prepare discovery and direct testimony is not persuasive. Parties had from January 4, 2007, to the present to conduct discovery. dPi was aware of and agreed to the proposed prehearing and hearing dates and should have recognized the need to commence with the filing of testimony."

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3. On September 26, 2007, dPi filed its second Motion for Continuance stating that it needed to continue the cause “to allow adequate discovery of evidence on potentially key issues in this case.”

4. AT&T Florida contends that dPi has been given ample opportunity to conduct discovery in this proceeding. dPi’s argument that the hearing should be continued to “allow adequate discovery” to take place is belied by the fact that dPi has had almost 9 months to conduct discovery in this proceeding, from January 4, 2007 to September 24, 2007, the discovery cut-off date. This matter has been pending since November 8, 2005 and dPi should be prepared to proceed.

5. If there has been any delay in conducting discovery, it has been because dPi has failed to conduct it.

6. On January 4, 2007, Order Granting Motion to Lift Stay, Order No. PSC-07-0015-PCO-TP, was entered by the prehearing officer. Order No. PSC-07-0015-PCO-TP lifted the stay that had been in place since March 8, 2006. At this time, dPi could have served discovery upon AT&T Florida; however, it did not do so.

7. On April 13, 2007, an Order Establishing Procedure, Order No. PSC-07-0322-PCO-TP, was entered. Order No. PSC-07-0322-PCO-TP provided discovery and testimony deadlines, as well as a hearing date of July 11, 2007. At this time, dPi could have served discovery upon AT&T Florida; however, once again it did not do so.

8. On May 11, 2007, dPi and AT&T Florida filed a Joint Motion for Continuance requesting that the Commission continue the hearing and suspend all prehearing deadlines established in the Order Establishing Procedure.

9. On June 4, 2007, dPi and AT&T Florida jointly requested that the Commission reestablish prehearing deadlines, including testimony and discovery timeframes, and a new hearing date. At this time, dPi could have served discovery upon AT&T Florida; however, once again it did not do so.

10. On June 13, 2007, dPi and AT&T Florida withdrew their May 11, 2007 Joint Motion for Continuance. In addition, the parties requested that the Commission issue a new Order Establishing Procedure that would establish prehearing deadlines, including testimony and discovery timeframes, and a new hearing date. At this time, dPi could have served discovery upon AT&T Florida; however, once again it did not do so.

11. On July 20, 2007, the date it filed its first Motion for Continuance, dPi finally served its First Set of Requests for Information upon AT&T Florida.

12. On August 9, 2007, AT&T Florida timely served its responses and objections to dPi's First Requests for Information.

13. On August 30, 2007 (21 days after AT&T Florida filed its responses to dPi's First Request for Information), dPi first contacted AT&T Florida about its response and objection to Item 1-19.

14. On August 31, 2007, dPi contacted AT&T Florida about a proposed sampling process in which AT&T Florida would review every third service order. On September 4, 2007, dPi further narrowed its request to new service orders for end users who order basic local service with two of the three call blocks: HBG, BCR and BRD from January 1, 2003 to the present.

15. On September 13, 2007, dPi filed its Motion to Compel AT&T Florida to produce the information requested in dPi's Request for Information Item 1-19.

16. On September 18, 2007, dPi argued its Motion to Compel before the prehearing officer at the Prehearing Conference.

17. On September 21, 2007, AT&T Florida received an email correspondence from Commission Staff that the prehearing officer had denied dPi's Motion to Compel in part and granted it in part and that AT&T Florida was directed to provide the requested information for the period of July 2005 through July 2007 by September 26, 2007.¹

18. On September 26, 2007, AT&T Florida, in compliance with the prehearing officer's Order, provided the requested information for the period of July 2005 through July 2007. Moreover, AT&T Florida provided the same information requested for January through July 2005, which it was also able to extract.

19. dPi now has more than two and half years of data that it has requested, from January 2005 to July 2007. However, in its second Motion for Continuance, dPi indicates that even though it requested the information in Item 1-19 and filed a Motion to Compel its production, it now appears that, in essence, dPi does not really need the information from 2005 to 2007 because it "has nowhere near the probative value of the information from 2003-2004."²

20. dPi's request to obtain the information from 2003 to 2004 is overly broad and unduly burdensome. Moreover, none of the information requested by dPi is relevant.

21. dPi asserts that its second Motion for Continuance is "not solely for delay"; however, the facts suggest to the contrary. dPi has consistently failed to utilize

¹ dPi asserts in its second Motion for Continuance that it "will be seeking a reconsideration" of the prehearing officer's decision. However, as will be provided further in AT&T Florida's Response in Opposition to dPi's Request for Reconsideration, dPi's Request should be denied.

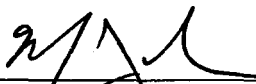
² AT&T Florida personnel labored diligently in preparing its response to dPi's request and went to great effort to obtain the requested information from 2005 to 2007, for dPi now to, in essence, say that it does not really need it, is bewildering.

the time available to it to conduct discovery. Moreover, dPi has established a troubling pattern of issuing burdensome discovery requests, then when it receives the information, rejects it as not useful and then serves additional burdensome requests. dPi has consistently conducted discovery in a way that combines unnecessary delay with consistent unreasonableness. dPi is simply trying to delay the hearing. However, there is no justification for dPi's request for continuance and it should be rejected.


WHEREFORE, based upon the foregoing, AT&T Florida respectfully requests that the Commission deny dPi's second Motion for Continuance.

Respectfully submitted this 27th day of September, 2007.

AT&T FLORIDA



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