

Ruth Nettles

From: Woods, Vickie [vf1979@att.com]
Sent: Wednesday, October 03, 2007 4:05 PM
To: Filings@psc.state.fl.us
Subject: 050863-TP AT&T's Response in Opposition to dPi's Request for Reconsideration
Importance: High
Attachments: Resp_in_.pdf

- A. Vickie Woods
Assistant to James Meza III, Manuel A. Gurdian,
and Tracy W. Hatch
AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5560
vf1979@att.com
- 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. 6 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 Request for Reconsideration
.pdf

<<Resp_in_.pdf>>

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. GA621

DOCUMENT NUMBER-DATE

09093 OCT-3 5

10/3/2007

FPSC-COMMISSION CLERK



Manuel A. Gurdian
Attorney
Legal Department

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
F: (305) 577-4491
manuel.gurdian@att.com

October 3, 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 Request for Reconsideration, 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 First Class U. S. Mail this 3rd day of October, 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
Steven Tepera (+)
Foster Malish Blair & Cowan LLP
1403 West Sixth Street
Austin, TX 78703
Tel. No. (512) 476-8591
Fax. No. (512) 477-8657
chrismalish@fostermalish.com
steventepera@fostermalish.com
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



Manuel A. Gurdian

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

)
)
)

Docket No. 050863-TP

Filed: October 3, 2007

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO
REQUEST FOR RECONSIDERATION**

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") "Request for Reconsideration of Preliminary Decision on dPi's Motion to Compel" ("Request").¹ In response, AT&T Florida requests that the Florida Public Service Commission ("Commission") deny dPi's request for reconsideration. In support of this Response in Opposition, AT&T Florida states the following:

1. dPi's Request seeks reconsideration of the prehearing officer's decision to compel production of information regarding dPi's Request for Information Item No. 1-19 for the period of July 2005 through July 2007 by September 26, 2007 but not for the period of 2003 to 2004. In its Request, dPi asserts that it requires the information for 2003 and 2004 to test AT&T Florida's contention that it does not offer the Line Connection Charge Waiver promotion to its own end users. For the reasons discussed below, dPi's Request lacks merit, and dPi has failed to show valid grounds for reconsideration.

2. The Commission has recited the following standard for review on reconsideration:

The standard of review for reconsideration of a Commission Order is whether the motion identifies a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the order. *See*

¹ AT&T Florida does not believe that the Commission Rules provide for a "Request for Reconsideration" and, thus, is treating dPi's "Request" as a Motion for Reconsideration.

DOCUMENT NUMBER-DATE

09093 OCT-30

FPSC-COMMISSION CLERK

Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So.2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So.2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315, 317 (Fla. 1974).

In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee, Docket No. 060635-EU, Order No. PSC-06-1028-FOF-EU (Issued December 11, 2006). *See also, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Docket No. 070001-EI, Order No. PSC-07-0330-FOF-EI, (Issued April 16, 2007) and *In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light*, Docket No. 000824-EI, Order No. PSC-01-2313-PCO-EI, (Issued November 26, 2001) (discussing standard of review for motion for reconsideration).

3. dPi fails to recite this standard, or even discuss its application, in the Request. This is perhaps unsurprising, because no points raised in the Request come close to meeting the standard for reconsideration.

4. On September 13, 2007, dPi filed its Motion to Compel AT&T Florida to produce certain information regarding dPi's Request for Information Item No. 1-19. In its Motion to Compel, dPi asserted that it required the information from 2002 to the

present to test AT&T Florida's contention that it does not offer the subject promotion to its own end users.

5. On September 18, 2007, dPi argued its position before the prehearing officer at the Prehearing Conference.

6. On September 27, 2007, the prehearing officer entered an Order denying dPi's Motion to Compel in part and granting it in part and AT&T Florida was directed to provide the requested information for the period of July 2005 through July 2007 by September 26, 2007. Specifically, the prehearing officer stated that "[g]iven the difficulty and burden that production of the entire 2002 through 2007 time frame initially requested by dPi would present to AT&T, AT&T shall provide the requested information for the period of July 2005 through July 2007, in a sampling format to be determined by AT&T."

7. 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.

8. dPi presents nothing in the Motion justifying reconsideration of the prehearing officer's denial of dPi's request to require AT&T Florida to produce the requested information from 2003-2004. It does not even attempt to identify "a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the order" Order No. PSC-06-1028-FOF-EU Order. To the contrary, the Request simply repeats the same argument that was presented to the prehearing officer in dPi's Motion to Compel and at the prehearing conference, that dPi must have the requested information

from 2003 and 2004 to test AT&T Florida's contention that it does not offer the subject promotion to its own end users. The Commission has expressly stated that this is not a valid basis for reconsideration: "In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered." *Id.*

9. The prehearing officer heard argument, reviewed dPi's Motion to Compel and carefully evaluated and rejected the same argument that dPi makes in its Request. dPi points to nothing that the prehearing officer overlooked or failed to consider in her evaluation. dPi is simply rehashing an argument that already has been considered and rejected. This cannot be a valid basis for reconsideration.

WHEREFORE, based upon the foregoing, AT&T Florida respectfully requests that the Commission deny dPi's "Request for Reconsideration of Preliminary Decision on dPi's Motion to Compel".

Respectfully submitted this 3rd day of October, 2007.

AT&T FLORIDA



JAMES MEZA III
AUTHORIZED HOUSE COUNSEL NO. 464260
TRACY W. HATCH
MANUEL A. GURDIAN
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558



E. EARL EDENFIELD JR.
J. PHILLIP CARVER
AT&T Southeast
Suite 4300, AT&T Midtown Center
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0763