

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by DPI-Teleconnect, L.L.C.
against BellSouth Telecommunications, Inc.
for dispute arising under interconnection
agreement.

DOCKET NO. 050863-TP
ORDER NO. PSC-08-0209-PCO-TP
ISSUED: March 28, 2008

ORDER DENYING MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY
AND ADDITIONAL DIRECT TESTIMONY

I. Case Background

On November 10, 2005, this docket was established to address dPi-Teleconnect, L.L.C.'s (dPi) complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) for a dispute arising under its interconnection agreement. On April 13, 2007, Order No. PSC-07-0322-PCO-TP (Order Establishing Procedure) was issued, scheduling the matter for an evidentiary hearing on July 11, 2007. By Order No. PSC-07-0571-PCO-TP, issued July 9, 2007, the hearing was rescheduled to October 1, 2007. AT&T and dPi filed an Emergency Joint Motion for Continuance on September 28, 2007, which was granted by Order No. PSC-07-0814-PCO-TP, issued on October 10, 2007, rescheduling the hearing for November 30, 2007. Order No. PSC-07-0959-PCO-TP was issued on November 30, 2007, establishing a new hearing date of March 12, 2008. On January 23, 2008, dPi filed a Motion to Modify Procedural Schedule/Move Hearing Date, which was granted by Order No. PSC-08-0122-PCO-TP, issued February 26, 2008, rescheduling the hearing to April 3, 2008.

On March 7, 2008, dPi filed a Motion for Leave to File Supplemental and Additional Direct Testimony (Motion). On March 14, 2008, AT&T filed its Response in Opposition to dPi's Motion (Response).

II. Motion for Leave to File Supplemental Testimony and Additional Direct Testimony

A. dPi's Motion

Through its Motion, dPi seeks to supplement the direct and rebuttal testimony filed by dPi Witness Brian Bolinger on July 26, 2007, and August 20, 2007, respectively, and also seeks to file additional testimony of a new witness, Mr. Steven Tepera. According to dPi, the proposed supplemental and additional testimony centers around late-produced evidence that dPi was previously unable to incorporate into its testimony because the data was not produced by AT&T until months after dPi's initial direct and rebuttal testimony were filed. Specifically, AT&T produced the first half of the data on September 26, 2007, and produced the second half on November 9, 2007.

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dPi asserts that the data provided by AT&T was voluminous, consisting of more than 1,000 pages with about 38 orders per page, and that dPi's data analysis and compilation took considerable time to complete. Further, dPi argues that AT&T would not be prejudiced by the requested supplemental and additional testimony because AT&T has been aware of the arguments raised in dPi's proposed additional and supplemental testimony for several months. Finally, dPi argues that the proposed testimony addresses issues that are directly relevant to the complaint in this proceeding.

B. AT&T's Response in Opposition

In its Response, AT&T argues that dPi's Motion should be denied in its entirety. AT&T states that dPi's request to file the direct testimony of Steven Tepera should be denied because it is based upon information that dPi has had in its possession for more than four months, and Mr. Tepera's analysis of this information has been completed for almost three months. AT&T contends that there is even less justification for dPi's failure to timely file the requested supplemental testimony of Witness Bolinger. According to AT&T, the proposed supplemental testimony of Witness Bolinger is composed almost entirely of information that was in dPi's possession well before dPi previously supplemented Witness Bolinger's rebuttal testimony in this proceeding in September 2007, and accordingly, could have been supplemented at that time.

AT&T asserts that granting dPi's Motion would be prejudicial to and would disadvantage AT&T, as there would be little or no opportunity for AT&T to prepare for the hearing that is scheduled for April 3, 2008, to review the 1,088 pages of exhibits appended to the testimony, to conduct discovery, or to prepare rebuttal testimony. AT&T further contends that the testimony dPi requests to file is irrelevant to any issue in this proceeding and has no probative value whatsoever and that dPi's actions in the instant docket reflect a pattern of improper and untimely filings.

III. Analysis and Ruling

dPi asserts that the information that is the basis for its requested supplemental and additional direct testimony was not available when it originally filed its testimony. However, dPi fails to demonstrate why the requested testimony should be allowed less than three weeks prior to the current established hearing date. It appears that dPi could have sought leave to supplement its testimony as early as December 2007, as evidenced by the filing of an affidavit by Steven Tepera in North Carolina on December 17, 2007, regarding the discovery information served by AT&T in this Florida case.¹ Consequently, it appears that dPi has had more than adequate time to review the discovery provided by AT&T and seek to supplement its previously-filed testimony prior to March 7, 2008. Allowing dPi to now supplement testimony, which includes over 1,000 pages of exhibits, would be prejudicial to AT&T.

¹ Affidavit Explaining the Methodology of the Calculations in the Appendices to dPi's Motion for Reconsideration Based on Testimony Now Known to be False, December 17, 2007, North Carolina, Docket No. P-55, Sub 1577, *In the Matter of Complaint of dPi Teleconnect, L.L.C. Against BellSouth Telecommunications, Inc. Regarding Credit for Resale of Services Subject to Promotional Discounts.*

Furthermore, dPi has established a pattern of filing motions very close to the scheduled hearing dates in this proceeding. On September 26, 2007, dPi filed a Motion for Continuance of the September 28, 2007, hearing.² On January 23, 2008, dPi filed a Motion to Modify Procedural Schedule/Move Hearing Date a little over a month before the March 12, 2008, hearing date due to a personal conflict of dPi's counsel and because dPi's counsel was apparently unaware of the hearing date.³ Most recently, on March 7, 2008, dPi filed the instant motion, less than one month before the current hearing date, seeking to supplement its previously-filed testimony with information that dPi has had in its possession since November 2007. This style of motion practice attempts to engender continued delay in resolution of the case and requires an inordinate amount of the parties' and the Commission's resources.

dPi has not justified its request to file supplemental or additional direct testimony, especially in light of the upcoming April 3, 2008, hearing date. Accordingly, dPi's Motion is hereby denied. Particularly given the latitude afforded thus far with respect to requests for more time, supplemental testimony, and hearing date postponements, the parties should be prepared to go to hearing before this Commission on April 3, 2008, over eight months later than the originally scheduled hearing date in this docket.⁴

It is therefore

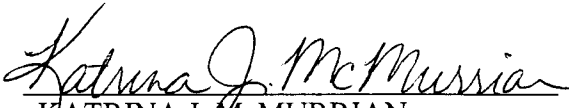
ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that dPi-Teleconnect, L.L.C.'s Motion for Leave to File Supplemental Testimony and Additional Direct Testimony is hereby denied.

² Order No. PSC-07-0791-PCO-TP, issued September 27, 2007, denied dPi's Motion for Continuance as untimely. However, AT&T and dPi subsequently filed an Emergency Joint Motion for Continuance, which was granted by Order No. PSC-07-0814-PCO-TP, issued October 10, 2007. This Order established a November 30, 2007 hearing date.

³ While granting dPi's Motion to Modify Procedural Schedule/Move Hearing Date in consideration of counsel's scheduling conflicts, Order No. PSC-08-0122-PCO-TP, issued February 26, 2008, addressed dPi's assertion that counsel was unaware of the hearing date: "There are numerous methods available to counsel for dPi to obtain information in the instant docket including, but not limited to, the Commission website, contact with Commission staff, and the faxed and e-mailed copies of Commission Orders that are sent to the parties by the Commission Clerk. Counsel for dPi should be well aware of the procedural schedule set for dockets to which dPi is a party."

⁴ Order No. PSC-08-0122-PCO-TP indicated that no additional continuances would be granted without a showing of good cause.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 28th
day of March, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.