

Dorothy Menasco

From: Woods, Vickie [vf1979@att.com]
Sent: Tuesday, May 26, 2009 3:52 PM
To: Filings@psc.state.fl.us
Subject: 090258-TP AT&T Florida's Answer to dPi's Complaint
Importance: High
Attachments: Document.pdf

- A. Vickie Woods
Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,
and Manuel A. Gurdian,
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
150 South Monroe Street, Rm. 400
Tallahassee, FL 32301-1558
(305) 347-5560
vf1979@att.com
- B. Docket No.: 090258-TP
Complaint of dPi Teleconnect, L.L.C. with BellSouth Telecommunications,
Ind. d/b/a AT&T Florida regarding BellSouth's failure to extend Cash
Back promotions to dPi
- C. AT&T Florida
on behalf of Manuel A. Gurdian
- D. 7 pages total in PDF format (includes letter, certificate and pleading)
- E. AT&T Florida's Answer to dPi's Complaint

.pdf

<<Document.pdf>>

5/26/2009

DOCUMENT NUMBER-DATE

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May 26, 2009

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 090258-TP: Complaint of dPi Teleconnect, L.L.C. against
BellSouth Telecommunications, Inc. d/b/a AT&T Florida for dispute
arising under interconnection agreement**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Answer to dPi's Complaint, 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
Gregory R. Follensbee
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Docket No. 090258-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 26th day of May, 2009 to the following:

Theresa Tan
Staff Counsel
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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re : Complaint of dPi Teleconnect, L.L.C. against)
BellSouth Telecommunications, Inc.) Docket No.: 090258-TP
d/b/a AT&T Florida for dispute arising under)
interconnection agreement) Filed: May 26, 2009

AT&T FLORIDA'S ANSWER TO DPI'S COMPLAINT

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby answers the Complaint filed by dPi Teleconnect, L.L.C. ("dPi"). In response to the specific allegations set forth in the Complaint, AT&T Florida states as follows: All allegations of the Complaint not expressly admitted are denied.

1. Paragraph 1 of the Complaint requires no response from AT&T Florida.
2. Paragraph 2 of the Complaint requires no response from AT&T Florida.
3. Responding to the allegations set forth in Paragraph 3 of the Complaint, AT&T Florida admits that it is an "incumbent local exchange carrier" as defined by 47 U.S.C. § 251(h), that it is a Georgia corporation and that its principal place of business is Atlanta, Georgia. Except as expressly admitted herein, the remaining allegations of Paragraph 3 of the Complaint are denied
4. Responding to the allegations set forth in Paragraph 4 of the Complaint, AT&T Florida admits that it provides resale services to dPi – including qualifying promotional credits (if any) -- pursuant to an interconnection agreement ("ICA")¹ between the parties and that has been approved by the Commission. Except as expressly admitted herein, the remaining allegations of Paragraph 4 of the Complaint are denied.

¹ The parties executed an ICA in March 2003. The parties executed dPi's current ICA in April 2007. Accordingly, it appears that most of the promotional credits dPi seeks in the case were submitted when the parties' prior ICA was in effect.

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5. Paragraph 5 of the Complaint purports to quote (or summarize) certain portions of the parties' ICA(s). AT&T Florida respectfully refers the Florida Public Service Commission ("Commission") to the parties' ICA(s) for its contents, and denies all inconsistent allegations or characterizations. AT&T Florida denies that dPi has cited all applicable portions of the parties' ICA(s).

6. Paragraph 6 of the Complaint purports to quote (or summarize) certain federal statutes and rules of the Federal Communications Commission ("FCC") regarding the resale of telecommunications services. AT&T Florida respectfully refers the Commission to such statutes and FCC rules for its contents, and denies all inconsistent allegations or characterizations.

7. Responding to Paragraph 7 of the Complaint, AT&T Florida admits that over the years it has offered for resale telecommunications service promotions which lasted for more than 90 days to competitive local exchange carriers ("CLECs"), such as dPi, in accordance with a CLEC's ICA and applicable law. AT&T Florida admits that a CLEC (like dPi) pays for services at the retail rate less the resale discount and must submit requests for promotional credits. Such requests are reviewed by AT&T Florida to determine if a CLEC is entitled to the requested promotional credit. AT&T Florida denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. Except as expressly admitted herein, the remaining allegations of Paragraph 7 of the Complaint are denied.

8. Responding to the allegations set forth in Paragraph 8 of the Complaint, AT&T Florida admits that over the years it has offered a number of "cash back" promotions that have lasted more than 90 days. AT&T Florida denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint. In Paragraph 8 of the Complaint, dPi seeks to

characterize an opinion issued by the United States Court of Appeals for the Fourth Circuit – *BellSouth Telecommunications, Inc. v. Sanford, et al.*, 494 F.3d 439 (4th Cir. 2007)(“*BellSouth v. Sanford*”). AT&T Florida respectfully refers the Commission to *BellSouth v. Sanford* for its contents, and denies all inconsistent allegations or characterizations.

In the *BellSouth v. Sanford* opinion, the Fourth Circuit upheld two decisions issued by the North Carolina Utilities Commission (“North Carolina Commission”) in North Carolina Commission Docket No. P-100, Sub 72b.² As an initial matter, the Commission is not bound by the aforementioned Fourth Circuit opinion and North Carolina Commission decisions. In any event, in the North Carolina Commission decisions upheld by the Fourth Circuit, the North Carolina Commission held that if a restriction on the resale of a promotion is challenged, then such restriction must be reviewed on a promotion-by-promotion basis to determine if such restriction is reasonable and non-discriminatory.³ Moreover, the North Carolina Commission observed, in *dicta*, that it would be inclined to find that AT&T’s (then known as BellSouth) restriction on the resale of a “cash back” promotion was reasonable and nondiscriminatory.⁴ The promotions challenged by dPi in this case are “cash back” promotions. Except as expressly admitted herein, the remaining allegations of Paragraph 8 of the Complaint are denied.

9. Responding to the allegations set forth in Paragraph 9 of the Complaint, AT&T Florida denies that dPi is (or was) entitled to the promotional credits it seeks in its Complaint.

² *BellSouth v. Sanford* at 453; see North Carolina Commission Order Ruling on Motion Regarding Promotions (December 22, 2004) and North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay (June 3, 2005).

³ North Carolina Commission Order Ruling on Motion Regarding Promotions at 12-13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.

⁴ North Carolina Commission Order Ruling on Motion Regarding Promotions at 13; North Carolina Commission Order Clarifying Ruling on Promotions and Denying Motions for Reconsideration and Stay at 3.

Except as expressly admitted herein, the remaining allegations of Paragraph 9 of the Complaint are denied.

10. Paragraph 10 of the Complaint purports to quote (or summarize) certain portions of the parties ICA(s) and sections of state statutes. AT&T Florida respectfully refers the Commission to such statutes and the ICA(s) for its contents, and denies all inconsistent allegations or characterizations. AT&T Florida denies any other allegations set forth in Paragraph 10 of the Complaint and demands strict proof thereof.

11. AT&T Florida denies the allegations set forth in Paragraph 11 of the Complaint and demands strict proof thereof.

12. AT&T Florida denies the allegations set forth in Paragraph 12 of the Complaint and demands strict proof thereof.

13. Responding to the "CONCLUSION AND PRAYER FOR RELIEF" portion of the Complaint, AT&T Florida denies that dPi is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

14. dPi has failed to state a claim upon which relief can be granted.

15. dPi's claims are barred by the doctrines of laches, estoppel, and waiver.

16. dPi's claims are barred by the statute of limitations.

17. dPi has (or had) a contractual obligation to pursue, escalate, and preserve its claim to the promotional credits it seeks in its Complaint in accordance with the applicable provisions of the parties' ICA(s). Upon information and belief, dPi failed to do so. Accordingly, dPi should be barred from pursuing claims that it failed to contractually preserve.

18. The Commission lacks jurisdiction to order any relief regarding any non-Florida accounts.

WHEREFORE, having responded to the Complaint, AT&T Florida respectfully requests that the Commission issue an Order dismissing the Complaint and granting such further relief as the Commission deems just and proper.

Respectfully submitted this 26th day of May, 2009.

AT&T FLORIDA



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