

Ruth Nettles

090258-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Wednesday, December 16, 2009 3:12 PM
To: Filings@psc.state.fl.us
Subject: 090258-TP AT&T Florida's Prehearing Statement
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
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- 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. 9 pages total in PDF format (includes letter, certificate and pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Prehearing Statement
.pdf

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December 16, 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
Prehearing Statement, 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 16th day of December, 2009 to the
following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of dPi Teleconnect, L.L.C.) Docket No. 090258-TP
against BellSouth Telecommunications, Inc.)
d/b/a AT&T Florida for dispute arising under)
interconnection agreement) Filed: December 16, 2009

AT&T FLORIDA'S PREHEARING STATEMENT

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), hereby submits, in compliance with the *Order Establishing Procedure* (Order No.: PSC-09-0499-PCO-TP, issued July 15, 2009, and the *Order Modifying Procedure* (Order No.: PSC-09-0718-PCO-TP), issued October 28, 2009, its Prehearing Statement.

A. Witnesses

AT&T Florida proposes to call the following witness to offer direct and rebuttal testimony on the issues in this proceeding:

<u>Witness</u>	<u>Issues</u>
Kristy Seagle (Direct)	1, 2 (a) and (b)
Nicole Bracy (Direct)	1, 2 (a) and (b)
P. L. (Scot) Ferguson (Direct and Rebuttal)	1, 2 (a) and (b)

AT&T Florida's witnesses present facts and/or policy considerations that support AT&T Florida's positions on these issues. AT&T Florida reserves the right to call additional witnesses, including witnesses to address or respond to inquiries from the Florida Public Service Commission ("Commission"), to address issues not presently designated that may be designated by the Prehearing Officer at the Prehearing Conference to be held on January 12, 2010, and to

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address issues raised in any discovery response or testimony by witnesses for dPi Teleconnect, L.L.C. ("dPi") that has not yet been filed.

B. Exhibits

*Kristy A. Seagle

KAS-1 Copy of an email sent to Mr. Watson on August 26, 2004, stating that AT&T Florida (then known as BellSouth) would not resell cashback offers.

KAS-2 Copy of an e-mail string - between Mr. Watson and Ms. Seagle - On July 21, 2005, Mr. Watson submitted a request on behalf of dPi for promotional credits for a cashback promotion.

KAS-3 is an example of correspondence between AT&T Florida and dPi addressing dPi's disagreement with AT&T Florida's decision not to provide various non-cashback promotional credits that dPi had requested.

KAS-4 (*Confidential - Filed under a Request for Specified Confidential Classification*) A summary that, in part, demonstrates; (1) the time between the billing periods associated with dPi's cashback promotional credit requests and the date dPi submitted to AT&T Florida; and (2) the time between the billing periods associated with dPi's cashback promotional credit requests and January 2007.

KAS-5 (*Confidential - Filed under a Request for Specified Confidential Classification*), The extracted data for promotional credit requests for the State of Florida.

*Nicole W. Bracy

NWB-1 (*Confidential - Filed under a Request for Specified Confidential Classification*), A chart describing the timing and amounts of the various dPi promotional credit requests that are at issue in this proceeding

*P.L. (Scot) Ferguson

PLF-1 CLEC Agreement – Interconnection Agreement between BellSouth Telecommunications, Inc. and dPi Teleconnect, LLC and Wholesale Agreement – Interconnection Agreement between BellSouth Telecommunications, Inc. and dPi Teleconnect, LLC

PLF-2 Includes a copy of the relevant sections of the Agreement, found in Attachment 1 – Resale, Sections 1.1 and 1.2. Both

Sections 1.1 and 1.2 refer to Exhibit D of Attachment 1 for the discount rates.

PLF-3 Includes a copy of the relevant sections of the Agreement, dated April 19, 2003, found in Attachment 1 – Resale, Sections 1.1 and 1.2. Both Sections 1.1 and 1.2 refer to Exhibit E of Attachment 1 for the discount rates.

PLF-4 Screenshot provided which provides an overview of dPi's home telephone services.

PLF-5 Screenshot provided which provides an overview of dPi's order summary.

*Any exhibits sponsored by dPi's witness, Tom O'Roark.

*AT&T Florida's Responses to all Interrogatories, Requests for Admissions and Requests for Production issued by Staff or dPi.

*dPi's Responses to all Interrogatories, Requests for Admissions and Requests for Production issued by AT&T Florida or dPi.

*Transcript of the August 25, 2009 deposition of Tom O'Roark.

*Transcript of the November 12, 2009 hearing in North Carolina.

AT&T Florida reserves the right to file exhibits relating to any discovery response or testimony that may be filed under the circumstances identified in Section "A" above. AT&T Florida also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Civil Procedure, Florida Rules of Evidence and the Rules of the Commission.

C. AT&T Florida's Statement of General Position

dPi is not entitled to the bill credits it seeks for the specific reasons set forth below in AT&T Florida's Position on the Issues.

D. AT&T Florida's Position on the Issues

Issue 1: Are dPi's claims time-barred for any reason, including without limitation the applicable statute of limitations, the terms of the parties' interconnection agreements, or application of equitable doctrines such as laches, estoppel, or waiver?

Position: Yes. dPi agreed in the 2007 interconnection agreement that "any orders placed under [the old contract]" and "any and all amounts and obligations owed for services provisioned or orders placed under [the old contract]" will be "due and owing" and "governed by the terms and conditions" of the 2007 interconnection agreement. For this reason, dPi agreed when it executed the 2007 interconnection agreement that its claims are governed by the 2007 interconnection agreement.

In the 2007 interconnection agreement, dPi agrees to "pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services Web site, or the billing dispute shall be considered denied and closed." It also unequivocally "agrees not to submit billing disputes for amounts billed more than twelve (12) months prior to submission of a billing dispute filed for amounts billed." dPi failed to comply with these contractual obligations. In addition, dPi's failure to raise these issues in a timely manner gives rise to the equitable defense of laches.

Issue 2(a): Is dPi entitled to credits from AT&T for the three promotions, Cash Back \$100 Two Features (C2TF), Cash Back \$100 Discount Complete Choice, and the Cash Back \$50 2 Pack Plan?

Position: No. dPi seeks bill credits for the "cashback" component of promotional offerings it purchased from AT&T Florida and resold to its end user customers between November 2003 and December 2006. dPi is not entitled to any of the cashback promotional credits it seeks because: (1) the cashback components of the promotional offerings at issue are

not “telecommunications services” and thus are not subject to any resale obligations AT&T Florida may otherwise have; and (2) even if they were, AT&T Florida’s decision not to make them available to dPi was a reasonable and nondiscriminatory (and thus permissible) restriction on resale.

In the alternative, if the Commission disagrees and finds that AT&T Florida was required to make the cashback component of these promotional offerings available to dPi for resale (and it should not), the Commission should award dPi no more than the amount of credits (if any) that dPi sought and disputed within one year of being billed for the underlying services (as required by the governing interconnection agreement), reduced by both: (1) the 21.83% residential resale discount rate; and (2) the 11% error rate in the cashback credit requests dPi has submitted since AT&T Florida began making cashback available for resale in July 2007.

Issue 2(b): If so, in what amount?

Position: For the reasons set forth above, dPi is not entitled to any credits.

E. Stipulations

The parties entered into several stipulations of fact during a recent hearing in North Carolina. These include:

1. In the August 2004 time frame, AT&T specifically told Lost Key that cash back promotions were not available for resale.
2. Lost Key did not submit any requests for cash back promotional credits to AT&T North Carolina on behalf of dPi until December of 2005.
3. In June of 2005, dPi instructed Lost Key to get the cash back promotions submitted in North Carolina “because it would be worth a ton of cash to both of us.”

4. dPi did not dispute AT&T's decision not to pay the cash back promotion requests until 2007.

F. Pending Motions

AT&T Florida has filed a Motion to Compel that is currently pending.

G. AT&T Florida's Notice of Intent to Use Confidential Information at Hearing

AT&T Florida was requested to provide and has provided confidential information to Commission Staff in response to discovery requests by Staff and dPi and as exhibits to direct testimony filed on AT&T Florida's behalf, and may provide additional confidential information in response to future discovery. AT&T Florida has requested or intends to request confidentiality for the following:

1. Direct Testimony of Kristy A. Seagle – Exhibit KAS-4 and KAS-5 (dPi's confidential information)
2. Direct Testimony of Nicole W. Bracy – Exhibit NWB-1 (dPi's confidential information)
3. AT&T Florida's Response to Staff's First Set of Interrogatories, attachment to Item No. 6(b) and First Request for Production of Documents, Item 5. (dPi's confidential information).
4. AT&T Florida's Supplemental Response to Staff First RFP, Item No. 4. (dPi's confidential information).

AT&T Florida reserves the right to use any such information at hearing, subject to appropriate measures to protect its confidentiality.

H. Other Requirements

AT&T Florida knows of no requirements set forth in any Prehearing Order with which it cannot comply.

Respectfully submitted this 16th day of December, 2009.

AT&T FLORIDA



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