

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by dPi Teleconnect, L.L.C.
against BellSouth Telecommunications, Inc.
d/b/a AT&T Florida for dispute arising under
interconnection agreement.

DOCKET NO. 090258-TP
ORDER NO. PSC-09-0847-PCO-TP
ISSUED: December 24, 2009

ORDER GRANTING IN PART AND DENYING IN PART AT&T'S MOTION TO COMPEL

On May 1, 2009, dPi Teleconnect L.L.C. (dPi) filed a complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) regarding a dispute arising under the Interconnection Agreement. Order No. PSC-09-0499-PCO-TP, issued July 15, 2009, set forth the procedure for this docket. Order No. PSC-09-0718-PCO-TP modified the controlling dates.

On December 4, 2009, AT&T filed a Motion to Compel responses to AT&T's First Set of Interrogatories Nos. 7a, 9-11, 13-20 and 22, First Request of Admission No. 4, Second Set of Interrogatories, Nos. 31-42 and Second Set of Requests for Production of Documents Nos., 10-12. On December 11, 2009, dPi filed its Response to AT&T's Motion to Compel. On December 14, 2009, dPi served its Supplemental Responses to AT&T's First and Second Sets of Interrogatories and First and Second Requests for Production of Documents.

AT&T's Motion

In its Motion, AT&T argues that dPi stated in discovery that certain responses would be supplemented; however, dPi has failed to provide supplemental responses to the discovery.¹ In the absence of additional information, AT&T requests that the Commission establish a deadline of January 5, 2010 for dPi to respond to these discovery requests.

AT&T states that dPi objected to a number of its discovery requests on the grounds of relevancy.² AT&T argues that the information that AT&T's requests about dPi's current prices, terms and conditions for its services in Florida are relevant in establishing whether the restriction in question is reasonable and nondiscriminatory.

AT&T argues that the requested information relates to whether AT&T's restriction affected dPi's ability to compete and win customers without the use of the cash-back promotion. In addition, AT&T asserts it is looking to see whether dPi reduced its retail price, which would indicate whether AT&T's restriction impacted the price retail customers pay dPi. AT&T

¹ AT&T's First Set of Interrogatories Nos. 7a, 17 -19, Second Set of Interrogatories Nos. 31, 39-41, Second Set of Requests for Production of Documents Nos. 10 and 11.

² First Set of Interrogatories, No. 9-11, 13-16, 20 and 22, Second Set of Interrogatories, 32-38, and 42. Second Set of Requests for Production of Documents No. 12.

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believes that if dPi chose not to pass on the full amount of the promotional discount to its end users, then the information could be used to support AT&T's premise that the restriction was not unreasonable. AT&T further contends that any inaccuracies identified would assist the Commission in assessing dPi's credibility.

AT&T argues that Interrogatory No. 42 is relevant in determining whether dPi complied with the requirements for dispute resolution in its Interconnection Agreement with AT&T and if dPi's claims are time barred.

AT&T requests the Commission grant its Motion and compel dPi to provide responses to AT&T's discovery requests.

dPi's Response

In its Response, dPi states that Interrogatories Nos. 9–11, 13–16, 20, 22, 32–38, 42 and Request for Admission No. 4 are not relevant. dPi believes that the information requested is only related to dPi's interactions with its customers and does not address raised in its complaint. Specifically, whether AT&T complied with its duty to extend the same promotions to dPi that AT&T extends to its retail customers. dPi notes that promotional offerings that AT&T made available at retail must be made available to CLECs at wholesale. dPi argues that the only relevant question in this complaint is whether AT&T has complied with federal law and that questions about dPi's interactions with its customers are irrelevant. dPi states that while AT&T is looking to show that dPi's rates are higher than AT&T's, dPi's cost structure is not at issue in the current case and therefore the information requested is not relevant.

Legal Standard

Under the Florida Rules of Civil Procedure, the scope of discovery is broad. Rule 1.280(b)(1), Fla. R. Civ. P., provides that a party may obtain discovery regarding any matter relevant to the subject matter of the pending action.

The Commission has broad discretion in resolving discovery disputes. In making its determination whether to allow discovery, the Commission has generally balanced the right to pursue full discovery with the right to be protected from oppressive or unduly burdensome discovery.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case."

Analysis and Ruling

On December 14, 2009, dPi provided additional responses, which effectively rendered AT&T's Motion to Compel moot for the following discovery questions: First and Second Set of Interrogatories Nos. 7a, 17–19, 31, 39–41, and First and Second Requests for Production 10, 11.


Upon review of the party's arguments, I believe the following requests seek information that is relevant or likely to lead to information that is relevant to this proceeding: AT&T's First Set of Interrogatories Nos. 9-11, 15-16, 20 and 22 and First Request of Admission No. 4 and Second Set of Interrogatories, Nos. 32-38, and 42, Second Set of Production of Documents No. 12. These responses will provide this Commission with information relevant to the issue in this complaint, primarily whether AT&T complied with its duty to extend to dPi, as a reseller, the same offers that AT&T extended to its retail customers, including how a wholesale customer passes on these promotional cash back components to its end users. I believe this information will allow this Commission to determine whether such actions are discriminatory and harmful to dPi as a wholesale customer.

Accordingly, AT&T's Motion to Compel is granted in part and denied in part. AT&T's Motion to Compel Responses to its First and Second Set of Interrogatories Nos. 7a, 17-19, 31, 39-41, and First and Second Requests for Production 10 and 11 are denied as moot. AT&T's Motion to Compel Responses to Interrogatories 13 and 14 are denied as not applicable, because Interrogatory 12 was answered in the negative.³ AT&T's Motion to Compel Responses to AT&T's First Set of Interrogatories Nos. 9, 10-11, 15-16, 20 and 22, First Request of Admission No. 4, Second Set of Interrogatories, Nos. 32-38, and 42, Second Set of Production of Documents No. 12, is granted. dPi is hereby directed to respond no later than January 5, 2010.

Based on the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that AT&T's Motion to Compel is hereby granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 24th day of December, 2009.



NANCY ARGENZIANO
Commissioner and Prehearing Officer

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³ Interrogatory No. 13: If you answered Interrogatory 12 in the affirmative, did dPi pass the promotional discount on to its end users?

Interrogatory No. 14: If you answered Interrogatory 13 in the affirmative, please identify all documents that demonstrate that dPi passes the promotional discount on to its end users.

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 25-22.0376, 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.