

Ruth Nettles

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Sent: Friday, September 07, 2007 4:13 PM
To: Filings@psc.state.fl.us
Subject: 050863-TP AT&T Florida's Response in Opposition to dPi's Motion for Extension of Time to Respond to Motion to Strike
Importance: High
Attachments: 050863-T.pdf

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- 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. 5 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 Motion for Extension of Time to Respond to Motion to Strike

<<050863-T.pdf>>

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September 7, 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 an original of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to dPi's Motion for Extension of Time to Respond to Motion to Strike, 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 7th day of September, 2007 to the
following:

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Mandel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050863-TP

Filed: September 7, 2007

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO DPI'S
MOTION FOR EXTENSION OF TIME**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") submits this Response in Opposition to dPi Teleconnect, LLC's ("dPi") Motion for Extension of Time to Respond to Motion to Strike ("Motion for Extension of Time"). For the following reasons, the Florida Public Service Commission ("Commission") should deny the Motion.

1. On August 24, 2007, AT&T Florida filed a Motion to Strike certain portions of Brian Bollinger and Steve Watson's rebuttal testimony. dPi was served via e-mail and Federal Express.

2. On August 28, 2007, AT&T Florida filed a Notice of Filing Corrected Attachment which did not amend the relief requested or the allegations in the Motion to Strike. The only addition to Composite Attachment 1 in the August 28th filing was a printout of the Federal Express receipt showing that the confidential information that related to the reasons for the denial of credit requests was delivered to dPi on August 10, 2007.¹

3. Rule 28-106-204(1), F.A.C., states that a party "may, within 7 days of service of a written motion, file a response in opposition."

¹ For dPi to argue that the addition of the Federal Express receipt to Composite Attachment 1 somehow "amended" AT&T Florida's Motion to Strike is absurd. In any event, however, if the Commission accepts dPi's argument that the August 28, 2007 Notice of Filing Corrected Attachment "amended" the Motion to Strike and thus changed the due date of dPi's Response in Opposition, dPi's Response was still untimely per Rule 28-106-204, as the due date for the Response would have been September 4, 2007, seven days after the August 28, 2007 filing, not September 5, 2007.

4. Moreover, Rule 28-106.204(5) provides that “[m]otions for extension of time shall be filed prior to the expiration sought to be extended and shall state good cause for the request.”

5. Rule 28-106.103, F.A.C., provides that “[i]n computing any time period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the next day which is not a Saturday, Sunday, or legal holiday.”

6. Pursuant to the express provisions of Rules 28-106.204 and 28-106.103, dPi’s Response in Opposition to AT&T Florida’s Motion to Strike was due on August 31, 2007. Moreover, dPi’s Motion for Extension of Time was also due on or before August 31, 2007.

7. It is undisputed that dPi did not file its Motion for Extension of Time and proposed Response in Opposition to AT&T Florida’s Motion to Strike until September 5, 2007.

8. Pursuant to Rule 28-106.204(1), dPi’s proposed Response in Opposition to AT&T Florida’s Motion to Strike is untimely as it was not filed “within 7 days of service of” the Motion to Strike.

9. Moreover, pursuant to Rule 28-106.204(5), dPi’s Motion for Extension of Time is untimely in that it was filed after the “expiration of the deadline.” dPi’s anemic excuse for the untimely filing is that it was “caused by a misunderstanding about the

rule". AT&T Florida submits that this excuse does not constitute "good cause" under the provisions of Rule 28-106.204(5).

WHEREFORE, for the foregoing reasons, AT&T Florida respectfully requests that the Commission deny dPi's Motion for Extension of Time to Respond to Motion to Strike.

Respectfully submitted this 7th day of September 2007.

AT&T FLORIDA



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