

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:) DOCKET NO. 050863-TP
)
dPi Teleconnect, L.L.C. v.)
BellSouth Telecommunications, Inc.)

MOTION TO COMPEL

dPi Teleconnect, LLC (“dPi”), files this motion to compel responses to discovery.

Background

1. dPi made the following request to AT&T under Request for Information 1-19 on July 20, 2007:

Please identify any and all occurrences, on a month to month basis beginning January, 2002, of an end user ordering from BellSouth basic service plus any two of the three following features: the call return block (bearing in North Carolina the Universal Service Ordering Code [“USOC”] of “BCR”); the repeat dialing block (“BRD”); and the call tracing block, and “HBG” block. Please indicate what these customers were charged when implementing these services, including any and all recurring charges, non-recurring charges, and promotional charges.

2. On August 9, 2007, AT&T responded with the following:

AT&T Florida objects to this Request on the grounds that it is overly broad and that responding to this Request as written would be unduly burdensome.

AT&T Florida also objects to this Request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence that is relevant to any issue in this complaint. dPi is requesting information related to services that have been offered by AT&T Florida since January, 2002. dPi’s complaint is only related to services AT&T Florida has offered since the Fall of 2003.

Subject to and without waiving the foregoing objections, the parties agreed in a parallel proceeding in Louisiana that AT&T Florida would provide a sample of the information requested and that the

agreement would apply to all states. dPi asked for time to consult with a statistician and/or their consultant to facilitate discussions regarding the sampling process and to communicate with AT&T Florida. dPi has failed to contact AT&T Florida regarding this issue. AT&T Florida remains willing to provide a reasonable sample.

3. Both the request and response are attached as Exhibit A.
4. Since that time, dPi has contacted AT&T to determine if and when it would be producing responsive documents. Along with telephone calls requesting the information, emails were sent between counsels for both parties. They are attached as Exhibit B. On the phone call referenced in Manuel Gurdian's email of Friday, August 31, 2007, counsel for dPi was told by counsel for AT&T Florida that AT&T would review the requested information and produce responsive documents to the extent it is not burdensome, as determined by AT&T.
5. On September 12, 2007, counsel for both parties and general counsel for the Public Service Commission held a telephone conference. The discovery issue was discussed. AT&T Florida asserted two (seemingly contradictory) excuses for its failure to produce this discovery: (1) it did not have to produce any documents because of an alleged agreement in Louisiana, and (2) it is trying to produce the documents but may not be able to because it might be too burdensome (although counsel for AT&T did not know if it *actually* would be too burdensome because he had not spoken with the appropriate AT&T employees).

ARGUMENT

6. dPi is entitled to the orders. Their relevance is plain: AT&T claims that dPi is not entitled to the promotion because its own end users were not given the promotional rate. dPi is testing this assertion by asking for AT&T to identify how much it charged its end users for basic service plus two blocks. The request is broken down on a month-to-month basis because it is dPi's contention that AT&T originally awarded its end users the promotional rates, then reinterpreted the promotion and ceased awarding promotional rates to its own end users when it discovered that a disproportionate amount of those qualifying under the original interpretation were CLECs' (such as dPi) end users.
7. Therefore, with this discovery request, dPi sought:
 - new service orders
 - for end users
 - who order regular service
 - plus two of the following three call blocks: HBG (call tracing block), BCR (call return block), and BRD (repeat dialing block).

8. In an effort to be accommodating, dPi volunteered to allow AT&T to test and evaluate a sample of the total pool of affected orders over time if AT&T would identify the pool from which the sample would be taken.
9. This should be the end of the inquiry and dPi should be ruled to be entitled to discovery. However, AT&T insists now that the *sample* might be too burdensome. There are several issues with this contention, including the fact that it is dubious on its face to begin with. It is doubtful that many subscribers order basic service plus two blocks – features which are not widely advertised or promoted by AT&T for the obvious reason that they do not generate revenue. Of course, no one can know this because AT&T has not told dPi how many end users have ordered basic service plus two blocks.
10. Second, AT&T Florida is asking dPi to create a sampling method, without letting dPi know what the data set to be sampled is. dPi does not know if there are thirty or thirty thousand AT&T end users with initial orders of basic service plus two blocks. It is impossible for dPi to create any sampling method, regardless of whether it is burdensome or not, if it does not know what data will be sample.
11. Third, dPi asked AT&T to suggest a sampling method that it believes would not be burdensome, but to date has refused to do so.
12. Finally, dPi actually did suggest a sampling method. dPi suggested that AT&T simply review every third initial service order of basic service plus two blocks and produce the amounts charged. Admittedly, dPi has no idea if such sampling method would be appropriate because it knows nothing about the data set because AT&T has not provided that information.
13. The second grounds on which AT&T refuses to produce documents is because AT&T claims that “the parties agreed in a parallel proceeding in Louisiana that AT&T Florida would provide a sample of the information requested and that the agreement would apply to all states.” Via telephone, via email, and for a second time via telephone at the teleconference of September 12, 2007, counsel for dPi informed counsel for AT&T that no such agreement occurred. Counsel for AT&T continues to insist that its duties in discovery are controlled by this fictional “agreement.”
14. No such agreement occurred. Two conversations are attached. The first is between counsel for dPi and AT&T Louisiana regarding the potential for sampling. The second is between dPi and AT&T Florida’s counsel that discovery matters in Louisiana would not be binding in Florida.
15. The entire conversation between counsel for dPi and counsel for AT&T Louisiana on this matter is attached as Exhibit C. The conversation is substance in that:
 - AT&T asked if AT&T could do a sampling because of the huge number of requests

involved.

- dPi pointed out that AT&T is misunderstanding the request, and pointed out that by filtering the service orders by removing all CLECs, removing anything but new service orders, and removing any order that was not basic service plus two blocks, the data set would be very small.
- AT&T responded that the number of retail customers is still quite large even after the filter.
- dPi asked AT&T to tell dPi what the number is after the filter, then dPi can think about how to sample. dPi said that it needed the information from each state.
- AT&T did not respond.

16. Nowhere in the above conversation did dPi take on the obligation to create a sampling method before AT&T lets dPi know what the sampling method is.

17. The second conversation is in context of the parties collaborating on a proposed Motion to Abate. The attached draft of a Motion to Abate from May 10, 2007 shows that both counsel for dPi and counsel for AT&T Florida understood that the Louisiana discovery issues would not govern Florida. It reads, in relevant part:

The parties would further show that they have reached an agreement to abate this case until 30 days after a discovery order is issued in the above-referenced case in Louisiana. The order, **while not controlling in this cause**, may better allow the parties to assess their obligations in discovery.

18. The email correspondence between counsel for dPi and counsel for AT&T, including the draft of the Motion to Abate is attached as Exhibit D.

CONCLUSION AND PRAYER

dPi is entitled to the requested documents. AT&T's refusal to produce the same is merely stalling based on unjustified objections. If AT&T feels that discovery is too burdensome because there are too many orders, then they should suggest some way to reduce the burden. Otherwise, AT&T must produce the requested documents.

dPi prays for an order that AT&T produce the documents as requested. In the alternative, dPi prays that AT&T formulate a sampling method for dPi to review.

Respectfully Submitted,

FOSTER MALISH BLAIR & COWAN, LLP

/s/ Chris Malish

Chris Malish

Texas Bar No. 00791164

chrismalish@fostermalish.com

Steven Tepera

Texas Bar No. 24053510

steventepera@fostermalish.com

1403 West Sixth Street

Austin, Texas 78703

Phone: (512) 476-8591

Fax: (512) 477-8657

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing document has been filed with the Florida Public Service Commission and served upon Defendant BellSouth through its below-listed attorneys on this 13th day of September, 2007.

/s/ Chris Malish

Chris Malish

J. Phillip Carver, Sr. Attorney
AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

*Via First-Class Mail
and Via Electronic Mail: pc0755@att.com*

Manuel A. Gurdian, Attorney
AT&T Florida
150 South Monroe Street, Room 400
Tallahassee, Florida 32301

*Via First-Class Mail
and Via Electronic Mail: mg2708@att.com*

Lee Eng Tan, Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

*Via First-Class Mail
and Via Electronic Mail: ltan@psc.state.fl.us*

EXHIBIT A: REQUEST FOR INFORMATION
AND RESPONSE

REQUEST: Please identify any and all occurrences, on a month to month basis beginning January, 2002, of an end user ordering from BellSouth basic service plus any two of the three following features: the call return block (bearing in North Carolina the Universal Service Ordering Code ["USOC"] of "BCR"); the repeat dialing block ("BRD"); and the call tracing block, and "HBG" block. Please indicate what these customers were charged when implementing these services, including any and all recurring charges, non-recurring charges, and promotional charges.

RESPONSE: AT&T Florida objects to this Request on the grounds that it is overly broad and that responding to this Request as written would be unduly burdensome.

AT&T Florida also objects to this Request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence that is relevant to any issue in this complaint. dPi is requesting information related to services that have been offered by AT&T Florida since January, 2002. dPi's complaint is only related to services AT&T Florida has offered since the Fall of 2003.

Subject to and without waiving the foregoing objections, the parties agreed in a parallel proceeding in Louisiana that AT&T Florida would provide a sample of the information requested and that the agreement would apply to all states. dPi asked for time to consult with a statistician and/or their consultant to facilitate discussions regarding the sampling process and to communicate with AT&T Florida. dPi has failed to contact AT&T Florida regarding this issue. AT&T Florida remains willing to provide a reasonable sample.

**EXHIBIT B: CORRESPONDENCE
BETWEEN COUNSEL REGARDING
PRODUCTION OF DOCUMENTS**

Steven Tepera

From: Gurdian, Manuel [mg2708@att.com]
Sent: Friday, August 31, 2007 3:50 PM
To: Steven Tepera
Subject: Re: dPi; BellSouth FLA; discovery

Steven

We will have to discuss on Tuesday as I have left for the long weekend. Talk to you then.

Manny

----- Original Message -----

From: Steven Tepera <steventepera@fostermailish.com>
To: Gurdian, Manuel
Sent: Fri Aug 31 15:43:05 2007
Subject: RE: dPi; BellSouth FLA; discovery

Dear Manny,

I called you about this discovery request yesterday. You sent me to Phil Carver because you aren't in charge of this. I call him once and emailed him twice about it. I don't receive a response from Phil, but from you. You can probably guess that I am a little confused on my end.

I don't ever recall making one state's discovery decisions binding on another's; in fact, I remember the opposite. However, that doesn't matter now. I just want the information. AT&T suggested that AT&T would sample and send us the results. Obviously AT&T had some method in which to sample that it had in mind. I would like you to tell me what that method is. If you never had a method in mind, then here is our suggested method: review for the information requested in RFI 1-19 on every third one and send us the results.

Everyone is being accommodating here. You don't want to provide all of the orders even though I am entitled to them. I am not asking you to. I just want your sampling method or your results of sampling. You can accommodate me by sending us the information.

If you think anything I am saying is unfair, please call me and we will discuss.

Thanks,

Steven

-----Original Message-----

From: Gurdian, Manuel [mailto:mg2708@att.com]
Sent: Friday, August 31, 2007 2:02 PM
To: Steven Tepera
Cc: Carver, J
Subject: FW: dPi; BellSouth FLA; discovery

Steven

It is my understanding that dpi would retain a statistician. The statistician would then suggest a sampling process for Louisiana. AT&T would then review and determine whether it agreed the proposed sampling process was valid. If AT&T agreed that the sampling process was valid, AT&T would then pull data for Louisiana. Also, any data from 2002 and prior to the Fall of 2003 would not be relevant as dpi's complaint is

9/13/2007

only related to services AT&T has offered since the Fall of 2003.

Please provide your statistician's proposed sampling process for our review at your earliest convenience.

Thanks.
Manny

-----Original Message-----

From: Steven Tepera [mailto:steventepera@fostermalish.com]
Sent: Thursday, August 30, 2007 2:00 PM
To: Carver, J
Subject: dPi; BellSouth FLA; discovery

Hi, Phil.

I just called to discuss discovery but you were not there.

We need the response to RFI 1-19. Please provide your sampling method for us to review. If it is reasonable, we'll request you to produce pursuant to that sampling method.

Please identify any and all occurrences, on a month to month basis beginning January, 2002, of an end user ordering from BellSouth basic service plus any two of the three following features: the call return block (bearing in North Carolina the Universal Service Ordering Code ["USOC"] of "BCR"); the repeat dialing block ("BRD"); and the call tracing block, and "HBG" block. Please indicate what these customers were charged when implementing these services, including any and all recurring charges, non-recurring charges, and promotional charges.

Thanks,

Steven Tepera
Foster Malish Blair & Cowan, L.L.P.
1403 West Sixth Street
Austin, Texas 78703
(512)476-8591- voice
(512)477-8657- fax

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9/13/2007

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GA622

9/13/2007

EXHIBIT C: CORRESPONDENCE
REGARDING AT&T'S OBLIGATION TO
PROVIDE DPI INFORMATION ON THE
DATA SET TO BE SAMPLED

Malish, Chris

From: Malish, Chris
Sent: Wednesday, March 21, 2007 3:57 PM
To: 'Shore, Andrew'
Cc: Bolinger, Brian
Subject: RE: dpi v. Bellsouth; LA discovery; other state discovery

Hi Andrew. I'm fine to talk about the discovery tomorrow a.m. Let me know the number of orders we're talking about after the filter and we can think about what kind of sampling, if any, makes sense.

We can talk about the "reasons" tomorrow too. I think we need to know what happened in each state though.

Give me a call sometime after 10:00 your time if you'd like.

Thanks,

Chris

Chris Malish
Foster Malish Blair & Cowan, LLP
1403 West Sixth Street
Austin, Texas 78703
(512)476-8591/voice
(512)477-8657/fax

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From: Shore, Andrew [mailto:Andrew.Shore@BellSouth.COM]
Sent: Wednesday, March 21, 2007 2:48 PM
To: Malish, Chris
Subject: Re: dpi v. Bellsouth; LA discovery; other state discovery

The no. Of retail customers once "filtered" is quite large and really unworkable given the hours needed to compile info to respond to dpi's request. We are willing to sample in an effort to be responsive to the extent feasible if we can agree upon reasonable parameters.

With regard to the other issue, dpi know Bellsouth's position, for example, that the free blocks dpi puts on all of its resale lines do not qualify for the line connection charge waiver. Thus, dpi is in position to know why its requests are denied, at least for those, which constitute the vast majority. Isn't it game playing to pretend otherwise? Or am I not understanding?

Do you want to talk Thurs am? Let me know.

9/13/2007

----- Original Message -----

From: Malish, Chris <chrismalish@FOSTERMALISH.com>

To: Shore, Andrew

Cc: Bolinger, Brian <brian.bolinger@dpiteleconnect.com>; Steven Tepera <steventepera@fostermalish.com>

Sent: Wed Mar 21 17:24:12 2007

Subject: dpi v. Bellsouth; LA discovery; other state discovery

Hi Andrew. I've been talking about this with Carmen Ditta in LA. However, for some reason, although this information requested in discovery in the current cases was provided in discovery in NC, Bellsouth is being difficult about providing it in the other states. This is also an issue in SC, and is throwing us off the scheduling order there. Generally, as I told Carmen:

With regards to our item 1-23 in LA, relating to what BellSouth charged retail customers who initiated service with POTS plus blocks only, I think there may have been a basic misunderstanding about what we are asking for. BellSouth appears to be wanting to give us information about its customers that, during any one month, are taking service consisting of POTS plus the blocks. But that's not what we asked for, and doesn't really help us.

Please note:

1. Since we are asking about this information in the context of qualifying for a line connection charge waiver, what we need know is how many sign up for service from the beginning -- an initial service order -- for that combination, and what they are charged on their initial bill.

2. we need to know this information for BellSouth's end users, not for any CLECs to whom BellSouth is reselling service.

After the information is sifted through these two filters -- initial sign ups and BellSouth retail customers only -- I suspect the number is far lower than the xxthousand BellSouth thinks we're dealing with here. Please check to see what number of orders we are dealing with after screening the data as noted. If the number is still big, then sampling is probably appropriate and we can work something out.

With regards to item 3-1 in LA, relating to the reasons BellSouth denied credit requests, we just need to be told WHY BellSouth made the denials that it did. If BellSouth did not verify 100% of the requested credits until about March of '06, and only did sampling of the credit application and extrapolated their results to the whole, that's fine: BellSouth will just have to explain the REASONS it denied credits for the relevant promotions. (I.e., "in _____ [e.g. August] of 2004, BellSouth denied \$ ____ K worth of credit on the _____ [e.g. LCCW] promotion based on the assumption/extrapolation that _____ percent of all [e.g. LCCW] credit requests did not qualify for the promotion because _____ [e.g. no two functions ordered because functions were free blocks] based on analysis of _____ orders; a further \$ ____ K worth of credit on the _____ [e.g. LCCW] promotion was denied based on the assumption/extrapolation that _____ percent of all [e.g. LCCW] credit requests did not qualify for the promotion because _____ [e.g. move orders, not new service orders were sent in] based on analysis of _____ orders.

In other words, BellSouth has to let us know how it got to its numbers at the time it made the denials. If sampling was involved to get to those numbers, BellSouth can explain how it was used.

9/13/2007

Giving us the TNS for those promotions which were denied and asking us to figure it out is completely unworkable because dPi submitted credit requests which it thought met the qualifications. dPi cannot be made to GUESS why BellSouth denied a credit request – only Bellsouth can provide the critical information requested.

Chris Malish

Foster Malish Blair & Cowan, LLP

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From: Shore, Andrew [<mailto:Andrew.Shore@BellSouth.COM>]
Sent: Wednesday, March 21, 2007 5:28 AM
To: Malish, Chris
Subject: Re: LA discovery

Chris, is dPi willing to agree to a sampling of the Bellsouth lines for our customers with basic service and free blocks to resolve the outstanding discovery issue in LA and to govern any other State where this might arise? We are confident that the ALJ will not require us to devote the enormous man hours needed to respond to the discovery as propounded and believe a sampling approach is very reasonable. Please let me know. Thanks.

----- Original Message -----

From: Malish, Chris <chrismalish@FOSTERMALISH.com>
To: Lee Eng Tan <LTAN@PSC.STATE.FL.US>; Shore, Andrew
Cc: Gurdian, Manuel; Meza, James
Sent: Tue Mar 20 18:37:26 2007
Subject: RE: Tentative Prehearing/hearing dates for Docket 050863

Hi Lee Eng. I've been out of the office for spring break. The dates indicated should work for us as well.

9/13/2007

Thanks

Chris

Chris Malish

Foster Malish Blair & Cowan, LLP

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Austin, Texas 78703

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From: Lee Eng Tan [<mailto:LTAN@PSC.STATE.FL.US>]
Sent: Friday, March 16, 2007 3:27 PM
To: Malish, Chris; Andrew.Shore@BellSouth.COM
Cc: Gurdian, Manuel; Meza, James
Subject: Tentative Prehearing/hearing dates for Docket 050863

Good Afternoon,

Staff has received tentative dates for Docket 050863-TP: dPi Teleconnect, L.L.C. v BellSouth Telecommunications, Inc.

Prehearing: June 18, 2007

Hearing: July 11, 2007

9/13/2007

Please let me know by Tuesday, March 20, 2007 if these dates work.

Thank you.

Regards,

Lee Eng

Lee Eng Tan

Attorney

Office of the General Counsel

(850) 413-6185

ltan@psc.state.fl.us

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9/13/2007

**EXHIBIT D: CORRESPONDENCE
BETWEEN COUNSEL REGARDING
MOTION TO ABATE**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:) DOCKET NO. 050863-TP
)
dPi Teleconnect, L.L.C. v.)
BellSouth Telecommunications, Inc.)

JOINT MOTION FOR ABATEMENT

TO THE HONORABLE UTILITIES COMMISSION:

dPi Teleconnect, L.L.C. and BellSouth Telecommunications, Inc., the parties in this case, would show the Commission that a case with identical facts is being litigated before the Louisiana Public Service Commission, Docket No. U-29172, *dPi Teleconnect, L.L.C. v. BellSouth Telecommunications, Inc.*

The parties would further show that they have reached an agreement to abate this case until 30 days after a discovery order is issued in the above-referenced case in Louisiana. The order, while not controlling in this cause, may better allow the parties to assess their obligations in discovery. The parties therefore move that this case be abated pending notice that such event has occurred.

Respectfully Submitted,

Chris Malish
1403 West Sixth Street
Austin, Texas 78703
Phone: (512) 476-8591
Fax: (512) 477-8657
Counsel for Complainant

James Meza
BellSouth Telecommunications, Inc.
150 South Monroe Street, Room 400
Tallahassee, Florida 32301
Phone: (305) 367-5561
Counsel for Defendant

Steven Tepera

From: Steven Tepera
Sent: Thursday, May 10, 2007 3:58 PM
To: 'Meza, James'
Subject: RE: dPi; BellSouth Florida; motion to continue



Motion to
Abate.doc



Motion for
Abeyance.pdf

Hi, James.

Here is a draft of the motion to abate.

Steven

-----Original Message-----

From: Meza, James [mailto:James.Meza@BellSouth.com]
Sent: Thursday, May 10, 2007 3:23 PM
To: Steven Tepera; Shore, Andrew
Subject: FW: dPi; BellSouth Florida; motion to continue

Steven -- I agree that we will not seek to hold dpi to the 5/11 direct testimony deadline and that AT&T Florida will also not file direct testimony on 5/11. I propose that we do the following:

- 1) Jointly seek to move the hearing to a date provided by Staff and suggest to the FPSC respective dates for testimony and discovery for their consideration.
- 2) While the motion is pending, ask the FPSC to give us an extension on direct testimony dates until the motion is decided. That way we are covered until our request for a continuance is decided.

Let me know if you are o.k. with this.

Jim

-----Original Message-----

From: Steven Tepera
Sent: Thursday, May 10, 2007 4:17 PM
To: Meza, James
Subject: RE: dPi; BellSouth Florida; motion to continue

Hi, Jim.

I would like to get something signed between us to make sure that everything is taken care of before I got to sleep tonight. I've attached a letter agreement that I'd like you to sign and fax back to me before the end of today.

If you have any questions, call me.

Thanks,

Steven Tepera

-----Original Message-----

From: Meza, James [mailto:James.Meza@BellSouth.com]
Sent: Thursday, May 10, 2007 12:38 PM
To: Steven Tepera

Subject: RE: dPi; BellSouth Florida; motion to continue

Thanks -- can you please provide in word?

-----Original Message-----

From: Steven Tepera [mailto:steventepera@fostermalish.com]

Sent: Thursday, May 10, 2007 1:37 PM

To: Meza, James

Subject: dPi; BellSouth Florida; motion to continue

Hi, James.

Attached is the motion to continue in WordPerfect and .pdf. If you agree, please sign and fax back a copy. If you have any suggestions, make changes on the WP version and send it back to me. Let me know if you need it in another format.

Thanks, <<Motion for Continuance v. 2.pdf>> <<Motion for Continuance v. 2.wpd>>

Steven Tepera
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1403 West Sixth Street
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(512)476-8591- voice
(512)477-8657- fax

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