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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 and J. Phillip Carver
- D. 9 pages total (includes letter, certificate of service and pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Compel

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September 17, 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 Motion to Compel, 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 17th day of September, 2007 to the following:

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Manuel A. Gurdian

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: dPi Teleconnect, L.L.C. v.) Docket No. 050863-TP
BellSouth Telecommunications, Inc.)
_____) Filed: September 17, 2007

AT&T FLORIDA’S MOTION TO COMPEL

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”), submits this Motion to Compel dPi Teleconnect, LLC (“dPi”) to respond to AT&T Florida’s First Set of Interrogatories Nos. 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 23, 24, 33, 34, 35, 36, 37, 38, 39, and 41 and First Request for Admissions Nos. 9, 10, 11, 12, 13, 14, 15, and 17. For the following reasons, the Florida Public Service Commission (“Commission”) should compel dPi to respond to AT&T Florida’s discovery.

I. Factual Background

On November 10, 2005, dPi filed this action before the Commission against AT&T Florida alleging that AT&T Florida failed to make available three certain retail promotions to dPi.¹ To the contrary, AT&T Florida makes its retail promotions available to reseller CLECs, such as dPi, by giving them a credit for the value of the promotion, *if* the CLEC’s end user customer meets the same criteria an AT&T Florida customer must meet in order to qualify for the promotion. For example, one promotion at issue in this docket is the Line Connection Charge Waiver (“LCCW”) which gives an AT&T customer a credit for the line connection charge if the customer, among other requirements, purchases at least basic service and two features, such as caller ID or call waiting. Likewise, in addition to other criteria, if a CLEC end user purchases basic

¹ dPi is a resale CLEC that buys services at wholesale from AT&T Florida at a legally-mandated discount price and resells these services at a marked up price to end user customers.

service plus two features, AT&T Florida will provide the CLEC a credit under the promotion for the line connection charge.

Examples of the features that qualify for this promotion are call return and repeat dialing. An AT&T Florida customer that purchases two of these services on a subscription basis qualifies for the Line Connection Waiver promotion. These features are also available to customers on a per usage basis. Customers also have the ability to order “blocks” of these features, so that they cannot be activated on a “per usage” basis. The blocks are available to customers at no charge.

dPi places on the line of each of its end users that orders basic service, blocks that prevent the end user from using certain features, such as call return and repeat dialing. dPi does so without the customer requesting the block, or consenting to it, and dPi does not inform the end user of the presence of these blocks. These line usage blocks are provided by AT&T Florida to dPi and its customers free of charge. However, dPi claims in this docket that it is entitled to a credit under the LCCW promotion when it places these two blocks on a customer’s basic service, even though these blocks are not “features” as that term is commonly understood and these services are not “purchased” by the end user (or by dPi).

II. Argument

dPi objects to responding to AT&T Florida’s First Set of Interrogatories Nos. 1, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 23, 24, 25, 26, 31, 33, 34, 35, 36, 37, 38, 39, and 41 and First Request for Admissions Nos. 1, 2, 7, 9, 10, 11, 12, 13, 14, 15, and 17. *See* dPi’s Response to AT&T Florida’s Request for Admissions and dPi’s Response to AT&T Florida’s First Set of Interrogatories attached hereto as Exhibits “A” and “B”.

Specifically, dPi has stated the following objection in response to each of the above-referenced discovery requests:

OBJECTION; irrelevant; not calculated to lead to the discovery of relevant evidence; burdensome and harassing.

The only issues in this case are promotions and services BellSouth offers to its end users at retail and CLECs at wholesale, and the amount BellSouth charges its retail end users and CLECs for said offerings. The configuration and amounts dPi charges its end users at retail cannot be relevant to any of the issues in this case.

The central issue in this case is whether dPi end users meet the *same* promotion criteria that AT&T Florida end users must meet in order to receive the benefits of a promotion. The parties' Interconnection Agreement ("Agreement") states: "Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly." See Agreement, Attachment 1, Exhibit A attached to Pam Tipton's direct testimony as Exhibit PAT-1. Under the clear language in the Agreement, dPi is entitled to promotional credits only for dPi end users that meet the *same* promotion criteria that AT&T Florida end users must meet in order to receive the benefits of a promotion.

Judged by this criteria, dPi fails to qualify for this promotion for at least three reasons: First, blocks are not features. If dPi has submitted only blocks, rather than features, it is not entitled to the promotional discount. Second, the promotion requires the purchase of features. Because blocks are available at no charge, there is no purchase. Third, and perhaps most importantly, the contractual requirement in the Interconnection Agreement is to treat the dPi customer the same as an AT&T Florida customer, i.e., if the order by a dPi customer would qualify her for a discount if she were an AT&T retail customer, then the dPi customer must be given the discount. In this case, AT&T Florida

believes that there was no customer involvement in these orders. Instead, dPi simply added blocks to customer lines to attempt to generate discounts, which dPi kept (when it was successful), rather than passing the discounts on to its customers. The subject discovery is designed to address these facts.

AT&T Florida's First Set of Interrogatories Nos. 1, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 23, 24, 33, 34, 35, 36, 37, 38, 39 and 41 and Request for Admissions No. 7, 9, 10, 11, 12, 13, 14, 15 and 17 are designed to elicit information on: (1) dPi's customers; (2) whether dPi's customers decide to have blocks placed on their service; (3) how dPi places blocks on its customers' lines; (4) how much dPi charges its customers for placing the blocks on their service; (5) how much dPi charges its end users for service and (6) how dPi's customers are similarly situated to AT&T Florida's customers. These areas of inquiry are directly relevant to the issue of whether dPi end users meet the *same* promotion criteria that AT&T Florida end users must meet in order to receive the benefits of the promotions.

Specifically, Request for Admissions Numbers 9 and 11 request dPi to admit that dPi places blocks on all customers lines (#11), and that dPi's customers do not request this (#9). If dPi places blocks without a customer request, Request for Admissions numbers 10 and 11 ask dPi to admit that it does not obtain the customer's consent (#10) or inform the customer (#11). Request Numbers 13, 14, 15 and 17 are simply more specific requests for admission on the same topic, e.g., Does dPi only block certain features when a customer does not subscribe to them.

Interrogatory Numbers 33, 34, 35, 36, 37, 38, 39 and 41 merely seek an explanation if dPi denies the above-referenced Requests for Admission. Interrogatory

Nos. 5 and 6 inquire whether any of the requests at issue in this case were actually made by a customer, or whether all were imposed by dPi. Interrogatory Numbers 7 and 8 inquire whether, when dPi places blocks without a customer's knowledge, it informs him of this or tries to obtain his consent.

dPi answered Interrogatory Number 10 (without objection) by stating that some of the requests at issue in this proceeding are for services such as call return or call blocking. dPi then objected to Interrogatory Numbers 11-15, which follow up on Interrogatory No. 10 and request more specific information. Since dPi has answered Number 10 by stating that requests for credit were based on features, and not just blocks, these questions regarding features are obviously relevant. Interrogatory No. 16 goes to the question of whether the dPi customer is truly similarly situated to an AT&T Florida end user, and inquires whether dPi passes on to its customers any promotional discounts it obtains. Moreover, each of the above-referenced Requests for Admissions and Interrogatories relate specifically to matters raised in dPi's pre-filed testimony. *See*, Direct Testimony of Brian Bolinger, p. 3, fn. 1 (which addresses dPi's service offerings); Rebuttal Testimony of Brian Bolinger, pages 2-3.

The frivolousness of dPi's objections is illustrated by two facts. One, dPi claims that answering would be burdensome, even though it is obvious that the subject discovery can mostly be answered with a "yes" or a "no" and a brief explanation. Two, when the Commission Staff propounded similar, but more general, questions concerning dPi's practices of imposing blocks of its customers' lines, dPi responded. *See* Responses to Staff's Interrogatory Number 7(e) and (f). When AT&T Florida asks more detailed

questions on the exact same subject, dPi stonewalls. In reality, the reason for dPi's objections is clear.

By objecting to the afore-mentioned discovery, dPi, attempts to keep this Commission from learning of the facts that the North Carolina Utilities Commission ("NCUC") found relevant, and which were referenced in its Order Dismissing dPi's Complaint. *See* NCUC Order Dismissing Complaint, Docket No. P-55, Sub 1577, issued June 7, 2006, p. 7, attached to Pam Tipton's direct testimony as PAT-4. dPi is fully aware that its already tenuous interpretation of the Interconnection Agreement and of the tariff will be weakened further if the facts of dPi's practices come to light in this proceeding. dPi is, in essence, attempting to play "keep away" with the facts by refusing to answer AT&T Florida's First Set of Interrogatories Nos. 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 23, 24, 33, 34, 35, 36, 37, 38, 39, and 41 and First Request for Admissions Nos. 9, 10, 11, 12, 13, 14, 15, and 17. This discovery is relevant, is reasonably calculated to lead to the discovery of admissible evidence and is not burdensome and harassing.

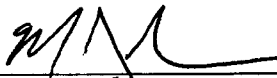
III. Conclusion

AT&T Florida is in need of the information requested in the above-referenced discovery to properly prepare its case for hearing and respectfully requests that the Commission grant its Motion to Compel

WHEREFORE, for the foregoing reasons, AT&T Florida respectfully requests that the Commission grant its Motion to Compel.

Respectfully submitted this 17th day of September 2007.

AT&T FLORIDA



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