

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

dPi's REPLY TO AT&T'S OBJECTION TO ADDITIONAL DISCOVERY

1. Discovery which AT&T was compelled to produce just before the original hearing date in this case showed that – contrary to AT&T's prior representations – AT&T *has* in fact repeatedly and systematically provided Line Connection Charge waivers to its end users taking only basic service plus two Touchstar Blocking Features – between 14 and 30% of the time from 2003 to 2007.
2. AT&T now claims, and will testify to the Florida Commission, that these Line Connection Charge waivers were made pursuant to promotions or discounts other than the Line Connection Charge Waiver. *See, e.g.*, AT&T's Response in Objection to dPi's Motion for Additional Discovery at p. 4: "the line connection charges are waived for a variety of other reasons other than the LCCW promotion"; "some of the waivers were for reasons completely unrelated to the LCCW promotion. "
3. Accordingly, on or about January 11, 2008, dPi moved this Commission to permit additional discovery to develop evidence that will test this latest round of assertions from AT&T, which are highly implausible. Why are these orders for Basic Service plus TouchStar Blocking Features receiving a waiver of the Line Connection Charge if not in connection with Line Connection Charge Waiver? What information is ATT using to make its assertions?

4. AT&T opposes this additional discovery. It complains that dPi has “over papered this case to a staggering degree.” In essence, it says “HEY! TRUST US! OUR WORD SHOULD BE GOOD ENOUGH FOR YOU.” But the facts which dPi has discovered through discovery so far clearly show that we cannot take such critical statements on faith:
- a. ATT initially testified that it had not provided the Line Connection Charge Waiver to retail customers taking basic service and the TouchStar Blocking Features;
  - b. ATT subsequently resisted discovery requests seeking documentation of what ATT’s retail customers taking basic service and the TouchStar Blocking Features were charged; and
  - c. When that documentation was finally produced, it showed that AT&T had repeatedly and systematically waived the Line Connection Charge for such customers – with the best explanation for why the waiver was not given to ALL such customers being that most of them were not win over or winback customers.

In short, the more discovery that is conducted, the more AT&T’s claims are exposed as being implausible, if not incorrect. It is no wonder it would prefer to prevent further discovery.

5. AT&T also claims its answers to similar questions propounded in other states should be good enough for Florida. However, the answers that AT&T has given in those states so far has been one iteration or another of “our systems don’t capture the data requested.” Such answers give rise to yet more questions: if the systems doesn’t provide such information, how is AT&T able to say that the waivers were given for reasons other than the LCCW promotion? It appears now that even more discovery is needed to get the answers to these questions: depositions of marketing, sales, or systems managers or accountants, for

example.

6. The new discovery is necessary to help determine whether AT&T was waiving the Line Connection Charge for customers with basic service plus two Touchstar Blocking Features pursuant to the Line Connection Charge Waiver or some other promotion. The need for the particular requests could not have been anticipated until after (1) AT&T produced its Line Connection Charge waiver data and (2) articulated its explanations as to why the data shows it had been extending the waiver to retail orders configured like dPi's – both of which came after the discovery cut-off.

7. At the end of the day, this Commission is faced with a fundamental decision about the administration of justice in Florida: does the Commission wish to try this case on the facts, based on an examination of what BellSouth actually *did*, or on BellSouth's after-the-fact policy statements: "after we have analyzed this issue, this is what we think our policy must have been."

#### PRAYER

8. The documentation provided by AT&T so far indicates that despite its earlier testimony to the contrary, AT&T has repeatedly and systematically waived the line connection charge for its retail customers taking just basic service and TouchStar Blocking Features and nothing else. AT&T has now represented that these waivers were given for reasons other than the Line Connection Charge Waiver promotion. The additional discovery requested tests these contentions on this critical subject and could not have been earlier anticipated, since they were triggered by materials produced and positions taken, by AT&T after the discovery deadline. dPi prays the Commission allows additional discovery.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the above instrument was transmitted to Counsel for Defendants at the below address via electronic mail and first class mail on February 8, 2008.

/s/ Chris Malish

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