

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by dPi-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement.	DOCKET NO. 050863-TP ORDER NO. PSC-08-0457-PCO-TP ISSUED: July 16, 2008
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ORDER GRANTING MOTION TO STRIKE

I. Case Background

On November 10, 2005, this docket was established to address dPi-Teleconnect, L.L.C.'s (dPi) complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) for a dispute arising under its interconnection agreement. Pursuant to Order No. PSC-07-0571-PCO-TP, Order Modifying Procedure, issued July 9, 2007, direct testimony was due on July 23, 2007, and rebuttal testimony was due on August 20, 2007. Both dPi and AT&T filed direct and rebuttal testimony accordingly.

In the course of the discovery process, AT&T provided data on September 26, 2007, and November 7, 2007, which was later marked and admitted into the hearing record as Exhibit 13. On March 7, 2008, a full four months after receiving this data from AT&T and less than one month prior to the April 3, 2008, hearing, dPi filed its Motion for Leave to File Supplemental Testimony and Additional Direct Testimony of Steven Tepera with Attachments.¹

On March 28, 2008, by Order No. PSC-08-0209-PCO-TP, the Prehearing Officer denied dPi's Motion, stating that dPi failed to demonstrate why the requested testimony should be allowed. As stated in the Order Denying Motion for Leave:

It appears that dPi has had more than adequate time to review the discovery provided by AT&T and seek to supplement its previously-filed testimony prior to March 7, 2008. Allowing dPi to now supplement testimony, which includes over 1,000 pages of exhibits, would be prejudicial to AT&T.

dPi sought reconsideration of the order, which the Commission denied as a preliminary matter at the April 3, 2008, hearing.

During the evidentiary hearing, counsel for dPi made several attempts to use and admit the testimony and exhibits which had previously been denied admittance. dPi did not prevail in these attempts to use the excluded information during the hearing.

Both parties timely filed post-hearing briefs on April 30, 2008. In its brief, dPi once again attempted to bring before the Commission portions of the excluded testimony and exhibits.

¹ dPi maintained in that Motion that the proposed testimony contained an analysis of the data AT&T had provided on September 26, 2007, and November 7, 2007.

DOCUMENT NUMBER-DATE

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In the appendices to its brief, dPi included a synopsis of Steven Tepera's excluded testimony, along with several of the exhibits that dPi was denied leave to file. AT&T moved to strike these appendices on May 2, 2008, and dPi filed a response in opposition on May 9, 2008.

II. AT&T's Motion to Strike

AT&T argues (1) that dPi attempted to reintroduce an edited version of testimony which has already been excluded from the record and (2) that dPi's post-hearing brief exceeds the 25-page limit established by Order No. PSC-07-0787-PHO-TP. According to AT&T, the appendices attached to dPi's brief are nothing more than reformatted and edited versions of the testimony and exhibits of Mr. Tepera, which the Commission has already refused to allow in the record. Thus, AT&T requests that the Commission strike the appendices to dPi's post-hearing brief.

III. dPi's Response to Motion to Strike

In its response, dPi argues that the appendices contain analysis of the evidence contained in Hearing Exhibit 13 and not actual evidence. dPi argues that the analysis, description, and explanation of the significance of the evidence are classic closing argument material. dPi requests that the Commission find AT&T's Motion to be without merit.


IV. Analysis and Ruling

Having reviewed the appendices, it appears that Appendix 1 contains language identical to portions of the excluded pre-filed direct testimony of Steven Tepera. In addition, Appendix 2A, Appendix 2B, and the third unnumbered appendix contain charts that are identical to those that were previously denied admittance into the record. By including these appendices with its post-hearing filing, dPi is flagrantly attempting to bring through the back door information that was denied admittance during the proceeding by order of the Prehearing Officer, by vote on reconsideration of the hearing panel, and by evidentiary rulings of the Presiding Officer during the evidentiary portion of the hearing. dPi's attempt to abuse the process of this Commission shall not be allowed. Accordingly, AT&T's Motion to Strike is granted.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrin, as Presiding Officer, that BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Strike Appendices to dPi-Teleconnect, L.L.C.'s Post-Hearing Brief is hereby granted.

By ORDER of Commissioner Katrina J. McMurrian, as Presiding Officer, this 16th day of July, 2008.


KATRINA J. McMURRIAN
Commissioner and Presiding Officer

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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 25-22.060, 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.