

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

PREHEARING STATEMENT OF DPI TELECONNECT, L.L.C.

Pursuant to the Florida Public Service Commission (“Commission”) order of April 13, 2007 as modified by the Commission’s order of July 9, 2007 modifying procedure, dPi Teleconnect, LLC (“dPi”) files its prehearing statements.

- 1. The name of all known witnesses whose testimony has been prefiled or whom may be called by the party, along with the subject matter of each of such witness’ testimony.**

RESPONSE:

Brian Bolinger: Vice President of dPi Teleconnect. Mr. Bolinger’s testimony concerns the promotional credits available for dPi Teleconnect based on the product that dPi Teleconnect provides its end users. Mr. Bolinger’s testimony also evaluates AT&T’s position.

Steve Watson: Principal of Lost Key Telecom. Lost Key Telecom is the agent of dPi Teleconnect in filing credit requests. Mr. Watson’s testimony concerns the procedure and results of its credit requests.

- 2. A description of all pre-filed exhibits and other exhibits that may be used by the party in presenting its direct case (including individual components of a composite exhibit) and the witness sponsoring each.**

RESPONSE:

As a preliminary note, not all exhibits have been pre-filed as discovery issues and disputes with AT&T have caused delays in dPi obtaining the necessary documents. Particularly, the below-listed dPi-7 is the subject of a discovery dispute.

dPi-1	Screenshot taken from AT&T’s website during the summer of 2005 indicating promotion criteria for Line Connection Charge Waiver promotion	Steve Watson
dPi-2	Except of tariff with qualifying language for Line Connection Charge Waiver	Steve Watson

dPi-3	Spreadsheet which shows the Line Connection Charge Waiver promotion credits that dPi applied for, and those that were paid	Steve Watson
dPi-4	AT&T's spreadsheet which shows the Line Connection Charge Waiver promotion credits dPi applied for, those that were denied and reasons for denial.	Produced by AT&T
dPi-5	Spreadsheet which shows dPi's denial analysis and totals according to percentages	Steve Watson
dPi-6	Examples of dPi-AT&T email correspondence on the subject of the promotion credit payment	Brian Bolinger
dPi-7	Spreadsheet showing amounts charged by AT&T to its end users for basic service plus two call blocks. (expected)	Produced by AT&T

3. A statement of the party's basic position in the proceeding.

RESPONSE:

dPi's basic position is that it was wrongfully denied \$59,210 in credits for the Line Connection Charge Waiver in violation of federal law.¹

AT&T created the Line Connection Charge Waiver promotion using the following language, which appeared on its website:

“Customers who switch their local service to BellSouth from another provider and purchase BellSouth Complete Choice, BellSouth Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date.”

AT&T also filed the following language concerning the line connection charge waiver, changing only the number of features needed to qualify for the promotion:

“The line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth Preferred Pack service, or basic service and *two (2)* features will be waived.”

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This dollar amount comes from AT&T's response to Staff's Interrogatory No. 5. AT&T has provided dPi with the raw data to calculate the number itself; however, it was in paper (non-manipulable) format. Thus, dPi has not independently verified this amount. If a subsequent independent verification reveals a large discrepancy, this number will be amended.

dPi ordered service for all of its end users with at least basic service plus two or more Touchstar feature blocks. The blocking features are identified by Universal Service Ordering Codes which are listed in AT&T's tariff amongst the rest of AT&T's Touchstar features.

dPi submitted requests for credit for each customer that (1) switched its local service to dPi from another provider and (2) purchased basic service with at least two features (3) and did not have dPi service within ten days of the connection request. AT&T denied some of these requests. Because the requests are precisely within the qualifying criteria *drafted by AT&T*, dPi is entitled to the credits.

4. A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue.

RESPONSE:

a. Question of Law:

The meaning of the following two excerpts related to the line connection charge waiver promotion is a question of law:

“Customers who switch their local service to BellSouth from another provider and purchase BellSouth Complete Choice, BellSouth Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date.”

and

“The line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth Complete Choice service, BellSouth Preferred Pack service, or basic service and *two (2)* features will be waived.”

The Commission should interpret the language of the promotion based on a plain reading of the text of the promotion and hold that when dPi purchases a package consisting of plain telephone plus two or more Touchstar feature blocks, dPi qualifies for the promotional pricing. AT&T initially interpreted the promotion in this way; it simply chose to change its interpretation of the promotion after it realized that CLECs such as dPi would benefit more from such an interpretation than its own customers, given the nature of the parties' respective customer bases.

b. Question of Policy

Should AT&T, which has created a “promotion credit” system that universally overcharges

its CLEC customers and requires the CLECs to hunt down the overcharges and apply for credits, be allowed to unjustly enrich itself at the expense of its competitors by changing its "interpretation" of the promotion in question to avoid paying credits that are due under a plain reading of the promotion?

5. A statement of issues to which the parties have stipulated.

RESPONSE:

None.

6. A statement of all pending motions or other matters the party seeks action upon.

RESPONSE:

The parties currently are working through a discovery problem.

dPi has sought a month by month list of charges by AT&T to AT&T's own retail end users who initially sign up for basic service plus two call blocks. This was requested in dPi's Request for Information 1-19. This information is relevant because the cornerstone of AT&T's case is that AT&T does not, and has not, provided the LCCW promotion to its own retail customers who order service this way. Such a bald and conclusory (but potentially powerful) statement must be tested for its truthfulness. However, AT&T has to date not been able to document and produce a single order in any of the states where Bellsouth did business to confirm this statement during the relevant time frame.

dPi contends that AT&T either has no customers who applied for service with such a single new service order (since it's generally not the kind of thing their regular customers would do), and that if customers had applied for service in this way, that AT&T has extended the promotion to such customers in the past.

AT&T has withheld response to this request on the grounds that dPi must first provide a statistical method for determining a representative sample of the data requested. dPi has communicated with AT&T that (1) AT&T must first give dPi information on the data set including number of orders within this set; (2) it cannot provide a statistical method without knowing anything about the data set; and (3) because AT&T is the one wanting to do the sampling, it should propose the sampling method it had in mind for dPi's evaluation.

Because nothing has been resolved to date concerning RFI 1-19, dPi has suggested simply taking every third order from January 1, 2003 to present that is a new service order with basic service and two call blocks and providing dPi with the results. Counsel for AT&T has responded that it will check with AT&T to determine if this can be produced.

dPi anticipates filing a motion to compel to preserve its rights regarding AT&T's failure to produce this information.

7. **A statement identifying the party's pending requests or claims for confidentiality.**

RESPONSE:

None.

8. **Any objections to a witness' qualifications as an expert. Failure to identify such objection will result in restriction of a party's ability to conduct voir dire absent a showing of good cause at the time the witness is offered for cross-examination at hearing.**

RESPONSE:

dPi objects to the testimony of Pam Tipton in its entirety. Ms. Tipton is essentially a trained witness with admittedly no personal knowledge of the substance of her testimony. All of her "testimony" comes from "interviewing" people at BellSouth who may or may not have had personal knowledge of the events which Ms. Tipton attempts to testify upon. The result is that there is a buffer between dPi and the Commission on the one hand, and the people from BellSouth who really knew what was going on. Ms. Tipton's job is simply to help develop and relay BellSouth/AT&T's party line on the issues in this case. Such testimony would be inadmissible in any state in the Union.

9. **A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.**

RESPONSE:

A discovery dispute prevents dPi Teleconnect from filing its exhibits. However, it expects to be able to file the all exhibits by the September 24, 2007, deadline set by Lee Eng Tan in the telephone conference with Steven Tepera on July 23, 2007.

The particulars of the dispute is that AT&T has not yet answered dPi Teleconnect's RFI 1-19 yet.

RFI 1-19:

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.

In brief, AT&T claims that dPi must provide an acceptable sampling method for the service orders before anything will be produced. dPi's position is that (1) there was no agreement

that any of the production requirements would depend on action from dPi; (2) it cannot create a sampling method when it knows nothing about data which is to be sampled; and (3) AT&T is better able to provide a sampling method since it is the one familiar with all of the particulars of the data to be sampled, and dPi can approve or disapprove of that method.

After conversations with Manuel Gurdian, counsel for AT&T, dPi was told that AT&T will determine if it can simply pull every third order that (1) is a new service order of basic service and (2) contains two call blocks and report the amount charged for each. If AT&T can provide this, dPi will be able to create Exhibit dPi-7 (listed above) from that data.

Respectfully Submitted,

FOSTER MALISH BLAIR & COWAN, LLP

/s/ Chris Malish

Chris Malish

Texas Bar No. 00791164

cmalish@fostermalish.com

Steven Tepera

Texas Bar No. 24053510

stepera@fostermalish.com

1403 West Sixth Street

Austin, Texas 78703

Phone: (512) 476-8591

Fax: (512) 477-8657

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document has been filed with the Florida Public Service Commission and served upon Defendant through its below-listed attorneys on this 4th day of September, 2007.

/s/ Chris Malish
Christopher Malish

Commissioner Katrina McMurrian
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

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

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***

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***