

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

dPi Teleconnect, LLC's Response to AT&T Florida's Motion to Compel

dPi Teleconnect, LLC ("dPi") files this Response to AT&T Florida ("AT&T")'s Motion to Compel filed September 17, 2007.

Background

1. This case is about one thing: Did dPi service orders from AT&T qualify for the promotion. Everything else is a red herring.
2. dPi provides this abbreviated background to show all facts relevant to this Motion to Compel.
3. dPi has requested credit for Line Connection Charge Waiver in Florida. The qualifying language for the promotion is as follows:

"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."
4. 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."
5. Federal law requires AT&T to provide its CLECs (such as dPi) promotions when their service orders qualify for promotions offered to AT&T's end users.

6. AT&T rejected credit requests for three reasons. One of the reasons for rejection, and the only reason dPi contends is invalid in this suit, is that the credit requests were denied because dPi did not have two purchased qualifying Touchstar features on its lines. This was expressed in an email from Kristy Seagle, April 19, 2005:

The Line Connection Charge Waiver promotion as set forth in the BellSouth A2.10 tariff states "The customer must switch their local service to BellSouth and purchase any one of the following: Bellsouth Complete Choice plan, BellSouth PreferredPack Plan, or BellSouth basic service and two (2) custom calling (or Touchstar service) local features." As you will note in Tariff Section A13.19, entitled Touchstar Service, there is not a charge for BCR, BRD or HBG. Since there is no charge for these three features, they do not qualify as purchased features as required in the Line Connection Charge Waiver promotion. In an effort to ensure parity, BellSouth Resale product management has confirmed that BCR, BRD and HBG do not qualify BellSouth's end users for this promotion as well.

7. AT&T continues to rely on the reasoning of Kristy Seagle. What remains is essentially a question of law for the Commission: does the promotional language allow for credit to be given for new orders of basic service plus the Touchstar features in AT&T's tariff: BCR, BRD, and HBG? Or, as AT&T asserts, does the language force AT&T to have a separate itemized price for the Touchstar feature, contrary to the language of the feature?
8. AT&T requested information through discovery concerning dPi's end users, including information on what features were offered them, how much they were billed, what efforts dPi went through to ensure that the customers were aware that they were given call blocks, etc. dPi refused to answer these questions because they all deal with dPi's end users. Because federal law looks only at the orders that dPi makes to AT&T (as opposed to the orders that dPi's end users make to dPi), AT&T's requests were irrelevant to whether promotional credits should be granted.

Argument

9. Discovery is only allowed if the request is relevant or reasonably likely to lead to the discovery of relevant evidence. It is disallowed if the burden exceeds the probative value of the evidence.
10. As AT&T correctly points out, dPi is entitled to the promotion if AT&T's end users would be entitled to the promotion with that same order. The *only* relevant information is whether or not dPi's service orders qualify for the promotion. To wit:
 - a. What did dPi order?

- b. What are the qualifications of the promotion?
 - c. Were AT&T's end users provided the promotion when their orders were identical to dPi's?
11. Nothing regarding dPi's end users, the features offered to dPi's end users, the costs charged to dPi's end users are relevant. This is because dPi (not dPi's end users) stands in the shoes of AT&T's end users when determining qualification for promotions. Thus, any inquiry into dPi's end users is irrelevant.
 12. Because the two parties were able through discovery to limit the issues and (essentially) agree on the facts of the case, the Commission is set to decide a very narrow legal question: what is the proper interpretation of the promotional language?
 13. This narrow scope immensely limits the potential relevance of other factors. AT&T, however, propounded discovery that delved into numerous different topics, completely irrelevant to the narrow legal question before the Commission.
 14. For instance, AT&T sought admissions that dPi does not own any telecommunications facilities in Florida (Request for Admission 1) and that dPi charges its end users for basic service at over a 300% markup (Request for Admission 7).
 15. dPi objects on relevance grounds. In no way can the response to such questions have any bearing on the legal meaning of the Line Connection Charge Waiver ("LCCW") promotional language or whether dPi's service orders meet the same requirements as the AT&T customers.
 16. Similarly, AT&T requested irrelevant information in its interrogatories. For instance, it sought information on whether dPi allows its customers to subscribe to repeat dialing (Interrogatory 15), and whether or not promotional discounts dPi receives is passed on to the end users (Interrogatory 16).¹
 17. dPi again objects on relevance grounds. Once again, whether or not the discount is passed on to the end user (Interrogatory 16) can not affect the legal meaning of the text of the LCCW promotional language. This is because dPi's end users are in no way relevant to this inquiry before the Commission.
 18. AT&T concludes its Motion to Compel by asserting that "the reason for dPi's objection is clear." And it is. dPi refuses to pursue thousands of different irrelevant rabbit trails losing time and money when there is a single issue in dispute.

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The complete listing of all Requests for Admission and Interrogatories and dPi's responses are included with AT&T's Motion to Compel.

Conclusion

dPi is ensuring that the issues in this case remain narrow and focused. By disallowing discovery of materials that are clearly irrelevant to the issue at hand, the Commission can focus on the legal question it is presented.

None of the information requested can help the Commission or any other party better answer the question of whether the call blocks count as Touchstar features. AT&T's Motion to Compel should be denied.

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 21st day of September, 2007.

/s/ Chris Malish
Christopher Malish

Attorneys for Defendant

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***

Attorney for Florida Public Service Commission

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***