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PUBLIC SERVICE
COMMISSION

VIA OVERNIGHT MAIL

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602

Re: dPi v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky
KPSC 2009-00127

Dear Mr. Derouen:

Enclosed for filing in the above-referenced case are the original and ten (10) copies of AT&T Kentucky's Reply Brief Addressing Cashback Issues.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

cc: Parties of Record

Enclosures

903813

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DPI TELECONNECT, LLC COMPLAINANT V. BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T KENTUCKY DEFENDANT _______________ DISPUTE OVER INTERPRETATION OF THE PARTIES' INTERCONNECTION AGREEMENT REGARDING AT&T KENTUCKY'S FAILURE TO EXTEND CASH-BACK PROMOTIONS TO DPI	))))))))))))))))	CASE NO. 2009-00127

AT&T KENTUCKY'S REPLY BRIEF
<u>ADDRESSING CASHBACK ISSUES</u>

For all of the reasons set forth in the Brief AT&T Kentucky submitted on February 4, 2011 ("AT&T Kentucky Brief"), dPi Teleconnect, LLC ("dPi") fails to provide legal or factual support for its claims in this case. Without waiving those arguments, in this Reply Brief, AT&T Kentucky demonstrates that: dPi's claims must be dismissed because they are untimely; in the alternative, if dPi qualifies to resell a cashback promotion, AT&T Kentucky is required to provide (at most) a credit in the retail amount of the cashback benefit discounted by the 16.79% resale discount rate established by the Commission; and AT&T Kentucky is not required to obtain prior approval from the Commission before discounting cashback credits in this manner.

I. THE COMMISSION SHOULD REJECT ALL OF DPI'S CLAIMS BECAUSE IT FAILED TO FOLLOW THE 2007 AGREEMENT'S ESCALATION PROVISIONS. IN THE ALTERNATIVE, THE COMMISSION SHOULD REJECT $7,350 OF DPI'S CLAIMS BECAUSE DPI DID NOT DISPUTE OR ESCALATE WITHIN 12 MONTHS AS REQUIRED BY THE 2007 ICA.

The Commission should find that all of dPi's claims are barred because dPi did not follow the escalation process required by the 2007 ICA. *See* AT&T Kentucky Brief at 18-19. If the Commission does not find that all of dPi's claims are barred for this reason, at a minimum it should find that $7,350 of dPi's claims are barred in light of the uncontroverted evidence that dPi failed to dispute AT&T Kentucky's denial of these claims within the one-year period as required by the Parties' 2007 ICA. *See* AT&T Kentucky Brief at 20-22. As AT&T Kentucky anticipated at page 21 of its Brief, dPi claims to be excused of this requirement by a general provision in the 2007 ICA that its terms and conditions do not apply retroactively prior to its effective date. *See* dPi Brief at 18. This general provision, however, must yield to the more specific provision that any amounts "owed for services provisioned or orders placed under [the prior agreement]" would be "due and owing" and "governed by the terms and conditions" of the 2007 Interconnection Agreement. *See* Exhibit PLF-3, General Terms and Conditions, p. 20, § 30.1. Accordingly, the 2007 ICA's requirements to formally dispute and escalate AT&T Kentucky's denial of dPi's credit requests within one year govern this dispute, and they demand a rejection of $7,350 of dPi's claims for promotional credits. *See* AT&T Kentucky Brief at 18. Had dPi wanted these claims governed by the earlier agreement, then it should have filed this proceeding while it operated under that agreement, or it should have negotiated different provisions in the 2007 agreement.

II. ANY AMOUNTS SOUGHT BY DPI THAT ARE NOT BARRED BY THE CONTRACT MUST BE REDUCED BY THE 16.79% RESIDENTIAL RESALE DISCOUNT ESTABLISHED BY THE COMMISSION.

For each cashback credit in dispute, dPi ordered a telecommunications service that was the subject of a cashback promotion, and AT&T Kentucky billed dPi the standard wholesale price of the service (the standard retail price of the service discounted by the 16.79% resale discount established by the Commission). dPi then requested a cashback promotional credit from AT&T Kentucky for the full retail amount of the cashback benefit. (*See generally* Bracy Direct at 1-7). If the Commission determines that AT&T Kentucky was required to resell the cashback component of these promotions, however, it must find that at most,[1] dPi is entitled to the retail amount of the cashback benefit discounted by the 16.79% resale discount rate established by the Commission.[2]

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[1] Indeed, discounting the face value of the retail cashback benefit by the resale discount rate established by this Commission provides dPi a lower wholesale price than it is entitled to receive, because it does not take into account the coupon redemption rate, the in-service life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. This issue, however, is not before the Commission in this proceeding.

[2] As explained below, federal law provides that prices for resold telecommunications services shall be set on the basis of retail rates charged to subscribers for the service requested, excluding the portion thereof attributable to costs that are avoided when an ILEC provides a service on a wholesale basis rather than on a retail basis. In 1997, after reviewing hundreds of pages of testimony, transcripts, and argument, the Commission implemented this requirement by establishing a uniform resale discount rate of 16.79% for the residential services at issue in this docket. *See* Order, *In the Matter of: The Interconnection Negotiations between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C.*, before the Kentucky Public Service Commission, Case No. 96-482 (Feb. 6, 1997), at 11. The Commission established this uniform discount percentage by excluding from aggregate retail prices the aggregate costs "that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier," including, among other items, product management and sales, advertising, customer services, corporate operation, and uncollectibles." *See, e.g.*, 47 CFR § 51.609 (b), (c). As explained below, granting dPi's request for more credits than the federal Act and the Commission's orders mandate would be tantamount to ignoring the avoided cost discount percentage this Commission established nearly 15 years ago and has used ever since.

A. AT&T Kentucky's Method of Discounting the Retail Cashback Amount by the Commission-Approved 16.79% Resale Discount Is Consistent with the FCC's *Local Competition Order*, the Fourth Circuit's *Sanford* Decision, and the Decision of Every Other State Commission to Have Considered this Issue to Date.

To illustrate AT&T Kentucky's method, assume a promotion that provides qualifying retail customers a one-time $50 cashback benefit when they purchase a service with a monthly price of $80. If dPi qualifies to purchase this promotion for resale, dPi should receive a $41.61 promotional cashback credit,[3] which results in dPi paying a net of $24.96 for the first month of service:

Amount dPi was Billed Initially:	$66.57	($80 discounted by 16.79%)
Amount dPi is Credited:	($41.61)	($50 discounted by 16.79%)
Net dPi Pays For "Cashback" Month	$24.96	

This net amount of $24.96 that dPi should pay for the first month of service appropriately reflects a 16.79% discount from the $30 promotional price ($80 standard price less $50 cashback) a retail customer would pay for the first month of service. AT&T Kentucky's method, therefore, is mathematically identical to applying the Commission-approved 16.79% resale discount percentage to the $30 promotional price of the service:

Wholesale = Promotional Price – [(Promotional Price) x (Resale Discount Percentage)]

[3] As demonstrated in **Attachment A** to this Reply Brief, giving dPi a $41.61 cashback credit in this example provides the same net benefit dPi would have received if AT&T Kentucky had simply reduced the retail price of the service by $50. Although it does not occur in Attachment A, a "rounding error" of a penny or two may appear in one or more of the Attachments to this Reply brief as a result of the calculations inherent in the Excel spreadsheet(s) used to create the Attachments.

Clearly, AT&T Kentucky's method sets the wholesale price of a promotional offering on the basis of the promotional price of the service, excluding the portion thereof attributable to avoided costs.[4]

This is entirely consistent with federal law as implemented by the FCC in its *Local Competition Order*. The 1996 Act provides that prices for resold services shall be set "on the basis of ***retail rates charged to subscribers*** for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[5] In its *Local Competition Order,* the FCC anticipated that state commissions would implement this requirement by adopting resale discount percentage rates like the 16.79% rate established by this Commission – in fact, the FCC itself adopted "a default range" of such resale discount rates that state Commissions could select, on an interim basis, until they established permanent discount rates on the basis of cost studies.[6] The FCC explained that when avoided costs are determined in this manner, state commissions "may then calculate the portion of a retail price that is attributable to avoided costs by multiplying ***the retail price*** by the discount rate."[7] Clearly, the 16.79% resale discount rate established by this Commission is to be applied to the "retail price" of the services that are being resold.

The FCC, however, understood that as competition developed in the local exchange market, the traditional "standard tariffed price" would not accurately reflect

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[4] The [(Promotional Price) x (Resale Discount Percentage)] portion of this formula uses the Commission-approved 16.79% resale discount to estimate the avoided cost of the service.

[5] 47 U.S.C. § 252(d)(3)(emphasis added).

[6] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 908 (1996)("*Local Competition Order*"), *subsequent history omitted.*

[7] *Id.* (emphasis added).

what a given customer pays for a telecommunications service any more than the sticker price accurately reflects what a given customer pays for a car. Accordingly, the FCC expressly decided what constitutes the "retail price" to which a percent resale discount rate is to be applied when a resold service is the subject of promotional pricing like the cashback offerings at issue in this proceeding. Contrary to dPi's position, the FCC found that it is the reduced promotional price – and not the "standard" price – to which the 16.79% resale discount rate appropriately is applied.

Specifically, in discussing how incumbent LECs are required to make promotions available for resale, the FCC acknowledged that there was a "question of whether all short-term promotional prices are 'retail rates' for purposes of calculating wholesale rates pursuant to section 252(d)(3),"[8] and it concluded that "short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation."[9] The FCC then noted that "[w]e must also determine when a promotional price ceases to be 'short term' ***and must therefore be treated as a retail rate for an underlying service***," and it concluded that a promotional price ceases to be "short term" when it is offered for a period of time "greater than 90 days in duration."[10] Because such promotional prices are not "short term," the FCC found that they "must therefore be treated as the ***retail rate*** for an underlying service."[11]

The FCC, therefore, expressly determined that avoidable costs are calculated by "multiplying ***the retail price*** by the discount rate."[12] The FCC also expressly determined that when a promotional price is offered for a period of time greater than 90

[8] *Id.* at ¶ 949.
[9] *Id.*
[10] *Id.* at ¶ 950.
[11] *Id.* (emphasis added).
[12] *Id.* at ¶ 908 (emphasis added).

days in duration (as is true of the cashback offerings at issue in this proceeding), it is that lower "promotional price" that "***must . . . be treated as a retail rate*** for an underlying service."[13] This is why, as explained at pages 24 to 25 of AT&T Kentucky's Brief, the Fourth Circuit affirmed the North Carolina Commission's conclusion that when cashback incentives are offered, it is appropriate to apply the percent resale discount rate to the resulting promotional price. *See BellSouth Telecom. Inc. v. Sanford*, 494 F.3d 439 (4th Cir. 2007); *CMC Telecom, Inc. v. Michigan Bell Tel. Co.*, 654 F.Supp.2d 677, 686 (W.D. Mich. 2009) ("The Fourth Circuit Court of Appeals upheld the State Commission's determination that the promotional offering, because it lasted more than 90 days, was a standard retail offering which must be subject to resale at the wholesale rate."). And this is why other states that have considered this issue also have ruled that it is appropriate for AT&T to apply the resale discount percentage to cashback items as AT&T Kentucky proposes. *See* AT&T Kentucky Brief at 25-27.

B. The Commission Should Reject Both of dPi's Alternative Methods because They Conflict with the FCC's *Local Competition Order*, the Fourth Circuit's *Sanford* Decision, and the Decision of Every Other State Commission to Have Considered this Issue to Date.

As anticipated (*see* AT&T Kentucky Brief at 27-28), dPi argues against AT&T Kentucky's method of discounting the cashback amount by claiming that it "actually results in a situation where the wholesale rates are higher than retail." *See* dPi Brief at 25. **Attachment B** to this Reply Brief uses the $50 Cashback 2-Pack Bundle Plan

[13] *Id.* at ¶ 950. The Eight Circuit Court of Appeals affirmed this decision, ruling that "the [FCC's] determination that promotional rates that are effective for more than 90 days qualify as 'retail rates' is a reasonable interpretation of the Act's terms and was not made arbitrarily or capriciously." *See Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 819 (8th Cir. 1997), *reversed sub nom. AT&T Corp. v. Iowa Utilities Bd. on other grounds,* 525 U.S. 366 (1999).

promotion[14] to illustrate what dPi erroneously argues is a problem with AT&T Kentucky's method. Under this promotion, a retail customer who keeps the service for only one month would receive a net payment of $20.00 from AT&T Kentucky.[15] Under AT&T Kentucky's method, if dPi qualified to resell this promotion and kept the service for only one month, it would receive a net payment of $16.64 from AT&T Kentucky.[16] This situation – in which dPi would receive less money from AT&T Kentucky for keeping the service for only one month than a retail customer would receive from AT&T Kentucky for keeping the service only one month – is what dPi refers to when it argues that AT&T Kentucky's method "actually results in a situation where the wholesale rates are higher than retail." *See* dPi Brief at 25.

1. Description of dPi's Proposed Methods

In light of its concerns, dPi offers not one, but two alternative methods of calculating wholesale prices.

a. dPi's Method 1

dPi's first method ("dPi's Method 1"), described at page 24 of its Brief, is:

Wholesale = Promotional Price – [(***Standard Price***) x (Resale Discount Percentage)][17]

In other words, dPi wants to have its cake and eat it too: it wants to start with the benefit of the lower promotional price, but it wants to use the ***higher*** standard price to

[14] This promotion, which is one of the cashback promotions at issue in this proceeding (*see* Ferguson Direct at 7-8), provided qualifying retail customers a one-time $50 cashback benefit with the purchase of the 2-Pack Bundle Plan service. Now obsolete, the 2-Pack Bundle Plan was priced at $30 per month in Kentucky. *See, e.g.*, Kentucky General Exchange Guidebook § A.103.2.13.C.1.(a).

[15] This is the net of the $30 the retail customer pays for the service and the $50 cashback benefit the retail customer receives from AT&T Kentucky.

[16] This is the net of the $24.96 dPi pays for the service and the $41.61 cashback benefit dPi would receive under AT&T Kentucky's method.

[17] **Attachment C** to this Reply Brief demonstrates that this is mathematically identical to dPi's paying the standard wholesale price for the service and then receiving a credit in the full retail amount of the cashback benefit.

calculate the avoided cost estimate. As explained below, this improperly overstates the avoided cost estimate, which improperly understates the price dPi should pay, which yields a resale discount that impermissibly exceeds the 16.79% discount established by this Commission.[18]

b. dPi's Method 2

Implicitly recognizing the obvious flaws in its Method 1, dPi offers an alternative second method ("dPi's Method 2"): "make[] the wholesale price a fixed percentage less than the net retail price." *See* dPi Brief at 24. As demonstrated by **Attachment D** to this Reply Brief, dPi's Method 2 produces the same results as AT&T Kentucky's method when the cashback benefit is less than the monthly price of the service. This is not surprising, because in this scenario, dPi's Method 2 is exactly the same as AT&T Kentucky's method:

Wholesale = Promotional Price – [(Promotional Price) x (Resale Discount Percentage)]

The difference between AT&T Kentucky's method and dPi's Method 2 exists when the cashback benefit is greater than the monthly price of the service.

Consider again the $50 Cashback 2-Pack Bundle Plan promotion for a service priced at $30 per month. AT&T Kentucky would apply the formula above exactly as it is written (and exactly as it has been applied in Kentucky for more than a decade):

Wholesale = Promotional Price – [(Promotional Price) x (Resale Discount Percentage)]

-20[19] – [-20 x .1679]
-20 – [-3.36]
-16.64

[18] In the example set forth in Attachment C, for instance, dPi's Method 1 yields a 44.77% resale discount instead of the appropriate 16.79% resale discount established by this Commission.

[19] In this scenario, the retail customer would net a $20 bill credit (*i.e.* -$20) for the first month of service by paying $30 and receiving a $50 cashback benefit.

In other words, under AT&T Kentucky's method, dPi would receive a net bill ***credit*** of $16.64 for the first month of service.

In sharp contrast, dPi would abandon this longstanding formula and create an entirely different one in order to force a result that is "a fixed percentage less than the net retail price." Instead of appropriately subtracting the avoided cost estimate from the promotional price, dPi would ***add*** the avoided cost estimate to the promotional price:

Wholesale = Promotional Price + [(Promotional Price) x (Resale Discount Percentage)]

-20 + [-20 x .1679]
-20 + [-3.36]
-23.36

Not surprisingly, dPi's proposal pads its own pockets by providing dPi a greater net bill credit for the first month of service than it is entitled to receive.

2. dPi's Methods Are Solutions in Search of a Problem that Does Not Exist – When Appropriately Viewed Over Any Reasonable Period of Time, AT&T Kentucky's Method Does not Result in Wholesale Prices that Are Higher than Retail Prices.

As the discussion of Attachment B above demonstrates, dPi's "wholesale is higher than retail" argument is the result of myopically focusing on a single month or two in isolation and ignoring the reality of what happens thereafter. It is hardly surprising that such an inappropriately narrow focus on a single month or two presents a distorted view of reality – one that dPi uses to erroneously suggest an anomaly in the application of the wholesale discount to a cashback promotion where none exists. Indeed, no aspect of a cashback promotion makes economic sense in such a short term. It would be irrational for AT&T Kentucky to offer $50 cashback to woo customers who will stay with the company for only one month. Likewise, the resale provisions in the 1996 Act are not intended to enable new entrants to win customers for a single month; that is not competition – it is churn. A proper understanding of the economics of a cashback promotion necessarily looks at a longer term.

As noted at page 28 of AT&T Kentucky's Brief, prices are never evaluated by isolating a single month or two and ignoring what happens beyond that. If they were, the Department of Justice and other federal agencies concerned with pricing activities would attack these cashback offerings on the basis that the net price paid for the first month of service is below the cost of the service in the first month. Similarly, rather than facilitating affordable pricing by allowing "up-front" costs to be recovered over a reasonable amount of time, the "first month in isolation" approach dPi espouses would require all companies to recover their "up front" costs in the very first month of service. That, of course, has never been required because prices appropriately are evaluated over a reasonable period of time. Moreover, the pro-competitive policy of the 1996 Act is to encourage competition in the local exchange service market and to grant resellers the opportunity to compete to obtain and keep customers. Looking at one month in isolation for the on-going service charges ignores the economic realities of the tenure of the end user customer and does nothing more than encourage dPi and other resellers to churn those end users off after one month of service. This tortures the 1996 Act into an arbitrage opportunity for resellers vis-à-vis the ILECs without providing any positive effect for the resellers' end user customers.

Moreover, as shown in the $50 Cashback 2-Pack Bundle Plan promotion example depicted in Attachment B to this Reply Brief, the situation that dPi erroneously characterizes as "wholesale is higher than resale" is forever reversed when the service is kept for more than a single month. As Attachment B shows, a retail customer who keeps the service two months pays AT&T Kentucky a net of $10, and when dPi keeps the service for two months, it pays AT&T Kentucky a net of $8.32 – a net amount that is not only *less* than what the retail customer pays, but that is less by the 16.79% resale discount rate established by the Commission. dPi likewise pays less than the retail customer when the service is kept for three, four, and any greater number of months,[20] and in such cases dPi always pays 16.79% less than the retail customer. Accordingly, dPi's proposed methods are nothing more than solutions in search of a problem that does not exist.

And if dPi's business plan really is to win and keep customers for only a single month, there is no reason for the Commission to give dPi any special help. If that is the case, dPi clearly is attempting to game the system by collecting a cashback credit from AT&T Kentucky, collecting higher-than-normal advanced payment from its credit-challenged end user, and then abandoning the end user. That sort of behavior merely pads dPi's pockets while providing no benefit whatsoever to Kentucky consumers, and it should not be rewarded or encouraged by giving dPi an even larger cashback credit than it is entitled to receive.

3. The Situation that dPi Erroneously Characterizes as "Wholesale is Higher than Retail" Does not Impede dPi's Ability to Compete.

Even if dPi was correct in arguing that AT&T Kentucky's method results in wholesale prices that are higher than retail prices for a month or two (and it is not), dPi is simply wrong when it suggests that the federal Act flatly prohibits wholesale prices that are higher than resale prices. *See, e.g.,* dPi Brief at 25 ("wholesale price should

[20] The evidence shows that dPi's end user customers, on average, keep service with dPi much longer than a month or two. *See* AT&T Kentucky Brief at 28.

always be less than retail price") (emphasis in original). In its *Local Competition Order,* the FCC excluded short-term promotions from the federal Act's resale obligations and thus sanctioned retail prices that temporarily are higher than wholesale prices,[21] recognizing that

> promotions that are limited in length may serve procompetitive ends through enhancing marketing and sales-based competition and ***we do not wish to unnecessarily restrict such offerings***. We believe that, ***if promotions are of limited duration, their procompetitive effects will outweigh any potential anticompetitive effects***. We therefore conclude that short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation.

Local Competition Order, ¶ 949 (emphasis added). Contrary to dPi's mantra, therefore, the FCC clearly contemplates – and even encourages – short-term "wholesale is greater than retail" situations.

The same policy considerations that led the FCC to exclude short-term promotions from the Federal Act's resale obligations[22] apply with equal force to (and demand a rejection of) the "wholesale is higher than resale" argument dPi presents in its Brief. The cashback offerings at issue in this proceeding are the type of pro-competitive "enhance[ed] marketing and sales-based competition" the FCC envisioned, and they clearly benefit Kentucky consumers. By making it more expensive for AT&T Kentucky to offer these promotions (by causing AT&T Kentucky to pay higher credits than is appropriate), dPi's proposed methods would discourage these pro-competitive

[21] Assume, for example, a promotion that provides that for 90 days, retail customers pay $50 a month for a service with a standard retail price of $100 a month, after which they pay the standard monthly price of $100. For 90 days, retail customers would pay $50 each month for this service, while Resellers would pay the higher price of $80 each month ($100 less the 16.79% discount) for the same service. Far from being prohibited, this short-term "wholesale is greater that retail" situation is expressly permitted – and even encouraged – by the FCC's rules.

[22] AT&T Kentucky is not arguing that this "short term promotion exception" relieves it of its resale obligations with regard to the cashback promotions at issue in this proceeding.

promotions that are beneficial to consumers in Kentucky. And nothing in the record suggests that dPi's proposed methods would in any way benefit consumers who purchase services from dPi.

The appropriate question, therefore, is not (as dPi suggests) whether a mathematically correct application of the discount yields a wholesale price lower than the retail price in each and every month. Rather, as the FCC made clear, the appropriate question is whether a mathematically correct application of the resale discount impedes dPi from competing. **Attachment E** to this Reply Brief clearly shows that the answer to that question is no, it does not. Attachment E is based on the following assumptions, which are consistent with the $50 Cashback 2-Pack Bundle Plan promotion described above:

(a) an AT&T Kentucky service has a retail price of $30 per month;

(b) the resale discount percentage is 16.79%;

(c) when no cashback promotion is in effect, dPi purchases this service from AT&T Kentucky at a wholesale price of $24.96 per month ($30 discounted by 16.79%) and resells it at a price of $28 per month (undercutting AT&T Kentucky's monthly retail price by $2);[23]

(d) an AT&T Kentucky promotion offers a one-time $50 cashback benefit with the purchase of this service;

(e) AT&T Kentucky gives dPi a $16.64 credit in the first month (the amount due under AT&T's Kentucky's position and, as demonstrated above, the amount due under a correct application of a 16.79% wholesale discount)[24]; and

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[23] This assumption is unduly generous to dPi, because the record shows that dPi actually prices its services well above AT&T Kentucky's retail prices for the same services. AT&T Kentucky's price for basic service in Frankfort, for example, is $16.65. *See* Ferguson Direct at 23. dPi's price for basic service is nearly three times more -- $39.99. *Id.*, Exhibit PLF-10. As demonstrated below, replacing this $28 assumption with a higher (and thus more realistic) price makes AT&T Kentucky's point even more emphatically.

[24] This is the net of the $24.96 ($30 discounted by 16.79%) dPi pays AT&T Kentucky for the service and the $41.61 ($50 discounted by 16.79%) cashback credit it receives from AT&T Kentucky.

(f) dPi actually passes the full $50 cashback benefit along to its qualifying end users.[25]

In this scenario, how does AT&T Kentucky's position affect dPi's ability to compete?

As shown in Attachment E, AT&T Kentucky is out-of-pocket $20 in the first month of service (it paid a $50 cashback to its end user and received a $30 payment). By comparison, dPi is out-of-pocket $5.36 in the first month of service (it paid a $50 cashback to its end user,[26] received a $28.00 payment from its end user, and received an $16.64 bill credit from AT&T Kentucky). The upshot is that while AT&T Kentucky is out-of-pocket $10 in a single month in order to win a customer with its cashback promotion, dPi is out-of-pocket only $5.36 to achieve the same result. Far from putting dPi at a competitive disadvantage, AT&T Kentucky's position allows dPi to use the same cashback offering AT&T Kentucky uses to attract customers for a fraction of the out-of-pocket amount AT&T Kentucky incurs.

Applying more realistic assumptions to this scenario shows that dPi fares much better in the real world. **Attachment F** shows that if dPi's price is twice AT&T Kentucky's retail price – a more realistic assumption given the evidence of record – and if dPi passes the full $50 cashback benefit through to its end users, dPi actually nets a *positive* $26.64 in the first month (compared to AT&T Kentucky's being out-of-pocket $10 in that month). **Attachment G** shows the most realistic example – dPi's price is twice AT&T Kentucky's retail price, and dPi does not pass any of the cashback to its

[25] This is another assumption that is generous to dPi, as nothing in the record suggests that dPi actually would have passed along to its end users any of the cashback credits it seeks in this proceeding.

[26] dPi does not need to provide *more* cashback than AT&T Kentucky in order to compete; it just needs to keep pace, counting on its lower monthly price for its competitive clout.

end users. In that example, dPi nets a *positive* $76.64 in the first month (compared to AT&T Kentucky's being out-of-pocket $10 in that month).[27]

Clearly, there is no problem that needs solving. AT&T Kentucky's method allows dPi not only to compete (if it truly was interested in competing with AT&T Kentucky), but to thrive (especially given that it charges its customer much more than AT&T Kentucky charges for similar services). Accordingly, there is no need to alter the long-standing application of the resale discount percentage in response to dPi's "wholesale is greater than retail" argument. Indeed, it would be ironic for the cries of wolf by a reseller that does not even pretend to compete with AT&T Kentucky to lead to a Commission ruling that could discourage AT&T Kentucky and other ILECs from providing these pro-competitive benefits to their end users.

4. Both of dPi's Proposals Distort the Commission's Avoided Cost Discount.

As explained above, dPi's Method 1 obviously overstates avoided costs by improperly applying the Commission-approved 16.79% discount to the standard price of the service instead of to the promotional price as instructed by the FCC and the Fourth Circuit. dPi's Method 2 also overstates avoided costs, although a bit more subtly. To see how, it is helpful to briefly review how the Commission established the 16.79% resale discount.

In 1997, the Commission used cost studies to determine the aggregate amount of "avoided costs" associated with AT&T Kentucky's retail services.[28] It then divided that aggregate "avoided cost" figure by the aggregate revenue generated by those

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[27] Indeed, this most realistic example explains why some resellers want to churn off customers after one month, sometimes to affiliate companies. Such a highly profitable first month creates strong incentives to game the system.

[28] *See* fn. 2 *supra*.

services, and the result is the 16.79% resale discount percentage. Because the resale discount percentage was developed on the basis of aggregate revenue, it produces an appropriate estimate of avoided costs only if it is applied consistently to the aggregate revenue AT&T Kentucky receives from all of its retail services. dPi's Method 2 does not do this. Instead, as shown earlier, dPi indisputably proposes to apply the resale discount percentage one way to what it perceives as "positive revenue" generated by "positive prices"[29] and a different way to what it perceives as "negative revenue" generated by "negative prices."[30] In doing so, dPi's Method 2 improperly overstates the aggregate avoided cost estimate and impermissibly changes the Commission's wholesale discount.[31]

Attachment H to this Reply Brief demonstrates this concept in basic terms. Attachment H assumes AT&T Kentucky sells exactly two services: Service A to Customer 1 at a retail price of $110 a month, and Service B to Customer 2 at a retail price of -$10 a month.[32] In this scenario, the aggregate revenue received by AT&T Kentucky is $100 a month, which means the estimate of total avoided costs should be $16.79 (16.79% of $100). As Attachment H shows, that is exactly the aggregate avoided cost estimate that AT&T Kentucky's proposal produces. dPi's Method 2, however, improperly produces an aggregate avoided cost estimate of $20.15 -- $3.36

[29] dPi appropriately would subtract the avoided cost estimate from the promotional price in these circumstances.

[30] dPi inappropriately would add the avoided cost estimate to the promotional price in these circumstances.

[31] dPi's Method 2 would remove the amount of estimated avoidable costs required by the federal Act and the Commission's avoided cost orders, but it would not stop there. Instead, dPi's Method 2 would also (and improperly) reward dPi by removing an *additional* amount of costs based on the difference between the cashback amount and the monthly price of the service. This approach, which produces results that have no relationship to the 16.79% resale discount percentage established by this Commission, is not permitted by the federal Act or the Commission's avoided cost orders.

[32] Because the point is mathematical, it makes no difference that it would not be rational for AT&T Kentucky to sell a product at a negative price over the long term or that the Commission's rules would prevent such pricing.

higher than the estimate should be under the methodology adopted by this Commission. Because of this fundamental flaw, dPi's Method 2 (like dPi's Method 1) yields a higher avoided cost discount between retail prices and wholesale prices than that established by the Commission.

This, in turn, yields wildly varying discounts on a month-to-month basis instead of the consistent 16.79% discount required by the Commission's orders. When appropriately applied, the avoided cost discount produces a constant 16.79% difference between retail prices and wholesale prices, not only in any given month, but also in the aggregate over time. **Attachment I** to this Reply Brief, for example, shows the total amounts a retail customer and dPi would pay, over the course of six months, for a service with a monthly retail price of $30. In any given month, there is a 16.79% difference between the $30 price the retail customer pays and the $24.96 price dPi pays. Likewise, there is a 16.79% difference between the aggregate amount a retail customer pays for the service over any given period of time and the aggregate amount dPi pays for the service over the same period of time.

Attachments J, K, and L to this Reply Brief show that when the one-time cashback amount is greater than the monthly price of the service, AT&T Kentucky's position appropriately maintains this same 16.79% difference over time, while dPi's two methods do not. These Attachments apply each of these three methods to the promotions at issue in this docket: $100 Cashback for 1FR + 2 Custom Calling or Touchstone Features (Att. J)[33], $100 Cashback for Complete Choice, Area Plus with

[33] Attachment J uses a monthly price of $35.39, comprised of the $18.40 price for a Group 5 1FR, the $8.99 price for Caller ID, and the $8.00 price for call return. *See* AT&T Kentucky General Exchange Guidebook §§A.3.2.1.A.1.(e); A.13.19.A.1.(I); and A.13.19.4.A.1.(a).

Complete Choice and Preferred Pack (Att. K) [34], and $50 Cashback 2-Pack Bundle Plan (Att. L).[35] AT&T Kentucky's position consistently produces not only a 16.79% difference between the retail price and the wholesale price in the first (and every other) month of service, but also a 16.79% difference between the aggregate amount a retail customer and dPi pay over the same period of time. In contrast, dPi's Method 1 never produces a 16.79% difference – and it sometimes produces differences as high as 100%, 120%, and even 288%. And while dPi's Method 2 forces a 16.79% difference (in the wrong direction) in the first month, the error of dPi's Method 2 is evident from the fact that when the service is kept for more than a single month, the aggregate amounts paid by the retail customer and dPi always improperly differ by more than 16.79% -- sometimes by as much as 100%, 117%, and even 368%. The graphs included in Attachments J, K, and L display the erratic, drastic, and improper departure from the appropriate 16.79% difference that is generated by the two methods dPi proposes.

5. Adopting Either of dPi's Methods Would Violate the FCC's *Local Competition Order.*

The foregoing discussion makes clear that dPi is proposing non-uniform wholesale discount rates. The *Local Competition Order,* however, expressly states that "we allow a state to approve nonuniform wholesale discount rates, as long as those rates are set on the basis of an avoided cost study that includes a demonstration of the percentage of avoided costs that is attributable to each service or group of services." *Local Competition Order,* ¶916. dPi presented no cost study in this proceeding. The Commission, therefore, cannot lawfully adopt either of dPi's positions.

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[34] Attachment K uses a monthly price of $40 for Complete Choice. *See* AT&T Kentucky General Exchange Guidebook § A.103.2.9.B.1.(a).

[35] Attachment L uses a monthly price of $30 for the 2-Pack Bundle Plan. *See* AT&T Kentucky General Exchange Guidebook § A.103.2.13.C.1.(a).

Additionally, dPi supports its unprecedented methods by claiming that they address its concerns that AT&T Kentucky's method, in limited circumstances, results in a greater credit for retail customers than for dPi. As explained above, these concerns are unfounded and dPi's methods are solutions in search of a problem that does not exist. Even if that were not the case, however, the *Local Competition Order* clearly states that "[a]n avoided cost study may not calculate avoided costs based on non-cost factors *or policy arguments . . . .*" *Local Competition Order,* ¶ 914 (emphasis added). Clearly, changing the Commission's longstanding method of calculating avoided costs in order to address dPi's "wholesale is higher than resale" policy arguments is not permissible.

B. Adopting Either of dPi's Proposed Methods Would Have a Chilling Effect on Promotional Offerings, to the Detriment of Kentucky Consumers.

Most of this Section II of AT&T Kentucky's Reply Brief shows that AT&T Kentucky's method of discounting the cashback amount complies with controlling law, and the two methods dPi proposes do not. In considering that discussion, it is important to remain mindful of the real-word context and impact of dPi's proposed methods. Consumers in Kentucky can choose from a wide array of communications services offered not only by ILECs like AT&T Kentucky, but also by cable companies, VoIP providers, wireless companies, and others. Like these other providers, AT&T Kentucky uses cashback and other promotional offerings to make its services attractive and competitive, and consumers in Kentucky clearly benefit from these competitive promotional offerings. Like other providers, AT&T Kentucky must carefully evaluate these promotional offerings to ensure that they remain profitable. It is axiomatic that the more expensive it becomes to offer these promotions, the less likely they are to remain available to Kentucky consumers.

AT&T Kentucky's method would give dPi a bill credit in the appropriate amount when the cashback benefit is greater than the monthly price of a service. Under either of dPi's two methods, however, AT&T Kentucky would be required to give dPi an additional amount of credit in these situations, above and beyond any amount dPi would be entitled to receive under the decisions of this Commission and the FCC. This clearly would have a chilling effect on promotional offerings, because it would be irrational for AT&T Kentucky to offer cashback promotions whose costs – including inflated payouts to resellers like dPi – exceed their benefits.

Nothing in the record suggests that either of dPi's proposed methods would benefit Kentucky consumers who purchase services from dPi. dPi did not rebut AT&T Kentucky's evidence that dPi charges its end user customers far more than AT&T Kentucky charges dPi (and far more than the retail prices AT&T Kentucky charges its retail customers for the same services). And if AT&T Kentucky were required to provide dPi additional credits beyond the amount dPi is entitled to receive, nothing requires dPi to pass one penny of those additional credits along to its end users (and nothing suggests it would), and nothing prohibits dPi from continuing to charge its end users much higher prices than AT&T Kentucky charges for similar services (and nothing suggests it would not).

III. AT&T KENTUCKY IS NOT REQUIRED TO OBTAIN COMMISSION APPROVAL PRIOR TO IMPLEMENTING ITS METHOD.

dPi suggests that even if the Commission determines that is is appropriate for AT&T Kentucky to apply the Commission-approved resale discount rate to the cashback credits dPi seeks (and it clearly is), the Commission can allow AT&T Kentucky to do so only prospectively from the date of such determination.[36] The sole legal authority dPi cites in support of this erroneous position is 47 CFR § 51.613(b), which provides:

> An incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

AT&T Kentucky respectfully submits that discounting the cashback amount as the FCC's *Local Competition Order* so clearly envisions simply is not a "restriction" on resale. And even if it was, nothing in the plain language of the FCC's rules requires "prior" Commission approval of restrictions on resale.

dPi's brazen attempt to import a "prior approval" requirement where none exists is inconsistent with both the plain language of the governing rule and the treatment of presumptions under Kentucky law, and it would create an unreasonable administrative burden for the Commission. *See* AT&T Kentucky Brief at 11-12. dPi seeks to bolster its weak and erroneous arguments by invoking themes of monopoly, arguing a need to "dismantle the monopoly in local phone service enjoyed by BellSouth/AT&T." *See* dPi's Brief at 16. Clearly, no such need exists: both the Kentucky legislature and the Kentucky Commission have recognized that AT&T Kentucky has no monopoly over

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[36] *See* dPi's Brief at 15. ("Assuming, *arguendo*, that the restriction BellSouth/AT&T imposed was reasonable, it is still irrelevant in the current case because BellSouth/AT&T ***did not*** get approval ***before*** instituting the restriction.") (emphasis in original).

local exchange services and that consumers have many choices in telecommunications services.[37]

CONCLUSION

For the foregoing reasons, the Commission should deny all relief requested by dPi in this docket. In the alternative, any amounts sought by dPi that are not barred by the agreement should be reduced by both: (1) the 16.79% residential resale discount rate established by this Commission; and (2) the 27% error rate in the cashback credit requests dPi has submitted since AT&T Kentucky began making cashback promotions available for resale in July 2007.

Respectfully submitted,

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[37] Support for this conclusion is overwhelming. For example, under the statutory provisions that state broadband and wireless services are not regulated in Kentucky, the legislature recognizes that "consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace." *See,* KRS 278.546(3). *See also* Order at 3, *An Investigation into the Intrastate Switched Access Rates of All Kentucky Incumbent and Competitive Local Exchange Carriers*, Kentucky Public Service Commission, Case No. 2010-00398 (Nov. 5, 2010) ("The existing cost-recovery mechanism was developed for a communications world where single narrowband wireline connections were the dominant form of telecommunications and competition was very limited. That is no longer the case. The legacy narrowband world is quickly being superseded by a very intermodal, competitive, and increasingly Internet-oriented telecommunications environment."). Moreover, more and more Kentuckians no longer rely on traditional landline service, as found by the Centers for Disease Control and Prevention (CDC) Study, estimating on the basis of 2007 data, that nearly 21% of Kentucky households have a wireless phone and no longer have a traditional landline telephone. *See* http://www.cdc.gov/nchs/data/nhsr/nhsr014.htm

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ATTACHMENT A

$50 Retail Price Reduction

Resale Discount Percentage 16.79%

	Retail	**Wholesale**
Original Price	$ 80.00	$ 66.57
New Price	$ 30.00	$ 24.96
Difference	$ 50.00	$ 41.61

ATTACHMENT B

Illustration of dPi's Erroneous "Wholesale is Higher than Retail" Argument

Monthly Price	$ 30.00
Cashback Amount	$ 50.00
Resale Discount	16.79%

Months Service is Kept

	1	2	3	4	5	6
AT&T Retail Customer						
Total Amount Paid	$ 30.00	$ 60.00	$ 90.00	$ 120.00	$ 150.00	$ 180.00
Total Cashback	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)
Net Amount Paid	$ (20.00)	$ 10.00	$ 40.00	$ 70.00	$ 100.00	$ 130.00
Proposed Wholesale Price						
AT&T's Method						
Total Paid	$ 24.96	$ 49.93	$ 74.89	$ 99.85	$ 124.82	$ 149.78
Total Cashback	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)
Net Amount Paid	$ (16.64)	$ 8.32	$ 33.28	$ 58.25	$ 83.21	$ 108.17

ATTACHMENT C

dPi's Method 1 is Mathematically Identical to dPi's Paying the Standard Wholesale Price for the Service and then Receiving a Credit in the Full Retail Amount of the Cashback Beneft

Standard Retail Price	$ 80.00
Cashback Amount	$ 50.00
Resale Discount	16.79%

Promotional Price	$ 30.00	Standard Wholesale Price	$ 66.57
Less Standard Price x Discount	$ 13.43	Less Full Retail Cashback	$ 50.00
Wholesale Price	$ 16.57	Wholesale Price	$ 16.57

Price Retail Customer Pays	$ 30.00
Price dPi Pays	$ 16.57
% Discount	44.77%

ATTACHMENT D

dPi's Method 2 Produces the Same Results at AT&T Kentucky's Method When the Cashback Benefit is Less than the Monthly Price of the Service.

Standard Retail Price	$	80.00
Cashback Amount	$	50.00
Resale Discount		16.79%

AT&T's Method		dPi's Method 2	
Promotional Price	$ 30.00	Net Retail Price	$ 30.00
Less Discount	$ 5.04	Less 16.79% of Net Retail	$ 5.04
Wholesale Price	$ 24.96	Wholesale Price	$ 24.96

OR

Standard Wholesale Price	$ 66.57
Less Discounted Cashback	$ 41.61
Wholesale Price	$ 24.96

ATTACHMENT E

A Mathematically Correct Application of the Discount Does Not Impede dPi from Competing

Retail Price	$ 30.00
Price Reseller Charges	$ 28.00
Cashback	$ 50.00
Resale Disount	16.79%

Impact on AT&T First Month

Receives from Customer	$ 30.00
Pays to Customer	$ (50.00)
Impact	$ (20.00)

Impact on dPi First Month

Receives from Customer	$ 28.00
Pays to Customer	$ (50.00)
Receives from AT&T	$ 16.64
Impact	$ (5.36)

ATTACHMENT F

A Mathematically Correct Application of the Discount Does Not Impede dPi from Competing

Retail Price	$ 30.00
Price Reseller Charges	$ 60.00
Cashback	$ 50.00
Resale Disount	16.79%

Impact on AT&T First Month

Receives from Customer	$ 30.00
Pays to Customer	$ (50.00)
Impact	$ (20.00)

Impact on dPi First Month

Receives from Customer	$ 60.00
Pays to Customer	$ (50.00)
Receives from AT&T	$ 16.64
Impact	$ 26.64

ATTACHMENT G

A Mathematically Correct Application of the Discount Does Not Impede dPi from Competing

Retail Price	$ 30.00
Price Reseller Charges	$ 60.00
Cashback	$ 50.00
Resale Disount	16.79%

Impact on AT&T First Month

Receives from Customer	$ 30.00
Pays to Customer	$ (50.00)
Impact	$ (20.00)

Impact on dPi First Month

Receives from Customer	$ 60.00
Pays to Customer	$ -
Receives from AT&T	$ 16.64
Impact	$ 76.64

ATTACHMENT H
dPi's Second Method Improperly Overstates the Avoided Cost Estimate

Service	Standard Price
A	$ 110.00
B	$ (10.00)
Total Revenue	$ 100.00
Correct Avoided Cost Estimate	**$ 16.79**

AT&T's Estimate of Avoided Costs

Service A	$ 18.47
Service B	$ (1.68)
Total	$ 16.79

Estimate of Avoided Costs Using dPi's Method 2

Service A	$ 18.47	
Service B	$ 1.68	*
Total	$ 20.15	

* dPi's Method 2 changes the sign of the avoided cost estimate when the "standard price" is negative

ATTACHMENT I

Proper Application of the Discount Consistently Yields a 16.79% Difference in the Aggregate Over Time

Monthly Price	$ 30.00
Resale Discount	16.79%

	Months Service is Kept					
	1	2	3	4	5	6
AT&T Retail Customer						
Total Amount Paid	$ 30.00	$ 60.00	$ 90.00	$ 120.00	$ 150.00	$ 180.00
dPi						
Total Amount Paid	$ 24.96	$ 49.93	$ 74.89	$ 99.85	$ 124.82	$ 149.78
% Difference from Net Retail	16.79%	16.79%	16.79%	16.79%	16.79%	16.79%

ATTACHMENT J

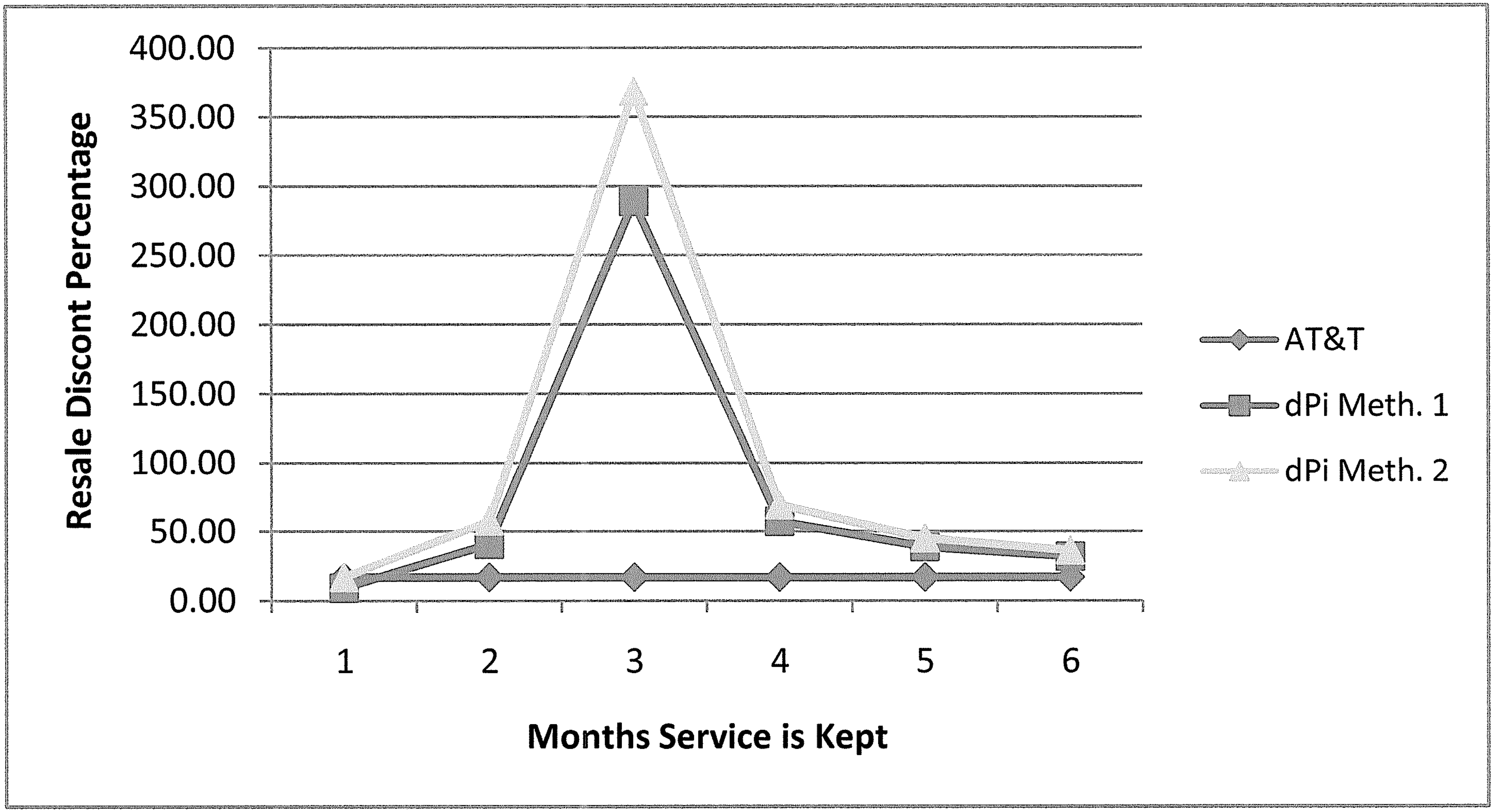
AT&T's Proposal Consistently Yields a 16.79% Difference in the Aggregate Over Time
dPi's Proposals Do Not -- They Yield Higher Differences

Monthly Price	$	35.39
Cashback Amount	$	100.00
Resale Discount		16.79%

Months Service is Kept

	1	2	3	4	5	6
AT&T Retail Customer						
Total Amount Paid	$ 35.39	$ 70.78	$ 106.17	$ 141.56	$ 176.95	$ 212.34
Total Cashback	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)
Net Amount Paid	$ (64.61)	$ (29.22)	$ 6.17	$ 41.56	$ 76.95	$ 112.34
Proposed Wholesale Price						
AT&T's Method						
Total Paid	$ 29.45	$ 58.90	$ 88.34	$ 117.79	$ 147.24	$ 176.69
Total Cashback	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)
Net Amount Paid	$ (53.76)	$ (24.31)	$ 5.13	$ 34.58	$ 64.03	$ 93.48
% Difference from Net Retail	16.79%	16.79%	16.79%	16.79%	16.79%	16.79%
dPi's Method 1						
Total Paid	$ 29.45	$ 58.90	$ 88.34	$ 117.79	$ 147.24	$ 176.69
Total Cashback	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)
Net Amount Paid	$ (70.55)	$ (41.10)	$ (11.66)	$ 17.79	$ 47.24	$ 76.69
% Difference from Net Retail	9.20%	40.67%	288.91%	57.19%	38.61%	31.74%
dPi's Method 2						
Net Amount Paid*	$ (75.46)	$ (46.01)	$ (16.56)	$ 12.89	$ 42.33	$ 71.78
% Difference from Net Retail	16.79%	57.46%	368.43%	68.99%	44.98%	36.10%

	First Month	Subsequent Months
Net Retail	$ (64.61) `	$ 35.39
20% Lower	$ (75.46)	$ 29.45



Resale Discont Percentage
400.00
350.00
300.00
250.00
200.00
150.00
100.00
50.00
0.00
1
2
3
4
5
6
Months Service is Kept
AT&T
dPi Meth. 1
dPi Meth. 2

ATTACHMENT K

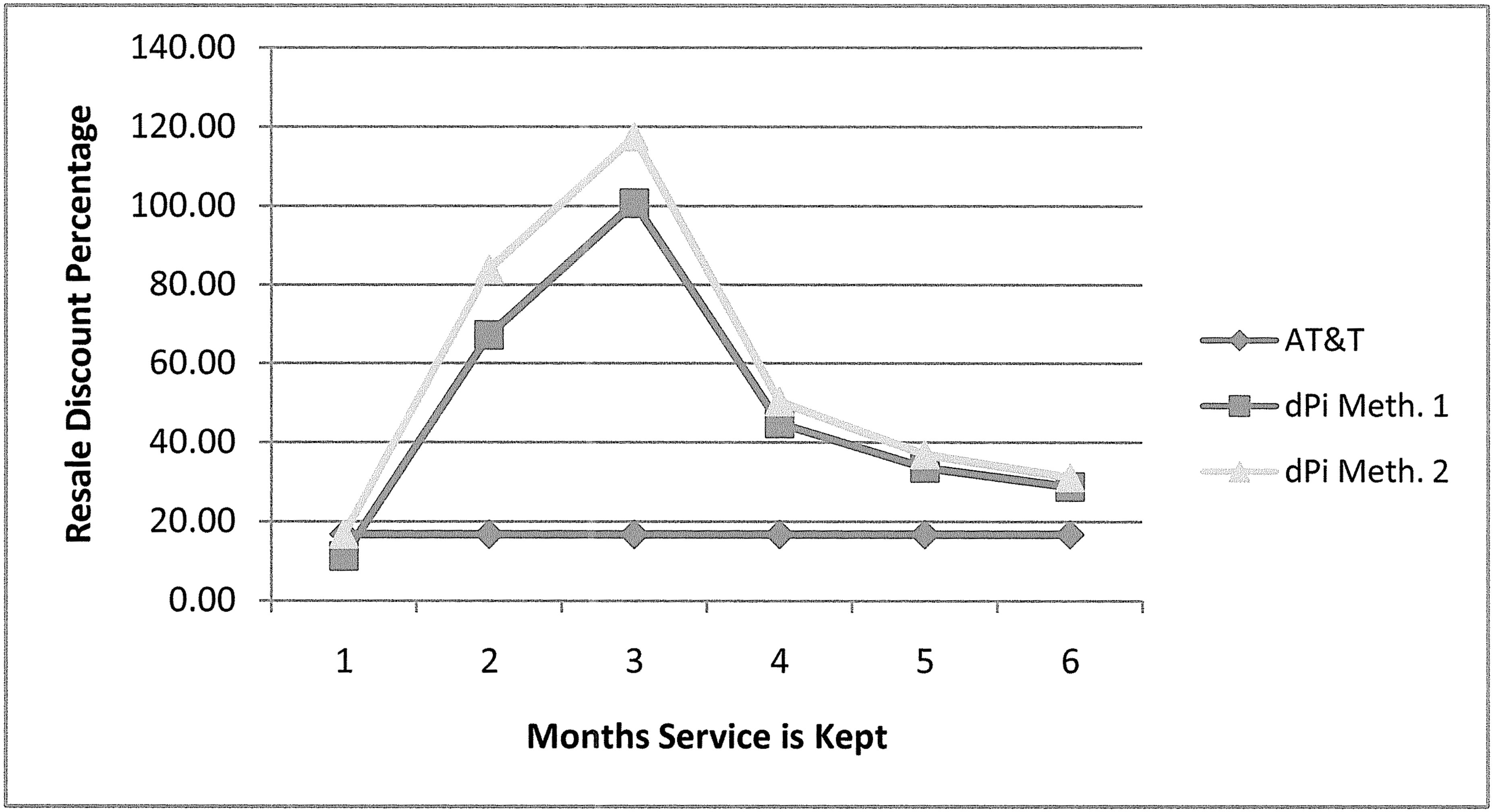
AT&T's Proposal Consistently Yields a 16.79% Difference in the Aggregate Over Time
dPi's Proposals Do Not -- They Yield Higher Differences

Monthly Price	$ 40.00
Cashback Amount	$ 100.00
Resale Discount	16.79%

Months Service is Kept

	1	2	3	4	5	6
AT&T Retail Customer						
Total Amount Paid	$ 40.00	$ 80.00	$ 120.00	$ 160.00	$ 200.00	$ 240.00
Total Cashback	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)
Net Amount Paid	$ (60.00)	$ (20.00)	$ 20.00	$ 60.00	$ 100.00	$ 140.00
Proposed Wholesale Price						
AT&T's Method						
Total Paid	$ 33.28	$ 66.57	$ 99.85	$ 133.14	$ 166.42	$ 199.70
Total Cashback	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)	$ (83.21)
Net Amount Paid	$ (49.93)	$ (16.64)	$ 16.64	$ 49.93	$ 83.21	$ 116.49
% Difference from Net Retail	16.79%	16.79%	16.79%	16.79%	16.79%	16.79%
dPi's Method 1						
Total Paid	$ 33.28	$ 66.57	$ 99.85	$ 133.14	$ 166.42	$ 199.70
Total Cashback	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)	$ (100.00)
Net Amount Paid	$ (66.72)	$ (33.43)	$ (0.15)	$ 33.14	$ 66.42	$ 99.70
% Difference from Net Retail	11.19%	67.16%	100.74%	44.77%	33.58%	28.78%
dPi's Method 2						
Net Amount Paid*	$ (70.07)	$ (36.79)	$ (3.51)	$ 29.78	$ 63.06	$ 96.35
% Difference from Net Retail	16.79%	83.95%	117.53%	50.37%	36.94%	31.18%

	First Month	Subsequent Months
Net Retail	$ (60.00) `	$ 40.00
20% Lower	$ (70.07)	$ 33.28



Resale Discount Percentage
140.00
120.00
100.00
80.00
60.00
40.00
20.00
0.00
1
2
3
4
5
6
Months Service is Kept
AT&T
dPi Meth. 1
dPi Meth. 2

ATTACHMENT L

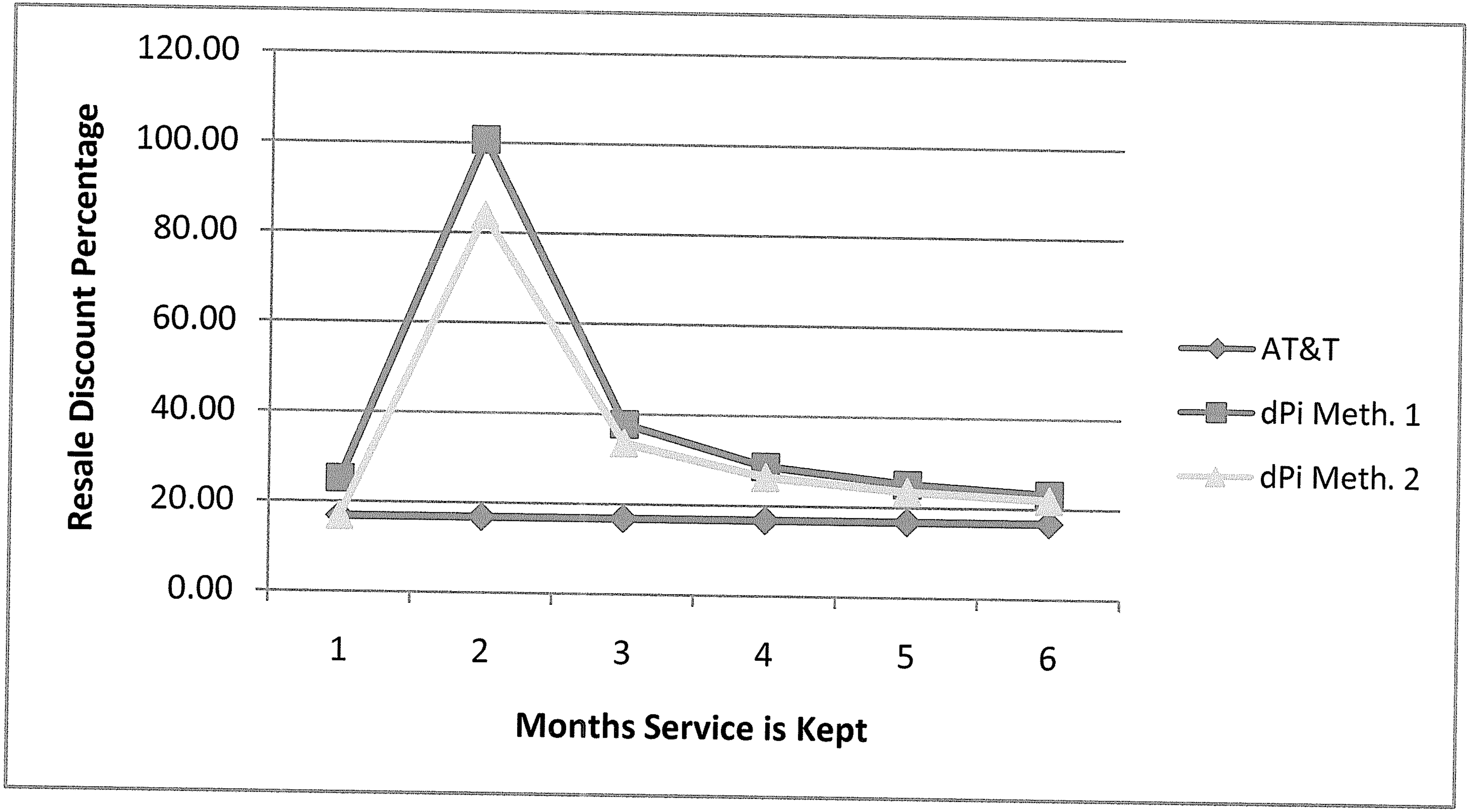
AT&T's Proposal Consistently Yields a 16.79% Difference in the Aggregate Over Time
dPi's Proposals Do Not -- They Yield Higher Differences

Monthly Price	$	30.00
Cashback Amount	$	50.00
Resale Discount		16.79%

Months Service is Kept

	1	2	3	4	5	6
AT&T Retail Customer						
Total Amount Paid	$ 30.00	$ 60.00	$ 90.00	$ 120.00	$ 150.00	$ 180.00
Total Cashback	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)
Net Amount Paid	$ (20.00)	$ 10.00	$ 40.00	$ 70.00	$ 100.00	$ 130.00
Proposed Wholesale Price						
AT&T's Method						
Total Paid	$ 24.96	$ 49.93	$ 74.89	$ 99.85	$ 124.82	$ 149.78
Total Cashback	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)	$ (41.61)
Net Amount Paid	$ (16.64)	$ 8.32	$ 33.28	$ 58.25	$ 83.21	$ 108.17
% Difference from Net Retail	16.79%	16.79%	16.79%	16.79%	16.79%	16.79%
dPi's Method 1						
Total Paid	$ 24.96	$ 49.93	$ 74.89	$ 99.85	$ 124.82	$ 149.78
Total Cashback	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)	$ (50.00)
Net Amount Paid	$ (25.04)	$ (0.07)	$ 24.89	$ 49.85	$ 74.82	$ 99.78
% Difference from Net Retail	25.19%	100.74%	37.78%	28.78%	25.19%	23.25%
dPi's Method 2						
Net Amount Paid*	$ (23.36)	$ 1.61	$ 26.57	$ 51.53	$ 76.49	$ 101.46
% Difference from Net Retail	16.79%	83.95%	33.58%	26.38%	23.51%	21.96%

	First Month	Subsequent Months
Net Retail	$ (20.00) `	$ 30.00
20% Lower	$ (23.36)	$ 24.96


Resale Discount Percentage
120.00
100.00
80.00
60.00
40.00
20.00
0.00
1
2
3
4
5
6
Months Service is Kept
AT&T
dPi Meth. 1
dPi Meth. 2

<u>CERTIFICATE OF SERVICE – PSC 2009-00127</u>

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 10th day of March 2011.

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