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August 13, 2010

RECEIVED

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PUBLIC SERVICE  
COMMISSION

**VIA COURIER**

Mr. Jeff Derouen  
Executive Director  
Kentucky 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 Direct Testimony of Nicole W. Bracy, P. L. (Scot) Ferguson, and Kristy A. Seagle on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky.

Should you have any questions, please let me know.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Parties of Record

839213

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 13th day of August 2010.

Honorable Douglas F. Brent  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202-2828

Christopher Malish  
Foster Malish Blair & Cowan, L.L.P.  
1403 W. 6th Street  
Austin, TX 78703

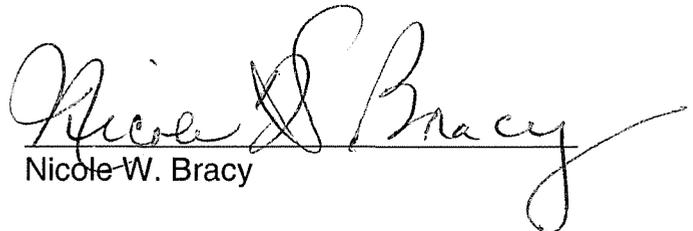
  
\_\_\_\_\_  
Mary K. Keyer



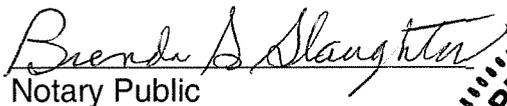
COMMONWEALTH OF KENTUCKY  
KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF FULTON  
STATE OF GEORGIA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Nicole W. Bracy, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00127, *In the Matter of: dPi Teleconnect, L.L.C., 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* and if present before the Commission and duly sworn, her statements would be set forth in the annexed direct testimony consisting of 10 pages and 1 exhibits.

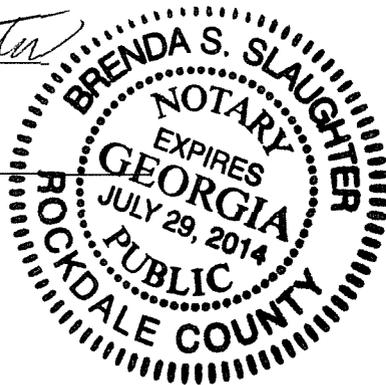
  
Nicole W. Bracy

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 3<sup>RD</sup> DAY OF AUGUST, 2010

  
Notary Public

My Commission Expires: \_\_\_\_\_

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AT&T KENTUCKY  
DIRECT TESTIMONY OF NICOLE W. BRACY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
DOCKET NO. 2007-00127  
AUGUST 13, 2010

**Q. PLEASE STATE YOUR NAME, YOUR POSITION, AND YOUR BUSINESS ADDRESS.**

A. My name is Nicole Bracy. I am employed by AT&T Operations, Inc. as a Senior Product Marketing Manager. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

**Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

A. I received a Bachelor of Science degree in Accounting from Auburn University in 1989, and I received a Masters in Business Administration from Nova Southeastern University in 1994. I joined BellSouth Telecommunications, Inc. (now doing business as AT&T Southeast and AT&T Kentucky) in 2000 as a Contract Negotiator in Interconnection Services. In 2005, I became a Subject Matter Expert for Contract Negotiations. In 2008, I joined the Business Marketing Organization as a Senior Product Marketing Manager.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2

3 A. My testimony presents facts that support AT&T Kentucky's policy positions  
4 that are set forth in the Direct Testimony of AT&T Kentucky witness Scot  
5 Ferguson. I present facts regarding: (1) the cashback promotional credits  
6 dPi has requested from AT&T Kentucky for billing periods prior to July 2007  
7 (when, as explained by Mr. Ferguson, AT&T Kentucky did not make the  
8 cashback component of promotional offerings available for resale); and (2)  
9 the percentage of dPi's cashback promotional credit requests for billing  
10 periods since July 2007 (when, as explained by Mr. Ferguson, AT&T  
11 Kentucky makes the cashback component of promotional offerings available  
12 for resale) that AT&T Kentucky has rejected because dPi's end users did not  
13 meet the qualifications of the promotion.<sup>1</sup>

14

15

16 **I. FACTS REGARDING CASHBACK PROMOTIONAL CREDITS DPI**  
17 **HAS REQUESTED FROM AT&T KENTUCKY FOR BILLING**  
18 **PERIODS PRIOR TO JULY 2007**

19

20

21 **Q. IN YOUR CURRENT POSITION, DO YOU HAVE ACCESS TO AT&T**  
22 **BUSINESS RECORDS THAT REFLECT THE AMOUNT OF CASHBACK**  
23 **PROMOTIONAL CREDITS DPI HAS REQUESTED FROM AT&T**  
24 **KENTUCKY FOR BILLING PERIODS PRIOR TO JULY 2007?**

25

26 A. Yes, I do.

27

28

---

<sup>1</sup> As noted below, these facts support AT&T Kentucky's position, set forth in Mr. Ferguson's Direct Testimony, that any amount of cashback promotional credits the Commission may determine is owed to dPi must be reduced by 27%.

1 Q. HAVE YOU REVIEWED THOSE RECORDS TO DETERMINE IF THEY ARE  
2 CONSISTENT WITH DPI's CONTENTION THAT DPI HAS SOUGHT  
3 \$37,050 IN CASHBACK PROMOTIONAL CREDITS FROM AT&T  
4 KENTUCKY FOR BILLING PERIODS PRIOR TO JULY 2007?

5

6 A. Yes, I have.

7

8 Q. WHAT AMOUNT OF PROMOTIONAL CREDITS DO AT&T'S RECORDS  
9 SHOW DPI HAS REQUESTED FOR BILL PERIODS PRIOR TO JULY  
10 2007?

11

12 A. As summarized in **Exhibit NWB-1** to my testimony, AT&T's records indicate  
13 that for billing periods prior to July 2007, dPi submitted \$37,000 in cashback  
14 promotions in Kentucky (which is only \$50 less than the amount dPi seeks in  
15 its Complaint).

16

17 Q. DOES THAT \$37,000 AMOUNT REFLECT THE RESALE DISCOUNT  
18 PERCENTAGE ADOPTED BY THIS COMMISSION?

19

20 A. No, it does not. dPi has requested credits for the full retail amount of the  
21 cashback component of the relevant promotional offerings. As addressed in  
22 the Direct Testimony of AT&T Kentucky witness Scot Ferguson, AT&T  
23 Kentucky's position is that the most dPi would be entitled to receive is  
24 \$31,242.80 (the \$37,000 retail amount of the credit requests AT&T has  
25 received from dPi reduced by the 15.56% resale discount rate established by  
26 this Commission).

27

28

1 Q. DID YOU HELP PREPARE EXHIBIT NWB-1?

2

3 A. Yes, I did.

4

5 Q. WHAT IS THE PURPOSE OF NWB-1?

6

7 A. In addition to supporting the \$37,000 figure addressed above, Exhibit NWB-1  
8 provides information that supports AT&T Kentucky's position, addressed in  
9 the Direct Testimony of AT&T Kentucky witness Scot Ferguson, that dPi did  
10 not submit, dispute, and/or escalate many of the credit requests at issue in a  
11 timely manner.

12

13 Q. PLEASE DESCRIBE THE INFORMATION PROVIDED IN EACH COLUMN  
14 OF EXHIBIT NWB-1.

15

16 A. In its discovery responses, dPi identified the cashback promotional credit  
17 amounts it is seeking in this case. See Exhibit A to dPi's Responses to AT&T  
18 Kentucky's First Set of Interrogatories and Request for Production of  
19 Documents ("dPi Discovery Exhibit A"). The first column of Exhibit NWB-1 is  
20 the "Invoice#" information (or promotional credit request description) for the  
21 Kentucky accounts identified in dPi Discovery Exhibit A.

22

23 The second column of Exhibit NWB-1 is the billing period for which the credit  
24 was requested. This information is taken directly from dPi Discovery Exhibit  
25 A.

1 The third column of Exhibit NWB-1 is the date, according to dPi, that it  
2 submitted the promotional credit request identified in the first column of  
3 Exhibit NWB-1 to AT&T Kentucky. This information is taken directly from dPi  
4 Discovery Exhibit A.

5

6 The fourth column of Exhibit NWB-1 is based on my review of AT&T's records  
7 of cashback promotional credit requests submitted by competitive local  
8 exchange carriers ("CLECs") like dPi. A "no" in that column indicates that  
9 AT&T Kentucky has no records indicating that dPi submitted the promotional  
10 credit request identified in the first column of Exhibit NWB-1.

11

12 The fifth column of Exhibit NWB-1 is the time between the billing period  
13 during which dPi purchased the services to which the request for promotional  
14 credits relates and the time dPi initially requested the credits.

15

16 The sixth column in Exhibit NWB-1 is the time between the billing period  
17 during which dPi purchased the services to which the request for promotional  
18 credits relates and the time dPi first suggested that it disagreed with AT&T  
19 Kentucky's denial of the request.

20

21 The seventh column of Exhibit NWB-1 is the amount of cashback promotional  
22 credit dPi claims to have sought in the request identified in the first column of  
23 the Exhibit. That information is taken directly from dPi Exhibit Discovery  
24 Exhibit A.

25

1 The eighth column of Exhibit NWB-1 is the sum total, by promotion type, of  
2 the amounts set forth in the seventh column.

3

4 **Q. BY WAY OF EXAMPLE, WHAT DOES THE FIRST ROW OF EXHIBIT NWB-**  
5 **1 REFLECT?**

6

7 A. The first row of Exhibit NWB-1 reflects that the request dPi identifies as C2-  
8 KY-502-20031208 (Column 1) was for credits totaling \$300 (Column 7).

9

10 According to dPi, that \$300 amount was sought for services it purportedly  
11 purchased from AT&T Kentucky for resale in December of 2003 (Column 2),  
12 but it was not until January 2006 that it actually requested cashback  
13 promotional credits from AT&T Kentucky for that service purchased in  
14 December 2003 (Column 3). That is, dPi waited two years after purchasing  
15 the services it claims entitled it to the promotional credits to actually request  
16 the credits from AT&T Kentucky (Column 5), and it was not until  
17 approximately three years after dPi purchased those services that dPi did  
18 anything to suggest that it intended to seek payment for those \$300 of  
19 cashback promotional credit requests that it had submitted and that AT&T  
20 Kentucky had not paid (Column 6).

21

22 **Q. DID AT&T KENTUCKY PROVIDE DPI ANY OF THE \$37,000 (OR \$37,050**  
23 **AS CLAIMED BY DPI) CASHBACK PROMOTIONAL CREDITS IT**  
24 **REQUESTED FOR BILLING PERIODS PRIOR TO JULY 2007?**

25

26 A. No.

27

1 Q. WHEN DID YOU FIRST BECOME AWARE THAT DPI INTENDED TO SEEK  
2 PAYMENT FOR CASHBACK PROMOTIONAL CREDIT REQUESTS THAT  
3 IT HAD SUBMITTED FOR BILL PERIODS PRIOR TO JULY 2007 AND  
4 THAT AT&T KENTUCKY HAD NOT PAID?

5

6 A. I became aware of dPi's intention after I assumed my current position in early  
7 2008.

8

9 II. FACTS REGARDING THE AMOUNT OF CASHBACK  
10 PROMOTIONAL CREDITS DPI HAS REQUESTED FROM AT&T  
11 KENTUCKY FOR BILLING PERIODS FROM JULY 2007 TO DATE.

12

13 Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?

14

15 A. This section of my testimony provides information that supports AT&T  
16 Kentucky's position, addressed in the Direct Testimony of AT&T Kentucky  
17 witness Scot Ferguson, that any amounts the Commission may otherwise  
18 award dPi must be reduced by the 27% error rate in the cashback credit  
19 requests dPi has submitted for bill periods since July 2007 (when AT&T  
20 Kentucky began making the cashback component of promotional offerings  
21 available for resale).

22

23 Q. WHAT AMOUNT OF CASHBACK PROMOTIONAL CREDITS HAS DPI  
24 REQUESTED FROM AT&T KENTUCKY FOR BILLING PERIODS FROM  
25 JULY 2007 TO DATE?

26

27 A. For billing periods from July 2007 through July 2010, dPi has requested  
28 \$432,299.63 in cashback promotional credits from AT&T Kentucky.

29

1 Q. IS DPI ENTITLED TO ALL OF THE \$432,299.63 IN CASHBACK  
2 PROMOTIONAL CREDITS THAT IT HAS REQUESTED FROM AT&T  
3 KENTUCKY FOR BILLING PERIODS SINCE JULY 2007?

4

5 A. No. As addressed in the Direct Testimony of AT&T Kentucky witness Scot  
6 Ferguson, the 2007 interconnection agreement provides that “[w]here  
7 available for resale, promotions will be made available only to customers who  
8 would have qualified for the promotion had it been provided by BellSouth  
9 directly.” Accordingly, even after it began making the cashback component of  
10 promotional offerings available for resale in July 2007, AT&T Kentucky has  
11 not provided cashback credits when dPi’s end user (or any other resellers’  
12 end user) did not meet the qualifications of the promotion.

13

14 Q. HOW MANY OF DPI’S CASHBACK CREDIT REQUESTS FOR BILLING  
15 PERIODS SINCE JULY 2007 HAS AT&T KENTUCKY DENIED BECAUSE  
16 DPI’S END USER DID NOT MEET THE QUALIFICATIONS OF THE  
17 PROMOTION?

18

19 A. AT&T Kentucky has denied approximately 27% (or \$116,907.24) of the  
20 \$432,299.63 of post-July-2007 cashback promotional credit requests dPi has  
21 submitted because dPi’s end users did not meet the qualifications of the  
22 underlying promotion.

23

24 Q. PLEASE EXPLAIN HOW AT&T KENTUCKY REVIEWS THE CASHBACK  
25 PROMOTIONAL REQUESTS SUBMITTED BY RESELLERS LIKE DPI FOR  
26 BILLING PERIODS AFTER JULY 2007.

27

28 A. For most of these requests, AT&T Kentucky’s mechanized systems extract  
29 information (including service order number) from the cashback promotional  
30 credit request submitted by the reseller (or the reseller’s billing agent). The

1 systems then compare the contents of the service order submitted by the  
2 reseller to requirements of the promotion to determine if the service order  
3 meets all of the promotional requirements.

4

5 In the past, for some cashback promotions, an end user could request the  
6 cashback offer only once in a given period of time. When a CLEC like dPi  
7 resold these types of promotions, a manual (as opposed to mechanized)  
8 review was conducted to determine if the end user satisfied the same criteria  
9 an AT&T Kentucky end user was required to satisfy.

10

11 **Q. WHY WERE 27% OF THE REQUESTS THAT HAVE BEEN REVIEWED TO**  
12 **DATE DENIED?**

13

14 A. These cashback promotional credit requests were denied because dPi's end  
15 users did not meet at least one of the requirements that an AT&T Kentucky  
16 end user would have to meet to qualify for the promotion.

17

18 **Q. HOW HAS DPI RESPONDED TO AT&T KENTUCKY'S DENIAL OF THESE**  
19 **\$116,907.24 IN REQUESTS?**

20

21 A. dPi has informed AT&T Kentucky that it disagrees with approximately  
22 \$53,637.85 of those denials. While dPi also has informed AT&T Kentucky  
23 that it disagrees with an additional \$42,373.84 in denied credit requests, dPi  
24 has not provided sufficient information for AT&T Kentucky to know whether  
25 those disagreements relate to any cashback promotional credits dPi has  
26 requested for billing periods since July 2007.

27

28

1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2

3 A. Yes.

4

5 838953



TIMING OF CASHBACK PROMOTIONAL CREDITS - JUGHT BY DPI

Exhibit NWB-1

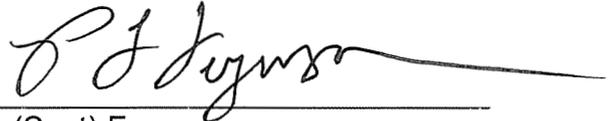
1	2	3	4	5	6	7	8
Description (from dPi Discovery Exhibit A)	Billing Period For Which the Credit was Requested (from dPi Discovery Exhibit A)	Date, According to dPi, that it Submitted Credit Request to AT&T (from dPi Discovery Exhibit A)	Does AT&T have a record of having received the request? (From AT&T Kentucky Witness Nicole Bracy)	Time Between Billing Period and Request for Credit	Time Between Billing Period for Which Credit was Requested and dPi's First Suggestion that it Intended to Seek Denied Credits in January 2007	Amount Submitted	Total Amount Submitted Per Promotion
C2-KY-502-20031208	12/08/2003	01/02/2006	Yes	24 months	36 months	\$300.00	
C2-KY-502-20040108	01/08/2004	01/02/2006	Yes	23 months	35 months	\$200.00	
C2-KY-502-20050108	01/08/2005	01/03/2006	Yes	11 months	23 months	\$600.00	
C2-KY-502-20050208	02/08/2005	12/09/2005	Yes	10 months	22 months	\$200.00	
C2-KY-502-20050308	03/08/2005	12/09/2005	Yes	9 months	21 months	\$1,200.00	
C2-KY-502-20050408	04/08/2005	01/03/2006	Yes	9 months	20 months	\$100.00	Total C2 \$2,600.00
C3-KY-502-20050408	04/08/2005	04/20/2006	No	12 months	20 months	\$50.00	
C3-KY-502-20060208	02/08/2006	12/26/2006	Yes	10 months	11 months	\$250.00	
C3-KY-502-20060308	03/08/2006	12/26/2006	Yes	9 months	10 months	\$150.00	
C3-KY-502-20060408	04/08/2006	12/26/2006	Yes	8 months	9 months	\$150.00	
C3-KY-502-20060508	05/08/2006	12/26/2006	Yes	7 months	8 months	\$50.00	
C3-KY-502-20060608	06/08/2006	12/26/2006	Yes	6 months	7 months	\$100.00	
C3-KY-502-20060708	07/08/2006	08/09/2006	Yes	1 month	6 months	\$350.00	
C3-KY-502-20060808	08/08/2006	12/26/2006	Yes	4 months	5 months	\$1,150.00	
C3-KY-502-20060908	09/08/2006	12/26/2006	Yes	3 months	4 months	\$1,700.00	
C3-KY-502-20061008	10/08/2006	12/26/2006	Yes	2 months	3 months	\$1,650.00	
C3-KY-502-20061108	11/08/2006	12/26/2006	Yes	1 month	2 months	\$1,850.00	
C3-KY-502-20061208	12/08/2006	12/26/2006	Yes	0 months	1 month	\$1,750.00	Total C3 \$9,200.00
CB-KY-502-20040708	07/08/2004	12/30/2005	Yes	17 months	30 months	\$1,700.00	
CB-KY-502-20040808	08/08/2004	12/29/2005	Yes	16 months	29 months	\$2,200.00	
CB-KY-502-20040908	09/08/2004	12/29/2005	Yes	15 months	28 months	\$2,900.00	
CB-KY-502-20041008	10/08/2004	12/29/2005	Yes	14 months	27 months	\$1,400.00	
CB-KY-502-20041108	11/08/2004	12/29/2005	Yes	13 months	26 months	\$1,500.00	
CB-KY-502-20041208	12/08/2004	12/29/2005	Yes	12 months	25 months	\$1,500.00	
CB-KY-502-20050108	01/08/2005	12/28/2005	Yes	11 months	24 months	\$1,300.00	
CB-KY-502-20050208	02/08/2005	12/29/2005	Yes	10 months	23 months	\$1,600.00	
CB-KY-502-20050308	03/08/2005	12/28/2005	Yes	9 months	22 months	\$600.00	
CB-KY-502-20050408	04/08/2005	12/26/2005	Yes	8 months	21 months	\$400.00	
CB-KY-502-20050508	05/08/2005	12/26/2005	Yes	7 months	20 months	\$300.00	
CB-KY-502-20050608	06/08/2005	12/26/2005	Yes	6 months	19 months	\$400.00	
CB-KY-502-20050708	07/08/2005	12/26/2005	Yes	5 months	18 months	\$600.00	
CB-KY-502-20050808	08/08/2005	12/26/2005	Yes	4 months	17 months	\$800.00	
CB-KY-502-20050908	09/08/2005	12/26/2005	Yes	3 months	16 months	\$800.00	
CB-KY-502-20051008	10/08/2005	12/24/2005	Yes	2 months	15 months	\$500.00	
CB-KY-502-20051108	11/08/2005	12/23/2005	Yes	1 month	14 months	\$700.00	
CB-KY-502-20051208	12/08/2005	12/23/2005	Yes	1 month	13 months	\$400.00	
CB-KY-502-20070408	04/08/2007	04/30/2007	Yes	0 months	3 months	\$1,900.00	
CB-KY-502-20070508	05/08/2007	05/18/2007	Yes	0 months	4 months	\$1,550.00	
CB-KY-502-20070608	06/08/2007	07/11/2007	Yes	1 month	5 months	\$2,200.00	Total CB \$25,250.00



COMMONWEALTH OF KENTUCKY  
KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF FULTON  
STATE OF GEORGIA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared P. L. (Scot) Ferguson, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00127, *In the Matter of: dPi Teleconnect, L.L.C., 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* and if present before the Commission and duly sworn, his statements would be set forth in the annexed direct testimony consisting of 34 pages and 11 exhibits.



P. L. (Scot) Ferguson

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 3<sup>RD</sup> DAY OF AUGUST, 2010

  
Notary Public

My Commission Expires: \_\_\_\_\_



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AT&T KENTUCKY  
DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 2009-00127  
AUGUST 13, 2010

**Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T OPERATIONS, INC., AND YOUR BUSINESS ADDRESS.**

A. My name is Scot Ferguson. I am an Associate Director in the wholesale organization of AT&T Operations, Inc. As such, I am responsible for certain issues related to wholesale policy, primarily related to the general terms and conditions of interconnection agreements throughout AT&T's operating regions, including Kentucky. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

**Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

A. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My career spans more than 36 years with Southern Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T Operations, Inc. In addition to my current assignment, I have held positions in sales and marketing, customer system design, product

1 management, training, public relations, wholesale customer and regulatory  
2 support, and wholesale contract negotiations.

3

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5

6 A. My testimony presents AT&T Kentucky's policy positions on the issues  
7 raised by the Complaint filed by dPi Teleconnect, L.L.C. ("dPi") with the  
8 Kentucky Public Service Commission ("Commission") on March 25, 2009,  
9 and explains why, from a policy perspective, dPi is not entitled to the  
10 promotional credits it is seeking in this proceeding. The testimony of  
11 AT&T Kentucky witnesses Nicole Bracy and Kristy Seagle presents facts  
12 supporting these policy positions, and AT&T Kentucky's counsel will  
13 present legal arguments supporting these positions in post-hearing  
14 submissions.

15

16 **Q. BRIEFLY SUMMARIZE WHAT IS AT ISSUE IN THIS COMPLAINT**  
17 **PROCEEDING.**

18

19

20 A. The issue is whether dPi is entitled to retroactive credits for cashback  
21 promotional offerings for billing periods from November 2003 through July  
22 2007. AT&T Kentucky believes dPi is not entitled to the credits it seeks  
23 because: (1) the cashback component of promotional offerings is not  
24 subject to resale; (2) even if it were, AT&T Kentucky's decision not to offer

1 the cashback component of the promotions at issue for resale is  
2 reasonable and nondiscriminatory; and (3) even if dPi was otherwise  
3 entitled to any of the credits it seeks (which AT&T Kentucky denies), the  
4 amount due to dPi must be reduced by: (a) the amount of credits it did not  
5 request, dispute, or escalate in a timely manner; (b) the 15.56% residential  
6 resale discount rate established by this Commission; and (c) the 27%  
7 error rate in the cashback credit requests dPi has submitted since AT&T  
8 Kentucky began making cashback available for resale in July 2007.

9  
10 **Q. PLEASE EXPLAIN HOW YOUR TESTIMONY IS ORGANIZED.**

11  
12 **A.** My testimony: (1) provides a general overview of AT&T Kentucky's resale  
13 obligations pursuant to the federal Telecommunications Act of 1996 (the  
14 "Act"); (2) discusses how AT&T Kentucky and dPi's interconnection  
15 agreements ("Agreements" or "ICAs") address resale issues; (3) discusses  
16 the general terms and conditions of the promotions at issue in dPi's  
17 Complaint; (4) explains AT&T Kentucky's general position on the resale of  
18 the cashback component of its promotions prior to July 2007 and after July  
19 2007; (5) explains why AT&T Kentucky's decision not to resell the  
20 cashback promotions at issue in this docket is reasonable and  
21 nondiscriminatory; and (6) explains that dPi's complaint is untimely and  
22 does not comply with the terms of the parties' Agreement.

23

1 Q. AS AN INITIAL MATTER, WHY IS AT&T KENTUCKY INVOLVING THE  
2 COMMISSION IN A DISPUTE OVER APPROXIMATELY \$37,000?

3  
4

5 A. dPi has filed similar Complaints against AT&T with each of the other eight  
6 state commissions in the former BellSouth territory. While the amounts at  
7 issue in this docket are relatively small, the combined amount across all  
8 nine states is significant, and AT&T is unwilling to take any action in  
9 Kentucky that is contrary to its position in the other states.

10

11 I. AT&T KENTUCKY'S RESALE OBLIGATIONS

12

13 Q. COULD YOU BRIEFLY EXPLAIN THE SOURCE OF AT&T  
14 KENTUCKY'S RESALE OBLIGATIONS?

15  
16

17 A. Yes. I am not a lawyer, and our attorneys can address the specific details  
18 of AT&T Kentucky's resale obligations in post-hearing submissions. In  
19 order to put the remainder of my testimony in perspective, however, I will  
20 provide a high-level overview of AT&T Kentucky's resale obligations,  
21 subject to further explanation by our attorneys.

22

23 In general, the Act requires AT&T Kentucky, subject to certain conditions  
24 and limitations, to offer for resale at wholesale rates any  
25 telecommunications service it provides at retail to subscribers who are not

1 telecommunications carriers. See generally, 47 U.S.C. §§251(b)(1);  
2 251(c)(4).

3  
4 The FCC issued an order and adopted rules implementing these  
5 provisions,<sup>1</sup> and this Commission issued an order establishing the resale  
6 wholesale discount rate for residential services (which are the only  
7 services at issue in this docket) in Kentucky as 15.56%.<sup>2</sup> As discussed in  
8 more detail below, AT&T Kentucky and dPi agreed to and incorporated  
9 this rate into the two ICAs that were in effect from 2003 to date.

10

11 **Q. AS A PRACTICAL MATTER, WHAT DOES ALL OF THAT MEAN?**

12

13 A. That means that subject to any ICA provisions that provide otherwise,  
14 when dPi makes an appropriate request to resell telecommunications  
15 services that AT&T Kentucky sells to its own end users and that are  
16 available for resale, AT&T Kentucky must sell those telecommunications  
17 services to dPi at discounted wholesale prices so that dPi, in turn, can  
18 resell the services to dPi's customers.

19

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<sup>1</sup> *In the Matter of 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, ¶¶ 863-984 ("Local Competition Order"). See also, 47 C.F.R. §§ 51.601-51-617.

<sup>2</sup> *In the Matter of: Petition of MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Case No. 96-431, Order dated December 20, 1996, at 13.

1 For example, assume that AT&T Kentucky's retail installation charge for a  
2 particular telecommunications service that is available for resale is \$40  
3 and that AT&T Kentucky's retail monthly price for the service is \$20.  
4 Assume further that a hypothetical resale discount of 20% applies.<sup>3</sup> If dPi  
5 purchases the same service to resell to one of its own qualifying end  
6 users, AT&T Kentucky would bill dPi \$32 for the installation charge (the  
7 \$40 retail price less the 20% resale discount) and \$16 for the monthly  
8 price (the \$20 retail price less the 20% resale discount).

9

## 10 II. THE PARTIES' INTERCONNECTION AGREEMENTS

11

12 **Q. DO THE ICAS BETWEEN AT&T KENTUCKY AND DPI ADDRESS**  
13 **RESALE ISSUES?**

14

15

16 **A.** Yes. Resale issues are addressed in the ICAs the parties entered into  
17 pursuant to Section 252 of the Act. dPi is seeking credits for bill periods  
18 from 2003 through June 2007, and two different interconnection  
19 agreements were in effect during that time period. **Exhibit PLF-1** to my  
20 testimony is a CD that contains both of these agreements in full.

21

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<sup>3</sup> I am using these hypothetical rates in this instance to simplify the math for illustrative purposes.

1 The parties entered into the first agreement in 2003 (“the 2003  
2 Agreement”), and **Exhibit PLF-2** to my testimony is a copy of the relevant  
3 provisions of the 2003 Agreement.

4  
5 The parties entered into the second agreement in 2007 (“the 2007  
6 Agreement”), and **Exhibit PLF-3** to my testimony is a copy of the relevant  
7 provisions of the 2007 Agreement. The 2007 Agreement remains in effect  
8 today.

9  
10 Both the 2003 Agreement and the 2007 Agreement were the result of  
11 voluntary negotiation (as opposed to arbitration).

12

13 **III. THE PROMOTIONS AT ISSUE IN THIS PROCEEDING**

14

15 **Q. WHAT PROMOTIONS ARE THE SUBJECT OF THIS COMPLAINT**  
16 **PROCEEDING?**

17

18

19 **A.** This case involves the following three AT&T Kentucky cashback  
20 promotions:

21

22 \$100 Cashback for 1FR + 2 Custom Calling or TouchStar®  
23 Features<sup>4</sup>;

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<sup>4</sup> In Kentucky, the promotion was entitled “1FR + 2 Cash Back Promotion.”

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\$100 Cashback for Complete Choice®, Area Plus® with Complete Choice® and Preferred Pack<sup>(SM)</sup>; and  
  
\$50 Cashback 2-Pack Bundle Plan.

**Q. PLEASE DESCRIBE THE \$100 CASHBACK FOR 1FR + 2 CUSTOM CALLING OR TOUCHSTAR® FEATURES PROMOTION.**

A. This promotion was available to qualifying AT&T Kentucky end users from August 25, 2003 to February 7, 2005. The promotion was offered to new residential end users who did not currently subscribe to AT&T Kentucky’s local service and who purchased basic residential service plus at least two (2) qualifying Custom Calling or TouchStar® features. When an AT&T Kentucky end user ordered and qualified for this promotion, AT&T Kentucky mailed the end user a \$100 Cashback coupon. The end user had to redeem the coupon within 90 days of receipt in order to receive a \$100 check.

**Q. PLEASE DESCRIBE THE \$100 CASHBACK FOR COMPLETE CHOICE®, AREA PLUS® WITH COMPLETE CHOICE® AND PREFERRED PACK<sup>(SM)</sup> PROMOTION.**

A. For the time period addressed in dPi’s Complaint, this promotion was available to qualifying AT&T Kentucky end users from January 2, 2004,

1 and continued until September 2007. The promotion was offered to  
2 returning AT&T Kentucky end users who did not currently subscribe to  
3 AT&T Kentucky's local service and had not had AT&T Kentucky local  
4 service for at least 10 days prior to their service request. In addition, an  
5 end user qualified for the promotion when he/she purchased AT&T  
6 Kentucky's Complete Choice® service offering, Area Plus® with Complete  
7 Choice® service offering, or PreferredPack<sup>(SM)</sup> Plan service offering.  
8 When an AT&T Kentucky end user ordered and qualified for this  
9 promotion, AT&T Kentucky mailed the end user a coupon for \$100  
10 cashback. The end user had to mail in the completed coupon in order to  
11 receive a check for \$100.<sup>5</sup>

12

13 **Q. PLEASE DESCRIBE THE \$50 CASHBACK 2-PACK BUNDLE PLAN**  
14 **PROMOTION.**

15

16

17 **A.** For the time period involved in dPi's Complaint, this promotion was  
18 available to qualifying AT&T Kentucky end users from December 15, 2005  
19 to December 31, 2006. The promotion was offered to reacquisition end  
20 users who purchased AT&T Kentucky's 2-Pack service offering plus an  
21 affiliate service (such as long-distance, DirecTV®, FastAccess® DSL, or  
22 Cingular wireless service). Such customers received a \$50 cashback

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<sup>5</sup> In March 2005, the promotion was modified to add an option for a \$100 VISA® card, and, in October 2005, it was modified again to add an option for a \$100 gift card from a choice of vendors.

1 coupon and optional voicemail service. AT&T Kentucky's 2-Pack service  
2 offering is a packaged offering that combines AT&T Kentucky's basic  
3 telephone service with specific features. When an AT&T Kentucky end  
4 user ordered and qualified for this promotion, AT&T Kentucky mailed the  
5 customer a coupon that the customer had to redeem in order to receive a  
6 \$50 check.

7

8 **Q. DO THESE THREE PROMOTIONS HAVE A COMMON**  
9 **CHARACTERISTIC THAT IS RELEVANT TO THIS PROCEEDING?**  
10  
11

12 **A.** Yes. The primary component of each of these three promotions is a  
13 cashback offering. That is, if an AT&T Kentucky end user purchased  
14 certain services at the standard retail price and met other eligibility criteria  
15 (such as the end user's returning to AT&T Kentucky after having left AT&T  
16 Kentucky), the end user could receive a specified amount of cash back  
17 from AT&T Kentucky, provided the customer returned the requisite coupon  
18 within the allowable time period.

19

20 **IV. AT&T KENTUCKY'S POSITION ON RESALE OF CASHBACK**  
21 **PROMOTIONS**  
22

23

1 Q. IS THE CASHBACK COMPONENT OF A PROMOTION A  
2 "TELECOMMUNICATIONS SERVICE"?

3  
4

5 A. No. The cashback component of a promotion is a marketing incentive –  
6 not a telecommunications service. Although I am not an attorney, I  
7 understand that the Act defines "telecommunications service" to mean the  
8 offering of telecommunications for a fee, and "telecommunications" is  
9 defined to mean "the transmission, between or among points specified by  
10 the user, of information of the user's choosing without change in the form  
11 of content of the information as sent and received." See 47 U.S.C.  
12 §153(43), (46). Coupons or checks do not fall within any of these  
13 definitions.

14

15 Q. DID THESE CASHBACK PROMOTIONS CHANGE THE AMOUNT AT&T  
16 KENTUCKY BILLED OR THE AMOUNT AT&T KENTUCKY'S RETAIL  
17 CUSTOMER PAID FOR THE SERVICE?

18  
19

20 A. No. AT&T Kentucky billed the retail customer the standard retail price,  
21 and the customer paid that price for the service.

22

23 Q. WERE "MARKETING INCENTIVES" CONSIDERED IN ESTABLISHING  
24 THE WHOLESALE DISCOUNT RATE IN KENTUCKY?

25  
26

27 A. Yes. This Commission established the resale rates that AT&T Kentucky  
28 and dPi adopted in both Agreements and, consistent with the Act and the

1 FCC's guidance, the Commission recognized marketing costs as one of  
2 the "avoided costs" that the Commission was required to consider in  
3 setting the discounted wholesale rates. See *Local Competition Order*, ¶  
4 917.

5

6 **Q. WHAT IS AT&T KENTUCKY'S POSITION ON THE RESALE OF THE**  
7 **CASHBACK COMPONENT OF THESE PROMOTIONS?**

8

9

10 A. That depends upon the time frame involved. As explained in more detail  
11 below, prior to July 2007, AT&T Kentucky's position was that the cashback  
12 component of a promotion *was not* available for resale. Assume, for  
13 example, that AT&T Kentucky offered a cashback promotion in January  
14 2007 by which an end user who purchased a particular service with a  
15 standard monthly retail price of \$40 would get \$20 cashback from AT&T  
16 Kentucky. AT&T Kentucky's position was that a reseller could purchase  
17 the service for \$32 (the \$40 retail price less the hypothetical 20% resale  
18 discount discussed earlier in my testimony), but AT&T Kentucky would not  
19 provide the reseller any portion of the \$20 cashback amount.

20

21 From July 2007 forward, AT&T Kentucky has made the cashback  
22 component of a promotion available for resale to a requesting reseller,  
23 assuming the reseller's end user purchases the requisite services and  
24 meets any other eligibility criteria associated with the promotion. Assume,

1 for example, that AT&T Kentucky offered a promotion in August 2007 by  
2 which an end user who purchased a particular service with a monthly retail  
3 price of \$40 would get \$20 cash back from AT&T Kentucky. AT&T  
4 Kentucky's position is that a reseller could purchase the service for \$32  
5 (the \$40 retail price less the hypothetical 20% resale discount), and AT&T  
6 Kentucky would provide the reseller a \$16 cashback credit (the \$20 retail  
7 cashback amount less the hypothetical 20% resale discount), assuming,  
8 of course, that the services involved in the promotion are  
9 telecommunications services that are subject to resale obligations and the  
10 reseller's end user met the same qualifications an AT&T Kentucky end  
11 user would have to meet to participate in the promotion.

12

13 **Q. IT MAY APPEAR THAT AT&T KENTUCKY CHANGED ITS POSITION**  
14 **IN JULY 2007 BASED ON A FOURTH CIRCUIT COURT OPINION THAT**  
15 **AFFIRMED ORDERS ISSUED BY THE NORTH CAROLINA**  
16 **COMMISSION. IS THAT WHAT HAPPENED?**

17  
18

19 A. No, as explained below, the change in position in July 2007 was not the  
20 result of a court decision that affirmed two orders of the North Carolina  
21 Utilities Commission addressing promotional offerings. Instead, it was the  
22 result of a decision by the recently-merged AT&T to standardize its resale  
23 position across the 22 states in which it operates as an incumbent local  
24 exchange carrier ("ILEC").

25

1                   A.    **AT&T KENTUCKY'S POSITION ON RESALE OF**  
2                                   **CASHBACK PROMOTIONS PRIOR TO JULY 2007**

3  
4

5    **Q.    PLEASE REMIND US OF AT&T KENTUCKY'S GENERAL POSITION**  
6           **ON THE RESALE OF THE CASHBACK COMPONENT OF**  
7           **PROMOTIONS PRIOR TO JULY 2007.**

8  
9

10   A.    Prior to July 2007, AT&T Kentucky's general position was that the  
11           cashback component of a promotion was not available for resale.

12

13   **Q.    WHAT WAS THE BASIS FOR THAT POSITION?**

14

15   A.    As I mentioned before, I am not a lawyer and cannot address the legal  
16           basis for the position -- I will leave that for AT&T Kentucky's attorneys to  
17           address. In order to put my testimony in context, however, AT&T  
18           Kentucky's general position was that the cashback component of such  
19           promotions was not a telecommunications service that is subject to the  
20           resale obligations of federal law. Instead, the "cashback" component of  
21           such promotions is a one-time marketing expense that does not reduce  
22           the retail price of the telecommunications service.

23

24

1 Q. FROM A POLICY PERSPECTIVE, WHAT IS THE SIGNIFICANCE OF  
2 THE FACT THAT THE CASHBACK COMPONENT IS A MARKETING  
3 EXPENSE?  
4  
5

6 A. "Marketing expenses" are already factored into the wholesale discount  
7 rate set by this Commission, because the Act and the FCC's rules and  
8 orders implementing it require wholesale prices for telecommunications to  
9 exclude an ILEC's avoided costs, including marketing expenses. Granting  
10 dPi an additional discount based on the value of a marketing incentive  
11 would effectively double-count those avoided costs and improperly  
12 increase the wholesale discount.  
13

14 Q. HAS ANY STATE COMMISSION OR ANY COURT ADDRESSED AT&T  
15 KENTUCKY'S POSITION THAT CASHBACK COMPONENTS OF  
16 PROMOTIONS ARE NOT TELECOMMUNICATIONS SERVICES THAT  
17 ARE SUBJECT TO THE RESALE PROVISIONS OF THE ACT?  
18  
19

20 A. Yes. The United States Court of Appeals for the Fourth Circuit addressed  
21 this issue in affirming two orders of the North Carolina Commission  
22 addressing promotional offerings.<sup>6</sup> At a high level, the Court affirmed the  
23 North Carolina Commission's determination that, unless a reasonable and  
24 nondiscriminatory restriction on resale applies, while the promotion itself  
25 need not be provided to CLECs, the value of incentives such as gift cards,  
26 checks, coupons for checks, or similar types of marketing incentives

---

<sup>6</sup> *BellSouth Telecommunications, Inc. v. Sanford, et al.*, 494 F.3d 439 (4<sup>th</sup> Cir. 2007).

1 extending for more than 90 days must be reflected in the retail price used  
2 for computing the wholesale rate that is to be charged to CLECs. AT&T  
3 Kentucky's attorneys will address the specifics of the rulings, and how it  
4 applies to the dispute at issue in this docket, in post-hearing submissions.

5

6 **B. AT&T KENTUCKY'S POSITION ON RESALE OF**  
7 **CASHBACK PROMOTIONS FROM JULY 2007 FORWARD**

8

9

10

11 **Q. PLEASE REMIND US OF AT&T KENTUCKY'S GENERAL POSITION**  
12 **ON THE RESALE OF THE CASHBACK COMPONENT OF**  
13 **PROMOTIONS FROM JULY 2007 FORWARD.**

14

15

16

17 **A.** From July 2007 forward, AT&T Kentucky's position is that the cashback  
18 component of a promotion is available for resale.

19

20 **Q. WHY DID AT&T KENTUCKY ADOPT THIS POSITION ON A GOING-**  
21 **FORWARD BASIS?**

22

23

24 **A.** Before the merger between AT&T and BellSouth was completed in  
25 December 2006, AT&T provided service to a 13-state region and  
26 BellSouth provided service to a 9-state region. For ease of discussion, I  
27 will refer to the AT&T 13-state region company as "pre-merger AT&T" and  
28 the BellSouth 9-state region company as "pre-merger BellSouth."

29

1 As noted above, pre-merger BellSouth did not make cashback and other  
2 non-telecommunications components of promotional offerings available to  
3 resellers. Pre-merger AT&T, on the other hand, did (although it was not  
4 obligated to do so). In short, the two companies had different positions  
5 regarding the availability of cashback component of promotional offerings  
6 to resellers.

7  
8 Those different positions presented operational issues in the post-merger  
9 AT&T. One of the company's FCC Merger Commitments, for instance,  
10 allows CLECs to "port" an interconnection agreement from one state in the  
11 merged company's 22-state ILEC territory into another state in the  
12 territory. Rather than allowing a CLEC to port a California agreement into  
13 Kentucky but not providing a cashback promotion that was available in  
14 California to the same CLEC in Kentucky, the merged company made a  
15 business decision to adopt the pre-merger AT&T resale position  
16 throughout its 22-state ILEC territory. This adoption of a unified position  
17 was not a suggestion that the pre-merger BellSouth position was not  
18 legally permissible. Instead, it was a voluntary change that reflected the  
19 need to modify business practices to facilitate operation as one corporate  
20 entity.

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**V. AT&T KENTUCKY'S POSITION ON THE REASONABLE AND NONDISCRIMINATORY NATURE OF ITS PRE-JULY 2007 CASHBACK POLICY**

**Q. WHAT IS AT&T KENTUCKY ASKING THE COMMISSION TO DO IF IT DISAGREES WITH AT&T KENTUCKY AND FINDS THAT THE CASHBACK COMPONENT OF A PROMOTIONAL OFFERING IS SUBJECT TO RESALE?**

A. If the Commission finds that the cashback component of a promotional offering is subject to resale, AT&T Kentucky is asking the Commission to find that AT&T Kentucky nonetheless appropriately restricted the resale of the promotions at issue in this docket.

**Q. IS THAT CONSISTENT WITH FEDERAL LAW?**

A. Yes. Once again, I will defer to AT&T Kentucky's attorneys to explain this in detail in post-hearing submissions, but at a high level, the federal Act does not prohibit restrictions on resale. Instead, it imposes on ILECs a duty "not to prohibit, and not to impose *unreasonable or discriminatory* conditions or limitations on, the resale of such telecommunications service . . . ." 47 U.S.C. §251(c)(4)(B) (emphasis added). For the reasons explained below, it is AT&T Kentucky's position that even if the cashback components of promotional offerings were subject to resale (which AT&T Kentucky denies), it was reasonable and non-discriminatory to restrict the

1 resale of the cashback component of the promotional offerings at issue in  
2 this docket.

3

4 **Q. HAS ANY STATE COMMISSION ADDRESSED WHAT MIGHT**  
5 **CONSTITUTE A REASONABLE AND NONDISCRIMINATORY (AND,**  
6 **THEREFORE, PERMISSIBLE) RESTRICTION ON THE RESALE OF A**  
7 **CASHBACK PROMOTIONAL OFFERING?**

8

9

10 A. Yes. The North Carolina Commission provided guidance as to some  
11 factors that should be considered in determining whether a given  
12 restriction on resale is reasonable and nondiscriminatory. **Exhibit PLF-4** is  
13 a copy of the North Carolina Commission's initial order ("*NC Promotions*  
14 *Order*"), and **Exhibit PLF-5** is a copy of the North Carolina Commission's  
15 order addressing motions to reconsider and clarify ("*NC Clarification*  
16 *Order*").

17

18

19 **Q. WHAT ARE SOME OF THE FACTORS THE NORTH CAROLINA**  
20 **COMMISSION DISCUSSED IN CONSIDERING RESTRICTIONS ON**  
21 **RESALE?**

22

23

24 A. The North Carolina Commission considered whether resellers remain  
25 entitled to the wholesale discount on the telecommunications components  
26 of a promotion, whether a reseller is free to provide additional  
27 inducements to its own end users at its own expense, and whether

1 resellers complained about the resale restriction. See Exhibit PLF-4 at 12-  
2 13.

3

4 **Q. DID AT&T KENTUCKY PROVIDE DPI THE WHOLESALE DISCOUNT**  
5 **ON THE TELECOMMUNICATIONS COMPONENTS OF THE**  
6 **PROMOTIONS AT ISSUE IN THIS PROCEEDING?**

7

8

9 A. Yes. As explained above, AT&T Kentucky made the telecommunications  
10 components of the promotions at issue in this docket available to dPi at  
11 the wholesale discount rate established by this Commission.

12

13 **Q. IS DPI FREE TO OFFER ADDITIONAL INDUCEMENTS TO ITS OWN**  
14 **END USERS AT ITS OWN EXPENSE?**

15

16

17 A. Yes, and it does so. dPi offers its end users a "Club Program" that  
18 provides: involuntary unemployment insurance; grocery coupon savings  
19 books; and debt and credit counseling services. See **Exhibit PLF-6**.<sup>7</sup> dPi  
20 also offers its end users Internet and long distance services (*id.*), neither  
21 of which is subject to the Act's resale obligations. dPi apparently obtains  
22 these services, at its own expense, from sources other than AT&T  
23 Kentucky.

24

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<sup>7</sup> Exhibit P LF-6 is a copy of information from dPi's website when the 40601 Zip Code for Frankfort, Kentucky is entered.

1 Q. HAS ANY RESELLER OTHER THAN DPI FILED A COMPLAINT WITH  
2 THIS COMMISSION REGARDING AT&T KENTUCKY'S DECISION NOT  
3 TO MAKE THE CASHBACK COMPONENT OF PROMOTIONAL  
4 OFFERS AVAILABLE FOR RESALE?  
5  
6

7 A. No.  
8

9 Q. DID THE NORTH CAROLINA COMMISSION ADDRESS THE IMPACT  
10 PROMOTIONS LIKE THE ONES AT ISSUE IN THIS PROCEEDING  
11 MAY HAVE ON COMPETITION?  
12  
13

14 A. Yes, and it suggested that the pro-competitive effects of restricting the  
15 cashback component of a telecommunications service promotion could  
16 outweigh any alleged anti-competitive effects. See Exhibit PLF-4 at 12-  
17 13.  
18

19 Q. IS THAT TRUE IN THIS CASE?  
20

21 A. Yes. Promotions clearly are pro-competitive, and consumers clearly  
22 benefit from such offerings. Further, AT&T Kentucky's promotions are  
23 generally not targeted for dPi's primary customer base which, as I  
24 understand it, is typically high-credit-risk customers who prepay dPi for  
25 service.  
26  
27

1 Q. WHAT IS THE BASIS FOR YOUR UNDERSTANDING OF DPI'S  
2 PRIMARY CUSTOMER BASE?

3  
4

5 A. dPi's website states that dPi is "one of the nation's premier providers of  
6 'Pay As You Go' prepaid local home phone service" and "No Credit  
7 Check, No Deposit, No Contracts, No I.D. Required". See **Exhibit PLF-7**.  
8 Additionally, dPi's acting Chief Executive Officer and Chief Financial  
9 Officer has testified that "essentially every single one of dPi's new  
10 customers is someone who was formerly a customer of BellSouth or  
11 another provider and who left after getting into trouble over their phone  
12 bill," see **Exhibit PLF-8**,<sup>8</sup> and that dPi serves a "prepaid niche that's not  
13 served by [AT&T] and it's not served by . . . any postpaid provider." See  
14 **Exhibit PLF-9**.<sup>9</sup>

15

16 Q. WHY IS THE CUSTOMER BASE DPI SERVES IMPORTANT?

17

18 A. It shows that dPi does not compete with AT&T Kentucky on a pricing  
19 basis, because dPi targets customers who have unpaid balances or credit  
20 issues that typically prevent them from obtaining service from AT&T  
21 Kentucky or other ILECs.

22

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<sup>8</sup> Exhibit PLF-8 is an excerpt from the Pre-Filed Direct Testimony of dPi Witness Tom O'Roark filed in Docket No. 21849-U before the Georgia Public Service Commission on September 25, 2009.

1 Q. HOW DO DPI'S PRICES IN KENTUCKY COMPARE TO AT&T  
2 KENTUCKY'S PRICES?

3  
4

5 A. AT&T Kentucky's retail price for retail basic residential service in Frankfort  
6 is \$16.65, and AT&T Kentucky resells that basic service to dPi for \$14.06  
7 (the retail price less the 15.56% resale discount established by the  
8 Commission). In turn, dPi charges its own end users nearly three times  
9 that amount -- \$39.99 -- for the same basic service. See **Exhibit PLF-**  
10 **10.**<sup>10</sup>

11

12 Once other dPi charges, taxes, and fees are taken into account, dPi's end  
13 users in the 40601 Frankfort zip code pay \$51.00 for basic service in the  
14 first month, \$66.28 for basic service in the second month, and \$56.28 for  
15 basic service each month thereafter. See Exhibit PLF-10.

16

17 For its Lifeline customers, dPi provides a credit of \$13.50 against these  
18 monthly recurring rates, so dPi's Lifeline customers in the 40601 Frankfort  
19 zip code pay approximately \$35.44 for basic service in the first month,  
20 \$50.75 for basic service in the second month, and \$40.75 for basic service  
21 each month thereafter. See **Exhibit PLF-11.**<sup>11</sup>

---

<sup>9</sup> Exhibit PLF-9 is a portion of the transcript of the live testimony of dPi Witness Tom O'Roark before the North Carolina Commission on November 12, 2009.

<sup>10</sup> Exhibit PLF-10 is a copy of information from dPi's website when the 40601 Zip Code for Frankfort, Kentucky is entered.

<sup>11</sup> Exhibit PLF-11 is a copy of information from dPi's website when the 40601 Zip Code for Frankfort, Kentucky is entered.

1           These prices assume dPi's end users pay on time – if they are late, dPi's  
2           “prompt pay discount” does not apply and the end users' monthly price  
3           increases by \$10.00. See Exhibits PLF-10 and PLF-11.

4

5   **Q.   HOW DOES THIS INFORMATION RELATE TO WEIGHING THE PRO-**  
6   **COMPETITIVE EFFECTS OF THESE PROMOTIONS AGAINST ANY**  
7   **ALLEGED ANTI-COMPETITIVE EFFECTS?**

8

9

10  A.   It shows that AT&T Kentucky's decision not to provide dPi promotional  
11       credits for the cashback component of promotional offerings in the past  
12       did not affect or impede dPi's ability to compete with AT&T Kentucky,  
13       because dPi clearly is not competing against AT&T Kentucky on a price  
14       basis.

15

16       Moreover, AT&T Kentucky's decision not to provide dPi promotional  
17       credits for the cashback component of promotional offerings in the past  
18       did not impede dPi's ability to compete with other pre-pay resellers,  
19       because AT&T Kentucky did not provide those promotional credits to other  
20       pre-pay resellers either.

21

22       In any event, dPi is seeking a little over \$37,000 in this case, and the  
23       amount sought covers about a four-year period (2003 to 2007). dPi has  
24       served customers in Kentucky since 2003, and is still serving customers in  
25       Kentucky in 2010. Further, dPi has presented no evidence that it has lost

1 business or has been unable to compete with AT&T Kentucky. This  
2 suggests that the pro-competitive aspects of the promotions involved in  
3 this docket outweigh any alleged anti-competitive concerns raised by dPi.  
4 If dPi is concerned about its ability to compete in light of AT&T Kentucky's  
5 promotions not having been available to CLECs, it is curious why dPi  
6 waited years to file a complaint with the Commission.

7

8 **Q. DID AT&T KENTUCKY'S DECISION NOT TO RESELL THE**  
9 **CASHBACK COMPONENT OF THE THREE PROMOTIONS AT ISSUE**  
10 **IN THIS DOCKET HARM COMPETITION?**

11  
12

13 A. No. Again, the total amount of cashback promotional credits (without  
14 being reduced by the wholesale discount) that dPi purports to have  
15 requested in Kentucky in the nearly four years between November 2003  
16 and June 2007 is approximately \$37,000. This is about \$9,250 per year –  
17 hardly an amount that would run a company out of business or prevent it  
18 from competing for business. To the contrary, dPi is still doing business in  
19 Kentucky. dPi, therefore, cannot credibly claim that its inability to obtain  
20 cashback promotional credits years ago somehow impeded its ability to  
21 compete in the local market in Kentucky.

22

23

1 Q. IS DPI'S REQUEST DISCRIMINATORY IN ANY WAY?

2

3 A. Yes. Pre-merger BellSouth applied its policy not to resell the cashback  
4 component of promotions across the entire reseller community, and dPi is  
5 now requesting special treatment to be paid credits that no other CLEC  
6 has been paid.

7

8 VI. AT&T KENTUCKY'S POSITION ON THE SPECIFIC DPI  
9 CASHBACK PROMOTIONAL CREDIT REQUESTS AT ISSUE IN  
10 THIS DOCKET.

11

12

13 Q. IF THE COMMISSION DISAGREES WITH AT&T KENTUCKY AND  
14 FINDS THAT THE PROMOTIONS AT ISSUE WERE SUBJECT TO  
15 RESALE AND THAT AT&T KENTUCKY'S RESTRICTION WAS  
16 UNREASONABLE OR DISCRIMINATORY, IS DPI ENTITLED TO THE  
17 FULL AMOUNT SOUGHT IN ITS COMPLAINT?

18

19

20 A. No. Even if the Commission were to make those findings, the amounts  
21 dPi seeks would have to be reduced by: (A) the amount of claims that dPi  
22 did not dispute and/or escalate in a timely manner; (B) the 15.56%  
23 residential resale discount rate established by this Commission; and (C)  
24 the 27% error rate in the cashback credit requests dPi has submitted since  
25 AT&T Kentucky began making cashback available for resale in July 2007.

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**A. DPI DID NOT SUBMIT, DISPUTE, AND/OR ESCALATE MANY OF ITS REQUESTS IN A TIMELY MANNER.**

**Q. DOES THE PARTIES' INTERCONNECTION AGREEMENT ADDRESS WHEN DPI IS REQUIRED TO SUBMIT A BILLING DISPUTE?**

A. Yes. The parties' 2007 Agreement requires dPi to submit a billing dispute within 12 months of an actual amount billed that is subject to dispute. See Exhibit PLF-3, Attachment 7, Section 2.2.

**Q. DOES THE 2007 AGREEMENT ADDRESS DISPUTES OVER AMOUNTS THAT HAD BEEN BILLED WHILE THE 2003 AGREEMENT WAS IN EFFECT?**

A. Yes. In the 2007 Agreement, dPi expressly agrees that "any orders placed under [the 2003 Agreement]" and "any and all amounts and obligations owed for services provisioned or orders placed under [the 2003 Agreement]" will be "due and owing" and "governed by the terms and conditions" of the 2007 Agreement. See Exhibit PLF-3, General Terms and Conditions, p. 20, §30.1.

1 Q. DID DPI INITIALLY REQUEST ALL OF THE CASHBACK CREDITS IT  
2 SEEKS IN THIS PROCEEDING WITHIN 12 MONTHS OF AN ACTUAL  
3 BILLED AMOUNT THAT IS SUBJECT TO THE CREDIT REQUEST?  
4  
5

6 A. No. Exhibit NWB-1 shows that dPi's *initial request* for \$10,200 of  
7 cashback promotional credits came more than 12 months after the date of  
8 the bill for the services that dPi claims entitled it to the credits it requested.  
9

10 Q. DID AT&T KENTUCKY PROVIDE ANY OF THE CASHBACK  
11 PROMOTIONAL CREDITS REQUESTED BY DPI FOR THE TIME  
12 PERIOD ADDRESSED BY DPI'S COMPLAINT?  
13  
14

15 A. No. AT&T Kentucky witness Kristy Seagle addresses this in her Direct  
16 Testimony.  
17

18 Q. DID DPI TIMELY DISPUTE AT&T KENTUCKY'S DENIAL OF THE  
19 CASHBACK PROMOTIONAL CREDIT REQUESTS AS REQUIRED BY  
20 THE PARTIES' INTERCONNECTION AGREEMENT?  
21  
22

23 A. No. As Ms. Seagle explains in her Direct Testimony, dPi knew that AT&T  
24 Kentucky had denied dPi's cashback promotional credit requests. If dPi  
25 was dissatisfied with not receiving its requested cashback-related bill  
26 credits, then dPi had a contractual obligation to dispute the denial of its  
27 previously-submitted cashback-related bill credit requests. The billing  
28 portion of the parties' 2007 Agreement requires dPi to electronically

1 submit all billing disputes to AT&T Kentucky using the form specified by  
2 AT&T Kentucky. See Exhibit PLF-3, Attachment 7, Section 2.1.

3  
4 Likewise, dPi's 2003 Agreement also required dPi to submit billing  
5 disputes on a form specified by AT&T Kentucky and to clearly explain the  
6 basis for submitting a dispute. See Exhibit PLF-2, Attachment 7, Section  
7 2. Further, the 2007 Agreement makes clear that if dPi is not satisfied  
8 with AT&T Kentucky's resolution of a submitted dispute, or if no response  
9 to the billing dispute has been received by dPi, then dPi has a contractual  
10 obligation to escalate the matter by following the escalation process  
11 outlined on AT&T Kentucky's interconnection services website or the  
12 matter shall be considered denied and closed. AT&T Kentucky's  
13 wholesale website has extensive guidelines regarding how a CLEC should  
14 submit a billing dispute and what steps a CLEC should take to escalate a  
15 billing dispute. These guidelines can be viewed at the following address:  
16 [http://wholesale.att.com/reference\\_library/guides/html/billing.html](http://wholesale.att.com/reference_library/guides/html/billing.html).

17

18 **Q. DID DPI FOLLOW THIS DISPUTE PROCESS WITH REGARD TO ANY**  
19 **OF THE PROMOTIONAL CREDITS IT SEEKS IN THIS PROCEEDING?**

20  
21

22 **A.** To my knowledge, no. As explained by AT&T Kentucky witness Kristy  
23 Seagle in her Direct Testimony, dPi ultimately sent AT&T an email in 2007  
24 saying it disagreed with AT&T's denial of dPi's credit requests for the time

1 periods at issue, but that email does not comply with the “dispute” process  
2 described above.

3

4 Moreover, even if that 2007 email constituted a “dispute” (which AT&T  
5 Kentucky denies), Exhibit NWB-1 shows that for \$22,250 of credits dPi is  
6 seeking in this proceeding, that “dispute” was submitted more than 12  
7 months after the bills to which the credit requests relate.

8

9 **Q. PLEASE DESCRIBE THE NEGOTIATIONS REGARDING THE**  
10 **REQUIREMENT IN THE 2007 AGREEMENT THAT DISPUTES MUST**  
11 **BE SUBMITTED WITHIN 12 MONTHS.**

12

13

14 A. As I noted earlier, the 2007 Agreement was not arbitrated. AT&T  
15 Kentucky proposed the 2007 Agreement, and dPi did not propose any  
16 changes or engage in any negotiation regarding any provision of the  
17 Agreement with respect to the 12-month requirement. Nor did dPi raise  
18 any issue about the 12-month requirement in the 2007 Agreement before  
19 signing it.

20

21 **Q. IS THERE ANY REASON FROM A COMPETITIVE PERSPECTIVE WHY**  
22 **DPI’S UNTIMELY REQUEST FOR CREDITS DATING BACK TO 2003**  
23 **SHOULD BE GRANTED?**

24

25

26 A. No. From a competitive perspective, there is no benefit to the  
27 telecommunications market or to the consumer to go back in time and

1 consider treating dPi differently from all other Kentucky CLECs. Prior to  
2 July 2007, AT&T Kentucky applied uniformly across all CLECs its policy of  
3 not reselling the cashback component of promotions. Granting dPi the  
4 relief it seeks in its complaint does nothing more than give dPi an after-  
5 the-fact cash windfall that dPi does not deserve and that AT&T Kentucky  
6 is not obligated to provide. dPi does not need such a windfall to compete  
7 in the local market because dPi has been competing in the Kentucky  
8 market throughout the time addressed in its Complaint. dPi has every  
9 incentive to try to gain promotional credits wherever it can (including for  
10 non-qualifying customers) because it has no expense in offering the  
11 promotion. Bestowing dPi with a windfall would only serve to line dPi's  
12 pockets and does not benefit dPi's customers or the state of competition in  
13 any way.

14

15 **Q. IS THERE ANY OTHER POLICY REASON TO DENY DPI'S REQUEST**  
16 **FOR CASHBACK PROMOTIONAL CREDITS IN THIS DOCKET?**  
17  
18

19 A. Yes. The highly competitive telecommunications market moves at a very  
20 fast pace, and companies competing in that market must move quickly  
21 and decisively. AT&T Kentucky cannot compete effectively if its  
22 competitors can wait almost half a decade after becoming aware of a  
23 policy to challenge that policy and seek relief, as a result of that challenge.

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**B. DPI INAPPROPRIATELY IS SEEKING THE FULL RETAIL AMOUNT OF THE CASHBACK COMPONENT OF PROMOTIONS.**

**Q. PLEASE DESCRIBE THE AMOUNT OF CASHBACK CREDIT DPI IS SEEKING FOR A GIVEN PROMOTION.**

A. dPi is seeking the full retail amount of the cashback component of a given promotion. For example, if a qualifying retail customer receives \$50 cashback, and if dPi believes its end user customer qualifies for that promotion, dPi is seeking a \$50 bill credit from AT&T Kentucky.

**Q. ASSUMING DPI WAS OTHERWISE ENTITLED TO A PROMOTIONAL CREDIT UNDER SUCH A PROMOTION, WHAT IS THE MAXIMUM AMOUNT OF CREDIT TO WHICH IT WOULD BE ENTITLED?**

A. AT&T Kentucky's position is that the most dPi would be entitled to receive in this situation is \$42.22, which is the \$50 retail cashback amount less the 15.56% resale discount rate established by this Commission. The reasons supporting this position are largely legal in nature and will be addressed in more detail by AT&T Kentucky's attorneys.

**C. ANY AMOUNTS SOUGHT BY DPI MUST BE FURTHER REDUCED BY 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.**

1 Q. IS DPI ENTITLED TO RESELL A PROMOTION TO ITS END USERS  
2 WHO DO NOT MEET THE PROMOTION QUALIFICATIONS?  
3  
4

5 A. No. The 2007 Agreement provides that “[w]here available for resale,  
6 promotions will be made available only to customers who would have  
7 qualified for the promotion had it been provided by BellSouth directly.”

8 See Ex. PLF-3, Attachment 1, Page 13, Exhibit A, Note 2.  
9

10 Q. IN SIMILAR PROCEEDINGS IN OTHER STATES, HAS DPI PROVIDED  
11 ANY EVIDENCE TO SHOW THAT A GIVEN END USER MET THE  
12 QUALIFICATIONS FOR THE PROMOTIONS FOR WHICH DPI IS  
13 SEEKING PROMOTIONAL CREDITS?  
14  
15

16 A. No, and I am not aware of dPi presenting any such evidence in this  
17 proceeding either.  
18

19 Q. ARE YOU AWARE OF ANYTHING THAT SUGGESTS WHETHER DPI’S  
20 END USERS DID NOR DID NOT MEET QUALIFICATIONS FOR THE  
21 PROMOTIONS FOR WHICH DPI IS SEEKING PROMOTIONAL  
22 CREDITS?  
23  
24

25 A. Yes. As I mentioned above, AT&T Kentucky has made the cashback  
26 component of promotions available for resale since July 2007. In her  
27 Direct Testimony, AT&T Kentucky witness Nicole Bracy shows that since  
28 that time, 27% of dPi’s cashback promotional credit requests have been  
29 appropriately denied because dPi’s end user did not meet at least one of

1 the requirements that an AT&T Kentucky end user would have to meet to  
2 qualify for the promotion. Based on that testimony, therefore, any amount  
3 to which dPi otherwise would be entitled should be reduced by an  
4 additional 27% to ensure that dPi does not receive credits to which it is not  
5 entitled.

6

7 **Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?**

8

9 **A. Yes.**

10



**AGREEMENT  
GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and DPI-Teleconnect, LLC (DPI), a Delaware corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or DPI or both as a "Party" or "Parties."

**WITNESSETH**

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, DPI is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, DPI wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

**WHEREAS**, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and DPI agree as follows:

**Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**Competitive Local Exchange Carrier (CLEC)** means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

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Page 2

**Effective Date** is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

**End User** means the ultimate user of the Telecommunications Service.

**FCC** means the Federal Communications Commission.

**General Terms and Conditions** means this document including all of the terms, provisions and conditions set forth herein.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications Act of 1996 (Act)** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

**1. CLEC Certification**

- 1.1 Prior to execution of this Agreement, DPI agrees to provide BellSouth in writing DPI's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.
- 1.2 To the extent DPI is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, DPI will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement. Upon notification, BellSouth will file this Agreement with the appropriate Commission for approval.

**2. Term of the Agreement**

- 2.1 The term of this Agreement shall be three years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement).
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate terms, conditions and prices for the Subsequent Agreement pursuant to 47 U.S.C. 252.
- 2.4 If, as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, this Agreement shall terminate. Upon termination of this Agreement, BellSouth shall continue to offer services to DPI pursuant to the terms, conditions and rates set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective as between the Parties, the Parties may continue to negotiate a Subsequent Agreement or arbitrate disputed issues to reach a Subsequent Agreement as set forth in Section 2.3 above, and the terms of such Subsequent Agreement shall be effective as of the effective date as stated in the Subsequent Agreement.
3. **Operational Support Systems**  
DPI shall pay charges for Operational Support Systems (OSS) as set forth in this Agreement.
4. **Parity**  
When DPI purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to DPI shall be at least equal in quality to that which BellSouth provides to itself, its Affiliates or any other Telecommunications carrier. The quality of the interconnection between the network of BellSouth and the network of DPI shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by DPI.
5. **White Pages Listings**
- 5.1 BellSouth shall provide DPI and its customers access to white pages directory listings under the following terms:

- 5.1.1 Listings. DPI shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include DPI residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Interconnection Agreement. Directory listings will make no distinction between DPI and BellSouth subscribers.
- 5.1.2 Rates. So long as DPI provides subscriber listing information (SLI) to BellSouth in accordance with Section 5.2 below, BellSouth shall provide to DPI one (1) primary White Pages listing per DPI subscriber at no charge other than applicable service order charges as set forth in BellSouth's tariffs.
- 5.2 Procedures for Submitting DPI SLI are found in The BellSouth Business Rules for Local Ordering.
- 5.2.1 DPI authorizes BellSouth to release all DPI SLI provided to BellSouth by DPI to qualifying third parties via either license agreement or BellSouth's Directory Publishers Database Service (DPDS), General Subscriber Services Tariff (GSST), Section A38.2, as the same may be amended from time to time. Such DPI SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.
- 5.2.2 No compensation shall be paid to DPI for BellSouth's receipt of DPI SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of DPI's SLI, or costs on an ongoing basis to administer the release of DPI SLI, DPI shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of DPI's SLI, DPI will be notified. If DPI does not wish to pay its proportionate share of these reasonable costs, DPI may instruct BellSouth that it does not wish to release its SLI to independent publishers, and DPI shall amend this Agreement accordingly. DPI will be liable for all costs incurred until the effective date of the amendment.
- 5.2.3 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by DPI under this Agreement. DPI shall indemnify, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate DPI listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to DPI any complaints received by BellSouth relating to the accuracy or quality of DPI listings.
- 5.2.4 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.
- 5.3 Unlisted/Non-Published Subscribers. DPI will be required to provide to BellSouth the names, addresses and telephone numbers of all DPI customers who wish to be

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Page 5

omitted from directories. Unlisted/Non-Published SLI will be subject to the rates as set forth in BellSouth's General Subscriber Services Tariff.

- 5.4 Inclusion of DPI End Users in Directory Assistance Database. BellSouth will include and maintain DPI subscriber listings in BellSouth's Directory Assistance databases at no recurring charge and DPI shall provide such Directory Assistance listings to BellSouth at no recurring charge.
- 5.5 Listing Information Confidentiality. BellSouth will afford DPI's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.
- 5.6 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in the General Subscriber Services Tariff.
- 5.7 Directories. BellSouth or its agent shall make available White Pages directories to DPI subscribers at no charge or as specified in a separate agreement with BellSouth's agent.

**6. Court Ordered Requests for Call Detail Records and Other Subscriber Information**

- 6.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services or local switching for DPI, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to DPI End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for DPI End Users for the same length of time it maintains such information for its own End Users.
- 6.2 Subpoenas Directed to DPI. Where BellSouth is providing to DPI Telecommunications Services for resale or providing to DPI the local switching function, then DPI agrees that in those cases where DPI receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to DPI End Users, and where DPI does not have the requested information, DPI will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 6.1 above.
- 6.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

**7. Liability and Indemnification**

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Page 6

- 7.1 DPI Liability. In the event that DPI consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, all such entities shall be jointly and severally liable for the obligations of DPI under this Agreement.
- 7.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to DPI for any act or omission of another Telecommunications company providing services to DPI.
- 7.3 Limitation of Liability
- 7.3.1 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to a credit for the actual cost of the services or functions not performed or improperly performed.
- 7.3.2 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.
- 7.3.3 Neither BellSouth nor DPI shall be liable for damages to the other Party's terminal location, equipment or End User premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 7.3.4 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent

efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

7.3.5 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

7.4 Indemnification for Certain Claims. The Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by the End User of the Party receiving services arising from such company's use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

7.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

## 8. Intellectual Property Rights and Indemnification

8.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the Other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the Other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the Other Party.

8.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use

patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

- 8.3 Intellectual Property Remedies
- 8.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 7 preceding.
- 8.3.2 Claim of Infringement. In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:
- 8.3.2.1 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 8.3.2.2 obtain a license sufficient to allow such use to continue.
- 8.3.2.3 In the event Section 8.3.2.1 or 8.3.2.2 are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 8.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would

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necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

8.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

8.4 Dispute Resolution. Any claim arising under this Section 8 shall be excluded from the dispute resolution procedures set forth in Section 10 and shall be brought in a court of competent jurisdiction.

9. **Proprietary and Confidential Information**

9.1 Proprietary and Confidential Information. It may be necessary for BellSouth and DPI, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

9.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.

9.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:

9.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

9.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement

and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

- 9.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 9.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 9.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 9 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

**10. Resolution of Disputes**

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

**11. Taxes**

- 11.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.
- 11.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party.

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- 11.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 11.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 11.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party.
- 11.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 11.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 11.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 11.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 11.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 11.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with

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respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

- 11.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 11.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party.
- 11.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 11.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 11.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 11.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 11.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 11.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorneys'

fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

11.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

11.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

12. **Force Majeure**

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by DPI, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13. **Adoption of Agreements**

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to DPI any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252, provided a minimum of six months remains on the term of such agreement. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are legitimately related to or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

**14. Modification of Agreement**

14.1 If DPI changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of DPI to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of DPI or BellSouth to perform any material terms of this Agreement, DPI or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

**15. Non-waiver of Legal Rights**

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

**16. Indivisibility**

The Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement and that neither Party would have contracted with respect to the provisioning of collocation space under this Agreement if the covenants and promises of the other Party with respect to the other services provided under this Agreement had not been made. The Parties further acknowledge that this Agreement is intended to constitute a single transaction, that the obligations of the Parties under this Agreement are interdependent, and that payment obligations under this Agreement are intended to be recouped against other payment obligations under this Agreement.

**17. Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**18. Governing Law**

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

**19. Assignments**

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of DPI, the assignee must provide evidence of Commission CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, DPI shall not assign this Agreement to any Affiliate or non-affiliated entity unless either (1) DPI pays all bills, past due and current, under this Agreement, or (2) DPI's assignee expressly assumes liability for payment of such bills.

**20. Notices**

20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**BellSouth Telecommunications, Inc.**

BellSouth Local Contract Manager  
600 North 19<sup>th</sup> Street, 8<sup>th</sup> floor  
Birmingham, Alabama 35203

and

ICS Attorney  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

**DPI-Teleconnect, LLC**

David B. Dorwart  
President/CEO  
2997 LBJ Freeway, Suite 225  
Dallas, Texas 75234

Telephone: (972) 488-4500 Ext 4001

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.
- 20.3 Notwithstanding the foregoing, BellSouth may provide DPI notice via Internet posting of price changes and changes to the terms and conditions of services available for resale per Commission Orders. BellSouth will post changes to business processes and policies, notices of new service offerings, and changes to service offerings not requiring an amendment to this Agreement, notices required to be posted to BellSouth's website, and any other information of general applicability to CLECs.
21. **Rule of Construction**
- No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.
22. **Headings of No Force or Effect**
- The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.
23. **Multiple Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**24. Filing of Agreement**

Upon execution of this Agreement it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, DPI shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by DPI. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as DPI is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

**25. Compliance with Applicable Law**

Each Party shall comply at its own expense with Applicable Law.

**26. Necessary Approvals**

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

**27. Good Faith Performance**

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**28. Nonexclusive Dealings**

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to DPI as a requesting carrier under the Act).

**29. Rate True-Up**

- 29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.
- 29.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 10 of the General Terms and Conditions of this Agreement.
- 29.3 An effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and DPI specifically or upon all carriers generally, such as a generic cost proceeding.
- 30. Survival**
- The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.
- 31. Entire Agreement**
- 31.1 This Agreement means the General Terms and Conditions, the Attachments identified in Section 31.2 below, and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and DPI acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and

executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 This Agreement includes Attachments with provisions for the following:

Resale  
Network Elements and Other Services  
Network Interconnection  
Collocation  
Access to Numbers and Number Portability  
Pre-Ordering, Ordering, Provisioning, Maintenance and Repair  
Billing  
Rights-of-Way, Conduits and Pole Attachments  
Performance Measurements  
BellSouth Disaster Recovery Plan  
Bona Fide Request/New Business Request Process

31.3 The following services are included as options for purchase by DPI pursuant to the terms and conditions set forth in this Agreement. DPI may elect to purchase said services by written request to its Local Contract Manager if applicable:

Optional Daily Usage File (ODUF)  
Enhanced Optional Daily Usage File (EODUF)  
Access Daily Usage File (ADUF)  
Line Information Database (LIDB) Storage  
Centralized Message Distribution Service (CMDS)  
Calling Name (CNAM)  
LNP Data Base Query Service

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.**

**DPI-Teleconnect, LLC**

By: Original Signature on File \_\_\_\_\_

By: Original Signature on File \_\_\_\_\_

Name: Elizabeth R.A. Shiroishi \_\_\_\_\_

Name: David B. Dorwart \_\_\_\_\_

Title: Director \_\_\_\_\_

Title: President and CEO \_\_\_\_\_

Date: 3/20/2003 \_\_\_\_\_

Date: 3/11/2003 \_\_\_\_\_

**Attachment 1**

**Resale**

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<b>Resale Restrictions</b>	<b>Exhibit A</b>
<b>Line Information Database (LIDB) Storage Agreement</b>	<b>Exhibit B</b>
<b>Optional Daily Usage File (ODUF)</b>	<b>Exhibit C</b>
<b>Enhanced Option Daily Usage File (EODUF)</b>	<b>Exhibit D</b>
<b>Resale Discounts and Rates</b>	<b>Exhibit E</b>

## RESALE

1. **Discount Rates**
  - 1.1 The discount rates applied to DPI purchases of BellSouth Telecommunications Services for the purpose of resale shall be as set forth in Exhibit E. Such discounts have been determined by the applicable Commission to reflect the costs avoided by BellSouth when selling a service for wholesale purposes.
  - 1.2 The telecommunications services available for purchase by DPI for the purposes of resale to DPI's End Users shall be available at BellSouth's tariffed rates less the discount set forth in Exhibit E to this Agreement and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.
2. **Definition of Terms**
  - 2.1 COMPETITIVE LOCAL EXCHANGE COMPANY (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.
  - 2.2 CUSTOMER OF RECORD means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.
  - 2.3 DEPOSIT means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by BellSouth.
  - 2.4 END USER means the ultimate user of the Telecommunications Service.
  - 2.5 END USER CUSTOMER LOCATION means the physical location of the premises where an End User makes use of the telecommunications services.
  - 2.6 NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
  - 2.7 RESALE means an activity wherein a certificated CLEC, such as DPI, subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public.
3. **General Provisions**
  - 3.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and

Commission rules and orders, BellSouth shall make available to DPI for resale those telecommunications services BellSouth makes available, pursuant to its General Subscriber Services Tariff and Private Line Services Tariff, to customers who are not telecommunications carriers.

- 3.1.1 When DPI provides Resale service in a cross boundary area (areas that are part of the local serving area of another state's exchange) the rates, regulations and discounts for the tariffing state will apply. Billing will be from the serving state.
- 3.1.2 In Tennessee, if DPI does not resell Lifeline service to any end users, and if DPI agrees to order an appropriate Operator Services/Directory Assistance block as set forth in BellSouth's General Subscriber Services Tariff, the discount shall be 21.56%.
  - 3.1.2.1 In the event DPI resells Lifeline service to any end user in Tennessee, BellSouth will begin applying the 16% discount rate to all services. Upon DPI and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate Operating Customer Number (OCN) is established for billing of Lifeline service end users, the discount shall be applied as set forth in 3.1.2 preceding for the non-Lifeline affected Master Account (Q-account).
  - 3.1.2.2 DPI must provide written notification to BellSouth within 30 days prior to either providing its own operator services/ directory services or orders the appropriate operator services/directory assistance blocking, to qualify for the higher discount rate of 21.56%.
- 3.2 DPI may purchase resale services from BellSouth for its own use in operating its business. The resale discount will apply to those services under the following conditions:
  - 3.2.1 DPI must resell services to other End Users.
  - 3.2.2 DPI cannot be a competitive local exchange telecommunications company for the single purpose of selling to itself.
- 3.3 DPI will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and receive payment from DPI for said services.
- 3.4 DPI will be BellSouth's single point of contact for all services purchased pursuant to this Agreement. BellSouth shall have no contact with the End User except to the extent provided for herein. Each Party shall provide to the other a nation wide (50 states) toll-free contact number for purposes of repair and maintenance.
- 3.5 BellSouth will continue to bill the End User for any services that the End User specifies it wishes to receive directly from BellSouth. BellSouth maintains the right

to serve directly any End User within the service area of DPI. BellSouth will continue to market directly its own telecommunications products and services and in doing so may establish independent relationships with End Users of DPI. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

- 3.5.1 When an End User of DPI or BellSouth elects to change his/her carrier to the other Party, both Parties agree to release the End User's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the End User's requested service as set forth in the BellSouth Product and Services Interval Guide.
- 3.5.2 BellSouth and DPI will refrain from contacting an End User who has placed or whose selected carrier has placed on the End User's behalf an order to change the End User's service provider from BellSouth or DPI to the other Party until such time that the order for service has been completed.
- 3.6 Current telephone numbers may normally be retained by the End User and are assigned to the service furnished. However, neither Party nor the End User has a property right to the telephone number or any other call number designation associated with services furnished by BellSouth, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BellSouth deems it necessary to do so in the conduct of its business and in accordance with BellSouth practices and procedures on a nondiscriminatory basis.
- 3.7 Where BellSouth provides resold services to DPI, BellSouth will provide DPI with on-line access to intermediate telephone numbers as defined by applicable FCC rules and regulations on a first come first served basis. DPI acknowledges that such access to numbers shall be in accordance with the appropriate FCC rules and regulations. DPI acknowledges that there may be instances where there is a shortage of telephone numbers in a particular Common Language Location Identifier Code (CLLIC); and in such instances, DPI shall return unused intermediate telephone numbers to BellSouth upon BellSouth's request. BellSouth shall make all such requests on a nondiscriminatory basis.
- 3.8 BellSouth will allow DPI to designate up to 100 intermediate telephone numbers per CLLIC, for DPI's sole use. Assignment, reservation and use of telephone numbers shall be governed by applicable FCC rules and regulations. DPI acknowledges that there may be instances where there is a shortage of telephone numbers in a particular CLLIC and BellSouth has the right to limit access to blocks of intermediate telephone numbers. These instances include: 1) where jeopardy status has been declared by the North American Numbering Plan (NANP) for a particular Numbering Plan Area (NPA); or 2) where a rate center has less than six months supply of numbering resources.

- 3.9 Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- 3.10 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- 3.11 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.
- 3.12 BellSouth will cooperate with law enforcement agencies with subpoenas and court orders relating to DPI's End Users, pursuant to Section 6 of the General Terms and Conditions.
- 3.13 If DPI or its End Users utilize a BellSouth resold telecommunications service in a manner other than that for which the service was originally intended as described in BellSouth's retail tariffs, DPI has the responsibility to notify BellSouth. BellSouth will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.
- 3.14 Facilities and/or equipment utilized by BellSouth to provide service to DPI remain the property of BellSouth.
- 3.15 White page directory listings for DPI End Users will be provided in accordance with Section 5 of the General Terms and Conditions.
- 3.16 Service Ordering and Operational Support Systems (OSS)
- 3.16.1 DPI must order services through resale interfaces, i.e., the Local Carrier Service Center (LCSC) and/or appropriate Complex Resale Support Group (CRSG) pursuant to this Agreement. BellSouth has developed and made available the interactive interfaces by which DPI may submit a Local Service Request (LSR) electronically as set forth in Attachment 2 of this Agreement. Service orders will be in a standard format designated by BellSouth.
- 3.16.2 LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic charge as set forth in Exhibit E to this Agreement. An individual LSR will be identified for billing purposes by its Purchase Order Number (PON). LSRs submitted by means other than one of these interactive interfaces (Mail, fax, courier, etc.) will incur a manual order charge as set forth in Exhibit E to this Agreement. Supplements or clarifications to a previously billed LSR will not incur another OSS charge.
- 3.16.3 Denial/Restoral OSS Charge. In the event DPI provides a list of customers to be denied and restored, rather than an LSR, each location on the list will require a separate PON and therefore will be billed as one LSR per location.

- 3.16.4 Cancellation OSS Charge. DPI will incur an OSS charge for an accepted LSR that is later canceled.
- 3.17 Where available to BellSouth's End Users, BellSouth shall provide the following telecommunications services at a discount to allow for voice mail services:
- Message Waiting Indicator ("MWI"), stutter dialtone and message waiting light feature capabilities
  - Call Forward Busy Line ("CF/B")
  - Call Forward Don't Answer ("CF/DA")
- Further, BellSouth messaging services set forth in BellSouth's Messaging Service Information Package shall be made available for resale without the wholesale discount.
- 3.18 BellSouth shall provide branding for, or shall unbrand, voice mail services for DPI per the Bona Fide Request/New Business Request process as set forth in Attachment 6 of this Agreement.
- 3.19 BellSouth's Inside Wire Maintenance Service Plan is available for resale at rates, terms and conditions as set forth by BellSouth and without the wholesale discount.
- 3.20 In the event DPI acquires an end user whose service is provided pursuant to a BellSouth Special Assembly, BellSouth shall make available to DPI that Special Assembly at the wholesale discount at DPI's option. DPI shall be responsible for all terms and conditions of such Special Assembly including but not limited to termination liability if applicable.
- 3.21 BellSouth shall provide 911/E911 for DPI customers in the same manner that it is provided to BellSouth customers. BellSouth shall provide and validate DPI customer information to the PSAP. BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the DPI customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services.
- 3.22 BellSouth shall bill, and DPI shall pay, the End User line charge associated with implementing Number Portability as set forth in BellSouth's FCC No. 1 tariff. This charge is not subject to the wholesale discount.
- 3.23 Pursuant to 47 CFR Section 51.617, BellSouth shall bill to DPI, and DPI shall pay, the End User common line charges identical to the End User common line charges BellSouth bills its End Users.

4. **BellSouth's Provision of Services to DPI**
- 4.1 Resale of BellSouth services shall be as follows:
- 4.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.
- 4.1.2 Hotel and Hospital PBX services are the only telecommunications services available for resale to Hotel/Motel and Hospital End Users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Payphone Service Provider (PSP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's A23 Shared Tenant Service Tariff in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
- 4.1.3 BellSouth reserves the right to periodically audit services purchased by DPI to establish authenticity of use. Such audit shall not occur more than once in a calendar year. DPI shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit. Any information provided by DPI for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.
- 4.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in BellSouth's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services.
- 4.3 DPI may resell services only within the specific service area as defined in its certificate of operation approved by the Commission.
- 4.4 If DPI cancels an order for resold services, any costs incurred by BellSouth in conjunction with provisioning of such order will be recovered in accordance with BellSouth's General Subscriber Services Tariffs and Private Line Services Tariffs.
- 4.5 Service Jointly Provisioned with an Independent Company or Competitive Local Exchange Company Areas
- 4.5.1 BellSouth will in some instances provision resold services in accordance with the General Subscriber Services Tariff and Private Line Tariffs jointly with an Independent Company or other Competitive Local Exchange Carrier.
- 4.5.2 When DPI assumes responsibility for such service, all terms and conditions defined in the Tariff will apply for services provided within the BellSouth service area only.

- 4.5.3 Service terminating in an Independent Company or other Competitive Local Exchange Carrier area will be provisioned and billed by the Independent Company or other Competitive Local Exchange Carrier directly to DPI.
- 4.5.4 DPI must establish a billing arrangement with the Independent Company or other Competitive Local Exchange Carrier prior to assuming an end user account where such circumstances apply.
- 4.5.5 Specific guidelines regarding such services are available on BellSouth's website @ [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com).
- 5. Maintenance of Services**
- 5.1 Services resold pursuant to this Attachment and BellSouth's General Subscriber Service Tariff and Private Line Service Tariff and facilities and equipment provided by BellSouth shall be maintained by BellSouth.
- 5.2 DPI or its End Users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth except with the written consent of BellSouth.
- 5.3 DPI accepts responsibility to notify BellSouth of situations that arise that may result in a service problem.
- 5.4 DPI will contact the appropriate repair centers in accordance with procedures established by BellSouth.
- 5.5 For all repair requests, DPI shall adhere to BellSouth's prescreening guidelines prior to referring the trouble to BellSouth.
- 5.6 BellSouth will bill DPI for handling troubles that are found not to be in BellSouth's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what BellSouth charges to its retail customers for the same services.
- 5.7 BellSouth reserves the right to contact DPI's End Users, if deemed necessary, for maintenance purposes.
- 6. Establishment of Service**
- 6.1 After receiving certification as a local exchange carrier from the applicable regulatory agency, DPI will provide the appropriate BellSouth Advisory team manager the necessary documentation to enable BellSouth to establish accounts for resold services ("master account"). DPI is required to provide the following before a master account is established: blanket letter of authorization, misdirected number form, proof of PSC/PUC certification, the Application for Master Account, an Operating Company Number ("OCN") assigned by the National

Exchange Carriers Association ("NECA") and a deposit and tax exemption certificate, if applicable.

- 6.1.1 If DPI needs to change its OCN(s) under which it operates when DPI has already been conducting business utilizing those OCN(s), DPI shall bear all costs incurred by BellSouth to convert DPI to the new OCN(s). OCN conversion charges include all time required to make system updates to all of DPI's end user customer records. Appropriate charges will appear in the OC&C section of DPI's bill.
- 6.2 DPI shall provide to BellSouth a blanket letter of authorization ("LOA") certifying that DPI will have End User authorization prior to viewing the End User's customer service record or switching the End User's service. BellSouth will not require End User confirmation prior to establishing service for DPI's End User customer.
- 6.3 BellSouth will accept a request directly from the End User for conversion of the End User's service from DPI to BellSouth or will accept a request from another CLEC for conversion of the End User's service from DPI to such other CLEC. Upon completion of the conversion BellSouth will notify DPI that such conversion has been completed.
- 7. **Discontinuance of Service**
  - 7.1 The procedures for discontinuing service to an End User are as follows:
    - 7.1.1 BellSouth will deny service to DPI's End User on behalf of, and at the request of, DPI. Upon restoration of the End User's service, restoral charges will apply and will be the responsibility of DPI.
    - 7.1.2 At the request of DPI, BellSouth will disconnect a DPI End User customer.
    - 7.1.3 All requests by DPI for denial or disconnection of an End User for nonpayment must be in writing.
    - 7.1.4 DPI will be made solely responsible for notifying the End User of the proposed disconnection of the service.
    - 7.1.5 BellSouth will continue to process calls made to the Annoyance Call Center and will advise DPI when it is determined that annoyance calls are originated from one of its End User's locations. BellSouth shall be indemnified, defended and held harmless by DPI and/or the End User against any claim, loss or damage arising from providing this information to DPI. It is the responsibility of DPI to take the corrective action necessary with its End Users who make annoying calls. (Failure to do so will result in BellSouth's disconnecting the End User's service.)

- 8. Operator Services (Operator Call Processing and Directory Assistance)**
- 8.1 Operator Call Processing provides: (1) operator handling for call completion (for example, collect, third number billing, and manual calling-card calls). (2) operator or automated assistance for billing after the end user has dialed the called number (for example, calling card calls); and (3) special services including but not limited to Busy Line Verification and Emergency Line Interrupt (ELI), Emergency Agency Call and Operator-assisted Directory Assistance.
- 8.1 Upon request for BellSouth Operator Call Processing, BellSouth shall:
- 8.1.1 Process 0+ and 0- dialed local calls
  - 8.1.3.2 Process 0+ and 0- intraLATA toll calls.
  - 8.1.4 Process calls that are billed to DPI end user's calling card that can be validated by BellSouth.
  - 8.1.5 Process person-to-person calls.
  - 8.1.6 Process collect calls.
  - 8.1.7 Provide the capability for callers to bill a third party and shall also process such calls.
  - 8.1.8 Process station-to-station calls.
  - 8.1.9 Process Busy Line Verify and Emergency Line Interrupt requests.
  - 8.1.10 Process emergency call trace originated by Public Safety Answering Points.
  - 8.1.11 Process operator-assisted directory assistance calls.
  - 8.1.12 Adhere to equal access requirements, providing DPI local end users the same IXC access that BellSouth provides its own operator service.
  - 8.1.13 Exercise at least the same level of fraud control in providing Operator Service to DPI that BellSouth provides for its own operator service.
  - 8.1.14 Perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-To-Third-Party calls.
  - 8.1.15 Direct customer account and other similar inquiries to the customer service center designated by DPI.
  - 8.1.16 Provide call records to DPI in accordance with ODUF standards.

- 8.1.17 The interface requirements shall conform to the interface specifications for the platform used to provide Operator Services as long as the interface conforms to industry standards.
- 8.2 Directory Assistance Service
- 8.2.1 Directory Assistance Service provides local and non-local end user telephone number listings with the option to complete the call at the caller's direction separate and distinct from local switching.
- 8.2.2 Directory Assistance Service shall provide up to two listing requests per call, if available and if requested by DPI's end user. BellSouth shall provide caller-optional directory assistance call completion service at rates set forth in BellSouth's General Subscriber Services Tariff to one of the provided listings.
- 8.3.1 Directory Assistance Service Updates
- 8.3.1 BellSouth shall update end user listings changes daily. These changes include:
- 8.3.2 New end user connections
- 8.3.3 End user disconnections
- 8.3.4 End user address changes
- 8.3.5 These updates shall also be provided for non-listed and non-published numbers for use in emergencies.
- 8.4 Branding for Operator Call Processing and Directory Assistance
- 8.4.1 BellSouth's branding feature provides a definable announcement to DPI end users using Directory Assistance (DA)/ Operator Call Processing (OCP) prior to placing such end users in queue or connecting them to an available operator or automated operator system. This feature allows DPI's name on whose behalf BellSouth is providing Directory Assistance and/or Operator Call Processing. Rates for the branding features are set forth in Exhibit E of this Attachment.
- 8.4.2 BellSouth offers three branding offering options to DPI when ordering BellSouth's Directory Assistance and Operator Call Processing: BellSouth Branding, Unbranding and Custom Branding.
- 8.4.3 Upon receipt of the branding order from DPI, the order is considered firm after ten (10) business days. Should DPI decide to cancel the order, written notification to DPI's BellSouth Account Executive is required. If DPI decides to cancel after ten (10) business days from receipt of the branding order, DPI shall pay all charges per the order.

- 8.4.4 Branding via Originating Line Number Screening (OLNS)
- 8.4.4.1 BellSouth Branding, Unbranding and Custom Branding are also available for Directory Assistance, Operator Call Processing or both via OLNS software. When utilizing this method of Unbranding or Custom Branding DPI shall not be required to purchase dedicated trunking.
- 8.4.4.2 BellSouth Branding is the default branding offering.
- 8.4.4.3 For BellSouth to provide Unbranding or Custom Branding via OLNS software for Operator Call Processing or for Directory Assistance DPI must have its Operating Company Number ("OCN(s)") and telephone numbers reside in BellSouth's LIDB; however, a BellSouth LIDB Storage Agreement is not required. To Implement Unbranding and Custom Branding via OLNS software, DPI must submit a manual order form which requires, among other things, DPI's OCN and a forecast for the traffic volume anticipated for each BellSouth TOPS during the peak busy hour. DPI shall provide updates to such forecast on a quarterly basis and at any time such forecasted traffic volumes are expected to change significantly. Upon DPI's purchase of Unbranding and Custom Branding using OLNS software for any particular TOPS, all DPI end users served by that TOFS will receive the Unbranded "no announcement" or the Custom Branded announcement.
- 8.4.4.4 Rates for Unbranding and Custom Branding via OLNS software for Directory Assistance and for Operator Call Processing are as set forth in Exhibit E of this Attachment. In addition to the charges for Unbranding and Custom Branding via OLNS software, DPI shall continue to pay BellSouth applicable labor and other charges for the use of BellSouth's Directory Assistance and Call Processing platforms as set forth in Exhibit E of this Attachment.
- 8.4.5 Selective Call Routing using Line Class Codes (SCR-LCC)
- 8.4.5.1 Where DPI resells BellSouth's services and utilizes an operator services provider other than BellSouth, BellSouth will route DPI's end user calls to that provider through Selective Call Routing.
- 8.4.5.2 Selective Call Routing using Line Class Codes (SCR-LCC) provides the capability for DPI to have its OCP/DA calls routed to BellSouth's OCP/DA platform for BellSouth provided Custom Branded or Unbranded OCP/DA or to its own or an alternate OCP/DA platform for Self-Branded OCP/DA. SCR-LCC is only available if line class code capacity is available in the requested BellSouth end office switches.
- 8.4.5.3 Custom Branding for Directory Assistance is not available for certain classes of service, including but not limited to Hotel/Motel services, WATS service and certain PBX services.

- 8.4.5.4 Where available, DPI specific and unique line class codes are programmed in each BellSouth end office switch where DPI intends to service end users with customized OCP/DA branding. The line class codes specifically identify DPI's end users so OCP/DA calls can be routed over the appropriate trunk group to the requested OCP/DA platform. Additional line class codes are required in each end office if the end office serves multiple NPAs (i.e., a unique LCC is required per NPA), and/or if the end office switch serves multiple rate areas and DPI intends to provide DPI-branded OCP/DA to its end users in these multiple rate areas.
- 8.4.5.5 BellSouth Branding is the default branding offering.
- 8.4.5.6 SCR-LCC supporting Custom Branding and Self Branding require DPI to order dedicated transport and trunking from each BellSouth end office identified by DPI, either to the BellSouth Traffic Operator Position System (TOPS) for Custom Branding or to the DPI Operator Service Provider for Self Branding. Separate trunk groups are required for Operator Services and for Directory Assistance. Rates for transport and trunks are set forth in applicable BellSouth Tariffs.
- 8.4.5.7 The rates for SCR-LCC are as set forth in Exhibit E of this Attachment. There is a nonrecurring charge for the establishment of each Line Class Code in each BellSouth central office.
- 8.4.5.8 Unbranded Directory Assistance and/or Operator Call Processing calls ride common trunk groups provisioned by BellSouth from those end offices identified by DPI to the BellSouth Tops. The calls are routed to "No Announcement."
- 8.4.6 Customized Branding includes charges for the recording of the branding announcement and the loading of the audio units in each TOPS Switch and Network Applications Vehicle (NAV) equipment for which DPI requires service.
- 8.4.6.1 Directory Assistance customized branding uses:
- 8.4.6.2 the recording of DPI
- 8.4.6.3 the loading of the recording in each switch.
- 8.4.6.4 Operator Call Processing customized branding uses:
- 8.4.6.5 the recording of DPI
- 8.4.6.6 the loading of the recording in each switch.
- 8.4.6.7 the loading on the Network Applications Vehicle (NAV). All NAV shelves within the region where the customer is offering service must be loaded.

- 9. Line Information Database (LIDB)**
- 9.1 BellSouth will store in its Line Information Database (LIDB) records relating to service only in the BellSouth region. The LIDB Storage Agreement is included in this Attachment as Exhibit B.
- 9.2 BellSouth will provide LIDB Storage upon written request to DPI's Account Manager stating a requested activation date.
- 10. RAO Hosting**
- 10.1 RAO Hosting is not required for resale in the BellSouth region.
- 11. Optional Daily Usage File (ODUF)**
- 11.1 The Optional Daily Usage File (ODUF) Agreement with terms and conditions is included in this Attachment as Exhibit C. Rates for ODUF are as set forth in Exhibit E of this Attachment.
- 11.2. BellSouth will provide ODUF service upon written request to its Account Manager stating a requested activation date.
- 12. Enhanced Optional Daily Usage File (EODUF)**
- 12.1 The Enhanced Optional Daily Usage File (EODUF) service Agreement with terms and conditions is included in this Attachment as Exhibit D. Rates for EODUF are as set forth in Exhibit E of this Attachment.
- 12.2 BellSouth will provide EODUF service upon written request to its Account Manager stating a requested activation date.

**EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE (Note 3)**

Type of Service	AL		FL		GA		KY		LA		MS		NC		SC		TN	
	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount	Resale	Discount
1 Grandfathered Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2 Promotions - > 90 Days (Note 2)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
3 Promotions - ≤ 90 Days (Note 2)	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
4 Lifeline/Link Up Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes								
5 911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6 N11 Services	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes
7 MemoryCall® Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
8 Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
9 Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
10 Non-Recur.Charges	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
11 End User Line Chg-Number Portability	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
12 Public Telephone Access Svc(PTAS)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
13 Inside Wire Maint Service Plan	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
<b>Applicable Notes:</b>																		
1.	Grandfathered services can be resold only to existing subscribers of the grandfathered service.																	
2.	Where available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by BellSouth directly.																	
3.	Some of BellSouth's local exchange and toll telecommunications services are not available in certain central offices and areas.																	

**LINE INFORMATION DATA BASE (LIDB)  
RESALE STORAGE AGREEMENT**

- I. Definitions (from Addendum)**
- A. Billing number - a number used by BellSouth for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.
  - B. Line number - a ten-digit number assigned by BellSouth that identifies a telephone line associated with a resold local exchange service.
  - C. Special billing number - a ten-digit number that identifies a billing account established by BellSouth in connection with a resold local exchange service.
  - D. Calling Card number - a billing number plus PIN number assigned by BellSouth.
  - E. PIN number - a four-digit security code assigned by BellSouth that is added to a billing number to compose a fourteen-digit calling card number.
  - F. Toll billing exception indicator - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by DPI.
  - G. Billed Number Screening - refers to the query service used to determine whether a toll billing exception indicator is present for a particular billing number.
  - H. Calling Card Validation - refers to the query service used to determine whether a particular calling card number exists as stated or otherwise provided by a caller.
  - I. Billing number information - information about billing number or Calling Card number as assigned by BellSouth and toll billing exception indicator provided to BellSouth by DPI.
  - J. Get-Data - refers to the query service used to determine, at a minimum, the Account Owner and/or Regional Accounting Office for a line number. This query service may be modified to provide additional information in the future.
  - K. Originating Line Number Screening ("OLNS") - refers to the query service used to determine the billing, screening and call handling indicators, station type and Account Owner provided to BellSouth by DPI for originating line numbers.
  - L. Account Owner - name of the local exchange telecommunications company that is providing dialtone on a subscriber line.

**II. General**

A. This Agreement sets forth the terms and conditions pursuant to which BellSouth agrees to store in its LIDB certain information at the request of DPI and pursuant to which BellSouth, its LIDB customers and DPI shall have access to such information. In addition, this Agreement sets forth the terms and conditions for DPI's provision of billing number information to BellSouth for inclusion in BellSouth's LIDB. DPI understands that BellSouth provides access to information in its LIDB to various telecommunications service providers pursuant to applicable tariffs and agrees that information stored at the request of DPI, pursuant to this Agreement, shall be available to those telecommunications service providers. The terms and conditions contained herein shall hereby be made a part of this Resale Agreement upon notice to DPI's account team and/or Local Contract Manager activate this LIDB Storage Agreement. The General Terms and Conditions of the Resale Agreement shall govern this LIDB Storage Agreement. The terms and conditions contained in the attached Addendum are hereby made a part of this LIDB Storage Agreement as if fully incorporated herein.

B. BellSouth will provide responses to on-line, call-by-call queries to billing number information for the following purposes:

1. Billed Number Screening

BellSouth is authorized to use the billing number information to determine whether DPI has identified the billing number as one that should not be billed for collect or third number calls.

2. Calling Card Validation

BellSouth is authorized to validate a 14-digit Calling Card number where the first 10 digits are a line number or special billing number assigned by BellSouth, and where the last four digits (PIN) are a security code assigned by BellSouth.

3. OLNS

BellSouth is authorized to provide originating line screening information for billing services restrictions, station type, call handling indicators, presubscribed interLATA and local carrier and account owner on the lines of DPI from which a call originates.

4. GetData

BellSouth is authorized to provide, at a minimum, the account owner and/or Regional Accounting Office information on the lines of DPI indicating the local

Attachment 1  
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Exhibit B

DPI in accordance with the tax provisions set forth in the General Terms and Conditions of this Agreement.

**Optional Daily Usage File**

1. Upon written request from DPI, BellSouth will provide the Optional Daily Usage File (ODUF) service to DPI pursuant to the terms and conditions set forth in this section.
2. DPI shall furnish all relevant information required by BellSouth for the provision of the ODUF.
3. The ODUF feed will contain billable messages that were carried over the BellSouth Network and processed in the BellSouth Billing System, but billed to a DPI customer.
4. Charges for ODUF will appear on DPI's monthly bills. The charges are as set forth in Exhibit E to this Attachment. ODUF charges are billed once a month for the previous month's usage. DPI will be billed at the ODUF rates that are in effect at the end of the previous month.
5. The ODUF feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
6. Messages that error in DPI's billing system will be the responsibility of DPI. If, however, DPI should encounter significant volumes of errored messages that prevent processing by DPI within its systems, BellSouth will work with DPI to determine the source of the errors and the appropriate resolution.
6. The following specifications shall apply to the ODUF feed.
  - 6.1 ODUF Message to be Transmitted
    - 6.1.1 *The following messages recorded by BellSouth will be transmitted to DPI:*
      - Message recording for per use/per activation type services (examples: Three Way Calling, Verify, Interrupt, Call Return, etc.)
      - Measured billable Local
      - Directory Assistance messages
      - IntraLATA Toll
  
      - WATS and 800 Service
      - N11

- Information Service Provider Messages
  - Operator Services Messages
  - Credit/Cancel Records
  - Usage for Voice Mail Message Service
- 6.1.2 Rated Incollects (originated in BellSouth and from other companies) can also be on ODUF. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.
- 6.1.3 BellSouth will perform duplicate record checks on records processed to ODUF. Any duplicate messages detected will be deleted and not sent to DPI.
- 6.1.4 In the event that DPI detects a duplicate on ODUF they receive from BellSouth, DPI will drop the duplicate message and will not return the duplicate to BellSouth).
- 6.2 ODUF Physical File Characteristics
- 6.2.1 The ODUF will be distributed to DPI via CONNECT:Direct or Secure File Transfer Protocol (FTP) or another mutually agreed medium. The ODUF feed will be a variable block format. The data on the ODUF feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.
- 6.2.2 Data circuits (private line or dial-up) will be required between BellSouth and DPI for the purpose of data transmission when utilizing CONNECT:Direct. Where a dedicated line is required, DPI will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. DPI will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit data will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to DPI. Additionally, all message toll charges associated with the use of the dial circuit by DPI will be the responsibility of DPI. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on DPI end for the purpose of data transmission will be the responsibility of DPI.
- 6.2.3 If DPI utilizes Secure File Transfer Protocol (FTP) for data file transmission, purchase of the Secure File Transfer Protocol (FTP) software will be the responsibility of DPI.

6.3 ODUF Packing Specifications

6.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

6.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to DPI which BellSouth RAO is sending the message. BellSouth and DPI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by DPI and resend the data as appropriate.

The data will be packed using ATIS EMI records.

6.4 ODUF Pack Rejection

6.4.1 DPI will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI Error Codes will be used. DPI will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to DPI by BellSouth.

6.5 ODUF Control Data

DPI will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate DPI received the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by DPI for reasons stated in the above section.

6.6 ODUF Testing

6.6.1 Upon request from DPI, BellSouth shall send test files to DPI for the ODUF. The Parties agree to review and discuss the file's content and/or format. For testing of usage results, BellSouth shall request that DPI set up a production (live) file. The live test may consist of DPI's employees making test calls for the types of services DPI requests on the ODUF. These test calls are logged by DPI, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within 30 calendar days from the date on which the initial test file was sent.

**Enhanced Optional Daily Usage File**

1. Upon written request from DPI, BellSouth will provide the Enhanced Optional Daily Usage File (EODUF) service to DPI pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
2. DPI shall furnish all relevant information required by BellSouth for the provision of the EODUF.
3. The EODUF will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.
4. Charges for delivery of the EODUF will appear on DPI's monthly bills. EODUF charges are billed at the EODUF rates that are in effect at the end of the previous month. The charges are as set forth in Exhibit E to this Attachment.
5. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
6. Messages that error in the billing system of DPI will be the responsibility of DPI. If, however, DPI should encounter significant volumes of errored messages that prevent processing by DPI within its systems, BellSouth will work with DPI to determine the source of the errors and the appropriate resolution.
7. The following specifications shall apply to the EODUF feed.
  - 7.1 Usage To Be Transmitted
    - 7.1.1 The following messages recorded by BellSouth will be transmitted to DPI:  
  
Customer usage data for flat rated local call originating from DPI's End User lines (1FB or 1FR). The EODUF record for flat rate messages will include:  
  
Date of Call  
  
From Number  
  
To Number  
  
Connect Time  
  
Conversation Time

Method of Recording

From RAO

Rate Class

Message Type

Billing Indicators

Bill to Number

- 7.1.2 BellSouth will perform duplicate record checks on EODUF records processed to O DUF. Any duplicate messages detected will be deleted and not sent to DPI.
- 7.1.3 In the event that DPI detects a duplicate on EODUF they receive from BellSouth, DPI will drop the duplicate message (DPI will not return the duplicate to BellSouth).
- 7.2 Physical File Characteristics
  - 7.2.1 The EODUF feed will be distributed to DPI via Connect: Direct, Secure File Transfer Protocol (FTP) or another mutually agreed medium. The EODUF messages will be intermingled among DPI's Optional Daily Usage File (ODUF) messages. The EODUF will be a variable block format. The data on the EODUF will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis Monday through Friday except holiday.
  - 7.2.2 Data circuits (private line or dial-up) may be required between BellSouth and DPI for the purpose of data transmission as set forth in Section 6.2.2 above.
  - 7.2.3 If DPI utilizes Secure File Transfer Protocol (FTP) for data file transmission, purchase of the Secure File Transfer Protocol (FTP) software will be the responsibility of DPI.
- 7.3 Packing Specifications
  - 7.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
  - 7.3.2 The OCN, From (RAO), and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to DPI which BellSouth RAO is sending the message. BellSouth and DPI will use the invoice sequencing to control data exchange.

CATEGORY	RATE ELEMENTS	Item# in	Zone	BCS	USOC	RATE(S)			Spec Order Submitted Manually per LSR	Spec Order Submitted Manually per LSR	Attachment: 1		Attachment: E				
						Nonrecurring Add'l	Disconnect Add'l	SOM/EC			SOM/AN	SOM/AN	SOM/AN	SOM/AN	SOM/AN		
																Rec	First
	APPLICABLE DISCOUNTS																
	Residence %							16.30									
	Business %							16.30									
	CSAs %																
	OPERATIONAL SUPPORT SYSTEMS (OSS) RATES																
	Electronic LSR																
	Manual LSR																
	SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)																
	Selective Routing Per Unique Line Class Code Per Request Per Switch																
	DIRECTORY ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLMS SOFTWARE																
	Recording of DA Custom Branded Announcement																
	Loading of DA Custom Branded Announcement per Switch per OCN																
	DIRECTORY ASSISTANCE UNBRANDING via OLMS SOFTWARE																
	Loading of DA per OCN (1 OCN per Order)																
	Loading of DA per Switch per OCN																
	OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLMS SOFTWARE																
	Recording of Custom Branded OA Announcement																
	Loading of Custom Branded OA Announcement per Switch/NAV per OCN																
	OPERATOR ASSISTANCE UNBRANDING via OLMS SOFTWARE																
	Loading of OA per OCN (Regional)																
	OPTIONAL DAILY USAGE FILE (ODUF)																
	ODUF: Recording, per message																
	ODUF: Message Processing, per message																
	ODUF: Message Processing, per Message Tags Provided																
	ODUF: Data Transmission (CONNECT), per message																
	ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)																
	EODUF: Message Processing, per message																

CATEGORY	RATE ELEMENTS	Intrm Zone	BCS	USOC	RATES(\$)		Nonrecurring Disconnctd Adjt	Svc Order Submitted Manually per LSR	Svc Order Submitted Manually per LSR	Assignment: 1		ESAM: E	
					Rat	Firt				Incremental Change Manual Svc Order vs. Electronic-1st			
APPLICABLE DISCOUNTS	Residence %												
	Business %												
	CSAs %												
OPERATIONAL SUPPORT SYSTEMS (OSS) RATES	Electronic LSR												
	Manual LSR												
SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)	Subactive Routing Per Unique Line Class Code Per Request Per Switch												
DIRECTORY ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLNS SOFTWARE	Recording of OA Custom Branded Announcement												
	Loading of OA Custom Branded Announcement per Switch per OCN												
DIRECTORY ASSISTANCE UNBRANDING via OLNS SOFTWARE	Loading of DA per OCN (1 OCN per Order)												
	Loading of DA per Switch per OCN												
OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLNS SOFTWARE	Recording of Custom Branded OA Announcement												
	Loading of Custom Branded OA Announcement per switch/NAV per OCN												
	Loading of OA Custom Branded Announcement per Switch per OCN												
OPERATOR ASSISTANCE UNBRANDING via OLNS SOFTWARE	Loading of OA per OCN (Regional)												
OPTIONAL DAILY USAGE FILE (ODUF)	ODUF: Recording, per message												
	ODUF: Message Processing, per message												
	ODUF: Data Transmission (CONNECT/DIRECT), per message												
ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)	EODUF: Message Processing, per message												



CATEGORY	RATE ELEMENTS	Inert PI	Zone	BCS	USOC	RATES(\$)		Nonrecursing Disconnect		Attachment: 1		Exhibit: E		
						Rec	First	Add'l	First	Add'l	Incremental Change - Manual Svc Order vs. Electronic- Add'l	Incremental Change - Manual Svc Order vs. Electronic- Add'l	Incremental Change - Manual Svc Order vs. Electronic- Disc 1st	Incremental Change - Manual Svc Order vs. Electronic- Disc Add'l
<b>APPLICABLE DISCOUNTS</b>														
	Residence %						16.75							
	Business %						15.54							
	CSAs %						15.54							
<b>OPERATIONAL SUPPORT SYSTEMS (OSS) RATES</b>														
	Electronic LSR													
	Manual LSR				SOMEI		3.50	3.50						
	SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)				SOMAN		19.99	19.99						
	Selective Routing Per Unique Line Class Code Per Request Per Switch							19.99						
	DIRECTORY ASSISTANCE CUSTOMER BRANDING ANNOUNCEMENT VIA OLDS SOFTWARE						93.53	93.53	15.59					
	Recording of DA Custom Branded Announcement						3,000.00	3,000.00						
	Loading of DA Custom Branded Announcement per Switch per OCN						1,170.00	1,170.00						
	Loading of DA per OCN (1 OCN per Order)						420.00	420.00						
	Loading of DA per Subst per OCN						18.00	18.00						
	OPERATOR ASSISTANCE CUSTOMER BRANDING ANNOUNCEMENT VIA OLDS SOFTWARE						7,000.00	7,000.00						
	Recording of Custom Branded OA Announcement						500.00	500.00						
	Loading of Custom Branded OA Announcement per shelf/NAV						1,170.00	1,170.00						
	Loading of OA Custom Branded Announcement per Switch per OCN						1,200.00	1,200.00						
	OPERATOR ASSISTANCE UNBRANDING VIA OLDS SOFTWARE													
	Loading of OA per OCN (Optional)													
	OPTIONAL DAILY USAGE FILE (ODUF)													
	ODUF: Recording per message						0.0000196							
	ODUF: Message Processing per message						0.002506							
	ODUF: Message Processing per Message File Provisioned						35.90							
	ODUF: Data Transmission (CARRIER PROTECT) per message						0.00010372							
	ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)													
	EODUF: Message Processing per message						0.235996							



CATEGORY	RATE ELEMENTS	Inlet	Zone	BCS	USOC	RATES(\$)		Nonrecurring		Nonrecurring Discontinued		Svc Order Submitted per LSR	Svc Order Submitted Manually per LOR	Attachment 1		Attachment E	
						Rate	Advt	Rate	Advt	Charge - Manual Svc Order vs. Electronic-Advt	Charge - Manual Svc Order vs. Electronic-Advt			Charge - Manual Svc Order vs. Electronic-Advt	Charge - Manual Svc Order vs. Electronic-Advt		
	APPLICABLE DISCOUNTS																
	Returned %						15.75										
	Business %						15.75										
	OPERATIONAL SUPPORT SYSTEMS (OSS) RATES																
	Electronic LSR																
	Manual LSR																
	SELECTIVE CALL ROUTING USING LINE CLARS CODES (SCR-LCC)																
	Selective Routing Per Unique Line Class Code Per Request Per Switch																
	DIRECTORY ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLNS SOFTWARE																
	Recording of OA Custom Branded Announcement																
	Loading of OA Custom Branded Announcement per Switch per OCN																
	DIRECTORY ASSISTANCE UNBRANDING via OLNS SOFTWARE																
	Loading of DA per OCN (1.00CN per Order)																
	Loading of DA per Switch per OCN																
	OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLNS SOFTWARE																
	Recording of Custom Branded OA Announcement																
	Loading of Custom Branded OA Announcement per Advt/NAV per OCN																
	Loading of OA Custom Branded Announcement per Switch per OCN																
	OPERATOR ASSISTANCE UNBRANDING via OLNS SOFTWARE																
	Loading of OA per OCN (Response)																
	CONFERENCE SERVICES																
	OPTIONAL DAILY USAGE FILE (DDUF)																
	DDUF: Recording per message																
	DDUF: Message Processing per message																
	DDUF: Back Message Processing per Message: Tone generated																
	DDUF: Back Message Processing (CORRECTION) per message																
	ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)																
	EODUF: Message Processing per message																





CATEGORY	RATE ELEMENTS	Initial m	Zone	BCS	USOC	Nonrecursing AdDT		Nonrecursing Disconnection AdDT		Svc Order Submittal Elec per LSR		Svc Order Submittal Manually per LSR		Attachment 1		Attachment E		
						Final	AdDT	Final	AdDT	SOME C	SOMAN	SOME C	SOMAN	Incremental Change - Manual Svc Order vs. Electronic- Disc AdDT	Incremental Change - Manual Svc Order vs. Electronic- Disc AdDT	Incremental Change - Manual Svc Order vs. Electronic- Disc AdDT	Incremental Change - Manual Svc Order vs. Electronic- Disc AdDT	
						Rec	Final	SOME C	SOMAN	SOME C	SOMAN	SOME C	SOMAN	SOME C	SOMAN	SOME C	SOMAN	
APPLICABLE DISCOUNTS																		
	Reference %																	
	Business %	16.00																
	CSA's %	16.00																
OPERATIONAL SUPPORT SYSTEMS (OSS) RATES																		
	Electronic LSR				SOME C													
	Manual LSR				SOMAN													
SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCLCC)																		
	Selective Routing Per Unique Line Class Code Per Request Per Switch																	
OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT VIA OLNS SOFTWARE																		
	Recording of OA Custom Branded Announcement																	
	Loading of OA Custom Branded Announcement per Switch per OCN																	
DIRECTORY ASSISTANCE UNBRANDING VIA OLNS SOFTWARE																		
	Loading of DA per OCN (1 OCN per Order)																	
	Loading of DA per Switch per OCN																	
OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT VIA OLNS SOFTWARE																		
	Recording of Custom Branded OA Announcement																	
	Loading of Custom Branded OA Announcement per Switch/NAV per OCN																	
	Loading of OA Custom Branded Announcement per Switch per OCN																	
OPERATOR ASSISTANCE UNBRANDING VIA OLNS SOFTWARE																		
	Loading of OA per OCN (Regional)																	
CONFERENCE SERVICES																		
	OPTIONAL DAILY USAGE FILE (ODUF)																	
	ODUF: Recording, per message																	
	ODUF: Message Processing, per message																	
	ODUF: Message Processing, per Message Type provisioned																	
	ODUF: Data Transmission (CONNECT/DIRECT), per message																	
	OPTIONAL DAILY USAGE FILE (ODUF)																	
	ODUF: Message Processing, per message																	

**Attachment 7**

**Billing**

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**Rates.....Exhibit A**

## BILLING

### 1. PAYMENT AND BILLING ARRANGEMENTS

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 Billing. BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information System (CRIS) depending on the particular service(s) provided to DPI under this Agreement. BellSouth will format all bills in Carrier Billing Output Specification (CBOS) Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format will change as necessary when standards are finalized by the applicable industry forum.
  - 1.1.1 For any service(s) BellSouth receives from DPI, DPI shall bill BellSouth in CBOS format.
  - 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.
  - 1.1.3 BellSouth will render bills each month on established bill days for each of DPI's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at a reasonable cost.
  - 1.1.4 BellSouth will bill DPI in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
    - 1.1.4.1 Charges for services will be calculated on an individual End User account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill DPI, and DPI will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees, unless otherwise ordered by a Commission.
  - 1.1.5 BellSouth will not perform billing and collection services for DPI as a result of the execution of this Agreement.
  - 1.1.6 In the event that this Agreement or an amendment to this Agreement effects a rate change to recurring rate elements that are billed in advance, BellSouth will make an adjustment to such recurring rates billed in advance at the previously effective rate. The adjustment shall reflect billing at the new rates from the Effective Date of the Agreement or amendment.

- 1.2 Establishing Accounts. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate regulatory agency, DPI will provide the appropriate BellSouth advisory team/local contract manager the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services, Collocation and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide telecommunications services, the appropriate Operating Company Numbers (OCN) for each state as assigned by the National Exchange Carriers Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), Blanket Letter of Authorization (LOA), Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, DPI may not order services under a new account established in accordance with this Section 1.2 until 30 days after all information specified in this Section 1.2 is received from DPI.
- 1.2.1 OCN. If DPI needs to change its OCN(s) under which it operates when DPI has already been conducting business utilizing those OCN(s), DPI shall bear all costs incurred by BellSouth to convert DPI to the new OCN(s). OCN conversion charges include all time required to make system updates to all of DPI's End User customer records and will be handled by the BFR/NBR process.
- 1.2.2 Payment Responsibility. Payment of all charges will be the responsibility of DPI. DPI shall make payment to BellSouth for all services billed. Payments made by DPI to BellSouth as payment on account will be credited to DPI's accounts receivable master account. BellSouth will not become involved in billing disputes that may arise between DPI and DPI's customer.
- 1.3 Payment Due. Payment for services provided is due on or before the next bill date in immediately available funds. Payment is considered to have been made when received by BellSouth.
- 1.4 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.6, below, shall apply.
- 1.5 Tax Exemption. Upon BellSouth's receipt of tax exemption certificate, the total amount billed to DPI will not include those taxes or fees from which DPI is exempt. DPI will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the End User of DPI.

- 1.6 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment charge shall be due to BellSouth. The late payment charge shall be the portion of the payment not received by the payment due date multiplied by a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, as appropriate. In addition to any applicable late payment charges, DPI may be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.
- 1.7 Discontinuing Service to DPI. The procedures for discontinuing service to DPI are as follows:
- 1.7.1 BellSouth reserves the right to suspend or terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by DPI of the rules and regulations of BellSouth's tariffs.
- 1.7.2 BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to DPI that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment of such amounts, and all other amounts not in dispute that become past due before refusal, incompleteness or suspension, is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, provide written notice to the person designated by DPI to receive notices of noncompliance that BellSouth may discontinue the provision of existing services to DPI if payment of such amounts, and all other amounts not in dispute that become past due before discontinuance, is not received by the thirtieth day following the date of the initial notice.
- 1.7.3 In the case of discontinuance of services, all billed charges, as well as applicable termination charges, shall become due.
- 1.7.4 Discontinuance of service on DPI's account will effect a discontinuance of service to DPI's End Users. BellSouth will reestablish service for DPI upon payment of all past due charges and the appropriate connection fee subject to BellSouth's normal application procedures. DPI is solely responsible for notifying the End User of the discontinuance of the service. If within fifteen (15) days after DPI's service has been discontinued and no arrangements to reestablish service have been made consistent with this subsection, DPI's service will be disconnected.

- 1.8 Deposit Policy. DPI shall complete the BellSouth Credit Profile and provide information to BellSouth regarding credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in BellSouth's sole discretion, some other form of security proposed by DPI. Any such security deposit shall in no way release DPI from its obligation to make complete and timely payments of its bill. DPI shall pay any applicable deposits prior to the inauguration of service. If, in the sole opinion of BellSouth, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the level of security deposit, BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC-1) security interest in DPI's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed two months' estimated billing. In the event DPI fails to remit to BellSouth any deposit requested pursuant to this Section, service to DPI may be terminated in accordance with the terms of Section 1.7 of this Attachment, and any security deposits will be applied to DPI's account(s). In the event DPI defaults on its account, service to DPI will be terminated in accordance with the terms of Section 1.7 above, and any security deposits will be applied to DPI's account.
- 1.9 Notices. Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, including notices relating to security deposits, disconnection of services for nonpayment of charges, and rejection of additional orders from DPI, shall be forwarded to the individual and/or address provided by DPI in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by DPI as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, upon written request from DPI to BellSouth's billing organization, the notice of discontinuance of services purchased by DPI under this Agreement provided for in Section 1.7.2 of this Attachment shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement.
- 1.10 Rates. Rates for Optional Daily Usage File (ODUF), Access Daily Usage File (ADUF), Enhanced Optional Daily Usage File (EODUF) and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in the applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. **BILLING DISPUTES**

- 2.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. DPI shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.
- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by written documentation, which clearly shows the basis for disputing charges. A billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other amounts owed by the billed Party until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.
- 2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge and interest, where applicable, shall be assessed. For bills rendered by either Party for payment, the late payment charge for both Parties shall be calculated based on the portion of the payment not received by the payment due date multiplied by the late factor as set forth in the following BellSouth tariffs: for services purchased from the General Subscribers Services Tariff for purposes of resale and for ports and non-designed loops, Section A2 of the General Subscriber Services Tariff; for services purchased from the Private Line Tariff for purposes of resale, Section B2 of the Private Line Service Tariff; and for designed network elements and other services and local interconnection charges, Section E2 of the Access Service Tariff. The Parties shall assess interest on previously assessed late payment charges only in a state where it has the authority pursuant to its tariffs.
- 3. RAO HOSTING**
- 3.1 RAO Hosting, Calling Card and Third Number Settlement System (CATS) and Non-Intercompany Settlement System (NICS) services provided to DPI by BellSouth will be in accordance with the methods and practices regularly applied

by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.

- 3.2 DPI shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.
- 3.3 Charges or credits, as applicable, will be applied by BellSouth to DPI on a monthly basis in arrears. Amounts due (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.
- 3.4 DPI must have its own unique hosted RAO code. Where BellSouth is the selected CMDS interfacing host, DPI must request that BellSouth establish a unique hosted RAO code for DPI. Such request shall be in writing to the BellSouth RAO Hosting coordinator and must be submitted at least eight (8) weeks prior to provision of services pursuant to this Section. Services shall commence on a date mutually agreed by the Parties.
- 3.5 BellSouth will receive messages from DPI that are to be processed by BellSouth, another LEC in the BellSouth region or a LEC outside the BellSouth region. DPI shall send all messages to BellSouth no later than sixty (60) days after the message date.
- 3.6 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from DPI.
- 3.7 All data received from DPI that is to be processed or billed by another LEC within the BellSouth region will be distributed to that LEC in accordance with the Agreement(s) in effect between BellSouth and the involved LEC.
- 3.8 All data received from DPI that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) in effect between BellSouth and its connecting contractor.
- 3.9 BellSouth will receive messages from the CMDS network that are destined to be processed by DPI and will forward them to DPI on a daily basis for processing.
- 3.10 Transmission of message data between BellSouth and DPI will be via CONNECT:Direct or Secure File Transfer Protocol (FTP).
  - 3.10.1 Data circuits (private line or dial-up) will be required between BellSouth and DPI for the purpose of data transmission when utilizing CONNECT:Direct. Where a dedicated line is required, DPI will be responsible for ordering the circuit and coordinating the installation with BellSouth. DPI is responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit data will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be

installed in the BellSouth data center by BellSouth and the associated charges assessed to DPI. Additionally, all message toll charges associated with the use of the dial circuit by DPI will be the responsibility of DPI. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on the DPI end for the purpose of data transmission will be the responsibility of DPI.

- 3.10.2 If DPI utilizes Secure File Transfer Protocol for data file transmission, purchase of the Secure File Transfer Protocol software will be the responsibility of DPI.
- 3.11 All messages and related data exchanged between BellSouth and DPI will be formatted for EMI formatted records and packed between appropriate EMI header and trailer records in accordance with accepted industry standards.
- 3.12 DPI will maintain recorded message detail necessary to recreate files provided to BellSouth for a period of three (3) calendar months beyond the related message dates.
- 3.13 Should it become necessary for DPI to send data to BellSouth more than sixty (60) days past the message date(s), DPI will notify BellSouth in advance of the transmission of the data. BellSouth will work with its connecting contractor and/or DPI, where necessary, to notify all affected LECs.
- 3.14 In the event that data to be exchanged between the two Parties should become lost or destroyed, the Party responsible for creating the data will make every effort to restore and retransmit such data. If the data cannot be retrieved, the Party responsible for losing or destroying the data will be liable to the other Party for any resulting lost revenue. Lost revenue may be a combination of revenues that could not be billed to the End Users and associated access revenues. Both Parties will work together to estimate the revenue amount based upon historical data through a method mutually agreed upon. The resulting estimated revenue loss will be paid by the responsible Party to the other Party within three (3) calendar months of the resolution of the amount owed, or as mutually agreed upon by the Parties.
- 3.15 Should an error be detected by the EMI format edits performed by BellSouth on data received from DPI, the entire pack containing the affected data will not be processed by BellSouth. BellSouth will notify DPI of the error. DPI will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, DPI will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.
- 3.16 In association with message distribution service, BellSouth will provide DPI with associated intercompany settlements reports (CATS and NICS) as appropriate.

- 3.17 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.
- 3.18 Intercompany Settlements Messages
- 3.18.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by DPI as a facilities based provider of local exchange telecommunications services outside the BellSouth region. Only traffic that originates in one Bell operating territory and bills in another Bell operating territory is included. Traffic that originates and bills within the same Bell operating territory will be settled on a local basis between DPI and the involved company(ies), unless that company is participating in NICS.
- 3.18.2 Both traffic that originates outside the BellSouth region by DPI and is billed within the BellSouth region, and traffic that originates within the BellSouth region and is billed outside the BellSouth region by DPI, is covered by CATS. Also covered is traffic that either is originated by or billed by DPI, involves a company other than DPI, qualifies for inclusion in the CATS settlement, and is not originated or billed within the BellSouth region (NICS).
- 3.18.3 Once DPI is operating within the BellSouth territory, revenues associated with calls originated and billed within the BellSouth region will be settled via NICS.
- 3.18.4 BellSouth will receive the monthly NICS reports from Telcordia on behalf of DPI. BellSouth will distribute copies of these reports to DPI on a monthly basis.
- 3.18.5 BellSouth will receive the monthly CATS reports from Telcordia on behalf of DPI. BellSouth will distribute copies of these reports to DPI on a monthly basis.
- 3.18.6 BellSouth will collect the revenue earned by DPI from the Bell operating company in whose territory the messages are billed via CATS, less a per message billing and collection fee of five cents (\$0.05), on behalf of DPI. BellSouth will remit the revenue billed by DPI to the Bell operating company in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), on behalf of DPI. These two amounts will be netted together by BellSouth and the resulting charge or credit issued to DPI via a monthly Carrier Access Billing System (CABS) miscellaneous bill.
- 3.18.7 BellSouth will collect the revenue earned by DPI within the BellSouth territory from another CLEC also within the BellSouth territory (NICS) where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of DPI. BellSouth will remit the revenue billed by DPI within the BellSouth region to the CLEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents

(\$0.05). These two amounts will be netted together by BellSouth and the resulting charge or credit issued to DPI via a monthly CABS miscellaneous bill.

3.18.8 BellSouth and DPI agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.

**4. OPTIONAL DAILY USAGE FILE**

4.1 Upon written request from DPI, BellSouth will provide the Optional Daily Usage File (ODUF) service to DPI pursuant to the terms and conditions set forth in this section.

4.2 DPI shall furnish all relevant information required by BellSouth for the provision of the ODUF.

4.3 The ODUF feed will contain billable messages that were carried over the BellSouth Network and processed in the BellSouth Billing System, but billed to a DPI customer.

4.4 Charges for the ODUF will appear on DPIs' monthly bills for the previous month's usage. The charges are as set forth in Exhibit A to this Attachment. DPI will be billed at the ODUF rates that are in effect at the end of the previous month.

4.5 The ODUF feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.

4.6 Messages that error in the billing system of DPI will be the responsibility of DPI. If, however, DPI should encounter significant volumes of errored messages that prevent processing by DPI within its systems, BellSouth will work with DPI to determine the source of the errors and the appropriate resolution.

4.7 The following specifications shall apply to the ODUF feed.

4.7.1 ODUF Messages to be Transmitted

4.7.1.1 The following messages recorded by BellSouth will be transmitted to DPI:

4.7.1.1.1 Message recording for per use/per activation type services (examples:

Three -Way Calling, Verify, Interrupt, Call Return, etc.)

4.7.1.1.2 Measured billable Local

4.7.1.1.3 Directory Assistance messages

4.7.1.1.4 IntraLATA Toll

4.7.1.1.5 WATS and 800 Service

- 4.7.1.1.6 N11
- 4.7.1.1.7 Information Service Provider Messages
- 4.7.1.1.8 Operator Services Messages
- 4.7.1.1.9 Operator Services Message Attempted Calls (Network Element only)
- 4.7.1.1.10 Credit/Cancel Records
- 4.7.1.1.11 Usage for Voice Mail Message Service
- 4.7.1.2 Rated Incollects (messages BellSouth receives from other revenue accounting offices) can also be on ODUF. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.
- 4.7.1.3 BellSouth will perform duplicate record checks on records processed to ODUF. Any duplicate messages detected will be deleted and not sent to DPI.
- 4.7.1.4 In the event that DPI detects a duplicate on ODUF they receive from BellSouth, DPI will drop the duplicate message and will not return the duplicate to BellSouth.
- 4.7.2 ODUF Physical File Characteristics
  - 4.7.2.1 ODUF will be distributed to DPI via CONNECT:Direct, Secure File Transfer Protocol (FTP) or another mutually agreed medium. The ODUF feed will be a variable block format. The data on the ODUF feed will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.
  - 4.7.2.2 Data circuits (private line or dial-up) will be required between BellSouth and DPI for the purpose of data transmission as set forth in Section 3.10.1 above.
  - 4.7.2.3 If DPI utilizes Secure File Transfer Protocol (FTP) for data file transmission, purchase of the Secure File Transfer Protocol (FTP) software will be the responsibility of DPI.
- 4.7.3 ODUF Packing Specifications
  - 4.7.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
  - 4.7.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to DPI which BellSouth RAO that is

sending the message. BellSouth and DPI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by DPI and resend the data as appropriate.

The data will be packed using ATIS EMI records.

4.7.4 ODUF Pack Rejection

4.7.4.1 DPI will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI error codes will be used. DPI will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to DPI by BellSouth.

4.7.5 ODUF Control Data

4.7.5.1 DPI will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate DPI's receipt of the pack and acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by DPI for reasons stated in the above section.

4.7.6 ODUF Testing

4.7.6.1 Upon request from DPI, BellSouth shall send ODUF test files to DPI. The Parties agree to review and discuss the ODUF content and/or format. For testing of usage results, BellSouth shall request that DPI set up a production (live) file. The live test may consist of DPI's employees making test calls for the types of services DPI requests on ODUF. These test calls are logged by DPI, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within 30 calendar days from the date on which the initial test file was sent.

5. ACCESS DAILY USAGE FILE

5.1 Upon written request from DPI, BellSouth will provide the Access Daily Usage File (ADUF) service to DPI pursuant to the terms and conditions set forth in this section.

5.2 DPI shall furnish all relevant information required by BellSouth for the provision of ADUF.

5.3 ADUF will contain access messages associated with a port that DPI has purchased from BellSouth

- 5.4 Charges for ADUF will appear on DPI's monthly bills for the previous month's usage. The charges are as set forth in Exhibit A to this Attachment. DPI will be billed at the ADUF rates that are in effect at the end of the previous month.
- 5.5 Messages that error in the billing system of DPI will be the responsibility of DPI. If, however, DPI should encounter significant volumes of errored messages that prevent processing by DPI within its systems, BellSouth will work with DPI to determine the source of the errors and the appropriate resolution.
- 5.6 ADUF Messages To Be Transmitted
  - 5.6.1 The following messages recorded by BellSouth will be transmitted to DPI:
    - 5.6.1.1 Recorded originating and terminating interstate and intrastate access records associated with a port.
    - 5.6.1.2 Recorded terminating access records for undetermined jurisdiction access records associated with a port.
  - 5.6.2 BellSouth will perform duplicate record checks on records processed to ADUF. Any duplicate messages detected will be dropped and not sent to DPI.
  - 5.6.3 In the event that DPI detects a duplicate on ADUF they receive from BellSouth, DPI will drop the duplicate message and will not return the duplicate to BellSouth.
  - 5.6.4 ADUF Physical File Characteristics
    - 5.6.4.1 ADUF will be distributed to DPI via CONNECT:Direct, Secure File Transfer Protocol (FTP) or another mutually agreed medium. The ADUF feed will be a fixed block format. The data on the ADUF feed will be in a non-compacted EMI format (210 byte). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one dataset per workday per OCN.
    - 5.6.4.2 Data circuits (private line or dial-up) will be required between BellSouth and DPI for the purpose of data transmission as set forth in Section 3.10.1 above.
    - 5.6.4.3 If DPI utilizes Secure File Transfer Protocol (FTP) for data file transmission, purchase of the Secure File Transfer Protocol (FTP) software will be the responsibility of DPI.
  - 5.6.5 ADUF Packing Specifications
    - 5.6.5.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.

- 5.6.5.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to DPI which BellSouth RAO is sending the message. BellSouth and DPI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by DPI and resend the data as appropriate.
- The data will be packed using ATIS EMI records.
- 5.6.6 ADUF Pack Rejection
- 5.6.6.1 DPI will notify BellSouth within one business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (i.e. out-of-balance condition on grand totals, invalid data populated). Standard ATIS EMI error codes will be used. DPI will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to DPI by BellSouth.
- 5.6.7 ADUF Control Data
- 5.6.7.1 DPI will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate DPI's receipt of the pack and acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by DPI for reasons stated in the above section.
- 5.6.8 ADUF Testing
- 5.6.8.1 Upon request from DPI, BellSouth shall send a test file of generic data to DPI via Connect:Direct or Text File via E-Mail. The Parties agree to review and discuss the test file's content and/or format.
- 6. ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)**
- 6.1 Upon written request from DPI, BellSouth will provide the Enhanced Optional Daily Usage File (EODUF) service to DPI pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
- 6.2 DPI shall furnish all relevant information required by BellSouth for the provision of the Enhanced Optional Daily Usage File.
- 6.3 The Enhanced Optional Daily Usage File (EODUF) will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.
- 6.4 Charges for delivery of the Enhanced Optional Daily Usage File will appear on DPI's monthly bills for the previous month's usage. The charges are as set forth in

Exhibit A to this Attachment. DPI will be billed at the EODUF rates that are in effect at the end of the previous month.

- 6.5 All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) EMI record format.
- 6.6 Messages that error in the billing system of DPI will be the responsibility of DPI. If, however, DPI should encounter significant volumes of errored messages that prevent processing by DPI within its systems, BellSouth will work with DPI to determine the source of the errors and the appropriate resolution.
- 6.7 The following specifications shall apply to the EODUF feed.
  - 6.7.1 Usage To Be Transmitted
    - 6.7.1.1 The following messages recorded by BellSouth will be transmitted to DPI:
      - 6.7.1.1.1 Customer usage data for flat rated local call originating from DPI's End User lines (1FB or 1FR). The EODUF record for flat rate messages will include:
        - 6.7.1.1.2 Date of Call
        - 6.7.1.1.3 From Number
        - 6.7.1.1.4 To Number
        - 6.7.1.1.5 Connect Time
        - 6.7.1.1.6 Conversation Time
        - 6.7.1.1.7 Method of Recording
        - 6.7.1.1.8 From RAO
        - 6.7.1.1.9 Rate Class
        - 6.7.1.1.10 Message Type
        - 6.7.1.1.11 Billing Indicators
        - 6.7.1.1.12 Bill to Number
      - 6.7.1.2 BellSouth will perform duplicate record checks on EODUF records processed to Optional Daily Usage File. Any duplicate messages detected will be deleted and not sent to DPI.

- 6.7.1.3 In the event that DPI detects a duplicate on Enhanced Optional Daily Usage File they receive from BellSouth, DPI will drop the duplicate message (DPI will not return the duplicate to BellSouth).
- 6.7.2 Physical File Characteristics
  - 6.7.2.1 The EODUF feed will be distributed to DPI over their existing Optional Daily Usage File (ODUF) feed. The EODUF messages will be intermingled among DPI's Optional Daily Usage File (ODUF) messages. The EODUF will be a variable block format (2476) with an LRECL of 2472. The data on the EODUF will be in a non-compacted EMI format (175 byte format plus modules). It will be created on a daily basis (Monday through Friday except holidays).
  - 6.7.2.2 Data circuits (private line or dial-up) may be required between BellSouth and DPI for the purpose of data transmission. Where a dedicated line is required, DPI will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. DPI will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to DPI. Additionally, all message toll charges associated with the use of the dial circuit by DPI will be the responsibility of DPI. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on DPI's end for the purpose of data transmission will be the responsibility of DPI.
- 6.7.3 Packing Specifications
  - 6.7.3.1 A pack will contain a minimum of one message record or a maximum of 99,999 message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of 99 packs and a minimum of one pack.
  - 6.7.3.2 The Operating Company Number (OCN), From Revenue Accounting Office (RAO), and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to DPI which BellSouth RAO is sending the message. BellSouth and DPI will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by DPI and resend the data as appropriate.
  - 6.7.3.3 The data will be packed using ATIS EMI records.



CATEGORY	RATE ELEMENTS	Interf in	Zone	BCS	USOC	RATES (\$)		Nonrecursing Disconnect		Attachment 7		Attachment 8			
						Rec	First	First	Advt	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
CONF/ADUUF/EODUUF/CADS - Florida															
CONF/ADUUF/EODUUF/CADS															
ACCESS DATA USAGE FILE (ADUUF)															
ADUUF: Message Processing, per message															
ADUUF: Data Transmission (CONNECT/DIRECT), per message															
OPTIONAL DATA USAGE FILE (ODUUF)															
ODUUF: Message Processing, per message															
ODUUF: Message Processing, per message															
ODUUF: Message Processing, per message															
ODUUF: Message Processing, per message															
ODUUF: Data Transmission (CONNECT/DIRECT), per message															
CENTRALIZED MESSAGE DISTRIBUTION SERVICE (CMDS)															
CMDS: Message Processing, per message															
CMDS: Data Transmission (CONNECT/DIRECT), per message															
ENHANCED OPTIONAL DATA USAGE FILE (EODUUF)															
EODUUF: Message Processing, per message															
EODUUF: Message Processing, per message															
EODUUF: Data Transmission (CONNECT/DIRECT), per message															
Notes: If no rate is identified in the contract, the rate for this specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.															



CATEGORY	RATE ELEMENTS	Intrnl Zone	SICS	USOC	RATES (\$)				Abschneit: 7				Exhibit A					
					Nonrecurring		Recurring		Incremental		Incremental		Incremental		Incremental			
					First	Adj1	First	Adj1	Chrgs - Manual Svc Order vs. Electronic-Adj1									
Rec	Adj1	First	Adj1	SOM/EC	SOM/AN	SOM/AN	SOM/AN	SOM/AN	SOM/AN	SOM/AN	SOM/AN	SOM/AN						
00UF/ADUF/00UF/CMD5	ACCESS DAILY USAGE FILE (ADUF) (ADUF: Message Processing, per message)																	
	ADUF: Data Transmission (CONNECT/DIRECT), per message																	
	OPTIONAL DAILY USAGE FILE (ODUF)																	
	ODUF: Recording, per message																	
	ODUF: Message Processing, per message																	
	ODUF: Message Processing, per Message: Taps processed																	
	CENTRALIZED MESSAGE DISTRIBUTION SERVICE (CMD5)																	
	CMD5: Data Transmission (CONNECT/DIRECT), per message																	
	CMD5: Message Processing, per message																	
	ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)																	
	EODUF: Message Processing, per message																	
	Notes: If no rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.																	

CATEGORY	RATE ELEMENTS	Inter- m	Zone	BCS	USOC	RATES (\$)		Nonrecurring Disconnected		SVC Order / Subsidized Manualy Elec per LSR		Attachment 7		Exhibit A		
						Nonrecurring		First	AGFT	SVC Order / Subsidized Manualy Elec per LSR	Incremental Change - Manual Svc Order vs. Electronic- Advt	Incremental Change - Manual Svc Order vs. Electronic- Advt	Incremental Change - Manual Svc Order vs. Electronic- Advt	Incremental Change - Manual Svc Order vs. Electronic- Advt	Incremental Change - Manual Svc Order vs. Electronic- Advt	Incremental Change - Manual Svc Order vs. Electronic- Advt
						Rec	AGFT	First	AGFT	SOMEK	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN	SOMAN
COAR/ADUF/EDUF/CMDS																
	ACCESS DAILY USAGE FILE (ADUF)															
	ADUF: Message Processing, per message															
	ADUF: Data Transmission (CONNECT/DIRECT), per message															
	OPTIONAL DAILY USAGE FILE (ODUF)															
	ODUF: Processing, per message															
	ODUF: Message Processing, per message															
	ODUF: Message Processing, per Message; Tags provisioned															
	ODUF: Data Transmission (CONNECT/DIRECT), per message															
	CENTRALIZED MESSAGE DISTRIBUTION SERVICE (CMDS)															
	CMDS: Message Processing, per message															
	CMDS: Data Transmission (CONNECT/DIRECT), per message															
	EMPOWERED OPTIONAL DAILY USAGE FILE (EODUF)															
	EODUF: Message Processing, per message															
	Notes: If the rate is identified in the contract, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.															







**AGREEMENT  
GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and dPi Teleconnect, LLC (DPI), a Delaware company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or DPI or both as a "Party" or "Parties."

**W I T N E S S E T H**

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, DPI is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, pursuant to Sections 251 and 252 of the Act; DPI wishes to purchase certain services from BellSouth; and

**WHEREAS**, the Parties wish to interconnect their facilities, exchange traffic, and perform Local Number Portability (LNP) pursuant to Sections 251 and 252 of the Act as set forth herein; and

**WHEREAS**, DPI wishes to purchase and BellSouth wishes to provide other services as described in this Agreement;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and DPI agree as follows:

**Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**Competitive Local Exchange Carrier (CLEC)** means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

**Effective Date** is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

**FCC** means the Federal Communications Commission.

**Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Telecommunications Service** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telecommunications Act of 1996 (Act)** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

**1 CLEC Certification**

- 1.1 DPI agrees to provide BellSouth in writing DPI's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval. Additionally, DPI shall provide to BellSouth an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.
- 1.2 To the extent DPI is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, DPI may not purchase services hereunder in that state. DPI will notify BellSouth in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, BellSouth will file this Agreement in that state, and DPI may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 7.
- 1.3 Should DPI's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided in that state

shall become due, or BellSouth may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. DPI shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

**2 Term of the Agreement**

- 2.1 The initial term of this Agreement shall be five (5) years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred eighty (180) days prior to the expiration of the initial term of this Agreement, the Parties shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.
- 2.3 If, within one hundred thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.
- 2.3.1 DPI may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then BellSouth may terminate this Agreement upon sixty (60) days notice to DPI. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to DPI pursuant to the rates, terms and conditions set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.

- 2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and BellSouth is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.
- 2.4 If, at any time during the term of this Agreement, BellSouth is unable to contact DPI pursuant to the Notices provision hereof or any other contact information provided by DPI under this Agreement, and there are no active services being provisioned under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to DPI pursuant to the Notices section hereof. Furthermore, if after eighteen (18) months following the Effective Date of this Agreement DPI has no active services pursuant to this Agreement, BellSouth may terminate this Agreement, without any liability to BellSouth, upon notification to DPI pursuant to the Notices section hereof.
- 2.5 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, DPI is solely responsible for notifying its customers of any discontinuance of service.

**3 Nondiscriminatory Access**

When DPI purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to others, including its customers. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to DPI shall be at least equal to that which BellSouth provides to itself and shall be the same for all Telecommunications carriers requesting access to that Network Element. The quality of the interconnection between the network of BellSouth and the network of DPI shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's customers and service quality as perceived by DPI.

- 4 Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for DPI, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to DPI customers. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for DPI customers for the same length of time it maintains such information for its own customers.
- 4.2 Subpoenas Directed to DPI. Where BellSouth is providing resold services to DPI, then DPI agrees that in those cases where DPI receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to DPI customers, and where DPI does not have the requested information, DPI will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with Section 4.1 above.
- 4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.
- 5 Liability and Indemnification**
- 5.1 DPI Liability. In the event that DPI consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using DPI's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of DPI under this Agreement.
- 5.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to DPI for any act or omission of another entity providing any services to DPI.
- 5.3 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to DPI pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to DPI pursuant to this Agreement.
- 5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum

extent permitted by Applicable Law, such Party shall not be liable to the customer or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

- 5.3.2 Neither BellSouth nor DPI shall be liable for damages to the other Party's terminal location, equipment or customer premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 5.3.4 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 5.4 Indemnification for Certain Claims. Except as otherwise set forth in this Agreement and except to the extent caused by the indemnified Party's gross negligence or willful misconduct, the Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by any third party (including, but not limited to, a customer of the Party receiving services) arising from the third party's use or reliance on and

arising from the Party receiving services use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

5.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

**6 Intellectual Property Rights and Indemnification**

6.1 No License. Except as expressly set forth in Section 6.2 below, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

- 6.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.
- 6.3 Intellectual Property Remedies
- 6.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 5 above.
- 6.3.2 Claim of Infringement
- 6.3.2.1 In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party, promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below, shall:
- 6.3.2.2 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
- 6.3.2.3 obtain a license sufficient to allow such use to continue.
- 6.3.2.4 In the event Sections 6.3.2.2 or 6.3.2.3 above are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.
- 6.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or

equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

6.3.4 **Exclusive Remedy.** The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

6.3.5 **Dispute Resolution.** Any claim arising under Sections 6.1 and 6.2 above shall be excluded from the dispute resolution procedures set forth in Section 8 below and shall be brought in a court of competent jurisdiction.

## 7 **Proprietary and Confidential Information**

7.1 **Proprietary and Confidential Information.** It may be necessary for BellSouth and DPI, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

7.2 **Use and Protection of Information.** Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees consultants, contractors and agents of Recipient or its Affiliates with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipients may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original. Information remains at all times the property of Discloser. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information)

will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such information has been returned or destroyed.

7.3 Exceptions

7.3.1 Recipient will not have an obligation to protect any portion of the Information which:

7.3.2 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

7.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. § 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

**8 Resolution of Disputes**

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

- 9           **Taxes**
- 9.1           Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor, excluding any taxes levied on income.
- 9.2           Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party
- 9.2.1           Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 9.2.2           Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 9.3           Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party
- 9.3.1           Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 9.3.2           To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 9.3.3           If the purchasing Party determines that in its opinion any such taxes or fees are not applicable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be applicable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

- 9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party
- 9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 9.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application of or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party.

The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

- 9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.5 Additional Provisions Applicable to All Taxes and Fees
- 9.5.1 In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.
- 9.5.2 Notwithstanding any provision of this Agreement to the contrary, any administrative, judicial, or other proceeding concerning the application or amount of a tax or fee shall be maintained in accordance with the provisions of this Section and any applicable federal, state or local law governing the resolution of such disputed tax or fee; and under no circumstances shall either Party have the right to

bring a dispute related to the application or amount of a tax or fee before a regulatory authority.

**10 Force Majeure**

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by DPI, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

**11 Adoption of Agreements**

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to DPI any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

**12 Modification of Agreement**

12.1 If DPI changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of DPI to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, DPI shall provide BellSouth with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), BellSouth's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

12.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of DPI or BellSouth to perform any material terms of this Agreement, DPI or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

13 **Legal Rights**

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

14 **Indivisibility**

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement as set forth in Attachment 4. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

15 **Severability**

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

16 **Non-Waivers**

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such

provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**17 Governing Law**

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

**18 Assignments and Transfers**

18.1 Any assignment by either Party to any entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. The assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that DPI is entitled to provide Telecommunications Service. After BellSouth's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, DPI shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) DPI pays all bills, past due and current, under this Agreement, or (2) DPI's assignee expressly assumes liability for payment of such bills.

18.2 In the event that DPI desires to transfer any services hereunder to another provider of Telecommunications Service, or DPI desires to assume hereunder any services provisioned by BellSouth to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

**19 Notices**

19.1 Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

**BellSouth Telecommunications, Inc.**

BellSouth Local Contract Manager  
600 North 19<sup>th</sup> Street, 10<sup>th</sup> floor  
Birmingham, AL 35203

and

Business Markets Attorney  
Suite 4300  
675 West Peachtree Street  
Atlanta, GA 30375

**dPi Teleconnect, LLC**

**Brian Bolinger**  
2997 LBJ Freeway  
Suite 225  
Dallas, TX 75234  
(972) 488-5500 EX 4018  
brian.bolinger@dpiteleconnect.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 19.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.
- 19.3 Notwithstanding the above, BellSouth will post to BellSouth's Interconnection Web site changes to business processes and policies and shall post to BellSouth's Interconnection Web site or submit through applicable electronic systems, other service and business related notices not requiring an amendment to this Agreement.
- 20 Rule of Construction**  
No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.
- 21 Headings of No Force or Effect**  
The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**22 Multiple Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**23 Filing of Agreement**

This Agreement, and any amendments hereto, shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, or as otherwise required by the state and the Parties shall share equally in any applicable fees. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as DPI is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

**24 Compliance with Law**

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. This Agreement also contains certain provisions that were negotiated without regard to the Parties' obligations as set forth Section 251 of the Act. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

**25 Necessary Approvals**

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

**26 Good Faith Performance**

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**27 Rates**

27.1 DPI shall pay the charges set forth in this Agreement. In the event that BellSouth is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, BellSouth reserves the right to back bill DPI for such rate or for the difference between the

rate actually billed and the rate that should have been billed pursuant to this Agreement; provided, however, that subject to DPI's agreement to the limitation regarding billing disputes as described in Section 2.2 of Attachment 7 hereof, BellSouth shall not back bill any amounts for services rendered more than twelve (12) months prior to the date that the charges or additional charges for such services are actually billed. Notwithstanding the foregoing, both Parties recognize that situations may exist which could necessitate back billing beyond twelve (12) months. These exceptions are:

- Charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner;
- Charges incorrectly billed due to erroneous information supplied by the non-billing Party;
- Charges for which a regulatory body has granted, or a regulatory change permits, the billing Party the authority to back bill.

- 27.2 To the extent a rate element is omitted or no rate is established, BellSouth has the right not to provision such service until the Agreement is amended to include such rate.
- 27.3 To the extent DPI requests services not included in this Agreement, such services shall be provisioned pursuant to the rates, terms and conditions set forth in the applicable tariffs or a separately negotiated Agreement, unless the Parties agree to amend this Agreement to include such service prospectively.
- 28 Rate True-Up**
- 28.1 This section applies to rates that are expressly subject to true-up.
- 28.2 The rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final and effective order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any discrepancy between the records or disagreement between the Parties regarding the amount of such true-up, the dispute shall be subject to the dispute resolution process set forth in this Agreement.
- 28.3 A final and effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the

Commission and shall be binding upon BellSouth and DPI specifically or upon all carriers generally, such as a generic cost proceeding.

**29 Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**30 Entire Agreement**

30.1 This Agreement means the General Terms and Conditions, the Attachments hereto and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and DPI acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

30.2 Any reference throughout this Agreement to a tariff, industry guideline, BellSouth's technical guideline or reference, BellSouth business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at BellSouth's Interconnection Web site at: [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com). References to state tariffs throughout this Agreement shall be to the tariff for the state in which the services were provisioned; provided, however, that in any state where certain BellSouth services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which BellSouth provides such services as a result of detariffing or deregulation.

**Attachment 1**

**Resale**

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## RESALE

### 1. Discount Rates

- 1.1 The discounts rates applied to dPi's purchases of BellSouth Telecommunications Services for the purpose of resale shall be as set forth in Exhibit D. Such discounts have been determined by the applicable Commission to reflect the costs avoided by BellSouth when selling a service for wholesale purposes.
- 1.2 The Telecommunications Services available for purchase by dPi for the purposes of resale to dPi's customers shall be available at BellSouth's tariffed rates less the discount reflected in Exhibit D and subject to the exclusions and limitations in Exhibit A.

### 2. Definition of Terms

For purposes of this Attachment only, the following terms shall have the definitions as set forth below:

- 2.1 Customer of Record means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as nonrecurring, monthly recurring, toll, directory assistance, etc.
- 2.2 End User Customer Location means the physical location of the premises where a customer makes use of the Telecommunications Services.
- 2.3 New Services means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.
- 2.4 Resale means an activity wherein a certificated CLEC, such as dPi, subscribes to the retail Telecommunications Services of BellSouth and then offers those retail Telecommunications Services to the public.

### 3. General Provisions

- 3.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail Telecommunications Services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to dPi for resale those Telecommunications Services BellSouth makes available, pursuant to its General Subscriber Services Tariff (GSST) and Private Line Services Tariff, to customers who are not Telecommunications carriers.
  - 3.1.1 When dPi provides Resale service in a cross boundary area (customer is physically located in a particular state and is served by a central office in an adjoining state) the rates, regulations and discounts for the state in which the serving central office is located will apply. Billing will be from the state in which the customer is located.
- 3.2 dPi as a reseller of Lifeline and Link-Up Services hereby certifies that it has and

will comply with the FCC requirements governing the Lifeline and Link-Up programs as set forth in 47 C.F.R. § 54.417(a) and (b). This includes the requirements set forth in BellSouth's GSST, Sections A3.31 and A4.7.

- 3.2.1 dPi shall maintain records to document FCC or applicable state eligibility and verification records to document compliance governing the Lifeline/Link-Up programs for the three (3) full preceding calendar years, and dPi shall provide such documentation to the FCC or its Administrator upon request.
- 3.2.2 In Tennessee, if dPi does not resell Lifeline service to any end users, and if dPi agrees to order an appropriate Operator Services/Directory Assistance block as set forth in BellSouth's GSST, the discount shall be twenty-one point fifty-six percent (21.56%).
  - 3.2.2.1 In the event dPi resells Lifeline service to any end user in Tennessee, BellSouth will begin applying the sixteen percent (16%) discount rate to all services. Upon dPi and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate OCN is established for billing of Lifeline service end users, the discount shall be applied as set forth in Section 3.2.2 above for the non-Lifeline affected Master Account (Q-account).
  - 3.2.2.2 dPi must provide written notification to BellSouth within thirty (30) days prior to either providing its own operator services/directory services or ordering the appropriate operator services/directory assistance blocking, to qualify for the higher discount rate of twenty-one point fifty-six percent (21.56%).
- 3.3 dPi may purchase resale services from BellSouth for its own use in operating its business. The resale discount will apply to those services under the following conditions:
  - 3.3.1 dPi must resell services to other end users.
  - 3.3.2 dPi cannot be a CLEC for the single purpose of selling to itself.
  - 3.3.3 dPi will be the Customer of Record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and receive payment from dPi for said services.
- 3.4 dPi will be BellSouth's single point of contact for all services purchased pursuant to this Agreement. BellSouth shall have no contact with the customer except to the extent provided for herein.
- 3.5 BellSouth will continue to bill the customer for any services that the customer specifies it wishes to receive directly from BellSouth. BellSouth maintains the right to serve directly any customer within the service area of dPi. BellSouth will continue to market directly its own Telecommunications products and services and in doing so may establish independent relationships with customers of dPi. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
  - 3.5.1 BellSouth will accept a request from another CLEC for conversion of the customer's service from dPi to such other CLEC. Upon completion of the conversion BellSouth will notify dPi that such conversion has been completed.

- 3.5.2 When a customer of dPi or BellSouth elects to change his/her carrier to the other Party, both Parties agree to release the customer's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the customer's requested service as set forth in the BellSouth Product and Services Interval Guide.
- 3.5.3 BellSouth and dPi will refrain from contacting a customer who has placed or whose selected carrier has placed on the customer's behalf an order to change the customer's service provider from BellSouth or dPi to the other Party until such time that the order for service has been completed.
- 3.6 Current telephone numbers may normally be retained by the customer and are assigned to the service furnished. However, neither Party nor the customer has a property right to the telephone number or any other call number designation associated with services furnished by BellSouth, and no right to the continuance of service through any particular central office. BellSouth reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BellSouth deems it necessary to do so in the conduct of its business and in accordance with BellSouth practices and procedures on a nondiscriminatory basis.
- 3.7 Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- 3.8 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- 3.9 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.
- 3.10 If dPi or its customers utilize a BellSouth resold Telecommunications Service in a manner other than that for which the service was originally intended as described in BellSouth's retail tariffs dPi has the responsibility to notify BellSouth. BellSouth will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.
- 3.11 Facilities and/or equipment utilized by BellSouth to provide service to dPi remain the property of BellSouth.
- 3.12 Service Ordering and Operations Support Systems (OSS)
- 3.12.1 dPi must order services through resale interfaces, i.e., the Local Carrier Service Center (LCSC) and/or appropriate Complex Resale Support Group (CRSG) pursuant to this Agreement. dPi may submit a Local Service Request (LSR) electronically as set forth in Attachment 6. Service orders will be in a standard format designated by BellSouth.
- 3.12.2 BellSouth messaging services set forth in BellSouth's Messaging Service Re-Seller Information Package shall be made available for resale without the wholesale discount.
- 3.13 BellSouth's Inside Wire Maintenance Service Plan is available for resale at rates, terms and conditions as set forth by BellSouth and without the wholesale

discount.

- 3.14 In the event dPi acquires a customer whose service is provided pursuant to a BellSouth Special Assembly, BellSouth shall make available to dPi that Special Assembly at the wholesale discount at dPi's option. dPi shall be responsible for all terms and conditions of such Special Assembly including but not limited to termination liability if applicable.
- 3.15 BellSouth shall provide 911/E911 for dPi customers in the same manner that it is provided to BellSouth customers. BellSouth shall provide and validate dPi customer information to the Public Safety Answering Point (PSAP). BellSouth shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the dPi customer information in the Automatic Location Identification/Data Management System (ALI/DMS) databases used to support 911/E911 services.
- 3.16 Pursuant to 47 C.F.R. § 51.617, BellSouth shall bill to dPi, and dPi shall pay, the End User Common Line (EUCL) charges identical to the EUCL charges BellSouth bills its customers.
- 4 BellSouth's Provision of Services to dPi**
- 4.1 Resale of BellSouth services shall be as follows:
  - 4.1.1 The resale of Telecommunications Services shall be limited to users and uses conforming to the class of service restrictions.
  - 4.1.2 Hotel and Hospital PBX services are the only Telecommunications Services available for resale to Hotel/Motel and Hospital customers, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Payphone Service Provider (PSP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's GSST Section A23, Shared Tenant Service Section in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
  - 4.1.3 BellSouth reserves the right to periodically audit services purchased by dPi to establish authenticity of use. Such audit shall not occur more than once in a calendar year. dPi shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit. Any information provided by dPi for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions.
- 4.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in BellSouth's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual customer of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features (e.g., a usage allowance per month) shall not be aggregated across multiple resold services.
- 4.3 If dPi cancels an order for resold services, any costs incurred by BellSouth in

conjunction with provisioning of such order will be recovered in accordance with BellSouth's GSST and Private Line Services Tariffs.

- 4.4 Service Jointly Provisioned with an Independent Company or CLEC
- 4.4.1 BellSouth will in some instances provision resold services in accordance with BellSouth's GSST and Private Line Tariffs jointly with an Independent Company (ICO) or other CLEC.
- 4.4.2 When dPi assumes responsibility for such service, all terms and conditions defined in the Tariff will apply for services provided within the BellSouth service area only.
- 4.4.3 Service terminating in an ICO or other CLEC area will be provisioned and billed by the ICO or other CLEC directly to dPi.
- 4.4.4 dPi must establish a billing arrangement with the ICO or other CLEC prior to assuming a customer account where such circumstances apply.
- 4.4.5 Specific guidelines regarding such services are available on the BellSouth Interconnection Web site.
- 5. **Maintenance of Services**
- 5.1 Services resold pursuant to this Attachment and BellSouth's GSST and Private Line Service Tariff and facilities and equipment provided by BellSouth shall be maintained by BellSouth.
- 5.2 dPi or its customers may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth except with the written consent of BellSouth.
- 5.3 dPi accepts responsibility to notify BellSouth of situations that arise that may result in a service problem.
- 5.4 dPi will contact the appropriate repair centers in accordance with procedures established by BellSouth.
- 5.5 For all repair requests, dPi shall adhere to BellSouth's prescreening guidelines prior to referring the trouble to BellSouth.
- 5.6 BellSouth reserves the right to contact dPi's customers, if deemed necessary, for maintenance purposes.
- 6. **Discontinuance of Service**
- 6.1 The procedures for discontinuing service to a customer are as follows:
  - 6.1.1 BellSouth will deny service to dPi's customer on behalf of, and at the request of, dPi. Upon restoration of the customer's service, restoral charges will apply and will be the responsibility of dPi.
  - 6.1.2 At the request of dPi, BellSouth will disconnect a dPi customer.
  - 6.1.3 All requests by dPi for denial or disconnection of a customer for nonpayment must be in writing.

- 6.1.4 dPi will be made solely responsible for notifying the customer of the proposed disconnection of the service.
- 6.1.5 BellSouth will continue to process calls made to the Annoyance Call Center and will advise dPi when it is determined that annoyance calls are originated from one of its customer's locations. BellSouth shall be indemnified, defended and held harmless by dPi and/or the customer against any claim, loss or damage arising from providing this information to dPi. It is the responsibility of dPi to take the corrective action necessary with its customer who make annoying calls. (Failure to do so will result in BellSouth's disconnecting the customer's service.)
7. **White Pages Listings**
- 7.1 BellSouth shall provide dPi and its end users access to white pages directory listings under the following terms:
- 7.1.1 Listings. dPi shall provide all new, changed and deleted listings on a timely basis and BellSouth or its agent will include dPi residential and business customer listings in the appropriate White Pages (residential and business) or alphabetical directories in the geographic areas covered by this Agreement. Directory listings will make no distinction between dPi and BellSouth customers. dPi shall provide listing information in accordance with the procedures set forth in The BellSouth Business Rules for Local Ordering found at BellSouth's Interconnection Services Web site.
- 7.1.2 Unlisted/Non-Published Customers. dPi will be required to provide to BellSouth the names, addresses and telephone numbers of all dPi customers who wish to be omitted from directories. Unlisted/Non-Published listings will be subject to the rates as set forth in BellSouth's GSST and shall not be subject to the wholesale discount.
- 7.1.3 Inclusion of dPi Customers in Directory Assistance Database. BellSouth will include and maintain dPi customer listings in BellSouth's Directory Assistance databases. dPi shall provide such Directory Assistance listings to BellSouth at no charge.
- 7.1.4 Listing Information Confidentiality. BellSouth will afford dPi's directory listing information the same level of confidentiality that BellSouth affords its own directory listing information.
- 7.1.5 Additional and Designer Listings. Additional and designer listings will be offered by BellSouth at tariffed rates as set forth in BellSouth's GSST and shall not be subject to the wholesale discount.
- 7.1.6 Rates. So long as dPi provides listing information to BellSouth as set forth in Section 7.1.2 above, BellSouth shall provide to dPi one (1) basic White Pages directory listing per dPi customer at no charge other than the manual service order charge or the electronic service order charge, as appropriate, as described in Attachment 6.
- 7.2 Directories. BellSouth or its agent shall make available White Pages directories to dPi customer at no charge or as specified in a separate agreement between dPi

and BellSouth's agent.

- 7.3 Procedures for submitting dPi Subscriber Listing Information (SLI) are found in The BellSouth Business Rules for Local Ordering found at BellSouth's Interconnection Services Web site.
- 7.3.1 dPi authorizes BellSouth to release all dPi SLI provided to BellSouth by dPi to qualifying third parties pursuant to either a license agreement or BellSouth's Directory Publishers Database Service (DPDS) in BellSouth's GSST. Such dPi SLI shall be intermingled with BellSouth's own customer listings and listings of any other CLEC that has authorized a similar release of SLI.
- 7.3.2 No compensation shall be paid to dPi for BellSouth's receipt of dPi's SLI, or for the subsequent release to third parties of such SLI. In addition, to the extent BellSouth incurs costs to modify its systems to enable the release of dPi's SLI, or costs on an ongoing basis to administer the release of dPi's SLI, dPi shall pay to BellSouth its proportionate share of the reasonable costs associated therewith. At any time that costs may be incurred to administer the release of dPi's SLI, dPi will be notified. If dPi does not wish to pay its proportionate share of these reasonable costs, dPi may instruct BellSouth that it does not wish to release its SLI to independent publishers, and dPi shall amend this Agreement accordingly. dPi will be liable for all costs incurred until the effective date of the amendment.
- 7.3.3 Neither BellSouth nor any agent shall be liable for the content or accuracy of any SLI provided by dPi under this Agreement. dPi shall indemnify, except to the extent caused by BellSouth's gross negligence or willful misconduct, hold harmless and defend BellSouth and its agents from and against any damages, losses, liabilities, demands, claims, suits, judgments, costs and expenses (including but not limited to reasonable attorneys' fees and expenses) arising from BellSouth's Tariff obligations or otherwise and resulting from or arising out of any third party's claim of inaccurate dPi listings or use of the SLI provided pursuant to this Agreement. BellSouth may forward to dPi any complaints received by BellSouth relating to the accuracy or quality of dPi listings.
- 7.3.4 Listings and subsequent updates will be released consistent with BellSouth system changes and/or update scheduling requirements.
- 8. Operator Services (Operator Call Processing and Directory Assistance)**
- 8.1 Operator Call Processing (OCP) provides: (1) operator handling for call completion (for example, collect, third number billing, and manual calling-card calls); (2) operator or automated assistance for billing after the customer has dialed the called number (for example, calling card calls); and (3) special services including but not limited to Busy Line Verification and Emergency Line Interrupt (ELI), Emergency Agency Call and operator-assisted Directory Assistance (DA).
- 8.2 Upon request for BellSouth OCP, BellSouth shall:
- 8.2.1 Process 0+ and 0- dialed local calls.
- 8.2.2 Process 0+ and 0- intraLATA toll calls.
- 8.2.3 Process calls that are billed to dPi customer's calling card that can be validated by

BellSouth.

- 8.2.4 Process person-to-person calls.
- 8.2.5 Process collect calls.
- 8.2.6 Provide the capability for callers to bill a third party and shall also process such calls.
- 8.2.7 Process station-to-station calls.
- 8.2.8 Process Busy Line Verify and ELI requests.
- 8.2.9 Process emergency call trace originated by PSAP.
- 8.2.10 Process operator-assisted DA calls.
- 8.2.11 Adhere to equal access requirements, providing dPi local customer the same IXC access that BellSouth provides its own operator service (OS).
- 8.2.12 Exercise at least the same level of fraud control in providing OS to dPi that BellSouth provides for its own OS.
- 8.2.13 Perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-To-Third-Party calls.
- 8.2.14 Direct customer account and other similar inquiries to the customer service center designated by dPi.
- 8.3 Upon dPi's request BellSouth shall provide call records to dPi in accordance with Optional Daily Usage File (ODUF) standards.
- 8.4 The interface requirements shall conform to the interface specifications for the platform used to provide OS as long as the interface conforms to industry standards.
- 8.5 DA Service
- 8.5.1 DA Service provides local and non-local customer telephone number listings with the option to complete the call at the caller's direction separate and distinct from local switching.
- 8.5.2 DA Service shall provide up to two (2) listing requests per call, if available and if requested by dPi's customer. BellSouth shall provide caller-optional DA call completion service at rates set forth in BellSouth's GSST to one of the provided listings.
- 8.6 DA Service Updates. BellSouth shall update customer listings changes daily. These changes include:
  - 8.6.1 New customer connections;
  - 8.6.2 Customer disconnections;
  - 8.6.3 Customer address changes; and
  - 8.6.4 Non-listed and non-published numbers for use in emergencies.

- 9. Branding for Wholesale OCP and DA**
- 9.1 BellSouth's branding feature provides a definable announcement to dPi's customers using BellSouth's DA/OCP prior to placing such customers in queue or connecting them to an available operator or automated operator system. This feature allows dPi to have its calls custom branded with dPi's name on whose behalf BellSouth is providing DA and/or OCP. Rates for the branding features are set forth in Exhibit D.
- 9.2 BellSouth offers three (3) branding options to dPi when ordering BellSouth's DA and OCP: BellSouth Branding, Unbranding and Custom Branding.
- 9.3 dPi's order for Custom Branding is considered firm ten (10) business days after BellSouth's receipt of the order. dPi may cancel its order more than ten (10) business days after BellSouth's receipt of the order. dPi shall notify BellSouth in writing and shall pay all charges per the order. For branding and unbranding via Originating Line Number Screening (OLNS), dPi must contact its Local Contract Manager to initiate the order via the OLNS Branding Order form.
- 9.4 Branding via OLNS
- 9.4.1 BellSouth Branding, Unbranding and Custom Branding are also available for DA, OCP or both via OLNS software. When utilizing this method of Unbranding or Custom Branding, dPi shall not be required to purchase dedicated trunking.
- 9.4.2 BellSouth Branding is the default branding offering.
- 9.4.3 For BellSouth to provide Unbranding or Custom Branding via OLNS software for OCP or for DA, dPi must have its OCN(s) and telephone numbers reside in BellSouth's Line Information Database (LIDB). To implement Unbranding and Custom Branding via OLNS software, dPi must submit a manual order form which requires, among other things, dPi's OCN and a forecast, pursuant to the appropriate BellSouth form provided, for the traffic volume anticipated for each BellSouth Traffic Operator Position System (TOPS) during the peak busy hour. dPi shall provide updates to such forecast on a quarterly basis and at any time such forecasted traffic volumes are expected to change significantly. Upon dPi's purchase of Unbranding or Custom Branding using OLNS software for any particular TOPS, all dPi customers served by that TOPS will receive the Unbranded "no announcement" or the Custom Branded announcement.
- 10. LIDB**
- 10.1 BellSouth LIDB stores current information on working telephone numbers and billing account numbers.
- 10.2 Where dPi is purchasing Resale services BellSouth shall utilize BellSouth's service order generated from dPi LSR's to populate LIDB with dPi's customer information. BellSouth provides access to information in its LIDB, including dPi customer information, to its LIDB customers via queries to LIDB.
- 10.2.1 When necessary for fraud control measures, BellSouth may perform additions, updates and deletions of dPi data to the LIDB (e.g., calling card deactivation).

- 10.2.2 *dPi will not be charged a fee for LIDB storage services provided by BellSouth to dPi pursuant to this Attachment.*
- 10.3 **Responsibilities of the Parties**
- 10.3.1 **BellSouth will administer the data provided by dPi pursuant to this Agreement in the same manner as BellSouth administers its own data.**
- 10.3.2 **dPi is responsible for completeness and accuracy of the data being provided to BellSouth.**
- 10.3.3 **BellSouth shall not be responsible to dPi for any lost revenue which may result from BellSouth's administration of the LIDB pursuant to its established practices and procedures as they exist and as they may be changed by BellSouth in its sole discretion from time to time.**
- 11. Revenue Accounting Office (RAO) Hosting**
- 11.2 **RAO Hosting is not required for resale in the BellSouth region.**
- 12. Optional Daily Usage File (ODUF)**
- 12.1 **The ODUF Agreement with terms and conditions is included in this Attachment as Exhibit B. Rates for ODUF are as set forth in Exhibit D.**
- 12.2 **BellSouth will provide ODUF service upon written request.**
- 13. Enhanced Optional Daily Usage File (EODUF)**
- 13.1 **The EODUF service Agreement with terms and conditions is included in this Attachment as Exhibit C. Rates for EODUF are as set forth in Exhibit D.**
- 13.2 **BellSouth will provide EODUF service upon written request.**

**EXCLUSIONS AND LIMITATIONS ON SERVICES AVAILABLE FOR RESALE (Note 4)**

Type of Service	AL		FL		GA		KY		LA		MS		NC		SC		TN	
	Resale	Discount																
1 Grandfathered Services (Note 1)	Yes	Yes																
2 Promotions - > 90 Days (Note 2 & 3)	Yes	Yes																
3 Promotions - < 90 Days (Note 2 & 3)	No	No																
4 Lifeline/Link Up Services	Yes	Yes																
5 911/E911 Services	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6 N11 Services (Note 1)	Yes	Yes	Yes	Yes	Yes	Yes	No	No										
7 MemoryCall <sup>SM</sup> Service	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No
8 Mobile Services	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No
9 Federal Subscriber Line Charges	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No
10 Nonrecurring Charges	Yes	Yes	Yes	No														
11 EUCL Charge	Yes	No																
12 Public Telephone Access Svc(PTAS)	Yes	Yes																
13 Inside Wire Maint Service Plan	Yes	No																

**Applicable Notes:**  
 1. Grandfathered services can be resold only to existing subscribers of the grandfathered service.  
 2. Where available for resale, promotions will be made available only to customers who would have qualified for the promotion had it been provided by BellSouth directly.  
 3. Promotions shall be available only for the term set forth in the applicable tariff.  
 4. Promotions shall be available only for the term set forth in the applicable tariff.  
 5. Some of BellSouth's local exchange and toll Telecommunications Services are not available in certain central offices and areas.

Optional Daily Usage File

1. Upon written request from dPi, BellSouth will provide the ODUF service to dPi pursuant to the terms and conditions set forth in this section.
2. dPi shall furnish all relevant information required by BellSouth for the provision of the ODUF.
3. The ODUF feed provides dPi messages that were carried over the BellSouth network and processed by BellSouth for dPi.
4. Charges for ODUF will appear on dPi's monthly bills for the previous month's usage in arrears. The charges are as set forth in Exhibit D.
5. The ODUF feed will contain both rated and unrated messages. All messages will be in the standard Alliance for Telecommunications Industry Solutions (ATIS) Exchange Message Interface (EMI) record format.
6. ODUF Specifications
  - 6.1 ODUF Message to be Transmitted
    - 6.1.1 The following messages recorded by BellSouth will be transmitted to dPi:
      - 6.1.1.1 Message recording for per use/per activation type services (examples: Three Way Calling, Verify, Interrupt, Call Return, etc.);
      - 6.1.1.2 Measured local calls;
      - 6.1.1.3 Directory Assistance messages;
      - 6.1.1.4 IntraLATA Toll;
      - 6.1.1.5 WATS and 800 Service;
      - 6.1.1.6 N11;
      - 6.1.1.7 Information Service Provider Messages;
      - 6.1.1.8 OS Messages;
      - 6.1.1.9 OS Message Attempted Calls;
      - 6.1.1.10 Credit/Cancel Records; and
      - 6.1.1.11 Usage for Voice Mail Message Service.
    - 6.1.2 Rated Incollects (messages BellSouth receives from other revenue accounting offices) appear on ODUF. Rated Incollects will be intermingled with BellSouth recorded rated and unrated usage. Rated Incollects will not be packed separately.
    - 6.1.3 BellSouth will perform duplicate record checks on records processed to ODUF. Any duplicate messages detected will be deleted and not sent to dPi.
    - 6.1.4 In the event that dPi detects a duplicate on ODUF they receive from BellSouth, dPi will drop the duplicate message and will not return the duplicate to BellSouth.
  - 6.2 ODUF Physical File Characteristics

- 6.2.1 ODUF will be distributed to dPi via Secure File Transfer Protocol (FTP). The ODUF feed will be a variable block format. The data on the ODUF feed will be in a non-compacted EMI format (one hundred seventy-five (175) byte format plus modules). It will be created on a daily basis Monday through Friday except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. There will be a maximum of one (1) dataset per workday per OCN. If BellSouth determines the Secure FTP Mailbox is nearing capacity levels, BellSouth may move the customer to CONNECT:Direct file delivery.
- 6.2.2 If the customer is moved, CONNECT:Direct data circuits (private line or dial-up) will be required between BellSouth and dPi for the purpose of data transmission. Where a dedicated line is required, dPi will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. dPi will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit messages successfully on an ongoing basis will be negotiated on an individual case basis. Any costs incurred for such equipment will be dPi's responsibility. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to dPi. Additionally, all message toll charges associated with the use of the dial circuit by dPi will be the responsibility of dPi. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on dPi's end for the purpose of data transmission will be the responsibility of dPi.
- 6.2.3 If dPi utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of dPi.
- 6.3 ODUF Packing Specifications
- 6.3.1 The data will be packed using ATIS EMI records. A pack will contain a minimum of one (1) message record or a maximum of ninety-nine thousand nine hundred and ninety-nine (99,999) message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of ninety-nine (99) packs and a minimum of one (1) pack.
- 6.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to dPi which BellSouth RAO is sending the message. BellSouth and dPi will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by dPi and resend the data as appropriate.
- 6.4 ODUF Pack Rejection
- 6.4.1 dPi will notify BellSouth within one (1) business day of rejected packs (via the mutually agreed medium). Packs could be rejected because of pack sequencing discrepancies or a critical edit failure on the Pack Header or Pack Trailer records (e.g., out-of-balance condition on grand totals, invalid data populated). Standard

ATIS EMI error codes will be used. dPi will not be required to return the actual rejected data to BellSouth. Rejected packs will be corrected and retransmitted to dPi by BellSouth.

6.5 ODUF Control Data

6.5.1 dPi will send one confirmation record per pack that is received from BellSouth. This confirmation record will indicate dPi's receipt of the pack and the acceptance or rejection of the pack. Pack Status Code(s) will be populated using standard ATIS EMI error codes for packs that were rejected by dPi for reasons stated in the above section.

6.6 ODUF Testing

6.6.1 Upon request from dPi, BellSouth shall send ODUF test files to dPi. The Parties agree to review and discuss the ODUF file content and/or format. For testing of usage results, BellSouth shall request that dPi set up a production (live) file. The live test may consist of dPi's employees making test calls for the types of services dPi requests on ODUF. These test calls are logged by dPi, and the logs are provided to BellSouth. These logs will be used to verify the files. Testing will be completed within thirty (30) days from the date on which the initial test file was sent.

**Enhanced Optional Daily Usage File**

1. Upon written request from dPi, BellSouth will provide the EODUF service to dPi pursuant to the terms and conditions set forth in this section. EODUF will only be sent to existing ODUF subscribers who request the EODUF option.
2. dPi shall furnish all relevant information required by BellSouth for the provision of the EODUF.
3. The EODUF will provide usage data for local calls originating from resold Flat Rate Business and Residential Lines.
4. Charges for EODUF will appear on dPi's monthly bills for the previous month's usage in arrears. The charges are as set forth in Exhibit D.
5. All messages will be in the standard ATIS EMI record format.
6. Messages that error in the billing system of dPi will be the responsibility of dPi. If, however, dPi should encounter significant volumes of errored messages that prevent processing by dPi within its systems, BellSouth will work with dPi to determine the source of the errors and the appropriate resolution.
7. **EODUF Specifications**
  - 7.1 **EODUF Usage To Be Transmitted**
    - 7.1.1 The following messages recorded by BellSouth will be transmitted to dPi:
      - 7.1.1.1 Customer usage data for flat rated local calls originating from dPi's customer lines (1FB or 1FR). The EODUF record for flat rate messages will include:
        - 7.1.1.1.1 Date of Call
        - 7.1.1.1.2 From Number
        - 7.1.1.1.3 To Number
        - 7.1.1.1.4 Connect Time
        - 7.1.1.1.5 Conversation Time
        - 7.1.1.1.6 Method of Recording
        - 7.1.1.1.7 From RAO
        - 7.1.1.1.8 Rate Class
        - 7.1.1.1.9 Message Type
        - 7.1.1.1.10 Billing Indicators
        - 7.1.1.1.11 Bill to Number
    - 7.1.2 BellSouth will perform duplicate record checks on EODUF records processed to ODUF. Any duplicate messages detected will be deleted and not sent to dPi.

- 7.1.3 In the event that dPi detects a duplicate on EODUF they receive from BellSouth, dPi will drop the duplicate message and will not return the duplicate to BellSouth.
- 7.2 EODUF Physical File Characteristics
- 7.2.1 EODUF feed will be distributed to dPi via FTP. The EODUF messages will be intermingled among dPi's ODUF messages. The EODUF will be a variable block format. The data on the EODUF will be in a non-compacted EMI format (one hundred seventy-five (175) byte format plus modules). It will be created on a daily basis Monday through Friday except holiday. If BellSouth determines the Secure FTP mailbox is nearing capacity levels, BellSouth may move the customer to CONNECT:Direct file delivery.
- 7.2.2 Data circuits (private line or dial-up) may be required between BellSouth and dPi for the purpose of data transmission. Where a dedicated line is required, dPi will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. dPi will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to dPi. Additionally, all message toll charges associated with the use of the dial circuit by dPi will be the responsibility of dPi. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on dPi's end for the purpose of data transmission will be the responsibility of dPi.
- 7.2.3 If dPi utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of dPi.
- 7.3 EODUF Packing Specifications
- 7.3.1 The data will be packed using ATIS EMI records. A pack will contain a minimum of one (1) message record or a maximum of ninety-nine thousand nine hundred and ninety-nine (99,999) message records plus a pack header record and a pack trailer record. One transmission can contain a maximum of ninety-nine (99) packs and a minimum of one (1) pack.
- 7.3.2 The OCN, From RAO, and Invoice Number will control the invoice sequencing. The From RAO will be used to identify to dPi which BellSouth RAO is sending the message. BellSouth and dPi will use the invoice sequencing to control data exchange. BellSouth will be notified of sequence failures identified by dPi and resend the data as appropriate.









CATEGORY	RATE ELEMENTS	Market Zone	BCS	USOC	RATES(\$)		Nonrecurring Fee	Reconnecting Fee	Disconnect Fee	AIR-1 ELEC D		Incremental Change - Manual Svc Order vs. Electronic- Disc 1st	Incremental Change - Manual Svc Order vs. Electronic- Disc 1st
					Rec	Rate				SOMECD	SOMAN		
<b>RESALE DISCOUNTS &amp; RATES - Kentucky</b>													
	RESALE APPLICABLE DISCOUNTS												
	Residence %					16.70							
	Business %					15.54							
	CSAs %					15.54							
<b>OPERATIONS SUPPORT SYSTEMS (OSS) - REGIONAL RATES*</b>													
NOTE: (1) CLEC should contact its contract negotiator if it prefers the "state specific" OSS charges as ordered by the State Commissions. The OSS charges currently contained in this rate schedule are the "regional" service order-type charges. CLEC may select either the state specific Commission ordered rates for the services ordering charges, or CLEC may elect the regional service ordering charges. However, CLEC can not obtain a mixture of the two regardless if CLEC has a interconnection contract established in each of the 8 states.													
	OSS - Electronic Service Order Charge, Per Local Service Request (LSR) - Resale Only						3.50	0.00	3.50	0.00			
	OSS - Manual Service Order Charge, Per Local Service Request (LSR) - Resale Only						19.99	0.00	19.99	0.00			
<b>COURTEOUS SERVICES</b>													
<b>OPTIONAL DAILY USAGE FILE (ODUF)</b>													
	ODUF - Recording Fee (message)					0.0000136							
	ODUF - Message Processing Fee (message)					0.022506							
	ODUF - Message Processing Fee (message)					36.50							
	ODUF - Data Transmission (CONNECT/DIRECT) per message					0.00010372							
	ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)												
	EODUF - Message Processing Fee (message)					0.255989							
	SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)												
	Switching Routing Per Unique Line Class Code Per Request Per Switch						89.53	84.53	15.56	15.56			
	DIRECTORY ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLDS SOFTWARE						3,000.00	3,000.00					
	Loading of DA Custom Branded Announcement						1,170.00	1,170.00					
	Loading of DA Custom Branded Announcement per Switch per OCN												
	DIRECTORY ASSISTANCE UNBRANDING via OLDS SOFTWARE												
	Loading of DA per OCN (LOCN per Order)						420.00	420.00					
	Loading of DA per Switch per OCN						16.00	16.00					
	OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT via OLDS SOFTWARE						7,000.00	7,000.00					
	Loading of Custom Branded OA Announcement						500.00	500.00					
	Loading of Custom Branded OA Announcement per switch/nav per OCN												
	Loading of OA Custom Branded Announcement per Switch per OCN						1,170.00	1,170.00					
	OPERATOR ASSISTANCE UNBRANDING via OLDS SOFTWARE						1,200.00	1,200.00					
	Loading of OA per OCN (Loading)												

CATEGORY	RATE ELEMENTS	Market Zone	BCS	USOC	RATES(\$)		Nonrecycling Discount		SVC Order Submitted Elec per LSR		SVC Order Submitted Manually per LSR		Inc. Order Submitted Manually per LSR		Inc. Order Submitted Electronically per LSR		Inc. Order Submitted Electronically per LSR		
					First	Advt	First	Advt	First	Advt	First	Advt	First	Advt	First	Advt	First	Advt	First
RESALE DISCOUNTS & RATES - Louisiana																			
RESALE APPLICABLE DISCOUNTS																			
	Residence %																		
	Business %																		
	CS&A %																		
OPERATIONS SUPPORT SYSTEMS (OSS) - REGIONAL RATES:																			
NOTE: (1) CLEC should contact the contract administrator if it prefers the "basis specific" OSS charges as ordered by the State Commissions. The OSS charges currently contained in this rate exhibit are the "regional" service ordering charges. CLEC may elect either the same specific Commission ordered rates for the service ordering charges, or CLEC may elect the regional service ordering charges, however, CLEC can not obtain a mixture of the two approaches if CLEC has a transmission contract established in each of the 8 states.																			
	OSS - Electronic Service Order Charge, Per Local Service Request (LSR) - Results Only																		
	OSS - Manual Service Order Charge, Per Local Service Request (LSR) - Results Only																		
OPTIONAL DAILY USAGE SERVICES																			
	DDUF: Records, per message																		
	DDUF: Message Processing, per message																		
	DDUF: Message Processing, per Message Tap provided																		
	DDUF: Data Transmission (CONNECT/DIRECT), per message																		
ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)																			
	EODUF: Message Processing, per message																		
SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)																			
	Selective Routing Per Unique Line Class Code Per Request Per Switch																		
DIRECTORY ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT THE OLDS SOFTWARE																			
	Recording of CA Custom Branded Announcement																		
	Loading of CA Custom Branded Announcement per Switch per OCH																		
DIRECTORY ASSISTANCE UNBRANDING THE OLDS SOFTWARE																			
	Loading of DA per OCH (LOCH per Order)																		
	Loading of DA per Switch per OCH																		
OPERATOR ASSISTANCE CUSTOM BRANDING ANNOUNCEMENT THE OLDS SOFTWARE																			
	Recording of Custom Branded CA Announcement																		
	Loading of Custom Branded CA Announcement per Advt/ANV per OCH																		
	Loading of CA Custom Branded Announcement per Switch per OCH																		
OPERATOR ASSISTANCE UNBRANDING THE OLDS SOFTWARE																			
	Loading of CA per OCH (LOCH)																		







CATEGORY	RATE ELEMENTS	Interim Zone	B/C	USOC	RATES(\$)		Nonrecording Disconnect Fee		SVC Order Submitted Manually per LSR		Incremental Charge - Manual SVC Order vs. Electronic-Add'l		Incremental Charge - Manual SVC Order vs. Electronic-Dis. Add'l	
					Rec	ASPT	ASPT	ASPT	SOMAN	SOMAN	SOMAN	SOMAN		
RESALE DISCOUNTS & RATES - Test/Release														
RESALE APPLICABLE DISCOUNTS														
	Business %					16.00								
	CS&M %					16.00								
OPERATIONS SUPPORT SYSTEMS (OSS) - REGULAR RATES*														
NOTE: (1) CLEC should contact its contract regulator if it prefers its "sales specific" OSS charges as ordered by the state Commission. The OSS charges currently contained in this rate exhibit are the BellSouth "regional" service ordering charges. CLEC may elect either the state specific Commission ordered rates for the services ordering charges, or CLEC may elect the regional service ordering charges. However, CLEC can not obtain a mixture of the two approaches. If CLEC has a "reconnection" contract established in each of the 9 states.														
	OSS - Electronic Service Order Change, Per Local Service Request (LSR) - Resale Only			SOMEC		3.50	0.00	3.50	0.00					
	OSS - Manual Service Order Change, Per Local Service Request (LSR) - Resale Only			SOMAN		19.99	0.00	19.99	0.00					
OPTIONAL DAILY USAGE FILE (ODUF)														
	ODUF: Recording, per message					0.000044								
	ODUF: Message Processing, per message					0.000446								
	ODUF: Message Processing, per message, 1 line processed					36.54								
	ODUF: Message Processing, per message, 1 line processed (SOMAN)					0.0000389								
ENHANCED OPTIONAL DAILY USAGE FILE (EODUF)														
	EODUF: Message Processing, per message					0.229779								
SELECTIVE CALL ROUTING USING LINE CLASS CODES (SCR-LCC)														
	Selective Routing Per Unique Line Class Code Per Request Per Switch					179.60	179.60							
DIRECTORY ASSISTANCE CUSTOMER BRANDING ANNOUNCEMENT (DBA)														
	Recording of DA Custom Branded Announcement					3,000.00								
	Loading of DA Custom Branded Announcement per Switch per OCN					1,170.00								
DIRECTORY ASSISTANCE UNBRANDED (UNBRANDED) OLSR SOFTWARE														
	Loading of DA per OCN (1 OCN per Order)					420.00	420.00							
	Loading of DA per Switch per OCN					18.00	18.00							
OPERATOR ASSISTANCE CUSTOMER BRANDING ANNOUNCEMENT (OBA)														
	Recording of Custom Branded OBA Announcement					7,000.00	7,000.00							
	Loading of Custom Branded OBA Announcement per Switch per OCN					500.00	500.00							
OPERATOR ASSISTANCE UNBRANDED (UNBRANDED) OLSR SOFTWARE														
	Loading of OBA Custom Branded Announcement per Switch per OCN					1,170.00	1,170.00							
	Loading of OBA per OCN (Unbranded)					1,200.00	1,200.00							

**Attachment 7**

**Billing**

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## BILLING

### 1. Payment and Billing Arrangements

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to DPI under this Agreement. BellSouth will use its best efforts to format bills in CABS Billing Output Specification (CBOS) standard format. BellSouth's billing format may change in accordance with applicable industry standards; provided, however, that BellSouth may, in some instances, not apply CBOS standard format for certain types of billing for certain products and services. Billing in a format other than CBOS shall not be the basis of any DPI dispute or withholding of payment.
- 1.1.1 For any service(s) BellSouth receives from DPI, DPI shall bill BellSouth in CBOS format.
- 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.
- 1.1.3 BellSouth will render bills each month on established bill days for each of DPI's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in BellSouth's Non-Regulated Services Pricing List N6.
- 1.1.4 BellSouth will bill DPI in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
- 1.1.4.1 For resold services, charges for services will be calculated on an individual customer account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill DPI, and DPI will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, EUCL charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.
- 1.1.5 BellSouth will not perform billing and collection services for DPI as a result of the execution of this Agreement.
- 1.2 Establishing Accounts and Subsequent State Certifications. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, DPI will provide the appropriate BellSouth Local Contract Manager responsible for new CLEC

activation, the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide Telecommunications Services, the appropriate OCN for each state as assigned by the NECA, CIC, if applicable, ACNA, if applicable, BellSouth's blanket form LOA, Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, DPI may not order services under a new account and/or subsequent state certification, established in accordance with this Section until thirty (30) days after all information specified in this Section is received from DPI.

- 1.2.1 ACNAs. DPI shall provide BellSouth with documentation from Telcordia identifying the ACNA assigned to it by Telcordia (as applicable) in the same legal name as reflected in the preamble to this Agreement. Such ACNA will be used by DPI to order services pursuant to this Agreement and will not be shared by DPI with another entity.
- 1.2.2 Company Identifiers. If DPI needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when DPI has already been conducting business utilizing those Company Identifiers, DPI shall follow the Mergers and Acquisitions Process as described on BellSouth's Interconnection Web site, and shall be subject to separately negotiated rates, terms and conditions.
- 1.2.3 Tax Exemption. It is the responsibility of DPI to provide BellSouth with a properly completed tax exemption certificate in the current version of the form customarily used by BellSouth and at intervals required by the appropriate taxing authorities or reasonably requested by BellSouth. A tax exemption certificate must be supplied for each individual DPI entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to DPI will not include those taxes or fees from which DPI is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and DPI shall pay all applicable taxes and fees. In the event that DPI believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to BellSouth's receipt of a properly completed exemption certificate, BellSouth shall assign to DPI its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by BellSouth, BellSouth shall, after receiving a written request from DPI and at DPI's sole expense, pursue such refund claim on behalf of DPI, provided that DPI promptly reimburses BellSouth for any costs and expenses incurred by BellSouth in pursuing such refund claim; and, provided further, that BellSouth shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to DPI or to deduct any such outstanding costs and expenses from any amounts owed by BellSouth to DPI if no refund is

obtained. DPI shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by DPI to its customers.

- 1.3 **Deposit Policy.** Prior to the inauguration of service or, thereafter, upon BellSouth's request, DPI shall complete the BellSouth Credit Profile (BellSouth form) and provide information to BellSouth regarding DPI's credit and financial condition. Based on BellSouth's analysis of the BellSouth Credit Profile and other relevant information regarding DPI's credit and financial condition, BellSouth reserves the right to require DPI to provide BellSouth with a suitable form of security deposit for DPI's account(s). If, in BellSouth's sole discretion, circumstances so warrant and/or DPI's gross monthly billing has increased by **20%**, BellSouth reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in DPI's "accounts receivables and proceeds".
- 1.3.1 Security deposit shall take the form of cash, an irrevocable letter of credit (BellSouth form), surety bond (BellSouth form) or, in BellSouth's sole discretion, some other form of security proposed by DPI and accepted by BellSouth. Any such security deposit shall in no way release DPI from its obligation to make complete and timely payments of its bill(s). If BellSouth requires DPI to provide a security deposit, DPI shall provide such security deposit prior to the inauguration of service or within **thirty (30)** days of BellSouth's request, as applicable. Security deposit request notices will be sent to DPI via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in BellSouth's GSST.
- 1.3.2 Security deposits collected under this Section shall not exceed two (2) months' estimated billing for services pursuant to this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if DPI has received service from BellSouth during such period at a level comparable to that anticipated to occur over the next six (6) months. If either DPI or BellSouth has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, DPI and BellSouth shall agree on a level of estimated billings based on all relevant information.
- 1.3.3 In the event DPI fails to provide BellSouth with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to DPI may be Suspended, Discontinued or Terminated in accordance with the terms of Section 1.5 below. Upon Termination of services, BellSouth shall apply any security deposit to DPI's

final bill for its account(s). If no bill is rendered to DPI, BellSouth shall, nevertheless, apply any security deposit to DPI's outstanding balance.

- 1.3.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by DPI as security under this Agreement, DPI shall renew such letter of credit or provide BellSouth with evidence that DPI has obtained a suitable replacement for the letter of credit. If DPI fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to draw down the full amount of such letter of credit and utilize the cash proceeds as security for DPI account(s). If DPI provides a security deposit or additional security deposit in the form of a surety bond as required herein, DPI shall renew the surety bond or provide BellSouth with evidence that DPI has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If DPI fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for DPI's account(s). If the credit rating of any bonding company that has provided DPI with a surety bond provided as security hereunder has fallen below B, BellSouth will provide written notice to DPI that DPI must provide a replacement bond or other suitable security within fifteen (15) days of BellSouth's written notice. If DPI fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for DPI's account(s). Notwithstanding anything contained in this Agreement to the contrary, BellSouth shall be authorized, in its sole discretion, to draw down the full amount of any letter of credit or take action on any surety bond provided by DPI as security hereunder if DPI defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein and apply the cash proceeds to any outstanding balance on DPI's accounts and utilize any remaining cash proceeds as security for DPI's account(s).
- 1.4 Payment Responsibility. Payment of all charges will be the responsibility of DPI. DPI shall pay invoices by check or by utilizing wire transfer services or automatic clearing house services. DPI shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between DPI and DPI's customer.
- 1.4.1 Payment Due. Payment for services provided by BellSouth, not including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify BellSouth of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by BellSouth. If the Remittance Information is not received with payment, BellSouth will be unable to apply amounts paid to DPI's accounts. In such event, BellSouth shall hold such funds until the Remittance Information is received. If BellSouth

does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.

- 1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.
- 1.4.1.2 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth above, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment and/or interest charge shall be due to BellSouth. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of BellSouth's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the BellSouth intrastate Access Services Tariff, or pursuant to the applicable state law as determined by BellSouth. In addition to any applicable late payment and/or interest charges, DPI may be charged a fee for all returned checks at the rate set forth in Section A2 of BellSouth's GSST or pursuant to the applicable state law.
- 1.5 Discontinuing Service to DPI. The procedures for discontinuing service to DPI are as follows:
- 1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:
- 1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.
- 1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's customers.
- 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.
- 1.5.2 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by DPI of the rules and regulations of BellSouth's tariffs.

- 1.5.3 Suspension. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or thirty (30) days from the date of a deposit request in the case of security deposits, BellSouth will provide written notice to DPI that services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above, or in the case of a security deposit request, in the manner set forth in Section 1.3.1 above: (1) within seven (7) days following such notice for CABS billed services; (2) within fifteen (15) days following such notice for CRIS and IBS billed services; and (3) within seven (7) days following such notice for security deposit requests.
- 1.5.3.1 The Suspension notice shall also provide that all past due charges for CRIS and IBS billed services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CRIS and IBS billed services.
- 1.5.3.2 For CABS billed services, BellSouth will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS billed Services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed services. This Discontinuance notice may be provided at the same time that BellSouth provides the Suspension notice.
- 1.5.4 Discontinuance. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, BellSouth will provide written notice that BellSouth may Discontinue the provision of existing services to DPI if payment of such amounts, and all other amounts that become past due before Discontinuance, including requested security deposits, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above or in the case of a deposit in accordance with Section 1.3.1 above, within thirty (30) days following such written notice; provided, however, that BellSouth may provide written notice that such existing services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.4.1 below.
- 1.5.4.1 BellSouth may take the action to Discontinue the provision of existing service upon fifteen (15) days from the day after BellSouth provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b) DPI has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:
- (1) BellSouth has sent the subject bill(s) to DPI within seven (7) business days of the bill date(s), verifiable by records maintained by BellSouth;

- i. in paper or CDROM form via the United States Postal Service (USPS),  
or
- ii. in magnetic tape form via overnight delivery, or
- iii. via electronic transmission; or

(2) BellSouth has sent the subject bill(s) to DPI, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

- 1.5.4.2 In the case of Discontinuance of services, all billed charges, as well as applicable disconnect charges, shall become due.
- 1.5.4.3 DPI is solely responsible for notifying the customer of the Discontinuance of service. If, within seven (7) days after DPI's services have been Discontinued, DPI pays, by wire transfer, automatic clearing house or cashier's check, all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of BellSouth's GSST, then BellSouth will reestablish service for DPI.
- 1.5.5 Termination. If within seven (7) days after DPI's service has been Discontinued and DPI has failed to pay all past due charges as described above, then DPI's service will be Terminated.

## 2. Billing Disputes

- 2.1 DPI shall electronically submit all billing disputes to BellSouth using the form specified by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within eight (8) business days of BellSouth's denial, or partial denial, of the billing dispute, if DPI is not satisfied with BellSouth's resolution of the billing dispute or if no response to the billing dispute has been received by DPI by such sixtieth (60<sup>th</sup>) day, DPI must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute shall pursue dispute resolution in accordance with General Terms and Conditions.
- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 above of a specific amount of money actually billed by BellSouth within twelve (12) months of the submission of such dispute. DPI agrees to not submit billing disputes for amounts billed more than twelve (12) months prior to submission of a billing dispute filed for amounts billed. The billing dispute must be clearly explained by DPI and supported by written documentation, which clearly shows the basis for disputing charges. Disputes that are not clearly explained or those that do not provide complete information may be rejected by

BellSouth. Claims by DPI for damages of any kind will not be considered a billing dispute for purposes of this Section. If BellSouth resolves the billing dispute, in whole or in part, in favor of DPI, any credits and interest due to DPI as a result thereof shall be applied to DPI's account by BellSouth upon resolution of the billing dispute.

**3. Non-InterCompany Settlements**

- 3.1 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the Centralized Message Distribution System (CMDS) Data Center (Direct Participant) and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center.
- 3.2 The Non-InterCompany Settlements (NICS) is the national system administered by Telcordia that is used in the settlement of revenues for calls that are originated and billed by two (2) different local exchange carriers (LEC) within a single Direct Participant's territory to another for billing. NICS applies to calls involving another LEC where the Earning Company and the Billing Company are located within BellSouth's territory.
- 3.3 In association with message distribution service, BellSouth will provide DPI with associated intercompany settlements reports as appropriate.
- 3.4 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.
- 3.5 Intercompany Settlements Messages
- 3.5.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by DPI as a facilities based provider of local exchange Telecommunications Services.
- 3.5.2 BellSouth will receive the monthly NICS reports from Telcordia on behalf of DPI and will distribute copies of these reports to DPI on a monthly basis.
- 3.5.3 Through NICS, BellSouth will collect the revenue earned by DPI within the BellSouth territory from another LEC also within the BellSouth territory where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of DPI. BellSouth will remit the revenue billed by DPI within the BellSouth region to the LEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two (2) amounts will be netted together by BellSouth and the resulting charge or credit issued to DPI via a CABS miscellaneous bill on a monthly basis in arrears.

3.5.4 BellSouth and DPI agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.



service as set forth below. In addition, the Public Staff sought guidance, also as set forth below, on the application of the resale obligation created by TA96.

A. Promotional Discounts/Nonregulated Service

1) *Are gift cards, checks, coupons for checks or similar types of benefits promotional discounts or nonregulated services, as Carolina/Central have contended?*

The **Public Staff** argued that bill credits, gift cards, checks or coupons offered to customers by a company's regulated business as a promotion to encourage subscription to a regulated service are promotions featuring price discounts. When inducements such as gift cards are given in exchange for subscription to both regulated and nonregulated services, the customer effectively receives a price discount even though the company's tariffed price for the regulated service remains unchanged. It is irrelevant whether the cost of the telecommunications service is directly affected or the customer reduces his expenses elsewhere through use of a gift card, check or coupon. The Public Staff further stated that gift card type promotions are not telecommunications services.

The **Joint Commenters** noted that, while not "services" according to the definition in G.S. 62-3(27), gift cards, checks, coupons and similar incentives are discounts offered to induce customers to purchase certain specified services. In order to invoke the one-day notice provision of Section 62-133.5(f) applicable when a discount applies solely to nonregulated services, the company offering the promotional discount has the burden of establishing that such discount applies only to the nonregulated portion of a mixed or bundled regulated/nonregulated service offering.

**BellSouth** contended that gift cards, checks, coupons for checks and similar types of benefits are marketing incentives. According to BellSouth, such incentives are not telecommunications services, nor are they promotional discounts, since customers are not provided a reduction, i.e., a discount, from the retail price of the service(s) offered in conjunction with the incentive(s).

According to the **ILECs**, gift cards, checks, coupons for checks and similar types of benefits are themselves nonregulated services. Sprint maintained in its reply comments that any services, such as gift cards, checks or check coupons, not contained in Carolina's and Central's General Subscriber Services or Intrastate Access Tariffs are not regulated by the Commission and are, therefore, nonregulated services. Verizon noted in its reply comments that gift cards, checks and coupons are marketing incentives, not regulated services. Verizon further stated that gift card type incentives cannot be considered promotional discounts because they cannot be used to reduce the retail price a customer pays for regulated services.

## DISCUSSION OF QUESTION A-1

The Commission agrees with the Joint Commenters and the Public Staff inasmuch as they argued (1) that gift cards, checks, check coupons and similar benefits offered as an inducement to purchase telecommunication services are not themselves services (regulated or nonregulated) offered by a public utility, and (2) that such inducements are promotional discounts nonetheless. The Commission is persuaded that anything of economic value paid, given, or offered to a customer to promote or induce purchase of a bundled service offering of both regulated and nonregulated telecommunications services is a promotional discount. Gift cards and similar benefits or incentives are not services offered by a public utility and they are not being offered by local exchange carriers as either regulated or nonregulated services. However, when such benefits are offered to induce the purchase of regulated and/or nonregulated services these benefits are promotional discounts. While the retail price to the customer of neither the regulated or nonregulated portions of the bundle is necessarily lowered as part of gift card type promotions, the customer nevertheless receives the offered bundle for a savings because the gift card, check, coupon for check, or other thing of value provided returns value to the customer for the purchase of a bundle. The customer does not receive this savings or value unless he purchases the specified bundle associated with the promotion. Thus, because the savings or benefit is received only in exchange for the purchase of the bundle, the bundle is in effect discounted to the customer by the amount of the monetary benefit or thing of value provided in return.<sup>1</sup>

2) *If such benefits are promotional discounts rather than nonregulated services, in what cases are the promotional discounts considered "price discounts that apply exclusively to services not regulated by the Commission"?*

The **Public Staff** argued that, only when the benefit of promotional discounts is funded solely from nonregulated operations of the local exchange carrier, are such discounts price discounts that apply exclusively to services not regulated by the Commission. The Public Staff stated that since the statute restricts the one-day notice provision to cases in which price discounts apply exclusively to services not regulated by the Commission, the burden rests on the company offering the promotional discount to establish that the promotional discount applies exclusively to nonregulated services, i.e., is funded from nonregulated operations. The Public Staff commented that a bundle typically has one price for two or more services, making it impossible to discern, without further information, which services in the bundle have been discounted.

The **Joint Commenters** implicitly agreed that a price discount applies exclusively to nonregulated services when a promotion is funded solely from nonregulated service offerings and the revenue from the regulated portion of a mixed offering is "booked" at the full retail rate or value. The Joint Commenters stated that to

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<sup>1</sup> Also, as discussed below in Part B of this *Order*, the real price of the service eventually becomes the retail price minus the value received for purchasing the service, i.e., the price is discounted by the value received. After a promotion is offered for a long enough period of time, the tariffed retail price is then no longer the real price.

the extent a LEC seeks to invoke the one-day notice provision of G.S. 62-133.5(f) with respect to gift card type incentives, the burden should be on the LEC to demonstrate that the promotional discount generated by the incentive is solely applied to (charged against) the nonregulated portion of any mixed bundle of regulated and nonregulated services. According to the Joint Commenters, if the regulated portions of a bundled offering are accounted for or “booked” at less than the retail value of the regulated services, then the discount does not apply exclusively to nonregulated services and the one-day notice provision of G.S. 62-133.5 is not applicable to the LEC’s promotion.

**BellSouth** stated that since these benefits are not promotional discounts, Question A-2 is not applicable.

The **ILECs** also found Question A-2 inapplicable since they argued that gift card type benefits are not promotional discounts, but are nonregulated marketing incentives. However, the ILECs, Verizon and Sprint suggest that if a promotion is found to feature a price discount for subscription to a bundled service offering of regulated and nonregulated services, and the offering company does not lower or in any way alter the price for the regulated service portion of the bundle, it is fairly simple to determine that the discount for the promotional offering was applied exclusively to the nonregulated service. Therefore the one-day notice of Section 133.5(f) would apply to the promotion.

#### **DISCUSSION OF QUESTION A-2**

Promotional discounts are considered “price discounts that apply exclusively to services not regulated by the Commission” when the benefit of the discount is funded solely from or charged against the nonregulated operations of the local exchange carrier. The LEC<sup>2</sup> is entitled to invoke the one-day notice provision of G.S. 62-133.5(f) when the promotional discount is not used to lower retail revenues of any regulated service offered as part of a mixed bundle, but is instead applied to or accounted for against revenues for nonregulated services contained in the bundle.

3) *Does the source of the discount offered in a promotion, i.e., from regulated or nonregulated operations or both, determine whether a one- or five-day notice is required if the promotion otherwise qualifies as a one business-day promotion?*

The **Public Staff** stated that, if the price of the regulated and nonregulated services in the bundle is lower than the sum of the individual prices, it is reasonable to conclude that the price of one or more of the services in the bundle has been discounted. The Public Staff argued that additional information is needed to confirm that such a discount was applied only to the nonregulated service(s) in the bundle. In some cases, the nonregulated services are not available individually, so it is not always possible to determine the price of the individual services. The Public Staff believes that the regulated company has an obligation to specify whether the marketing incentive or price discount is provided by or charged against regulated or nonregulated operations. If

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<sup>2</sup> The Commission uses the term “LEC” to refer to local exchange carriers, including competing local providers, unless otherwise stated.

the regulated operations of the company will record the tariffed price of the regulated service as revenue (or, conversely, if the cost of the promotion is not recorded as a regulated expense), it is reasonable to conclude that the price discount has been taken only on the nonregulated service(s) in the bundle, qualifying the promotional offer for the one business day notice provision. Otherwise, an ILEC bundle or promotion must be made under the five business-day provision of the ILEC tariffs. Specification of the source of the price discount is a reliable, determinative factor for ensuring that notice of the promotion or bundle has been properly filed.

The **Joint Commenters** stated that in order to use the one-day notice provision, the company offering the promotional discount has the burden of showing that the exclusive source of funding for any promotional discount offered as an incentive to purchase a mixed bundle is nonregulated service operations. The Joint Commenters believe the source should be identified through accounting records that will show whether any discount was applied to or accounted for against regulated service operations or nonregulated service operations.

**BellSouth** emphasized that it is not the accounting treatment of the benefit or marketing incentive that determines the proper notice period, but whether a price discount is being offered. BellSouth maintained that gift card type promotions are mere incentives and do not provide price discounts against the services offered, since such promotions do not impact or reduce the retail price of the bundled service package purchased by the customer.

The **ILECs** again stated that the only necessary test for determining whether there is a discount applicable exclusively to the nonregulated services in a mixed bundle is to determine whether the price for any regulated services in the bundle has been lowered. If the price for a regulated service has been lowered, a five-day notice filing is required. If a price discount is present without any lowering of the regulated price, the Commission must determine that the discount was applied exclusively to the nonregulated service in the bundled offering and that one-day notice to the Commission of the promotion is all that is required. The ILECs maintained that if services in a bundle or promotion offered by a company operating under price regulation include any nonregulated service, there should be no consideration of the source of the funds for the promotion or discount.

### **DISCUSSION OF QUESTION A-3**

Whether a new promotion featuring a price discount applies exclusively to services not regulated by the Commission is what determines whether a LEC is entitled to invoke the one-day notice provision of G.S. 62-133.5(f). Accordingly, the real question raised by the Public Staff's Motion is whether the source of funding for a promotional discount must come from nonregulated service operations in order for a LEC to establish that the featured promotional price discount applies exclusively to services not regulated by the Commission. The Commission believes, as argued by the Public Staff and the Joint Commenters, that the source of funding for any promotional

discount is determinative of whether the discount “applies exclusively to services not regulated by the Commission.” If the discount is funded in whole or in part by charging it to a regulated service or the regulated service operations, then it would not apply exclusively to nonregulated services or operations and the LEC offering the promotion would not be entitled to avail itself of the one-day notice provision.

4) *If the source of the discount determines whether a one- or five-day notice is required, should the Commission require that [a LEC] specify in its filing whether the benefit offered in conjunction with a promotion is funded by nonregulated operations, regulated operations, or both so that the Public Staff can determine whether the promotion is properly filed?*

The **Public Staff** in effect argued that if the source of funding is determinative of whether a promotion “appl[ies] exclusively to services not regulated by the Commission” and therefore the Commission need only receive one day’s notice prior to the effective date of the promotion, then the Commission’s *Order* dated January 2, 2004 must be expanded to include a specification of the source of the funding for the promotional discount. The Public Staff claimed that without further information from companies regarding the source of a promotional discount, the Public Staff and Commission are unable to monitor promotions and to ensure that the proper amount of notice has been given.

The **Joint Commenters** requested the Commission to impose upon LECs seeking to invoke the one-day notice provision in G.S. 62-133.5(f) the requirement that their notices contain more specific information in support of their filings made pursuant to the one-day notice provision of the statute. The Joint Commenters proposed a rule that would address the LEC’s internal accounting procedures as they may relate to G.S. 62-133.5(f). The Joint Commenters stated that without the adoption of appropriate and detailed protective mechanisms and guidance concerning LEC bundling and promotions, the one-day notice provision is extremely difficult to administer and could lead to anticompetitive behavior.

**BellSouth** argued that the source of funding does not determine the proper amount of notice and that it is not required by any statute or rule to give any notice of marketing incentives. BellSouth reiterated that gift card promotions are marketing incentives—not promotional discounts that impact the retail price of any service. Because these types of promotions are not discounts, they do not require any notice whatsoever pursuant to any North Carolina statute or rule. However, BellSouth stated that it “does not object generally to providing information indicating whether marketing incentives [such as gift card promotions] are funded by regulated and/or non-regulated operations.”

The **ILECs** opposed the imposition of any requirement that LECs provide information in addition to that required by the Commission’s *Order* dated January 2, 2004. The ILECs stated that any requirement by the Commission of anything more than a statement from carriers describing the promotional/bundled service offerings, and the

dates during which those offerings would be made available, would suggest that Commission has approval authority not provided for in G.S. 62-133.5(f). Further, the ILECs suggested that the Commission's *Order* dated January 2, 2004 requires more information in notices of promotional offerings than the statute requires. In its reply, Sprint answered that the Commission should not require LECs to provide any additional information regarding the funding source for a promotion. Sprint noted that perhaps the Public Staff's proposal may be justified for those companies which are rate of return regulated. However, examination of a price regulated company's financial accounting by the Public Staff is not required or appropriate.

#### **DISCUSSION OF QUESTION A-4**

While, as discussed above, the Commission finds the source of funding for promotional discounts, such as gift cards, relevant to the determination of whether a discount applies exclusively to the nonregulated services in a mixed bundle of services, thereby qualifying the promotion for the one-day notice requirement, the Commission rules that there is no need to expand its *Order* dated January 2, 2004, regarding the content of notices provided under G.S. 62-133.5(f). Pursuant to the statute at issue, a LEC is not entitled to give the Commission one business day's notice *unless* the promotion or bundled service offering (1) involves both regulated and nonregulated services and (2) features a price discount that applies exclusively to the nonregulated services. Therefore, the Commission need not impose a requirement that the LEC specify the funding source for its promotion in its one-day notice filing. When a LEC purports to file a one-day notice pursuant to G.S. 62-133.5(f) for a promotional offering involving both regulated and nonregulated services, it is representing that any discount applies exclusively to nonregulated services, i.e., that it has chosen to fund any discount from its nonregulated operations.

Thus, as argued by the ILECs, if a LEC provides the Commission with one-day notice of a promotion and a price discount is present without any lowering of the regulated price, the Commission will view the one-day notice as the LEC's representation that the discount was applied exclusively to the nonregulated service in the bundled offering in accordance with the reasoning of this *Order*. The Commission's decision does not impose internal accounting procedures on the LECs; rather, by submitting a one-day notice under G.S. 62-133.5(f), a LEC, on its own volition, has elected to fund its promotion from its nonregulated operations. The Commission still believes, as asserted by the Public Staff in earlier comments when the Commission was initially requested to adopt rules related to the notice required under G.S. 62-133.5(f), that imposing unnecessary "rules" or requirements on notices for promotions and bundled service offerings could make it more difficult and more time-consuming for LECs than the Legislature intended when it enacted the one-day notice provision and exempted these types of offerings from the Commission's approval authority.

In sum, the Commission finds that companies who avail themselves of the one-day notice provision of G.S. 62-133.5(f) necessarily represent that any promotional discount applies exclusively to the nonregulated portion of a mixed bundle, and that any

such discount given for the purchase of a mixed bundle will be funded, accounted for or applied against only the nonregulated portion of the bundle. Therefore, for all regulatory purposes and required filings, regulated companies must assign the full tariff rate to sales of (or revenues from) regulated services that were subscribed to as a result of promotional discounts involving bundled offerings of both regulated and nonregulated services.<sup>3</sup> LECs who invoke the one-day notice provision should keep records regarding the funding of their promotion and be mindful that they are subject to audit. See G.S. 62-51.

B. Resale Obligation

1) *If a LEC offers a benefit in the form of a check, a coupon for a check, or anything else of value for more than ninety days to incent subscription or continued subscription to a regulated service, is it required that the benefit be offered to resellers in addition to the reseller discount?*

The **Public Staff** alleges that BellSouth's 1FR + 2 Cash Back promotion, which provides subscribers with a \$100 check for subscribing to certain services, is implicated by Question B-1. The Public Staff argued that when inducements such as gift cards are offered to promote new or continued subscriptions to regulated telecommunications services, the regulated services are discounted. The resulting discount, brought about by the inducing promotion, should be available to resellers at the discounted resale rate whenever the promotion is offered for more than 90 days. The FCC's Local Competition Order makes no distinction between charging a reduced price for service, and charging the standard tariff rate while awarding the customer with a check or a coupon for a check.

The **Joint Commenters** declined to take a position with respect to resale obligations related to gift card type promotions offered for the purchase of bundles of both regulated and nonregulated services.

**BellSouth** stated that gift cards, coupons, etc. are not telecommunications services and therefore are not subject to the resale obligation of TA96. Gift card type promotions are marketing tools that do not provide end-user customers with a reduction of the price of the ILEC's services.

The **ILECs** argued that marketing incentives, gift cards, checks, coupons for checks, and similar incentives are not telecommunications services and are not subject to the resale requirements of the Act. Sprint reiterated that the obligation to resell

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<sup>3</sup> The Commission notes that it is not concerned with the rate of return of price regulated companies such as the ILECs who filed comments. However, inquiring into the source of funding for purposes of applying G.S. 133.5(f) is not the same as inquiring into a company's rate of return. The Commission's interest is not in a company's margins or profits or in any particular amount of reduction of revenues; the Commission's interest is in whether the costs (no matter the amount) of a given promotion were applied to nonregulated services.

services does not extend to nonregulated services (i.e., incentives, gift cards, checks etc.) offered with regulated services.

### DISCUSSION OF QUESTION B-1

At the outset, the Commission notes that Question B-1 does not address mixed bundles of regulated and nonregulated services. Instead, Question B-1 is directed to promotions that offer a gift such as a gift card or a check for cash in exchange for subscribing to regulated services.

Section 251(c)(4) of TA96 addresses the extent to which an ILEC may restrict resale of its retail telecommunications services. Section 251(c)(4) requires an ILEC “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” This Section further requires ILECs “not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of . . . telecommunications service” provided at retail to end-user subscribers. Section 252(d)(3) provides that wholesale rates are to be determined on the basis of rates charged to subscribers.

While gift cards, check coupons and other similar promotions or incentives offered for the purchase of a regulated telecommunications service are not themselves services that ILECs offer at retail from their tariffs, they are promotional offerings for telecommunications services. Promotional offerings are subject to the limitations and conditions set forth by the FCC. In ¶ 948 of its Local Competition Order<sup>4</sup>, the FCC stated that Section 251(c)(4)’s requirement that ILECs resell retail telecommunications services

makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for *all promotional or discount service offerings* made by incumbent LECs. [Emphasis added.] A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act. In discussing promotions here, we are only referring to price discounts from standard offerings that will remain available for resale at wholesale rates, *i.e.*, temporary price discounts.

The Commission interprets ¶ 948 of the FCC’s Local Competition Order to mean that an ILEC’s duty to resell telecommunications services it offers at retail does not exclude an ILEC’s promotional offerings. The FCC clearly stated that any other conclusion would allow ILECs routinely to create promotions or nonstandard offerings just to avoid their resale obligation. The FCC was concerned that ILEC promotions could become *de facto* standard offerings that would not be made available to resellers

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<sup>4</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (CC Docket 96-98); First Report and Order, FCC No. 96-325, 11 FCC Rcd 15499 (rel. August 8, 1996) (“Local Competition Order”).

and would therefore undercut the duty to resell retail services to resellers at wholesale rates. The FCC's statement that the subject of its discussion on promotions referred to "price discounts from standard offerings that will remain available for resale at wholesale rates, *i.e.*, temporary price discounts," does not define or limit the term "promotion," as used by the FCC in its Order, to a reduction from the retail price of a tariffed service. Rather, the FCC was speaking to the temporary nature of a promotion. The term "promotion" in the context of a sale or advertising campaign usually refers to an opportunity or offer that is temporary or short-term, rather than one that is more permanent or long-lasting.<sup>5</sup> The FCC distinguished a promotional price discount from a "standard offering" that would remain available for sale at retail and therefore available for resale at the wholesale rate. Contrasted with a promotional offering, a standard offering is one that is of a more permanent, long-lasting nature. When the reference to a promotion as a price discount is read in context, the Commission believes it is clear that the FCC was not stating that a promotion exists only when there is a reduction or discount of the retail price of a telecommunications service.<sup>6</sup>

The Commission's interpretation of ¶ 948 of the FCC's Order is supported by the Order's next paragraph. In ¶ 949, the FCC immediately began a discussion of whether "short-term promotional prices" are "retail rates." Since resale wholesale rates are based on retail rates, state commissions setting wholesale rates must know if the rates for promotions, *i.e.*, short-term prices, are "retail rates" that are to be discounted to the wholesale rates that ILECs must offer to resellers. Because TA96 does not define "retail rates," the FCC interpreted the meaning of the term as follows:

In view of this ambiguity, we conclude that "retail rate" should be interpreted in the light of the pro-competitive policies underlying the 1996 Act. We recognize 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 effect. 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.<sup>7</sup>

Thus, short-term promotional prices or nonstandard offerings are not the "retail rate" for purposes of establishing the wholesale rate. If a promotion is offered for an indefinite extended period of time, at some point it starts to become or look more like a standard

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<sup>5</sup> The Commission's interpretation is supported by the FCC's opinion and order in *In the Matter of American Communications Services, Inc.*, (CC Docket 97-100); FCC No. 99-386, 14 FCC Rcd 21579 (rel. December 23, 1999), ¶¶ 41, 51 (noting that phrases such as "service packages" and "trial offerings" connote an element of a temporary price discount).

<sup>6</sup> The FCC's use of the phrase "all promotional or discount service offerings" in ¶ 948 of the Local Competition Order implies a distinction between a promotional service offering and a discount service offering. That is to say, the FCC appears to have contemplated that an ILEC could offer a promotion that would not necessarily result in a reduced service price per se.

<sup>7</sup> Local Competition Order, ¶ 949.

retail offering that should be subject to the duty to resell at the wholesale rate. Cognizant of this situation, the FCC made a determination as to when a promotional price ceases to be short-term and must be treated as the retail rate to be used in calculating the wholesale rate.

We believe that promotions of up to 90 days, when subjected to the conditions outlined below, will have significantly lower anticompetitive potential, especially as compared to the potential procompetitive marketing uses of such promotions. We therefore establish a presumption that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers. Promotional offerings greater than 90 days in duration must be offered for resale at wholesale rates pursuant to 251(c)(4)(A).<sup>8</sup>

Despite the ILECs' argument that gift card type promotions are incentives and/or marketing tools used to distinguish their services in the marketplace, these promotions are in fact promotional offers subject to the FCC's rules on promotions.<sup>9</sup> While these promotional offerings are not discount service offerings *per se* because they do not result in a reduction of the tariffed retail price charged for the regulated service at the heart of the offerings, they do result in a savings to the customers who subscribe to the regulated service. The longer such promotion is offered, the more likely the savings will undercut the tariffed retail rate and the promotional rate becomes the "real" retail rate available in the marketplace. The promotion reduces the subscriber's cost for the service by the value received in the form of a gift card or other giveaway. The tariffed retail rate would, in essence, no longer exist, as the tariffed price minus the value of the gift card received for subscribing to the regulated service, i.e., the promotional rate, would become the "real" retail rate. Thus, the ILEC could use the promotion as a *de facto* rate change without changing its tariff pricing. The FCC hoped to avoid this situation, where the promotional rate competes with the tariffed price for a long or indefinite period of time, by defining the point at which the promotional rate would become a retail rate to be discounted for resale as the 91<sup>st</sup> day the promotion is available to end-users purchasing a particular telecommunications service. In other words, the FCC decided that after 90 days, resellers are entitled to the promotional rate (the "real" retail rate) minus the wholesale discount.

Therefore, pursuant to TA96, in order for a gift card type promotion not to require an adjustment to the resale wholesale rate (caused by the fact that the retail price has in effect been lowered), such a promotion must be limited to 90 days, unless the ILEC proves to the Commission that not applying the resellers' wholesale discount to the

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<sup>8</sup> Local Competition Order, ¶ 950.

<sup>9</sup> See *In re AT&T Communications of the Southern States, Inc.*, Docket No. 960833-TP, PSC-96-1579-FOF-TP (Fla. P.S.C. 1996); *In re AT&T Communications of the Southern States, Inc.*, Docket No. 6801-U (Ga. P.S.C. 1996); *In re Sprint Communications Company, L.P.*, Case No. TO-97-124 (Mo. P.S.C. 1997); *In re US West Communications, Inc.*, Docket No. 70000-TT-98-379, Record No. 3992, (Wyo. P.S.C. 1999) (rejecting similar "marketing tool"/"marketing expense" arguments offered by ILECs to avoid resale obligation with regard to promotions).

promotional offering is a reasonable and nondiscriminatory restriction on the ILEC's resale obligation.<sup>10</sup>

Does the record before the Commission sufficiently establish that it is reasonable and nondiscriminatory for ILECs not to apply the wholesale discount to the promotional rate for gift card type promotions? The Commission finds it extremely noteworthy that while its *Order* seeking comments on the questions raised by the Public Staff's Motion was served on companies authorized to resell local service in North Carolina, no resellers filed comments addressing the ILECs' resale obligation with respect to promotional offerings. This absence of comment would appear to suggest that the reseller community believes competition will not be stifled or unduly harmed by gift card type promotions such as the one presently being offered by BellSouth since June 29, 2004 and scheduled to run until March 31, 2005. Although the resellers offered no comments, ILECs such as BellSouth commented that they offer these type promotions precisely because there is robust competition they are trying to meet by distinguishing their services with gift card type promotions. While these promotions do provide a savings and therefore a type of discount to subscribers, they do not in fact lower the charge to the subscribers for the regulated services purchased. Therefore, the Commission believes these promotions do not have the same degree of anticompetitive effect that a direct discounting of the retail price would have on the reseller market. Some customers will likely subscribe to the regulated service offering at the retail rate, although the gift received (particularly a gift card) may have little value to them.<sup>11</sup> Furthermore, the ILECs continue to resell the regulated services offered in their promotions to resellers, reducing the retail rate for these services by the amount of the applicable wholesale discount. Hence, the ILECs argue they are meeting their statutory obligation to resell their retail telecommunication services; resellers are not being prevented from reselling these services. Moreover, after purchasing services from the ILECs at the wholesale discount rate (a rate made possible by excluding ILEC marketing costs from the resale price), resellers may resell these services to end-users and may offer promotional inducements at their own expense whether or not the ILECs offer such promotions. In fact, ILECs have argued that their promotions are in response to promotions (fee waivers and the like) offered by resellers. Finally, to the extent that these gift card promotions are for a reasonably limited duration and are not offered consecutively, their procompetitive effects in a market that is more competitive than it was in 1996 when the Local Competition Order was issued will likely outweigh the anticompetitive effects.

Given that there has been no opposition to gift card type promotions from the reseller community, the Commission is reluctant to establish a rule that the benefit of these promotions must be offered to resellers in addition to the reseller discount. To the contrary, given the absence of opposition, the Commission is persuaded by the arguments put forth by the ILECs. Although the Commission believes that restrictions on resale obligations must be considered on a promotion-by-promotion basis, some

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<sup>10</sup> 47 C.F.R. § 51.613(b).

<sup>11</sup> For example, BellSouth commented that some customers accepting gift card type promotions never use the gift card or coupon for check, etc.

restrictions on resale of some gift card type promotions that run for more than 90 days may be proven to be reasonable and nondiscriminatory. While promotions must be analyzed individually for their anticompetitive effects, the Commission finds that, upon proof that it is reasonable and nondiscriminatory not to offer the benefit of a promotion offered for more than 90 days to resellers, ILECs will not be required to provide such benefit to resellers in addition to the established reseller wholesale discount. However, ILECs should be mindful that resale restrictions on unreasonably long, unlimited or permanent promotions that compete with and undercut the tariffed retail price for services would gut the resale obligation of TA96 and will be held unreasonable.<sup>12</sup>

With regard to BellSouth's 1FR + 2 Cash Back promotion, based on the Commission's current knowledge, the Commission would be inclined to find that a restriction on resale is reasonable and non-discriminatory. Resellers have not complained or asked the Commission to find the restriction unreasonable or harmful to competition. Resellers have not been precluded from reselling the regulated service and are able to purchase the service at the tariffed rate minus the wholesale discount. The wholesale discount was, in part, set by deducting ILEC marketing expenses from the ILECs' costs for the regulated service—at least in part a recognition that resellers would have their own marketing expenses. Resellers remain free to offer, at their own expense, promotional inducements to customers who purchase the tariffed service(s) from them. Although the Commission would ordinarily be concerned about a promotion in competition with the tariffed offering for a nine-month period (from June to March), BellSouth's promotion will be offered for a limited time, and the resellers' apparent disinterest or indifference would tend to persuade the Commission that, at least with respect to 1FR + 2 Cash Back, the anti-competitive effects caused by a nine-month promotion that is unavailable to resellers are outweighed by the procompetitive effects.

2) *Is an ILEC offering a bundle of regulated and nonregulated services for more than ninety days obligated to offer the bundle, the regulated portion of the bundle, or both to resellers during the term of the promotion or, as BellSouth has contended, is no part of such a bundle subject to the resale obligations?*

The **Public Staff** argued that the regulated portion of a mixed bundle containing regulated services is subject to resale. Companies should not be allowed to evade their resale obligations by placing regulated services in bundles, discounting these services, and refusing to offer the regulated portion of the bundle to resellers. Bundling regulated services does not suddenly make those services immune from regulation. Bundles certainly can be in the public interest by allowing customers to buy services they desire at a lower rate. However, they are not immune from regulation.

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<sup>12</sup> The Commission notes that to the extent a gift card type promotion may be associated with a mixed bundle offering of regulated and nonregulated services with respect to which an ILEC invokes the one-day notice in G.S. 62-133.5(f), case-by-case determinations for the purpose of determining resale obligations will not run afoul of the ILECs' right to offer the promotion without obtaining the Commission's approval. The Commission's case-by-case determination would not be for approval purposes but would be to determine whether, under TA96 and the FCC's rules, the benefit of a promotion offered for more than 90 days must be accounted for in determining the retail rate that must be discounted by the wholesale discount.

The **Joint Commenters** did not address this issue.

**BellSouth** maintained that a company is not required to resell mixed bundles containing non-telecommunications services or services provided by other entities. There is no obligation to make the separate parts of a bundled offering available to resellers at a “hypothetical” discounted price which would be the equivalent of providing resellers a service at a price that does not relate to the prices for which those services are sold at retail to non-carrier subscribers. However, a company must offer for resale each regulated service contained in a bundle at the retail rate minus the wholesale discount.

The **ILECs** commented that if a bundle consists of regulated and nonregulated services, resellers should not be allowed to sell the bundle at the promotional discount rate. Requiring the resale of bundled offerings containing regulated and nonregulated services would be contrary to the TA96.

### **DISCUSSION OF QUESTION B-2**

As has been discussed hereinabove, Section 251(c)(4)(A) of TA96 requires ILECs to offer for resale at wholesale discounts any telecommunications service that it provides at retail to non-telecommunications end-user subscribers. The FCC has held that promotions offered for more than 90 days must be made available to resellers at the promotional rate minus the wholesale rate, because any promotion exceeding 90 days would be in competition with the retail rate and would allow the ILEC to undercut the reseller by shifting customers to the promotional offerings and denying the benefits of those offerings to the resellers. An ILEC’s obligation to make the benefit of a promotional offering available to resellers is, therefore, directly related to whether the promotional rate is available to the end-user retail customer in such a way as to be in competition with the tariffed retail rate. Service bundles, such as those implicated by Question B-2, are not categorically exempt from the resale obligation.<sup>13</sup>

In the context of analyzing the obligation of ILECs to resell services, there are at least two different types of mixed bundle offerings. The first type is similar to the gift card type promotion and must be made available to resellers if offered for more than 90 days, unless a restriction on reselling the promotion is reasonable and nondiscriminatory. The second type of mixed bundle offering requires the customer to subscribe to a bundle of services, the total cost of which exceeds the cost of the consideration of the regulated service(s) on a stand-alone basis if purchased from the tariff. ILECs should not be obligated to resell this second type of promotion.

The first type of mixed bundle promotion consists of regulated telecommunications services, provided at no less than the tariffed retail rate, and nonregulated services, provided free of charge. For resale purposes, this type of promotion should be treated no differently than gift card type promotions. Promotions that allow the customer to receive something of value as a giveaway for the purchase of

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<sup>13</sup> *In the Matter of American Communications Services, Inc.*, ¶¶ 41, 51, 52.

a regulated telecommunications service would provide the customer with a discount off the price of the regulated service, i.e., a discount equal to the value of the giveaway, whether it be a gift card, cash back or free nonregulated services. These promotions permit the customer to purchase the regulated service for the same price listed in the tariff but gives the customer more for the same amount of money by providing the customer a giveaway of some value. These promotions, therefore, compete head-to-head with the retail price. The customer's choice is between paying the retail price of, for example, \$20, and receiving only the tariffed regulated service, or paying the same \$20 retail price for the same service but receiving an additional value or giveaway for making the exact same dollar cost purchase. Thus, the promotion reduces or discounts the retail price by the value of the giveaway. When such a discount of the regulated service is offered for more than 90 days, the discounted price (the tariffed rate minus the value of the giveaway) becomes the "real" retail rate and competes directly with the tariffed rate for the regulated service. Therefore, in order for the reseller to receive the true wholesale rate, the wholesale discount must be from the discounted promotional rate. The ILEC must allow the reseller's purchase price to be determined by applying the wholesale discount to the promotional rate that is, in effect, available at retail to end-user subscribers. To further clarify the ILEC's resale obligation as to this first type of mixed bundle promotion, the Commission notes that the ILEC does not have to allow the reseller to purchase the bundle of services offered in the ILEC's promotion as long as it offers for resale each telecommunications service component of the bundle at the promotional rate minus the wholesale discount. Of course, if the promotional rate is not available to end-user subscribers for more than 90 days, the ILEC is not obligated to permit resellers to take advantage of the promotional rate.

The second type of mixed bundle promotion also consists of both regulated telecommunications services and nonregulated services, but the entire bundle is offered to the customer for more consideration than the customer would pay if purchasing from the tariffed offering.<sup>14</sup> For resale purposes, the ILEC should not be required to provide these bundled offerings or the benefit of these promotions to resellers. Such promotions do not compete directly with tariffed offerings. With these promotions, end-user subscribers cannot purchase the bundle (or the regulated portion of the bundle) for a price less than or equal to the tariffed retail rate for the regulated service(s) in the bundle. The subscriber to such a promotional offering must accept the complete bundle and pay not only for the regulated service(s), but also for the additional services in the bundle at a total cost that exceeds the price of the regulated service(s) when purchased on a stand-alone basis under the tariff. Some or all of the services (regulated and/or nonregulated) may be discounted, but the customer cannot purchase the regulated portion of the bundle, discounted or not, without purchasing the entire bundle for consideration that exceeds the tariffed price for just the regulated retail services. Any discount that may apply to a regulated service in such a promotional bundle is not available to end-users because they cannot receive the discounted service

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<sup>14</sup> For purposes of this discussion on the second type of mixed bundle, more consideration includes all additional consideration (beyond the tariffed price) from the customer, such as the price paid for service, the signing of a contract binding the consumer to purchase a service for a set or extended period of time, or the subscription to a certain increased level of service at a specified premium price.

unless they purchase the entire bundle of services for consideration that exceeds the retail price for the regulated service. Therefore, with these promotions, neither the promotional bundle nor the regulated services in the bundle competes directly with or undercuts the equivalent regulated tariffed offerings. The customer's choice is between the regulated service(s) at the tariffed price on the one hand, or the regulated service(s) plus additional services for a total price exceeding the cost of the stand-alone regulated service(s) under the tariff on the other hand. The promotional bundle, which costs the customer more, is not a lower cost means of obtaining the regulated services in the bundle; instead, it is a higher cost means of purchasing the service because the customer can only receive the regulated service in the bundle by paying additional money or consideration for additional services.<sup>15</sup>

However, ILECs are advised that if promotional mixed bundles should be offered for a total price that is less than or equal to the price of the regulated services offered on a stand-alone basis under their tariffs, the promotions would cause head-to-head competition with the tariffed retail rates. Accordingly, with regard to the regulated services in such a bundle, the benefit of such promotions offered for more than 90 days would have to be offered to the resellers, as discussed in the section above on the first type of mixed bundle offerings. In any event, as with the first type of promotions, ILECs are not required to make the bundles themselves available to resellers and would only have to make the promotional rate of the regulated services available for resale if the entire bundle was offered for less than the price of the tariffed regulated services.

3) *If the ILEC is required to offer the bundle or the regulated portion of the bundle to resellers, does the reseller discount apply in addition to any promotional discount offered in the bundle to the ILEC's end users during the term of the promotion?*

The **Public Staff** argued that the regulated portion of a bundle is subject to resale, and both the promotion discount and the reseller discount should apply. The Public Staff opined that, since the promotion discount has lowered the retail rate of the regulated service, the wholesale discount should be applied to the reduced retail rate.

The **Joint Commenters** did not address this question.

**BellSouth** stated that, as set forth in its initial comments, a service is required to be offered for resale at the wholesale discount only if it is made available to end-users at the retail rate. Retail customers do not have the ability to pick and choose selected portions of bundles. They can purchase a component of a bundle alone if that service is available on a stand-alone basis, and when they do so they pay the tariffed rate for the individual service, not some percentage of the price for a bundle that includes that service (and others). In those cases, BellSouth makes the retail service available for resale at the retail price minus the wholesale discount. There is no further requirement

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<sup>15</sup> While the bundle costs more than just the regulated service(s), a customer who wants the additional services *and* the regulated services saves money by choosing the promotional bundle because it is priced lower than the total cost of the services purchased individually.

in any jurisdiction that BellSouth break apart and resell parts of bundles piece-meal, and there is no valid basis for the Commission to create one.

Again, the **ILECs** commented that if a bundle consists of regulated and nonregulated services, resellers should not be allowed to sell the bundle at the promotional discount rate. Requiring the resale of bundled offerings containing regulated and nonregulated services would be contrary to the TA96.

### **DISCUSSION OF QUESTION B-3**

This question has been answered by the discussion hereinabove. Whenever an ILEC is required to make the benefit of a promotion available to resellers because it is being offered for more than 90 days and is therefore in competition with the tariffed retail rates, the reseller discount applies to the promotional rate. That is to say, the reseller discount applies in addition to the promotional discount.

WHEREUPON, the Commission reaches the following

### **CONCLUSIONS**

- 1) That gift cards, checks, coupons for checks or similar types of benefits are promotional discounts for the purposes of G.S. 62-133.5(f);
- 2) That promotional discounts are considered "price discounts that apply exclusively to services not regulated by the Commission" pursuant to G.S. 62-133.5(f) when the benefit of the discounts is funded solely from or charged against the nonregulated operations of the local exchange carrier;
- 3) That the source of funding for any promotional discount is determinative of whether the discount "applies exclusively to services not regulated by the Commission." A discount funded in whole or in part by charging it to a regulated service or to regulated service operations is not one that "appl[ies] exclusively to services not regulated by the Commission;"
- 4) That LECs who avail themselves of the one-day notice provision of G.S. 62-133.5(f) necessarily represent that any promotional discount appl[ies] exclusively to the nonregulated portion of a mixed bundle, and that any discount given for the purchase of a mixed bundle will be funded, accounted for or applied against only the nonregulated portion of the bundle. The Commission declines to expand its *Order* of January 2, 2004 to require a LEC to specify the funding source of its promotions;
- 5) That the benefit of a gift card type promotion offered for more than 90 days must be made available to resellers such that resellers are permitted to purchase the regulated service(s) associated with the promotion at the promotional rate minus the wholesale discount, unless the ILEC proves to the Commission (per 47 C.F.R.

§ 51.613(b)) that not applying the wholesale discount to the promotional offering is a reasonable and nondiscriminatory restriction on the ILEC's resale obligation;

- 6) That the benefit of a mixed bundle offering that results in a regulated service in the bundle being in direct competition with the tariffed retail rate for the regulated service must be made available to resellers if the bundled promotion is offered for more than 90 days, but the benefit of a mixed bundle offering that does not result in such direct competition with the tariff offering (as discussed above in this *Order*) need not be made available to resellers; and,
- 7) That whenever an ILEC is required to make the benefit of a promotion available to resellers because it is being offered for more than 90 days and is therefore in competition with the tariffed retail rates, the reseller discount applies to the promotional rate instead of the tariffed retail rate.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 22<sup>nd</sup> day of December, 2004.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. P-100, SUB 72b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Implementation of Session Law 2003-91,            )   ORDER CLARIFYING RULING  
Senate Bill 814 Titled "An Act to Clarify the    )   ON PROMOTIONS AND  
Law Regarding Competitive and Deregulated    )   DENYING MOTIONS FOR  
Offerings of Telecommunications Services"    )   RECONSIDERATION AND STAY

BY THE COMMISSION: On December 22, 2004, the Commission issued *Order Ruling on Motion Regarding Promotions*. On February 18, 2005, BellSouth Telecommunications, Inc. ("BellSouth") filed a Motion for Reconsideration or, in the Alternative, for Clarification, and for Stay. Also on February 18, 2005, Image Access, Inc. d/b/a New Phone ("New Phone") filed a Petition to Intervene and Comment Out of Time. The Commission granted New Phone's Petition to Intervene on March 3, 2005, and accepted New Phone's Comments for the record, but did not otherwise address them. This Order addresses both New Phone's comments and BellSouth's motion.

**New Phone's Comments**

A. The Commission's forecast and 47 C.F.R. 51.613(a)(2)

In its comments, New Phone complains that the Commission considered a specific promotion, which BellSouth offered in excess of 90 days, and forecasted that the Commission would be inclined to find that a restriction on the resale of the promotion was reasonable and nondiscriminatory. New Phone notes that the Commission's forecast was *dictum*, based in part on the Commission's perception that Competing Local Providers ("CLPs") did not object to BellSouth's refusal to offer the promotion for resale since no CLP filed comments or objections. New Phone explains that it and other CLPs were not indifferent on this issue, but failed to file comments or objections because the Commission's July 7, 2004 *Order* seeking comments did not indicate that specific BellSouth promotions of more than 90 days' duration would be considered or approved. According to New Phone, without regard to whether a CLP files an objection, Federal Communications Commission ("FCC") Rule 47 C.F.R. 51.613(a)(2) establishes that it is unreasonable and discriminatory for an ILEC to refuse to resell telecommunications services at the promotional rate minus the percentage wholesale discount when the promotional rate is offered to retail customers for more than 90 days.

## DISCUSSION

First, the Commission does not agree that its July 7, 2004 *Order* failed to provide CLPs with notice that BellSouth's 1FR + 2 Cash Back promotion could be under consideration. The Public Staff's motion for a ruling on promotions made express mention of the 1FR + 2 Cash Back promotion, the dispute with BellSouth regarding the availability of the promotion for resale, and the start and end dates for the nine-month promotion. In addition, the Public Staff's motion was an attachment to the Commission's *Order*, and the Public Staff again specifically identified and discussed the 1FR + 2 Cash Back promotion in the comments it filed on August 6, 2004 pursuant to the Commission's *Order*. Thus, the Commission believes that New Phone and other CLPs had adequate notice that the Commission could address the 1FR + 2 Cash Back promotion in examining and clarifying BellSouth's resale obligations. Nevertheless, the Commission granted New Phone's Petition to Intervene and accepted New Phone's comments for the record. Because New Phone's comments were not filed in time to be considered prior to issuance of the December 22<sup>nd</sup> *Order*, the Commission will consider them now and will treat them as a motion for reconsideration or, in the alternative, for clarification of the Commission's *Order Ruling on Motion Regarding Promotions*.

Second, the Commission generally agrees with New Phone's interpretation of 47 C.F.R. 51.613(a)(2): if a promotion involves rates that will be in effect for more than 90 days, an ILEC shall apply the wholesale discount to the special promotional rate for retail service rather than to the ordinary rate. The FCC has stated in express terms that short-term promotional prices do not constitute retail rates that are subject to the wholesale percentage discount and has defined short-term promotions to be those offered for no more than 90 days. The FCC reasoned that a promotion offered for 90 days or less has procompetitive effects that outweigh the anticompetitive effects of restricting the resale of such a promotion.<sup>1</sup> The clear implication of the FCC's rule and related opinions is a presumption that it is unreasonable and discriminatory for an ILEC not to resell telecommunications services at the promotional rate minus the percentage wholesale discount when the promotional rate is offered to retail customers for more than 90 days.

However, in its December 22<sup>nd</sup> *Order*, the Commission recognized that the FCC clearly intended that an ILEC may rebut this presumption as to promotions offered in excess of 90 days by proving that a restriction on resale of such promotions is reasonable and nondiscriminatory. "With respect to any restrictions on resale not permitted under paragraph (a) [e.g., a restriction on the resale of a long-term promotion that is offered for more than 90 days], an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."<sup>2</sup> That is to say, not all promotions offered for more than 90 days

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<sup>1</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, (CC Docket 96-98); First Report and Order, FCC No. 96-325, 11 FCC Rcd 15499 (rel. August 8, 1996) ("Local Competition Order"), ¶¶ 949-50.

<sup>2</sup> 47 C.F.R. 51.613(b).

necessarily have anticompetitive effects that outweigh procompetitive effects. It may not always be unreasonable and discriminatory for an ILEC not to apply the wholesale discount to the 90-day-plus special promotional rate.

By its *dicta*, the Commission did not intend to suggest a change of law or to disregard existing FCC rules and orders. Instead, the Commission's discussion of the dispute implicated by BellSouth's 1FR + 2 Cash Back promotion recognized that FCC rules do permit an ILEC to restrict resale of a promotion offered at retail for more than 90 days, upon *proving* that the restriction is reasonable and nondiscriminatory. The Commission's discussion of factors an ILEC may present to establish that a restriction is reasonable and nondiscriminatory was not intended to be exhaustive nor meant to suggest that the presence of any one or all of the factors would be sufficient to prove that a given restriction is permissible under the FCC's rules. Rather, the Commission's opinion stressed that each 90-day-plus promotion, including the 1FR + 2 Cash Back promotion, would have to be examined on a promotion-by-promotion basis, and that, in the absence of an objection by a reseller, the stated factors could be considered and could have some persuasive value to the Commission in determining whether a particular restriction on resale is reasonable and nondiscriminatory.

#### CONCLUSIONS

To clarify, the Commission's December 22, 2004 *Order* should not be read as a change of law or policy. If the Commission is called upon to determine whether a promotion offered for more than 90 days must be offered to resellers at the promotional rate minus the wholesale discount, the Commission will follow the law as stated in 47 U.S. C. 251(c)(4) and 47 C. F. R. 51.613 (a)(2) and (b). In order to withhold the benefit of a long-term (90-day-plus) promotional rate from resellers, an ILEC is first required to "[prove] to the [Commission] that the restriction is reasonable and nondiscriminatory." The Commission's discussion of the 1FR + 2 Cash Back promotion was intended only to offer a modicum of guidance as to some of the kinds of factors the Commission might find probative, in the absence of objection, should an ILEC seek to prove that a restriction on resale is reasonable and nondiscriminatory. The burden of proving any restriction reasonable and nondiscriminatory remains with the ILEC. The factors acknowledged by the Commission were not intended to be exhaustive or necessarily sufficient to meet the ILEC's burden of proof. The Commission will consider all arguments and admissible evidence presented and decide on a promotion-by-promotion basis (with regard to promotions offered in excess of 90 days) whether an ILEC has proved that a restriction on resale is permissible pursuant to 47 C.F.R. 51.613(b). The Commission cannot authorize a restriction on resale of a long-term promotion in the absence of such proof

#### B. The Commission's forecast and the parties' interconnection agreement

New Phone states in its comments that it is concerned that BellSouth may rely on the Commission's forecast with respect to the 1FR + 2 Cash Back promotion to avoid its obligation to resell promotions as provided by the terms of BellSouth's interconnection

agreement with New Phone ("Agreement"). According to New Phone, the Agreement provides that BellSouth must resell all telecommunications services at the wholesale discount rate subject to a list of restrictions set forth in the Agreement. New Phone states that the Agreement provides that all promotions must be available for resale at the wholesale discount rate except those promotions, as identified in the list of restrictions, which are offered for less than 90 days. New Phone further notes that the Agreement contains Parity provisions that may be violated if BellSouth fails to resell promotions in accordance with the terms of the Agreement.

#### DISCUSSION AND CONCLUSION

The Commission's December 22, 2004 *Order* does not relieve any party of obligations it might have under an existing interconnection agreement. The Commission does not, based on the present record, express any opinion about the extent of any party's obligation under New Phone's interconnection agreement with BellSouth. Moreover, the Commission has no evidence before it suggesting that BellSouth has any intent to avoid the obligations established by its interconnection agreement with New Phone. Accordingly, the Commission clarifies that its December 22, 2004 *Order* relieves no party of any resale obligations it might have under an existing interconnection agreement.

#### **BellSouth's Motion**

##### A. Resale Obligations and One-time Gift Promotions

In its motion for reconsideration or clarification, BellSouth argues that the Commission created a novel resale obligation for one-time incentive gifts that ILECs provide to their customers. According to BellSouth, the Commission's *Order* requires one-time upfront gifts "that are funded in whole or in part by the ILEC's regulated service operations" and offered as incentives to customers subscribing to retail services to be "made available to resellers, unless the ILEC proves to the Commission that not making [such gifts] available for resale is reasonable and nondiscriminatory." BellSouth suggests that the Commission's ruling on resale obligations is based on language in the *Order* stating that "anything of economic value paid, given, or offered to a customer to promote or induce purchase of a bundled service offering of both regulated and nonregulated telecommunications services is a promotional discount." BellSouth calls the result of the Commission *Order* "patently silly" and "bizarre" because, according to BellSouth, the *Order* would require BellSouth "to give a CLP . . . a toaster for each customer to whom the CLP resells [a given] service," if BellSouth offers a toaster to any customer subscribing to that same service. BellSouth re-asserts its initial argument that because one-time gifts offered as incentives are not themselves "telecommunications services," they are not subject to the resale obligations of the Telecommunications Act of 1996 ("TA 96"). BellSouth further complains that CLPs are not required to pass the benefit of the promotional rate on to their customers and that it will often be difficult, if not impossible, to determine the value of one-time incentive gifts, since ILECs generally do not pay face value for such gifts.

## DISCUSSION

First, the Commission notes that BellSouth appears to cite language from Part A of the Commission's *Order*, which pertains to the interpretation of a state statute concerning when notice of a promotion or a bundled service offering must be filed, to complain about the Commission's holding in Part B of the *Order*, which pertains to federal resale obligations under TA 96. To clarify, the Commission's holdings with respect to resale obligations are not based on the ILEC's funding source for incentive gifts or marketing tools. The Commission's discussion of the source of funding for a promotion applies only to the interpretation of the state statute at issue in Part A of the *Order*.

Second, notwithstanding BellSouth's characterizations, the Commission's *Order* creates no new resale obligations. Section 251(c)(4) of TA 96 requires an ILEC "to offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 252(d)(3) provides that the wholesale rates are to be determined on the basis of rates charged to subscribers. The Commission's *Order* merely recognizes what the FCC found in its 1996 Local Competition Order, *i.e.*, that long-term promotional offerings offered to customers in the marketplace for a period of time exceeding 90 days have the effect of changing the actual retail rate to which a wholesale requirement or discount must be applied. The FCC stated that there is to be no general exemption of promotional offerings from the wholesale requirement. However, in the same order, the FCC held that promotional offerings are exempt from the wholesale requirement if they are offered for 90 days or less because such short-term promotional offerings do not constitute the actual retail rate. The wholesale requirement, therefore, would not apply to such short-term promotions because they have been determined by the FCC not to change the actual retail rate. This bright line test was the FCC's compromise between allowing and not allowing ILECs to offer promotions that could undercut reseller pricing, so that short-term promotions, deemed procompetitive and beneficial to customers, would not have to be unnecessarily restricted.

One-time incentive gifts, including gift cards, check coupons and other merchandise, which are offered to induce customers to subscribe to telecommunications services, are promotional offerings. Therefore, if such gifts or incentives are offered for more than 90 days, as discussed in greater detail in the *Order*, they have the effect of lowering the actual, "real" retail rate. The retail rate, and thus the wholesale rate charged to resellers, must be determined on the basis of the "real" rate charged to subscribers. The Commission's *Order* does not prevent or in any way frown upon the use of such incentives as gift cards and other one-time upfront gifts. However, if the incentives, *i.e.*, promotions, are offered for more than 90 days, on the 91<sup>st</sup> day, resellers are entitled to have the benefit of the promotion reflected in the wholesale rate, meaning that the wholesale discount must be applied to the promotional rate—not to some other theoretical listed rate which has been undercut by a long-term promotional rate that is generally available to subscribers in the telecommunications marketplace. If an ILEC does not want to offer resellers a wholesale rate based on a retail rate adjusted

to reflect the effect of a promotion on the actual retail price, then the ILEC must not offer the promotion for more than 90 days.

Third, the Commission did not create a novel approach or new law when it held that “in order for a gift card type promotion not to require an adjustment to the resale wholesale rate . . . such a promotion must be limited to 90 days, unless the ILEC proves to the Commission that not applying the resellers’ wholesale discount to the promotional offering [rate] is a reasonable and nondiscriminatory restriction on the ILEC’s resale obligation.” As discussed above with respect to New Phone’s comments, FCC Rule 51.613(b), read in tandem with Rule 51.613(a)(2), has long provided for the possibility that an ILEC could avoid applying the wholesale discount to the special promotional rate if the ILEC is able to prove that withholding the availability of the promotional rate from the reseller is reasonable and nondiscriminatory.

Fourth, the Commission is not persuaded by BellSouth’s argument that one-time incentive gifts such as gift cards and toasters are not “telecommunications services” required to be resold pursuant to TA 96. The *Order* does not require that non-telecommunications services, such as gift cards, check coupons, or merchandise, be resold. Such items do, however, have economic value. In recognition of this fact, the *Order* requires that telecommunications services subject to the resale obligation of Section 251(c)(4) be resold at rates that give resellers the benefit of the change in rate brought about by offering one-time incentives for more than 90 days. The *Order* does not require ILECs to provide CLPs with toasters, phones, knife sets, hotel accommodations, gift cards, *etc.* that they might provide to their customers as an incentive to purchase services. The *Order* does require that the price lowering impact of any such 90-day-plus promotions on the real tariff or retail list price be determined and that the benefit of such a reduction be passed on to resellers by applying the wholesale discount to the lower actual retail price.

Fifth, BellSouth complains that the Commission did not determine the value of various gift incentives or provide guidance on making such determinations, given that the ILECs’ costs to acquire incentive gifts are likely not the same as the face value or actual value of the gifts to the customers. The Commission did not address determining the value of the benefit of an incentive gift promotion nor did it attempt to set strict guidelines for determining the actual rate for a service based on the value of any particular type of incentive gift. The Commission intentionally left this matter open so that the parties would be free to negotiate and arrive at a mutually agreed upon real retail rate. Irresolvable disputes in this area may be brought to the Commission for decision. However, to the extent that it is impossible either to reach a fair accommodation or agreed upon rate based on the promotional offer, or to provide the benefit of the promotional rate to resellers because it is too difficult to calculate such a

rate, then, in the absence of contrary proof, such 90-day-plus promotions would be unreasonable and discriminatory and could not be approved.<sup>3</sup>

Finally, BellSouth complains that CLPs will not be required to pass on the benefit of the promotional rate to their customers. According to BellSouth, a CLP would have every incentive to keep the benefit for itself as a windfall over and above the wholesale discount it already receives. The resale obligation of TA 96 permits a CLP to use the wholesale discount in a way that is beneficial to it without requiring the benefit to be passed directly to end users, so it is possible that a reseller could choose not to pass the promotional rate on to its customers. However, the Commission believes such an outcome is unlikely because the reseller's success is based on being able to sell services at prices that are competitive with the ILEC's prices in the marketplace. If the ILEC offers a long-term promotion and that promotional rate continues to be generally available in the market after the 90<sup>th</sup> day of a promotion, the reseller will need to offer its services at a competitive price and will likely want to maintain the price differential it usually maintains between the ILEC's retail rates and the rates it charges customers. Moreover, BellSouth's argument seems to contemplate that the gift would be provided directly to the CLP, *e.g.*, if a \$100 coupon was offered to BellSouth's customers, BellSouth would have to provide resellers with a \$100 cash payment for each of its customers. However, as discussed above, the *benefit* (not the gift itself) would be delivered to the reseller through the wholesale price charged to the reseller, thus, further reducing the likelihood of undue windfall as described by BellSouth.

## CONCLUSION

The Commission's *Order* regarding resale obligations applicable to one-time gift promotions, pursuant to TA 96, is clarified in accordance with the foregoing discussion.

### B. Resale obligations with respect to mixed bundles

BellSouth complains that, with respect to mixed bundles of telecommunications services and non-telecommunications services, the Commission's *Order* requires ILECs to make the regulated services in the bundle available for resale at a "super discount." According to BellSouth, this super discount results because the *Order* requires the wholesale discount to be applied to the difference between the tariff rate for the telecommunications services in the mixed bundle and the entire price of the bundle, whenever the bundle is offered for a total price that is less than or equal to the stand-alone tariff price for the regulated telecommunications service. Thus, BellSouth believes the *Order* requires ILECs to resell piece-meal portions of mixed bundles at a "super discount." BellSouth argues that it should not be made to break apart such bundles. An ILEC has no obligation to resell either non-telecommunications services

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<sup>3</sup> Prior approval is not required under N.C.G.S. 62-133.5(f), but starting on the 91<sup>st</sup> day of a promotional offering, "an incumbent LEC may impose a restriction [on the resale obligation] only if it [has proved] to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. 51.613(b).

that it provides, or any services (telecommunications or non-telecommunications services) that are provided by entities other than the ILEC.

#### DISCUSSION

At the outset, the Commission notes that its *Order* addressed the Public Staff's specific questions, which focused on resale obligations with respect to *regulated* telecommunications services that were part of a gift card promotion or that were part of a bundle of regulated and nonregulated services. Therefore, the *Order* generally discussed resale obligations regarding component services in a mixed bundle in terms of regulated and nonregulated services. However, pursuant to Section 251(c)(4), an ILEC is required "to offer for resale at wholesale rates any telecommunications service that [the ILEC] provides at retail to subscribers who are not telecommunications carriers." It follows from Section 251(c)(4) that an ILEC must resell all telecommunications services, whether regulated or nonregulated, at the true retail price minus the wholesale discount. Thus, an ILEC must offer the reseller any regulated telecommunications services it provides at retail (the tariff list price) for the wholesale rate, and it must also offer the reseller any nonregulated telecommunications services it provides at retail (the retail list price) for the wholesale rate. Accordingly, hereinafter, the Commission will discuss the resale obligation in terms of telecommunications services and non-telecommunications services, not in terms of regulated and nonregulated services.

BellSouth correctly states that an ILEC is not required to resell either non-telecommunications services that it provides or any services that are provided by an entity other than the ILEC. The Commission's *Order* imposed no resale obligation in conflict with this stated principle. The *Order* does not require an ILEC to resell a mixed bundle that contains inside wire maintenance (a non-telecommunications service) nor a mixed bundle that contains long distance service (a telecommunications service) supplied by a non-ILEC such as BellSouth Long Distance, Inc. However, the Commission's *Order* does require that an ILEC make any telecommunications services provided by it and offered as a component of a mixed bundle available for resale on a stand-alone basis for the wholesale rate, which must be determined by applying the wholesale discount rate to the actual, retail, marketplace rate. Accordingly, with respect to mixed bundles of telecommunications services and non-telecommunications services or telecommunications services and services offered by non-ILECs, determining the actual retail rate of any ILEC-provided telecommunications services that are in the bundle is crucial to calculating the wholesale rate a reseller must pay to resell such telecommunications services. As discussed in the *Order*, short-term promotional rates offered for 90 days or less do not constitute retail rates for telecommunications services, but long-term promotional rates offered for 91 days or more do constitute the retail rates that must be used to determine the reseller's wholesale rate.

In its discussion of a "super discount" resale obligation, BellSouth has misunderstood the Commission's *Order*, which the Commission finds should be clarified with respect to resale obligations relating to telecommunications services offered as part

of a mixed bundle. When a package or bundle of a telecommunications service and a non-telecommunications service is offered in excess of 90 days for a total price that equals the price of the telecommunications service, *i.e.*, the price of the telecommunications service is not lowered but the customer receives added value for the price of the telecommunications service alone, the real retail rate in the market for the ILEC-provided telecommunications service must be determined by accounting for the value of the services in the bundle that are not telecommunications services provided by the ILEC. In this situation, the price for the telecommunications service provided by the ILEC is reduced by the value received in the form of additional non-telecommunications services and/or non-ILEC provided services. Thus, if Telecommunications Service 1 ("TS1") retails for \$50 and a mixed bundle consisting of TS1, a Non-Telecommunications Service, and Satellite Television provided by a non-ILEC entity retails for \$50, then TS1 is being discounted by the value of the other services in the bundle (which may appear to be provided as a free gift). If this mixed bundle is offered for 91 days or more, then the wholesale rate that the reseller must pay for TS1 is determined by applying the wholesale discount (to be determined in accordance with the discussion on Pages 6-7 above) to the promotional rate for TS1, which is determined by subtracting the value (benefit) of the giveaways (the Non-Telecommunications Service and the non-ILEC provided Satellite Television Service) from the tariff or retail list price for TS1.

When a package or bundle of a telecommunications services and a non-telecommunications service is offered in excess of 90 days for a total price that is less than the price of the telecommunications service, the real retail rate for the telecommunications service is the total price of the bundle. That is to say, when the total bundle price is less than the telecommunications service in the bundle, the ILEC has determined the value of the discount from the tariff or retail list price and has thereby determined that the actual retail rate for the telecommunications service is the price of the total mixed bundle. (There is no requirement that discounts applicable to individual components sold together in a bundle be determined or passed on to resellers.) For example, if TS1 retails for \$50 and Telecommunications Service 2 ("TS2") retails for \$75, while a mixed bundle consisting of TS1, TS2, a Non-Telecommunications Service, and Satellite Television is offered for \$60, then TS2 is actually available in the marketplace for a real retail rate of \$60. A customer whose goal is to acquire TS2 for the best price in the market can do so by paying \$60 for the bundle rather than the retail list price of \$75, although he must also accept additional services in order to acquire TS2 at the lower rate. Therefore, the wholesale rate that the reseller must pay for TS2 is determined by applying the wholesale discount to \$60, the promotional rate for TS2. In this example, the mixed bundle sells for more than the retail price for TS1, so TS1 is not available in the marketplace for less than the tariff or retail list price of \$50. The customer whose goal is to purchase TS1 for the best price in the market would not purchase the \$60 mixed bundle just to acquire TS1, because he can purchase TS1 for less at the retail list price. Accordingly, an ILEC is only obligated to resell TS1 at the retail list price minus the wholesale discount.

In another example, if TS2 again retails on a stand-alone basis for \$75 and a Non-Telecommunications Service retails for \$10, while a mixed bundle of TS2 and the Non-Telecommunications Service is offered for more than 90 days for \$25, then TS2 would be available in the market for a real retail rate of \$25 even though a subscriber would have to accept the entire bundle to obtain TS2 for that price. Thus, TS2 should be offered to the reseller at the wholesale rate, which would be determined by applying the wholesale discount to the TS2 promotional rate of \$25.

Looking at BellSouth's example on Page 7 of its Motion for Reconsideration, where telecommunications service A retails for \$30, telecommunications service B retails for \$10, and a bundle of both A and B is priced at \$25 for a period in excess of 90 days, a reseller must pay \$25 minus the wholesale discount for service A, since a customer could purchase service A for less than \$30 by purchasing the bundle for \$25. That is to say, the real retail rate for service A would be \$25. For service B, the reseller must pay \$10 minus the wholesale discount because the real retail rate for service B remains at \$10, *i.e.*, a customer cannot acquire service B for less than \$10 by purchasing the bundle. The reseller would not be entitled to purchase service A alone for \$15 (\$40 [A + B] minus \$25 = \$15) minus the wholesale discount as BellSouth apparently believed was required by the Commission's *Order*. It should be noted that if service B is changed to a non-telecommunications service or to a non-ILEC provided service, the ILEC would have no obligation to offer service B to a reseller at the wholesale rate.

Finally, to reiterate, as was noted above and in the *Order*, when the entire mixed bundle is offered for a price that is more than an end-user subscriber would pay for a telecommunications service if purchased alone at the retail list price, an ILEC is not required to resell the telecommunications services in the bundle for a price that is lower than the retail list price minus the wholesale discount. Instead, the ILEC is only required to resell such telecommunications services at the listed retail price minus the wholesale discount. For example, TS1 retails for \$50, while a mixed bundle of TS1, a Non-Telecommunications Service and Satellite Television supplied by a non-ILEC is offered at \$80. In this example, the mixed bundle cannot be purchased as a lower cost means of acquiring TS1. Thus, the wholesale rate for TS1 would continue to be determined by applying the wholesale discount to the tariff or retail list price for TS1, not the promotional rate that a customer might receive for TS1 if it is purchased as part of the bundle. To clarify further, the Commission's *Order* does not require an ILEC to calculate internal discount prices of components offered in a bundle and then "pick apart" the bundle to offer those internal discounts applicable to telecommunications services (discounts that are never offered to retail customers on a stand-alone basis) to resellers.

#### CONCLUSION

The Commission's *Order* regarding federal resale obligations applicable to mixed bundles is clarified in accordance with the foregoing discussion.

DISPOSITION OF MOTIONS

WHEREUPON, the Commission disposes of the parties' motions as follows:

1. New Phone's Motion to Reconsider IS DENIED.
2. New Phone's alternative Motion for Clarification IS GRANTED in accordance with the foregoing discussion and conclusions stated hereinabove in the section captioned "New Phone's Comments."
3. BellSouth's Motion to Reconsider and its Motion for Stay ARE DENIED.
4. BellSouth's alternative Motion for Clarification IS GRANTED in accordance with the foregoing discussion and conclusions stated hereinabove in the section captioned "BellSouth's Motion."

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of June, 2005.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

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Basic Upgrades	Quote	Call Features
Lifeline Credit		
Link Up America Credit		
	Total: \$26.49	<input type="checkbox"/> <b>Call Forwarding</b> * \$7.00
	remove (\$13.50)	Call Forwarding allows you to transfer all of your calls to another telephone number. Call Forwarding must be activated from your home phone. Lift the handset and listen for dial tone. Press *72 in some areas you must dial 72# with touch tone. At the tone, dial the # calls are to be forwarded to. To deactivate Call Forwarding Press *73 or 73# and hang up.
	remove (\$30.00)	<input type="checkbox"/> <b>Busy Redial</b> * \$7.00
	Total Upgrades: (\$43.50)	Busy redial automatically redials the lasts number you dialed. To Activate – Lift the headset and listen for dial tone and press *66. To cancel busy redial press *86
	<b>Grand Total: (\$17.01)</b> (Excluding Taxes and Fees)	<input type="checkbox"/> <b>Call Return</b> * \$7.00
		Call Return automatically returns the most recent incoming call, whether answered or not. Listen for the dial tone and press *69 to return the last call received.
		<input type="checkbox"/> <b>Caller ID</b> * \$12.00
		Caller ID allows you to see the name and number of the person calling you.
		<input type="checkbox"/> <b>3 Way Calling</b> * \$7.00
		Three-way Calling allows you to add a third person to your conversation. To activate press and release the flash key (#) to place the first caller on hold, listen for three quick tones, followed by a dial tone. Dial the number you want to add to the conversation, when that person answers press the flash (#) key once and all three parties will be connected.
		<input type="checkbox"/> <b>Call Waiting</b> * \$7.00
		To use call waiting you will hear a tone during the call. Press flash key to answer the other line and then press flash again to return to caller.
		<input type="checkbox"/> <b>Call Trace</b> * \$7.00
		With Call Trace, you will be have to initiate an automatic trace of the last call received
		<input type="checkbox"/> <b>Speed Dial</b> * \$7.00
		With Speed Dialing 8, you will have easy and immediate access to family, friends, emergency and other important numbers.
		<input type="checkbox"/> <b>Call Block</b> * \$7.00
		With Call Block, you will have the ability to prevent incoming calls from up to six different telephone numbers.
		<b>Special Offers</b>
		<input type="checkbox"/> <b>Grace Days/Extension (1st month free)</b> * \$2.50
		This plan allows the Customer 5 extra days after their due date each month to make a payment with no risk of being disconnected.
		<input type="checkbox"/> <b>The dPi Club Program (1st month free)</b> * \$3.00
		Involuntary Unemployment Insurance: If you become involuntarily unemployed dPi TeleConnect will waive your monthly payments for up to 3 months subject to the provisions of the program (1-888-600-4436)
		Grocery Coupon Savings Book: Get valuable coupons on the products you buy every day. Use them at any grocery store and save over \$500 every year. Select from more than 1,000 brand name items.
		Debt and Credit Counseling Services: If you are currently living paycheck to paycheck or if credit cards bills are weighing you down? Then speak with one of our Credit Counselors and we will be happy to assist you (1-800-285-8546 ID Code: dPi).
		<input type="checkbox"/> <b>The dPi Club Program, Gold Package (1st month free)</b> * \$5.00
		Involuntary Unemployment Insurance:

If you become involuntarily unemployed dPi TeleConnect will waive your monthly payments for up to 3 months subject to the provisions of the program (1-888-600-4436).

**Grocery Coupon Savings Book:**  
Get valuable coupons Use them at any grocery store and save over \$500 every year.

**Debt and Credit Counseling Services:**  
If you are currently living paycheck to paycheck or if credit cards bills are weighing you down? Then speak with one of our Credit Counselors and we will be happy to assist you (1-800-285-8546 ID Code: dPi).

**Grace Days:**  
This allows a Customer 5 extra days after their due date each month to make a payment with no risk of being disconnected.

**Internet**

**dPi Net \*** **\$11.99**

dPi net Offers High Speed Dial Up Service with Free Email, Custom Web Page (up to 25MB), 24x7 Technical Support, No-Disc Easy Installation.

**Listing**

**Non-Published Listing \*** **\$7.00**

This allows for a phone number to be withheld from both the printed phone book as well as being accessible on 411.

**Long Distance**

**Long Distance - 2,000 Anytime Minutes 877-260-2763 \*** **\$13.00**

This is the best value DPI has ever offered. You can make long distance calls, anytime you want 1-877-260-2763 Receive 2,000 Long Distance Anytime Minutes per month of Domestic Voice Use only.

**Long Distance - 500 Anytime Minutes 877-260-2763 \*** **\$10.00**

If you have average long distance calling habits each month, and you want a good price when you use it, this is for you. 1-877-260-2763

**Long Distance - 200 Anytime Minutes 877-260-2763 \*** **\$6.00**

If you have average long distance calling habits each month, but you want a good price when you use it, this is for you. 1-877-260-2763

**Long Distance - 100 Anytime Minutes 877-260-2763 \*** **\$3.50**

If you don't use a lot of long distance each month, but you want it cheap when you use it, this is for you. 1-877-260-2763

**Lifeline**

**Lifeline Credit \*** **(\$13.50)**

LIFELINE CUSTOMERS - ONLY AVAILABLE TO THOSE CUSTOMERS WHO MEET THE REQUIRED LEGAL QUALIFICATIONS FOR LIFELINE AND CAN PROVIDE THE REQUIRED PROOF OF ELIGIBILITY. Legal documentation must be obtained and sent to dPi Corporate offices in order for a customer to be provisioned with this product.

**Link Up America Credit \*** **(\$30.00)**

A government subsidized program that gives partial credit of the Service Activation charge to customers who qualify for the Lifeline Assistance Program

**Package**

**Call Feature Bonus Package \*** **\$35.50**

This package includes Call Forwarding, Call Waiting, Caller ID, Call Return, 3-Way Calling and can make all the Local calls you want for one low price.

**Call Feature Super Value \*** **\$27.00**

This package includes Call Forwarding, Call Waiting, Caller ID and 3-Way calling

**Call Feature Saver \*** **\$16.00**

This package includes Call Waiting and Caller ID.



Call Us Toll-Free at: 1-877-JOIN DPI (564-6374)

DPI

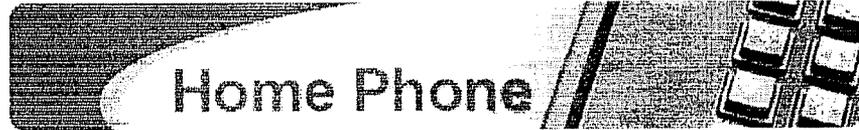
## Home Phone - Energy - Wireless Great Products for a Great Life

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### Getting Connected Is Easier Than You Think

With over 6,000 agents nationwide, dPi processes thousands of new dial-tone activations per month. It's our dedication to understanding our customer's needs that has cemented our reputation as one of the nation's premier providers of Pay As You Go prepaid local home phone service.

- No Credit Check
- No Deposit
- No Contracts
- No I.D. Required

#### Packages Designed With You in Mind

dPi's Pay As You Go prepaid local home phone packages are designed to fit your needs without busting your budget. Packages start as low as \$9.99 a week or \$29.99 a month! Choose from the following plans:

Features:	Basic Package	Advantage Package	Premier Package
Unlimited Local Calls	yes	yes	yes
Call Waiting		yes	yes
Caller ID		yes	yes
Call Return			yes
Call Forwarding			yes
3 Way Calling			yes

Packages not what you're looking for? Simply add any of the features above to a basic calling package to create your own personalized package. What are you waiting for? **Sign up today!**

#### Add Pay As You Go Prepaid Long Distance

dPi also offers domestic long distance packages with your dPi Local Home Phone service. Need international long distance, too? We can hook you up! **Learn more.**

#### Add Pay As You Go Prepaid Internet

Get connected without the commitment! With dPi Local Home Phone service, you can purchase Internet minutes via Pay As You Go access or get a monthly subscription. **Learn more.**

[Learn about the dPi Prompt Payment Discount](#)

**Ready to Sign Up?**  
**Got a Question?**  
 Call 1-877 JOIN dPi  
**Email Your Question**  
**Find a Reseller Near You**

Get the facts before you buy - Q&A with dPi:

- Q. Will you ever ask for a deposit from me?  
A. No. Absolutely not.
- Q. Can I keep my existing phone number?  
A. Yes.
- Q. Do you need my real name to sign up for home phone service?  
A. Absolutely not. All we need is your address.
- Q. Can I add or delete phone features in the future?  
A. Yes, you can modify your plan each month if you wish.
- Q. What if I move? Can I keep my phone number and service?  
A. Yes, there is a \$20 fee to make a change or to transfer your service.
- Q. What if I need a few extra days to pay my bill?  
A. dPi gives our customers the choice of having grace days to make the next payment (first month free - \$5 thereafter). We allow customers to make a "promise to pay," either on the phone, or on our Website. We also allow our customers to "pay as they go" meaning they can pay by the day, week or month.

### PAY AS YOU GO HOME PHONE SERVICE Get Started!

enter zip code

Local Phone Company  
I would like to keep my  
existing home phone number

Yes
  No

[Get My Price!](#)

Every month, you can lower your bill by \$10 for the following month when you pay your full bill on or before the due date.



Q. If I haven't made the next month's payment, will you disconnect me without calling me first?

A. No. We will always contact you and try to work with you before disconnecting service.

Q. Why does the local phone company require my name and a deposit when dPi doesn't?

A. They don't need it. It's a matter of trust. The only reason they need it is so they can track you down or report bad credit on your account.

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Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin

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This website is best viewed by using Internet Explorer Version 7.

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**

In the matter of: )  
 )  
dPi Teleconnect, L.L.C. v. ) DOCKET NO. 21849-U  
 )  
BellSouth Telecommunications, Inc. )

**DIRECT TESTIMONY OF TOM O'ROARK**

- 1 Q. Please tell us who you are and give a little background about yourself.
- 2 A. My name is Tom O'Roark. I serve as dPi's CFO and, for now, chief
- 3 executive officer. Since the departure of dPi's Brian Bolinger, dPi's former vice
- 4 president of legal and regulatory affairs, I am the one who has taken the lead in
- 5 dealing with disputes over promotion credits with AT&T. Prior to my involvement,
- 6 Brian Bolinger along with Steve Watson of Lost Key Telecom Inc. (which functions
- 7 as dPi's billing and collections agent for promotions) headed up this effort on behalf
- 8 of dPi, and thus had most of the detailed interaction with AT&T; I was simply kept
- 9 appraised of events as they developed by Brian and/or Steve.
- 10
- 11 Q. Please give a little background on dPi Teleconnect and describe the history of
- 12 dPi Teleconnect's dispute with AT&T.
- 13 A. dPi Teleconnect is a competitive telecommunications company authorized
- 14 to provide intrastate local exchange and interexchange telecommunications services
- 15  dPi provides telecommunications services primarily to residential

1           At this point, (September/October 2004) BellSouth put together a team of  
2           lawyers and retail and marketing managers to find see if there was a way to avoid  
3           paying the promotions. *See* Seagle depo 40-56.

4           From September 2004 to April 2005, BellSouth was unable to satisfactorily  
5           explain why it was refusing to pay these credits. On numerous occasions over this  
6           period, BellSouth's Kristy Seagle and/or other employees promised that these  
7           payments would be forthcoming. *See* dPi's Exhibit 5, copies of email  
8           communications between the parties on this subject.

9           It appears that over the period of September 2004 to April 2005, BellSouth  
10          seemed to be floating "test balloons" about possible reasons for not paying the  
11          credits. For example, during the fall of 2004, it was suggesting that it might deny  
12          dPi the credits requested because the orders submitted would not qualify because  
13          they were not for "winover" or "reacquisition" customers. However, because  
14          (unlike BellSouth) dPi sells primarily to the credit challenged customer, essentially  
15          every single one of dPi's new customers is someone who was formerly a customer  
16          of BellSouth or another provider and who left after getting into trouble over their  
17          phone bill.

18          Another reason initially advanced for not issuing the credits was for the  
19          supposed reason that the TouchStar Blocking Features dPi used to qualify for the  
20          LCCW were really not "features." This reason was withdrawn (though it has now  
21          reappeared in sister states) after dPi pointed out that the TouchStar Blocking  
22          Features appear in the various state tariffs where they are listed with other features,

**OFFICIAL COPY**

1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Thursday, November 12, 2009  
3 DOCKET NO.: P-55, Sub 1744  
4 TIME IN SESSION: 10:03 A.M. - 4:37 P.M.  
5 BEFORE: Commissioner William T. Culpepper, III, Presiding  
6 Chairman Edward S. Finley, Jr.  
7 Commissioner Bryan E. Beatty

8 IN THE MATTER OF:

9 BellSouth Telecommunications, Inc.: Complaint of dPi  
10 Teleconnect, LLC

11  
12 A P P E A R A N C E S:

13 FOR AT&T NORTH CAROLINA:

14 Edward L. Rankin, III  
15 Patrick W. Turner  
16 AT&T North Carolina  
17 P.O. Box 30188  
18 Charlotte, North Carolina 28230

19 FOR THE USING AND CONSUMING PUBLIC:

20 Lucy Edmondson, Staff Attorney  
21 Public Staff - North Carolina Utilities Commission  
22 4326 Mail Service Center  
23 Raleigh, North Carolina 27699-4326  
24

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A P P E A R A N C E S (Continued):

FOR DPI TELECONNECT, LLC:

Ralph McDonald  
Bailey & Dixon, LLP  
Post Office Box 1351  
Raleigh, North Carolina 27602-1351

Christopher Malish  
Foster, Malish & Blair, LLP  
1403 West Sixth Street  
Austin, Texas 78703

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1 we are convenient for them in terms of making easy payment  
2 available to them in terms of working with them to make it  
3 easy and convenient for them to retain their phone service  
4 and we work with them to help provide life management  
5 skills, frankly, that they lack to remind them to make  
6 payments.

7           We do an awful lot of account administration work  
8 with them to remind them to make payments to try to keep  
9 their phone service active and that type of thing. We  
10 also allow them to come back if their phone service gets  
11 interrupted because they have to make a decision between  
12 diapers and phone service, we allow them to come back. We  
13 don't require them to put up deposits; we don't charge  
14 them penalties, that type of thing for leaving service,  
15 coming back to service. We're very friendly to them in  
16 that regard.

17           Those customers need us. And -- and we feel like  
18 that we provide a valuable and needed service in our  
19 prepaid niche that's not served by BellSouth and it's not  
20 served by any prepaid -- any postpaid provider. So we  
21 feel like to a certain extent that we're here representing  
22 those customers.

23           The -- we do business with all of the major ILECs.  
24 And in most cases when we deal with an ILEC, they offer a

**Exhibit PLF-10**  
**Page 1 of 1**



Home Products My Account Contact Us About Us Call Us Toll-Free at: 1-877 JOIN DPI (564-6374)

Select Provider > Select Package > Select Services > Order Summary > Address / Customer Info > Make Payment > Account Summary

**Order Summary**

**ZipCode: 40601 Bell South**

Package and Features Selected	Price	Month 2 Charges
Basic Service	\$39.99	\$39.99
Access Fee		\$2.00
USOC Order Charge	\$1.69	\$1.69
FCC Subscriber Line Fee	\$6.50	\$6.50
Retention Credit		(\$6.30)
Prompt Pay Discount		
Payment Deferral		\$6.33
A.A.M. Fee	\$5.00	\$5.00
Service Activation Charge	\$60.00	
Service Activation Charge		\$0.00
Payment Deferral	(\$69.68)	
<b>Product Total</b>	<b>\$43.50</b>	<b>\$55.21</b>
<b>Taxes</b>		
Sales Tax	\$7.50	\$11.07
<b>Total Amount Due</b>	<b>\$51.00</b>	<b>\$66.28</b>



Product Name	Mo.1	Mo.2	Mo.3	Mo.4	Mo.5	Mo.6	Mo.7	Mo.8	Mo.9
Basic Service	39.99	39.99	39.99	39.99	39.99	39.99	39.99	39.99	39.99
Access Fee		2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
USOC Order Charge	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69
FCC Subscriber Line Fee	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Retention Credit		-6.30	-6.30	-6.30	-6.30	-6.30	-6.30	-6.30	-6.30
Prompt Pay Discount			-10.00	-10.00	-10.00	-10.00	-10.00	-10.00	-10.00
Payment Deferral		6.33	6.33	6.33	6.33	6.33	6.33	6.33	6.33
A.A.M. Fee	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Service Activation Charge	60.00								
Service Activation Charge		0.00	0.00	0.00	0.00				
Payment Deferral	-69.68								
Subtotal Product	43.50	55.21	45.21	45.21	45.21	45.21	45.21	45.21	45.21
Taxes, Fees and Surcharges	7.50	11.07	11.07	11.07	11.07	11.07	11.07	11.07	11.07
<b>Total</b>	<b>51.00</b>	<b>66.28</b>	<b>56.28</b>						

<b>Tax Details: Month 1</b>
Federal Excise Tax (\$0.69)
Federal Universal Service Fund \$1.79
Franklin Co. 911 Surcharge \$1.00
KY Annual Psc Assessment \$0.05
KY Lifeline Support Surcharge \$0.08
KY Tap Surcharge \$0.02
KY Trs \$0.02
Rate Increase For School Tax \$2.62
State Sales Tax \$2.61



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**Exhibit PLF-11**  
**Page 1 of 1**



Home Products My Account Contact Us About Us Call Us Toll-Free at: 1-877 JOIN DPI (564-6374)

Select Provider > Select Package > Select Services > Order Summary > Address / Customer Info > Make Payment > Account Summary

**Order Summary**

**ZipCode: 40601 Bell South**

Package and Features Selected	Price	Month 2 Charges
Basic Service	\$39.99	\$39.99
Access Fee		\$2.00
USOC Order Charge	\$1.69	\$1.69
FCC Subscriber Line Fee	\$6.50	\$6.50
Prompt Pay Discount		
Payment Deferral		\$6.33
Payment Deferral	(\$69.68)	
A.A.M. Fee	\$5.00	\$5.00
Service Activation Charge	\$60.00	
Service Activation Charge		\$0.00
Retention Credit		(\$6.30)
Lifeline Credit	(\$13.50)	(\$13.50)
<b>Product Total</b>	<b>\$30.00</b>	<b>\$41.71</b>
<b>Taxes</b>		
Sales Tax	\$5.44	\$9.04
<b>Total Amount Due</b>	<b>\$35.44</b>	<b>\$50.75</b>



Product Name	Mo.1	Mo.2	Mo.3	Mo.4	Mo.5	Mo.6	Mo.7	Mo.8	Mo.9
Basic Service	39.99	39.99	39.99	39.99	39.99	39.99	39.99	39.99	39.99
Access Fee		2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00
USOC Order Charge	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69	1.69
FCC Subscriber Line Fee	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50
Prompt Pay Discount			-10.00	-10.00	-10.00	-10.00	-10.00	-10.00	-10.00
Payment Deferral		6.33	6.33	6.33	6.33	6.33	6.33	6.33	6.33
Payment Deferral	-69.68								
A.A.M. Fee	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Service Activation Charge	60.00								
Service Activation Charge		0.00	0.00	0.00	0.00				
Retention Credit		-6.30	-6.30	-6.30	-6.30	-6.30	-6.30	-6.30	-6.30
Lifeline Credit	-13.50	-13.50	-13.50	-13.50	-13.50	-13.50	-13.50	-13.50	-13.50
Subtotal Product	30.00	41.71	31.71	31.71	31.71	31.71	31.71	31.71	31.71
Taxes, Fees and Surcharges	5.44	9.04	9.04	9.04	9.04	9.04	9.04	9.04	9.04
<b>Total</b>	<b>35.44</b>	<b>50.75</b>	<b>40.75</b>						

<b>Tax Details: Month 1</b>
Federal Excise Tax (\$1.10)
Federal Universal Service Fund \$1.79
Franklin Co. 911 Surcharge \$1.00
KY Annual Psc Assessment \$0.03
KY Lifeline Support Surcharge \$0.08
KY Tap Surcharge \$0.02
KY Trs \$0.02
Rate Increase For School Tax \$1.80
State Sales Tax \$1.80

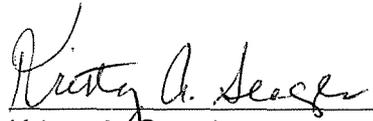


COMMONWEALTH OF KENTUCKY  
KENTUCKY PUBLIC SERVICE COMMISSION

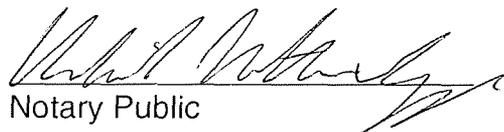
COUNTY OF Jefferson

STATE OF AL

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Kristy A. Seagle, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2009-00127, *In the Matter of: dPi Teleconnect, L.L.C., 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* and if present before the Commission and duly sworn, her statements would be set forth in the annexed direct testimony consisting of 10 pages and 3 exhibits.

  
\_\_\_\_\_  
Kristy A. Seagle

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 4 DAY OF AUGUST, 2010

  
Notary Public

My Commission Expires: 6/25/2012

1 AT&T KENTUCKY

2 DIRECT TESTIMONY OF KRISTY A. SEAGLE

3 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

4 CASE NO. 2009-00127

5 AUGUST 13, 2010

6

7 **Q. PLEASE STATE YOUR NAME, YOUR EMPLOYER, AND YOUR**  
8 **BUSINESS ADDRESS.**

9

10 A. My name is Kristy Seagle. I am employed by AT&T Operations, Inc. in the  
11 area of wholesale operations. My business address is 3535 Colonnade  
12 Parkway, Suite N3C, Birmingham, Alabama 35243.

13

14 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND**  
15 **AND EXPERIENCE.**

16

17 A. I received my Masters of Business Administration degree from the University  
18 of Alabama in Birmingham in 1982. I have 12 years experience in the  
19 telecommunications industry. My career with AT&T/BellSouth began in 1998  
20 as a Small Business Service Representative. Since then I have worked as a  
21 Systems Designer, Resale Product Manager, and Lead Interconnection  
22 Agreements Manager, before assuming my current position as a Systems  
23 Engineer.

24

25

26

27

1 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2

3 A. My testimony presents facts that support ATT Kentucky's policy positions that  
4 are set forth in the Direct Testimony of AT&T Kentucky witness Scot  
5 Ferguson. Specifically, my testimony: (1) provides an overview of the  
6 process competitive local exchange carriers ("CLECs") like dPi Teleconnect,  
7 L.L.C. ("dPi") use to request promotional credits from AT&T Kentucky; (2)  
8 summarizes conversations I had with dPi representatives regarding this  
9 process; and (3) discusses how I informed dPi representatives in 2004 and  
10 again in 2005 that AT&T Kentucky would not make the cashback portions of  
11 promotional offerings available for resale.

12

13 I. **OVERVIEW OF PROMOTIONAL CREDIT REQUEST PROCESS**

14

15 Q. **PLEASE GIVE A GENERAL SUMMARY OF HOW AT&T KENTUCKY**  
16 **GOES ABOUT RESELLING PROMOTIONS TO CLECS LIKE DPI?**

17

18 A. The CLEC purchases the services that are required in conjunction with a  
19 promotion from AT&T Kentucky and pays the standard resale price (the retail  
20 price less the wholesale resale discount) for those services. The CLEC then  
21 submits a promotional credit request seeking any additional credits to which it  
22 claims to be entitled pursuant to the promotion.

23

24 For example, assume that AT&T Kentucky ran a promotion that waived a  
25 retail \$40 installation charge when an end user ordered a line with a retail

1 price of \$20 per month during the promotional period. Assume further that  
2 the resale discount is 20%. If a CLEC resold that promotion to one of its end  
3 users that qualified for the promotion, the CLEC would be billed \$32 (\$40 less  
4 the 20% resale discount) for the installation charge and \$16 per month (\$20  
5 less the 20% resale discount) for the line. In order to receive the benefit of  
6 the promotional waiver of installation charges, the CLEC would then submit a  
7 request to AT&T Kentucky for a \$32 credit. If the request is valid (*i.e.*, if the  
8 promotion is available for resale and if the CLEC's end user meets the criteria  
9 that an AT&T Kentucky end user would have to meet to qualify for the  
10 promotion), AT&T Kentucky provides the CLEC a \$32 credit.

11

12 **Q. HAS THIS PROCESS BEEN IN PLACE THROUGHOUT THE 2003 TO 2007**  
13 **TIME FRAME AT ISSUE IN THIS DOCKET?**  
14

15 A. This general process has been in place throughout that time period, but the  
16 process has become more mechanized over time.

17

18 At the beginning of that time period, for instance, these types of promotional  
19 credit requests were received and processed manually. Beginning in the Fall  
20 of 2005, the process became increasingly mechanized. Today, the  
21 submission, validation, and processing of these types of promotional credit  
22 requests are almost entirely mechanized.<sup>1</sup>

---

<sup>1</sup> As explained by AT&T Kentucky witness Nicole Bracy in her Direct Testimony, for some cashback promotions, an end user may request the cashback

1           **II.     DISCUSSIONS WITH DPI REPRESENTATIVES REGARDING THE**  
2           **PROMOTIONAL CREDIT REQUEST PROCESS**  
3

4   **Q.     IN COMPANION PROCEEDINGS IN OTHER STATES, DPI HAS**  
5   **IDENTIFIED STEVE WATSON OF LOST KEY TELECOM INC. AS DPI'S**  
6   **BILLING AND COLLECTIONS AGENT FOR PROMOTIONS. HAVE YOU**  
7   **HAD ANY DISCUSSIONS WITH DPI'S BILLING AGENT, MR. WATSON,**  
8   **ABOUT THE PROMOTIONAL CREDIT REQUEST PROCESS?**  
9

10   A.    Yes.

11

12   **Q.     WHEN WAS THE FIRST TIME YOU DISCUSSED THE PROMOTIONAL**  
13   **CREDIT REQUEST PROCESS WITH MR. WATSON IN HIS CAPACITY AS**  
14   **DPI'S BILLING AGENT?**  
15

16   A.    During a face-to-face meeting in Birmingham, Alabama, in August of 2004.

17

18   **Q.     WHAT WERE YOUR JOB RESPONSIBILITIES AT THAT TIME?**  
19

20   A.    In August 2004, I was the resale product manager. My job responsibilities at  
21   the time included, among other duties, processing promotional credit requests  
22   submitted by CLECs.

23

24   **Q.     HOW DID YOUR AUGUST 2004 MEETING WITH DPI'S BILLING AGENT**  
25   **COME ABOUT?**  
26

27   A.    dPi's billing agent, Mr. Watson, asked me to meet with him and his son Chris.  
28   Mr. Watson said that he had recently left his position with another carrier and

---

offer only once in a given period of time. AT&T manually reviews cashback promotional credit requests related to these types of promotions

1 was starting a new business, Lost Key Telecom, Inc., that would work with a  
2 number of CLECs to submit promotional credit requests to AT&T. Mr.  
3 Watson said he wanted to discuss the format he intended to use in submitting  
4 these requests in order to ensure that the proposed format included all of the  
5 information AT&T needed to process the requests.

6

7 **Q. DID YOU DISCUSS THE PROMOTIONAL CREDIT REQUEST PROCESS**  
8 **WITH MR. WATSON DURING YOUR AUGUST 2004 MEETING?**

9

10 A. Yes. I explained the form that needed to be submitted to seek promotional  
11 credits, and Mr. Watson and I discussed how best to format the backup  
12 information that would need to be submitted to support the request.

13 **III. INFORMING DPI THAT CASHBACK PROMOTIONS WERE NOT**  
14 **AVAILABLE FOR RESALE**

15

16 **Q. WHAT TYPES OF PROMOTIONS DID YOU DISCUSS WITH MR. WATSON**  
17 **DURING THE AUGUST 2004 MEETING?**

18

19 A. Most of our discussions addressed promotions that did not involve cashback  
20 offers. During the meeting, however, Mr. Watson did specifically ask me  
21 about cashback promotions such as the ones at issue in this docket.

22

23 **Q. HOW DID YOU RESPOND TO MR. WATSON'S QUESTION?**

24

25 A. I told Mr. Watson that cashback promotions were not available for resale, and  
26 I agreed to send him an email to that effect when I got back to my office.

1 Q. DID YOU SEND DPI'S BILLING AGENT, MR. WATSON, AN EMAIL  
2 STATING THAT CASHBACK PROMOTIONS WERE NOT AVAILABLE FOR  
3 RESALE?  
4

5 A. Yes. Exhibit KAS-1 is a copy of the email I sent Mr. Watson on August 26,  
6 2004, stating that AT&T (then known as BellSouth) would not resell cashback  
7 offers.  
8

9 Q. AFTER YOUR MEETING WITH MR. WATSON IN AUGUST 2004, DID  
10 AT&T BEGIN RECEIVING PROMOTIONAL CREDIT REQUESTS FROM  
11 DPI'S BILLING AGENT?  
12

13 A. Yes. The following month, September 2004, I began receiving and  
14 processing promotional credit requests submitted by Lost Key on behalf of  
15 various CLECs, including promotional credit requests that Lost Key submitted  
16 on behalf of dPi.  
17

18 Q. WERE ANY OF DPI'S PROMOTIONAL CREDIT REQUESTS FOR  
19 CASHBACK PROMOTIONS?  
20

21 A. No. None of the promotional credit requests submitted in September 2004  
22 was for any cashback promotions, including those involved in this docket. In  
23 fact, I did not receive any promotional credit requests for cashback  
24 promotions from dPi until July 2005.  
25

1 Q. **WHAT HAPPENED IN JULY 2005?**

2

3 A. On July 21, 2005, Mr. Watson submitted a request on behalf of dPi for  
4 promotional credits for a cashback promotion. **Exhibit KAS-2** is a copy of an  
5 email string that includes that request. The request was submitted for  
6 services dPi had ordered in North Carolina, but that July 2005 request was  
7 the first request for cashback promotional credits I received from dPi.

8

9 Q. **HOW DID YOU RESPOND TO DPI'S JULY 2005 REQUEST FOR**  
10 **PROMOTIONAL CREDITS FOR A CASHBACK PROMOTION IN NORTH**  
11 **CAROLINA?**

12

13 A. Consistent with my August 2004 conversation with and email to Mr. Watson, I  
14 sent Mr. Watson an email on August 2, 2005, stating that the cashback  
15 promotion for which he was requesting a credit was not available for resale.  
16 See Exhibit KAS-2.

17

18 Q. **DID MR. WATSON RESPOND TO YOUR EMAIL?**

19

20 A. Yes. The next day, Mr. Watson sent me an email stating, among other  
21 things, that "I will let DPI Teleconnect know about this promotion." See  
22 Exhibit KAS-2.

23

24

1 Q. IN THE 2005 TIME FRAME, DID DPI OR LOST KEY SUGGEST THAT  
2 THEY DISAGREED WITH THE POSITION SET OUT IN YOUR AUGUST 2,  
3 2005 EMAIL?  
4

5 A. No. I heard nothing further from dPi or dPi's billing agent, Mr. Watson, about  
6 cashback promotions or AT&T's position that such promotions were not  
7 available for resale until January 2007, when dPi sent the spreadsheet  
8 addressed below.  
9

10 Q. DID MR. WATSON AND DPI TYPICALLY REMAIN SILENT WHEN THEY  
11 DISAGREED WITH AT&T'S HANDLING OF A PROMOTIONAL CREDIT  
12 REQUEST?  
13

14 A. No, not at all. As I mentioned earlier, dPi had submitted a number of  
15 promotional credit requests for non-cashback promotions since my August  
16 2004 meeting with Mr. Watson. On several occasions, and for various  
17 reasons, AT&T did not believe that dPi was entitled to some or all of the  
18 promotional credits it requested and, therefore, AT&T did not provide the  
19 requested credits to dPi. On several such occasions, dPi quickly informed  
20 AT&T that it did not agree with AT&T's decision not to provide the credits.  
21 **Exhibit KAS-3** is an example of correspondence, beginning in the Spring of  
22 2004, addressing dPi's disagreement with AT&T's decision not to provide  
23 various non-cashback promotional credits that dPi had requested.  
24  
25

1 Q. **WHEN IS THE FIRST TIME DPI REQUESTED A CASHBACK**  
2 **PROMOTIONAL CREDIT IN KENTUCKY?**  
3

4 A. According to Exhibit A to dPi's responses to AT&T Kentucky's discovery  
5 requests, the first time dPi sought cashback promotional credit in Kentucky  
6 was December 2005.  
7

8 Q. **DID AT&T KENTUCKY PROVIDE THE CASHBACK CREDITS DPI**  
9 **REQUESTED IN KENTUCKY IN DECEMBER 2005?**  
10

11 A. No. As explained by AT&T Kentucky witness Nicole Bracy, AT&T Kentucky  
12 did not provide any of the cashback credits dPi requested for billing periods  
13 prior to July 2007.  
14

15 Q. **WHEN DID YOU FIRST BECOME AWARE THAT DPI INTENDED TO**  
16 **SEEK PAYMENT FOR CASHBACK PROMOTIONAL CREDIT**  
17 **REQUESTS THAT IT HAD PREVIOUSLY SUBMITTED AND THAT**  
18 **AT&T KENTUCKY HAD NOT PAID?**  
19

20 A. In January 2007, dPi sent AT&T Kentucky a spreadsheet listing what it  
21 purported to be "open disputes." Some cashback promotional credit  
22 requests were included in these purported disputes. This was the first  
23 indication I had that dPi intended to seek payment for cashback  
24 promotional credit requests that it had previously submitted and that  
25 AT&T Kentucky had not paid.  
26  
27

1 Q. ARE YOU AWARE OF DPI HAVING DONE ANYTHING PRIOR TO  
2 JANUARY 2007 TO INDICATE THAT IT DISAGREED WITH AT&T  
3 KENTUCKY'S DECISION NOT TO PROVIDE CASHBACK  
4 PROMOTIONAL CREDIT REQUESTS PREVIOUSLY SUBMITTED BY  
5 DPI?

6  
7 A. No.

8  
9 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

10

11 A. Yes, it does.

12

13 839013

Message

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Thursday, August 26, 2004 1:47 PM  
**To:** Steve Watson  
**Subject:** Language regarding Cash Back/Coupon promotions

Steve,

Below is the language regarding Cash Back and Coupon promotions. I will get back to you on the 2 promotions we discussed and if they only involve new installs. It was really nice meeting you and Chris today. I look forward to a productive relationship for both of us. Thanks.

Kristy

BellSouth is not required by the Telecommunications Act, the Federal Communications Commission's (FCC) rules or by its tariffs to resell cash back promotional offers. BellSouth is required to and does make available for resale the service in connection with which the coupon is provided.

Section 251(c)(4) requires BellSouth to "offer for resale at wholesale rates any telecommunications service that the carrier provide(s) at retail, to subscribers who are not telecommunications carriers." The retail price of the telecommunications service is the standard tariff price. In implementing this section of the Act, the FCC confirmed that the ILEC resale obligation applies to promotions, which the FCC takes to refer to "price discounts from standard offerings." (96-98 Interconnection Order at para 948). Thus BellSouth's resale obligation for promotions applies to reduced prices reflected in a credit or a lower charge on a telecommunications service and not to cash back offers where the funds can be used by the customer for any purpose.

Further, BellSouth's tariffs state "that [CLECs] may resell specific tariff services identified in the tariff." (BellSouth Louisiana Tariff at Section A2.19.1, BellSouth Georgia Resale Tariff). Although promotional offers appear in some of BellSouth's GSST tariffs, a cash back promotion is not a tariff service, nor is it a reduction in the tariffed rate of a telecommunications product or service to which the resale obligation applies.

Kristy Seagle  
BellSouth ICS Marketing  
Office: 205/877-1208  
lpager: kristyseagle@imcingular.com

If you have received this message in error or do not wish to receive future commercial electronic mail messages from BellSouth Interconnection Services visit  
<<http://contactmanage.bellsouth.com/interconnection/optout/index.asp>> or write to us at:  
Attn: BellSouth Interconnection Services Marketing Communications  
Rm 34H71

Message

675 West Peachtree  
Atlanta, GA 30375

\*\*\*\*\*

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Message

**From:** processing [mailto:processing@lostkeytelecom.com]  
**Sent:** Wednesday, August 03, 2005 8:16 AM  
**To:** Seagle, Kristy  
**Subject:** RE: DPI Teleconnect Promotions - CB-100TF 20040408 to 20050331

Thank you Kristy,

Hope your recovering well from your surgery. I will let DPI Teleconnect know about this promotion. I wonder if you have the list of credits that you promised me before you left. Thank you,

Steve T Watson  
Lost Key Telecom  
Senior Account Manager  
878.528.6692 (Office)  
850.492.7444 (Fax)  
888.259.6057 (Toll Free)  
850.748.2344 (mobile)  
swatson@lostkeytelecom.com

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Tuesday, August 02, 2005 2:54 PM  
**To:** processing  
**Subject:** RE: DPI Teleconnect Promotions - CB-100TF 20040408 to 20050331

Hello Steve - This promotion was not available for resale during this time period. Thanks.

Kristy

-----Original Message-----

**From:** processing [mailto:processing@lostkeytelecom.com]  
**Sent:** Thursday, July 21, 2005 3:26 PM  
**To:** Seagle, Kristy  
**Cc:** Bolinger, Brian  
**Subject:** DPI Teleconnect Promotions - CB-100TF 20040408 to 20050331

Steve Watson  
P.O. Box 34474  
Pensacola, FL 32507  
878.528.6692 (Office)  
850.492.7444 (Fax)  
888.259.6057 (Toll Free)  
850.748.2344 (mobile)  
swatson@lostkeytelecom.com

\*\*\*\*\*

Message

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Message

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**Butler, Ann W**

---

**From:** Steve Watson [swatson@fostkeytelecom.com]  
**Sent:** Monday, April 18, 2005 7:08 AM  
**To:** Seagle, Kristy  
**Cc:** Chris Watson  
**Subject:** RE: DPI Teleconnect Credits

Thanks Kristy for the spreadsheet. Let me know if there is any way we can help with the process. God bless;

Steve

---

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Tuesday, April 12, 2005 3:21 PM  
**To:** Steve Watson  
**Subject:** RE: DPI Teleconnect Credits

Hello Steve - Wish I could say things have settled down. I'm working fast and furious to get the promotion credits processed. Please find attached your dispute spreadsheet with credits given to DPI and [REDACTED]. The DPI [REDACTED] credits should have appeared on their January bill period. If you can't find them, I'll get in touch with Billing & Collections. Thanks.

Kristy

-----Original Message-----

**From:** Steve Watson [mailto:swatson@fostkeytelecom.com]  
**Sent:** Wednesday, April 06, 2005 4:15 AM  
**To:** Seagle, Kristy  
**Cc:** Chris Watson  
**Subject:** DPI Teleconnect Credits

Good morning Kristy,

Hope everything has settle down in the Promotion Dept. and your getting the help you need. You sent a file showing the credits for [REDACTED] Waiver on 12/30/04. We have not been able to find those credits on DPI Teleconnect Resale Billing accounts on 2/08/05 and 3/08/05. Could you verify which month they will be credited to their bill? Also could you please send me the list of the new credits that were issued on April 1 so that I can update my spreadsheets for all of our clients. When it is convient Chris and myself would still like to meet with you for lunch or dinner, what ever works best with your schedule. Just let us know if that would be possible in May. Thank you for your help.

Sincerely,

Steve Watson  
P.O. Box 34474  
Pensacola, FL 32507  
878.528.8682 (Office)  
878.388.9888 (Fax)  
888.259.8057 (Toll Free)  
850.748.2344 (mobile)  
swatson@fostkeytelecom.com

11/8/2005

Message

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**Butler, Ann W**

---

**From:** Steve Watson [mailto:swatson@lostkeytelecom.com]  
**Sent:** Monday, April 18, 2005 10:12 AM  
**To:** Seagle, Kristy  
**Subject:** RE: DPI Teleconnect Credits

Thank you for the quick response. Steve

---

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Monday, April 18, 2005 8:39 AM  
**To:** Steve Watson  
**Subject:** RE: DPI Teleconnect Credits

Hey Steve - For some reason, the [REDACTED] charges were not credited. Billing & Collections found the error Friday, so they will appear on the May bill. I apologize for the oversight.

Kristy

-----Original Message-----

**From:** Steve Watson [mailto:swatson@lostkeytelecom.com]  
**Sent:** Monday, April 18, 2005 7:12 AM  
**To:** Seagle, Kristy  
**Cc:** Chris Watson  
**Subject:** RE: DPI Teleconnect Credits

Hi Kristy,

I just check for the [REDACTED] Waiver promotional credits for DPI Teleconnect on their 1-08-05 and I found no credits on that billing cycle. I also check the 2-08-05 and the 3-08-05 and found none. Please check with collections and see where and when they will receive those credits. Thank you for your help in this matter.

Steve

---

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Tuesday, April 12, 2005 3:21 PM  
**To:** Steve Watson  
**Subject:** RE: DPI Teleconnect Credits

Hello Steve - Wish I could say things have settled down. I'm working fast and furious to get the promotion credits processed. Please find attached your dispute spreadsheet with credits given to DPI and [REDACTED]. The DPI [REDACTED] credits should have appeared on their January bill period. If you can't find them, I'll get in touch with Billing & Collections. Thanks.

Kristy

-----Original Message-----

**From:** Steve Watson [mailto:swatson@lostkeytelecom.com]

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Message

Page 2 of 2

Sent: Wednesday, April 06, 2005 4:15 AM  
To: Seagle, Kristy  
Cc: Chris Watson  
Subject: DPI Teleconnect Credits

Good morning Kristy,

Hope everything has settle down in the Promotion Dept. and your getting the help you need. You sent a file showing the credits for [REDACTED] Waiver on 12/30/04. We have not been able to find those credits on DPI Teleconnect Resale Billing accounts on 2/08/05 and 3/08/05. Could you verify which month they will be credited to their bill? Also could you please send me the list of the new credits that were issued on April 1 so that I can update my spreadsheets for all of our clients. When it is convient Chris and myself would still like to meet with you for lunch or dinner, what ever works best with your schedule. Just let us know if that would be possible in May. Thank you for your help.

Sincerely,

Steve Watson  
P.O. Box 34474  
Pensacola, FL 32507  
878.528.8882 (Office)  
878.388.9866 (Fax)  
888.259.6057 (Toll Free)  
850.748.2344 (mobile)  
swatson@loftkeytelecom.com

\*\*\*\*\*

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**Butler, Ann W**

**From:** Mangina, Laisa G  
**Sent:** Tuesday, October 25, 2005 2:44 PM  
**To:** Butler, Ann W  
**Subject:** FW: dPI Teleconnect

FYI

-----Original Message-----

**From:** Bolinger, Brian [mailto:BBolinger@dpiteleconnect.com]  
**Sent:** Thursday, April 14, 2005 3:48 PM  
**To:** Seagle, Kristy; Bolinger, Brian; Seube, Louis; Patterson, Gary D  
**Cc:** Mangina, Laisa G; Kelley, Rod (James R)  
**Subject:** RE: dPI Teleconnect

Kristy:

Thank you for your e-mail. I am a little confused though. Would you please explain what you mean by "retail's consideration of [REDACTED] . . ." Please correct me if I am wrong, but it is my understanding that so long as the item is in the BellSouth tariff, it is eligible for the associated promotional credit. Features [REDACTED] such as [REDACTED], [REDACTED] and [REDACTED] are all defined TouchStar services in BellSouth tariffs.

The amounts in question now all stem from the [REDACTED] Waiver promotion. I cannot see any other conclusion other than that dPI Teleconnect met the end user qualifications of ordering basic local service with 2 custom calling and/or TouchStar features as defined in the BellSouth's own Tariff and associated Promotion. dPI Teleconnect provisions [REDACTED], [REDACTED] and [REDACTED] on every order it submits.

With regard to your question of what [REDACTED] is [REDACTED] is a [REDACTED] feature that [REDACTED]

Again, thank you for your e-mail and I look forward to receiving your answer on Monday.

Cordially,

Brian A. Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2887 LBJ Freeway, Suite 225  
Dallas, TX 75234  
(972) 488-5500 ext 4018

-----Original Message-----

**From:** Seagle, Kristy [mailto:Kristy.Seagle@BellSouth.com]  
**Sent:** Thursday, April 14, 2005 3:24 PM  
**To:** Bolinger, Brian; Seube, Louis; Patterson, Gary D  
**Cc:** Mangina, Laisa G; Kelley, Rod (James R)  
**Subject:** RE: dPI Teleconnect

Brian,

I am in the process of validating retail's consideration of [REDACTED] on features such as [REDACTED], [REDACTED] and [REDACTED]. I should have an answer by Monday, April 18. I was not able to find USOC [REDACTED] in our database or on a sampling of dPI orders. Do you have an order I could look at to see this USOC? Thank you.

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Kristy

-----Original Message-----

From: Bolinger, Brian [mailto:BBolinger@dpiconnect.com]  
Sent: Thursday, April 14, 2005 2:34 PM  
To: Seube, Louis; Bolinger, Brian; Patterson, Gary D  
Cc: Mangina, Leisa G; Kelley, Rod (James R); Seagle, Kristy  
Subject: RE: dPI Teleconnect

Louis:

Thank you for the update and additional adjustments. We have yet to receive a response from Ms. Seagle regarding the approximately \$[REDACTED] in credits that remain outstanding.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
(972) 488-6500 ext 4018

-----Original Message-----

From: Seube, Louis [mailto:Louis.Seube@BellSouth.com]  
Sent: Thursday, April 14, 2005 2:37 PM  
To: Bolinger, Brian; Patterson, Gary D  
Cc: Mangina, Leisa G; Kelley, Rod (James R); Seube, Louis; Seagle, Kristy  
Subject: RE: dPI Teleconnect

Brian,

Please see the attached file with the additional adjustments that are currently being completed. You will notice that there is an additional \$[REDACTED] that will be credited from this spreadsheet. The total amount of both spreadsheets provided is \$[REDACTED].

Please call me if you have any questions regarding these credits.

Kristy, do we have a response yet on the remaining credit requests?

Louis Seube  
205-714-7400

-----Original Message-----

From: Bolinger, Brian [mailto:BBolinger@dpiconnect.com]  
Sent: Wednesday, April 13, 2005 2:44 PM  
To: Seube, Louis; Patterson, Gary D  
Cc: Bolinger, Brian; Mangina, Leisa G; Kelley, Rod (James R)  
Subject: RE: dPI Teleconnect  
Importance: High

Louis:

Thank you for the information. If my math is correct, the total amount posted (or to be posted) is \$[REDACTED]. This amount differs from Mr. Patterson's e-mail below of \$[REDACTED]. Do you know why?

Also, we currently show remaining promotional credits outstanding from BellSouth in the amount of \$[REDACTED]. Any idea when those will be credited?

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Again, thanks for the information.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
(872) 488-6500 (ph)  
(872) 408-0193 (f)

-----Original Message-----

From: Seube, Louis [mailto:Louis.Seube@BellSouth.com]  
Sent: Wednesday, April 13, 2005 1:55 PM  
To: Patterson, Gary D  
Cc: BBolinger@dpiteleconnect.com; Mangina, Lefsa G; Kelley, Rod (James R); Seube, Louis  
Subject: RE: dPI Teleconnect

Brian,

Per your request, attached is the spreadsheet detailing when the adjustments posted, or when they will post. There are a few on the list that have yet to post, but the adjustment has been issued. Please let me know if you have any questions about the attached.

Louis Seube  
205-714-7400

-----Original Message-----

From: Patterson, Gary D  
Sent: Monday, April 11, 2005 1:37 PM  
To: Seube, Louis  
Subject: FW: dPI Teleconnect  
Importance: High

can you answer this question? gp

-----Original Message-----

From: Bolinger, Brian [mailto:BBolinger@dpiteleconnect.com]  
Sent: Monday, April 11, 2005 1:21 PM  
To: Patterson, Gary D  
Subject: RE: dPI Teleconnect  
Importance: High

Mr. Patterson:

We received an account aging as of this morning and the \$~~100,000~~ credit was not reflect on any account. I was under the impression that since the adjustments were completed as of last Wednesday, our current aging would show the adjustment. Can you tell me when our accounts will be adjusted accordingly?

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Thank you.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPi Teleconnect, LLC  
2887 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-5500 ext. 4018  
Fax (972) 406-0193

-----Original Message-----  
From: Patterson, Gary D  
[mailto:Gary.Patterson2@BellSouth.com]  
Sent: Monday, April 11, 2005 11:31 AM  
To: Bolinger, Brian  
Subject: RE: dPi Teleconnect.

Advernull is a she. She shortens it to Ad. Her telephone number is 205-977-1059.

-----Original Message-----  
From: Bolinger, Brian  
[mailto:BBolinger@dPiTeleconnect.com]  
Sent: Monday, April 11, 2005 11:03 AM  
To: Patterson, Gary D; Bolinger, Brian  
Cc: Dorwart, David  
Subject: RE: dPi Teleconnect  
Importance: High

Mr. Patterson:

Thank you for your reply. If you would, please provide me with the contact information for Advernull Allen. I have not had the opportunity to work with him or her yet.

Also, with regard to your previous message stating "dPi Teleconnect did not receive full credit on all submitted requests due to not meeting end user qualifications of ordering basic local service with 2 custom calling and/or TouchStar(r) features as defined in the Tariff Promotion." Please know that dPi Teleconnect disagrees with BellSouth's conclusion for the following reasons:

In accordance with BellSouth's Tariff Promotion, TouchStar Service USOCs include [REDACTED] and [REDACTED]. dPi Teleconnect uses each of these USOCs on every order. Additionally, dPi Teleconnect utilizes the custom calling feature [REDACTED] on each and every order. Accordingly, dPi Teleconnect concludes that the \$[REDACTED] not paid by BellSouth is in error because dPi Teleconnect meets the end user qualifications of ordering basic local service with 2 custom calling

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and/or TouchStar features.

Thank you for your attention to this matter and please provide me with the date on when BellSouth will correct this error.

Cordially,

Brian A. Bolinger  
Vice President of Legal Affairs  
dPi Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-5600 ext. 4018  
Fax (972) 408-0193

-----Original Message-----

From: Patterson, Gary D  
[mailto:Gary.Patterson2@BellSouth.com]  
Sent: Monday, April 11, 2005 10:36 AM  
To: Bolinger, Brian  
Subject: RE: dPi Teleconnect

It would be best to continue to work through Kristy Seagle and Jim Maziar. They actually do the investigation and then advise my employees of the adjustments needed and we actually do the adjustments. We received notification of the adjustments needed on Monday April 4, and completed the adjustments by Wednesday. As a reference, Advermail Allen is their Director and she would be a good escalation resource.

I do get involved once that process is completed, so should you desire to escalate further, please feel free to contact me.

Sincerely,

Gary Patterson  
QAVP BellSouth Accounts Receivable  
Management, BARM  
205-714-7357

-----Original Message-----

From: Bolinger, Brian  
[mailto:BBolinger@dpiteleconnect.com]  
Sent: Monday, April 11, 2005 8:23 AM  
To: Patterson, Gary D  
Subject: RE: dPi Teleconnect

Mr. Patterson:

Thank you for your correspondence. Your prompt response to this matter is appreciated. We will review our submission regarding the Line Connection Fee Waiver and determine

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the accuracy of the data.

In the future, is it best to work through you on these matters?

Thank you again.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPi Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-5500 ext. 4018  
Fax (972) 408-0193

-----Original Message-----

From: Patterson, Gary D  
[mailto:Gary.Patterson2@BellSouth  
Sent: Friday, April 08, 2005 5:36  
PM  
To: BBolinger@dpiteleconnect.com  
Subject: dPi Teleconnect

April 8, 2005

Mr. Brian Bolinger  
Vice President of Legal Affairs  
dPi Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234

Dear Mr. Bolinger:

This is in response to your email to BellSouth dated April 8, 2005 regarding resale promotional credits claimed to be due to dPi Teleconnect. We apologize for the delay in processing promotional credits however, I understand that the investigation and processing is now complete and a credit will appear on your April billing. As you stated in your email, BellSouth began receiving applications for these credits beginning in September 2004. As you know, these credits received in September by BellSouth were for the time period of October 2003 through August 2004. Upon initial investigation of the request, it

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was determined that it was necessary to further investigate whether the end user qualifications for these promotions were present. BellSouth endeavored to insure parity for our wholesale customers by fully exploring the qualifications from a retail, legal, and regulatory perspective for each promotion.

Based on these defined qualifications, as stated above, your credits have been processed and will appear on your April billing. Please see attached spreadsheet for details of promotional credits given. In summary, the findings are:

\* [REDACTED]  
[REDACTED] Charge Waiver -  
dPi Teleconnect  
requested \$ [REDACTED],  
and received credit of  
\$ [REDACTED]

\* 1FR + 2 Free  
Features - dPi  
Teleconnect requested  
\$ [REDACTED] and  
received credit of  
\$ [REDACTED]

\* [REDACTED]  
[REDACTED] Waiver -  
2004 dPi Teleconnect  
requested \$ [REDACTED].  
and received credit of  
\$ [REDACTED] dPi  
Teleconnect did not  
receive full credit on all  
submitted requests due  
to not meeting end user  
qualifications of  
ordering basic local  
service with 2 custom  
calling and/or TouchStar  
(r) features as defined in  
the Tariff Promotion.

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BellSouth performed a random sampling of end user telephone numbers provided for each promotional credit submission and determined that your total credits due are \$~~5,000.00~~.

We appreciate your patience and willingness to work with BellSouth to resolve these issues. Please contact me with any questions you have regarding this matter.

Sincerely,

Gary D. Patterson  
OAVP, BARM  
(205) 714-7357

<<DPI Credits thru 4\_8\_05.xls>>

\*\*\*\*\*

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers. 117

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This electronic mail message was sent from L. M. Berry & Company

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or Berry Network, Inc. Our primary business address is 3170 Kettering Blvd., Dayton, OH 45439. This message may constitute a commercial solicitation or advertisement as defined by the CAN-SPAM act of 2003. If you do not wish to receive future commercial electronic mail solicitations or advertisements from L. M. Berry & Company or Berry Network, Inc., please send a request to [optout@lmberry.com](mailto:optout@lmberry.com)

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Message

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Butler, Ann W

From: Seube, Louis  
Sent: Tuesday, April 12, 2005 8:54 AM  
To: Seagle, Kristy  
Subject: FW: dPI Teleconnect  
Importance: High

See Brian's response below. How do we proceed?

-----Original Message-----

From: Patterson, Gary D  
Sent: Monday, April 11, 2005 1:37 PM  
To: Seube, Louis  
Subject: FW: dPI Teleconnect  
Importance: High

Can you answer this question? gp

-----Original Message-----

From: Bolinger, Brian ([mailto:BBolinger@dpteleconnect.com])  
Sent: Monday, April 11, 2005 1:21 PM  
To: Patterson, Gary D  
Subject: RE: dPI Teleconnect  
Importance: High

Mr. Patterson:

We received an account aging as of this morning and the [REDACTED] credit was not reflect on any account. I was under the impression that since the adjustments were completed as of last Wednesday, our current aging would show the adjustment. Can you tell me when our accounts will be adjusted accordingly?

Thank you.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2007 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-5500 ext. 4018  
Fax (972) 408-0183

-----Original Message-----

From: Patterson, Gary D ([mailto:Gary.Patterson2@BellSouth.com])  
Sent: Monday, April 11, 2005 11:31 AM  
To: Bolinger, Brian  
Subject: RE: dPI Teleconnect

Advernall is a she. She shortens it to Ad. Her telephone number is 205-877-1068.

-----Original Message-----

From: Bolinger, Brian ([mailto:BBolinger@dpteleconnect.com])  
Sent: Monday, April 11, 2005 11:03 AM  
To: Patterson, Gary D; Bolinger, Brian

Message

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Cc: Dorwart, David  
Subject: RE: dPi Teleconnect  
Importance: High

Mr. Patterson:

Thank you for your reply. If you would, please provide me with the contact information for Advernall Allen. I have not had the opportunity to work with him or her yet.

Also, with regard to your previous message stating "dPi Teleconnect did not receive full credit on all submitted requests due to not meeting end user qualifications of ordering basic local service with 2 custom calling and/or TouchStar® features as defined in the Tariff Promotion." Please know that dPi Teleconnect disagrees with BellSouth's conclusion for the following reasons:

In accordance with BellSouth's Tariff Promotion, TouchStar Service USOCs include [REDACTED], [REDACTED] and [REDACTED]. dPi Teleconnect uses each of these USOCs on every order. Additionally, dPi Teleconnect utilizes the [REDACTED] feature [REDACTED] on each and every order. Accordingly, dPi Teleconnect concludes that the [REDACTED] not paid by BellSouth is in error because dPi Teleconnect meets the end user qualifications of ordering basic local service with 2 custom calling and/or TouchStar features.

Thank you for your attention to this matter and please provide me with the date on when BellSouth will correct this error.

Cordially,

Brian A. Bolinger  
Vice President of Legal Affairs  
dPi Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-5500 ext. 4018  
Fax (972) 406-0183

-----Original Message-----

From: Patterson, Gary D (mailto:Gary.Patterson2@BellSouth.com)  
Sent: Monday, April 11, 2005 10:36 AM  
To: Bolinger, Brian  
Subject: RE: dPi Teleconnect

It would be best to continue to work through Kristy Seagle and Jim Maziar. They clarify do the investigation and then advise my employees of the adjustments needed and we actually do the adjustments. We received notification of the adjustments needed on Monday April 4, and completed the adjustments by Wednesday. As a reference, Advernall Allen is their Director and she would be a good escalation resource.

I do get involved once that process is completed, so should you desire to escalate further, please feel free to contact me.

Sincerely,

Gary Patterson  
OAVP BellSouth Accounts Receivable Management, BARM  
205-714-7357

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-----Original Message-----

From: Bolinger, Brian [mailto:BBolinger@dpiconnect.com]  
Sent: Monday, April 11, 2005 8:23 AM  
To: Patterson, Gary D  
Subject: RE: dPI Teleconnect

Mr. Patterson:

Thank you for your correspondence. Your prompt response to this matter is appreciated. We will review our submission regarding the Line Connection Fee Waiver and determine the accuracy of the data.

In the future, is it best to work through you on these matters?

Thank you again.

Brian A. Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234  
Office (972) 488-8500 ext. 4018  
Fax (972) 406-0193

-----Original Message-----

From: Patterson, Gary D [mailto:Gary.Patterson2@BellSouth.com]  
Sent: Friday, April 08, 2005 5:36 PM  
To: BBolinger@dpiconnect.com  
Subject: dPI Teleconnect

April 8, 2005

Mr. Brian Bolinger  
Vice President of Legal Affairs  
dPI Teleconnect, LLC  
2997 LBJ Freeway, Suite 225  
Dallas, TX 75234

Dear Mr. Bolinger:

This is in response to your email to BellSouth dated April 8, 2005 regarding resale promotional credits claimed to be due to dPI Teleconnect. We apologize for the delay in processing promotional credits however, I understand that the investigation and processing is now complete and a credit will appear on your April billing. As you stated in your email, BellSouth began receiving applications for these credits beginning in September 2004. As you know, these credits received in September by BellSouth were for the time period of October 2003 through August 2004. Upon initial investigation of the request, it was determined that it was necessary to further investigate whether the end user qualifications for these promotions were present. BellSouth endeavored to insure parity for our wholesale customers by fully exploring the qualifications from a retail, legal, and regulatory perspective for each promotion.

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Based on these defined qualifications, as stated above, your credits have been processed and will appear on your April billing. Please see attached spreadsheet for details of promotional credits given. In summary, the findings are:

- [REDACTED] Charge Waiver - dPi Teleconnect requested \$[REDACTED], and received credit of \$[REDACTED].
- [REDACTED] 1FR + 2 Free Features - dPi Teleconnect requested [REDACTED], and received credit of [REDACTED].
- [REDACTED] Waiver - 2004 dPi Teleconnect requested [REDACTED] and received credit of \$[REDACTED]. dPi Teleconnect did not receive full credit on all submitted requests due to not meeting end user qualifications of ordering basic local service with 2 custom calling and/or TouchStar® features as defined in the Tariff Promotion.

BellSouth performed a random sampling of end user telephone numbers provided for each promotional credit submission and determined that your total credits due are \$[REDACTED].

We appreciate your patience and willingness to work with BellSouth to resolve these issues. Please contact me with any questions you have regarding this matter.

Sincerely,

Gary D. Patterson  
OAVP, BARM  
(205) 714-7357

<<DPi Credits thru 4\_B\_05.xls>>

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