

1. The March 1, 2006, hearing transcript of the North Carolina Utilities Commission in *In the Matter of BellSouth Telecommunications, Inc., Complaint of dPi Teleconnect, LLC*, Docket No. P-55, Sub 1577.

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: Wednesday, March 1, 2006
3 DOCKET NO.: P-55, Sub 1577
4 TIME IN SESSION: 9:22 A.M. - 2:16 P.M.
5 BEFORE: Commissioner James Y. Kerr, II, Presiding
6 Commissioner Sam J. Ervin, IV
7 Chair Jo Anne Sanford

8
9 IN THE MATTER OF:

10 BELLSOUTH TELECOMMUNICATIONS, INC. COMPLAINT OF DPI
11 TELECONNECT, LLC
12

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P R O C E E D I N G S

1
2 COMMISSIONER KERR: My name is Commissioner Jim
3 Kerr with the North Carolina Commission. With me this
4 morning is Commissioner Sam J. Ervin and Chairperson Jo
5 Anne Sanford. I now call for hearing in Docket No. P-55,
6 Sub 1577, a formal complaint of dPi Teleconnect against
7 BellSouth Telecommunications, Inc.

8 The Complainant filed a Complaint with the
9 Commission on August 25th, 2005, regarding credits for
10 promotional discounts resulting from their interconnection
11 agreement and in support thereof. The Commission issued
12 an Order Serving Complaint on August 30th and an Order
13 Serving Answer on September 20, 2005.

14 On October 4th, 2005, Complainant made a filing
15 with the Commission indicating that BellSouth's Answer was
16 not satisfactory and that it desired public hearing to
17 present additional evidence to support its Complaint.

18 On November 1st, 2005, the Commission issued an
19 Order Scheduling Docket for Hearing and the prefilng of
20 testimony, setting the hearing for February 21st, 2006.
21 Due to scheduling conflicts the Commission issued an Order
22 cancelling the hearing on January 4th, 2006, and on
23 January 5th issued an Order scheduling docket for hearing
24 on this date, for this date and time.

1 On February 27th, 2006, the Public Staff filed a
2 notice of intervention.

3 Are there any preliminary matters which need to
4 be addressed prior to the beginning of the hearing?
5 Anything?

6 (No Response.)

7 Before we went on the record, the Complainant
8 asked to make a brief opening statement, including
9 audio/visual support and we agreed that that was okay.
10 And, Mr. Shore, if you need to do the same, maybe that's
11 what the microphone is for, you're welcome to do that.

12 I now call for the appearance of counsel,
13 beginning with the Complainant.

14 MR. MCDONALD: Good morning. I'm Ralph McDonald
15 appearing for the complaint of dPi Teleconnect, LLC. And
16 I'm appearing with Chris Malish from Texas, Austin, and
17 he's already been admitted pro hac for this case.

18 MR. RANKIN: Good morning, Commissioners. Ed
19 Rankin and Andrew Shore on behalf of BellSouth
20 Telecommunications.

21 MR. GILLAM: Good morning. Bob Gilliam and this
22 Ralph Daigneault with the Public Staff Legal Division
23 representing the Using and Consuming Public.

24 COMMISSIONER KERR: All right. Anything else?

1 If not, Mr. McDonald, Mr. Malish, whoever's --

2 MR. MALISH: Thank you, Your Honor.

3 Commissioners, although this is a fairly simple case with
4 just three witnesses total for both sides, I have tried to
5 put together a fairly short Power Point presentation to
6 guide us through the -- what we hope and expect is going
7 to be the evidence that you will see here today.

8 Generally speaking, just to give you an overview
9 of what we expect to come out today, I'm going to talk a
10 little bit about the promotion credit process, which is
11 somewhat of a loose term as you'll see later.

12 I want to talk about the specific promotion
13 that's left in dispute in this case, which is the line
14 connection charge waiver. I'll explain and our witnesses
15 will explain why dPi qualifies for this particular
16 promotion and then I'll cover briefly the BellSouth's
17 "yeah, buts," which is basically, yeah, but you don't get
18 it for this reason or that reason or another reason, and
19 then wrap up a little bit with something on damages.

20 Starting off with an explanation about the
21 crediting process, can you see that? I have some
22 eight-and-a-half-by-eleven's too if it gets hard. May I
23 approach?

24 COMMISSIONER KERR: Give them one and if you've

1 got enough for us.

2 MR. MALISH: At the risk of repeating the
3 obvious, a promotion is a situation in which BellSouth
4 offers a price that is lower than what its tariff price is
5 to its end users. And as y'all know, when it does that,
6 it has to extend the benefit of that lower pricing to
7 resellers, in this case, dPi.

8 Now, the way this works is that BellSouth
9 automatically extends this preferential pricing to its end
10 users when its end users sign up with it. So if you were
11 to call up and place an order for service with BellSouth,
12 its people would take your details and would find out, you
13 know, what specific promotions you were entitled to and
14 therefore what discounts you were entitled to, and that
15 would flow through the system and your initial bill would
16 be essentially correct. In other words, whatever it was
17 they told you was the promotional price you would be
18 entitled to, that's what you get and that's what shows up
19 on your bill.

20 Now, it doesn't work that way for resellers.
21 And we don't know why, but the fact of the matter is that
22 it doesn't. So what happens is that although when the
23 reseller applies for a service, which is subject to a
24 promotion and the reseller is entitled to get that

1 promotional price, it doesn't happen automatically.
2 Instead, BellSouth automatically charges the reseller the
3 full tariff price of that, whatever that item or service
4 may be, and then it puts the onus on the CLEC to come back
5 after the fact and figure out what it really should have
6 been charged and then dispute the overcharge that
7 BellSouth has -- or the overcharge that BellSouth has made
8 against it.

9 And we talk about this as the promotion credit
10 process. And I've got it in quotes there, "process,"
11 because it's actually not a very well-developed process.
12 It's basically at this point an ad hoc thing where, as it
13 turns out, they are doing this, BellSouth and the CLECs
14 together are sort of putting together as they go along how
15 BellSouth wants these promotional credits to be submitted
16 to it.

17 So there's a lot of feeling their way, on both
18 sides, feeling their way through the dark. And things are
19 going wrong on both sides and they're both working
20 together to get towards a more streamlined approach to
21 make it work to get the right price.

22 But the net effect of the way this is currently
23 set up is that BellSouth profits at the expense of
24 resellers because the way it works is that a CLEC -- a

1 CLEC must -- you know, first of all, as we've said before,
2 they don't get the correct price up front. They have to
3 come back later and apply to get a credit to get the
4 benefit of that price. So first of all, the CLEC must
5 realize that it's not getting the right price and that
6 there's a mechanism for it to get the correct price.

7 Once they even understand that this is --
8 there's a process that's available to them, as a practical
9 matter, in order to be able to get the information that
10 they need to submit this billing dispute, they have to
11 have the bill electronically and they have to be able to
12 audit that bill. And it creates a problem, as you will
13 hear from Steve Watson, because the format in which they
14 get these bills, even though they're in a electronic
15 format, it's a proprietary format. And it's not something
16 -- it's not an easy job to just open it up and monitor the
17 data. There are key codes and other locks on the data
18 that make it very difficult to figure out exactly what is
19 in the CD, when it's transmitted by the CD, to find out
20 what it is that they're entitled to.

21 So once you can actually get into the data,
22 which is difficult in itself, you must be able to decode
23 it and put together a credit request. And then at the
24 end, of course, you have to submit all of this timely to

1 BellSouth in order to get your money back. And at any one
2 of these stages, if you miss the boat, BellSouth just
3 keeps your money.

4 Now this case, if you looked at the pleading
5 that originally started out, dPi was trying to get a
6 handful of different promotions from BellSouth.

7 COMMISSIONER ERVIN: Go ahead. I can see it,
8 I'm just going to give my copy to our staff so they can
9 see. But I can see fine, so go ahead.

10 COMMISSIONER KERR: Keep going.

11 MR. MALISH: With this particular promotion or
12 in this particular case, we started out with a number of
13 promotions that we were complaining about. As we went
14 through the process though -- for example, BellSouth would
15 come up with some reasons why they shouldn't have to pay
16 something and we would debunk that and they agreed and so
17 they paid some.

18 On the other hand, they brought up some
19 things -- they made some points like, well, you can't get
20 such and such for such and such reason and we would look
21 at it and if that made sense, we would agree. And so
22 where we get to today is that we only have one promotion
23 that is left in dispute and that is the line connection
24 charge waiver.

1 So if you may hear during the course of this
2 case something about, for example, the CREX promotion or
3 applying for credit under CREX, that's one of the disputes
4 that has essentially gone away because of an agreement
5 between the parties.

6 So if dPi applied under a particular promotion
7 for credit for a CREX or CREX, they may have mis -- they
8 were entitled to get that money back, but they were
9 applying for it through the wrong vehicle. We've got that
10 sorted out now and it's not an issue anymore. So that's
11 dropped out of the case. But if you hear about it, I
12 don't want you to be lead off track. It's no longer an
13 issue.

14 So this is the only one that's left, the line
15 connection charge waiver. And this is what it provides.
16 As you can see what's required here is that to get the
17 line connection charge waiver, which is basically what you
18 pay once you get connected to your carrier, you have to
19 have -- if you're a BellSouth customer you have to have
20 anyone of the following. These are sort of more high
21 level offerings from BellSouth, which really don't --
22 aren't the subject of the dispute, so BellSouth's Complete
23 Choice plan, the BellSouth PreferredPack plan or -- and
24 this is where we start to have a dispute, a situation

1 where BellSouth -- where you're buying BellSouth basic
2 service and two custom calling features or Touchstar
3 features. This is the only promotion that we're left
4 disputing here.

5 DPI is a reseller. You will hear from Brian
6 Bolinger that most of their customers are essentially
7 credit challenged. As a result, nearly 100 percent of
8 their -- the people that they get as customers are
9 winbacks or winovers from other customers in North
10 Carolina. So, for example, if an end user has lost
11 service with BellSouth because they have not paid their
12 bill, they can come on with dPi, prepay and continue to
13 have phone service that way.

14 But again, precisely because of the nature of
15 this clientele, every time dPi orders something for one of
16 its end users, they have at a minimum the basic local --
17 the basic calling package and then two or more Touchstar
18 blocks; BCR, BRD or HBG. Now those are USOC's, Universal
19 Service Ordering Code's shorthand for blocking call
20 return, blocking call waiting, things of that nature.

21 Now where we come into a dispute with BellSouth
22 is that -- well, there's been a number -- basically a
23 number of "yeah, buts" that BellSouth has used in order to
24 avoid paying these.

1 The first one, which they were asserting
2 basically from September to January of '05, September of
3 '04, yeah, but these guys aren't winovers; your end users
4 aren't winovers. They're not reacquisitioned either. And
5 this is something that they abandoned approximately of
6 January of '05. So that should not be an issue anymore.

7 The second "yeah, but" were, yeah, but BCR and
8 BRD aren't features. They're not features at all, so if
9 you get those on your order, they don't count.

10 The problem with this argument is that the
11 tariff itself identifies them as features. And if we take
12 a look at Section A13 -- I don't know how well you can see
13 it. Well, this is a document which is filed with the
14 Commission and which you all would have -- could take
15 judicial notice of. Basically when you set -- A13 sets
16 out the rates and the charges for Touchstar service. And
17 although it's hard to see here, and I apologize, listed
18 are the blocks with their USOC BCR, BRD and HBG.

19 If you look at the fine print, there's a
20 footnote by each one of them. If you go down to the
21 bottom it says these features -- for those blocks that
22 we've been talking about, these futures don't count
23 towards some other calling plan that BellSouth has. Not
24 the line connection charge waiver, but towards something

1 else.

2 They also say, well, you know -- they've said,
3 you know, these aren't features, but of course that's not
4 what happens when you're a UNE. When you're a UNE by way
5 of comparison, these are regarded as features. And Steve
6 Watson can tell you about that. And of course during the
7 course of the correspondence between the parties -- this
8 is in some of our exhibits -- these BCR, BRD and HBG
9 blocks are referred to as features by BellSouth.

10 I don't know if they're still making that claim
11 that these aren't features or not. What I do know is that
12 this is still a live complaint or a live "yeah, but." And
13 this is apparently the one that they are at least hanging
14 their hat on at this stage. Yeah, but BRD, BCR and HBG
15 are not purchased at additional cost because there is no
16 charge associated with these blocks.

17 If you go back and you look at the terms of the
18 promotion itself, it doesn't say that you have to take
19 Touchstar features at an additional cost, it just says
20 that you have to purchase any one of the following,
21 BellSouth's basic service and two custom calling or
22 Touchstar features.

23 So what's happening here is dPi is taking basic
24 calling and two Touchstar features. We just don't -- you

1 know, that's what's being purchased, is they order that as
2 a package. It's a single order for those things. We get
3 a single price back.

4 Essentially what's happening here is that
5 BellSouth is reading a comma into the promotion that's not
6 in the original. They're saying that you have to purchase
7 basic service, comma, which isn't really there, and at
8 least two Touchstar services or features. That's not what
9 the tariff says. In any event, that's not -- the fact of
10 the matter remains that dPi is purchasing the local
11 service plus two Touchstar features.

12 Where we get to here is that, you know, purchase
13 doesn't require an exchange of money for each separate
14 item of what's involved in the total service package that
15 dPi orders. They are getting it. Just like when you buy
16 a car, for example, you don't have a separate charge for
17 the steering wheel. It's included in what you've ordered.
18 Of course sometimes there are more expensive options that
19 you can add like a bigger motor or a more fancy calling
20 plan. But again, the fact of the matter is they are
21 purchasing a set of things, including, in this case,
22 Touchstar features. And it shouldn't be an issue here
23 because dPi has always purchased through a single order
24 this package, basic service plus at least two Touchstar

1 features.

2 Now recently we've heard another "yeah, but,"
3 which is yeah, but our own end users don't get it this
4 way. That's a bit of a red herring because BellSouth's
5 end users don't usually purchase this. They don't try to
6 ask for it to begin with. Even if it weren't a red
7 herring for that reason, the fact of the matter is if they
8 did apply for it, if they did ask for it, they should get
9 it because what controls is the written terms of the
10 contract and not -- you know, not what they think it wants
11 to be.

12 And, of course, here in North Carolina the terms
13 of the written contract are to be construed most fondly
14 against the party drafting the instrument. And that's
15 just the black-letter law that applies in almost every
16 jurisdiction.

17 So I've gone through BellSouth's "yeah, but's."
18 And what we've come down to at the end of the day here in
19 North Carolina is that using BellSouth's own data it
20 provided to us in discovery, they have wrongfully denied
21 \$185,000 in these line connection charge waiver promotions
22 by refusing to count instances in which dPi has applied
23 for basic service, plus these two or more of those blocks
24 that we have up there.

1 There's another much more minor denial that they
2 have, which is -- or they've claimed that you don't get a
3 block in an instance in which we've transferred from the
4 same person from one location to another. And we agree
5 with that. If you transfer -- if the same end user stays
6 with you but moves from one house to another house, that
7 doesn't apply. So we agree that we don't -- we aren't
8 entitled to that.

9 What they've said though is that like 27 percent
10 of our orders for certain months were transfer orders.
11 And when we went back and actually audited every single
12 order in those months, it turns out that it's more along
13 the lines of the industry averages of four to eight
14 percent. And so that's resulted in the situation where we
15 ought to get another 2,500 and change back on those.

16 One thing that I should have maybe visited about
17 but didn't, the line connection charge waiver is either
18 approximately \$33 or approximately \$4. The difference is
19 if it's new service that's being turned on for the first
20 time it's a \$33 charge; if you are doing a winover from --
21 with a customer that is basically converting from existing
22 service with somebody else to you, the charge is only \$4.
23 Thank you.

24 COMMISSIONER KERR: Mr. Shore?

1 MR. SHORE: Thank you, Mr. Chairman. Good
2 morning, Commissioners. It's good to be home here in
3 North Carolina. When I sit down there in Atlanta and
4 drive around in the traffic and look at the smog, I often
5 pine away and remember my days in North Carolina fondly.
6 Sometimes I wonder is it really as good as I remember it?
7 And when I come up here in the middle of the winter and
8 it's 75 degrees, I'm telling you, it's even better than I
9 remember it. And it's particularly good to be back.

10 I didn't know till just this morning that we
11 were going to make opening statements. I'd wish to do it
12 without notes totally, but I may need to cheat a little
13 bit because I had to make a few notes so I hurried here a
14 short time ago.

15 I want to talk briefly about the parties in this
16 case, what we see is the issues. And although what Mr.
17 Malish had to say this morning certainly is not evidence,
18 just like what I tell you is not evidence, there are a few
19 things that I think he just got dead wrong and I want to
20 point those out to you.

21 First, the parties. Obviously I represent
22 BellSouth. And as an ILEC here in North Carolina, we have
23 an obligation to resell our services that we provide to
24 our end users at a wholesale discount that this Commission

1 has established. And what a CLEC like dPI pays for a 1
2 FR, which is a basic POTS line, is between \$11.58 and
3 \$13.15, depending upon what rate group you're at.

4 DPi charges its customers that it pays BellSouth
5 that rate for a whole lot more than that, about \$41 here
6 in Raleigh for that service.

7 DPi is a reseller. They don't have facilities
8 in North Carolina or elsewhere. And as Mr. Malish said,
9 they mostly -- they are only a prepaid provider. And as
10 such they market primarily to folks who've got credit
11 issues. They're located in Dallas, Texas. I'm not sure
12 if you keep up with that or not.

13 Let me talk about these promotions. The
14 Commission has dealt with promotions before in kind of a
15 larger policy context. This is not such a case. This is
16 a dispute between two parties. This is a case where dPi
17 is trying to get money from my client that it's not
18 entitled to pure and simple. It doesn't have any broader
19 policy-type implications like the cases you've dealt with
20 previously with respect to resale promotions.

21 BellSouth, like a lot of phone companies
22 nowadays in this age of competitiveness, has got to offer
23 promotions to get customers. It's really kind of plain
24 and simple. We're out there fighting for customers every

1 day and we offer a variety of promotions to do that. One
2 such promotion is the line connection charge waiver
3 promotion. That's where if you sign up with us and buy
4 certain things, we charge the hookup fee, the line
5 connection charge.

6 Another promotion that you'll hear about today
7 is the secondary service charge waiver promotion. That's
8 if you're an existing customer and you make some changes,
9 we normally would charge you a secondary service charge.
10 We've offered to waive that in certain circumstances.

11 Now, where this comes into play in this case is
12 that BellSouth is obligated to resell certain of its
13 promotions to folks like dPi. And there's no dispute
14 about that. What the contract says between BellSouth and
15 dPi is that for any end user account that dPi has, if that
16 end user would have been entitled to a promotion if it
17 were a BellSouth customer, then dPi is entitled to a
18 credit on that account. There's no dispute about that and
19 we do that.

20 We give dPi credits everyday. This isn't
21 BellSouth saying, well, you don't get credits. We give
22 them credits every single month for promotions where their
23 end user would have qualified if it had been a BellSouth
24 end user. Just what the contract said and what they

1 agreed to. In their depositions they say there's no
2 dispute about that.

3 Lost Key is another company you'll hear about in
4 this case if you read the testimony, which I'm sure you
5 did. You'll see that Mr. Watson, who I understand will be
6 their second witness, is a guy who started this company
7 down in Pensacola, Florida, where he acts as an agent for
8 dPi and some other CLECs. And he essentially gets the
9 BellSouth bills, goes through them and determines what he
10 at least thinks what credits his clients are entitled to
11 and he files those with BellSouth. And he's just paid a
12 commission based on the credits that BellSouth would give
13 his CLEC reseller client.

14 Now, I was a little bit surprised to hear about
15 the process by which CLECs or through their agents apply
16 for credits because process -- I didn't think process was
17 an issue in this case. DPi doesn't say anything about it
18 in their Complaint; they don't allege that there's
19 anything wrong with it; they didn't even mention it in
20 their direct testimony.

21 Mr. Watson went on about it in his rebuttal
22 testimony, but I don't -- it's not an issue that's keyed
23 up in this case; certainly not one that BellSouth had an
24 opportunity to address given they didn't talk about it in

1 their direct testimony or their Complaint. And I don't
2 think they're asking us to do anything about the process,
3 so that isn't an issue as far as I know.

4 I want to talk about some of the problems with
5 dPi's promotional credit request to BellSouth. And
6 there's no dispute about that. Ms. Tipton talks about in
7 her testimony that they double dip. They apply for
8 promotions under different -- credit for under different
9 promotions. They don't refute that.

10 She also talks about when applying for charges
11 that weren't the subject of any promotion. And you know
12 what, they don't dispute that either. So there's no doubt
13 that there were at a minimum, at a minimum they were
14 sloppy and they asked for more money than they're entitled
15 to and they've admitted as such in their depositions. And
16 we'll talk about that today.

17 I want to talk about the line connection charge
18 waiver promotion. That promotion, as Mr. Malish said,
19 requires that a customer purchase at least the 1 FR, basic
20 service and two features. And BellSouth makes that
21 promotion available. So if you were to sign up for
22 BellSouth service and buy a basic service with, for
23 example, caller ID and call waiting, we waive your line
24 connection charge.

1 Likewise, when dPi has a customer that signs up
2 with dPi for a 1 FR and caller ID and call waiting, for
3 example, we give them promotional credit. We've done that
4 and we've issued over \$350,000 promotional credits to dPi
5 just in January of this year. And there's no dispute
6 about that.

7 By the way, dPi doesn't pass that on to their
8 customer. We make that promotion available to our
9 customers; we waive that charge. When they get that
10 credit, which they're entitled to under the law, they
11 don't pass it on to their customers.

12 Now, the dispute here has to deal with when you
13 a buy 1 FR but don't buy any features. Dpi puts on all of
14 its customer lines these blocks -- BCR and BCD (sic) are a
15 couple of them -- automatically. It doesn't tell its
16 customers that it's getting this deal; it doesn't charge
17 its customers for those blocks. Likewise, BellSouth
18 doesn't charge dPi for those. Doesn't even tell its
19 customers that he has it. So it says, hey, we're still
20 entitled. That's -- I'm buying two features. Well, it's
21 not. First of all, they're not features and we'll go
22 through the tariff and demonstrate that. But even if it
23 is, it's clear that they are not purchased features. So
24 we're not going to have to waste a lot of time on whether

1 or not they're features, but they're not.

2 What the contract says and what dPi agrees with
3 is that if we don't give it to our customers, they don't
4 get it. They don't get credit for it. Well, today they
5 say, well, it doesn't really matter. Well, it does
6 matter. That's the law and that's what the contract says.

7 We don't give our customers -- we don't waive
8 the line connection charge for our customers who get free
9 blocks. Why would we? What kind of promotion is that?
10 What a way to entice a customer, sign up, don't pay us
11 anything extra than you would otherwise and we'll start
12 waiving charges. That's not what a promotion does.
13 That's not what it's intended to do and the irrefutable
14 and undisputed evidence in this case is that we don't give
15 that to our customers. They say they don't get what we
16 don't give our customers; they're not entitled to it. I
17 think it's a pretty simple legal issue when it comes down
18 to it.

19 Finally, a couple of things that Mr. Malish
20 said. He talked about this CREX charge. It's another
21 acronym. It's a restriction on toll dialing. And he said
22 it's not an issue in this case, they they've applied for
23 it under some CREX promotion and that, you know, they
24 agree that they're not entitled to it.

1 Well, folks, there was never such a thing as a
2 CREX promotion, number one. They applied for these CREX
3 charges under the line connection charge waiver. Now they
4 admit that they shouldn't have done that. Even for the
5 stuff we paid them, they admit they shouldn't have done
6 that.

7 Most importantly, all that \$40,000-plus that
8 they applied for for CREX charges, that they admit they
9 shouldn't have, are still in their numbers; are still in
10 their \$185,000 change numbers. So it is an issue in this
11 case and I would please ask you to pay attention when we
12 talk about that and not disregard it as dPi's lawyer has
13 asked you to.

14 In conclusion, we're going to show you what the
15 contract says; we're going to show you what we do for our
16 customers; and we're going to show you that dPi is not
17 entitled to this extra money grab that it's trying to get
18 for itself. Thank you.

19 COMMISSIONER KERR: Public Staff?

20 MR. GILLAM: We have no opening statement.

21 COMMISSIONER KERR: Mr. Malish, you can call
22 your first witness.

23 MR. MALISH: Thank you, Commissioner. Our first
24 witness is Brian Bolinger with dPi.

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BRIAN BOLINGER; Being first duly sworn,
 testified as follows:

DIRECT EXAMINATION BY MR. MALISH:

Q. Mr. Bolinger, will you identify yourself for the record, please?

A. Sure. My name is Brian Bolinger and I'm the vice president of legal affairs for dPi Teleconnect.

Q. And we have previously submitted your direct and rebuttal in this case, haven't we?

A. Yes.

Q. Are there any changes that you would like to make in either your direct or rebuttal at this time?

A. I do not believe so.

Q. Could you give us a brief summary of what it is that you say in those testimonies?

A. Sure. DPi Teleconnect is a CLEC. We currently conduct business in approximately 28 states. And in order to obtain the benefit of promotional discounts that are offered by BellSouth, we have to basically take their data or have their data sent to us electronically; figure out how to mind that data to identify the customers that fit within the promotional tariff that they have filed; take that information out, put it on a form that is required by

1 BellSouth and in a format that is required by BellSouth
2 and then submit it to BellSouth.

3 And so in September of 2004, dPi began that
4 process through Lost Key Telecom. Prior to being
5 introduced to Lost Key Telecom, dPi Teleconnect did not
6 file for any promotional discounts in approximately the
7 five years that it had been in business. And so we most
8 likely missed out on millions of dollars of discounts that
9 we did not even know about or know how to get out of our
10 bills.

11 Once we have submitted the promotional discount,
12 it is for charges that we basically have been
13 overcharged --

14 MR. SHORE: Pardon me, Mr. Bolinger. Mr.
15 Chairman, I've resisted the temptation to do this, but
16 other than the fact that he's the vice president for legal
17 affairs for dPi, nothing else he's said is in his
18 testimony. Some of it's in Watson's testimony; some of it
19 isn't in either one of their testimonies. But as I
20 understand it, summaries are supposed to be based on the
21 prefiled testimony and I object to the summary.

22 COMMISSIONER KERR: Mr. Malish?

23 MR. MALISH: Mr. Commissioner, it generally
24 tracks what's in there.

1 MR. SHORE: It doesn't even come close.

2 MR. MALISH: I guess the testimony speaks for
3 itself, so I don't --

4 COMMISSIONER KERR: Well, I mean, the question
5 is, is it a summary of the testimony that he has filed in
6 this case. If it's a summary of Mr. Watson's, Mr. Watson
7 can give it.

8 MR. MALISH: I understand that. He's
9 summarizing as best he can, I suppose.

10 COMMISSIONER KERR: Is he summarizing his
11 testimony?

12 THE WITNESS: Is that a question to me?

13 COMMISSIONER KERR: It's a question to somebody
14 who wants to answer it.

15 THE WITNESS: I'm summarizing what has occurred
16 and what I've testified about. I don't --

17 COMMISSIONER KERR: Well, here --

18 THE WITNESS: -- have it memorized verbatim.

19 COMMISSIONER KERR: Let me make -- let me try to
20 make this easier for everybody.

21 THE WITNESS: Sure.

22 COMMISSIONER KERR: You've filed direct
23 testimony.

24 THE WITNESS: Yes.

1 COMMISSIONER KERR: Our practice here is to have
2 your prefiled testimony admitted into evidence and then
3 have you stand for cross. If it -- in order to be helpful
4 for the Commission, we allow witnesses to give an overview
5 or summary of their testimony.

6 So I don't need you to testify right now. I
7 don't need you to summarize anyone else's testimony. If
8 you want to summarize your testimony briefly, emphasis on
9 the term briefly, be happy to allow you to do that. But
10 if you want to testify or summarize someone else's
11 testimony, I'll sustain -- sustain the objection.

12 THE WITNESS: Yes, sir. I thought I was
13 summarizing mine, but would you like me to continue?

14 COMMISSIONER KERR: Yes.

15 A. In, I believe, September of 2004 we filed a large
16 amount of promotional disputes with BellSouth going back
17 to, I believe, January of 2004. We were told by BellSouth
18 that we would be -- we would see the credits on our
19 October bill, then our November bill, then our December
20 bill. Then there was an excuse that it had been escalated
21 to the legal department, but it would be resolved by the
22 first of the year.

23 March came around, we're told that it would be on
24 our March 8th bill, which we should have seen March 15th.

1 When that did not occur, I filed an informal complaint
2 here in North Carolina. And after receipt to that
3 complaint BellSouth began to compensate and credit us some
4 promotions. Prior to that I believe the amount credited
5 was something like \$7,000 to \$9,000. After the informal
6 complaint, it ran \$250,000 or so.

7 But one thing that they did not credit was the
8 line connection waiver charge. And that is initially
9 what's at dispute today. We believe that BellSouth has
10 defined Touchstar feature USOC's BCR, BRD and HGB (sic) in
11 their tariff as Touchstar features. We place those on
12 every order we submit and we are not being -- those are
13 not being recognized.

14 Then they came back -- after we showed them where
15 they had defined them as such, they came back and have
16 told us that we did not purchase them because there's not
17 an additional charge. Of course we disagree because we
18 believe the purchases, totality of the transaction as
19 opposed to one individual itemized bill. And so we are
20 asking the Commission to approve approximately \$188,000 in
21 credits that we have been denied now for approximately a
22 year and a half.

23 MR. MALISH: At this time, Commissioners, we ask
24 that Mr. Bolinger's direct and rebuttal testimony be

1 admitted into evidence and copied into the record.

2 COMMISSIONER KERR: Without objection, so
3 ordered.

4 (Whereupon, the prefiled direct and
5 rebuttal testimony and exhibits of Brian
6 Bolinger will be reproduced in the record
7 at this point the same as if the questions
8 had been orally asked and the answers
9 orally given from the witness stand.)

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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

FILED
JAN 27 2006

Clerk's Office
N.C. Utilities Commission

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In the Matter of:)
)
Complaint of dPi Teleconnect, L.L.C.)
Against BellSouth Telecommunications, Inc.) Docket No. P-55, Sub 1577
Regarding Credit for Resale of Services)
Subject to Promotional Discounts)

DIRECT TESTIMONY OF dPi TELECONNECT'S BRIAN BOLINGER

Please tell us who you are and give a little background about yourself.

My name is Brian Bolinger. I am dPi's vice president of legal and regulatory affairs. I am the one who has taken the lead in dealing with this dispute over promotion credits with Bellsouth since its inception, along with Steve Watson of Lost Key Telecom Inc., which functions as dPi's billing and collections agent for promotions.

Please give us a little background on dPi Teleconnect and describe the history of dPi Teleconnect's dispute with Bellsouth.

dPi Teleconnect is a competitive facilities-based telecommunications company authorized to provide intrastate local exchange and interexchange telecommunications services in North Carolina. dPi provides telecommunications services to residential and business customers. This case involves only dPi Teleconnect's resale operations and relationship with Bellsouth.

As Steve Watson points out in his testimony, Bellsouth is required by law to make available for resale any promotion that Bellsouth makes available to its customers for an extended period of time. This case arises because of Bellsouth's refusal to extend its promotional pricing to dPi.

1 Although dPi has a number of promotion related disputes, we have chosen to focus on a
 2 dispute about dPi's eligibility for a single particular promotion – the Line Connection Charge
 3 Waiver – as this argument encompasses the lion's share of the total dollars in dispute.

4 **What's the Line Connection Charge Waiver promotion?.**

5 Generally, the Line Connection Charge Waiver promotion provides that Bellsouth will
 6 waive the line connection charge for customers who switch to Bellsouth and take at least basic
 7 service with two Touchstar features – at least, two features are required according to Bellsouth's
 8 tariffs. However, in 2005, Bellsouth has reduced its requirement for this promotion to taking
 9 one Touchstar feature; this change appears never to have been tariffed, but was offered to
 10 Bellsouth's retail customers and was described on Bellsouth's website. It has since been
 11 removed from the website. See dPi Exhibit 1, a screenshot taken from Bellsouth's website
 12 during the summer of 2005;¹ Customers who switch their local service to BellSouth from another
 13 provider and purchase BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth
 14 Basic Service with at least one feature can qualify for a waiver of the local service connection
 15 fee. Customers must not have had local service with BellSouth 10 days prior to new service
 16 connection date. Offer ends December 26, 2005. dPi Exhibit 2 is a reproduction of the Bellsouth
 17 promotional materials relating to this promotion provided by Bellsouth to dPi in discovery.²The

¹ In relevant part, the promotion provides:
Connection Fee Waived

² In relevant part, the promotion reads as follows:
Promotion Specifics

Specific features of this promotion are as follows:

Waived line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth® Complete Choice® service, BellSouth® PreferredPack service, or basic service and two (2) features will be waived.

1 customer must switch their local service to BellSouth and purchase any one of the following:
2 BellSouth® Complete Choice® plan, BellSouth® PreferredPack plan, or BellSouth® basic
3 service and two (2) custom calling (or Touchstar® service) local features.

4 In any event, this promotion has been around for a couple of years; dPi's claims go back
5 to January of 2004.

6 In August 2004, dPi began submitting credit requests through Lost Key pursuant to
7 Bellsouth's procedures. For some reason, Bellsouth credited dPi only a small fraction of the
8 amounts applied for. dPi Exhibit 3 is a spreadsheet taken from Lost Key Telecom's dPi billing
9 records which shows the Line Connection Charge Waiver promotion credits that dPi applied for,
10 and those that were paid.

11 Soon after Bellsouth's initial refusal to credit the amounts requested, Steve Watson
12 notified me of the situation so that I could monitor it and participate in the dispute resolution
13 process. From September 2004 to April 2005, Bellsouth was unable to explain why it was
14 refusing to pay these credits. On numerous occasions over this period, Bellsouth's employees
15 promised me that these payments would be forthcoming. Examples of our correspondence are
16 included as dPi Exhibit 6. However, in about April of 2005, Bellsouth stated that it would not
17 be paying these credits applied for almost entirely on the grounds that dPi had not qualified for
18 the credits because, notwithstanding the fact that dPi had purchased Bellsouth's basic service
19 with two or more Touchstar features, the Touchstar features that dPi had included in its orders

Restrictions/Eligibility Requirements

The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth® Complete Choice® plan, BellSouth® PreferredPack plan, or BellSouth® basic service and two (2) custom calling (or Touchstar® service) local features.

1 (e.g., BCR and BRD blocks)³ “did not count” because Bellsouth did not have a separate charge
2 for these particular Touchstar features. dPi Exhibit 4 is a copy of a spreadsheet provided by
3 Bellsouth in response to dPi’s RFI 2-1, which shows the reasons why Bellsouth denied the Line
4 Connection Charge Waiver. As you can see by looking at the document, the overwhelming
5 majority of the time a credit request was denied, it was denied because Bellsouth decided that
6 dPi did not have the requisite number of Touchstar features, since it refused to count the
7 Touchstar blocks that dPi had on the lines.

8 **Is there any merit to Bellsouth’s position?**

9
10 Essentially none. The fact of the matter is that all that is required to qualify for these
11 promotion is the purchase of basic service with two (or sometimes one, if you use the promotion
12 description from Bellsouth’s website) Touchstar features. In every case where Bellsouth denied
13 credit on the grounds that dPi did not qualify because it had not purchased Bellsouth’s basic
14 service with two features, dPi *had* in fact taken Bellsouth’s basic service with at least two
15 additional Touchstar features, such as the BCR and BRD blocks, among others. Bellsouth
16 simply chooses not to “count” these features. There is no dispute that the blocks ordered are
17 listed by Bellsouth as Touchstar features. There is no dispute that Bellsouth has paid credits of
18 far higher amounts to other carriers (such as Budget) with the same service orders (i.e., basic
19 service plus Touchstar blocks) in the past. Now Bellsouth is simply fabricating an excuse to
20 avoid having to pay these credits to dPi.

21

³A large portion of dPi’s customers are pre-paid. dPi’s most basic offering generally includes basic service, plus a number Touchstar blocks, including (among others) the BCR and BRD Touchstar blocks. Other features can be added at the customer’s request.

1 **Does Bellsouth owe dPi any amounts for wrongfully denying promotion credits for this**
2 **reason?**

3 Yes. Our billing agent (Lost Key) has calculated – using Bellsouth’s numbers – that
4 Bellsouth has wrongfully denied at least \$185,719.49 in promotion credits just on the bogus
5 “insufficient features” defense alone. Lost Key’s calculations are provided at dPi Exhibit 5.

6 **Did Bellsouth fail to credit dPi for any other reasons?**

7 Yes. As Steve Watson notes, in some months, Bellsouth also denied the promotion
8 credits on the grounds that they were sought for move orders (also known as “transfers” –
9 situations where an existing customer was moving from one location to another). However, in
10 some months, the rate at which Bellsouth claimed our credit application orders involved move
11 orders/transfers instead of qualifying new orders was as high as 27% in June 05; 22% in Aug. 05;
12 and 27% in Nov. 05 – see dPi Exhibit 4. These numbers are wildly inconsistent with dPi’s past
13 experience with of the percentage of such orders that dPi processes, which is usually less than
14 10%. Steve Watson expects that Bellsouth’s numbers are skewed by Bellsouth’s having used too
15 small a sample from which to make its projections. Lost Key has begun an audit of the months
16 in question for a true count. That audit has not yet been completed, as we just received these
17 details from Bellsouth on January 23. When we have completed our audit, we will be able to
18 calculate the correct amounts that dPi is owed.

19 **Does this conclude your testimony?**

20

21 Yes – for now. But I reserve the right to supplement or amend it at hearing.

22

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FEB 10 2006

Clerk's Office
N.C. Utilities Commission

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

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In the Matter of:)
)
Complaint of dPi Teleconnect, L.L.C.)
Against BellSouth Telecommunications, Inc.) Docket No. P-55, Sub 1577
Regarding Credit for Resale of Services)
Subject to Promotional Discounts)

REBUTTAL TESTIMONY OF dPi TELECONNECT'S BRIAN BOLINGER

Overall, what is your response to Bellsouth's testimony?

Generally speaking, Bellsouth spends most of its breath addressing essentially irrelevant issues. Its direct testimony is focused on issues which represent less than 1% of the total dollars at issue – issues which dPi chose to abandon, since the cost of litigating those claims would instantly eclipse few hundred dollars at stake – in order to focus on the meaningful Line Connection Charge Waiver (“LCCW”) Promotion.

Does focusing on the Line Connection Charge Waiver (“LCCW”) Promotion simplify issues for the Commission?

Vastly. As noted before, the dispute over this promotion accounts for more than 99% of the dollars at issue between the parties. And the vast majority of the time, dPi was denied credit under this promotion because Bellsouth refused to “count” as Touchstar features those features selected by dPi, such as the Touchstar blocks. For example, this was the reason behind 100% of Bellsouth's LCCW promotion credit denials for the months of January, March, May, August, and December of 2004, and May of 2005; the reason behind 90% of the credit denials for remaining months of 2004, and the vast majority of remaining months of 2005. See dPi Consolidated Exhibit 4. In all, Bellsouth has wrongfully denied dPi at least \$185,719.49 in promotion credits just on the bogus

1 "insufficient features" defense in situations where dPi was undeniably taking two or more Touchstar
 2 features with the basic service it was ordering. In short, using the words from Bellsouth's own
 3 promotion, dPi is entitled to the promotion because it has "purchase[d] ... BellSouth Basic Service
 4 with at least one feature" and thus has "qualif[ied] for a waiver of the local service connection fee."¹

5
 6 **So in short, this case is reduced to whether dPi is entitled to promotional credits when it orders**
 7 **Basic Service plus Touchstar block features because it has "purchase[d] ... BellSouth Basic**
 8 **Service with at least one feature" and thus has "qualif[ied] for a waiver of the local service**
 9 **connection fee."**

10
 11 Exactly. And there is no getting around the fact that dPi has in fact ordered Basic Service
 12 with Touchstar features. If Bellsouth does not wish its promotion to apply to all Touchstar features,
 13 it should do like SBC, and alter its promotion so that the promotion specifically lists those features
 14 that Bellsouth requires to qualify for the promotion.

15
 16 **Does this conclude your testimony?**

17
 18 Yes – for now. But I reserve the right to supplement or amend it at hearing.
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1
 See dPi Exhibit I, a screenshot taken from Bellsouth's website during the summer of 2005. In relevant part, the promotion provides:

Connection Fee Waived
 Customers who switch their local service to BellSouth from another provider and purchase BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Offer ends December 26, 2005.

1 COMMISSIONER KERR: Mr. Malish, you might want
2 to pull that middle mike a little bit closer to you for
3 the court reporter. And it doesn't always work, so you
4 may need to swap with Mr. McDonald.

5 MR. MALISH: So can you hear me now? Is that
6 better?

7 COMMISSIONER KERR: I think that's better. You
8 might just make sure it's close enough.

9 MR. MALISH: Do I need to repeat what I --

10 COMMISSIONER KERR: Nope. I think we got it.
11 Is the witness ready to be cross-examined?

12 THE WITNESS: Yes, I am.

13 COMMISSIONER KERR: All right. Mr. Shore.

14 MR. SHORE: Thank you, Commissioner Kerr.

15 CROSS-EXAMINATION BY MR. SHORE:

16 Q. Mr. Bolinger, I'm Andrew Shore. We met last week
17 at your deposition. I'm a lawyer with BellSouth. Good
18 morning.

19 A. Good morning.

20 Q. I've got some questions here this morning about
21 some things that you said in this case under oath. You're
22 the only dPi employee that's testifying in this case; is
23 that right?

24 A. That is correct.

1 Q. And would you tell us -- the only thing you could
2 tell us about dPi in your prefiled testimony is on Page 1
3 of your direct, that dPi is a facilities based
4 telecommunications company and it provides service to
5 residential and business customers, correct? That's what
6 you say in your direct testimony, right?

7 A. Yes, that is what we said. And in the deposition
8 I corrected that and said we only provide service to
9 residential customers and that technically we're
10 considered a facilities base because of the UNE agreements
11 and things of that nature, but we own no facilities.

12 Q. DPi owns no facilities?

13 A. That's correct.

14 Q. Now dPi doesn't provide service to business
15 customers, am I clear on that?

16 A. Yes.

17 Q. DPi provides service primarily by reselling the
18 ILEC service, correct?

19 A. It depends on whether it's under a wholesale
20 agreement, which would formally be known as UNEs, or if
21 it's under the resale agreement.

22 Q. Most of dPi's customers in North Carolina are
23 resale customers, correct?

24 A. That is correct.

1 Q. And dPi offers only prepaid service, right?

2 A. That is correct as well.

3 Q. And I think you told me in your deposition that
4 the primary market for that are folks that have got credit
5 issues; is that right?

6 A. Well, I told you that there was several different
7 types of customers we had, but typically it's considered
8 the cash and credit constraint consumer.

9 Q. That's the primary market for your services,
10 right?

11 A. Well, I wouldn't say it's the primary market. I
12 would say that's what's typically considered as our
13 customer.

14 Q. DPi charges its customers in North Carolina for
15 basic service \$40.99; is that right?

16 A. I don't know off the top of my head, but --

17 Q. You would agree with that subject to check?

18 A. It doesn't sound unreasonable, no.

19 Q. And you pay BellSouth for resale service between
20 \$11.58 and \$13.15, correct?

21 A. Depends on --

22 MR. MALISH: I would like to object to this line
23 of questioning because frankly what dPi charges its end
24 users is totally irrelevant to the situation that we have

1 at hand here, which is whether dPi is entitled to the
2 promotions with BellSouth's offering to its end users; and
3 absolutely zero of relevance to making a decision in this
4 case can come from an examination of what dPi charges its
5 end users for promotions that dPi may extend to its end
6 users. It's totally irrelevant to the question of what --
7 to the relationship between BellSouth and dPi.

8 COMMISSIONER KERR: Mr. Shore, how is this
9 relevant?

10 MR. SHORE: Well, let me show you, if I can.
11 The next question will certainly be relevant. I was just
12 setting up the next question. The next question is going
13 to about a line connection charge.

14 COMMISSIONER KERR: I withhold judgment and see
15 what he does with the next question.

16 A. I'm sorry, Mr. Shore, can you repeat your
17 question?

18 Q. Well, let me ask you a different question. DPi
19 charges customers in North Carolina who sign up for dPi's
20 basic service an activation fee, a hook-up charge of
21 approximately \$50, correct?

22 MR. MALISH: Objection again.

23 COMMISSIONER KERR: Let's just do this. Let's
24 don't do it through your questions, let's just be heard on

1 what it is you're trying to establish.

2 MR. SHORE: This case is about line connection
3 charges and it's talking about what BellSouth charged its
4 customers and what credits dPi's entitled to and I'm
5 asking does dPi charge its customers a line connection
6 charge.

7 MR. MALISH: And, of course, what dPi charges
8 its customers would be irrelevant -- irrelevant and
9 unrelated to what BellSouth charges dPi. So this is a
10 rabbit trail that is going to consume resources and time
11 for something that is ultimately of absolutely no
12 relevance to the decision-making involved in this case.

13 MR. SHORE: That was my last question on it, so
14 I don't plan on consuming any further resources,
15 Commissioner Kerr, and I think it is relevant.

16 COMMISSIONER KERR: Let me overrule the
17 objection and see how much further down this rabbit trail
18 we go.

19 Q. Mr. Bolinger, you're familiar with the
20 interconnection agreement between dPi and BellSouth,
21 correct?

22 A. I am -- are we -- I'm a little confused.

23 Q. Good.

24 A. Do I need to answer the two previous questions?

1 COMMISSIONER KERR: I would answer the question
2 that he's asking you now.

3 A. Yes, I am.

4 Q. Does dPi charge a connection charge for customers
5 in North Carolina?

6 A. We do.

7 Q. And that's approximately \$50, correct?

8 MR. MALISH: Again, objection.

9 COMMISSIONER KERR: Overruled.

10 A. I don't think it's -- I'm not exactly sure what it
11 is, but I think \$50 is high.

12 Q. What is it?

13 A. Well, I think the averages that I've seen across
14 the board company-wide, our average activation charge as a
15 company is \$40. I know in North Carolina it's -- it seems
16 to be approximately \$33.

17 Q. Part of your interconnection agreement with
18 BellSouth addresses dPi's reselling of BellSouth services,
19 correct?

20 A. That is correct.

21 Q. And what the interconnection agreement says is
22 that dPi is entitled to a promotional credit for an end
23 user only if that end user would have qualified for the
24 promotion if it had been a BellSouth customer, correct?

1 A. I don't have that memorized, but if you say it's
2 correct, it probably is.

3 COMMISSIONER KERR: Do you want to show him a
4 copy of that, provide him with a copy of that?

5 Q. Are you familiar with Ms. Tipton's testimony where
6 she quotes that portion of the interconnection agreement?

7 A. I believe I've read it, yes.

8 Q. You didn't take any issue with it in your rebuttal
9 testimony, did you?

10 A. No.

11 Q. And you would agree, wouldn't you, that dPi is
12 only entitled to a promotional credit for an end user
13 account if that end user would have qualified for the
14 promotion if it had been a BellSouth retail customer?

15 A. What I agree with is that a dPi customer should be
16 allowed the promotion if the customer purchased service
17 under what BellSouth has filed in the state in question.

18 I'm not sure how BellSouth's internal operations
19 work so I can't answer whether or not you provide it to
20 your customer, but all we have to go on is what's filed
21 with the state.

22 Q. So we can agree, then, that dPi would only be
23 entitled to a promotional credit for an account if
24 BellSouth's promotion that it files with the Commission,

1 if a BellSouth customer would likewise be entitled to --
2 strike that.

3 We can agree that the dPi end user qualified for
4 promotional credit has got to meet the same qualifications
5 that BellSouth sets out for its retail customers in its
6 promotional filings with this Commission, can we not?

7 A. Yes. With what BellSouth puts in the filing.

8 Q. Now, the interconnection agreement doesn't say
9 anything about the process for applying for promotional
10 credits, does it?

11 A. No.

12 Q. And dPi didn't make any allegations whatsoever
13 about that process in its Complaint in this case, did it?

14 A. DPi actually did not realize that BellSouth --

15 Q. Pardon me, Mr. Bolinger.

16 MR. SHORE: Mr. Chairman, would you instruct the
17 witness to answer my question, then certainly --

18 THE WITNESS: I was trying --

19 MR. SHORE: -- he can explain it. I asked a yes
20 or no question.

21 COMMISSIONER KERR: I don't think he had a
22 chance not to answer it before we interrupted him, so
23 let's let him answer and see how it goes.

24 A. DPi had no knowledge of BellSouth's internal USOC

1 that is used to apply the promotion on their bill until
2 depositions last week. We did not know that they were
3 doing anything differently than what we have to go
4 through.

5 Q. Did dPi make any allegations in its Complaint
6 about the process by which dPi applies for promotional
7 credits?

8 A. No. We thought it was a normal process.

9 Q. DPi had been submitting promotional credit
10 requests until at least September of 2004, correct?

11 A. We've been submitting them, yes.

12 Q. And receiving credits before you filed this
13 Complaint, isn't that right?

14 A. Only -- well, we received \$7,000 or \$9,000 until
15 the formal Complaint was filed and then we received 250.

16 Q. And we'll get to that, I promise. DPi had to
17 contract with a company called Lost Key that authorizes
18 Lost Key to act as dPi's agent for the purposes of
19 submitting promotional credit requests; is that right?

20 A. Yes. They help identify, manage, submit the
21 promotion process.

22 Q. And you entered into that contract with Lost Key
23 in the summer of 2004?

24 A. Yes. Approximately at that time, yes.

1 Q. And under that contract you pay Lost Key
2 commissions based on any credits that dPi receives from
3 BellSouth, correct?

4 A. Correct.

5 Q. And I think, as I recall, for any credits -- the
6 contract says for any credits that are from -- retroactive
7 to the time you started the contract, you pay Lost Key ten
8 percent commission and then going -- on a going-forward
9 basis would be five percent; is that right?

10 A. I believe that's correct, yes.

11 Q. And Lost Key first submitted promotional credit
12 requests to BellSouth in September of 2004, right?

13 A. Yes.

14 Q. And that first batch of submissions that y'all
15 gave us in September of 2004 went back until at least
16 January of 2004, correct?

17 A. Yes, I believe that is accurate.

18 Q. And then after September of 2004, Lost Key
19 submitted these requests on a monthly basis, right?

20 A. Yes.

21 Q. And you don't dispute that through January of this
22 year BellSouth had issued promotional credit requests to
23 dPi in excess of \$350,000, do you?

24 A. I think that would be an accurate number. I don't

1 know exactly what it is.

2 Q. Steve Watson is the person that you deal with at
3 Lost Key?

4 A. Yes.

5 Q. And he's going to testify today?

6 A. I believe he is, yes.

7 Q. And in addition to the commissions that you pay
8 Mr. Watson for any credits he gets for you, you're also
9 paying him to testify here today, correct?

10 A. Yeah. We pay him on anything he does above and
11 beyond our contracted agreement. We pay him an hourly
12 fee, which includes doing anything; running reports, going
13 to Atlanta, you know, coming here, yes.

14 Q. I think you touched on this a few minutes ago. In
15 order to determine if dPi is entitled to a promotional
16 credit, you need to look at what the criteria are for an
17 end user to meet the qualifications for the promotion,
18 correct?

19 A. Yes. Among other things, yes.

20 Q. And those criteria are spelled out in filings that
21 BellSouth makes to this Commission, correct?

22 A. Sometimes.

23 Q. We talked about one of those filings at your
24 deposition last week, correct?

1 A. Correct.

2 Q. Let me give you that.

3 MR. SHORE: I'm going to ask Mr. Rankin to help
4 me pass this out. And for identification purposes this is
5 part of dPi's Exhibit No. 2. And I ask that it be
6 identified as BellSouth Cross-Examination Exhibit No. 1.

7 Q. Mr. Bolinger, do you have that in front of you?

8 COMMISSIONER KERR: How old on one second,
9 please. I can't get my pen to work. All right. We --
10 I'm fine, thank you. Mark this as BellSouth
11 Cross-Examination Exhibit No. 1.

12 (Whereupon, BellSouth Cross-Examination
13 Exhibit No. 1 was marked for
14 identification.)

15 Q. And, Mr. Bolinger, you recognize the exhibit,
16 don't you?

17 A. Yes. This is what you showed me last week.

18 Q. This is included as part of dPi's Exhibit 2 that
19 it filed in this case, right?

20 A. Correct.

21 Q. And it's the document that you told me that dPi
22 would look at to determine what the criteria were for a
23 promotion, correct?

24 A. Yes. This is one of the documents we look at.

1 Q. In this case, this was a line connection charge
2 waiver promotion, right?

3 A. Yes.

4 Q. And if you look at this document, there's a
5 section that's entitled "Restrictions/Eligibility
6 Requirements," do you see that?

7 A. I do.

8 Q. And then down half -- two-thirds of the way down
9 it says, "The customer must switch their local service to
10 BellSouth and purchase any one of the following:
11 BellSouth Complete Choice plan, BellSouth PreferredPack
12 plan, or BellSouth basic service and two custom calling
13 (or Touchstar service) local features," correct?

14 A. Yes.

15 Q. And there's a reference down at the bottom, NC
16 2004-131, do you see that?

17 A. I do.

18 Q. And you're aware that BellSouth also filed notices
19 of its promotions on its interconnection website for its
20 BellSouth customers?

21 A. Yes.

22 Q. Now, dPi's applied for credits with BellSouth
23 based on three promotions, the ones I've listed up there
24 on the chalkboard. I don't know if you can see it.

1 COMMISSIONER KERR: Let me back up and ask you.
2 Mr. Shore, you've referenced in introducing this
3 exhibit -- BellSouth Cross-Examination Exhibit No. 1,
4 you've referenced it as part of another document and we
5 didn't catch what that was. Tell me what that was.

6 MR. SHORE: DPi, along with its testimony, filed
7 six exhibits with its direct and then a seventh in its
8 rebuttal. And this is a part of dPi Exhibit 2.

9 COMMISSIONER KERR: And what is the document?
10 What is it?

11 MR. SHORE: It is a -- it was attached to a
12 letter to this Commission saying "Commission, just to make
13 you aware that we're going to be offering this line
14 connection waiver promotion" and attached this document
15 setting forth the criteria for the promotion.

16 COMMISSIONER ERVIN: Just so I can be absolutely
17 clear then, this is a document that was attached to a
18 letter submitted to the Commission under the usual
19 promotion practices?

20 MR. SHORE: Yes, sir.

21 COMMISSIONER ERVIN: So this will be a part of
22 our record somewhere if we were to go find it probably?

23 MR. SHORE: Presumably, yes, sir.

24 COMMISSIONER KERR: Okay.

- 1 Q. Mr. Bolinger, dPi's applied for credits,
2 promotional credits with BellSouth under three promotions,
3 correct?
- 4 A. Actually, I believe it's four.
- 5 Q. Okay. The LCCW is one?
- 6 A. Uh-huh.
- 7 Q. The secondary service charge waiver is another?
- 8 A. Yes.
- 9 Q. The two features for creating another?
- 10 A. Yes.
- 11 Q. Okay. And what was the fourth?
- 12 A. Cash back promotion.
- 13 Q. Now, the line connection charge, that's a charge
14 for hooking up service for a new customer, correct?
- 15 A. In a nutshell, yeah.
- 16 Q. And under that promotion, BellSouth waives that
17 charge if the customer buys certain things from BellSouth,
18 correct?
- 19 A. Yes.
- 20 Q. And the secondary service charge, that applies
21 when an existing customer makes some changes to its
22 service, correct?
- 23 A. Correct.
- 24 Q. And under that promotion, BellSouth waives the

1 charge if an existing customer buys certain things or adds
2 certain things to its package, correct?

3 A. I'm not exactly sure exactly what they have to
4 add, but yeah.

5 Q. We don't need to fuss about what those are --

6 A. Yeah.

7 Q. -- but that's the promotion, correct?

8 A. Correct.

9 Q. And the line connection waiver charge will apply
10 only to new customers, correct?

11 A. Actually I think it applies to new customers or --
12 depends on what your definition is, but it applies to new
13 customers and converting customers.

14 Q. When the customers sign up for service, either for
15 the first time or again?

16 A. Yes.

17 Q. And the secondary service charge applies that
18 they've already been there and they're just adding things
19 and --

20 A. Yes. They're existing customers that are making
21 changes to their accounts.

22 Q. And given that, we can agree, can't we, that a
23 customer could not at the same time be eligible for both
24 the line connection waiver promotion and also the

1 secondary service charge waiver promotion?

2 A. No, I would disagree with that. Because it would
3 depend -- a customer could sign up December 1st under the
4 LCCW and December 15th make a change to their account
5 which would fall under the secondary service charge
6 waiver. So in the first month under one billing we would
7 actually have two promotions because they were an existing
8 customer at the time they did the secondary service charge
9 waiver. So I would disagree with that.

10 Q. A customer at the same time, not in the same month
11 and not, you know, the next day, but at the same time a
12 customer cannot be eligible for both the line connection
13 charge waiver promotion or the -- and the secondary
14 service charge waiver promotion, correct?

15 A. Again, I don't know if that's accurate or not. I
16 mean if they were a quick serve customer they're on in a
17 couple of hours and if they make a change -- I don't know
18 if we can identify that on our bills. I don't think it's
19 time and date stamped when that occurred so I don't if I
20 can answer that.

21 Q. So do you contend that a customer at the same time
22 could be eligible, at the same time, in one service order
23 could be eligible for both the line connection charge
24 waiver promotion and the secondary service charge waiver

1 promotion?

2 A. Under one service order, the initial service
3 order, I would say no. But I don't know if we can extract
4 that from the bills we receive.

5 Q. Now, you don't dispute that BellSouth has issued
6 credits to dPi under the secondary service charge waiver
7 promotion that dPi was not entitled to, do you?

8 A. I'm sorry, can you repeat that?

9 Q. Yeah. You read Ms. Tipton's testimony where she
10 said that BellSouth had issued credits to dPi under these
11 secondary service charge waiver promotion that dPi wasn't
12 entitled to? You read that in her testimony, did you not?

13 A. I did.

14 Q. And you don't dispute that she's right, do you?

15 A. The secondary service charge waiver is not at
16 issue. I don't know if she's right or not to be perfectly
17 honest because I don't know exactly what we've been
18 credited for that we were not eligible for. We just
19 receive credits; we're never told why.

20 Q. Let me try to ask it this way: Do you dispute Ms.
21 Tipton's testimony that dPi applied for and BellSouth
22 granted it credits under the secondary service charge
23 waiver promotion that dPi was not entitled to?

24 MR. MALISH: May I object for a second here.

1 Mr. Chairman, dPi has purposefully limited its case
2 strictly to the line connection charge waiver, which
3 compromised over 99 percent of the dollars at issue and
4 corresponding instances of what was actually happening.

5 So we're no longer litigating. We clarified
6 this. If it wasn't clear already in our testimony, we
7 clarified this on the record and in depositions last week.
8 These other promotions aren't relevant because they're so
9 small, but also aren't relevant because they're just not
10 part of the case anymore.

11 So I don't know why we're pursuing this line of
12 questioning on these other promotions, which have less
13 than one percent of the total amount that's in dispute
14 between these parties to begin with.

15 COMMISSIONER KERR: Mr. Shore --

16 MR. SHORE: Mr. Chairman --

17 COMMISSIONER KERR: -- why is this relevant?

18 MR. SHORE: Well, I understand why dPi wants to
19 sweep this under the rug because what happened here --

20 COMMISSIONER KERR: Well, just wait a minute.
21 Wait, wait, wait. Just why is it relevant?

22 MR. SHORE: It's relevant because dPi has -- it
23 will not dispute that it submitted credit requests that it
24 wasn't entitled to.

1 COMMISSIONER KERR: But have those --

2 MR. SHORE: And --

3 COMMISSIONER KERR: Wait, wait, wait, wait,
4 wait. Have those been worked out and are those relevant
5 to an issue that is pending before the Commission for a
6 decision?

7 MR. SHORE: At a minimum they're absolutely
8 relevant to the credibility of dPi and its agent who
9 submit credit requests to my client and do so in a sloppy
10 fashion and have gotten as a result credits that they
11 weren't entitled to. And they knew that. That's
12 absolutely relevant.

13 COMMISSIONER KERR: I'll overrule the objection,
14 but I think you need to fairly quickly establish that it
15 somehow goes to an issue of credibility that exists in
16 this case. I mean, if it's just that we had a
17 disagreement and it's been worked out, I don't think that
18 goes to anybody's credibility and --

19 MR. SHORE: No, that's not the case --

20 COMMISSIONER KERR: Wait, wait. Let me finish.
21 It's about three times in a row. Let me finish. And, you
22 know, if it's something that's been worked out and we're
23 just throwing it out here to prejudice the decision-maker,
24 then I think we're a little far afield and we need to

1 stop, so --

2 MR. SHORE: Well let me be clear, that is not
3 the case, so it hasn't been worked out.

4 COMMISSIONER KERR: What I've heard him say is
5 we've had these disputes; we submitted these bills and
6 it's been worked out. So --

7 MR. SHORE: I heard him say that, too.

8 COMMISSIONER KERR: Okay. So we've gotten that.
9 So I'm not quite sure what you're doing about credibility
10 with this, but I'll allow you to continue but you need to
11 show me pretty fairly quickly or we're going to change
12 courses.

13 Q. Did dPi dispute Ms. Tipton's testimony that
14 BellSouth issued to dPi credits that dPi was not entitled
15 to under the secondary service charge waiver promotion?

16 A. DPi doesn't know one way or the other because we
17 were never told what we were credited -- exactly what we
18 were credited for, exactly what was denied. But I did see
19 that in Ms. Tipton's testimony. It wasn't disputed
20 because the dollar amounts left over in that specific
21 promotion were so small they were not -- they're not in
22 dispute anymore.

23 Q. And we can agree under the line connection charge
24 waiver promotion that dPi did submit requests under that

1 promotion that it was not entitled to, correct?

2 A. Yes. And I think we've worked those out as well.

3 Q. I think not, but I guess we'll disagree with that.

4 Now, you say in your -- well, look at this
5 document that we agreed is where you go to see what the
6 criteria for the line connection charge --

7 A. It's one of them.

8 Q. What else would you look at?

9 A. We have to look at the specific promotion. For
10 example, under the plan promotion here you have the
11 BellSouth Complete Choice plan. Well, it doesn't tell you
12 what's entailed or what's involved in the Complete Choice
13 plan so we have to dig deeper, find another document, take
14 a look at that, see what it is all involved in that plan,
15 see what we have that mirrors that or if we could tweak to
16 mirror that and then have that plan.

17 Same thing for the PreferredPack. It doesn't
18 detail what's involved in there, so we would have to go
19 find out.

20 With this you have -- the third one with the
21 custom calling or the Touchstar service features, you have
22 to go in and find out what are the custom calling
23 features. In this instance, what are the Touchstar
24 features, which we did, and were defined. And that's what

1 we applied. So there's several different things you have
2 to look at when you're trying to do a promotion.

3 Q. Can we agree that this document that BellSouth
4 filed with the Commission that we've identified as Cross
5 Exhibit 1, is the document where BellSouth sets forth --
6 where BellSouth sets forth what the criteria for a
7 promotion are? In this case it would be line connection
8 charge waiver promotion.

9 A. Yes. And they -- but BellSouth also understands
10 what all of that is -- those are words we -- which we
11 cannot --

12 Q. And if you want to know what the definition is of
13 Complete Choice, you've got to go somewhere else and look
14 for it?

15 A. That is correct.

16 Q. And in BellSouth's promotion that it filed for the
17 line connection charge waiver promotion, it says that the
18 customer must switch to service with BellSouth and
19 purchase certain things, correct?

20 A. Yes.

21 Q. And so in your prefiled testimony when you use the
22 word -- you say things like the customer must take service
23 and two features or order service and two features, we can
24 agree that what the promotion requires is the customer

1 purchased basic service and two features, can we not?

2 A. Yes. It's all part of the transaction, yes.

3 Q. Now, if a dPi customer purchases basic service
4 from BellSouth and caller ID and caller waiting and dPi
5 applies for a credit based on the line connection charge
6 waiver promotion, BellSouth issues those credits to dPi,
7 does it not?

8 A. I would hope so and I think so, but again, we're
9 credited and we're not exactly sure exactly for what those
10 credits are for.

11 Q. You're not contending in this case that BellSouth
12 has failed to issue credits to dPi under those
13 circumstances, are you?

14 A. No. I mean it took us ten months, but no I'm not,
15 no.

16 Q. And when BellSouth gives dPi those credits, dPi
17 doesn't pass those on to its end users, does it?

18 A. Well it's been impossible to pass those on to our
19 end users because we've had to wait ten months to get
20 them. In the prepaid environment the average customer
21 sticks around anywhere from six to eight months, so by the
22 time we actually we receive that dollar amount, the
23 customer is most likely already gone so we can't pass it
24 to the customer.

1 Q. At the time you first submitted y'all's promotion
2 request you gave us about eight or ten months at the same
3 time, right?

4 A. I believe we gave you January of 2004 to August of
5 2004.

6 Q. And there were some issues with those, took
7 several months for the parties to work out some of those
8 issues, correct?

9 A. I think there were issues on BellSouth's side, I
10 don't think there were issues on dPi's end.

11 Q. Well at least we think so and that's why we're
12 here, but in any event. But -- and I think we already
13 agreed that dPi continues to submit those on a monthly
14 basis?

15 A. Correct.

16 Q. And there's some things that we don't fight about
17 anymore and that we've worked out the process. And there
18 aren't -- there's things that we agree that dPi is
19 entitled to a credit for, correct? Like when a dPi
20 customer buys basic service and two features like caller
21 ID and caller waiting?

22 A. I don't think that's in dispute, but I cannot tell
23 you if we have been credited for every one of those
24 orders.

1 Q. Now, after that initial batch was taken care of
2 and took some months to work out, now when dPi submits its
3 credit request, BellSouth on a monthly basis -- it doesn't
4 do it eight months at a time, it does it on a monthly
5 basis, BellSouth issues credits shortly thereafter that it
6 believes that dPi is entitled to, correct?

7 A. Kind of. We receive credits on a monthly basis.
8 Some of the credits go back. For example, we were told, I
9 believe in December, that BellSouth had re-audited 2004
10 and there were additional monies from 2004 that were
11 supposed to be put on our December bill, but to date we
12 haven't received it so we're still trying to figure out
13 where that's coming from.

14 We get portions of stuff we've already filed every
15 month and so we have no idea exactly where the money is
16 coming from, specifically what filing that we filed which
17 is being paid, we just know we filed X amount of dollars
18 and Y has been paid. But we can't -- it's hard for us to
19 identify exactly which submission that Lost Key did that's
20 being paid, so -- but we get every month. We get some
21 promotions every month.

22 Q. You get some credits every month?

23 A. Yes.

24 Q. Have you gone to BellSouth and said when you give

1 us these credits every month, can you identify with us
2 with specificity what they apply to?

3 A. We've asked BellSouth for a number of things. We
4 would love to have that information.

5 Q. Have you asked BellSouth to give you that
6 information every month on your bill?

7 A. I believe we have.

8 Q. Did you ask for that?

9 A. Did I personally ask for that?

10 Q. Yeah.

11 A. No. I believe folks in our accounting department
12 that have asked for that because it's an accounting
13 nightmare.

14 Q. Do you know who they asked?

15 A. Not off the top of my head, no.

16 Q. And when dPi gets these credits on a monthly
17 basis, it doesn't pass on any of those credits by a
18 promotional mechanism or any other mechanism to its end
19 users, do you?

20 MR. MALISH: Objection. Relevance, please.

21 COMMISSIONER KERR: Mr. Shore?

22 MR. SHORE: I'm trying to establish what the
23 mechanism is for promotional credit requests they get to
24 request and what they do with the money.

1 MR. MALISH: What they do with the money --

2 COMMISSIONER KERR: And what they -- you asked
3 how they make the request.

4 MR. SHORE: Yes, sir.

5 COMMISSIONER KERR: And you're asking what they
6 do with the money. Tell me how that's --

7 MR. SHORE: And then --

8 COMMISSIONER KERR: I think that's what the
9 objection is to. Tell me why what they do with the money
10 is relevant if they're entitled to the request.

11 MR. SHORE: These are end user promotions that
12 BellSouth credits their end users for that they apply
13 under and I want to know and I think we're entitled to
14 know if dPi passes that on to its end users.

15 COMMISSIONER KERR: Mr. Malish?

16 MR. SHORE: They make arguments in their
17 testimony about how -- the reason that they need to -- we
18 need to resell promotions is to even the competitive
19 landscape so we can all compete for the same customers.
20 If that was the case and that's -- then they would have to
21 pass these on.

22 If competition was the issue that they're
23 concerned about, they would turn out to be passing these
24 on to their customers. So they make that allegation in

1 their testimony and I just want to find out. I think he's
2 answered they don't, but --

3 COMMISSIONER KERR: Okay. Mr. Malish?

4 MR. MALISH: Mr. Chairman, dPi is BellSouth's
5 customer. DPi's end user is not BellSouth's customer. So
6 frankly what dPi does with the credits that it gets from
7 BellSouth and the monies that it pays to BellSouth kind of
8 aren't really relevant to what it charges its end users.
9 Just not relevant. You cannot -- you're putting -- you're
10 making a false -- or BellSouth is making a false
11 connection here.

12 COMMISSIONER KERR: Mr. Shore, it seems to me
13 the argument that you're making in terms of -- in support
14 of the relevance has to do with the underlying policy of
15 resale and in particular the resell of promotions. I
16 don't understand that to be an issue in this case. I
17 think we are more technically concerned with whether or
18 not on the facts of this case they are entitled to receive
19 certain amounts in refunds. And so I'm going to sustain
20 the objection.

21 Q. DPi claims that certain blocks that its customers
22 have on their lines are purchased features in this case,
23 correct?

24 A. Yes. They are the BCR, BRD and I think HGB (sic)

1 are specific USOCs that are used for Touchstar features
2 that we purchase on every order.

3 Q. And these are blocks that restrict the ability of
4 a customer to use things like call return and the repeat
5 dialing, these Touchstar features, correct?

6 A. It restricts the per charge use of those, yes.

7 Q. And I think you told me in your deposition that
8 you rely on the definitions in BellSouth's tariffs to
9 determine what a feature is, correct?

10 A. In this instance, yes.

11 MR. SHORE: I'm going to ask Mr. Rankin to help
12 me pass out a section of BellSouth's tariff that is --
13 I'll asked to be identified as BellSouth Cross Exhibit 2.
14 And it's a section from our General Subscriber Service
15 Tariff, Section A13.19 entitled "Touchstar Service."

16 (Whereupon, BellSouth Cross-Examination
17 Exhibit No. 2 was marked for
18 identification.)

19 COMMISSIONER KERR: Let's take a five-minute
20 break. And let's try to stick to a five-minute break.
21 And so we'll come back -- that clock back there is not
22 right, but going on that clock we'll come back at 37 or 38
23 after the hour.

24 (RECESS - 10:30 A.M. TO 10:44 A.M.)

1 COMMISSIONER KERR: All right. Mr. Shore, you
2 had handed out BellSouth Cross-Examination Exhibit No. 2?

3 MR. SHORE: Yes, Mr. Chairman. That's a section
4 from BellSouth's General Subscriber Service Tariff that
5 sets forth what its Touchstar features are.

6 COMMISSIONER KERR: All right. Let's get going.

7 MR. SHORE: Okay.

8 Q. Mr. Bolinger, you have the BellSouth
9 Cross-Examination Exhibit No. 2 there in front of you?

10 A. I do.

11 Q. And if you look at the first -- it's the second
12 sentence there of the text where it says "Touchstar
13 service consists of the following features," colon, do you
14 see that?

15 A. Yes.

16 Q. And then it goes to list definitions of features A
17 through M, correct?

18 A. Yes.

19 Q. Will you turn over to Page 2 down towards the --
20 well, Section A there is talking about call return
21 feature, right?

22 A. Yes, it is.

23 Q. And it says, looking on Page 1, "This feature
24 enables a customer to place a call to the telephone number

1 associated with the most recent call received, whether or
2 not the call was answered or the number is known. The
3 customer can dial a code to request that the network place
4 the call." Did I read that correctly?

5 A. I don't know where you were reading, but I would
6 assume so.

7 Q. Under the definition of call return. That's
8 what's known as like Star 69?

9 A. Yes. Yeah, that's the common --

10 MR. MALISH: Mr. Commissioner, we're willing to
11 stipulate that this is admissible into evidence and, you
12 know, beyond than that it speaks for itself. I don't know
13 what it does to speed things along to have Mr. Bolinger
14 read parts of it and have Mr. Shore read parts of it in
15 the record.

16 COMMISSIONER KERR: Well, we will admit into the
17 record, but he's certainly welcome to ask the witness
18 questions about what it says.

19 Q. I think we agree, Mr. Bolinger, that items capital
20 A through M set forth what BellSouth's Touchstar featured
21 offerings are in North Carolina, correct?

22 A. Yeah. Those are the defined Touchstar definitions
23 of Touchstar features, yeah.

24 Q. And if you turn over to Page 2 down at the bottom

1 of Section A there, there's -- the last paragraph in
2 Section A starts, "This feature is available," do you see
3 that?

4 A. The last paragraph?

5 Q. Yes, sir.

6 A. Yes.

7 Q. Section A. And then the third sentence reads,
8 "Where facilities permit, the feature may be utilized on a
9 non-subscription basis with a per occasion charge for each
10 use," do you see that?

11 A. Yes.

12 Q. And is it your understanding that a customer, even
13 if it doesn't subscribe to the call return feature on a
14 monthly basis, if it just wants to use it, it can do so
15 and then it gets charged on a per use basis and that's
16 what this is saying here?

17 A. Yeah. There are two -- there are two ways to be
18 billed in this instance for call return. The first one is
19 you basically pay a set amount, you have unlimited use;
20 and the second way to be charged is on a per use basis of,
21 you know, \$.75 a pop every time you use it.

22 Q. In that sentence we just looked at, that's saying
23 you can use it on a per use basis, correct?

24 A. Yeah.

1 Q. And then the next -- well not the sentence in
2 bold, but the last sentence in Section A there says,
3 "Access to the usage option can be restricted at the
4 customer's request at no charge." Do you see that?

5 A. Yes.

6 Q. And that's the block of call returns, the BCR that
7 we're talking about in this case, correct?

8 A. I would assume so, yes.

9 Q. Block of call return or BCR isn't listed --
10 doesn't have its own capital letter in this section. It's
11 not in A through M. The only mention of it is in there
12 within the definition of the call return feature, correct?

13 A. I do not see any of the USOCs listed in the
14 definitions, for any USOCs of the Touchstar features
15 listed in the definitions.

16 Q. What's -- the USOC is an -- what is that?

17 A. Universal Service Order Code.

18 Q. And there's thousands of USOCs in BellSouth's
19 system, correct?

20 A. Yeah and there's nothing universal about them.

21 Q. And a USOC is for all different kinds of things,
22 not just features, correct?

23 A. Yeah. The USOC 1 FR is the basic line, for
24 example. In this scenario, looks like the USOC, the two

1 USOC -- the two Touchstar USOCs for call return are either
2 NSS or BCR because it doesn't look like there is a USOC
3 available on a pre-use basis. So the two Touchstar USOCs
4 for call return are either NSS or BCR.

5 Q. Essentially to get something provisioned or
6 ordered in BellSouth's systems, you need a USOC, you need
7 to plug a USOC that identifies what it is you're ordering
8 or you want, correct?

9 A. Yes. If you want to be billed correctly and have
10 the order, you have to have the required USOCs.

11 Q. And if you look at capital B, the repeat dialing
12 that's on Page 2 of the exhibit, down towards the end of
13 that description of that feature it also says there, like
14 with call return, "if facilities permit, the feature may
15 be utilized on a non-subscription basis with a per
16 occasion charge per use," correct?

17 A. I'm sorry, can you tell me where that is again?

18 Q. Yes. Section B on Page 2, repeat dialing feature,
19 the last paragraph about halfway there.

20 A. Where it says "where facilities permit"?

21 Q. Yes.

22 A. Yeah.

23 Q. And then a few sentences after that, the last
24 section in that -- in the repeat dialing feature

1 definition says, "Access to the usage option can be
2 restricted at the customer's request at no charge." And
3 that's the BRD USOC that we're talking about in this case,
4 correct?

5 A. I believe so, yes.

6 Q. And we can agree, can't we, that the BRD USOC
7 doesn't have its own capital letter, A through M, in this
8 list of Touchstar features here in the tariff?

9 A. No, it doesn't. Just as, you know, NSQ doesn't
10 either, which is the other Touchstar USOC used for repeat
11 dialing.

12 Q. The only place that the ability to block repeat
13 dialing is mentioned here in the definition section is
14 within the definition of repeat dialing under capital B,
15 correct?

16 A. Well it also mentions it in A13.19.4.

17 Q. Yeah. That's the rates and charges section?

18 A. Correct.

19 Q. And I was asking about the definitional section.
20 Can we agree that the thing we just looked at, the
21 sentence we looked at is the only place that discusses the
22 BRD USOC in the definitional section?

23 A. Well, it doesn't discuss the BRD USOC, it
24 discusses how -- that you can put a block on for no

1 charge.

2 Q. And that block you can put on is what's known as
3 the BRD, correct?

4 A. That's the USOC you have to use for that
5 functionality of the Touchstar feature.

6 Q. DPi offers service here in North Carolina. They
7 call this basic service or basic package, correct?

8 A. We have several packages in different states, but
9 we have a basic -- a basic line, yes.

10 Q. And the basic service is you get dial tone,
11 essentially, correct, and local calling?

12 A. You get unlimited local calling. And I'm not sure
13 if there is any long distance associated with that or not,
14 but there may be.

15 MR. SHORE: I'm going to ask Mr. Rankin to pass
16 out what I ask to be -- what I will ask to be identified
17 as BellSouth Cross-Examination Exhibit No. 3. And that is
18 a printout from dPi's website.

19 (Whereupon, BellSouth Cross-Examination
20 Exhibit No. 3 was marked for
21 identification.)

22 Q. Mr. Bolinger, have you been on dPI's website
23 before?

24 A. Yes.

1 Q. And you recognize Exhibit 3 as a printout of a
2 portion of dPi's website?

3 A. Well, we actually just redid it, but yeah, it
4 looks like.

5 Q. And you see there that about halfway through the
6 page different packages that dPi, I guess, offers its
7 customers; basic package, advantage package, premier
8 package, do you see that?

9 A. Yeah. At a very high level that's what it is.

10 Q. And the first column there is features, right?

11 A. Yes. What's associated with the different
12 packages.

13 Q. And with the basic package the only thing that dPi
14 identifies is unlimited local calling, correct?

15 A. Yes.

16 Q. And when your customers order basic service from
17 dPi, they don't get any features, do they?

18 A. It depends on what you define a feature as.

19 Q. Well, when your customers order basic service from
20 dPi, they don't get any features in the manner that dPi
21 defines features to its end users, do they?

22 A. Well, we define features as what's associated with
23 it. If you look down the page you see 100 minutes of long
24 distance is also defined as a feature; 500 minutes of long

1 distance is defined as a feature. Depending on how you
2 order it, either 100 minutes a month for five months or
3 500 minutes a month for every month. So that's just
4 what's associated with the local service.

5 Q. You recall I took your deposition five or six days
6 ago, correct?

7 A. Yes.

8 Q. And you told the truth at your deposition?

9 A. I believe so.

10 Q. Do you have a copy on the table?

11 A. No, I don't. Well, I have one over there, but not
12 with me right here.

13 Q. All right. Mr. Rankin will give you a copy. Can
14 you turn to Page 18 of your deposition, please?

15 MR. MALISH: Mr. Chairman, it looks to me like
16 BellSouth is attempting to impeach Mr. Bolinger on what's
17 basically an ancillary matter. Again, this is what dPi
18 offers its end users.

19 I just don't see how it could possibly be
20 relevant to what BellSouth calls features when it is
21 selling them to its end users. Obviously dPi has
22 something different because they're trying to
23 differentiate themselves.

24 But, I mean, this can only go to what is dPi

1 select to its end user. And that's totally irrelevant to
2 what BellSouth is selling to dPi. So this is a side show.

3 COMMISSIONER KERR: Mr. Shore?

4 MR. SHORE: I disagree.

5 COMMISSIONER KERR: Why do you disagree?

6 MR. SHORE: Everybody in the industry knows what
7 a feature is. Everybody in the industry knows that a
8 feature doesn't include these blocks that don't allow you
9 to do anything and that you don't have to pay for. And
10 everybody uses those terms likewise, and he testified in
11 his deposition. It's going to take two seconds here to
12 show what he testified to under oath last week, and we can
13 move on.

14 COMMISSIONER KERR: Overruled.

15 Q. Can you turn to Page 18 in your deposition, Mr.
16 Bolinger?

17 A. Yes.

18 Q. You see on line seven there -- well, on line two I
19 asked you, "In BellSouth's region of North Carolina
20 particularly, do you have a service that you call basic
21 service?" Can you read your answer that you gave last
22 week at your deposition?

23 A. Sure. I said, "We just have our basic -- basic
24 telephone service."

1 Q. And then I asked you, "What does the customer get
2 when it buys basic telephone service from dPi in North
3 Carolina," and you answered, "I believe they get just your
4 typical local dial tone in their home, and in North
5 Carolina I'm not sure if there is any long distance
6 attached to that, but there may be, and then that's about
7 it."

8 Did I read your answer you gave at your deposition
9 accurately?

10 A. Yes.

11 Q. And then my next question was, "Do they get --
12 with basic service does the customer get any features?"
13 Can you read the answer that you gave me at your
14 deposition?

15 A. I said, "Not if they just order basic service, no,
16 unless they order them or they order a package." And then
17 I think I quantified that later on in my deposition by
18 saying when you said features, I assumed that you meant
19 call waiting, caller ID and things of that nature.

20 Q. When a dPi customer in North Carolina orders basic
21 service from dPi, dPi automatically puts the BCR and
22 BCD (sic) blocks on the line, correct?

23 A. Yes. DPi is a prepaid company and so we block all
24 per call tolled use functionality.

1 Q. I'm sorry. I didn't mean to talk over you.

2 A. That's quite all right.

3 Q. And you don't ask the customer if it wants those

4 blocks on the line before you do that, correct?

5 A. No. It's common practice in the prepaid industry.

6 Q. And BellSouth doesn't charge dPi for the BCR or

7 BRD blocks, does it?

8 A. It depends on if we're ordering reseller UNE.

9 UNE I believe we get charged a call feature package if we

10 use those blocks. In resale we do not get charged for

11 those featured USOCs.

12 Q. And all the issues in this case have to do with

13 resale, correct? I want to make sure I keep it relevant.

14 A. Yes. But you asked if we got charged, and

15 sometimes we do.

16 Q. For a resale customer, you don't get charged for

17 the BCR and BCD blocks, correct?

18 A. BCR and BRD --

19 Q. BRD, yeah, I'm sorry.

20 A. Confused me for a second. No.

21 Q. Confuse myself as well. That's common practice.

22 And dPi pays BellSouth the same amount for a line

23 when it orders the BCR and BRD blocks than it would if it

24 didn't order those blocks, correct?

1 A. Depends.

2 Q. Under resale.

3 A. It depends. Because if the customer -- if we
4 didn't put it on there and the customer began using it, we
5 would be charged \$.75 every time a customer uses it. So
6 in the areas as you put in in your tariff where facilities
7 allow, in the areas where they don't allow, we have seen
8 bills \$300, \$400, \$500 a month for customers that use Star
9 69 over and over and over again, we're not allowed to
10 block them in the switch.

11 Q. But that's for use of the call return, not for use
12 of the block, correct?

13 A. Well, the block is not allowed because allowed we
14 charge that.

15 Q. Can you turn to Page 73 of your deposition?

16 A. 73?

17 Q. Yes, sir. The very last question on Page 73 you
18 see I asked you, "dPi doesn't contend that it has to pay
19 more when it gets the BRD and BRG denials than it would if
20 it didn't get those, does it?" Can you read the answer
21 you gave me?

22 A. I'm sorry, "No, we don't."

23 Q. And dPi doesn't even tell its customers or notify
24 them in any way that it's putting these blocks on their

1 lines, does it?

2 A. No. It's just common practice in the prepaid
3 industry that you attempt to block all per charge toll
4 when possible.

5 Q. And for every customer that dPi signs up who isn't
6 paying for these blocks and who may not even know they
7 have them, you want BellSouth to give your company a
8 credit for the line connection charge of \$33.56, correct?

9 A. Actually what we want BellSouth to do is adhere to
10 their filing within the state.

11 Q. And you want BellSouth for every customer you sign
12 up in North Carolina that's got these blocks that you
13 don't charge for and the customers don't even know they
14 have them, you want BellSouth to give you credit equal to
15 the line connection charge of \$33.56; is that correct?

16 A. Yes. That is in adherence to what has been filed
17 within the state, but yes.

18 Q. And that adds up to the tune of almost \$190,000,
19 correct?

20 A. I'm sorry, can you repeat that?

21 Q. Yeah. The total amount that you're asking for for
22 those customers who've got these blocks who may or may not
23 even know they have them and they don't pay for them adds
24 up to about 185 to \$190,000, correct?

1 A. Over the course of a year and a half, I would say
2 yes.

3 Q. Thank you.

4 MR. SHORE: That's all I have.

5 COMMISSIONER KERR: Public Staff?

6 MR. GILLAM: Only one question.

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION BY MR. GILLAM:

9 Q. Am I right in thinking that the basic issue in
10 this case is the same as the issues that would arise if
11 a -- if an end user customer of BellSouth were to file a
12 complaint saying that he has subscribed to service with
13 the BCR, BCD and should have been given the line
14 connection charge waiver?

15 A. Yeah, I would say that's accurate. If a customer
16 had those Touchstar USOCs on their order and did not
17 receive the promotion and then filed a complaint, yes.

18 Q. Thank you.

19 A. You're welcome.

20 COMMISSIONER KERR: Redirect, Mr. Malish?

21 REDIRECT EXAMINATION BY MR. MALISH:

22 Q. One item, please, Mr. Bolinger. I don't know if
23 -- what was the exhibit number for this -- okay. So we're
24 looking at Cross-Examination Exhibit 3, which is the

1 screen shot from your website which lists what y'all call
2 your features that you offer to your end users.

3 Are you looking at with -- are you looking at that
4 with me now?

5 A. Yes.

6 Q. I also want you to look at the tariff that
7 Mr. Shore gave you, which is Cross-Examination Exhibit 2,
8 which lists the BellSouth features. I'm going to flip
9 back and forth between these.

10 A. Is that A13?

11 Q. A13, yes.

12 Now, y'all don't list call trace as a feature that
13 you offer to your end users, do you?

14 A. No.

15 Q. But that is a Touchstar feature that is offered by
16 BellSouth and it is described in their tariff at Page 2,
17 Item C, correct?

18 A. Correct.

19 Q. Similarly, y'all don't list repeat dialing as a
20 feature that you offer your customers, do you?

21 A. That's correct.

22 Q. But that is a Touchstar feature that is offered by
23 BellSouth to its end users under item B on that Page 2,
24 isn't it?

1 MR. SHORE: Object. He's leading the witness.

2 COMMISSIONER KERR: Overruled.

3 A. Correct.

4 Q. And similarly, y'all don't have as one of the
5 features that you would -- and offer to your end users
6 call selector, do you?

7 A. No, we don't have that listed on here.

8 Q. But that is a Touchstar feature?

9 A. Correct.

10 Q. That's item D in Section A13.19 of the tariff,
11 isn't it?

12 A. Yes.

13 Q. So you all don't offer the same features, what
14 y'all call features, to your end users that BellSouth
15 offers to you; is that correct?

16 A. Yes. I mean we could in theory purchase a lot of
17 what BellSouth calls features, but we just don't offer
18 those to our customers.

19 MR. MALISH: No further questions.

20 COMMISSIONER KERR: Questions from the
21 Commission?

22 EXAMINATION BY COMMISSIONER ERVIN:

23 Q. I just have one rather direct one. It seems to me
24 at least one of the two issues in here is how do we define

1 what is a custom calling or Touchstar service local
2 feature.

3 If you were to point me to a single BellSouth
4 document that you contend shows that the blocking features
5 that you have relied upon are custom calling or Touchstar
6 service features, what would it be?

7 A. Thank you, Commissioner Ervin. Actually if you
8 look at -- there are several. If you look at Kristy
9 Seagle's deposition from last week -- and she is a
10 proclaimed expert on promotions from BellSouth -- she
11 calls theme features.

12 If you look at correspondence from Gary Patterson,
13 who I believe is Kristy Seagle's -- Kristy Seagle reports
14 to Mr. Patterson. I think he's a vice president at
15 BellSouth -- he will refer to them as features.

16 There are several other correspondences that I
17 think we've attached where BellSouth has called them
18 features.

19 And to be perfectly honest, I was under the
20 impression that we had gotten over that because once we
21 showed BellSouth, you know, hey, it's -- you define the
22 feature and the USOCs associated with that feature, which
23 we've used in your tariff, you've called them features,
24 they went away from that and started arguing that we

1 didn't purchase those features. . And at that point they
2 even called them features.

3 Q. It seems to me, at least from reading the prefiled
4 testimony, that essentially in their testimony made both
5 arguments. And I'm trying to figure out -- I can pretty
6 well deal with the "we didn't pay a price for them."
7 Under that argument I understand the argument; I've seen
8 the documents.

9 The question I'm going to put to you directly is
10 on what basis in terms of a BellSouth document or filing
11 with the Commission or something of that nature should I
12 use to determine whether these things are or are not
13 Touchstar?

14 A. Yes, sir. Well, if you go to -- and I don't know
15 if you have A13 in front of you.

16 Q. I've got it if it's Cross Exhibit No. 2.

17 A. Okay. So on Cross Exhibit No. 2, if you go to the
18 last page --

19 Q. The rates and charges page?

20 A. Yes, sir.

21 Q. So that's what you would -- I mean, I can read the
22 page?

23 A. Well, yeah. So if you look at the footnote, it
24 talks about these features, you know, in footnote three --

1 I'm sorry, in footnote one it says these features should
2 not be included in the multi-feature discount plan. So in
3 our opinion they have defined them as features.

4 They have also specifically identified what does
5 not count with those features. And if they wanted these
6 blocks not to count with this promotion, they had every
7 opportunity to put footnote two in here and say, oh, by
8 the way, these features also do not count for the line
9 connection waiver fee. They did not do that. We assumed
10 that they meant that these features would also be included
11 in that.

12 Q. All right. Thank you.

13 A. Thank you.

14 COMMISSIONER KERR: Questions on Commissioner
15 Ervin's questions?

16 (No Response.)

17 All right, Mr. Bolinger, thank you. Call your
18 next witness.

19 THE WITNESS: Thank you.

20 (WITNESS DISMISSED.)

21 MR. SHORE: Commissioner Kerr?

22 COMMISSIONER KERR: Yes, sir?

23 MR. SHORE: A couple of housekeeping matters. I
24 would like to move for the admission of the BellSouth

1 Cross-Examination Exhibits 1 through 3. And I also ask
2 that we can file and make part of the record these
3 depositions of Mr. Bolinger and Mr. Watson.

4 COMMISSIONER KERR: What's the deal with the
5 cross-examination exhibits?

6 MR. MALISH: No objection to the
7 cross-examination exhibits.

8 COMMISSIONER KERR: All right. What about the
9 depositions of Mr. Watson and Mr. Bolinger?

10 MR. MALISH: Do I object? Yeah, I do. I mean
11 that would technically be hearsay, I suppose. I'm not
12 sure why it's being offered. He's already read into the
13 record the parts that he wanted to bring up in that as
14 evidence, so -- I've never seen this done before in a PVC
15 proceeding. If that's the ordinary course of business
16 here, then --

17 COMMISSIONER KERR: Why don't we -- I'll
18 withhold ruling on that and let's proceed and then we'll
19 deal with that before we -- your request is to file the
20 complete transcripts --

21 MR. SHORE: Yes, sir.

22 COMMISSIONER KERR: -- in the record and have
23 them admitted as evidence? Okay, we'll deal with that
24 before we conclude.

1 MR. SHORE: And then finally, I don't want to --
2 there was a question -- a follow-up to Mr. -- one of
3 y'all's questions and I didn't get a chance to ask
4 questions. And I don't think I need to, I just want to be
5 clear, I don't --

6 COMMISSIONER KERR: Hold on. There's a question
7 in response to Commissioner Ervin's question? He's the
8 only one that asked questions.

9 MR. SHORE: Yes. And I just want to make a
10 clarification for the record that will make the record
11 accurate. I don't want to impeach the witness or ask him
12 any questions about it, but there's a correction I think
13 needs to come in.

14 COMMISSIONER KERR: Well, the witness --

15 COMMISSIONER ERVIN: If it will make you feel
16 any better, Mr. Shore, I was going to ask your witness the
17 same question.

18 MR. SHORE: Well, you know, now that I think
19 about it, it wasn't follow-up --

20 COMMISSIONER KERR: Let me get to where we are.
21 The witness was on the stand, I asked if there were any
22 questions on our questions and nobody had any so I've
23 excused him. Are you asking that he be brought back so
24 you can ask him a question? Are you asking -- that's

1 fine. You can get up here.

2 MR. SHORE: I don't want to testify. I was
3 going to try to make the record accurate, but I'm fine
4 with the way it is. We've got other evidence that will
5 show --

6 COMMISSIONER KERR: But one way for you to do
7 that and that's to ask Mr. Bolinger a question. If you
8 want to do that, you can ask to do that. If you want to
9 do something else, I don't know what that else might be --

10 MR. SHORE: I was trying --

11 COMMISSIONER KERR: -- other than you call your
12 witness later.

13 MR. SHORE: That will be fine.

14 COMMISSIONER KERR: Any other witnesses?

15 MR. MALISH: Yes, Mr. Chairman. We would now
16 call Steve Watson.

17 STEVE WATSON; Being first duly sworn,
18 testified as follows:

19 COMMISSIONER KERR: Let me remind you as I did
20 Mr. Bolinger that if you would like to give a brief
21 summary of your testimony that has been filed, either the
22 direct or rebuttal, you are welcome to do so.

23 Do not want you to testify or try to summarize
24 someone else's testimony.

1 THE WITNESS: Thank you. Good morning. For the
2 record my name is Steve Watson. I am the senior account
3 manager for Lost Key Telecom, and also I have a interest
4 in the company as an owner.

5 Basically what our company does is we go and
6 represent my client, dPi, and other CLECs to recover
7 overcharges with regard to promotional credits.

8 COMMISSIONER KERR: Mr. Malish, I think I
9 started the examination, but if you've got anything
10 left --

11 MR. MALISH: Just a little bit.

12 DIRECT EXAMINATION BY MR. MALISH:

13 Q. Mr. Watson, you're the same Steve Watson that has
14 tendered written direct and written rebuttal testimony in
15 this case; is that correct?

16 A. That's correct.

17 Q. And I know that there are some clarifications that
18 you wanted to make in that written testimony before you
19 swear to it as you told me earlier this morning.

20 A. That's correct.

21 Q. Do you have your direct with you?

22 A. Yes, I do.

23 Q. What you asked me to look at, I believe, was lines
24 63 and 64.

1 COMMISSIONER KERR: Let us get caught up. We're
2 in the direct?

3 MR. MALISH: Watson direct, lines 63 and 64.

4 COMMISSIONER KERR: Of what page?

5 MR. MALISH: They're sequentially numbered. It
6 will be on Page 3.

7 COMMISSIONER ERVIN: Mine are not sequentially
8 numbered.

9 MR. MCDONALD: I'm not impressed by the way it
10 got filed. Each page is --

11 MR. MALISH: So this would be Page 3, lines ten
12 and 11.

13 COMMISSIONER ERVIN: All right, thank you.

14 COMMISSIONER KERR: Thanks. The sentence
15 beginning "In August 2004" --

16 MR. MALISH: The sentence being --

17 COMMISSIONER KERR: -- which is line nine?

18 MR. MALISH: Line ten, I think --

19 COMMISSIONER KERR: Beginning, "Our computer
20 program"?

21 MR. MALISH: Yeah.

22 Q. "Our computer program, while it might be
23 scattered, the orders are electronically reported by
24 BellSouth for our clients and tallies those that contain

1 new service plus two or more Touchstar features," that's
2 something that you wanted to clarify?

3 A. Yes. That was not one of the criterias that we
4 used for the data that was submitted on behalf of dPi.

5 Q. And why is that?

6 A. Because the company profile that dPi uses, the
7 Touchstar features, BCR and BRD and HBG, appeared on every
8 one of their orders.

9 Q. So basically you didn't double-check each one of
10 those orders to make sure those appeared on there?

11 A. No, we did not.

12 Q. Also --

13 COMMISSIONER KERR: Let me ask this: Is your
14 clarification that while this is typically how you operate
15 for your clients generally, in this particular case, you
16 did something slightly different as you've testified? Is
17 that the correction you're trying to make?

18 THE WITNESS: Yes.

19 COMMISSIONER KERR: And that's a generally true
20 statement, but in this particular case you're refining
21 what you did in this --

22 THE WITNESS: Yes. We did -- we did not -- one
23 of the -- I guess from a programming standpoint, one of
24 the criteriers (sic) for pulling out the data was not

1 based on two Touchstar features and we wanted to make sure
2 -- that when I reread that, I said that that's not true.

3 COMMISSIONER KERR: Let's do this, let's admit
4 his testimony. Is this the only correction?

5 MR. MALISH: There are some almost essentially
6 housekeeping matters that we want to do with some exhibits
7 that he -- that are part of his testimony. You all's
8 copies I think came out just in gray, and what he
9 originally had was color, so now we have some color copies
10 to help y'all read things better.

11 COMMISSIONER KERR: That's just slip-sheeting?
12 I mean, you're not correcting, you're just replacing pages
13 that we have with color copy pages?

14 MR. MALISH: Yes. And in addition, we have a
15 sort of follow-along spreadsheet to clarify what could
16 be -- what could otherwise be a misconception that became
17 clear might be a problem during his deposition last week.

18 COMMISSIONER KERR: Has Mr. Shore been
19 provided -- let's deal with the testimony. You've got the
20 clarification to the direct testimony, plus you want to
21 slip-sheet certain of the exhibits?

22 MR. MALISH: Correct.

23 COMMISSIONER KERR: Mr. Shore, do you have any
24 concerns --

1 MR. SHORE: Yes.

2 COMMISSIONER KERR: -- with this? What are
3 those with those two issues?

4 MR. SHORE: I've got no concerns with the
5 testimony issue. My concern with the exhibit --

6 COMMISSIONER KERR: Let's admit the written
7 testimony subject to the clarification he's given in his
8 direct. We've allowed him to directly clarify -- on
9 direct clarify his written testimony as it deals with
10 lines 10 through 12 on Page 3.

11 We are admitting the exhibits to his testimony
12 subject to slip-sheeting color copies for some of those.
13 Which exhibits are those that you want to slip-sheet,
14 Mr. Malish?

15 MR. MALISH: I believe those are dPi Exhibit 7.

16 COMMISSIONER KERR: Mr. Shore, have you seen
17 those copies and are you okay with that?

18 MR. SHORE: I have, and I have no objection if
19 all they're doing is slip-sheeting color copies of what's
20 previously been filed.

21 COMMISSIONER KERR: I've asked that two or three
22 different ways and I've been assured that's what they're
23 doing. Let me ask you one more time, are you changing
24 anything on Exhibit 7?

1 MR. MALISH: Exhibit 7, the way it stands, I'm
2 just trying to slip-sheet. But in addition there was
3 another spreadsheet where we added some columns.

4 COMMISSIONER KERR: And I'm going to get to
5 that.

6 MR. MALISH: Okay.

7 COMMISSIONER KERR: Exhibit 7 is being
8 slip-sheeted and it's just simply more attractive now, as
9 I understand it.

10 MR. SHORE: I have no objection to that.

11 COMMISSIONER KERR: It's just more of a
12 effective printout. All right. Any problems with the
13 other exhibits? The admission of the other exhibits that
14 are attached to the direct testimony?

15 MR. SHORE: I don't think so. But subject to
16 cross, though. I've got some questions on cross.

17 COMMISSIONER KERR: Now you have an additional
18 exhibit that you would like to offer?

19 MR. MALISH: Correct.

20 COMMISSIONER KERR: Why don't we let you do that
21 on redirect?

22 MR. MALISH: Very good.

23 COMMISSIONER KERR: And we'll deal with it that
24 way. And I would say that to the extent he gets into

1 that, you'll certainly be allowed to re-cross on it if you
2 need to. Is that --

3 MR. SHORE: I think so.

4 COMMISSIONER KERR: You're not going to be
5 disadvantaged in that. We need to figure out how we can
6 do it, but you won't be disadvantaged.

7 MR. SHORE: That wasn't my concern.

8 COMMISSIONER KERR: With that as our guide star,
9 let's go. And you want to admit exhibits -- the direct,
10 the rebuttal and exhibits one through seven and you've got
11 one more you may want to admit?

12 MR. MALISH: Correct.

13 COMMISSIONER KERR: And so ordered, the direct
14 as clarified.

15 (Whereupon, the prefiled direct and
16 rebuttal testimony and exhibits of Steve
17 Watson will be reproduced in the record at
18 this point the same as if the questions had
19 been orally asked and the answers orally
20 given from the witness stand.)

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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

FILED
JAN 27 2006
Clerk's Office
N.C. Utilities Commission

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In the Matter of:)
)
Complaint of dPi Teleconnect, L.L.C.)
Against BellSouth Telecommunications, Inc.) Docket No. P-55, Sub 1577
Regarding Credit for Resale of Services)
Subject to Promotional Discounts)

DIRECT TESTIMONY OF STEVE WATSON ON BEHALF OF dPi TELECONNECT

Please tell us who you are and give a little background about yourself.

My name is Steve Watson. I operate a CLEC consulting/billing agent company called Lost Key Telecom Inc. We are a billing agent for dPi Teleconnect; we handle their promotion credit billing, along with that of numerous other CLECs in the Bellsouth areas. We have managed dPi's account since July of 2004. I am the one who worked on dPi's account and interacted on dPi's behalf with Bellsouth on the promotions that are the subject of this dispute, especially the dispute relating to the Line Connection Charge Waiver promotion.

Please give us a little background on what you do and what this case is about generally.

Well, as you probably know, this dispute relates to dPi's resale operations, in which dPi buys Bellsouth's retail services at a wholesale discount and resells those services to its own customers. Under the law, any promotion that Bellsouth makes available to its customers for an extended period of time, it must allow dPi to also purchase. Otherwise, the whole system of competition based on wholesale/resale would be undercut, because Bellsouth could offer pricing to its retail customers below the "wholesale" price it extends to its competitors.

1 My company handles all of dPi's promotion credit billing. This is because Bellsouth
2 does not automatically calculate what credits its resale customers are entitled to like it does with
3 its retail customers; Bellsouth requires its resellers to audit their bill and apply for credits they
4 are entitled to. As dPi's agent in this process, we review the data Bellsouth provides dPi
5 regarding the services Bellsouth has sold dPi, and calculate which promotions (if any) dPi is
6 entitled to under the promotions then in effect. We then submit requests for promotional credits
7 on dPi's behalf, and Bellsouth evaluates or audits those requests and issues or denies credit as it
8 sees fit. This overall procedure was set up by Bellsouth.

9 At any given time, Bellsouth has a number of promotions going at once. We apply for all
10 those that are available to dPi, and manage any disputes over promotion payments/credits with
11 Bellsouth. In dPi's case, it has disputes with Bellsouth on a number of promotional credits, but
12 nearly 99% of the money involved is tied to a single dispute about dPi's eligibility for a single
13 kind of promotion: the Line Connection Charge Waiver.

14 **Tell us about that.**

15 For the past few years, Bellsouth has put out a promotion that it calls the Line Connection
16 Charge Waiver. Generally, it provides that Bellsouth will waive the line connection charge for
17 customers who switch to Bellsouth and take at least basic service and two Touchstar features –
18 according to Bellsouth's tariffs. However, in 2005, Bellsouth has reduced its requirement for
19 this promotion to taking *one* Touchstar feature; this promotion appears never to have been
20 tarified, but was offered to Bellsouth's retail customers and was described on Bellsouth's
21 website. See dPi Exhibit 1, a screenshot taken from Bellsouth's website during the summer of
22 2005;¹ Customers who switch their local service to BellSouth from another provider and purchase

¹ In relevant part, the promotion provides:

1 BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth Basic Service with at
2 least one feature can qualify for a waiver of the local service connection fee. Customers must not
3 have had local service with BellSouth 10 days prior to new service connection date. Offer ends
4 December 26, 2005. dPi Exhibit 2 is a reproduction of the Bellsouth promotional materials
5 relating to this promotion provided by Bellsouth to dPi in discovery.²The customer must switch
6 their local service to BellSouth and purchase any one of the following: BellSouth® Complete
7 Choice® plan, BellSouth® PreferredPack plan, or BellSouth® basic service and two (2) custom
8 calling (or Touchstar® service) local features.

9 In August 2004, we began submitting credit requests for dPi pursuant to Bellsouth's
10 procedures, as well as for other clients. Our computer program automatically scours the orders
11 electronically reported by Bellsouth for our clients, and tallies those that contained new service
12 plus two or more Touchstar features. A request for credit was made pursuant to those tallies.

13 For some of our clients, Bellsouth paid essentially 100% of credit applied for. For
14 example, Budget Phone, who has a claim roughly double the size of dPi's, was paid in full.

Connection Fee Waived

Customers who switch their local service to BellSouth from another provider and purchase BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Offer ends December 26, 2005.

² In relevant part, the promotion reads as follows:

Promotion Specifics

Specific features of this promotion are as follows:

Waived line connection charge to reacquisition or winover residential customers who currently are not using BellSouth for local service and who purchase BellSouth® Complete Choice® service, BellSouth® PreferredPack service, or basic service and two (2) features will be waived.

Restrictions/Eligibility Requirements

The customer must switch their local service to BellSouth and purchase any one of the following: BellSouth® Complete Choice® plan, BellSouth® PreferredPack plan, or BellSouth® basic service and two (2) custom calling (or Touchstar® service) local features.

1 Previously, Bellsouth had similarly paid Teleconnex in full for these promotions. These entities'
2 product mix to their end users was also essentially very similar to dPi's. However, Bellsouth
3 credited dPi only about a small fraction of the amounts applied for. dPi Exhibit 3 is a
4 spreadsheet taken from Lost Key Telecom's dPi billing records which shows the Line
5 Connection Charge Waiver promotion credits that dPi applied for, and those that were paid.

6 From September 2004 to April 2005, Bellsouth was unable to explain why it was refusing
7 to pay these credits. On numerous occasions over this period, Bellsouth's Christy Siegel and/or
8 other employees promised that these payments would be forthcoming. However, in about April
9 of 2005, Bellsouth stated that it would not be paying these credits applied for almost entirely on
10 the grounds that dPi had not qualified for the credits because, notwithstanding the fact that dPi
11 had purchased Bellsouth's basic service with two or more Touchstar features, the Touchstar
12 features that dPi had included in its orders (e.g., BCR and BRD blocks) "did not count" because
13 Bellsouth did not levy a separate charge for these particular Touchstar features. dPi Exhibit 4 is
14 a copy of a spreadsheet provided by Bellsouth in response to dPi's RFI 2-1, which shows the
15 reasons why Bellsouth denied the Line Connection Charge Waiver. As you can see by looking
16 at the document, the overwhelming majority of the time a credit request was denied, it was
17 denied because Bellsouth decided that dPi did not have the requisite number of Touchstar
18 features.

19 **Is there any merit to Bellsouth's position?**

20

21 Essentially none. The fact of the matter is that all that is required to qualify for these
22 promotion is the purchase of basic service with two (or sometimes one, if you use the promotion
23 description from Bellsouth's website) Touchstar features. In every case where Bellsouth denied

1 credit on the grounds that dPi did not qualify because it had not purchased Bellsouth's basic
2 service with two features, dPi *had* in fact taken Bellsouth's basic service with at least two
3 additional Touchstar features, such as the BCR and BRD blocks, among others. Bellsouth
4 simply chooses not to "count" these features. There is no dispute that the blocks ordered are
5 listed by Bellsouth as Touchstar features. Bellsouth has paid credits to other carriers with the
6 same service orders (i.e., basic service plus Touchstar blocks) in the past. Now Bellsouth is
7 simply fabricating an excuse to avoid having to pay these credits to dPi.

8 **Does Bellsouth owe dPi any amounts for wrongfully denying promotion credits for this**
9 **reason?**

10 Yes indeed. Just using the numbers from Bellsouth's own reports (dPi Exhibit 4), you
11 can calculate that Bellsouth has wrongfully denied at least \$185,719.49 in promotion credits just
12 on the bogus "insufficient features" defense alone. If you'd like to see my calculations, they are
13 provided as dPi Exhibit 5.

14 **Did Bellsouth fail to credit dPi for any other reasons?**

15 In some months, Bellsouth also denied the promotion credits on the grounds that they
16 were sought for move orders (also known as "transfers" – situations where an existing customer
17 was moving from one location to another). However, in some months, the rate at which
18 Bellsouth claimed our credit application orders involved move orders/transfers (e.g., 27% in June
19 05; 22% in Aug. 05; 27% in Nov. 05 – see dPi Exhibit 4) far exceeded the expected true rate.
20 This 27% figure wildly exceeds dPi's average of these kinds of order, as well as the industry
21 average, both of which are generally no more than 4-8%. Bellsouth's numbers are presumed to
22 be skewed by Bellsouth's having used too small a sample from which to make its projections.
23 This has resulted in a situation where Bellsouth made unrealistic assumptions about the number

1 of times credits were being requested for non-qualifying transfers, as opposed to qualifying new
2 orders. We have begun, but have not been able to conclude at the time of this filing, an actual
3 audit of the months in question, as we just received these details from Bellsouth on January 23.
4 When we have completed our audit, we will be able to calculate the correct amounts that dPi is
5 owed.

6 **Does this conclude your testimony?**

7 For now. But I reserve the right to supplement or amend it at hearing.

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**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

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In the Matter of:)
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Complaint of dPi Teleconnect, L.L.C.)
Against BellSouth Telecommunications, Inc.) Docket No. P-55, Sub 1577
Regarding Credit for Resale of Services)
Subject to Promotional Discounts)

**REBUTTAL TESTIMONY OF STEVE WATSON ON BEHALF OF dPI
TELECONNECT**

I know you have reviewed Bellsouth’s direct testimony. What’s your response?

The most remarkable thing I saw in Bellsouth’s response was its attempt to spin the facts in this case to suggest that dPi is essentially attempting to steal from Bellsouth by manipulating these promotions credit applications. In doing so, Bellsouth is attempting to shift the Commission’s attention from the “white elephant in the middle of the room” – namely, that the practical effect of Bellsouth’s “promotion process” is to unjustly enrich Bellsouth at the expense of its small competitors.

Please explain.

To begin with, it is grotesque that Bellsouth cannot bill resellers the correct amount (including promotional discounts) for the services they order when the order is submitted. I know from experience that SBC does so: SBC’s systems allow one to apply for a promotional credit as part of the provisioning order, and reject the order if it does not qualify for the promotion. The credit is applied to the price immediately and the discount reflected on the same bill; the CLEC pays no more than what it actually owes for the service from the get-go.

1 In contrast, the practical effect of Bellsouth's refusal to bill these charges correctly on the
2 front end means that Bellsouth automatically overcharges every reseller for every service the reseller
3 orders that is subject to a promotional discount. Then Bellsouth shifts the burden on to the reseller
4 to figure out how much Bellsouth has overcharged the reseller, and dispute Bellsouth's bills
5 accordingly. Some CLECs I have worked with aren't even aware that this is how the "system" is
6 supposed to work and don't know to apply for these promotions; in such cases, Bellsouth obviously
7 just keeps their money.

8 For those CLECs who generally understand that they must apply for these credits,
9 Bellsouth's system makes it as difficult as possible for the reseller dispute the bills to Bellsouth's
10 satisfaction. First, the credit request must be meticulously documented, listing details of every order
11 for which credit is requested. But getting the data to populate these forms is a Herculean task in
12 itself: it must come from Bellsouth's billing and ordering data, which Bellsouth has traditionally
13 provided to resellers only on either a paper bill, or electronically in a "DAB" file, which has data
14 locks built into it, making downloading of the raw data exceptionally difficult. To make matters
15 worse, next to no one at Bellsouth can explain how to get the data out of the "DAB" files, because
16 Bellsouth does not maintain its own data in such files, and its employees simply are not equipped
17 with the knowledge to answer questions about how to unlock its secrets. Figuring out how, as a
18 practical matter, to apply for these credits takes a large amount of resources in time and money. As
19 you can imagine, this has resulted in a great many CLECs simply throwing their hands in the air and
20 giving up. Bellsouth keeps their money too. I know of several CLEC that have gone out of business
21 who never realized before they went under that Bellsouth actually owed them hundreds of thousands
22 of dollars in promotional credits.

1 Next, if a CLEC spends the time and resources to figure out a way to get at their data, and
2 create systems for electronically scouring it to identify those orders that ought to qualify for
3 promotional credits, and write and re-write programs that will populate Bellsouth's forms (which
4 it changes from time to time as it sees fit), Bellsouth will examine the requests for credit to see if
5 it will honor them. There is no deadline for Bellsouth to act on these credit requests. When it finally
6 approves or denies credits – which can take months – it makes no explanation for what credits it
7 accepts, and what credits it rejects, and why. If the credit is rejected, the CLEC has no way of
8 auditing the rejection to see if it is merited or not. If the credit is accepted, Bellsouth has kept the
9 CLEC's money for months without interest before returning it.

10 This system is backwards, failure prone, and grossly inefficient. And at every step of the
11 way, whether consciously designed to that end or not, the system works to the profit and unjust
12 enrichment of Bellsouth at the CLEC's expense.

13 **In what manner did dPI decide to apply for credits?**

14 Basically by doing what Bellsouth has asked us to do. When I first got involved in trying
15 to claim credits on behalf of CLECs, back in 2003, Bellsouth's "promotional credit processing
16 department" appeared to consist of one person: Stanley Messinger; he was later replaced by Kristy
17 Seagle, who was in turn superseded by Keith Deason in the second half of 2005. These were the
18 people tasked with helping CLECs navigate the promotional credit filing process – that is, verifying
19 what promotions CLECs were in fact eligible for, and how to apply and secure those credits. I don't
20 know how this "department" fit into Bellsouth's organizational structure, but they were not part of
21 Bellsouth's billing and collections department, nor were they part of Bellsouth's wholesale
22 operations. It was obvious when I first started calling that they simply didn't get hardly any
23
24

1 promotional credit requests, nor any questions about how to qualify and apply for such credits.
2 Frequently they did not know the answers to questions on these subjects, and sometimes a decision
3 by one person would be reversed by his or her successor. Oftentimes, it seems that policies were
4 made on the spot, on an *ad hoc* basis. In essence, we were feeling our way through “the system”
5 together, and I relied on what they told me about what was creditable and how to apply for those
6 credits. As CLECs began to figure out that they were entitled to promotion discounts, and how to
7 apply for them, the credit requests grew, to the point that in later 2004, Bellsouth began to spend
8 more resources on managing the influx of requests – redoing forms and processes and so on.

9
10 **What merit is there in Bellsouth’s hints that dPi has cheated the system?**

11 None. Bellsouth’s suggestion that dPi somehow cheated the system is simply incredible to
12 me. First, we worked with Bellsouth’s staff in order to try to apply for these credits as directed by
13 Bellsouth. dPi simply cannot be blamed for following Bellsouth’s directions. Second, Bellsouth
14 conveniently fails to mention those situations – for example, with the CREX one time nonrecurring
15 charge – that when the parties revisited whether it was appropriate for dPi to have those charges
16 credited, and concluded that it was not, these claims were immediately dropped.

17 Finally, and most damning, Bellsouth fails to acknowledge that those instances of “unfair
18 credit applications” are statistically inconsequential. The overwhelming amount of credit applied
19 for and denied were for the Line Connection Charge Waiver (“LCCW”) Promotion, which accounts
20 for more than 99% of the dollars at issue between the parties. And the vast majority of the time, dPi
21 was denied credit under this promotion because Bellsouth refused to “count” as Touchstar features
22 those features selected by dPi, such as the Touchstar blocks. For example, this was the reason
23 behind *100%* of Bellsouth’s LCCW promotion credit denials for the months of January, March,

1 May, August, and December of 2004, and May of 2005; the reason behind 90% of the credit denials
2 for remaining months of 2004, and the vast majority of remaining months of 2005. See dPi
3 Consolidated Exhibit 4.

4
5 **How did dPi qualify for LCCW promotions it applied for?**
6

7 All –ALL– dPi has to do to qualify for the line connection charge waiver is purchase Basic
8 Service with one or more Touchstar features.¹ In every situation in which dPi applied for the
9 promotional credit, it ordered at least Basic Service plus two or more Touchstar features, including
10 Touchstar blocks.² In short, using the words from Bellsouth’s own promotion, dPi is entitled to the
11 promotion because it has “purchase[d] ... BellSouth Basic Service with at least one feature” and thus
12 has “qualif[ied] for a waiver of the local service connection fee.” In all, Bellsouth has wrongfully
13 denied dPi at least \$185,719.49 in promotion credits just on the bogus “insufficient features” defense
14 in situations where dPi was undeniably taking two or more Touchstar features with the basic service
15 it was ordering.

16 **So in short, this case is reduced to whether dPi is entitled to promotional credits when it orders**
17 **Basic Service plus Touchstar block features because it has “purchase[d] ... BellSouth Basic**
18 **Service with at least one feature” and thus has “qualif[ied] for a waiver of the local service**
19 **connection fee.”**

1
See dPi Exhibit 1, a screenshot taken from Bellsouth’s website during the summer of 2005. In relevant part, the promotion provides:

Connection Fee Waived
Customers who switch their local service to BellSouth from another provider and purchase BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth Basic Service with at least one feature can qualify for a waiver of the local service connection fee. Customers must not have had local service with BellSouth 10 days prior to new service connection date. Offer ends December 26, 2005.

2
dPi’s basic offering always includes the Touchstar blocks. There is no dispute that dPi has ordered Touchstar blocks – the dispute is solely whether the Touchstar block features that dPi orders “qualify” as Touchstar features under the promotion because they bear no additional charge.

1 Essentially. And as Brian Bolinger said, there is no getting around the fact that dPi has in
2 fact ordered Basic Service with Touchstar features. If Bellsouth does not wish its promotion to
3 apply to all Touchstar features, it should do like SBC does, and alter its promotion so that the
4 promotion specifically lists those features that Bellsouth requires to qualify for the promotion.
5
6

7 **What about Bellsouth’s claim that dPi wrongly submitted claims for transfer orders?**

8 We have reviewed Bellsouth’s position on this, and compared it to the language of the
9 promotion. We agree upon further consideration that the promotions should not apply to transfers.
10 Having said that, in some months, Bellsouth denied up to 27% of the promotion credits dPi applied
11 for this reason (e.g., 27% in June 05; 22% in Aug. 05; 27% in Nov. 05 – see dPi Exhibit 4). This
12 27% figure wildly exceeds dPi’s average of these kinds of order, as well as the industry average,
13 both of which are generally no more than 4-8%. As I noted in my direct testimony, we began and
14 have now completed an actual audit of the months in question.
15

16 **Were Bellsouth’s numbers correct?**

17 No. They were significantly off. For example, for the June 2005 billing period, dPi
18 submitted 171 requests for LCCW promotion credits, of which it turns out that 13, or 7.6% – *NOT*
19 27%, were transfer orders. Similarly, for the August 2005 billing period, dPi submitted 130
20 requests for LCCW promotion credits, of which it turns out that 6, or 4.62% – not 22%, were
21 transfer orders. And again, for the November billing period, dPi submitted 191 requests for LCCW
22 promotion credits, of which it turns out that 9, or 4.59% – not 27%, were transfer orders. Copies
23 of our audit are included as dPi Exhibit 7.
24

1 **What does this translate to in terms of credits wrongfully denied?**

2 Well, given that for June of 2005 Bellsouth denied \$6,053.61 in credits applied for, and 27%
3 (or \$1,634.47) of that amount was denied for transfers when only 7.6% (or \$460.07) were voidable
4 for that reason, Bellsouth has over-withheld – and should credit dPi – \$1,174.39.

5 Similarly, for August of 2005 Bellsouth denied \$3,252.21 in credits applied for, and 22%
6 (or \$715.48) of that amount was denied for transfers when only 4.62% (or \$150.25) were voidable
7 for that reason, so Bellsouth has over-withheld – and should credit dPi – \$565.23.

8 Finally, for November of 2005 Bellsouth denied \$3,561.31 in credits applied for, and 27%
9 (or \$961.55) of that amount was denied for transfers when only 4.59% (or \$163.46) were voidable
10 for that reason, and Bellsouth has over-withheld – and should credit dPi – \$798.08.

11 So, the amount wrongfully denied for just these three months for just this reason totals
12 \$2,537.70. Of course, if when we add that to the \$185,719.49 amount wrongfully denied on the
13 bogus “non qualifying Touchstar features” excuse, the total rises to \$188,257.19.

14
15 **Does this conclude your testimony?**

16 For now. But I reserve the right to supplement or amend it at hearing.

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1 MR. GILLAM: Mr. Chairman, what is going to be
2 done with these color exhibits? Are they going to be
3 distributed now?

4 COMMISSIONER KERR: If that's a request, I would
5 ask that Mr. Gillam be -- he's dieing to see the color
6 exhibits, so let's give him a copy. That's fine. If
7 you've got them in number, you can go ahead and distribute
8 them. If you don't, we will proceed and get them as soon
9 as we get them.

10 MR. GILLAM: Mr. Chair, I think I can live
11 without --

12 MR. MALISH: I hope to provide them, Mr.
13 Chairman.

14 COMMISSIONER KERR: Here's what I would like to
15 keep doing. I would like to keep making as much
16 substantive process towards the finish line -- progress
17 towards the finish line and while we work out housekeeping
18 matters, although it is always a good idea to make Mr.
19 Gillam happy. So I would give you that advice and let's
20 keep plugging away.

21 MR. GILLAM: Mr. Chair, I am very happy.

22 MR. MALISH: At this point I suppose we tender
23 the witness for cross-examination.

24 COMMISSIONER KERR: What I would say, too, just

1 you all work out getting the color copies and agreeing
2 that this is what it ought to be and getting those to the
3 court reporter as to what -- I have ruled as to what has
4 been admitted, so just make sure that's what gets in the
5 record and then if we need to be involved further, we can
6 be. Mr. McDonald knows what I'm asking, I think.

7 Mr. Shore?

8 MR. SHORE: Thank you, Mr. Chairman.

9 CROSS-EXAMINATION BY MR. SHORE:

10 Q. Mr. Watson, good morning.

11 A. Good morning.

12 Q. Were you sworn in, sir?

13 COMMISSIONER KERR: He was.

14 A. Yes, I was.

15 Q. Okay. Let me --

16 COMMISSIONER KERR: You're the second person to
17 ask and I assure both you and Commissioner Ervin he has
18 been sworn. Before I started examining him, he was sworn.

19 Q. Lost Key has got a total of two employees,
20 yourself and a computer programmer, correct?

21 A. At the present time.

22 Q. And you spent most of your adult working life in
23 the construction business, correct?

24 A. Yes.

1 Q. And you formed Lost Key in 2004; is that right?

2 A. That's correct.

3 Q. And it's headquartered in Pensacola, Florida,
4 where you live?

5 A. Yes.

6 Q. And most of Lost Key's revenue is derived from
7 commissions reseller CLPs like dPi pay you for requesting
8 and getting promotional credits, correct?

9 A. Yes.

10 Q. And all the promotional credit work you do is
11 commission based, true?

12 A. Yes.

13 Q. So the more in credits your clients receive, the
14 more money you make, correct?

15 A. In theory, yes.

16 Q. You've got written contracts with your -- with
17 dPi, correct?

18 A. That's correct.

19 Q. And you've got a similar written contract with
20 other CLPs that you represent for this promotional work?

21 A. Yes.

22 Q. Is there any provision in your contracts with CLPs
23 that penalizes you for making credit requests that are
24 determined that your clients are not entitled to?

1 A. Repeat the question.

2 Q. Is there -- your contracts spell out that you're
3 going to get a commission for any credits that your
4 clients get, correct?

5 A. Yes.

6 Q. Is there any provision that's in those contracts
7 that says if you submit a credit request that is
8 determined that your client is not entitled to you, that
9 you suffer any type of penalty at all or financially or
10 otherwise?

11 A. No.

12 Q. And you have, in fact, requested promotional
13 credits from BellSouth on behalf of dPi that dPi is not
14 entitled to, correct?

15 A. Yes. I believe we established that last week in
16 my deposition.

17 Q. And you're charging dPi \$150 an hour for your
18 testimony?

19 A. That's my hourly rate, yes.

20 Q. I'm going to talk about the focus on the line
21 connection charge waiver promotion and what it is you do
22 to generate these credit requests that you submit to
23 BellSouth.

24 Each month you receive billing data, BellSouth

1 bills to dPi essentially, correct?

2 A. Yes.

3 Q. And for those you create a subset of accounts for
4 which a line connection charge was assessed, correct?

5 A. What do you mean by subset of accounts?

6 Q. Well, when you get that billing data and you take
7 out -- or you form a separate list for every dPi account
8 where a line connection charge was assessed, correct?

9 A. Yes.

10 Q. And then you ask BellSouth for a credit of the
11 line connection charge for every single one of those
12 accounts, correct?

13 A. Yes.

14 Q. And I think you told me last week that that whole
15 process on a monthly basis takes you about three hours,
16 right?

17 A. Yeah, at the current time.

18 Q. And for each line you assume that there were at
19 least two blocks such as BCR and BRD on that line,
20 correct?

21 A. That's their company profile.

22 Q. You didn't make any attempt to verify that before
23 you submitted those credit requests to BellSouth, correct?

24 A. No, we did not.

1 Q. And we can agree that you submitted credit
2 requests to BellSouth on behalf of dPi for end users that
3 had less than two features, true?

4 MR. MALISH: Could you repeat that, please?

5 A. Yeah, repeat that again.

6 Q. You have submitted credit requests to BellSouth on
7 behalf of dPi for end user accounts that had less than two
8 features, correct?

9 A. Based on the three months that was submitted as
10 part of the exhibits, we went back this past week and we
11 checked all that to verify that they all had BCR and BRD
12 and, in fact, they did.

13 Q. Do you have your deposition transcript with you,
14 sir?

15 A. Yes, I do.

16 Q. Can you -- we took that deposition last week and
17 you were under oath there. I assume you told the truth at
18 your deposition?

19 A. Yes, I did.

20 Q. Can you turn to Page 43 of your deposition,
21 please?

22 A. Sure.

23 Q. You're up to Page 43?

24 A. Yes, I am.

1 Q. See on Line 20 I asked you the question, "So you
2 have asked for promotional credit requests for those
3 customers that had no feature and one feature, correct?"

4 What was the answer you gave at your deposition?

5 A. I said, "Correct." But again, that's back to the
6 definition of what a feature is because I think that's
7 what this whole proceeding is about.

8 Q. You didn't qualify your answer in any way at your
9 deposition, did you, sir?

10 A. Well, based on what I thought you were asking me.

11 Q. Yes?

12 A. What I thought you were asking is in regards to
13 the features that were paying features because we had a
14 discussion about paying features and non-paying features.

15 Q. Well, I'm looking at your -- the deposition
16 transcript will speak for itself, but when I asked you the
17 question at your deposition on Page 43 in the context -- I
18 can go over the pages and the context, but I'm trying to
19 belabor that, especially if they're going to be admitted
20 -- but when I asked you, "So you have asked for
21 promotional credit requests for customers that had no
22 feature and one feature, correct," your answer was
23 "Correct," period, isn't that true, sir?

24 A. That's what it says in my deposition.

1 MR. SHORE: Now, I'm going to ask Mr. Rankin to
2 pass out what I would ask to be identified as BellSouth
3 Cross-Exhibit No. 4.

4 (Whereupon, BellSouth Cross-Examination
5 Exhibit No. 4 was marked for
6 identification.)

7 Q. Mr. Watson, do you have that Cross-Examination
8 Exhibit No. 4 there?

9 A. Yes, I do.

10 Q. And that's one of the forms that you submitted to
11 BellSouth requesting promotional credits on behalf of dPi,
12 correct?

13 A. Yes.

14 Q. You see box number one there, the form is dated --
15 the date there is 9/2/2004, do you see that?

16 A. Yes.

17 Q. Is that to reflect the date that you submitted the
18 form?

19 A. That was the date the form was created.

20 Q. Well this is a BellSouth -- it's a BellSouth form.
21 You're saying that's the date you populated the form?

22 A. When our program runs the data and it puts the
23 information on this form, the current date that's -- that
24 we're running the data is placed in that box, so it's the

1 day it's created.

2 Q. And the -- so -- and then it would be submitted to
3 BellSouth sometime after that date or maybe even on the
4 same date?

5 A. Yeah. The goal was to submit it as soon as
6 possible.

7 Q. Box number three identifies this was a request on
8 behalf of dPi, right?

9 A. That's correct. And then that's their claim or
10 audit number.

11 Q. And box number nine was the amount that you were
12 requesting \$48,000 -- \$38,845.73, right?

13 A. Yes. Number nine is the summary of all the --
14 everything that's on the Excel spreadsheets.

15 Q. And 11, box 11 identifies that these are requests
16 for credit of non-recurring charges that dPi had been
17 assessed?

18 A. Yes.

19 Q. And box number 12 has "Bill Dates/Invoice Dates."
20 The date there is from March of 2004. What does that
21 reflect?

22 A. That's the bill date or the electronic media date
23 of the billing period that the data has been extracted --
24 that we extracted from.

1 Q. So just to make sure that I'm on the same page
2 with you now, if I understand correctly, that in this case
3 for Cross-Examination Exhibit 4, this was billing data
4 for -- from BellSouth to dPi from March of 2004 that you
5 were submitting a spreadsheet for and ultimately request
6 in September of 2004, six months later?

7 A. That's their bill cycle date. The actual data is
8 from 2004 -- '02, the 9th, all the way to that date.

9 Q. So the bill date is March 8th and that would
10 include things from the prior bill date on or about
11 February 8th --

12 A. 30-day cycle.

13 Q. -- and then you were submitting these credit
14 requests in September, six months after the bill date,
15 correct?

16 A. That's correct.

17 Q. And box number 15, the reference there you're
18 identifying that the basis for these requests is the line
19 connection charge waiver promotion in North Carolina,
20 correct?

21 A. Correct.

22 Q. Now, I just want to go through this exhibit a
23 little bit and just make sure that we understand it and
24 the Commission understands what it is that you submit to

1 BellSouth.

2 This is an example of what you submit to BellSouth
3 on a monthly basis or --

4 A. Yes.

5 Q. -- now on a monthly basis, correct? Yeah. If you
6 flip over to page -- there's an Excel spreadsheet, 20
7 pages, the page 1 of 20, the very next page in the
8 exhibit, do you see that?

9 A. Yes.

10 Q. The first column there, "Earning Telephone
11 Number," that's in reference -- that's the custom -- end
12 user customer's actual telephone number?

13 A. That's correct.

14 Q. And then there's a start date of installation is
15 the next column. I think I understand that. The next one
16 is "Total Billed Revenue," do you see that?

17 A. Yes.

18 Q. What does that represent?

19 A. Represent the total charges for the end user.

20 Q. From BellSouth to dPi?

21 A. Yes.

22 Q. And in the next amount -- the next column, excuse
23 me, is requested credit amount. Do you see that?

24 A. Yes.

- 1 Q. And what does that represent?
- 2 A. The amount -- are you saying a column?
- 3 Q. Yeah. Let me ask it -- may I can it more
- 4 artfully, maybe. Is the number listed there in the
- 5 "Requested Credit Amount" column, is that the dollar
- 6 figure that you are telling, by submitting this form to
- 7 BellSouth, you owe my client, dPi, in reference to that
- 8 telephone number listed there in the first column?
- 9 A. Yes, that's correct.
- 10 Q. And the \$7.65 charge, what is that a charge for?
- 11 A. It's a charge for a non-occurring one-time setup
- 12 of toll block waiver.
- 13 Q. And that's what's known as CREX, C-R-E-X?
- 14 A. Custom call restriction.
- 15 Q. And the -- that's what we refer to as CREX?
- 16 A. Yes. Custom call restriction.
- 17 Q. And the \$33.56 charge, do you see that on the
- 18 second line?
- 19 A. Yes, I do.
- 20 Q. What is that charge?
- 21 A. That is the non-reoccurring charge for an
- 22 installation of a new service.
- 23 Q. That's the line connection charge?
- 24 A. That's correct.

1 Q. Now, look down to, I guess, it's the third line on
2 Page 1 there, telephone number -- well, I don't want to
3 read the telephone number in the record, but third line
4 there, you see where you're requesting credit in the
5 amount of \$41.21?

6 A. Yes.

7 Q. And what does that represent? Is that the CREX
8 charge plus the line connection charge? I've done the
9 math and I think that's what it adds up. I just want to
10 make sure that that's what that is --

11 A. Yes.

12 Q. -- intended to represent.

13 Now you included a request for credit for this
14 CREX charge in requests that you submitted under the line
15 connection charge waiver promotion from the January of '04
16 bill date up through most of -- at least half of 2005,
17 correct?

18 A. Correct.

19 Q. None of BellSouth's filings with this Commission
20 or anywhere else about the line connection charge said
21 anything about the CREX charge, did they?

22 A. Not to my knowledge.

23 Q. And we agree that dPi is not entitled to credits
24 for the CREX charges, correct?

1 A. Not through the promotional method, but through
2 disputes.

3 Q. Is dPi claiming that it is entitled to a credit
4 for any CREX charges that was assessed in this case?

5 A. I'm not understanding what you're asking me.

6 Q. You've agreed that dPi is entitled to credits
7 through the line connection charge waiver promotion --

8 A. Yes.

9 Q. -- for CREX? Okay. Then I think that answers my
10 question.

11 Would you agree with me subject to check that dPi
12 submitted requests to BellSouth under the line connection
13 charge waiver promotion for CREX totalling approximately
14 \$43,000?

15 A. Yes, that's correct.

16 Q. You state in your testimony that BellSouth has
17 wrongfully denied dPi credits of \$185,000, right?

18 A. Yes.

19 Q. About a quarter of that is CREX charges, isn't it,
20 \$43,000?

21 A. If that's what the math is. I haven't done the
22 math, I don't know that.

23 Q. But the CREX charges are included in that \$185,000
24 figure, correct?

1 A. If you say so, yes. I don't know that to be a
2 fact.

3 Q. You don't dispute that, do you?

4 A. If that's correct, yes, I don't dispute it with
5 you. If you're saying that's what it is and if it is
6 correct, then I say yes.

7 Q. You state in your testimony that your calculations
8 for the amount that you say BellSouth owes dPi are set
9 forth on dPi Exhibit 5, right?

10 A. Yes.

11 Q. And you took those numbers from Exhibit 4,
12 correct?

13 A. Yes.

14 Q. And if those exhibits reflect that the CREX
15 charges that you agree that dPi is not entitled to are
16 included in that \$185,000 figure, you don't dispute that?

17 A. No. No. I believe I reflected that in my
18 deposition that that was submitted in error.

19 Q. At no time did -- strike that. I have nothing
20 further.

21 COMMISSIONER KERR: Public Staff?

22 DIRECT EXAMINATION BY MR. GILLAM:

23 Q. Good morning, Mr. Watson.

24 A. Good morning.

1 Q. This form, Cross-Examination Exhibit 4, that is
2 a -- is this a form that was developed by BellSouth and
3 made available online for you and others in your position
4 to fill in and submit?

5 A. No, they were not.

6 Q. This is not a form that was developed by
7 BellSouth?

8 A. No. It was developed by Lost Key Telecom.

9 Q. Oh, this -- this --

10 COMMISSIONER KERR: Why don't you let him
11 clearly see what you're -- you're --

12 A. Oh, the bar form, yes. That's a BellSouth
13 document. But the Excel -- the bar form is a BellSouth
14 document, yes. And that can be pulled off their website.

15 Q. And you pull it off their website and you
16 populated it and submitted it?

17 A. That's correct.

18 Q. And in line 38 it says, "BellSouth considers this
19 dispute resolved," is that right?

20 A. Yes. They consider the dispute resolved "if we
21 don't hear from you within 5 business days."

22 Q. So you have to submit a form that says BellSouth
23 considers this dispute resolved?

24 A. Correct.

1 Q. Okay. Now, you expressed some concern in your
2 rebuttal testimony about the complexity of the process
3 that you have to go through to submit these claims.

4 A. Yes.

5 Q. And I believe your attorney also -- or dPi's
6 attorney also mentioned that in his opening statement?

7 A. That's correct.

8 Q. And I believe BellSouth expressed concern that it
9 had not been properly addressed in your Complaint and teed
10 up for consideration by the Commission?

11 A. Repeat that. I want to make sure I understand you
12 correctly.

13 Q. If I remember correctly, BellSouth expressed
14 concern that the complexity of the format for submitting
15 these claims of promotions had not been properly teed up
16 and they had not been given an opportunity to express
17 their views on your concerns about the complexity of the
18 process?

19 A. Yes. There was mentioning about that when we
20 first began that, I believe, Mr. Shore referred to it as
21 the process.

22 Q. If the Commission wanted to get into the process
23 and give -- and ensure that BellSouth as well as dPi had
24 adequate opportunity to present their views, they could

1 set that up for another stage of this procedure, could
2 they not?

3 A. I believe they could.

4 Q. Thank you.

5 MR. GILLAM: That's all I have.

6 COMMISSIONER KERR: Redirect?

7 REDIRECT EXAMINATION BY MR. MALISH:

8 Q. Mr. Watson, dPi Cross-Exhibit -- I guess it's
9 BellSouth Cross Exhibit 4, which is the bar form that
10 Mr. Shore asked you to take a look at, that bar form, is
11 that the same kind of form that BellSouth asks you to fill
12 out to make a garden variety billing dispute as opposed to
13 a promotional request for credit?

14 A. Well, that bar form is originally designed for
15 disputes. As far as disputes, you know, whether it was on
16 resale platform or UNE platform, disputes that deal with
17 billing.

18 The bar form I don't believe was ever designed for
19 promotionals. I mean, that's my opinion. But we have
20 modified that bar form now. That bar form is now no
21 longer in a Word document, it's now in Excel. And the
22 last round we just did of programming we modified this
23 right here, which was BellSouth's Cross-Examine No. 4.
24 Now that -- when we submit the data, it comes to BellSouth

1 and it sends me back a receipt saying that all the files
2 that I've sent meet certain criteriers.

3 Q. And these revisions that you're talking about,
4 these are the result of a collaborative process between
5 you and people at BellSouth to make the process work
6 better; is that true?

7 A. That's correct.

8 Q. At the time this was submitted in September of
9 2004, was this the best that you had from BellSouth that
10 you could use?

11 A. This was the best that we had and this was, based
12 on my prior experience with the promotional process
13 starting with Stanley Messinger, then to Kristy Seagle --
14 actually I went to Birmingham twice and met with Kristy
15 Seagle, Maxine Alagar and Heidi Bell to ask them what I
16 needed to do to streamline the process.

17 And I've had several correspondence with BellSouth
18 saying, "Tell me what I need to do. Let me know what is
19 wrong with the data so that we can get this a better fit."
20 Because we believed if we submitted the data that was
21 clean and it was accurate, that the clients could get
22 billed or get paid their credits in a more timely manner.

23 One of the things -- initials complaints with the
24 data was they complimented us on the forms and the format

1 and everything, but they said that there's a lot of things
2 in here -- we've had to go through a lot of data. And
3 just by the nature of us submitting back data, BellSouth
4 said that they were overwhelmed with the amount data and
5 we were saying, well, how can we streamline this process?
6 And at one of my meetings I said, well, I can even give
7 you access to my programmer to show you how we can
8 streamline this process between the two of us.

9 The other problem that we were facing -- or the
10 other problem that I dealt with is they just wouldn't give
11 me any feedback on what was rejected. Whether it be the
12 CREX issue or the transfers, we never received anything
13 back saying the data that you -- the sample data that you
14 sent us over or the first round of data you send it over,
15 this is all correct, but this is incorrect and no longer
16 submit this. I never got any correspondence from
17 BellSouth to the effect of that.

18 Q. I want to talk a little about the CREX, the CLECs.
19 That obviously doesn't belong under the line connection
20 charge waiver promotion, correct?

21 A. Correct.

22 Q. And when you visited with BellSouth about that you
23 said, that's correct, it doesn't go there. You didn't
24 contest that, did you?

1 A. No. I had a call from Keith Deason and Keith
2 Deason asked me why there was duplicate charges from one
3 telephone number.

4 Q. Is that -- is the answer to my question is you
5 didn't contest it?

6 A. No, I did not.

7 Q. Now, that CREX or CREX, that's something that
8 they're -- dPi's entitled to be refunded using some
9 different vehicle besides the line connection charge
10 waiver?

11 A. They would actually use the same form. They would
12 file a dispute for a non-reoccurring CREX toll charge, the
13 toll setup charge.

14 MR. SHORE: Object to the extent that he stated
15 that dPi was entitled to receive that. I don't believe
16 there's any evidence in the case nor that they're just
17 entitled to receive that generally because they're not.

18 COMMISSIONER KERR: Overruled.

19 Q. When the CREX was submitted on its own and not as
20 part of the LCCW promotion, did BellSouth routinely pay it
21 back?

22 A. We have represented other clients where they were
23 paid for that.

24 Q. I want to take a look at -- do you have in front

1 of you a copy of dPi's Exhibits 4 and 5?

2 A. Yes, I do.

3 Q. I want to take a look at dPi's Exhibit No. 4.

4 This is a document that was tendered to dPi by BellSouth
5 during the course of discovery. Do you have it in front
6 of you?

7 A. Yes, I have it in front of me.

8 Q. And part of this chart is on two pages and it's --
9 I apologize it's so hard to read. I got it in the PDF and
10 this is the best form that I've ever had. We've got -- we
11 have something that we might be able to slip in that's
12 slightly better, but only marginally better.

13 But this chart is supposed to show the reasons why
14 BellSouth denied credit to dPi. So there's various
15 numbers of reasons why they did not pay the line
16 connection charge waiver.

17 MR. SHORE: I'm going to object, Mr. Chairman,
18 both on the form of the question on redirect and the scope
19 of the redirect, which is going way beyond
20 cross-examination.

21 COMMISSIONER KERR: Overruled.

22 Q. Do you see on Page 2 where there's a list of six
23 reasons?

24 A. Yes, I do.

1 Q. Reason number one being less than one to two
2 custom calling and/or Touchstar features purchased?

3 A. Yes.

4 Q. With number -- reason number five down there being
5 the order to add CREX or other feature?

6 A. Yes.

7 Q. So Column 6, reason number six is the last column
8 on each of these pages; is that right?

9 A. Yes, it is.

10 Q. And we work inwards from that, so that reason
11 number one is the first percentages that appear after
12 dollar amounts; is that correct?

13 A. That's correct.

14 Q. And reason number one gives the reasons why
15 BellSouth refused to pay a line connection charge waiver
16 credit to dPi, correct?

17 A. Correct.

18 Q. So for example, if we look at the first entry,
19 which is for January of '04, it shows -- this chart shows
20 the amount that dPi applied for for the line connection
21 charge waiver, which was \$17,450, and it shows the amount
22 denied, which was \$8,725. And then it shows the reason
23 why that amount, that \$8,000 was denied; is that right?

24 A. Yes.

1 Q. And then, therefore, in Column 1 it says 100
2 percent, 100 percent of that \$8,000 was denied because
3 according to BellSouth dPi had less than two custom
4 calling or Touchstar features purchased, correct?

5 A. Yes.

6 Q. And so that's how that chart works, correct?

7 A. Yes, that's correct.

8 Q. We take a look at the sort of summary spreadsheet
9 that we have on Page 5.

10 COMMISSIONER KERR: Let me just ask one
11 question. BST Cross-Examination 4 and then some parts of
12 this exhibit are marked proprietary. And I'm just going
13 to assume y'all have worked this out. I don't see anybody
14 in the room that would need to be kicked out, I just
15 didn't -- I want to flag for you all both, your
16 cross-examination exhibit and some of these -- we often
17 screw these things up, I'm just telling you I've seen it
18 and if y'all screw it up, I brought it to your attention,
19 so --

20 MR. SHORE: We marked them all proprietary
21 because they -- or those documents because they contain
22 dPi customer information. It's up to dPi. If it wants to
23 mark it as proprietary, that's fine.

24 COMMISSIONER KERR: I don't care why you've done

1 it, I've just flagged it for everybody that I see that and
2 hadn't heard anything about it and don't know what's been
3 filed and y'all proceed how you want to. It's just not
4 going to be our fault, which it often is.

5 MR. MALISH: Thank you, Mr. Chairman.

6 Q. Mr. Watson, if we take a look at dPi's Exhibit No.
7 5, that's a spreadsheet which just totals up every amount
8 that was denied for reason number one; that is denied by
9 BellSouth for lack of two custom calling features under
10 their definition?

11 A. Yes, that's correct.

12 Q. That's not for amounts that had been denied for
13 having the CREX on there; is that correct?

14 A. That's correct.

15 Q. And so the total at the bottom, that \$185,719.49,
16 that is entirely to do with BellSouth refusing to credit
17 dPi in a situation where BellSouth has claimed that the
18 BCR and BRD and the HBG don't qualify as features; is that
19 correct?

20 A. That's correct.

21 Q. So when you go ahead and you look back at this --
22 these two exhibits, what Mr. Shore was asking you to admit
23 to turns out not to be correct? In other words, the
24 \$185,000 that we mentioned earlier is entirely amounts

1 that have been denied to dPi because of the two features?

2 A. That's correct.

3 Q. And not because of CREX?

4 A. That's correct.

5 Q. Mr. Shore also brought up something that I saw as
6 a problem in your deposition and that you tried to
7 explain, this issue about features, when he's using the
8 term features as opposed to when dPi was using the term
9 features. So he was trying to impeach you on something
10 you were talking about.

11 For example, if you look at the exhibits that are
12 currently dPi 7, which is a spreadsheet that your company
13 put together, it has, for example, situations where 1 FR
14 with no features, 1 FR with one feature.

15 COMMISSIONER KERR: Tell me what the reference
16 is again, I'm sorry.

17 MR. MALISH: The reference is to dPi 7, which
18 are these series of spreadsheets. And the columns on the
19 ends of these spreadsheets, more particularly on the
20 summary pages of the spreadsheets, have a breakout by 1 FR
21 with no features, 1 FR with one feature, 1 FR with two
22 features --

23 COMMISSIONER KERR: Gotcha.

24 MR. MALISH: -- with a color code, which you

1 will see when you have a color copy. I don't know that
2 it's necessary for what we're trying to cover right this
3 moment.

4 Q. And Mr. Watson, do you see what I'm talking about?
5 Do you remember what was being discussed in your
6 deposition?

7 A. Yes, I do.

8 Q. And the spreadsheet that you prepared was an
9 attempt to show what it would be if we used BellSouth's
10 definition of features; is that correct?

11 A. Yes, sir.

12 Q. So if we go with BellSouth's definition that you
13 cannot count BCR and BRD, that's what gives you these
14 results on dPi Exhibit 7; is that right?

15 A. That's correct.

16 Q. And when Mr. Shore was asking you these questions
17 about features that he just went over with you with your
18 deposition testimony, were you working on using his
19 definition of what they've been calling features, which
20 does not include the BCR, the BRD and the HBG blocks?

21 A. Yes. That was in reference to this summary here.

22 Q. Okay. Now you have since prepared a revised and
23 less confusing -- let me go back to something else.

24 What was the primary purpose of putting together

1 these -- these spreadsheets behind dPi 7, when I read
2 you're rebuttal testimony, these are supposed to be
3 showing us how many out of all the orders that were placed
4 in the particular months that these spreadsheets are
5 auditing, how many moves, how many orders were moved
6 orders or transferred orders as opposed to new or
7 conversion orders; is that correct?

8 A. Yes. This -- these spreadsheets were designed to
9 refute the percentages. I think it was June was 27
10 percent and August 22 percent and November 27 percent.
11 That was to show that dPi Teleconnect did not have that
12 many transfer orders. And so we created these documents,
13 really which was from another audit, we created this to
14 show exactly what the transfer orders read on the T
15 orders.

16 Q. So in other words, in January when we've got dPi
17 Exhibit 4, which is the spreadsheet provided by BellSouth
18 which shows the reasons why they're denying dPi's credits
19 -- and we saw that in certain months -- for example, June
20 of '05 they denied 27 percent of the credits requested on
21 the grounds that those were all moved orders as opposed to
22 new connects -- when I say moved, that's transferred as
23 opposed to new connect or conversions -- right?

24 A. That's correct.

1 Q. So you went back and for those months that had
2 unusually high percentages, like June of '05 at 27
3 percent, August of '05 at 22 percent, November of '05 at
4 27 percent, you went back and looked at every order that
5 was submitted to see how many -- what percent was actually
6 a move order; is that right?

7 A. That's correct.

8 Q. Because these numbers were out of line with
9 industry norms; is that correct?

10 A. They didn't match industry standards.

11 Q. And so when you went back and re-audited and
12 counted every single order, you've come up with numbers
13 that are much lower and that's what the purpose of these
14 exhibits were? So, for example -- is that correct?

15 A. That's correct.

16 Q. So, for example, the billing period which covers
17 the bill that would have been issued for -- in August '05,
18 the August '05 bill date where they say the percentage was
19 22, you went back and calculated every single order and
20 came up with a 4.62 percentage instead, correct?

21 A. That's correct. There were 130 lines; we found
22 six to be a transfer.

23 Q. So that was the initial reason why we submitted
24 these spreadsheets?

1 A. That was your request to me.

2 Q. Now, after your deposition last week, you went
3 back and redid those spreadsheets to show not just
4 BellSouth's definition of what a feature is, but to
5 include ours; isn't that correct?

6 A. That's correct.

7 Q. And when you did that, how many lines did you find
8 did not have at least two of the blocks BCR, BCG or HBG?

9 A. We did not find one in the three months that were
10 sampled or submitted as exhibits.

11 Q. So every single order had at least those blocks?

12 A. That's correct.

13 Q. And that would be contained in the new spreadsheet
14 that we would like to introduce into evidence in this
15 case?

16 A. That's correct.

17 Q. Which would be dPi 8 if we have a chance to admit
18 it?

19 A. Yes.

20 MR. MALISH: Pass the witness.

21 COMMISSIONER KERR: Let me find out where we
22 are. Has Mr. Shore had a chance to see this proposed new
23 exhibit?

24 MR. MALISH: I don't know if he's had a chance

1 to read it or not.

2 COMMISSIONER KERR: Has he been provided a copy
3 of it?

4 MR. MALISH: Electronically he was provided a
5 copy with it yesterday. I believe it was yesterday
6 morning. And I have a paper copy here.

7 COMMISSIONER KERR: Okay. There are no
8 questions from the Commission. Mr. Shore, have you had a
9 chance to look at this document?

10 MR. SHORE: I have.

11 COMMISSIONER KERR: And are you prepared to ask
12 questions on it or to be heard as to whether or not we
13 ought to admit it or -- first of all, answer those
14 questions.

15 MR. SHORE: Yes. And I also have recross of the
16 witness.

17 COMMISSIONER KERR: Let's go off the record for
18 a second.

19 (DISCUSSION HELD OFF RECORD.)

20 COMMISSIONER KERR: We'll recess for lunch, but
21 try to do it quickly and like, you know, try to come back
22 on that clock at quarter till. And it sounds like we can
23 go fairly -- we'll be done by early afternoon.

24 MR. MALISH: And Mr. Chairman, I'll be honest,

1 if -- you know, it's hard to gage, but if Mr. Shore only
2 has, you know, ten minutes with -- I don't know how
3 long --

4 COMMISSIONER KERR: Sounds like he's got more --

5 MR. SHORE: Well, I think it may be as quick as
6 ten minutes. I've got to go through some of these
7 exhibits and he was a very proper witness --

8 COMMISSIONER KERR: Let's do this, then. Let's
9 take a 15-minute bathroom break and we'll come back and
10 get done.

11 (RECESS - 12:00 P.M. TO 12:22 P.M.)

12 COMMISSIONER KERR: The witness is with
13 Mr. Shore, I believe.

14 RECROSS EXAMINATION BY MR. SHORE:

15 Q. Mr. Watson, you talked in your redirect about
16 changing the form that you now submit to BellSouth to get
17 credit requests. Do you recall that testimony?

18 A. Yes.

19 MR. SHORE: Mr. Chairman, I've got a document
20 here; the other side has it. It's a copy of what he sent
21 to me yesterday. I didn't intend to use it as an exhibit,
22 but I want to just be able to show it to the witness and
23 ask him if this is the new form. Okay, he's got it.

24 Q. Mr. Watson, let me hand you this exhibit and then

1 I'll identify it as BellSouth Cross-Examination No. 5. Is
2 that a copy of the new form that you developed?

3 A. Yes, it is.

4 Q. I don't have any questions on that.

5 MR. SHORE: I ask for permission to make copies
6 and submit this as BellSouth No. 5. This is the new form
7 and I want to compare it to the old form in his testimony.

8 COMMISSIONER KERR: Chris, do you have any
9 concerns to him --

10 MR. MALISH: No objection.

11 COMMISSIONER KERR: So this would be admitted as
12 BellSouth Cross-Exhibit No. 4 and she probably -- 5, I'm
13 sorry, and she probably needs a copy of it -- well, again,
14 y'all just make sure she gets what she needs.

15 (Whereupon, BellSouth Cross-Examination
16 Exhibit No. 5 was marked for
17 identification.)

18 Q. Mr. Watson, I think you said you prepared your
19 Exhibit 7, which was an audit to look at transfer
20 accounts, at the request of Mr. Malish; is that correct?

21 A. That's correct.

22 Q. And when you prepared Exhibit No. 7, you put in a
23 column that has a number of features, right?

24 A. The original audit, yes.

1 Q. Did Mr. Malish ask you to include a column that
2 showed how many features a dPi customer had?

3 A. No, he did not.

4 Q. Now, let's talk about this CREX stuff because --

5 MR. GILLAM: Mr. Chairman, I'm sorry, but I'm
6 having trouble following the questions because this is
7 dPi -- is Mr. Shore referring to this dPi 7 or this dPi 7?

8 COMMISSIONER KERR: I can't answer the question
9 because I don't know what you just held up. Yeah. We've
10 got lots going on here. Why don't we do this. Mr. Shore,
11 tell us what you are referring to.

12 MR. SHORE: Well, I was referring to the dPi 7
13 that had been filed. I understand they're going to
14 slip-sheet dPi 7, but it's not going to change except it's
15 going to have pretty colors now, so there's no difference.

16 COMMISSIONER KERR: This is dPi 7, which is the
17 exhibit to the rebuttal testimony, right?

18 MR. SHORE: Yes.

19 MR. MALISH: Yes.

20 COMMISSIONER KERR: You've got that, Mr. Gillam?

21 MR. GILLAM: Okay.

22 Q. Now, Mr. Watson, we've got to talk about this CREX
23 stuff. Let me be clear because I got confused on your
24 redirect.

1 Is it your sworn testimony sitting here today
2 under oath that the CREX charges that you applied for on
3 behalf of dPi under the line connection charge waiver
4 promotion are not included in the \$185,000 figure?

5 A. That's correct.

6 Q. Now you changed your testimony on redirect, did
7 you not?

8 A. Well, I was corrected. It was brought to my
9 attention based on the dPi No. 5 that the sum total of
10 \$185 (sic) was all the items number one, that they were
11 rejected because they did not have one or two Touchstar
12 features.

13 But when you asked me the question you asked me
14 and I said -- you quoted me a figure of \$40-some-thousand
15 dollars and I said if the math is correct, then I agree
16 with you. And that's the only reason I agreed with you
17 because you were telling me that that was correct, that
18 that was part of the \$185,000.

19 Q. Let's look in a little more detail and establish
20 whether or not it is correct. Look at Exhibit No. 4 to
21 dPi's testimony. You talked with Mr. Malish about that on
22 your redirect.

23 That's a chart that BellSouth prepared in
24 discovery and it has -- Mr. Malish talked to you about the

1 reasons, the columns one through six, that BellSouth
2 denied credit requests that you submitted to it, right?
3 Do you recall that?

4 A. Yes, I do.

5 Q. Reason number one was less than one to two custom
6 calling or Touchstar features, right?

7 A. That's correct.

8 Q. And, again, this is all for the line connection
9 charge waiver promotion, correct?

10 A. Yes, it is.

11 Q. And the line connection charge waiver promotion
12 only deals with new customers, correct?

13 A. Yes, it is.

14 Q. Okay. Now look at chart number four, second page,
15 the reasons column. Go down to number five. That says,
16 "she ordered you add CREX or another feature to an
17 existing dPi customer," correct?

18 A. Yes, that's what number five says.

19 Q. Now look at BellSouth Cross-Examination Exhibit
20 No. 4 of the -- I think it's number 4. It's this credit
21 request that you submitted to us for the billing date of
22 March 8th, 2004. Do you have that?

23 A. Yes, I do.

24 Q. And the total amount you requested there was

1 \$38,845.73 under the line connection charge, right?

2 A. That's correct.

3 Q. And some of that, \$7,000 and some change, was
4 attributable to CREX, correct? If you look at the second
5 page, 7.65 and there's some -- 421 -- 41.21. I think we
6 covered that, but --

7 A. I don't know the total -- I don't know if the
8 total is correct.

9 Q. Some of the amount in the \$38,000 is attributable
10 to the CREX?

11 A. That's correct.

12 Q. And we could add that up by adding up the 7.65s
13 and we would also have to subtract 7.65 from the lines
14 that had 41.21. If we added up all those, we would know
15 how much that you requested for CREX in this given month,
16 correct?

17 A. That's correct.

18 Q. Now, do you understand -- you read Ms. Tipton's
19 testimony, I take it, right?

20 A. Yes, I have.

21 Q. And you understand when BellSouth gets these
22 credit requests that it goes through and performs an
23 audit, for lack of a better term, to determine the
24 percentage -- those are samplings essentially -- to

1 determine the percentage of dPi accounts that BellSouth
2 believes are not entitled to the line connection credit
3 because they don't have purchased features, at least in
4 BellSouth's view? I don't want to fight about that issue
5 right now. You understand that that's what BellSouth
6 does, correct?

7 A. That's what I told the process -- I wasn't
8 familiar with how they audited, but through this
9 proceeding I've found out that they sample data.

10 Q. Great. Now, if you look at Exhibit 4,
11 Cross-Exhibit 4, Page 2, you see down on the bottom --
12 it's Page 1 of 20, but it's Page 2 of the exhibit. You
13 see down at the bottom in the far right there's numbers
14 there.

15 Those numbers weren't on this request when you
16 submitted it to BellSouth, were they, that handwriting?
17 Yes, sir.

18 A. That's what you're referring to?

19 Q. Yeah. There's handwriting on this exhibit,
20 correct?

21 A. No, I've never seen that before.

22 Q. You haven't seen the handwriting. It wasn't there
23 when you turned it into BellSouth, right?

24 A. No, it was not.

1 Q. And if you see down in the far right side corner
2 it says 7 over 33 and next to that 21 percent, do you see
3 that?

4 A. Yes, I do.

5 Q. And if we go through -- if you go through this
6 exhibit on the far right column, in some cases it says no,
7 no; some say yes?

8 A. I see "no #1." I just see "no #1." On the sheet
9 that you're referencing to I see "no #1" twice.

10 Q. And if you kept flipping through the pages --
11 well, let's see if I can shortcut this because I don't
12 think this is anything we need to quibble about.

13 Can we agree subject to check, at least, that
14 there are a total of 33 lines or there's a notation and
15 there's seven yeses and the rest are nos?

16 A. You're referring to 7/33. Seven represents what
17 now?

18 Q. Yeses in that far right column, the handwriting
19 where it says yes.

20 A. Where's yes at?

21 Q. Well, let's see. The first one would be -- y'all
22 don't have very many of them. First one would be on page
23 three.

24 A. Yes. I see that on Page 3.

1 Q. And can we just agree subject to check that
2 there's seven yeses out of 33 total lines where there's a
3 notation, seven yeses -- and don't make me do math -- but
4 the rest nos?

5 A. Just an assumption if everything is done
6 correctly.

7 Q. Okay. Now the total amount you requested for this
8 given month is \$38,000 and some change. I think we
9 already talked about that includes the amount that's
10 requested for CREX, correct?

11 A. That's correct.

12 Q. Do you have a calculator up there?

13 A. Do not.

14 Q. I'm going to give you this one that my boss gave
15 me for -- it says, "For a job well done in 2005," but I
16 want this back. That's the first good year I had.

17 COMMISSIONER KERR: Your boss might want it
18 back.

19 Q. You got that? Now, can you -- if you look at the
20 top there, \$38,845.73, can you punch that into the
21 calculator?

22 A. I have it.

23 Q. Can you multiply that by 21 percent, which I think
24 would be .21. Okay, what's the number you come up with?

1 A. Looks like \$8,157.60.

2 Q. And if you take now \$38,845 -- got that? Put it
3 in the calculator. I'm going to try to make it easy.

4 A. What do you want to put in there?

5 Q. Your number that you requested, \$38,845.73.

6 A. It's in there.

7 Q. And subtract from that, minus the number that you
8 just gave me, \$8,157.60. Okay. What number do you come
9 up with?

10 A. \$30,688.13.

11 Q. Now if you look over at Exhibit No. 4, dPi Exhibit
12 No. 4 --

13 A. Okay. I have it in front of me.

14 Q. Okay. For March '04, the amount BellSouth denied
15 is 30,688.13, right, the same number you just gave me?

16 A. Yes, that's correct.

17 Q. And that was based, again, on Bell taking the
18 total amount you requested, including the CREX charges,
19 and multiplying it by the percentage that BellSouth said
20 you ought not get, correct?

21 A. I guess that's correct.

22 Q. You don't have any --

23 A. That's the amount denied.

24 Q. Right. And it says 100 percent of that amount was

1 denied because you didn't have enough features, correct?

2 A. That's correct.

3 Q. And if you look over at your Exhibit 5 from March
4 '04, the amount that you say BellSouth owes under the line
5 connection charge waiver promotion is that same number,
6 \$30,688.13, correct?

7 A. That's what I see here, yes.

8 Q. And that number includes charges that were
9 credited -- that were requested for CREX, doesn't it, sir?

10 A. The 30,000 --

11 Q. Yes, sir.

12 A. -- 688? I'm not sure.

13 Q. Well, let's go over it again. Look at Exhibit 4,
14 Cross-Examination Exhibit 4. The total amount that you
15 requested under the line connection charge waiver is
16 38,000 and some change, correct?

17 A. That's correct.

18 Q. And that included charges for CREX that you agree
19 you're not entitled to, correct?

20 A. That's what I've said before.

21 Q. And BellSouth denied some percentage of those
22 based on its sampling, 21 percent that it found -- it
23 found only 21 percent had at least two features according
24 to BellSouth's definition in this case?

1 A. Where did you get that figure at, 21 percent?

2 Q. It's that number down there at the bottom, 7 over
3 33, 21 percent.

4 A. You're referring to the writing just written on
5 the bottom of --

6 Q. Yes, sir.

7 A. Is that BellSouth Cross-Examine No. 4?

8 Q. Yes, sir.

9 A. Yes.

10 Q. And came up with the numbers 8,157.60. And we
11 agree that the difference between the totals you
12 requested, 38,845 and 30,688 that BellSouth denied based
13 on not having enough features was that number, 8,157.60,
14 right?

15 A. Well, the number 30 -- the 21 percent represented
16 what now?

17 Q. Represented the BellSouth sampling of the number
18 of accounts in this month that qualify with a basic line
19 and two features.

20 A. And when you say two features, what are you --

21 Q. I don't want to quibble about features for purpose
22 of these questions. We don't have to.

23 A. Yeah, but I want to make sure I understand exactly
24 what you're telling me.

1 Q. Well, BellSouth is using its definition here.

2 And, you know, I understand that dPi doesn't like it.

3 A. Well there's paying features and nonpaying
4 features.

5 Q. Right. BellSouth did it the way it believes is
6 appropriate and the way it does it for its retail
7 customers, paying features.

8 A. I mean, if you say that's what it is, that's fine,
9 but I don't --

10 Q. All right.

11 A. I mean, I don't agree with the 30 -- you know, the
12 21 percent, of how you came up with it.

13 Q. What you're saying is you don't agree that
14 lines -- your fight is the fact that other lines ought to
15 qualify, the lines with the blocks ought to qualify?
16 That's the part you don't agree with, right?

17 A. Lines with features, Touchstar features.

18 Q. And I don't want to -- for purposes of these
19 questions, we don't need to fight about that, okay. Let
20 me just give you an example. Let's do maybe simple math.
21 I'm going to have to do this on the fly, so it's probably
22 not going to be that simple.

23 Assume for me for a minute that BellSouth -- that
24 you submitted credits to BellSouth in a given month for

1 \$100, okay. Let's assume -- and let's assume for that
2 month that just like this month on Exhibit 4 that \$100
3 included charges -- requests for CREX, okay. And let's
4 just say that amount was -- you know, it doesn't really
5 matter. But let's say the CREX stuff in there was \$10 of
6 it, okay, included in it.

7 All right. Now if BellSouth determined that you
8 weren't entitled -- under its definition of features in
9 this case that we don't need to fight about for this
10 question. If BellSouth determined that you weren't
11 entitled to 100 percent of that, that you only had what we
12 consider to be two featured -- two purchase features and
13 80 percent of it, 80 percent -- or 20 percent of the time,
14 how much credit would BellSouth give you?

15 A. I'm not following you completely on this one.

16 You've got --

17 Q. Out of that \$100 --

18 A. You've got \$100 there --

19 Q. BellSouth said you only -- you only -- we only
20 believe you qualify for a promotion 20 percent of the
21 time. BellSouth would then give you a credit for \$20?

22 A. \$20, that's correct.

23 Q. And that's what was done here, but the numbers
24 that we've just walked through -- it would be

1 Cross-Examination Exhibit No. 4, but the numbers weren't
2 quite round numbers that I could do in my head, were they?

3 A. No.

4 Q. But in our example here, out of that \$100, CREX
5 charges were in there, correct?

6 A. The CREX charges were -- you were making an
7 example about them there, yes.

8 Q. And if we gave you -- if CREX charges were
9 included in that 100 and we gave you a credit just based
10 on the sampling methodology for 20 percent, included in
11 that 20 are CREX charges, correct?

12 A. If that's what you say, that's fine.

13 Q. And just like in this case, when we gave you --
14 when we denied a credit amount, the amount that came out
15 to be \$30,000 that was denied, included in that \$30,000
16 for March of '04 is CREX charges that you applied for,
17 isn't it, sir?

18 A. Repeat the question.

19 Q. Yeah. In the amount you claim is due under the
20 line connection charge waiver for March of '04 of \$30,000,
21 there's CREX charges in there, right?

22 A. Without me going through it and looking at it
23 myself and -- I -- if that's your -- I don't know.

24 Q. Well, I thought we just looked at it. If you had

1 a number, \$38,000 that included CREX, and BellSouth denied
2 a certain percentage and that percentage came out to be
3 \$30,000 and some change based on not having enough
4 features, and all it did to get to that number denied was
5 multiply the total amount times the percentage it said
6 didn't qualify, the product would include CREX charges,
7 right?

8 A. If that's the way the math works out, that's what
9 it is.

10 Q. Do you swear here under oath today that this
11 amount that you requested for March of '04 of \$40,000 does
12 not include CREX charges, sir?

13 A. Do I swear to what charges does not include CREX?

14 Q. Look at dPi Exhibit 5.

15 A. The data that I submitted, my company submitted
16 for \$38,845.73 included CREX charges. And it wasn't until
17 two weeks ago that I called BellSouth and got a call from
18 Keith Deason, excuse me, and he asked me, he says, "Why do
19 we have duplicate charges?" And I said because we've
20 always filed the CREX with that because it was part of the
21 setup for a new customer.

22 And he says, "Let me call retail and I'll find out
23 if that's -- if we are offering that to retail." He
24 called me back and said, "no, I talked with retail. The

1 toll block setup, one-time charge of \$7.65 we do not offer
2 that to our retail customers, so you need to take that out
3 of the -- your query and no longer submit that." And I
4 said it's done.

5 Q. You stopped doing that in July of '05, right, sir?

6 A. July of '05?

7 Q. Yes.

8 A. I don't know the exact date.

9 Q. Would you dispute that you have not submitted any
10 requests for CREX since June of '05?

11 A. June of '05?

12 Q. Yes, sir.

13 A. I don't know the exact date when we changed the
14 query on that.

15 Q. Now back to dPi Exhibit No. 5. If you look at the
16 third line which we've -- from March of '04, the amount
17 dPi is requesting of \$40,688.13 under the line connection
18 charge waiver, is it your sworn testimony now that that
19 amount does not include any CREX charges, sir?

20 A. Which exhibit are you referencing to?

21 Q. DPi Exhibit 5.

22 A. And which line?

23 Q. Third line down.

24 A. Third line.

1 Q. Do you see that number there, \$30,688.13?

2 A. Yes.

3 Q. Is it your sworn testimony that that amount does
4 not include amounts requested for CREX?

5 A. I don't know if does or it doesn't.

6 Q. Okay. Thank you, sir.

7 MR. SHORE: That's all I have.

8 COMMISSIONER KERR: Anything further from the
9 left-hand side of the room, my left?

10 MR. GILLAM: Yes.

11 COMMISSIONER KERR: Mr. Gillam?

12 MR. GILLAM: I would like to follow up on that
13 briefly.

14 REDIRECT EXAMINATION BY MR. GILLAM:

15 Q. Mr. Watson, looking at BellSouth Cross-Examination
16 Exhibit 4, this billing adjustment request form that they
17 passed out and have been pointing out problems with, that
18 shows in the upper right corner of Page 1 of 20
19 \$38,845.73, does it not?

20 A. Yes, it does.

21 Q. Okay. Now, looking at dPi Exhibit 4, which
22 they've also been asking you about, the fourth column on
23 the -- let's see, I'm looking at the first page of tables.
24 The fourth column is headed at the top, "Amount Applied

1 For," is it not? DPi Exhibit 4, the first page, the
2 fourth column.

3 A. Yes, I see it.

4 Q. And the fifth column is "Amount Denied," isn't
5 that right?

6 A. Make sure that we're looking at the same columns.
7 Okay. Now I'm looking -- okay, I see exactly where you're
8 at.

9 Q. Now that would suggest to you, would it not, that
10 the difference between those would be the amount they had
11 allowed?

12 A. Go ahead, repeat.

13 Q. That would suggest to you, would it not, that the
14 difference between those two columns would be the amount
15 they -- that BellSouth had allowed?

16 A. That's correct.

17 Q. Okay. Now, looking at -- going back to -- well
18 now, let's look down to the third row of that page. It
19 says "Amount Applied For," and this is March '04,
20 \$38,845.73, right?

21 A. That's correct.

22 Q. And that's the same number to the penny as the
23 \$38,845.73 on Page 1 of 20 of Cross-Examination Exhibit 4,
24 isn't it?

1 A. That's correct.

2 Q. And on dPi's Exhibit 4, it says on row three,
3 "Amount Denied" for March 4, \$30,868.13, right?

4 A. That's correct.

5 Q. And then in the column right next to it, which is
6 the first column of the denial percentages, that's 100
7 percent, isn't it?

8 A. Yes, it is.

9 Q. And reason number one is on the next page in the
10 legend is "Less than one to two custom calling and/or
11 Touchstar features purchased," is it not?

12 A. Yes, it is.

13 Q. Then in the legend, the column in the legend,
14 reason number five is customer ordered to add CREX or
15 another feature to an existing dPi customer, is it not?

16 A. That's correct.

17 Q. And for March 4 on row three of the first page of
18 dPi No. 4, there is the no percentage given for reason
19 number five, is there?

20 A. No, there is not.

21 Q. But yet Mr. Shore is trying to tell you based on
22 this 21 percent calculation that the seven -- that the
23 difference between 38,845 and the 30,688 is because it was
24 disallowed on the grounds of CREX?

1 MR. SHORE: Absolutely not.

2 A. That's what I understood, but I was confused about
3 myself.

4 Q. Well, do you think -- that's what I thought too.
5 What is the real truth?

6 A. What is the real truth?

7 Q. Yes.

8 A. Well, the truth of the matter is without me
9 looking at it and going through the data and reviewing it
10 and seeing absolutely what it is, you know, I really
11 wouldn't want to comment.

12 I can sit here and go through it. I have the
13 benefit of my programmer in a lot of these situations to
14 tell me exactly what the breakdown is. Without
15 elaborating on it and without not really knowing --

16 EXAMINATION BY COMMISSIONER KERR:

17 Q. Mr. Watson, let me interject and see if I can't at
18 least try to bring order to where I think we are without
19 comment on whether it matters or not.

20 Based on BST Cross-Examination Exhibit No. 4, my
21 understanding is you submitted this form --

22 A. That's correct.

23 Q. -- at the time as marked. And in that, under a
24 line LCC waiver you submitted both the appropriate line --

1 what's that called? What's LCC stand for? Line --

2 A. Line connection charge waiver.

3 Q. -- as well as these CREX charges. And that's in
4 the 38,000?

5 A. That's correct.

6 Q. Then if you look over at BellSouth Exhibit No. --
7 yeah, if you look on Page 2 of that same exhibit, it looks
8 as though BellSouth in its audit went through and
9 disallowed some percentage of that \$38,000 number; is that
10 correct?

11 A. That's correct.

12 Q. And they did that, though, only based on reason
13 number one, which is the absence of the appropriate number
14 of features?

15 A. That's what they say, yes.

16 Q. It appears to me what Mr. Shore -- the point he is
17 attempting to make is that had they wanted to, they could
18 have also denied some of those charges because they were
19 CREX charges and they were inappropriately submitted as a
20 LCC waiver.

21 A. That's correct. We had no dispute about the CREX
22 charges.

23 Q. And they didn't do that, but what he is saying is
24 that they could have done that at the time?

1 A. That's what I believe he's saying, yes.

2 Q. Thank you.

3 COMMISSIONER KERR: Any questions on our
4 questions? Or Commissioner Ervin, do you --

5 EXAMINATION BY COMMISSIONER ERVIN:

6 Q. Or just to follow up as an example, if you look at
7 page -- the second page of BST Cross 4 and look down about
8 halfway of the page you'll see a line that says, "no
9 number one," right?

10 A. You're on dPi 4?

11 Q. Yes. Or I'm on BST Cross 4.

12 A. On the second page?

13 Q. Yes.

14 A. Yes, I see that.

15 Q. And if you look to the left you'll see requested
16 credit amount \$41.21, right?

17 A. Yes.

18 Q. I believe you testified earlier that, for example,
19 at the very top of that column you'll see a \$7.65 charge?

20 A. Yes. That's a makeup of 33.56 and then a 7.65
21 CREX.

22 Q. So that the total amount of credit requested would
23 consist in part of the LCCW charge and partially the CREX
24 charge?

1 A. That's the one-time toll block setup.

2 Q. This \$41.21 charge would have been included in the
3 \$30,000 some odd amount that Bell denied, right?

4 A. Well, this 41.20 --

5 Q. \$41.21 would have been a component of the amount
6 that was denied? It's not all of it, but it's a part of
7 it?

8 A. Part of it, yes, sir.

9 Q. So that -- I mean, at least the point that I had
10 understood that Mr. Shore was trying to make was that
11 although they denied \$41.21 for reason number one, even if
12 they were wrong as to reason number one, they could have
13 denied \$7.65 of that as an impermissible CREX charge?

14 A. That's correct.

15 Q. So that at least the point I had understood
16 Mr. Shore was trying to make -- and whether it's a
17 significant point or not, I think we've got to decide when
18 we get to the end of the hearing is that some of the
19 \$30,000-some-odd-dollar amount that was denied from this
20 month that goes into the calculation of your claim
21 includes \$7.65 CREX charges?

22 A. I believe so.

23 Q. So that some of the amount that's being claimed
24 for that month includes CREX charges, as I've gone over it

1 with you here; is that true?

2 A. That's true.

3 COMMISSIONER KERR: But let me ask you to look
4 at dPi No. 5.

5 MR. MALISH: Mr. Chairman, now that I'm
6 understanding what's supposed to be happening here --

7 COMMISSIONER KERR: Give me one more second and
8 see --

9 COMMISSIONER ERVIN: Because at this point all
10 I'm trying to do is make it -- I think we've got people
11 talking past each other and I think we understood it was
12 what this side of the room was saying. Whether it's
13 significant is another issue.

14 FURTHER EXAMINATION BY COMMISSIONER KERR:

15 Q. Let me let you look at dPi No. 5. DPi -- I don't
16 know who prepared it, but what I read it to be is a
17 summary of the amounts denied, the stated reasons for the
18 denial.

19 A. That's correct.

20 Q. And it says it was denied for reason number one?

21 A. And it was taken right off their spreadsheet.

22 Q. And that's not a comment as to whether they're
23 might be some other reason that some of these dollars
24 might have been denied, but simply a summary of the stated

1 reasons for which it were -- they were denied?

2 A. Yes. I believe that Mr. Malish did that.

3 Q. And as far as you know, whether these dollars
4 include CREXE (sic) dollars or not, this was an accurate
5 summary of the reasons that you've been given for the
6 denials of these amounts?

7 A. That's correct.

8 Q. Let me ask you one more question. In this
9 process, are you -- is there any concept of waiver with
10 respect to -- you know, if you're going to go through an
11 audit, is there any obligation on BellSouth -- I mean --
12 and the reason I ask this is at the bottom of this bar
13 form, BST Cross-Exhibit No. 4, there is essentially a
14 waiver saying if we haven't heard from you in five days
15 we're going to consider this resolved, meaning you need --
16 we need to hear from you.

17 Are you familiar with any concept that says if
18 they deny for one reason and not the other that they're
19 somehow prevented from denying it for every possible
20 reason?

21 A. No.

22 Q. I'm not asking you for a legal opinion, but you've
23 been involved in this a lot more than I have.

24 A. So basically a dispute could be denied for

1 multiple reasons. The normal dispute process is that you
2 submit the data and then BellSouth responds back and tells
3 you what of the data they agree is correct, that they're
4 going to pay for; and the data that they disagree with,
5 they usually itemize out and tell you exactly why.

6 In the promotional process we have not gotten
7 that, and insomuch as we had to build a query to determine
8 who even got credits. Because my situation as a business
9 owner, what I was doing, I was calling BellSouth and
10 saying please let me know who got paid what. And, oh, by
11 the way, if you can tell me why they were rejected, let us
12 know. And I was caught in a crossfire between BellSouth
13 and my angry customers saying, hey, I need to know what's
14 going on.

15 We had to build a procedure now that pulls out the
16 promotionals that are actually put on the bill, we strip
17 it out and say this is what BellSouth paid you, this is
18 what you owe me for.

19 So it -- we -- we met with BellSouth in the early
20 summer. We met with them again in October and they
21 decided that they didn't want to do that anymore. We
22 tried to over-communicate and I communicated by e-mails on
23 several occasions saying tell us what we need to submit.

24 The data that we submitted on these forms here are

1 what was originally approved by Stanley Messinger, but as
2 we -- what we believed to be accurate. And even when I
3 had conversation with Keith Deason just a couple of weeks
4 ago, he was not sure and I was not sure. Because he
5 didn't know, in fact, if it was even being offered on the
6 retail side until he called.

7 So our intentions as far as did we submit
8 something that wasn't supposed to be submitted, we never
9 -- even to this day we still don't have an accurate
10 baseline. I think we're getting real close, but we've
11 gone through four major programming changes to bring this
12 down to the level where it's accurate.

13 And the gentleman I'm dealing with at BellSouth
14 right now, Keith Deason, wished he had been there a long
15 time ago because the communication is good, it's accurate
16 and it's helpful and it's helping everybody.

17 Q. Let me ask you again to look at dPi No. 5. Is it
18 an accurate summary of the amounts in dispute? In other
19 words, does it summarize the disputed dollars, whether
20 they're CREXE or LCCW, whether -- but is this the sum
21 total of the amounts that have been denied for some
22 reason?

23 A. I just know that this column and this total here
24 is based on, you know, number one criteria that they don't

1 have the features. That's all that I know. I mean,
2 without getting deep and down into it and me drilling down
3 into it and doing more research into it, I just have to
4 trust that what's here is correct and that's all that I
5 know.

6 Q. But that's the sum total of that, again,
7 regardless of why it was denied or what the stated
8 reasons, these are the amounts that have been submitted
9 and not paid --

10 A. That's correct.

11 Q. -- and are at dispute here?

12 A. That is correct.

13 Q. And we might have to decide how much of this is --

14 A. Yes. But that is the --

15 Q. -- one or the other?

16 A. That is the correct amount that has been denied.

17 COMMISSIONER KERR: Let me -- Mr. Malish?

18 MR. MALISH: Mr. Chairman, now that we know
19 where this was all going, this spreadsheet that you're
20 looking at, which is dPi Exhibit 4, is something that we
21 were asking for, didn't get until late January. And we
22 relied upon that to structure our case, which is we're
23 going to limit it straight down to those instances where
24 we didn't get line connection charge waiver because they

1 said that they were going to deny it because we didn't
2 have two features.

3 And what's happened to us now is that in -- you
4 know, despite what was provided us in response to
5 discovery, it appears as though that the argument is being
6 made that, well, there's other reasons why you shouldn't
7 have gotten that money, you see. And I'm caught
8 completely flat-footed at the end of the hearing unable to
9 respond.

10 COMMISSIONER KERR: Unfortunately it's not the
11 end of the hearing.

12 MR. MALISH: Well, the tail end of the hearing.
13 You know, I'm unprepared to deal with it. And so what
14 they're saying apparently is that, you know,
15 notwithstanding the fact that in this spreadsheet that
16 they gave us that identified why they denied things, their
17 reasons, not ours, the things that they said. They have
18 columns in there for CREX.

19 COMMISSIONER KERR: I got you. And what I think
20 we've got now on the record is that this is an accurate
21 summary of the amounts that have been disputed. Some of
22 it may be LCCW and some of it may be CREX and we may be
23 asked to go through and sort that, but that the dPi 5
24 represents a -- the total -- the total number of dollars

1 in dispute. That's the high number. It may be something
2 less than that. Am I wrong there, Mr. Shore?

3 MR. SHORE: I would never say you're wrong,
4 Commissioner Kerr, but I'm not sure you're right.

5 COMMISSIONER KERR: I do it very often, but go
6 ahead.

7 MR. SHORE: Let me tell you why.

8 COMMISSIONER KERR: Take back your calculator,
9 but go ahead. Mr. Lackey might take it back when he sees
10 this transcript, but go ahead.

11 MR. SHORE: That was from Lackey's boss
12 actually.

13 First, with response to what Mr. -- let me
14 respond to what Mr. Malish said and put it in context with
15 what the question is. Somehow claiming that they have
16 information that's --

17 COMMISSIONER KERR: I, I -- let me --

18 MR. SHORE: Let me get to it.

19 COMMISSIONER KERR: No, hold on. I don't care
20 about that. I'm trying to get -- make sure everybody
21 understands where we are as we sit here.

22 MR. SHORE: Okay. I don't think --

23 COMMISSIONER KERR: You tell me what we're
24 missing here.

1 MR. SHORE: Okay. Your question is is this an
2 accurate summary of what they would claim is due. And I
3 don't believe --

4 COMMISSIONER KERR: That's not at all what I
5 said.

6 MR. SHORE: What's in dispute.

7 COMMISSIONER KERR: No. Listen to what I said.

8 MR. SHORE: Okay.

9 COMMISSIONER KERR: It's an accurate amount --
10 it's a summary of the amounts that have been denied. For
11 whatever reason they've been denied, it is a summary of
12 what has been denied. It has been submitted and it has
13 been denied.

14 MR. SHORE: That part is true.

15 COMMISSIONER KERR: Well, that's what I thought
16 I said.

17 MR. SHORE: I don't think we'll dispute and I
18 apologize if I misheard.

19 COMMISSIONER KERR: So we all agree that's the
20 total amount that has been denied payment? You claim --
21 you've claimed that you submitted and been --

22 MR. SHORE: Actually that's not true. That's
23 the total amount that's been denied that they're claiming
24 in this case is 185 and not the total amount that's been

1 denied.

2 MR. MALISH: Because in studying them, actually
3 the total amount either because there's that \$2,500 and
4 change that we -- that they denied for another reason.
5 It's by far the lion's share of what's being denied.

6 COMMISSIONER KERR: Yes, sir, Mr. Gillam?

7 MR. GILLAM: The thing that still puzzles me is
8 that we -- the question was raised from the bench whether
9 this has any actual relevance. And the relevance it
10 appeared to me to have was assuming the Commission agrees
11 with dPi's point of view as to which features count, then
12 the question is is dPi entitled to \$185,000 or just
13 \$145,000.

14 But -- and I do not think that I have heard
15 Mr. Watson or Mr. Malish agree that \$145,000 is the right
16 number. But I'm not even sure as I sit here now that
17 \$185,000 is the total amount that was denied because we
18 have taken as one piece of that the \$38,800 for
19 March 2004, which dPi Exhibit 4 indicates that 30,800 was
20 denied. And all of that for reason one, for the lack of
21 sufficient features.

22 But then Mr. Shore had Mr. Watson calculate the
23 number 8,200 as the number that was disallowable for
24 reasons of CREX. And that is the difference between the

1 38,800 and the 30,600 that is shown on line three of dPi
2 Exhibit 4.

3 And so it appears to me that 38,000 -- 30,688 is
4 one of the components of the 185,000. And so it looks
5 like that in addition to that 30,600 that BellSouth is
6 also denying an additional 8,200 that is not included in
7 the 185,000.

8 COMMISSIONER KERR: Mr. Shore, I'm not sure I
9 agree with that.

10 MR. SHORE: I don't agree with that and I think
11 the record on that issue is pretty clear. Let me try to
12 address your question. I want to try to help you here,
13 try to make it clear.

14 If the Commission were to rule against BellSouth
15 and say, you know, these three blocks, they count as
16 features and they're entitled to credit, what's the proper
17 amount? That's what they're trying to establish here in
18 Exhibit No. 5, and the total is 185,000.

19 The question then becomes they admit that they
20 shouldn't get credit for CREX. They submitted it for a
21 while and we didn't catch it, so we were denying it in
22 percentage for the other reason. The question then
23 becomes -- I think Commissioner Ervin's question captured
24 this, but if you rule against us, in that 185,000 is there

1 stuff that even they admit, i.e. CREX, included that? I
2 think we've established that it is and it would be less
3 than 185,000.

4 So that was the reason I disagreed with you,
5 that even -- that's not an accurate summary because they
6 admit they don't get CREX. So the only question is, is
7 CREX included? If it isn't, 185 would be an accurate
8 number; if it is, it would be less than 185.

9 COMMISSIONER KERR: Here's where I think we are.
10 The question I asked is whether dPi 5 is an accurate
11 summary of what has been denied. We will be asked to
12 determine whether it is appropriate to deny based on an
13 absence of two Touchstar features and we'll make that
14 determination. That will apply to a certain amount.

15 It also appears at this point that BellSouth has
16 denied 185,000 of charges for the stated reason that
17 there's an absence of two features. It seems to me that
18 there might be legal arguments that you have somehow
19 waived or you are estopped from doing that or whatever,
20 and that seems to me that's something we can deal with in
21 briefs.

22 But what I think the evidence is is that this is
23 the number we are talking about. There might be more than
24 one reason to have denied these charges and what the legal

1 implications of your actions or failure -- any party's
2 actions or failures we can sort that out in briefs.
3 That's not a matter for evidence. So that's the baseline
4 that I think we've gotten to.

5 Does anybody disagree that that's where we
6 are --

7 MR. GILLAM: May I --

8 COMMISSIONER KERR: -- because we've taken a
9 long --

10 MR. GILLAM: -- ask Mr. Watson a couple of
11 questions --

12 COMMISSIONER KERR: Yes, you may.

13 MR. GILLAM: -- and try and clarify this
14 briefly.

15 MR. MALISH: And I can finalize -- get to the
16 answer that you want, that you just asked. The 185,719.49
17 is the total amount that was denied and that we are
18 claiming we are owed for not having two features.

19 In addition, there's a little bit more. There's
20 \$2,537.70 that we claim we are owed that was denied
21 because they said it was for a move or a transfer instead
22 of a new connection or conversion. So the total amount
23 that we've chosen to fight about is slightly more than
24 185.

1 COMMISSIONER KERR: And Mr. Shore is saying that
2 that 185 is the amount that was denied for the stated
3 reason, number one, the absence of two features, but in
4 fact that number includes amounts that could have been
5 denied for other reasons.

6 MR. MALISH: That's what he's saying. And we
7 agree that's what he's saying.

8 COMMISSIONER KERR: Mr. Rankin is nodding yes.

9 MR. SHORE: I'm saying that amount includes CREX
10 and they agree they're not entitled to it, yes, sir.

11 COMMISSIONER KERR: Well, I mean, don't play
12 word games with me, but --

13 MR. SHORE: I'm not. His testimony --

14 COMMISSIONER KERR: -- that's the amount --
15 that's the amount of money that has been denied and you're
16 saying it could have been denied for more than one reason;
17 is that --

18 MR. SHORE: Part of that -- part of it, yeah,
19 sure.

20 COMMISSIONER KERR: All right.

21 MR. SHORE: And I'm saying they agreed with us
22 here today under oath.

23 COMMISSIONER KERR: Okay. Anything else,
24 Mr. Gillam?

1 MR. GILLAM: Yes. I would like to ask Mr. --

2 COMMISSIONER KERR: Anything else that's going
3 to bring clarity to this situation?

4 MR. GILLAM: That's my hope.

5 FURTHER REDIRECT EXAMINATION BY MR. GILLAM:

6 Q. Mr. Watson, looking at dPi 4, line 3, the
7 38,845.73 that has been bugging me for some time, is that
8 an amount that you all applied to BellSouth to collect?

9 A. Yes, it is.

10 Q. And did they deny 30,688 of it?

11 A. Yes, they did.

12 Q. What happened to the other 8,200? Did they pay
13 it?

14 A. That was paid to dPi Teleconnect.

15 Q. Okay. Now, do you agree with Mr. Shore's
16 calculations? And that was derived by multiplying 38,845
17 times 7 over 33 and that gave you \$8,200 roughly?

18 A. The figures seemed to be accurate, yes.

19 Q. Now, what in your view does the 7 over 33
20 represent?

21 A. Which figure now? Repeat that.

22 Q. What in your view does the 7 over 33, 7/33rds
23 represent?

24 A. That's their audit that they had and basically

1 it's referring to the CREX, the lines that should not have
2 received a credit.

3 Q. You mean 7/33rds should have been disallowed
4 because of CREX?

5 A. Yeah. We've before -- we stated that if it has a
6 CREX block on it that had the 7.65, that dPi Teleconnect
7 should not get paid that.

8 Q. So BellSouth perceives that 7/33rds of your claim
9 for that month was disallowable on the ground of CREX?

10 A. Well, from the original document the number one
11 criteria was the two features. And that was the figure
12 and that was the summary.

13 Q. Right. And so 38,000 was your entire claim?

14 A. That's correct.

15 Q. And 26/33rds of it or 30,800 they denied?

16 A. They denied for reason number one.

17 Q. And 7/33rds of it they paid?

18 A. That they paid -- according to the calculations
19 they paid 8,157.60. And I can -- just as far as I know
20 without checking my records, but I believe that has been
21 paid.

22 Q. Okay. Is -- well, if it was subject to deny -- if
23 7/33rds of the amount was subject to denial on the ground
24 of CREX, why did they pay 7/33rds of your claim?

1 A. I don't have the answer to that.

2 Q. Do you -- is the -- did they pay 7/33rds of your
3 claim?

4 A. I mean, it looks like the math came out the same.
5 Maybe that's a coincidence.

6 Q. Oh, you think maybe that's just a coincidence?

7 A. That's just a coincidence. I don't believe those
8 two are -- I mean it just happened that way, but I don't
9 believe that that's --

10 Q. So you don't -- oh, okay. So you don't think that
11 the difference between 38,845 and 30,688 --

12 A. I can only refute -- I can only look at their
13 document, their exhibit where it says that the \$30,688.13
14 was denied based on number one. And without me doing any
15 more research on it myself personally, I don't know.

16 Q. Okay.

17 A. I know they got paid \$8,000, some odd dollars and
18 they were rejected 30,000 and BellSouth submitted a
19 spreadsheet saying that it was based on number one.

20 Now if there's other reasons for denial, which I
21 believe the Commission has already addressed, then so be
22 it.

23 Q. So are you saying that they considered 7/33rds of
24 the 38,845 to be disallowable on the grounds of CREX,

1 whether or not they actually disallowed it?

2 A. Well that's what Mr. Shore was saying, yes.

3 MR. SHORE: I don't think so.

4 Q. But the part that they told you they were
5 disallowing, they told you they were disallowing it not
6 because of CREX but because of the definition of what is a
7 feature?

8 A. Yes.

9 Q. Okay. I think that's as far as I can go.

10 COMMISSIONER KERR: Anything further?

11 MR. MALISH: Sorry to do this.

12 FURTHER REDIRECT EXAMINATION BY MR. MALISH:

13 Q. I want to make sure that you're being precise when
14 you're answering these questions, Mr. Watson. We
15 understand and we agree that CREX is not something we can
16 get back under the line connection charge waiver
17 promotion?

18 A. That's correct.

19 Q. Is CREX something they get back using some other
20 -- for some other reason?

21 A. Yes. They can file a dispute for that.

22 Q. So it's the same bar form that we've been looking
23 at, like Page 1 of Cross Exhibit 4, but in line 15 you
24 would just say -- you would use a different reason amount

1 is in question?

2 A. That's correct.

3 Q. So you would then say CREX needs to be refunded
4 for whatever the promotion or whatever the reason is that
5 it's supposed to be refunded?

6 A. That's correct.

7 Q. So the error here is not that you requested the
8 CREX, but that you used the wrong vehicle through which to
9 do so?

10 A. That's correct.

11 MR. MALISH: No further questions.

12 MR. SHORE: I got a couple now. But, you know,
13 he keeps testifying on redirect and I've got a couple of
14 questions now.

15 COMMISSIONER KERR: Go ahead.

16 FURTHER RE-CROSS-EXAMINATION BY MR. SHORE:

17 Q. Mr. Watson, you have not submitted claims for the
18 CREX charge on behalf of dPi in North Carolina under
19 anything else other than the line connection waiver
20 promotion, correct?

21 A. That's correct.

22 Q. And when BellSouth told you back in 2005 that it
23 wasn't refundable, you didn't get that credit under the
24 line connection charge waiver promotion, right?

1 A. That's correct.

2 Q. And you haven't tried to submit it on any other
3 basis, correct?

4 A. No.

5 Q. And these numbers that you've submitted in this
6 case, 185,000, whatever it is, the only claims you are
7 making under the line connection charge waiver promotion,
8 right?

9 A. That's correct.

10 Q. I'm clear now. Thank you.

11 FURTHER EXAMINATION BY COMMISSIONER ERVIN:

12 Q. Just so we get all this out on the table, what
13 promotion -- or under what promotion or relating to what
14 promotion do you contend that dPi could seek credit for
15 CREX charges?

16 A. That would be a dispute and that dispute would be
17 filed with the billing and collections department. And
18 that would be filed on this bar form.

19 Q. And I'm not trying to -- what I'm trying to get to
20 is essentially the way I understand the system works is
21 that in the event that Bell has a promotion program under
22 which they waive CREX charges, you then are entitled to
23 seek to have the benefit of that promotion if you are a
24 reseller because that's actually an adjustment in the

1 purchase price.

2 What promotion, not the mechanism used to get it,
3 what promotion that Bell offers involves a waiver of the
4 CREX charge?

5 A. There's a toll block initiative waiver; it's a
6 toll block waiver. And there's a notification. I don't
7 have the exact notification, but it basically says that
8 when a customer uses TWODW, there will no longer be a
9 charge for the CREX, a dollar charge.

10 I understand in North Carolina you all have never
11 charged for CREX; there is no dollar charge. But there
12 still was a one-time non-reoccurring setup and that under
13 the toll block initiative waiver that the CLEC is eligible
14 to dispute that -- it's not a promotional, but it's a
15 dispute -- based on the billing system does not remove it.
16 When the TVDODW is placed on the order, it eliminates the
17 monthly charge, but it does not eliminate the
18 non-reoccurring one-time setup.

19 Q. So that if a customer was assessed one of these,
20 they can ask that it be taken off?

21 A. They could.

22 Q. That is an end user of BellSouth customer?

23 A. I don't know how they handle it on retail. I
24 imagine if a customer complained about it, asked what that

1 charge was for, I don't -- I imagine they could take it
2 off, yes, sir.

3 Q. Thank you.

4 COMMISSIONER KERR: Okay. Questions on
5 Commissioner Ervin's question? Going once. Mr. Watson,
6 thank you.

7 THE WITNESS: Thank you.

8 COMMISSIONER KERR: Anything further from the
9 Complainant?

10 MR. MALISH: We rest, Mr. Chairman.

11 COMMISSIONER KERR: And let me just ask that --
12 let's see, we've got BellSouth Cross-Examination -- this
13 is going to be in tutu. I've got Cross-Examination
14 Exhibits 1 through 5; is that right?

15 MR. SHORE: Yes, sir.

16 COMMISSIONER KERR: We'll admit those absent
17 objection. And we've admitted one through seven. And
18 we've got in dispute number eight that we probably ought
19 to deal with before you rest.

20 (Whereupon, BellSouth Cross-Examination
21 Exhibit Nos. 1 through 5 were admitted into
22 evidence.)

23 MR. MALISH: And I believe during the break that
24 Mr. Shore and I had a chance to visit and he's agreed to

1 the admission of our Exhibit 8.

2 MR. SHORE: No. No.

3 COMMISSIONER KERR: Okay. Well, that's fine.

4 Let's just --

5 MR. MALISH: In that case, we would move for the
6 admission of dPi Exhibit 8, which is the revised
7 spreadsheet that Mr. Watson was talking about that shows
8 not just the paid features, but the unpaid features, which
9 compliments dPi's Exhibit No. 7.

10 COMMISSIONER KERR: Okay.

11 MR. MALISH: And we believe it's necessary in
12 order to not make dPi Exhibit No. 7 misleading.

13 COMMISSIONER KERR: Mr. Shore?

14 MR. SHORE: There's a couple of things we did
15 agree to at the break. One was that they wanted to submit
16 a different copy of Exhibit 4; same, just more legible.
17 I've got no problem with that. They also wanted to
18 slip-sheet in a new Exhibit 5, but change the title, the
19 title only, and I have no problem with that.

20 We do object to the admission of Exhibit 8.

21 Exhibit 8 --

22 COMMISSIONER KERR: On what basis?

23 MR. SHORE: It's a new exhibit. I took the
24 gentleman's deposition last week; prefiled testimony was

1 filed a while back; they didn't have any opportunity --
2 and the fact that they don't like how the deposition
3 testimony fits with his exhibit is not a basis to submit
4 an exhibit the day of the hearing and get additional
5 evidence in the case. If that was the case, you know, we
6 would never end. We would take another deposition, et
7 cetera. I think it's inappropriate.

8 The gentleman testified on recross that that
9 wasn't stuff that he put in there at Mr. Malish's request
10 in the first place and that was the basis they're saying
11 they ought to be able to add these new columns now.

12 COMMISSIONER KERR: Okay. I'm going to overrule
13 the objection and admit it. I thought I gave you the
14 opportunity before and even offered to take a lunch break
15 in order to prepare to deal with it and were told that we
16 ought to proceed the way we were. So I'm going to admit
17 Exhibit No. 8.

18 (Whereupon, dPi Exhibit No. 8 was admitted
19 into evidence.)

20 COMMISSIONER KERR: Is there anything further
21 from the Complainant?

22 MR. MALISH: Nothing further.

23 COMMISSIONER KERR: Okay. BellSouth?

24 MR. RANKIN: BellSouth calls Pam Tipton.

1 MS. TIPTON: May I request that we take two
2 minutes for a restroom break? I wanted to make sure I
3 heard everything.

4 COMMISSIONER KERR: We could get this over
5 really quickly if I didn't -- if I denied you that.
6 That's fine.

7 (RECESS - 1:15 P.M. TO 1:24 P.M.)

8 PAM TIPTON; Being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. RANKIN:

11 Q. Ms. Tipton, could you state your name and your
12 business address for the record?

13 A. Yes. My name is Pam Tipton. My business address
14 is 675 West Peachtree Street, Atlanta, Georgia.

15 Q. Did you prefile in this case direct testimony
16 totaling 16 pages along with four exhibits?

17 A. Yes.

18 Q. Do you have any changes, anything you would like
19 to make to that testimony?

20 A. No.

21 Q. Did you also prefile in this case nine pages of
22 rebuttal testimony?

23 A. Yes, I did.

24 Q. And do you have any changes to make to that

1 testimony?

2 A. No, I do not.

3 Q. If I asked you the questions today that are
4 contained in your direct and rebuttal testimonies, would
5 your answers then be the same?

6 A. Yes, they would.

7 MR. RANKIN: Mr. Chairman, I would ask that her
8 testimony and her exhibits be entered at this time?

9 MR. MALISH: Mr. Chairman, we have an objection
10 which stems from what we learned in depositions last week,
11 which is generally that Ms. Tipton, although a very nice
12 person, has no personal knowledge whatsoever of any of the
13 facts that took place that lead up to this dispute. And
14 her involvement has occurred exclusively since this case
15 has been filed.

16 What she knows she knows only from having
17 quizzed or been briefed by other BellSouth employees. And
18 what it comes down to is that she is essentially --
19 literally a trained witness put on by BellSouth who's job
20 is to learn the party line and then regurgitate it for the
21 Commission.

22 Because it is -- she is that kind of a witness,
23 that puts us at a severe disadvantage because obviously
24 all she knows and all she can talk about is what other

1 people have told her. And so we can't effectively
2 cross-examine her on something like that because if
3 someone lied to her, she wouldn't necessarily know.

4 COMMISSIONER KERR: Have you filed a motion to
5 strike her testimony?

6 MR. MALISH: We have not done so, Mr. Chairman.
7 And we haven't had the opportunity until, I suppose,
8 yesterday, I believe, would have been our first
9 opportunity to do so.

10 And I understand that under these circumstances
11 that the -- obviously the federal rules and the state
12 rules of evidence don't apply in proceedings like this,
13 you know, and if they did, of course she wouldn't be
14 allowed to testify. But we have the same problem with her
15 testimony that we would have obviously if we were in a
16 more formal proceeding.

17 MR. RANKIN: And Mr. Kerr, since Mr. Shore was
18 involved with the depositions last week, he's going to
19 address Mr. Malish's objection.

20 MR. SHORE: Let me just say there's been no voir
21 dire of this witness's knowledge on the stand here to the
22 basis for a motion to strike. And I will say that his
23 characterization for her deposition testimony is not
24 merely inaccurate, it's flat wrong.

1 What Ms. Tipton testified in her deposition is
2 that she went over all these billing requests, went
3 through them personally, not just based on what someone
4 else told her. That was her actual sworn testimony. I
5 don't think striking her testimony would be appropriate in
6 any case, but even if that rule applied, that was not her
7 testimony and I'm confident that her testimony won't
8 change here today.

9 COMMISSIONER KERR: So you have objected to the
10 admissibility of her testimony and of the exhibits?

11 MR. MALISH: Correct.

12 COMMISSIONER KERR: I'm going to deny your
13 motion on the basis that while you have raised issues that
14 might go to -- might be properly dealt with on
15 cross-examination and may go to the weight that her
16 testimony is given, don't believe that you have
17 established the inadmissibility of her testimony.

18 I think she is certainly able to testify about
19 the things that she does have knowledge of and you are
20 certainly entitled to explore those things about which she
21 doesn't have knowledge of. So with that.

22 (Whereupon, the prefiled direct and
23 rebuttal testimony and exhibits of Pam
24 Tipton will be reproduced in the record at

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this point the same as if the questions had
been orally asked and the answers orally
given from the witness stand.)

FILED
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COMM. DIV.
N.C. UTILITIES COMMISSION

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF PAM TIPTON
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-55, SUB1577
JANUARY 27, 2006

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR BUSINESS ADDRESS.

A. My name is Pam Tipton. I am employed by BellSouth as a Director in the regulatory organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Arts in Economics from Agnes Scott College in 1986, and a Masters Certification in Project Management from George Washington University in 1996. Since joining Southern Bell in 1987, I have gained over 18 years experience in telecommunications, primarily in the areas of wholesale and UNE product development, process design, services implementation, wholesale marketing, and regulatory policy implementation.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2

3 A. I address the issues raised by the Complaint dPi Teleconnect, LLC
4 ("dPi") filed with the North Carolina Utilities Commission ("NCUC") on
5 August 25, 2005, and explain why dPi is not entitled to the promotional
6 discount credits that it is seeking in this proceeding.

7

8 Q. DPI ALLEGES THAT BELLSOUTH REFUSES TO COMPENSATE
9 IT FOR PROMOTIONAL DISCOUNT CREDITS AND THAT
10 BELLSOUTH REFUSES TO COMMUNICATE WITH DPI
11 REGARDING ITS CLAIM FOR SUCH CREDITS. IS THE DPI
12 COMPLAINT ACCURATE WITH RESPECT TO THOSE
13 ALLEGATIONS?

14

15 A. Absolutely not. BellSouth has issued promotional credits to dPi for
16 resale accounts applicable to dPi's North Carolina end users in an
17 amount in excess of \$137,000 as of the January 2006 billing cycle.
18 Region-wide, BellSouth has issued credits to dPi in excess of
19 \$350,000 as of the January 2006 billing cycle. Further, BellSouth
20 has been in frequent communication with dPi regarding its claims
21 for additional promotional credits.

22

23

24

25

1 Q. WHAT IS THE ISSUE IN DISPUTE IN THIS PROCEEDING?

2

3 A. dPi asks the NCUC to order BellSouth to issue dPi additional
4 promotional credits over and above the amount of credits already
5 provided to dPi for services dPi resold to its customers. dPi is
6 asking for such credits even for its end user customers that do not
7 meet the qualifications for the promotions in question. In many
8 cases, dPi is also seeking promotional credits for items that are not
9 subject to any promotions. Only specific rate elements identified as
10 part of a promotion are eligible for billing credits. dPi is not entitled
11 to promotional credits for customers that do not meet those criteria,
12 nor is it entitled to receive credits for service elements that are not
13 included in the promotions offered by BellSouth to its retail
14 customers.

15

16 Q. ARE THERE SPECIFIC PROVISIONS IN THE
17 INTERCONNECTION AGREEMENT BETWEEN BELLSOUTH
18 AND DPI THAT GOVERN THE ISSUANCE OF PROMOTIONAL
19 CREDITS?

20

21 A. Yes. The parties' interconnection agreement ("Agreement") states:
22 "Where available for resale, promotions will be made available only
23 to End Users who would have qualified for the promotion had it
24 been provided by BellSouth directly." See Agreement, Attachment
25 1, Exhibit A, a copy of which is attached as Exhibit PAT-1.

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Thus, per the clear language in the Agreement, BellSouth is required to issue promotional credits only for dPi end users that meet the same promotion criteria that BellSouth retail customers must meet in order to receive the benefits of a promotion.

Q. IS THIS OR SIMILAR LANGUAGE STANDARD IN BELLSOUTH'S INTERCONNECTION AGREEMENTS?

A. Yes.

Q. IS BELLSOUTH ATTEMPTING TO AVOID THE PAYMENT OF PROPER COMPENSATION TO DPI FOR PROMOTIONAL SERVICE CREDITS?

A. No. BellSouth's sole objective with respect to the payment of credits for promotional discounts to any requesting CLP, including dPi, is to pay the correct and proper credit amounts, per the provisions of the Interconnection Agreement and in accordance with the eligibility criteria for qualification for such promotions.

Q. PLEASE DESCRIBE THE PROCESS BY WHICH CLPS CLAIM AND RECEIVE PROMOTIONAL DISCOUNT CREDITS?

1 A. Each month, reseller CLPs submit Credit Request Forms to
2 BellSouth with accompanying spreadsheets detailing end user
3 account information for those accounts that the CLP claims qualify
4 for the promotion for which they are applying. By submitting the
5 request for credit, the CLP is representing to BellSouth that its end
6 user meets the same qualifications that a BellSouth end user has to
7 meet to receive the promotion. BellSouth does not have the
8 resources to perform a complete verification of all accounts for
9 which a credit is requested, nor should it be necessary for
10 BellSouth to do so. BellSouth does, however, sample CLP end
11 user accounts submitted for promotion billing credit to determine
12 whether they qualify for the promotion in question. If, during the
13 course of the review, BellSouth determines that a portion of the
14 accounts do not qualify, BellSouth applies the resulting percentage
15 of qualified accounts to the total credit amount requested to
16 determine the credit given to the CLP. As an example, if a resale
17 CLP requests \$1,000 in promotion credits, and BellSouth's sampled
18 review reveals that 60% of the end users for which the CLP claimed
19 a credit actually qualify for the promotion, then BellSouth applies
20 the qualifying percentage, 60% in this case, to the original amount
21 of requested promotion credits resulting in an adjusted credit of
22 \$600 to the requesting CLP.

23

24 Q. COULD YOU PROVIDE SOME EXAMPLES OF THE TYPES OF
25 DPI RESALE ACCOUNTS FOR WHICH DPI REQUESTED

1 CREDITS BUT THAT DO NOT QUALIFY FOR THE
2 PROMOTIONAL CREDITS?

3

4 A. Yes. The Line Connection Charge Waiver (LCCW) promotion is
5 the most common promotion and accounts for the majority of the
6 requests for credit at issue in this proceeding. This promotion
7 provides for a credit of the applicable nonrecurring installation
8 charge for the line requested (e.g., a basic local flat-rate residential
9 line). To qualify for BellSouth's retail LCCW promotion, the end
10 user customer must be a customer whose service is currently with
11 a carrier other than BellSouth and who is now ordering service as a
12 "win-over" or a reacquired BellSouth customer and, in addition,
13 must have purchased a designated number of Custom Calling or
14 TouchStar® features. Thus, per the terms of the parties' Agreement,
15 for dPi to receive a credit under the LCCW promotion, its end user
16 must likewise be a win-over or reacquired customer for dPi and
17 must have purchased a designated number of Custom Calling or
18 TouchStar® features.

19

20 The majority of customers for whom dPi requested credits based on
21 the LCCW promotion, and for whom BellSouth denied credits did
22 not qualify because the end user did not subscribe to the required
23 number of purchased features. Indeed, many of those dPi
24 customers did not purchase any features. In addition, some of the
25 resale accounts for which dPi submitted LCCW promotion credit

1 requests were not eligible because the customer was not a
2 reacquisition or win-over. These accounts were already dPi
3 customers that were either moving to a new address or changing
4 the class of service ordered. BellSouth's retail customers in that
5 position were not eligible for the LCCW promotion, so dPi is not
6 entitled to promotional credits for those customers.

7
8 Another promotion for which dPi requested credit is the Secondary
9 Service Charge Waiver (SSCW). This promotional waiver applies
10 for changes to certain features or services on an *existing* end user
11 account. For example, an existing dPi customer wishing to add or
12 change features or services will incur a Secondary Service Charge
13 since the customer remains a dPi customer and is not changing
14 local service providers. Some of the accounts for which dPi
15 requested credits based on the SSCW promotion did not qualify
16 because the accounts were new to dPi, i.e., not part of dPi's
17 existing customer base.

18
19 A third promotion for which dPi requested credits is the Two
20 Features for Free promotion. Under that promotion, BellSouth re-
21 acquisition or win-over customers who purchased basic local
22 service plus two Custom Calling or TouchStar® features qualified
23 for a credit for the features during the contiguous 12-month period
24 immediately following the installation of the qualifying basic local
25 service. dPi improperly requested credits based on this promotion

1 for services provided beyond the 12-month period following the
2 date of service installation.

3

4 Attached as Proprietary Exhibit PAT-2 are examples of accounts for
5 which dPi submitted promotional credit requests that BellSouth
6 denied because the dPi end user did not meet the eligibility criteria
7 for the promotion. There are two examples each of the improper
8 credit claims described above for the Line Connection Waiver
9 promotion, the Secondary Service Charge promotion, and the Two
10 Features for Free promotion. A cover sheet provides a summary
11 description of each example. Attached thereto are copies of the
12 actual service orders for which dPi claimed credit. For each of the
13 examples, BellSouth notes what was requested and the specific
14 reason for denial.

15

16 **Q. WHY HAS BELLSOUTH DENIED THE ADDITIONAL CREDITS**
17 **REQUESTED BY DPI?**

18

19 **A. For each promotional credit request that dPi submitted, BellSouth**
20 **issued credits to dPi based on the results of the sampling process**
21 **described above. dPi is not entitled to further compensation.**
22 **Indeed, in some instances, it has received more credits than it is**
23 **entitled to receive.**

24

25

1 Q. HAS BELLSOUTH PERFORMED ANY OTHER REVIEW OF DPI'S
2 PROMOTIONAL CREDIT REQUESTS?

3

4 A. Yes. BellSouth enlisted the aid of a PhD statistician, Dr. Joseph B.
5 Thomas, to develop a sampling procedure for the universe of North
6 Carolina accounts for which dPi claimed it was due a promotional
7 credit. The purpose of this effort was to test the results of the
8 sampling performed earlier.

9

10 Q. PLEASE DESCRIBE THAT PROCESS.

11

12 A. Dr. Thomas determined sample sizes for dPi's promotion requests
13 that would determine a statistical accuracy of 98% and a precision
14 of +/- 5%. Dr. Thomas then selected the individual accounts to be
15 sampled using a random number generator assignment process.
16 Each of the accounts selected was examined and a determination
17 made as to whether the account for which dPi requested a
18 promotional credit qualified for the named promotion. For example,
19 for the LCCW promotion, the account was reviewed to ensure that
20 the account was a reacquisition or win-over and that the account
21 had two qualifying purchased features ordered at the same time as
22 the service was installed for dPi. If the account did not have the
23 requisite number of qualifying features or was not a reacquisition or
24 win-over (e.g., the service order was a change in class of service

1 for an existing dPi customer), then the account was disqualified as
2 credit eligible.

3

4 Q. WHAT WAS THE RESULT USING DR. THOMAS' SAMPLING
5 METHOD?

6

7 A. The review showed that 64 percent of the North Carolina accounts
8 for which dPi claimed credit based on the LCCW promotion did not
9 qualify for the promotion.

10

11 Q. HOW DOES THAT COMPARE TO THE PERCENTAGE OF DPI'S
12 REQUESTS FOR CREDIT BASED ON THE LCCW PROMOTION
13 THAT BELLSOUTH HAS DENIED?

14

15 A. It is very close to the 66% that BellSouth denied based on its earlier
16 sampling.

17

18 Q. WHAT WERE THE RESULTS FOR THE SECONDARY SERVICE
19 CHARGE PROMOTION?

20

21 A. BellSouth determined that 59% of the samples did not qualify for
22 the promotion. The percentage of invalid SSCW North Carolina
23 accounts submitted by dPi for credit, and subsequently denied by
24 BellSouth was only 16%. Therefore, it appears that dPi received
25 far more credit than it was entitled to for the SSCW promotion.

1

2 Q. WHY DID BELLSOUTH DENY ONLY 16% OF DPI'S SSCW
3 PROMOTION, YET BELLSOUTH'S STATISTICAL SAMPLE NOW
4 INDICATES THAT 59% OF THE SSCW REQUESTS FROM DPI
5 DID NOT QUALIFY FOR THE PROMOTION?

6

7 A. Initially, BellSouth had not identified some of the inaccuracies
8 contained in dPi's requests for credit. It was only later that
9 BellSouth discovered that dPi had "double-dipped" on many of its
10 SSCW claims, i.e., submitted claims for the same end user account
11 for both the LCCW and the SSCW promotions. This "double-
12 dipping" practice is discussed more fully later in my testimony.

13

14 Q. WHAT DO YOU CONCLUDE FROM THE MOST RECENT
15 STATISTICAL EVALUATION OF THE PROMOTIONAL CREDITS
16 SUBMITTED BY DPI?

17

18 A. First, and importantly, BellSouth's most recent statistical
19 examination of the promotion credit requests submitted by dPi
20 validates BellSouth's previous actions in response to dPi's inflated
21 requests for promotional credits. Second, it confirms that dPi
22 seemingly systematically inflated its requests for promotional credit
23 by submitting duplicate claims for credit as well as requesting billing
24 credit under particular promotions for elements not included in the

1 promotions, all while neglecting to apply the most basic qualification
2 tests on the accounts it submitted to BellSouth for credit.

3

4 Q. WHY DO YOU CONCLUDE THAT DPI MADE LITTLE OR NO
5 ATTEMPT TO IDENTIFY ACCOUNTS THAT DO NOT COMPLY
6 WITH THE CRITERIA NECESSARY TO WARRANT THE
7 PROMOTIONAL CREDIT FROM BELLSOUTH?

8

9 A. Based on dPi's promotional credit requests, it appears to BellSouth
10 that dPi represented that all of its "new" end user accounts were
11 eligible for credits, and did not attempt to validate whether or not
12 the accounts met the eligibility criteria for such credits. BellSouth's
13 review of those resale accounts, however, demonstrated that a
14 significant percentage do not qualify for promotional credits.

15

16 Q. HAS BELLSOUTH IDENTIFIED ADDITIONAL IMPROPRIETIES
17 WITH DPI'S PROMOTIONAL CREDIT REQUESTS?

18

19 A. Yes. In addition to asking for promotional credits for resale
20 customers who did not meet the criteria for the promotion, dPi also
21 requested promotional credits for charges that are not the subject
22 of promotions. Additionally, dPi has "double-dipped" on its requests
23 for credit by submitting the same account for credit for the same
24 rate element under two different promotions within the same month.

25

1 Q. CAN YOU PROVIDE EXAMPLES OF THESE CREDIT
2 REQUESTS?

3
4 A. Yes. The first example is where dPi included in its credit request
5 elements that are not part of any promotion. Specifically, dPi
6 included a service providing a form of blocking, identified in the
7 BellSouth Uniform Service Order Code ("USOC") as CREX. It
8 appears that from January 2004 through June 2005, dPi included
9 requests for credit for the non-recurring charge for CREX in its
10 requests for credits under the Line Connection Charge Waiver
11 promotion. CREX was not a part of BellSouth's retail LCCW
12 promotion. Only the waiver of the line connection non-recurring
13 charge was a part of that promotion.

14
15 In North Carolina, the Line Connection Charge is \$33.56 after the
16 Resale discount is applied. The CREX non recurring charge is
17 \$7.65. Attached as Proprietary Exhibit PAT-3 are examples of the
18 spreadsheets dPi submitted in support of its claim that it was
19 entitled to a credit for the CREX charge under the Line Connection
20 Charge promotion. dPi included CREX in every monthly LCCW
21 credit request for the period January 2004 through June 2005. For
22 brevity, however, Exhibit PAT-3 includes only the first month's data
23 of each quarter (January, April, etc.). As seen on dPi's
24 spreadsheets, it requested credit for CREX charges in one of two
25 ways: 1) a separate line item in the amount of \$7.65 with the same

1 earning telephone number as the line item for the line connection
2 charge of \$33.56, or 2) a single line item in the amount of \$41.21
3 which combines the \$33.56 line connection charge with the \$7.65
4 CREX charge. dPi is not entitled to a credit for CREX charges in
5 either case.

6

7 **Q. ARE THERE OTHER EXAMPLES OF DPI'S IMPROPER**
8 **REQUESTS FOR PROMOTION CREDIT?**

9

10 **A. Yes. dPi's claims also include requests for both the Line**
11 **Connection Charge Waiver promotion and the Secondary Service**
12 **Charge Waiver promotion for the same end user account during the**
13 **same month. Attached as Proprietary Exhibit PAT-4 are examples**
14 **of spreadsheets dPi submitted and attempted to "double-dip" by**
15 **applying for both promotions. The spreadsheets are labeled with**
16 **the specific promotion under which dPi was seeking credit, with the**
17 **duplicate requests highlighted. In each example, all of the**
18 **accounts submitted for credit under the SCCW promotion had**
19 **already been submitted for credit for the same \$4.12 charge under**
20 **the LCCW promotion credit request.**

21

22 **Q. IS THERE ADDITIONAL EVIDENCE THAT FURTHER**
23 **ILLUSTRATES WHY SUCH A LARGE PERCENTAGE OF DPI'S**
24 **ACCOUNTS ARE NOT ELIGIBLE FOR PROMOTIONAL**
25 **CREDITS?**

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A. A visit to dPi's web page reveals that dPi sells exclusively pre-paid local service. While anyone could conceivably purchase pre-paid local service, the primary target market for those services are those consumers with high credit risk. Credit risk customers frequently purchase the basic calling plan, or the "Basic Package" as described on dPi's web page. The "Basic Package" consists of pure, unlimited local calling with no vertical features such as call waiting, caller ID, call return, call forwarding, 3-way calling and long distance calling. While such additional features are available from dPi as part of more expensive calling plans, the Basic Plan is just that—local calling. Since the criteria for reimbursement under BellSouth's LCCW promotional credit arrangement, for example, currently requires the purchase of either two custom calling and/or TouchStar[®] features, none of dPi's Basic Plan sales meet that criteria and, thus, cannot possibly qualify for reimbursement. Yet, dPi has made no attempt to exclude its Basic Plan customer accounts from the universe of accounts it submitted to BellSouth for reimbursement.

Q. IN ITS COMPLAINT, DPI ALLEGES THAT BELLSOUTH ADMITTED ITS OBLIGATION TO ISSUE ADDITIONAL CREDITS TO DPI. IS THAT AN ACCURATE STATEMENT?

1 A. No. As BellSouth has previously indicated to the Commission,
2 BellSouth will issue credits to dPi for customers that meet
3 promotion eligibility criteria.

4

5 Q. DPI ALSO ALLEGES IN ITS COMPLAINT THAT BELLSOUTH
6 PAID SIMILAR CREDITS TO OTHER CLPS WITH ESSENTIALLY
7 IDENTICAL CLAIMS, BUT REFUSES TO ISSUE THE CREDITS
8 TO DPI. HOW DO YOU RESPOND?

9

10 A. BellSouth previously trusted that, when a CLP requested a
11 promotional credit, the CLP had already screened their end users
12 to determine eligibility for the promotion for which it was asking for
13 a credit. BellSouth realized in September 2004, however, that was
14 not an accurate assumption for certain CLPs. BellSouth then
15 began sampling promotional credit requests for all CLPs, as
16 described earlier in my testimony, and implemented a validation
17 process in March 2005. Prior to using this process, some CLPs
18 were able to receive credits for which they were not entitled.

19

20 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

21

22 A. Yes.

23

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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF PAM TIPTON
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1577

FEBRUARY 10, 2006

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed Direct Testimony on January 27, 2006.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony responds to portions of the Direct Testimony filed on January 27, 2006, by Brian Bolinger and Steve Watson on behalf of dPi Teleconnect, L.L.C. ("dPi").

Q. ON PAGE 2 OF BOTH MR. WATSON'S AND MR. BOLINGER'S TESTIMONY, THE WITNESSES CLAIM THAT BELLSOUTH REDUCED ITS REQUIREMENT FOR THE LINE CONNECTION CHARGE WAIVER ("LCCW") FROM TWO TOUCHSTAR™ FEATURES TO ONE IN 2005 AND CITE A PAGE FROM BELLSOUTH'S INTERNET WEBSITE AS SUPPORT. IS THEIR CLAIM TRUE?

1 A. No. The exhibit described in both Mr. Watson's and Mr. Bolinger's
 2 testimony and attached to Mr. Bolinger's testimony as exhibit dPi-1
 3 is a marketing piece from BellSouth's website. The generic
 4 descriptions in the on-line marketing piece, including the referenced
 5 "promotion," are not North Carolina-specific, may have other
 6 qualifications, and include retail promotions not subject to resale.
 7 The section referenced by Messrs. Watson and Bolinger falls under
 8 a generic heading entitled "Connection Fee Waived." A review of
 9 the actual public filing package(s) for promotions offered in North
 10 Carolina during the referenced time period reveals that, in addition
 11 to the Line Connection Charge Waiver promotion (which does
 12 require two purchased features), BellSouth had also made an offer
 13 to waive the Line Connection Charge and give twenty-five dollars
 14 (\$25) cash back when a reacquired customer purchased a 1FR
 15 (single residence line) and Caller ID Deluxe plus an affiliate service
 16 bundle (e.g., Cingular wireless, BellSouth DSL, BellSouth long
 17 distance). This is a bona fide offer to BellSouth customers
 18 requiring the purchase of one feature (Caller ID Deluxe), but such
 19 an offer is not available for resale because it also requires the
 20 purchase of a service bundle with wireless, DSL, or long distance.

21
 22 Q. IS IT APPROPRIATE FOR DPI (OR ANY OTHER CLP) TO CLAIM
 23 PROMOTIONAL CREDITS BASED UPON AN ADVERTISEMENT
 24 ON BELL SOUTH'S CORPORATE WEBSITE?

25

1 A. No. dPi, or any other CLP, should only use official BellSouth, North
2 Carolina-specific promotional notices to determine the promotional
3 requirements for specific services prior to submission of requests
4 for credit from BellSouth. Any clarifications regarding these
5 promotions may be made through dPi's BellSouth Account
6 Representative. BellSouth is required to provide CLPs advance
7 notice of any promotion involving telecommunications service—
8 typically 45 days in advance of the effective date. BellSouth does
9 so by posting the notices on its Interconnection Website under
10 Alerts & Notifications (<http://interconnection.bellsouth.com>).
11 Additionally, BellSouth filed with the North Carolina Utilities
12 Commission ("NCUC") for approval on all promotions that impacted
13 rates for retail telecommunications services, including promotional
14 offerings such as those at issue in this proceeding. Accordingly,
15 accurate and current information describing the BellSouth
16 promotions in effect during the period at issue in this proceeding
17 and the specific qualifications necessary to receive promotional bill
18 credits were available to dPi via these two sources.

19

20 Q ON PAGE 4 OF MR. WATSON'S AND ON PAGE 3 OF MR.
21 BOLINGER'S TESTIMONY (AGAIN, BOTH USE IDENTICAL
22 LANGUAGE), THEY SEEM TO BELIEVE THAT ADDITIONAL
23 FEATURES WITH NO ASSOCIATED RATE MAY BE USED TO
24 QUALIFY FOR THE LCCW PROMOTION. IS THAT A CORRECT

1 INTERPRETATION OF BELLSOUTH'S PROMOTIONAL
2 OFFERINGS?

3

4 A. Absolutely not. BellSouth's LCCW promotion qualification
5 requirements clearly specify that the minimum requirement is the
6 ***purchase*** of basic local service and 2 features.

7

8 Q. ARE THERE FEATURES WITH NO ASSOCIATED RATES AND
9 CHARGES LISTED AS TOUCHSTAR™ FEATURES BY
10 BELLSOUTH IN ITS TARIFF?

11

12 A. Yes. Of the thirteen (13) TouchStar™ Service features listed in
13 BellSouth's North Carolina GSST tariff, two (2) of these features
14 are offered at no charge: Calling Name/Number Blocking – Per
15 Call and Calling Name/Number Blocking – Per Line. Additionally,
16 BellSouth offers the option of placing a "denial of per use" for three
17 TouchStar™ features. This "denial of per use" is at no charge and
18 is commonly referred to as "blocking", or restricting, that feature. In
19 most, if not all, of the cases referenced by dPi where BellSouth
20 denied dPi resale promotion credits, dPi had requested that the
21 "denial of per use" feature be added to its customer lines to prevent
22 end users from running up additional per-use charges for items
23 such as Call Return, Repeat Dialing, or Call Tracing. These are the
24 BCR and BRD USOCs referenced by dPi's witnesses Watson and
25 Bolinger.

1

2 Q. IS "DENIAL OF PER USE" ON A FEATURE LIKE CALL RETURN
3 (BCR) CONSIDERED AN ACTUAL FEATURE?

4

5 A. No. It is simply an optional service configuration to prevent
6 inadvertent use of unwanted features.

7

8 Q. DOES BELLSOUTH INCLUDE THESE "DENIAL OF PER USE"
9 RESTRICTIONS AS QUALIFIED FEATURES IN ITS LCCW
10 PROMOTIONS TO ITS RETAIL CUSTOMERS?

11

12 A. No, it does not. In fact, BellSouth's tariffs specifically exclude
13 these items from inclusion in any multi-feature discount plans.
14 BellSouth's General Subscriber Service Tariff, Section A13.19.4
15 Rates and Charges, references Note 1 next to Denial of per use
16 restrictions for Call Return, Repeat Dialing, and Call Tracing
17 (USOCs BCR, BRD, and HBG, respectively). There are no rates or
18 charges associated with these three USOCs. Note 1 states the
19 following:

20

21 These features should not be included in the determination
22 of applicable Multi-Feature Discount Plan (MFDP) discounts
23 as specified in A13.33 of this Tariff.

24

1 Q. DOES BELLSOUTH INCLUDE FEATURES WITH NO
2 ASSOCIATED RATE OR CHARGE AS QUALIFIED FEATURES IN
3 ITS LCCW PROMOTION TO ITS RETAIL CUSTOMERS?

4
5 A. No, it does not.

6
7 Q. WHY DOES BELLSOUTH EXCLUDE FEATURES OR
8 BLOCKING/RESTRICTIONS WITH NO ASSOCIATED RATE
9 FROM QUALIFYING FOR ITS PROMOTIONS?

10

11 A. It makes no economic sense to include free features in promotions.
12 The goal of any promotion is to generate additional revenue for the
13 offering company. For example, many fast food establishments
14 tender promotions that offer a free drink with the purchase of a
15 sandwich and a side item. The restaurant presumably sells more
16 sandwich/side combos as a result of the free drink offer. For
17 BellSouth to offer a promotion that waives the installation charge for
18 basic local service without generating additional revenue from other
19 sources—in this case, purchased features—does not make
20 practical business sense. Further, it is counter-intuitive that
21 BellSouth would expressly require the purchase of two additional
22 features and then allow free features to qualify toward satisfying the
23 specific promotion requirements. To allow the free features to
24 qualify could be likened to the absurdity of the fast food restaurant
25 that is offering a free drink with a sandwich and side item promotion

DM #620229

1 to allow mustard and ketchup on the sandwich to qualify as side
2 items for purposes of getting a free drink.

3
4 Restrictions on TouchStar™ features such as the Call Return
5 (USOC—BCR) and Repeat Dialing (USOC—BRD) blocks, as
6 referenced by Mr. Watson and Mr. Bolinger are provided free of
7 charge with local service. Since they are not features *and* do not
8 have an associated rate, they are not **purchased** features that may
9 be used to satisfy the qualification requirements for the LCCW
10 promotion. It is not a matter of BellSouth choosing not to “count”
11 these features, as the testimony on page 4 of Mr. Watson's and
12 page 4 of Mr. Bolinger's testimony claim in unison. It is simply that
13 the requirements to qualify for BellSouth's promotions state
14 explicitly that the additional features must be **purchased** features.

15
16 Q. DOES BELLSOUTH TREAT ITS OWN CUSTOMERS ANY
17 DIFFERENTLY THAN CLP RESALE CUSTOMERS WITH
18 RESPECT TO WHETHER OR NOT A REACQUISITION
19 CUSTOMER QUALIFIES FOR PROMOTIONS?

20
21 A. No. To qualify for the Line Connection Charge Waiver promotion,
22 BellSouth retail customers must have **purchased** two billable
23 features. With respect to the qualification for, and application of,
24 promotional credits, BellSouth's policy and practice is to treat

1 customers of CLPs in the same manner as BellSouth treats its own
2 customers.

3

4 Q. ON PAGE 2 OF HIS TESTIMONY, MR. WATSON STATES THAT
5 BELLSOUTH DOES NOT AUTOMATICALLY CREDIT RESALE
6 CUSTOMERS AND REQUIRES ITS RESELLERS TO APPLY FOR
7 PROMOTIONAL CREDITS. IS THIS CORRECT?

8

9 A. Yes. BellSouth is not asking CLPs to do anything more than
10 BellSouth does with BellSouth's own customers. The reselling CLP
11 has direct customer contact at the time service is requested (like
12 BellSouth has with *its* customers). Thus, the reseller CLP is in the
13 best position to determine if their customer meets the qualifications
14 for a particular promotion(s). Rightfully, BellSouth requires its CLP
15 resellers to take certain steps to ensure that the accounts submitted
16 to BellSouth for promotional credit do, indeed, qualify for such
17 credits. As referenced above, BellSouth reviews the service
18 requests of its own customers to validate that any promotional
19 credits are applied correctly in accordance with the terms of
20 BellSouth's tariffs, promotional offers and BellSouth policy
21 guidelines. CLPs must do likewise. It is incumbent on the CLP to
22 review its own service requests and ascertain if a particular
23 promotional credit is valid based on the service and features
24 purchased by the customer.

25

1 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

2

3 A. Yes.

1 MR. RANKIN: Thank you, Commissioner Kerr.

2 Q. Ms. Tipton, have you prepared a summary of your
3 testimony?

4 A. Yes, I have.

5 Q. Would you please give it?

6 A. Yes. And with the Commission's indulgence, I
7 recognize that we have, I guess, fettered out a number of
8 these items prior to my appearance and some of which were
9 referenced by Mr. Shore in his opening statement. So to
10 ensure they're appropriately in the record, I apologize in
11 advance for the regurgitation of some of the things that I
12 will say in my summary of my testimony.

13 We're here because dPi is claiming more
14 promotional credits than it is entitled to receive.
15 BellSouth doesn't dispute the fact that it owes billing
16 credits to resellers where their end users would have
17 qualified for the BellSouth retail promotion if that end
18 user had in fact been served by BellSouth.

19 In my testimony I provide as Exhibit 1 the actual
20 site from the interconnection agreement and I'll read it
21 here. "Where available for resale, promotions will be
22 made available only to end users who would have qualified
23 for the promotion had it been provided by BellSouth
24 directly."

1 BellSouth has consistently applied the same
2 criteria to its reseller accounts for promotional credits
3 it applies to its own end users. What it boils down to is
4 that dPi claims that it should get promotional bill
5 credits that BellSouth does not give its own customers.

6 The majority of the promotional credits that dPi
7 seeks are under the line connection waiver, and I think
8 we've established that now. And I believe we've also
9 established that BellSouth's actual promotion is --
10 includes at least the purchase of basic local service and
11 two custom calling or Touchstar features. And I emphasize
12 here purchase because it is the offer that BellSouth makes
13 to its retail customers and how we apply that criteria
14 that is at issue here.

15 DPI is claiming that it's owed credits for
16 customers that have no features at all. And let me
17 explain what I mean about that. DPI claims that there are
18 certain feature restrictions, which we've heard referred
19 to here as blocks, that they have requested be placed on
20 their accounts. Their customers haven't requested, but
21 dPi has requested. And they do not qualify for these
22 promotions.

23 The blocks in and of themselves are not features,
24 rather they disable certain features like call return or

1 repeat dialing. So I believe this morning Mr. Malish
2 referred to an example of you can buy extra features when
3 you buy a car, you know, a better engine or leather seats
4 or a CD player. But if you choose not to buy that actual
5 feature, the feature doesn't exist. So if you purchase
6 call return, you've purchased the feature; but if you've
7 blocked the feature, you haven't purchased the feature.

8 BellSouth doesn't charge dPi for blocking these
9 features and, of course, dPi doesn't charge their
10 customers for it. And I would venture to say that most of
11 their customers or perhaps all their customers probably
12 don't even know the blocks are on the line. They are
13 identified as the USOCs you've heard presented today, BCR,
14 BRD and I believe HBC (sic) is the other one, and they are
15 not qualifying for this promotion.

16 Again, BellSouth offer to its retail customers is
17 that we waive the line connection charge when a customer
18 purchases at least two features in conjunction with basic
19 local service. And that also applies to packages where
20 there's multiple features, but they have to purchase at
21 least two.

22 And dPi has acknowledged here today and in its
23 testimony and its deposition that it doesn't get credit
24 for a promotion unless the customer would have qualified

1 for the promotion had that end user been a BellSouth end
2 user. BellSouth does not give and would not give credit
3 to its own end users if the end user had only purchased
4 basic local service and two of these free feature blocks.

5 It really doesn't make any sense for BellSouth to
6 develop a promotion to entice customers to buy additional
7 service when the enticement only applies to something
8 that's already free. And that's not what the line
9 connection waiver was about.

10 I've talked to the folks on the retail side of the
11 house. Mr. Malish is correct, I don't develop promotions,
12 but those are developed on the retail side of the house.
13 The wholesale side of the house is responsible for
14 ensuring that what we implement mirrors the retail
15 promotion if it's offered for more than 90 days.

16 Now, in addition, I think we've talked quite a bit
17 the last hour or so, dPi's credit requests have been
18 inflated by double dipping on promotions and as well as
19 including amounts such as the CREX, which we've talked
20 quite a bit about, and those are not subject to this line
21 connection charge waiver promotion.

22 While dPi has in fact ceased submitting -- they
23 have stopped submitting the CREX charge -- I believe July
24 of 2005 was the first month that they did not submit CREX

1 along with the line connection waiver promotion request --
2 they have not amended the request for credit claims.

3 DPI is asking for credits that they are not
4 entitled to receive and essentially they're asking the
5 Commission to retroactively change the qualifying criteria
6 for the line connection charge waiver promotion that
7 BellSouth has been offering its end user customers for
8 more than two years.

9 The Commission should rule that dPi is not
10 entitled to these credits under the line connection waiver
11 for customers that have not purchased qualified features
12 and have only requested free blocks.

13 Thank you and this concludes my summary.

14 MR. RANKIN: We tender the witness.

15 COMMISSIONER KERR: Mr. Malish?

16 MR. MALISH: Thank you, Mr. Chairman.

17 CROSS-EXAMINATION BY MR. MALISH:

18 Q. Ms. Tipton, I'm going to ask you some questions
19 and I hope they don't sound mean, but it just comes with
20 part of what your job is, so you let me know if I'm being
21 mean and I'll try to stop.

22 Ms. Tipton, you really don't have any personal
23 knowledge of any of the events that took place in this
24 case, do you?

1 A. In regards to what happened prior to the Complaint
2 being filed, I was not involved in the actual review of
3 the billing credit request forms and the denial of those.
4 Since the time --

5 Q. And, Ms. Tipton --

6 A. -- that --

7 COMMISSIONER KERR: Hold on. Hold, hold, hold.
8 Ms. Tipton, finish answering the question.

9 A. Since the time the Complaint was filed, I have
10 reviewed all 24 months of the credit submissions under the
11 line connection waiver. I actually have a copy of them
12 here. I have looked at individual accounts that are a
13 part of those submissions. I have looked at the service
14 order activity both that which was claimed by dPi as a
15 part of the promotion, as well as other service order
16 activities against the same or new telephone numbers
17 represented by dPi on their credit request submissions.

18 MR. MALISH: I'm going to object to the
19 response -- the response, the answer as being
20 nonresponsive.

21 COMMISSIONER KERR: Overruled.

22 Q. Ms. Tipton, you haven't been involved with this
23 case until after dPi filed its Complaint; is that correct?

24 A. That's correct.

1 Q. And you are quite literally a trained BellSouth
2 witness, isn't that true?

3 A. I believe that's a slight mischaracterization. I
4 reflected in my deposition that in 1998 I attended a half
5 to a three-quarter day session with a facilitator to help
6 me understand as a subject matter expert how the
7 witnessing process goes and what to expect on the witness
8 stand and how to prepare a summary and how to be aware of
9 my nonverbal communication. I don't consider myself a
10 trained witness.

11 Q. Nevertheless, you took part in training which
12 included role playing on how to be a witness, correct?

13 A. Yes. A half to a three-quarter of a day.

14 Q. And you have no formal legal education, correct?

15 A. That's correct.

16 Q. And you also don't have a degree in English,
17 correct?

18 A. No, I do not.

19 Q. And so you're not here to offer your legal
20 opinions on what the language in the contract means on a
21 legal basis; is that correct?

22 A. That's correct.

23 Q. And similarly, you're not here to offer your
24 opinion as to what the language in the promotion means as

1 an expert in the English language, are you?

2 A. I think the language is pretty clear and speaks
3 for itself. I don't know that any legal interpretation is
4 necessary, but I'll leave that to the attorneys.

5 Q. So you're not here as an expert on the English
6 language?

7 A. No.

8 Q. Thank you.

9 How many -- one of your job duties is to be a
10 witness, correct?

11 A. When called upon, yes, that is part of what -- my
12 job responsibilities are.

13 Q. And in that capacity you work on whatever case
14 that's assigned to you, correct?

15 A. Not necessarily. When a case arises such as an
16 arbitration case or a complaint case, BellSouth looks at
17 the issues and determines who the appropriate person might
18 be. It's not that a name is drawn out of a hat.

19 And in this case, due to my background and my
20 experiences and the facts in the case, I was selected as
21 the appropriate witness to represent BellSouth.

22 Q. You never corresponded with anyone from dPi on
23 this case, have you?

24 A. No.

1 Q. You never corresponded with anyone from Lost Key
2 on this case, have you?

3 A. No, I have not.

4 Q. In fact, you're one of two people that BellSouth
5 has hired to serve as a witness company-wide?

6 A. I don't agree with that characterization. My role
7 is in regulatory to help decipher any activities at the
8 state and federal level; help the retail or wholesale
9 business units understand the impacts associated with
10 those activities, including, you know, regulatory
11 activities as well as legislative activities.

12 One portion of my role would be to serve as a
13 company witness when called upon. It's certainly not
14 appropriate to represent that that is my job.

15 Q. Well, it's part of your job, though?

16 A. Certainly.

17 Q. Sure. And you are here in that capacity now?

18 A. Yes, I am.

19 Q. And what you know about what's happened in this
20 case is what you've been told or what you've been shown by
21 other BellSouth employees, correct?

22 A. That's part of it. I've undertaken my own
23 evaluation of the billing credit requests that have been
24 submitted by dPi. I have reviewed the service order

1 activities, as I said a minute ago, that were specifically
2 requested in the credit requests; and then also look at
3 some of those service orders that were submitted prior to
4 and after the particular service orders where the requests
5 for credit were asked.

6 Q. But the documents, they weren't in your own file
7 and you didn't create them, did you?

8 A. They're online.

9 Q. You had to find -- go get them, basically?

10 A. Certainly. Any time we do an evaluation of a
11 credit request, the person who's performing the analysis
12 of each individual request would log onto our online
13 systems, first going to billing records and then into our
14 online inquiry system to look at the activities. All of
15 those are electronically maintained records.

16 Q. Is it true that when you came to this case
17 BellSouth's position was already established?

18 A. Yes.

19 Q. And that you're basically -- basically your role
20 is learning what BellSouth's position was and then sharing
21 that with the Commission here?

22 A. Yes. Because BellSouth's position has been
23 consistent. We've got, you know, several hundred
24 interconnection agreements with the same retail terms and

1 conditions -- for reseller, excuse me, especially for that
2 particular promotion, so there's no change in that.

3 BellSouth has had in its resale agreement that it
4 will offer promotions to resellers for end users that
5 qualify at -- if the end user would have qualified if they
6 had been a BellSouth retail customer. That has not
7 changed. And that is really what is in dispute here in
8 this complaint.

9 Q. And Ms. Tipton, do you remember what my question
10 to you was that you've just given this answer to?

11 A. I couldn't regurgitate it word for word, no.

12 Q. I asked you to confirm that your role was
13 understanding what BellSouth's was and then sharing that
14 with the Commission. So the answer to my question really
15 is, yes, that's your role; is that correct?

16 A. Actually I believe the question that you asked
17 that I was responding to was, was BellSouth's position
18 already established when I came to this case. That's the
19 question I thought I was answering.

20 Q. Well, you answered that question, yes, that's
21 true.

22 A. That is correct.

23 Q. My follow-up question was your role is learning
24 what the position is and then regurgitating that or

1 sharing that with the North Carolina Commission in this
2 particular case. So the answer to that question is that
3 is your role?

4 COMMISSIONER KERR: Let me ask you to break that
5 up into one question at a time.

6 MR. MALISH: May I approach the witness?

7 COMMISSIONER KERR: For what purpose?

8 MR. MALISH: I just want to have her look at
9 something that she told me in her deposition.

10 COMMISSIONER KERR: Now are you giving up on the
11 questions that are on the table, are you withdrawing those
12 or is this --

13 MR. MALISH: No. I'm just trying to --
14 basically I'm impeaching her on her statement.

15 COMMISSIONER KERR: Which is fine, but let's --
16 I have just suggested there ought to be -- you asked kind
17 of a compound series of questions and I'd ask you to ask
18 maybe one at a time because she looked confused and I was
19 confused.

20 MR. MALISH: Okay.

21 COMMISSIONER KERR: But you're welcome to
22 approach her, I just would like -- let's kind of do it --
23 get it --

24 Q. I had a simple question. And my question was -- I

1 was asking you to confirm that your role was to learn what
2 BellSouth's position was and then communicate that to the
3 North Carolina Commission. Those are yes or no questions.
4 Is that your role?

5 A. I answered your question with a yes and I
6 explained it and I will explain it further.

7 Q. Well, that's okay. It's not necessary. I just
8 wanted to make sure you understand what my question was.

9 MR. RANKIN: As long as she's allowed to --

10 COMMISSIONER KERR: Ms. Tipton, if you need to
11 explain your answer, you certainly can explain your
12 answer.

13 A. Thank you. I recall the question in my deposition
14 and I believe that in and around that questioning what we
15 were talking about was learning about the facts of the
16 complaint case and whether I had been involved in the
17 complaint case. And I believe we've clearly established
18 that I was not involved with dPi in particular prior to
19 the time in which the Complaint was filed.

20 Was I familiar specifically with BellSouth's
21 position on offering resellers the promotions that are
22 offered on the retail side of the house. That specific
23 question was not asked by Mr. Malish and I want it to be
24 clear that I was very familiar with that position and

1 policy prior to dPi's filing of any complaints. That's
2 not something I had to learn. I was already familiar with
3 that and he's tried to establish that I had no knowledge
4 whatsoever of any of the facts in this case.

5 MR. MALISH: No further questions.

6 COMMISSIONER KERR: Public Staff? Yes, sir.

7 CROSS-EXAMINATION BY MR. DAIGNEAULT:

8 Q. Good afternoon, Ms. Tipton.

9 A. Good afternoon.

10 Q. Can I refer you to Page 8 of your rebuttal
11 testimony?

12 A. Sure.

13 Q. Specifically the sentence that starts on line 17,
14 "As referenced above, BellSouth revies the service
15 requests of its own customers."

16 A. Yes.

17 Q. My question is, is the service request by
18 BellSouth end users similar to the credit request by the
19 reseller, in this case dPi?

20 A. The process that BellSouth has when a customer
21 applies for service is very similar, I presume, to the
22 process that dPi had in interfacing with its customer. So
23 those are the two processes which really should be
24 compared.

1 And in regard to obtaining credits for like the
2 line connection waiver promotion, at the time a BellSouth
3 customer calls into BellSouth or a potential customer
4 calls into BellSouth to obtain service, at the time that
5 that service request is actually received and processed
6 and the customer service rep has that customer on the
7 line, the customer is qualified for a promotion at that
8 time.

9 Likewise, dPi could do the same thing, but they
10 don't. They choose instead to rely upon the billing data
11 that BellSouth generates to them. I believe Mr. Malish
12 referred to that this morning as the decoding of billing
13 data. But in fact, dPi, when receiving a request from a
14 customer, while they're on the telephone with them because
15 they receive their request for service -- I believe all of
16 them are on the telephone, I'm not positive about that --
17 they could qualify that end user at that very time for
18 whatever promotion they're seeking to qualify under.

19 So let's use the line connection waiver since
20 that's what is at issue here. At the time the customer
21 requests service, if they're only requesting dPi's basic
22 service, then they -- based upon BellSouth's
23 interpretation and BellSouth's actual promotion it offered
24 its retail end users, it would essentially disqualify

1 those customers from receiving the line connection waiver
2 charge.

3 But customers that called in and requested one of
4 their feature packages -- I don't recall what they're
5 called. I've gone online and looked at their website and
6 I've actually called in and talked to one of their service
7 reps. But those would qualify because they offer more
8 than one feature. I think the two feature packages I
9 looked at on the web -- actually I have it right here --
10 is called a premier package and the complete package, both
11 of those have at least two. They have it looks like
12 three, four, five features, so those would qualify. And
13 they could qualify that end user right there while they
14 have the end user on the phone and then create some type
15 of log or spreadsheet very similar to what they already
16 submit to BellSouth.

17 Q. So the BellSouth end user is automatically
18 qualified to receive that credit?

19 A. They're not automatically. Once the service rep
20 determines that they are qualified, then the service rep
21 then is able to put an entry on the service order as it
22 flows through the system.

23 Q. And the service rep will do that automatically?

24 A. Only if they qualify.

1 Q. Right. But the customer would have to take an
2 extra step to request?

3 A. Well, actually the customer does -- when they call
4 in, they typically have to request. They've been sent a
5 direct mail piece and this is -- for line connection
6 waiver, it's for reacquisition and winover customers, so
7 it's someone that we've reached out to trying to win from
8 perhaps another CLEC.

9 And so in those cases the customer would be
10 calling in to a very special number and they would have to
11 request the particular promotion.

12 Q. And I understand that BellSouth's relation to its
13 end user is similar to dPi's relation to its own end
14 user --

15 A. Yes.

16 Q. -- but that dPi has an extra step of filling out
17 that bar request to BellSouth to receive the credit,
18 correct?

19 A. That's correct.

20 MR. DAIGNEAULT: No further questions.

21 COMMISSIONER KERR: Redirect?

22 MR. RANKIN: No redirect.

23 COMMISSIONER KERR: Commissioner Ervin?

24 EXAMINATION BY COMMISSIONER ERVIN:

1 Q. I'm afraid I'm going to carry out the threat I
2 made earlier, Ms. Tipton. I essentially asked this same
3 question of Mr. Bolinger and I just want to get your view
4 of it as well.

5 Is there any BellSouth document that you contend
6 supports your contention that these blocking -- I hesitate
7 to use the word feature, but I don't know what else to
8 call them -- that these blocking features are not features
9 of the type that are sufficient to trigger the
10 applicability of the line connection waiver promotion?

11 A. Yes. I would direct you to the tariff.

12 Q. Which part of the tariff?

13 A. I believe Mr. Shore handed out this morning --

14 Q. It's BellSouth Cross 2.

15 A. Probably. Section -- just to be clear, Section
16 A13.19.

17 Q. Are you referring to the definitional section?

18 A. I'm actually referring to the entirety of the
19 section because there are several places within the tariff
20 document that I believe demonstrate -- first and foremost
21 is when you're talking about a feature, I think you could
22 ask most people that know anything about telecom, you
23 know, what's a feature? Oh, it's ability to do something,
24 such as the call return. I think Mr. Shore walked through

1 what the definition of each of these features are.

2 Additionally, I would point to the footnote at the
3 bottom of the rates and charges section. While I believe
4 Mr. Malish made the comment that there's no specific note
5 relative to line connection waiver, BellSouth doesn't put
6 line connection waiver in many of its other promotions
7 directly into its tariff. The only supposed promotional
8 offer that's directly in the tariff is the multi-feature
9 discount plan. And that's just a long-standing discount
10 plan; it's not considered a promotion. Because a
11 promotion is something that's only offered for a defined
12 period of time.

13 Q. Secondly, does BellSouth have a promotion that
14 involves in some form the waiver of the CREX charge?

15 A. I'm not familiar with that. I actually tried to
16 get that clarification. I'm not personally aware that
17 there is an active promotion in North Carolina that
18 somehow involves the waiver of the CREX charge, but I
19 have --

20 Q. What I'm hearing you say is you don't know one way
21 or the other?

22 A. Right.

23 Q. Okay. Thank you.

24 EXAMINATION BY COMMISSIONER KERR:

1 Q. Ms. Tipton, let me ask you to look at BST
2 Cross-Examination Exhibit No. 2, which is the tariff or
3 part of the tariff. Do you have that in front of you?

4 A. I do.

5 Q. On the last page, A13.19.4, rates and charges for
6 residence?

7 A. Yes, sir.

8 Q. So it would be A (1), (2) and (3). There is the
9 footnote of the denial of per use and I think it has the
10 corresponding USOC codes and those that have been in
11 dispute here with respect to the two features.

12 A. Yes, sir.

13 Q. That note uses the term features to describe --
14 well, let me just say the footnote uses the term features.
15 And I think at least a reasonable reading of it, it is
16 using that term in the discussion of the blocking
17 capability.

18 Can you -- that seemed a little inconsistent with
19 your testimony or your position or your company's
20 position. Can you explain to me how the term "feature"
21 ends up in footnote one?

22 A. Yeah. I mean, to the best of my ability I'll
23 explain it because I certainly wasn't involved in
24 developing this particular tariff.

1 When developing promotions that are offered to the
2 retail customer, BellSouth uses the term feature to apply
3 to features that are purchased by the tariff, meaning add
4 revenue value. Perhaps, you know -- I've been in telecom
5 for 18 years. And we've, in my experience, had not
6 referred to blocking as a standalone feature. The feature
7 was called return blocking, was just the blocking of that
8 feature.

9 So my belief is that there's been a whole lot more
10 focus in this particular proceeding perhaps generated by
11 my own rebuttal testimony. I'll admit that. There's been
12 a whole lot more focus on what the definition of a feature
13 is or is not or is that are these USOCs actual features.

14 What the real crux of the matter is, is the
15 promotion of the line connection waiver charge that was
16 offered to BellSouth's retail end users did not include
17 these USOCs. And so BellSouth is not obligated to include
18 that to its resellers. That's what the issue is, whether
19 you call it a feature or you call it a boomerang. And
20 perhaps it created a lot more confusion in this case than
21 was actually necessary.

22 But the bottom line is the promotion that was
23 offered to retail, these were not qualified. We
24 communicated that to dPi back in April of 2005.

1 COMMISSIONER KERR: Any questions on our
2 questions?

3 RECROSS EXAMINATION BY MR. MALISH:

4 Q. I want to make sure that I understood what you
5 were talking about with the Commission staff here.

6 Ms. Tipton you're not saying -- I hope you're not
7 saying that dPi's -- the person who takes the phone call
8 from an end user for dPi has the ability to send an
9 automated order in to BellSouth through Lens (phonetic) or
10 whatever the electronic data interface is in order to get
11 the promotional price right then and there? That's not
12 available to dPi, is it?

13 A. No, it's not. But what they could do is begin to
14 populate their credit request form for accounts that
15 actually qualify for the promotion.

16 Q. Right. But the answer to my question, then, was
17 that's not available?

18 A. Correct.

19 Q. You mentioned that you were not aware of an active
20 CREX promotion or refund program. Are you aware of an
21 inactive one?

22 A. Actually, I can't say one way or the other,
23 whether there is an active one or an inactive one. I
24 don't know.

1 Q. Are you aware that in the UNE context these USOCs,
2 BCR, BRD, HGB are charged as features?

3 A. I don't have personal knowledge of that and I
4 believe it's irrelevant to the discussion here because
5 this is about a resale promotion, not about UNE prices.

6 Q. So you can't deny that?

7 A. I can't say one way or the other, but it has no
8 relevance.

9 MR. MALISH: No further questions.

10 FURTHER EXAMINATION BY COMMISSIONER KERR:

11 Q. I have one more. And I think you've alluded to
12 this as Commissioner Ervin and I were chitchatting, and I
13 meant to ask you.

14 You have said that BellSouth does not make the
15 line connection charge waiver available to its customers
16 who purchase basic service with two of these blocking
17 features; is that correct?

18 A. Yes. If -- it's the only thing, it's the totality
19 of what they've subscribed to is basic service and one of
20 these -- or two of these three blocking features, BRD,
21 BCR, HBG, I think is what it's called.

22 Q. And you know that how?

23 A. I know that from the discussions that I've had
24 with the individual responsible for executing on

1 promotions on the retail side of the house and I know that
2 from talking with Kristy Seagle who has also spoken with
3 more than one individual on the retail side of the house.

4 Q. Is there a written policy that predates this
5 dispute that supports that position or do you know it only
6 anecdotally that others have told you, well, we don't do
7 that? In other words, can you testify that someone has
8 asked and been denied that or is there a written policy
9 that says it doesn't apply?

10 And I'm getting to the quality. I know you've
11 testified that you don't do it. I'm looking at trying to
12 figure out quality of the basis for your testimony that --
13 or what is the basis for that testimony?

14 A. What I can tell you is that I asked specifically
15 for a query to be run to determine if any BellSouth end
16 users had been granted a line connection waiver that had
17 only basic local service and two of these blocks with
18 nothing else, two or more of these just free features,
19 free whatever they are.

20 And what I was told -- you see I do it too. What
21 I was told, there are none. And when I asked -- you know,
22 I've asked the question 50 ways to Sunday and it is
23 BellSouth's policy that these do not apply to this type of
24 promotion.

1 I cannot answer whether there is -- I haven't
2 personally seen the written document itself, but it's my
3 understanding is this is the policy; it's always been the
4 policy. It's the way the promotion has been designed.
5 We've had this promotion, the sign available for several
6 years and that's the application and the practice, the way
7 that it has always been applied.

8 Q. I suspect you've got other resale -- wholesale
9 resale customers who are in the prepaid business and make
10 similar requests for service as dPi?

11 A. Yes.

12 Q. Has a similar dispute ever arisen with respect to
13 the availability of these promotions and other prepaid
14 resellers?

15 A. Yes. In fact, the company Lost Key represents
16 several resellers with BellSouth and these same issues
17 have come up with other resellers.

18 And I'll also say that it's my understanding that
19 prior to a certain point in time, BellSouth had actually
20 given back the credit, had given the credits for some of
21 these accounts that really shouldn't have qualified
22 because BellSouth wasn't doing an appropriate review of
23 the submissions.

24 Q. And the policy that we've talked about in terms of

1 the availability of the promotion in the context of a
2 request for basic service and two of the blocking features
3 have been consistently applied to all such requests by
4 resale -- wholesale resale customers?

5 A. Yes. Since we modified the process. Now prior to
6 that it had not, but since we've modified the process we
7 have consistently applied it.

8 COMMISSIONER KERR: Questions on our questions?

9 MR. MALISH: Last question.

10 COMMISSIONER KERR: Yes.

11 FURTHER RECROSS EXAMINATION BY MR. MALISH:

12 Q. Ms. Tipton, I believe you stated that y'all ran a
13 query and that the result of that query was that SBC had
14 never given its end users this -- the benefits of this
15 promotion in a situation where they had the basic service
16 plus one -- or two or more of those blocks; is that
17 correct?

18 A. Yes. Except that we are BellSouth and not SBC.

19 Q. Sorry. I do both, so -- you might soon be one.

20 A. Good point.

21 Q. I think it would be interesting to know how many
22 times BellSouth customers applied for that promotion under
23 those circumstances and were denied?

24 A. I don't know.

1 Q. Of course BellSouth's general makeup of its end
2 users aren't the same credit challenged folks that are at
3 dPi; is that fair to say?

4 A. I'm sorry, could you repeat that?

5 Q. You agree with me that in general overall
6 BellSouth's customers are not the same kind of credit
7 challenged folks that are ending up with service at dPi?

8 A. I would say as a percentage of our base not,
9 absolutely not because I have a much larger base. And so
10 I'm sure some of our customers are, but certainly not the
11 same percentage as dPi.

12 Q. So the probability that any one of those credit --
13 you know, one of those customers of BellSouth would be
14 attempting to order such a combination would be
15 proportionally less as well?

16 A. I could guess, but I don't know.

17 MR. MALISH: No further questions. Thank you.

18 COMMISSIONER KERR: Mr. Gillam?

19 CROSS-EXAMINATION BY MR. GILLAM:

20 Q. Do you know whether there has been any situation
21 in which a -- in which a CLEC requested to receive refunds
22 for line connection waiver or SSCW on the basis that its
23 customer had basic service and these blocking type
24 nonpaying features and was denied and this was -- and this

1 matter came before a regulatory commission and a ruling
2 was made?

3 A. I'm not aware that that has occurred.

4 Q. And would you know if it had occurred?

5 A. I should know if it had occurred, yes. But I'm
6 not aware -- at least in BellSouth's region. Now I don't
7 know about outside of that. But in BellSouth's nine state
8 serving area, I'm not aware that that has occurred and I
9 should be aware if it had.

10 Q. Now looking at it from the standpoint of an end
11 user customer requesting to receive such waiver and
12 BellSouth not being willing to grant the waiver because
13 these were nonpaying features, has that come before a
14 regulatory commission?

15 A. I don't know.

16 Q. Would you know if it had?

17 A. No, not necessarily.

18 Q. That's something that you're --

19 A. Yeah. Sometimes those are handled in a different
20 type of form rather than a formal pleading filed at a
21 Commission, and so sometimes those are handled more as an
22 executive escalation, even though the complaint comes to
23 the Commission and then goes to an executive escalation
24 because it's typically a phone call and so there's no

1 document exchange and that's not distributed broadly
2 within BellSouth.

3 Q. Okay. Thank you.

4 COMMISSIONER KERR: Anything further for
5 Ms. Tipton? Mr. Rankin?

6 MR. RANKIN: No.

7 COMMISSIONER KERR: Ms. Tipton, thank you.

8 (WITNESS DISMISSED.)

9 Anything further from BellSouth?

10 MR. RANKIN: Nothing further.

11 COMMISSIONER KERR: Public Staff, do you have
12 anybody you want to call?

13 MR. GILLAM: No, sir, we do not.

14 COMMISSIONER KERR: Anything further from
15 BellSouth? Public Staff? All right. I've got a couple
16 of matters. Let me talk to you all off the record and
17 then we'll go back on the record.

18 (DISCUSSION HELD OFF RECORD.)

19 COMMISSIONER KERR: All right. Let's go back on
20 the record. There are three issues that we need to take
21 up on the record before adjourning. First is the matter
22 of admission of depositions, their depositions of the
23 complainant's witnesses and also Ms. Tipton. We're going
24 to admit those. Copies of those deposition are admitted.

1 I don't think they need to be identified other than that.
2 I think just admit them as the depositions.

3 (Whereupon, the depositions of B. Bolinger,
4 S. Watson and P. Tipton were admitted into
5 evidence.)

6 Secondly, Chairman Sanford participated in this
7 matter up until about ten minutes till 1:00 and then we
8 concluded the testimony at right about 2:00 by the clock
9 in here, so she missed a little more than an hour of it.

10 I have asked the parties whether or not they
11 would consent to her reading that part of the transcript
12 that she was not physically present. She was not present
13 because of an unavoidable conflict that developed during
14 the course of the hearing. And the parties have assured
15 me off the record that they stipulate to her doing so, to
16 reading the transcript. And I am going to ask on -- and
17 to participate in the decision-making based on that.

18 And I just on the record want to ask both
19 counsel for the parties that that is, in fact, the case
20 and no one has an objection to her reading the transcript,
21 the portion of the transcript that she missed and
22 participate in the decision; is that correct?

23 MR. SHORE: Correct from BellSouth's point of
24 view, yes, sir.

1 MR. MALISH: Correct from dPi's point of view.

2 COMMISSIONER KERR: Finally is the matter of
3 briefs and proposed orders. And what I will do is ask
4 that they be filed 30 days from the date of the mailing of
5 the transcript. And if that doesn't work, once the
6 transcript's mailed, let us know and we will consider an
7 extension of that time.

8 Anything further?

9 MR. MALISH: Mr. Chairman, I do have one other
10 thing. Both sides have mentioned the tariff. I don't
11 know that either side has offered it into evidence as an
12 exhibit. And it's obviously something that the Commission
13 could take judicial notice of since it's filed with the
14 Commission, but I would like to go ahead and make a formal
15 motion to have "A13 Miscellaneous Service Arrangements"
16 put on the list of exhibits.

17 COMMISSIONER KERR: A portion of it, at least,
18 is BST Cross 2. I don't know if that's the complete --

19 MR. MALISH: If that has the portion that has
20 the rates and charges with the footnotes on it --

21 COMMISSIONER KERR: That's got the part you're
22 most interested in.

23 MR. MALISH: Yes.

24 COMMISSIONER KERR: It's got the part you think

1 is most important.

2 MR. MALISH: Very good.

3 COMMISSIONER KERR: But why don't y'all just --
4 if this is a complete -- if that's not what you want in
5 there, we certainly -- if you want to file a late filed
6 exhibit, which is the complete tariff, it is obviously
7 something that we can take judicial notice of. And so if
8 you want to file it in order to reference it as an
9 exhibit, I think that would be fine too. But I do think
10 it's there, the part we've talked about.

11 MR. MALISH: Certainly.

12 COMMISSIONER KERR: Anything else?

13 (No Response.)

14 All right, thank you.

15

16 Whereupon, the hearing was adjourned.

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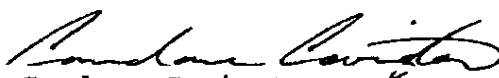
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CERTIFICATE

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The undersigned Court Reporter certifies that this is the transcription of notes taken by her during this proceeding and that the same is true, accurate and correct.


Candace Covington
Court Reporter II