

2. The April 15, 2008, 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: Tuesday, April 15, 2008

3 DOCKET NO.: P-55, Sub 1577

4 TIME IN SESSION: 9:30 a.m. - 11:35 a.m.

5 BEFORE: Commissioner James Y. Kerr, II, Presiding  
6 Commissioner Sam J. Ervin, IV  
7 Chairman Edward S. Finley, Jr.

8 IN THE MATTER OF

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

11 VOLUME 1

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

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I N D E X

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STEVEN TEPERA

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1           COMMISSIONER KERR: Good morning. Let's come on  
2 the record. I now call for hearing Docket No. P-55, Sub  
3 1577. My name is Commissioner Jim Kerr. I will be  
4 presiding this morning. With me are Commissioner Jimmy  
5 Ervin and Chairman Ed Finley.

6           On August 25, 2005, dPi Teleconnect, L.L.C.  
7 filed a Complaint against BellSouth Telecommunications,  
8 seeking credit for resale of services subject to allegedly  
9 to promotional discounts in accordance with their  
10 interconnection agreement. Among other things, dPi resells  
11 BellSouth's retail residential telephone services, some of  
12 which are subject to BellSouth promotional discounts. The  
13 discount dPi sought credit for in this proceeding is the  
14 Line Connection Charge Waiver (LCCW), which BellSouth gave  
15 to customers that purchased certain packages or features.

16           On March 1, 2006, the Commission held an  
17 evidentiary hearing in Raleigh with witnesses from dPi and  
18 BellSouth presenting testimony and exhibits. The Public  
19 Staff's intervention and participation in the proceeding  
20 was recognized pursuant to Commission Rule R1-19(e).

21           On June 7, 2006, the Commission issued an Order  
22 Dismissing the Complaint. Specifically, the Commission  
23 held that dPi was not entitled to the credits that it  
24 sought because the interconnection agreement between

1 BellSouth and dPi precluded a similarly situated BellSouth  
2 customer who only purchased basic service and received the  
3 two free blocking features provided by BellSouth from  
4 receiving the LCCW.

5 On July 6, 2006, dPi filed a Motion for  
6 Reconsideration of the Commission's June 7, 2006 decision.  
7 On October 12, 2006, the Commission denied dPi's Motion  
8 for Reconsideration.

9 On October 26, 2006, dPi challenged the  
10 Commission's dismissal of its Complaint by filing a  
11 Complaint in federal district court for the Eastern  
12 District of North Carolina alleging that the Commission  
13 had erred by failing to award it the credits that it was  
14 due by failing to properly analyze the evidence presented  
15 and inappropriately interpreting the interconnection  
16 agreement between dPi and BellSouth in violation of the  
17 Telecommunications Act of 1996. The North Carolina  
18 Utilities Commission, Former Commissioners JoAnne Sanford  
19 and Robert E. Koger, Commissioners Robert V. Owens, Jr.,  
20 Sam Ervin, IV, Lorinzo Joyner, James Y. Kerr, II and  
21 Howard Lee in their official capacities as Commissioners  
22 of the North Carolina Utilities Commission, and BellSouth  
23 Telecommunications, Inc., were named defendants in the  
24 suit.

1           On September 25, 2007, US District Court Judge  
2 James C. Dever, III, issued an Order affirming the  
3 Commission's decision and denying dPi's request for  
4 relief. dPi appealed Judge Dever's Order to the United  
5 States Court of Appeals for the Fourth Circuit on October  
6 18, 2007. Pursuant to Fourth Circuit rules, the parties  
7 were scheduled to mediate the dispute on December 7, 2007.

8           On November 19, 2007, dPi filed an unverified  
9 Motion with the Commission Clerk pursuant to GS 62-80  
10 requesting that the Commission reconsider its decision  
11 dismissing the Complaint against BellSouth. dPi alleged  
12 that it had discovered evidence in a proceeding before the  
13 Florida Public Service Commission that Pam Tipton, the  
14 primary BellSouth witness in the proceeding before this  
15 Commission, had provided false testimony to this  
16 Commission. Specifically, dPi claimed that Tipton's  
17 testimony that BellSouth did not provide promotion credits  
18 to its end users who order basic service plus two free  
19 TouchStar Blocking Features was false.

20           On December 14, 2007, the United States Court of  
21 Appeals for the Fourth Circuit issued an Order holding the  
22 matter before it in abeyance pending a resolution of dPi's  
23 Motion to Reconsider by the North Carolina Utilities  
24 Commission.

1           On December 17, 2007, dPi filed the Affidavit of  
2 Steven Tepera, I apologize if I got that right -- wrong I  
3 mean. I can be corrected -- support of the previously  
4 filed November 19, 2007 Motion. The Affidavit was  
5 denominated as "Affidavit Explaining the Methodology of  
6 the Calculations in the Appendices to dPi's Motion for  
7 Reconsideration of Decision Based on Testimony Now Known  
8 to Be False."

9           On that same date, BellSouth filed its response  
10 in opposition to dPi's Motion to Reconsider. BellSouth  
11 asserted that the materials upon which dPi relied upon do  
12 not in any way invalidate the testimony given by Pam  
13 Tipton in these proceedings. The filing was accompanied  
14 by a cover letter which explained that dPi served  
15 BellSouth with the Tepera Affidavit on the day that  
16 BellSouth was filing its response, and that BellSouth  
17 reserved the right to respond to the Affidavit after it  
18 had a chance to review and digest the information  
19 contained therein.

20           On January 2, 2008, dPi responded to the  
21 December 17, 2007 BellSouth response. dPi alleged that the  
22 bottom line was that, contrary to the original testimony  
23 of the BellSouth witness, BellSouth repeatedly and  
24 regularly waived the LCCW charge for those customers

1 taking just basic service and two free TouchStar blocking  
2 features.

3 On January 22, 2008, BellSouth, again, filed a  
4 response denying the merit of dPi's allegations.

5 On March 7, 2008, the Commission issued an Order  
6 Scheduling Hearing to receive evidence concerning dPi's  
7 factual allegation that BellSouth presented false evidence  
8 at the March 1, 2006 evidentiary hearing and BellSouth's  
9 response that dPi's allegations cannot be supported. The  
10 Order scheduled the matter for evidentiary hearing on  
11 April 15, 2008.

12 On March 14, 2007, the Commission issued an  
13 Order Clarifying Procedure related to the evidentiary  
14 hearing scheduled for April 15, 2008. In the Order, the  
15 parties were notified that Steven Tepera and Pam Tipton  
16 were necessary witnesses in the hearing; that Mr. Tepera  
17 and Ms. Tipton were required to be present at the hearing;  
18 and, that the Affidavits of Mr. Tepera and Ms. Tipton,  
19 respectively, may be identified by the witness, offered in  
20 evidence, and made a part of the record without further  
21 formality or explanation and the witness immediately  
22 tendered for cross examination "in lieu of prefiled  
23 testimony."

24 On March 26, 2008, dPi filed Direct Testimony of



1 Steven Tepera, Exhibits 10 and 13 and a Consolidated  
2 Exhibit List.

3 On March 28, 2008, BellSouth filed a Motion to  
4 Strike the Direct Testimony of Steven Tepera and the  
5 associated exhibits.

6 On April 1, 2008, dPi filed a written response  
7 opposing AT&T's Motion to Strike the Direct Testimony of  
8 Steven Tepera.

9 On April 1, 2008, the Commission issued an Order  
10 Granting the Motion to Strike Testimony.

11 On April 4, 2008, the Commission granted AT&T's  
12 Motion to Permit the admission of Attorney J. Phillip  
13 Carver pro hac vice.

14 Pursuant to GS 138A-15(e), I hereby remind all  
15 members of the Commission responsible for hearing and  
16 deciding this matter of their duty to avoid conflicts of  
17 interest and inquire as to whether there is any known  
18 conflict of interest on the part of any member of the  
19 Commission assigned to decide this matter.

20 (No response.)

21 I now ask for appearances of counsel beginning  
22 with the Public Staff.

23 (No response.)

24 Others for the Complainant?

1 MR. MCDONALD: Good morning. I'm Ralph McDonald  
2 appearing for dPi Teleconnect, LLC, the Complainant.  
3 Appearing with me is Christopher Malish of the Texas Bar  
4 admitted pro hac vice.

5 MR. RANKIN: Good morning, Commissioners. Ed  
6 Rankin and Phil Carver on behalf of AT&T North Carolina.

7 COMMISSIONER KERR: Any other counsel need to  
8 make an appearance?

9 (No response.)

10 Are there any preliminary matters -- We had an  
11 off-the-record conference with counsel before hand, are  
12 there any other preliminary matters we need to take care  
13 of?

14 (No response.)

15 We are going to proceed in this manner: We  
16 will have brief opening statements by counsel, if they so  
17 choose. We will then have the Complainant tender its  
18 witness for direct examination and cross and redirect.  
19 Then we will have -- Once both sides have rested if  
20 counsel wants to make a brief summary of their case, we  
21 will allow time for that as well.

22 Also, I think that BellSouth had requested the  
23 use of a summary of Ms. Tipton's testimony and that's been  
24 reviewed by counsel for dPi and found it to be consistent

1 with her Affidavit. So we will proceed with the summary,  
2 although one is not required. If you want to have your  
3 client -- your witness briefly summarize that is fine as  
4 well.

5 All of this is a way of saying we are in a  
6 little bit of not a normal procedure. And if everybody  
7 will be patient, we will work our way through this and  
8 everybody be will treated fairly and have the opportunity  
9 to try their side of the issue.

10 MR. CARVER: I have one question. I should have  
11 asked it earlier, but it just slipped my mind. The direct  
12 portion of the testimony, will this be like a typical  
13 hearing where the Affidavit will just go in and the  
14 witness will be tendered for cross-examination or will  
15 there be additional direct to elicit live testimony?

16 COMMISSIONER KERR: As I have contemplated this  
17 I have thought that there would be additional direct if it  
18 were necessary. The Affidavits were filed some time ago  
19 and this is a little bit of a moving target. My main  
20 thinking is if we are all gathered here today, I want to  
21 make sure we get everything on the record before us to  
22 resolve the case. So I don't want to arbitrarily limit  
23 the testimony one way or the other. I would hope that the  
24 Affidavit and the summary of the Affidavit would cover

1 most of it. But I don't want to argue by way of  
2 limitation that someone couldn't elicit additional direct  
3 testimony if they needed to do so. But to some extent I  
4 need to rely on y'all's professional and experienced  
5 judgment as to how you need to get the record the way you  
6 need the record to be to convince us of your side of the  
7 argument. And I don't want to arbitrarily limit that.

8 With that, we will hear from dPi.

9 MR. MALISH: Thank you, Commissioners.

10 Christopher Malish on behalf of dPi. I have a handout, a  
11 power point slide -- since I don't have a real power point  
12 to do, this may or may not help. And there is actually  
13 more on this I will be talking about today because this  
14 basically summarizes the whole case. And we are going to  
15 focus just on a little part of it today.

16 Commissioners, if you will remember the  
17 whole case basically originates from BellSouth's  
18 obligation to provide at wholesale the same kind of  
19 promotion it provides to its customers at retail. And so  
20 at the end of the day the question that we are looking  
21 at -- this is my clever artwork on the situation. I don't  
22 know if y'all can see that. I will come a little bit  
23 closer -- the question is: If AT&T provides its retail  
24 customers with this promotion -- I have abbreviated this

1 1FR plus blocks. That is basic service plus blocks -- if  
2 they provide that LCCW promotion to its retail customers,  
3 and when dPi orders those same -- orders configured the  
4 same way that it is with basic service -- 1FR plus the  
5 blocks, it's entitled to the promotion as well.

6           When we had this hearing two years ago,  
7 approximately two years ago, this Commission was  
8 particularly interested in this component: What AT&T  
9 provided to its retail customers. Not so much what the  
10 policy was, but what the practice was between AT&T and its  
11 retail customers. And the testimony that this Commission  
12 found to be dispositive was Ms. Tipton's testimony that we  
13 don't give that to our retail customers. It's not our  
14 policy. It never has been. It's not our practice. We  
15 don't do that.

16           In fact, Ms. Tipton testified she had had  
17 queries run -- a fairly nebulous statement -- but repeated  
18 that she had queries run, and that they had shown there  
19 was no customers of AT&T placing orders for 1FR plus  
20 blocks that were getting their line connection charge  
21 waived. That is something we weren't able to test here in  
22 North Carolina for various different reasons. But we were  
23 able to test in the other BellSouth's states starting with  
24 Florida.

1           And in Florida they produced a stack of about a  
2 thousand pages of spread sheets filed with this Commission  
3 actually showing the orders that they provided -- that  
4 they processed -- for their retail customers just taking  
5 that 1FR and these blocks at retail. And that showed that  
6 depending upon the month you are looking at, approximately  
7 40, 10 percent of the time, their retail customers were  
8 not being charged a connection charge.

9           We summarized all of the spread sheets with some  
10 graphs and charts. This is not exactly the same thing as  
11 what we provided the Commission with Mr. Tepera's  
12 Affidavit because this has plotted on it some hurricane  
13 activity as well. It's something that we mentioned in our  
14 reply -- it's something we mentioned in our reply those  
15 dates, but they weren't on the original filing.

16           Now, the reason why we can use data from the  
17 Florida here in North Carolina is because these are  
18 basically the same kinds of systems. In other states,  
19 BellSouth has acknowledged that "credit requests are  
20 handled on a regional basis, according to procedures that  
21 are common to the entire region. Therefore, there is no  
22 reason to think that retail orders submitted in, for  
23 example, Florida would be handled any differently than  
24 orders submitted in North Carolina or Alabama. Consistent

1 with this, when dPi filed its Motion for Reconsideration  
2 in North Carolina, it did not submit North Carolina data.  
3 Instead, dPi's Motion was premised entirely upon the data  
4 produced in Florida. AT&T did not object because, again,  
5 there was no reason to think that the data would vary from  
6 state to state." So that's why we are able to use or draw  
7 some of the same conclusions from the data that you would  
8 get if you saw the same thing in North Carolina.

9           If you flip to the last pie chart on this stack,  
10 this gives you a total for the entire years of data that  
11 were produced to us, which was May of 2003 through August  
12 of 2007. It came in two separate data sets. And Mr.  
13 Tepera will talk to you about why we used the data set  
14 that we used. But basically we used what they provided us  
15 relying that they were answering the discovery that we  
16 asked them. But what is interesting is that approximately  
17 20 percent over this entire time of the people that are  
18 ordering 1FR plus blocks at retail are not being charged a  
19 line connection charge at all. So they are having it  
20 waived. The best explanation from our view as to why more  
21 people aren't getting it is because the line connection  
22 charge waiver is only available to those end users which  
23 are re-acquisitioned customers. And that is a small  
24 percentage of BellSouth's new customers as a whole. That

1 is the best explanation for it.

2           There are a very small number of reasons why  
3 some of these reconnections are being done without charge.  
4 For example, Ms. Tipton recognizes that or claims that  
5 some of these were disconnects that were done in error,  
6 and, therefore, reconnected at no charge. But that,  
7 according to her, is approximately 15 percent of this red  
8 slice. And there is no good explanation for why the rest  
9 of these people got the line connection charge waived  
10 except for the line connection charge waiver. There is no  
11 other applicable promotions for these particular kinds of  
12 orders.

13           The line charge shows what the history was over  
14 time, what percentage was month per month. You will see  
15 that we've -- this is the two data sets. Basically, the  
16 green line represents the average of the two -- the second  
17 data set. The red line represents the average of the  
18 first data set.

19           The red line here is the data set they are  
20 claiming is more reliable than the green data set. They  
21 also claim that if we had used basically the same sort of  
22 data for both sides, then I guess these lines would be  
23 closer together. But you will notice there is actually  
24 there is just a break -- hard break -- between the two.



1 There is obviously hard break between the horizontal green  
2 and the horizontal red line because we are averaging two  
3 separate periods there. But if you look at the blue line,  
4 the trend line, you will see that there's actually three  
5 data points going down from November '04 to January '05.  
6 So there is a trend line coming down before it's lower in  
7 2005.

8           We don't have a very goods explanation for this.  
9 The only thing we know of that would contribute to this is  
10 the fact that dPi filed its Application to have these  
11 sorts of credits refunded to it in August of 2004. And  
12 they were finding ways to explain why they shouldn't have  
13 to give it from basically September through March, I  
14 believe, of 2005. And in 2005 is when they came out with  
15 their policy document and said this is not supposed to be  
16 made available to those taking just 1FR plus the blocks in  
17 question.

18           In summary, Commissioners, it appears to us that  
19 the reality is that from the actual Order that we see is  
20 that AT&T was giving this waiver of the line connection  
21 charge to its retail customers ordering basic service plus  
22 the blocks. That is the one conclusion that can be drawn  
23 from the data. The thing that they said, categorically  
24 did not happen and it just turns out to not be true. The

1 fact that in practice they did waive the line connection  
2 charge for their customers taking just basic service plus  
3 the blocks means that dPi is also entitled to have the  
4 line connection charge waived when it takes basic service  
5 plus the blocks. And I will conclude with that unless the  
6 Commissioners have questions.

7 COMMISSIONER KERR: Mr. Carver?

8 MR. CARVER: Thank you, Mr. Chairman. Phillip  
9 Carver on behalf of AT&T. I didn't really have a formal  
10 opening prepared, but I do have some comments that I would  
11 like to make to sort of set forth our view of what's  
12 happening here.

13 Essentially, when Ms. Tipton testified two years  
14 ago she said is that if an AT&T retail customer ordered  
15 basic local service in two blocks then they would not  
16 qualify for line connection promotion. And the statement  
17 that she made was true then. It's true now. dPi claims  
18 that to the contrary. Of course, they claim not only she  
19 was incorrect, they actually said the statement is false.  
20 So they are imputing her integrity. And they are doing it  
21 entirely on the basis of a document that was produced in  
22 discovery in Florida. And we believe they fail to support  
23 their claim about Ms. Tipton's testimony for three  
24 reasons: The first reason is the data is inherently

1 unreliable. And we made that clear to them from the very  
2 beginning. I will talk a little bit about why that is.

3 The second reason was even if you could rely on  
4 the data, it simply does not say what dPi says it does.  
5 Actually, if you look at the data it really provides no  
6 useful information whatsoever.

7 And the third reason is that Ms. Tipton, as she  
8 describes in her Affidavit, went beyond the data that was  
9 produced in response to their discovery requests and  
10 looked at some service orders that are actually the source  
11 document for which this data was taken. And those service  
12 orders absolutely rebut dPi's interpretation of this data.

13 Now at this point, I need to talk a little bit  
14 about the history of this production in Florida and what  
15 happened. And by the way, counsel is correct, we don't  
16 object to the use of the Florida data here because we  
17 believe that it is consistent from state to state because  
18 it's a regional system. But the problem is this: When  
19 the propounded their request to us in Florida, they wanted  
20 us to go in for a six-year period and look at every single  
21 retail customer that ordered basic service in two blocks  
22 and tell us whether or not they received a line connection  
23 charge. And originally we objected. We said up front our  
24 systems aren't designed to do this. Our systems are not

1 designed to provide forensic detail about what customers  
2 ordered six years after the fact.

3           The ordering systems are basically designed so  
4 the customers place orders, the orders go in. And beyond  
5 that, there is not a paper trail that exist forever. So  
6 right up front we expressed a lot of reservations about  
7 reliability of this data. But it was a request that they  
8 made. So we tried to respond to it.

9           We had a dispute up front because they wanted  
10 six-years data. We said the only thing that we think  
11 might be somewhat reliable is the data from the ordering  
12 system. And we only had that for 2005 to 2007. So we  
13 offered that as a compromise.

14           Now the Florida Commission ruled that that was  
15 an acceptable compromise. They told us to produce that.  
16 They told us we didn't have to produce anything older than  
17 than. So we went ahead and produced the ordering data  
18 from 2005. Now later we went back and we figured out that  
19 if you look at billing data we thought we could extract  
20 some information that was sort of surrogate for the  
21 ordering. We didn't think it was very good. We didn't  
22 think it was very reliable. But we were attempting to be  
23 responsive. So we went ahead, even though we weren't  
24 under any obligation to do so, and we produced data for

1 2003. So we produced the '03 and '04 data also from the  
2 billing system. And, again, at the time we produced it,  
3 we told them our reservations and told them we didn't  
4 think it was reliable. And we still don't. In fact, if  
5 you look at 2005, we produce data to them from both  
6 systems for that year. And according to one set of data,  
7 15 percent of the customers received a waiver. According  
8 to the other set of data, 30 percent of the customers  
9 received a waiver. So, if you look at that particular  
10 year and you look at the data the way it came out, there's  
11 just no way to reconcile it and assume that that's  
12 reliable.

13           Now some of their pleadings, dPi said, well,  
14 it's our data, so, you know, you shouldn't be allowed to  
15 complain about it. But I think the point that I want to  
16 make is it's not really our data. It was something we did  
17 as a customized extraction from our systems in response to  
18 their request. We said all along that the system is  
19 really not set up to do this. We spent a lot of time  
20 programming to try to extract it. But all along we said  
21 it's really not that reliable. However, even if we simply  
22 were reliable, if we look at it, it really doesn't show  
23 anything, and this is the reason: If you look at the '05  
24 through '07, I think that's the part that you can maybe

1 rely on a little bit more. It says that basically when  
2 customer with this ordering profile place an order, 15  
3 percent of them receive a waiver; Eighty-five percent of  
4 them didn't. But it doesn't say why they received a  
5 waiver. And there are at least four reasons why customers  
6 receive a waiver: A promotion is one; the second one,  
7 which Ms. Tipton covers in her testimony, is if a customer  
8 is disconnected in error. And when they are reconnected,  
9 there is no line connection charge when they are  
10 reconnected; a third reason is that when a customer loses  
11 service as a result of the natural disaster. That could  
12 be anything. It could be a hurricane, tornado, flood,  
13 fire, anything else. But when that customer is  
14 reconnected, there is no line connection charge; another  
15 possibility is when there is a split billing situation.  
16 That is when there are two lines that go into a residence  
17 and they are on one account. Let's say roommates move  
18 into a two bedroom apartment, they want to split it out  
19 and make it into two accounts. We have two new accounts,  
20 but there is no line connection charge.

21 So other than the promotion, there are at least  
22 three other reasons why there could be a waiver. And if  
23 we look at the data that is produced, it gives us  
24 absolutely no indication as to the reasons for the waiver.

1 So it is impossible to look at that data and reach the  
2 conclusion that the promotion has been given. All we know  
3 is that the waiver has been given for some reason.

4 Now the third reason I mentioned, and Ms. Tipton  
5 talks about this, is that she went beyond the data that  
6 was produced to dPi and looked at the actual service  
7 orders. And service orders were the source for this  
8 information produced to them. She looked at the service  
9 orders for 2005 through 2007 because that is all that we  
10 have left. And she did a statistically valid sample. She  
11 pulled 136 because the statistician told her that was  
12 enough to get a good representation of the entire  
13 universe. And what she found was that in some instances  
14 the service orders didn't really contain any useful  
15 information. But she did find that in a significant  
16 percentage of them, there is a reason given for the waiver  
17 other than the promotion.

18 And about the disconnects in error, actually  
19 counsel misstated. I think me made a mistake about Ms.  
20 Tipton's testimony on that point because this came up in  
21 Florida two weeks ago. What she found was of the total  
22 universe of waivers that were given, 15 percent of them  
23 based on the service orders were for disconnect in error.  
24 So basically, looking at the sample, the number that were

1 disconnected in error is about the same as total waivers  
2 in the entire universe of 2000. So that single  
3 explanation really could be the entire issue. That could  
4 explain every single waiver. Excuse me. I apologize, I  
5 am having some seasonal allergies, so I may have to stop  
6 from time to time.

7           And the last thing she found by looking at these  
8 service orders is that she looked at the entire 136 orders  
9 and not a single one listed the promotion as the reason  
10 for the waiver being given. So if we look at this all  
11 together, we have data that is questionable to begin with,  
12 we have data that dPi has submitted that doesn't indicate  
13 the reason for the waiver, and then we have an additional  
14 analysis by Ms. Tipton that goes beyond that data and that  
15 rebuts dPi's conclusion that all of these waivers were the  
16 result of promotion. So if you take all that together, I  
17 think there is certainly a basis there to conclude that  
18 Ms. Tipton's testimony was accurate and that dPi has  
19 presented nothing to call that testimony to question.

20 Thank you.

21           COMMISSIONER KERR: All right, dPi call your  
22 first witness -- only witness.

23           MR. MALISH: Thank you. Our only witness is  
24 Steven Tepera.



1 STEVEN TEPERA; Being first duly sworn,  
2 testified as follows:

3 DIRECT EXAMINATION BY MR. MALISH:

4 Q Mr. Tepera, let's begin by having you introduce  
5 yourself for the record, please.

6 A My name is Steven Tepera. I am an attorney for  
7 Foster, Malish and Cowan. And I am an attorney for dPi in  
8 this case. And Commissioner Kerr correctly pronounced my  
9 name, Tepera.

10 COMMISSIONER KERR: I don't mean to embarrass  
11 you, but I pronounce mine Kerr. It's an easy mistake.  
12 It's a phonetically correct pronunciation you gave, but  
13 it's Kerr.

14 Q And Mr. Tepera, you are here today because you  
15 analyzed some materials that BellSouth provided in  
16 response to Discovery requests to dPi; correct?

17 A That's correct.

18 Q And as -- after you performed your analysis, you  
19 wrote down your methods and conclusions of what you found  
20 out in your Affidavit that was filed in this case;  
21 correct?

22 A That's correct.

23 Q And if we were to ask you about what was in that  
24 Affidavit would that basically be your same testimony that

1 you would give orally here today?

2 A It is.

3 Q Would you like to go ahead and summarize that for  
4 the Commission, please?

5 A My summary is going to touch on a lot of what  
6 Mr. Malish covered in his opening because it all sort of  
7 bears in the analysis that I did, I will be going over a  
8 little bit of that again.

9 I will start with the fact that I am talking  
10 about numbers we are using from BellSouth/AT&T's customers  
11 in Alabama -- I mean rather in Florida. And the reason  
12 that's important and the reason it applies here to North  
13 Carolina is simply as Mr. Carver and Mr. Malish pointed  
14 out, there is no objection to the fact this is going to  
15 apply all over the BellSouth states because it's all the  
16 same. It's essentially the same process. They file  
17 documents reflecting that, so we are just assuming this is  
18 all okay. We just simply don't have the North Carolina  
19 data in front of us, otherwise we would be using that.

20 What we did is we propounded discovery requests  
21 on AT&T in Florida to try to fix the problem that we had  
22 here in North Carolina, which is Mr. Tipton testified that  
23 AT&T didn't give its end users, customers whose orders  
24 were identical to dPi orders. So we made a discovery

1 request and asked them for documentation that shows that.  
2 We wanted to see some background documentation. And so I  
3 would have thrown this up on the ELMO, overhead projector,  
4 but I don't have one that will work with non-transparency  
5 here. But essentially, it says, give us "beginning  
6 January 2002, all end users ordering from BellSouth basic  
7 service plus any two of the following three features."  
8 And it goes on to list the three features we are talking  
9 about. So we designed this to say, give us new orders  
10 with basic service plus two of the three Touchstar blocks  
11 that dPi ordered from BellSouth. Tell us how much you  
12 charged your end users.

13           After a discovery dispute, we ended up getting  
14 on September 26 of last year, we received about half of  
15 this stack. We didn't realize we were only receiving half  
16 at the time, but we received about half of this stack.  
17 And it goes at about 38 lines per page how many customers  
18 made this order and whether or not they were given a  
19 waiver. And so my analysis is not complex at all. I just  
20 counted. I went through and counted each one and  
21 highlighted, and we distributed that to the Commission.  
22 And I went through and tabulated on a month-by-month basis  
23 how many were given, how many weren't. And I filtered out  
24 all of the orders that didn't match dPi's orders because

1 they sorta over answered. They answered with not just  
2 basic service plus two blocks. But the also answer with  
3 some orders had Caller ID on it and things like that that  
4 wouldn't apply to today.

5 Then on November 9th, as Mr. Carver pointed out,  
6 they supplement the response -- AT&T supplemented the  
7 response with data from 2003 through 2004. So I had 2003,  
8 4, 5, 6 through August of 2007.

9 As a quick side note here, an issue that's going  
10 to be at dispute here, they say they actually produced the  
11 2005 data as well and they impute some -- I don't know,  
12 some deception on me by not using that. And the answer is  
13 simply: I was given 2005 through 2007 the first time and  
14 then they gave me 2003 through the end of 2005 the second  
15 production. I had already analyzed 2005. So I didn't use  
16 that. And then it also appeared they intended me to not  
17 use it. In the transfer letter Mr. Carver sent to us with  
18 the discovery that says here, thus attached to the  
19 electronic file contains the requested information for the  
20 timeframe of January 1, 2003 through December 31, 2004 as  
21 opposed to 2005. So I used the 2003 and 2004 data from  
22 the second set. And I added that to my analysis. I did  
23 the same thing again, went through one at a time,  
24 highlight the orders, put it in tabulative form and then

1 ended up creating the charts.

2 And the charts are just a summary of their  
3 response to discovery requests, but sorta makes it in a  
4 form that we can use it. This is very useless to go  
5 through this way. I think it's more useful to be able to  
6 look at it. And so I go through those one at a time and  
7 show you what I think each of them says. If you start at  
8 the back, the least fancy of them is that pic chart there.  
9 It doesn't give you a lot of information, but I think it's  
10 important --

11 COMMISSIONER KERR: Let me just -- in trying to  
12 make our transcript legible, let's mark this as  
13 Complainant's Exhibit 1, 2, and 3, numbering from front to  
14 back.

15 THE WITNESS: Okay.

16 COMMISSIONER KERR: So you were talking about  
17 Complainant's Exhibit No. 3.

18 A -- all right. Complainant's Exhibit --

19 MR. MALISH: Steven, are you looking at the one  
20 with the hurricanes on it or --

21 THE WITNESS: I'm looking at what you passed  
22 out.

23 MR. MALISH: Right. But --

24 COMMISSIONER KERR: The pie chart.

1 THE WITNESS: Right. Exactly.

2 COMMISSIONER KERR: He was on Page 3 of what you  
3 handed out, Mr. Malish.

4 A -- so Plaintiff's (sic) Exhibit 3 shows a quick  
5 way of saying, let's not lose the forest for the trees.  
6 No matter what happens on a month-to-month basis or how  
7 many percentages or whatever, it shows at the end of the  
8 day, bottom line, 5,052 BellSouth end users ordered a  
9 basic service plus two of those three Touchstar blocks and  
10 were not charged a line connection charge.

11 Now, there is going to be dispute over what the  
12 red mark means, what the blue mark means. But if you will  
13 remember, the original discovery requests asked simply how  
14 many "new orders" basic service plus two blocks were  
15 there. Whereas the promotion itself requires how many --  
16 requires a winover of basic service plus two blocks. So  
17 what you see in this pie chart is not just winovers, but  
18 people who move into the BellSouth area -- AT&T area and  
19 get a new service; Someone sends their kid off to college  
20 and gets a new service. So all of those would be line  
21 connections that aren't waived. So that's a good part of  
22 the blue portion of this chart here. And so that part  
23 really isn't relevant to this suit today as far as ratios  
24 here at the end of the day because a lot of those would

1 just be cut out because they are not winovers.

2           The red part, we say the best explanation is  
3 simply is they were given the line connection charge  
4 waiver. We know that their line connection charge was  
5 waived. They claim that it was maybe a hurricane, for  
6 instance, because this is Florida that caused the line  
7 connection charge to be waived. But we will discuss that  
8 later and show why that appears to not be true, or a  
9 disconnect in error. Essentially what they are saying  
10 here is if it's a disconnect in error or a line splitting  
11 charge, I believe is Mr. Carver's other argument, that  
12 makes up 20 percent of the total orders. And we just find  
13 that incredible that they would disconnect in error 20  
14 percent of the orders. I think all the Commission would  
15 ever be doing is dealing with customer complaints if they  
16 are disconnecting at that rate. But moving on to the next  
17 chart just because this is just a big summary. Remember  
18 at the end of the day, 5,000 people were given a waiver.

19           The next chart, Complainant's Exhibit 2 shows  
20 you a lot of the same of what the pie chart does, but  
21 splits it out on a month-by-month basis. And the one  
22 important detail this adds is simply to show that each of  
23 those red bars on Plaintiff's (sic) Exhibit 2 represents  
24 raw numbers of how many were given this waiver. It shows

1 that it happened consistently and every single month.  
2 This wasn't some one-time glitch in the computer, for  
3 instance, that allowed this to happen. But every single  
4 month on a month-by-month basis these line connection  
5 charge waivers were given or rather a line connection  
6 charge was waived; however you want to say it if we want  
7 to dispute why it was.

8           And then finally going on to the line graph,  
9 Plaintiff's (sic) Exhibit 1, it's taking -- or Plaintiff's  
10 Exhibit 2 rather and changing it to ratios instead of raw  
11 numbers. I think the important thing that that shows is  
12 that this dispute between dPi and AT&T/BellSouth began  
13 around October 2004. That is when AT&T stopped issuing  
14 these credits. And sure enough, we see an immediate ramp  
15 down beginning October 2004 through November, December and  
16 bottoming out in January 2005 that they stopped giving  
17 this to their end users. We say that the inference is  
18 essentially, they decided to change their policy because  
19 it benefits us more than them.

20           Another important thing that this shows just to  
21 wrap it up here is that the five hurricanes that we  
22 plotted on there seemed to me to no correlation at all as  
23 to whether or not there were more or less orders given.  
24 I think the first three is obviously on a line going up



1 and I want to make sure you are aware of what you are  
2 looking at here. This is saying from 28 to 33 percent.  
3 While that line looks big, it's still within a very narrow  
4 area there. And then down at the bottom, it actually goes  
5 down when Hurricane Katrina came through Florida, slightly  
6 up after Hurricane Wilma. So there really is no  
7 correlation between the hurricanes and the data. The  
8 numbers are what they are. I'm not adding really anything  
9 at all to this. I am just summarizing it. And it just  
10 simply says at the end of the day that this many people  
11 this frequently have their line connection charge waived.

12 EXAMINATION BY COMMISSIONER KERR:

13 Q Let me interrupt and ask a question to make sure I  
14 understand the relationships between Exhibit 3, 2, and 1.  
15 On 1 the vertical axis is the percent of total orders  
16 that received the labor?

17 A It's -- I think you're right. That is kind of  
18 deceptive. Because this data was over productive, it  
19 didn't just give us winovers with a basic service plus two  
20 features, but rather all new orders of basic service plus  
21 two features, it's percentages of new orders. And so  
22 while we can tell from that data that people had their  
23 line connection charge waived, we can't tell how many  
24 winovers had the line connection charge waived. So

1 essentially if you just looked at the winovers, the lines  
2 would all move up because you would be taking out a big  
3 portion of what was the blue portion of Complainant's  
4 Exhibit 3.

5 Q But comparing that -- but that is consistent. For  
6 instance, if you looked at what is represented on Exhibit  
7 No. 1 would be the percentage of the red that's shown on  
8 Exhibit No. 2 --

9 A Exactly.

10 Q -- of the combined red and yellow on No. 2?

11 A Right.

12 Q You are consistent as to what the numerator or  
13 denominator is?

14 A Sure. Sure. If you change say May 2003 on  
15 Complainant's Exhibit No. 2 and you divided the red bar  
16 plus some of the red and yellow, you would get 40 percent.  
17 And that wraps up my summary.

18 MR. MALISH: We move for the admission of the  
19 testimony of Mr. Tepera and Exhibits 1, 2, and 3 into the  
20 record.

21 COMMISSIONER KERR: Move to admit his Affidavit  
22 you said?

23 COMMISSIONER KERR: His Affidavit.

24 MR. MALISH: His Affidavit, yes.

1 COMMISSIONER KERR: Okay. Any objections?

2 MR. CARVER: No objections.

3 COMMISSIONER KERR: So admitted, and

4 Complainant's Exhibits 1, 2, and 3.

5 (Whereupon, the Affidavit of Steven Tepera  
6 and Complainant's Exhibits 1, 2, and 3 were  
7 admitted.)

8 Additional questions for Mr. Tepera?

9 MR. MALISH: I was going to tender Mr. Tepera  
10 for cross.

11 COMMISSIONER KERR: You are welcome to do that.  
12 It shouldn't imply that I'm asking you to ask him  
13 additional questions, but we talked about this at the  
14 outset.

15 MR. MALISH: I don't really think I have any  
16 questions unless something comes up on cross that needs  
17 clarification.

18 COMMISSIONER KERR: Mr. Carver?

19 MR. CARVER: Thank you.

20 CROSS-EXAMINATION BY MR. CARVER:

21 Q Good morning, Mr. Tepera.

22 A Good morning.

23 Q My name is Phillip Carver, and I represent AT&T.

24 And before we get into the substance of your analysis, I

1 just have a few background questions I want to ask you:

2 First of all, what is your educational background?

3 A I have BS in aerospace engineering from the  
4 University of Texas and JD from UT as well.

5 Q Have you ever worked for a telecommunications  
6 company?

7 A I have not.

8 Q Do you have any specialized education that applies  
9 to the telecommunications industry?

10 A Nothing other than work experience.

11 Q So you don't consider yourself an expert in  
12 telecommunications?

13 A I do not.

14 Q Do you have any specialized training or knowledge  
15 regarding computerized ordering systems?

16 A No.

17 Q Do you have any specialized training or knowledge  
18 regarding computerized billing systems?

19 A No.

20 Q Do you have expertise in the particular way that  
21 AT&T's billing and ordering systems function?

22 A Other than knowledge I've gained over the two plus  
23 years of this case, no.

24 Q But you are not a computer expert, you're not a

1 systems expert, you're not a telecom expert; correct?

2 A Correct.

3 Q And do you have any expertise or specialized  
4 knowledge regarding AT&T'S retail customer service  
5 procedures or practices?

6 A No.

7 Q Now, in terms of your analysis as I understand it,  
8 and correct me if I'm wrong, and I am going to summarize a  
9 little bit so we can see what you did. Attached to your  
10 Affidavit there are three Appendices. And the third  
11 Appendices is what AT&T produced?

12 A That's correct.

13 Q You took that Appendices or took that the data  
14 that is part of it and you tabulated it to summarize it  
15 and that is Appendix 2?

16 A Sure. It's just counting. That's all I did.

17 Q And then you took that and you used it to make  
18 charts which are Appendix 1; correct?

19 A Correct.

20 Q So is that -- Have I left anything out or is that  
21 the entire analysis?

22 A I don't know you might end up saying something  
23 that will remind me of something else I did. But  
24 essentially I went through and highlighted every number.

1 I wrote down -- or filtered out all the orders that  
2 weren't 1FR plus two blocks or three blocks. I tried to  
3 create as helpful of a way that we can look at a thousand  
4 plus pages in as an instructive and brief way as possible.

5 Q Did anyone else work with you on this analysis?

6 A Oversight from Mr. Malish. I think that he  
7 pointed out the importance of putting the hurricanes on  
8 there. I think 99 percent of it is probably me.

9 Q Okay. And the information in Appendix 3 as you  
10 understand it, that was originally extracted from service  
11 orders; correct?

12 A I think that it is extracted from billing data and  
13 your service side or whatever the other one is.

14 Q You're right. Thank you for that correction. The  
15 guess the older data would be the billing. But the newer  
16 data, the 2005/2007 -- Let me try it this way: Ms.  
17 Tipton, I believe, has testified that that is data that  
18 came from our ordering system. And the original source  
19 for that was the service orders. My question is: Do you  
20 dispute that?

21 A All I can tell you is what you have told me.

22 Q All right. That is what I wanted to establish  
23 that you don't have any independent knowledge about the  
24 process or where the information came from with the orders

1 themselves?

2 A That's correct.

3 Q You didn't review any actual service orders as  
4 part of your analysis, did you?

5 A No. We reviewed what we were provided. If we had  
6 that, we would have reviewed it, but we didn't.

7 Q You didn't ask for it, did you?

8 A We asked you to show us how much y'all charged in  
9 whatever form you gave that in. I don't want to get in a  
10 fight over that, but, you know, of course we would have  
11 analyzed anyway you would have answered RFI 119.

12 Q Okay. But you didn't specifically propound a  
13 request for service orders, did you?

14 A To the extent that 119 doesn't satisfy that,  
15 you're right.

16 Q By way the way, if I could ask you to do one  
17 thing: I am going to try to ask for the most part  
18 questions that can be answered with a yes or no. So if  
19 you could give me a yes or no before you explain, that  
20 would make the record clearer. So if you could help me  
21 with that, I would appreciate it.

22 A Okay. Well, then to clarify, I think my answer  
23 actually is no.

24 Q No you did not look at service orders?

1 A No. We did not not ask you for the service  
2 orders. I believe that we asked in not North Carolina,  
3 but some of the other BellSouth states is show us the  
4 underlying -- ten copies of the underlying requests as  
5 well. That's my memory of it. Of course, I don't have  
6 that with me. But that is my memory.

7 Q That was the context of a completely different  
8 request though. It didn't have anything to do with 119 in  
9 Florida; isn't that correct?

10 A Like I said, I don't have it in front of me. I am  
11 just going by my memory.

12 Q Our memories are different, so I guess we will  
13 just leave it at that since it's kind of a side issue.  
14 Now in her Affidavit, Ms. Tipton states that AT&T had to  
15 develop a specific methodology to extract this information  
16 in response to dPi's request. You don't have any basis to  
17 dispute that, do you?

18 A The brief answer, again, is no. We expect you to  
19 be able to look at your customers and say what happened.

20 Q Now, you are aware, are you not, that Ms. Tipton  
21 stated that AT&T's systems are not designed to retain this  
22 type of information? You know that's in her Affidavit;  
23 correct?

24 A Yes.



1 Q And you don't have any basis to dispute that, do  
2 you?

3 A If you are asking for -- I know you want yes or no  
4 questions. I want to be as efficient as possible up here.  
5 But you produced data that actually says the information  
6 you claim is not designed to do. And so I don't know  
7 whether or not you have -- if it's specifically designed  
8 for that purpose, but I know that it had that information  
9 in it.

10 Q My question -- so your answer then is: You don't  
11 contest her testimony that our systems are not designed to  
12 capture this type of information?

13 A Correct. All I know is it did capture that  
14 information.

15 Q And in her Affidavit, Ms. Tipton stated that dPi  
16 had requested the ordering activity that it be recreated  
17 in a way that would not yield meaningful results. In  
18 other words, what you requested based on our analysis of  
19 the system, she concluded it would not yield meaningful  
20 results. And you don't have any basis to contest that  
21 conclusion either, do you?

22 A No, I do have basis to contest that. I think that  
23 it all produces meaningful results. I don't think that  
24 this is going to show with scientific accuracy percentages

1 that we are dealing with because you guys could not  
2 distinguish between a new order and a winover order. And  
3 so while at the end of the day, the raw numbers aren't  
4 going to be exactly what we showed as far as how  
5 frequently you give a winover orders identical to dPi;  
6 take the short cut. While I think it does show it did  
7 happen frequently and consistently and a month-by-month  
8 basis, and I think that's the important thing to learn out  
9 of this data.

10 Q You kind of -- you didn't exactly answer my  
11 question and perhaps I wasn't clear about it, okay? You  
12 told me you are not an expert in AT&T systems. You told  
13 me you are not an expert in ordering. You told me you're  
14 not a computer expert.

15 A Correct.

16 Q With that background, what I said was that Ms.  
17 Tipton states in her Affidavit that the extraction  
18 process, the programming process of what had to be done  
19 mechanically and logistically to yield this information  
20 would not result in reliable results. She says that. My  
21 question is from a technical standpoint, you don't have a  
22 basis to have an opinion about that one way or the other,  
23 do you?

24 A No. All I can look at is the product at the end

1 of the day, and it says whether or not a line connection  
2 charge is waived. I think both of our points are made.  
3 So I will stop repeating that.

4 Q So, let's look at the chart. This is the one --  
5 Complainant's No. 3. The first page is three?

6 A No.

7 COMMISSIONER KERR: I numbered them from front  
8 to back, although we started discussing them from back to  
9 front. That would make the pie chart three.

10 MR. CARVER: Okay. Thank you.

11 Q My question goes to the first page. So I guess  
12 that would be No. 1. Now, on this chart the information  
13 from 2005 to 2007, that comes from AT&T's ordering system;  
14 correct?

15 A Correct.

16 Q And the information on the green line, the higher  
17 line from 2003 to 2004, that comes from AT&T's billing  
18 system; correct?

19 A That's correct.

20 Q And I think your summary -- actually it doesn't  
21 say this on here, but I think it says in your Affidavit  
22 that the green line represents about 30 percent and the  
23 red line about 14, 15 percent?

24 A I think it's 28.8 is one number and 14.4 is the

1 other if I recall correctly. But, again, that's my  
2 memory.

3 Q Now, you touched on this in your summary, but AT&T  
4 also provided to you billing information for 2005;  
5 correct?

6 A Correct.

7 Q And in the Appendix 3 that you submitted to the  
8 Commission, it didn't include that information, did it?

9 A No.

10 Q So basically we produced the information to you,  
11 you removed a hundred pages or so and then provided it to  
12 the Commission?

13 A Pursuant to your instructions though.

14 Q Well, let me clarify, okay? I understand your  
15 explanation and I am not questioning your integrity. That  
16 is not what this is about. I'm just trying to understand  
17 what's been provided, what hasn't been provided, what  
18 you've analyzed, what you haven't analyzed.

19 A You're absolutely correct that there are probably  
20 a hundred more pages that I have no idea what they say  
21 because I didn't look at them, more or less that I did not  
22 provide in Exhibit 3.

23 Q That's really what I was getting to with my  
24 question. The '05 data from the billing system -- You

1 told us you didn't provide it to the Commission, you  
2 didn't analyze it?

3 A Correct.

4 Q Okay. And in her Affidavit you are aware that Ms.  
5 Tipton said that she did analyze it and it shows 30  
6 percent waiver for '05 as well as her '03 and '04;  
7 correct?

8 A I am aware of that.

9 Q And after she said that, you still didn't go back  
10 analyze it to see if that was the case?

11 A No, I didn't.

12 Q As you sit here today, if you looked at that '05  
13 data you don't really know whether it would extend out  
14 like this or not, do you?

15 A No. I have no knowledge of that.

16 MR. CARVER: I'd like to ask that, if this is  
17 proper, that the exhibit that I have marked on in order to  
18 ask the witness a question be marked as AT&T CX No. 1.

19 COMMISSIONER KERR: Do you wish to be heard, Mr.  
20 Malish?

21 MR. MALISH: He's just marking it right now.  
22 So, I don't have an objection to that.

23 COMMISSIONER KERR: I'm sorry, I thought you  
24 asked that it be admitted. I apologize. Did you just --

1 MR. CARVER: I may have, but I should have just  
2 asked that it be marked for identification.

3 COMMISSIONER KERR: It will be marked  
4 accordingly.

5 (Whereupon, AT&T CX Exhibit No. 1 was  
6 marked for identification.)

7 MR. CARVER: That is what i intended to do. I  
8 apologize if I misspoke.

9 COMMISSIONER KERR: I likely misheard.

10 BY MR. CARVER:

11 Q So basically if we extended it, it would look like  
12 that?

13 A I don't know.

14 Q Okay. Well in your chart this green line for '03,  
15 you see the level it's at, that represents 30 percent,  
16 roughly; right?

17 A Right.

18 Q Okay. And for '04 it represents 30 percent,  
19 roughly; correct?

20 A Well, not to confuse -- I mean, I did an average  
21 on an annual basis. I put '03 and '04 together. So I  
22 don't know. '03 probably, in my guess, '03 would be a  
23 little bit higher than '04 would be, just looking at the  
24 lines.

1 Q But your average for the two years yields a  
2 straight line?

3 A Right.

4 Q So if Ms. Tipton testified, if '05 was consistent  
5 with '03 and '04, the line would just continue on? It  
6 would just be straight all the way across?

7 A I want to back up again, because I'm not sure that  
8 you understood what I just said: It results in a straight  
9 line because I averaged those two years together. So no  
10 matter what the number would be, it would come out to the  
11 straight line. 2003 I did not analyze separately from  
12 2004. What I did was a I plotted the line, and I visually  
13 saw a graph and thought it would be meaningful to put  
14 those lines in there to show the break.

15 Q I actually did understand, but thank you for the  
16 clarification. Your average for the two years was 30  
17 percent; right?

18 A Correct.

19 Q So Ms. Tipton has testified that based on her  
20 analysis of the '05 data that you were provided and didn't  
21 analyze, it was consistent with the other two years. It  
22 was 30 percent also, roughly. So my question is: If we  
23 were to graphically depict that on your chart, we would  
24 just take that green line and just continue it on for

1 another year; correct?

2 A If that's what the data said.

3 Q Okay. I have a few questions I want to ask you  
4 specifically about your Appendix 3. All of the orders in  
5 Appendix 3 are "N" orders; correct?

6 A "N" orders, yes. New orders.

7 Q And you know that because AT&T told you?

8 A Correct.

9 Q Okay. And "N" orders include in this context  
10 completely new orders to customers that were disconnected  
11 and reconnected and re-acquisitioned or winover customers;  
12 correct?

13 A Yes. Again, based on y'all's representation.

14 Q And you don't dispute that?

15 A No.

16 Q Other than what AT&T has told you, do you have any  
17 personal knowledge of the reasons why the line connection  
18 charge is waived?

19 A As to frequency of them or as to an individual?

20 Q Well --

21 A I don't know what the question is asking.

22 Q I'm asking you what you told us so far -- let me  
23 try to clarify. Mostly you know what AT&T told you and  
24 what you did in your very limited analysis. So I am just



1 trying to be clear on this point also: Did you not have  
2 any personal independent knowledge as to why line  
3 connection waivers are given or aren't given, just  
4 universally; is that correct?

5 A I have anecdotal knowledge that -- or I have  
6 knowledge say for instance whether or not a hurricane  
7 would affect it based on y'all's representations, based on  
8 what happens on CNN and things like that.

9 Q Okay. Well, let me go to some specific reasons:  
10 In her Affidavit, Ms. Tipton says that the line connection  
11 charge is waived when a customer's service is reconnected  
12 after it was disconnected in error. You don't dispute  
13 that, do you?

14 A I don't dispute that.

15 Q And in Ms. Tipton's Affidavit she says that  
16 customer service -- I'm sorry, the line connection charge  
17 for the customer can be waived if the customer loses  
18 services and has it restored after disaster. You don't  
19 dispute that, do you?

20 A I don't dispute that either.

21 Q Okay. And actually, I have a couple other  
22 questions that I want to ask you about this and if I can  
23 pause for a second and have Mr. Rankin pass something out  
24 for me.

1                   Mr. Tepera, what I have given you is a page or  
2 actually two pages from the General Subscriber Service  
3 Tariff from Florida. This is AT&T's tariff. And you see  
4 towards the bottom of the page is a heading, Service  
5 Charge Exceptions and below that it says, Service Charges  
6 do not apply for? Do you see that?

7           A           Yes.

8           Q           Turn to the next page, please. If you look at  
9 Subheading A, No. 7. I will just read it into the record:  
10 It says, the move from a premises which has been destroyed  
11 or made untenable by a disaster such as a hurricane,  
12 tornado, fire, flood, etc., when equivalent service is  
13 established, at the new/temporary location of for the move  
14 back into the original location. Do you see that in the  
15 tariff?

16          A           Yes.

17          Q           Okay. And the so this is the provision that  
18 applies in Florida. So you don't dispute that a customer  
19 -- you may have answered this already -- but you don't  
20 dispute that if a customer loses service and has it  
21 reconnected after disaster, the line connection charge can  
22 be waived, do you?

23          A           No, I don't.

24          Q           And the reasons given here include a hurricane.

1 But it also includes a tornado, fire, flood; correct?

2 A That's correct.

3 Q And it also says, et cetera, meaning it could be  
4 other things; correct?

5 A Sure.

6 Q Now on your chart, I know you said you did an  
7 analysis of hurricane activity. Did you do an analysis of  
8 fires in Florida for the six-year period?

9 A No. I did an analysis of what I thought was  
10 probably going to be most important.

11 Q You didn't do an analysis flooding?

12 A No.

13 Q And there's a fair amount of flooding in Florida  
14 in bad weather seasons; isn't there?

15 A Hurricane season.

16 Q Have you ever lived in Florida?

17 A No, I have not.

18 Q Are you aware of what the weather is like in the  
19 Summer even when there's not hurricanes?

20 A To the extent that I'm aware of the weather  
21 anywhere. I've been to Florida in the Summer.

22 Q But you haven't, for example, lived in Miami in  
23 June, July, and August when it rains every afternoon. And  
24 since Miami is right at the water table, the streets tend

1 to flood. You haven't had any experience with that?

2 A No, I have not.

3 Q So you are not testifying that the only reason  
4 there would be a flood in Florida would be a hurricane,  
5 are you?

6 A That's not my testimony.

7 Q You don't really know one way or the other how  
8 frequently it floods in Florida, do you?

9 A No.

10 Q And you didn't analyze that as part of your  
11 analysis, did you?

12 A I guess I made the assumption that hurricanes  
13 would cause significant floods.

14 Q Okay. But my point is: There are listed in the  
15 tariff four examples and there's an et cetera implying  
16 that there could be other reasons, too. And your analysis  
17 was limited to just one reason and that is hurricanes;  
18 correct?

19 A Sure.

20 Q Thank you. Now, Ms. Tipton also stated in her  
21 Affidavit the line connection charge could be waived in  
22 split billing situations. Do you dispute her statement?

23 A No.

24 MR. CARVER: For my next questions I need to

1 hand out another exhibit.

2 COMMISSIONER KERR: Mr. Carver, did you want to  
3 have the portion of the Florida tariff marked?

4 MR. CARVER: Yes, sir, I do. Thank you.

5 COMMISSIONER KERR: Cross-examination Exhibit  
6 No. 2.

7 (Whereupon, AT&T CX Exhibit No. 2 was  
8 marked for identification.)

9 MR. CARVER: Thank you.

10 COMMISSIONER KERR: Do you want this marked as  
11 Cross 3?

12 MR. CARVER: Yes, please.

13 COMMISSIONER KERR: Okay.

14 (Whereupon, AT&T CX Exhibit No. 3 was  
15 marked for identification.)

16 BY MR. CARVER:

17 Q Let me explain what this is that I've given you:  
18 I took the single page from the Appendix 3 that is  
19 attached to your testimony, and I redacted the account  
20 numbers because that is customer-specific information.  
21 Then you can see I have written, in my sloppy handwriting,  
22 on the left-hand side of the page the numbers one through  
23 six just in note to particular customers. One means the  
24 first one, et cetera. Okay?

1 A Yes.

2 Q The asterisks, that's your's; correct?

3 A The highlighting was mine. You can't see this  
4 because it isn't a color copy. I guess I went through and  
5 made astericks. It came from our side. I can say that.  
6 Maybe Chris made the asterick after I made the highlights  
7 because he was looking at it. I don't know.

8 Q That was my question: When we produced it, it  
9 didn't have astericks. And when we got it back under  
10 Appendix 3, it did.

11 A That's correct.

12 Q So you didn't do those astericks? Mr. Malish did?

13 A I highlight them. I think I made brackets to  
14 indicate when the two separate lines actually represented  
15 a single order. Astericks I don't recall whether I made  
16 those or not. I don't dispute that we did that.

17 Q Okay. And the asterisks indicate an instance in  
18 which the line connection charge waiver was given;  
19 correct?

20 A Correct. Except that one of them actually is two  
21 lines on a single waiver. It's a single order. It was  
22 only waived once there. And you can see that with the  
23 bracket down about maybe ten lines down.

24 Q Okay. Let's just focus for now on the first one.

1 A Okay.

2 Q Based on the information produced on this sheet --  
3 Let me ask you first of all: This particular customer,  
4 this particular line would be the only information in the  
5 entire document that relates to this customer and this  
6 service initiation; correct?

7 A That's correct.

8 Q For those particular customers --

9 A Some of them that is not true on.

10 Q Some of them it's not true? Well, you are talking  
11 about where you have two together like in the case where  
12 you bracketed?

13 A Yes. And there's cases I don't bracket it where  
14 you go and you list half dozen different on a separate  
15 line and so cases like that. But I wouldn't have  
16 bracketed those at all because I didn't count that because  
17 it wasn't 1FR plus two TouchStar block features.

18 Q But for this particular customer, this single line  
19 has all the information about this customer's account;  
20 correct?

21 A That's correct.

22 Q Looking at this line, tell me was this particular  
23 customer disconnected in error and then reconnected?

24 A I don't know.

1 Q Was this particular customer disconnected and then  
2 reconnected after a disaster of some sort?

3 A I don't know.

4 Q Was this particular customer, was their service  
5 established in the context of the split billing situation?

6 A I don't know.

7 Q From looking at the information on this particular  
8 line, can you tell if this customer is a completely new  
9 customer or a winback customer or a customer that was  
10 disconnected and reconnected?

11 A No.

12 Q So basically for this customer based on the  
13 information here, is it fair to say you don't know why the  
14 line connection charge waiver was given?

15 A I think we can do that on every one of these  
16 customers. Individually you can't tell.

17 Q Okay. So you told me for this particular  
18 customer, the individual line provides all the information  
19 about that account?

20 A About that particular account, that's right.

21 Q Okay. So if we went to No. 3, for example -- I'm  
22 going to skip two because that is one of those instances  
23 where they disconnected. But if we went to three, same  
24 answer?



1 A That's right.

2 Q And four, the same answer, you don't know why that  
3 customer had the line connection charge waived?

4 A That's correct.

5 Q And for No. 5 you don't know?

6 A That's correct.

7 Q And for No. 6 you don't know?

8 A Correct.

9 Q And if I went through all of the thousands of  
10 waivers on that large stack of paper, you wouldn't be able  
11 to tell us why any of them actually had the charge waived  
12 individually, would you?

13 A No. Not on an individual basis I couldn't.

14 MR. CARVER: Thank you. That's all I have.

15 COMMISSIONER KERR: Redirect?

16 MR. MALISH: Commissioner Kerr, we have no  
17 redirect.

18 COMMISSIONER KERR: Commissioner Ervin?

19 EXAMINATION BY COMMISSIONER ERVIN:

20 Q Mr. Tepera, I ask you what amount to a couple of  
21 ultimate issues kind of questions. Let's start with the  
22 last set of questions that Mr. Carver asked you. I think  
23 you said, and I believe you testified in response to his  
24 questions rather, that you could not say in any particular

1 instance why the line connection charge was waived?

2 A That's correct.

3 Q The issue here, at least as I understand it, is  
4 the accuracy of Mrs. Tipton's testimony at the original  
5 hearing that BellSouth did not waive line connection  
6 charges for essentially winback customers that had two or  
7 more of these non-billed features?

8 A That's correct.

9 Q If you -- and let me just ask you: If you don't  
10 know in any individual instance why a particular line  
11 connection charge was waived, why do you believe or what  
12 is your basis for contending that at least some of these  
13 waivers occurred as the result of the promotion that y'all  
14 are claiming you have the right to take advantage of?

15 A When we looked through all these orders, if we  
16 found -- I didn't know what I was going to find at first.  
17 I went and started going and seeing what we found. And if  
18 I found something like a tenth of a percent or so were  
19 given a waiver then I wouldn't have thought anything of  
20 it. Essentially that could be human error maybe of  
21 whoever is inputting on AT&T's side. That could be  
22 reconnect after a hurricane. That could be a splitting of  
23 roommates' bills and things like that. But it happened  
24 with such a high frequency that they gave out these

1   waivers. They testified in Florida for instance that they  
2   had 1.65 million new orders since 2005. As that -- As  
3   Complainant's Exhibit 3 shows, 20 percent of the people  
4   are given waivers. So they are actually asking us to  
5   believe that 320,000 people had reconnects after a  
6   disconnect in error for instance or the other reasons.  
7   And it is strange credibility.

8   Q       So basically, the argument that you are testifying  
9   in support of is simply that there are the number of  
10   waivers is sufficiently significant, be it at the 28.8  
11   percent level or 14.4 percent level, that you believe that  
12   there simply have to be some significant percentage that  
13   represent the application of this promotion to BellSouth's  
14   own customers?

15   A       That's correct. And just to clarify again, it's  
16   hard to look at these charts and remember exactly what  
17   they are graphing here. When we say 28 percent, we are  
18   not saying that 28 percent of people that qualify got the  
19   waiver.

20   Q       What you are saying, at least as I understand it,  
21   and please correct me if I'm wrong because that's the  
22   ultimate question I am going to ask: What this appears to  
23   be saying is that of the customers that were new orders  
24   and that took two or more of the these call blocking

1 features or these features that are at issue here, that  
2 they received a waiver of line connection charges. That  
3 is what I understand we are talking about here. Is that  
4 --

5 A That's correct.

6 Q -- am I misunderstanding anything?

7 A Well, I want to remind everyone that that is  
8 missing one of the elements to get this waiver -- qualify  
9 the waiver and that is to be a winover customer. And  
10 that's why -- It may very well be if we were to actually  
11 to examine those customers that were actually identical to  
12 dPi's that were winover basic service plus two, we may  
13 find out that 90 or 95 percent were give a line connection  
14 charge wainever. And that's what's not really represented  
15 on here because all this --

16 Q Say what you just said again. I'm not sure it  
17 didn't just blow right by me.

18 A We couldn't figure out any way to represent it any  
19 better than that simply because there is more data in here  
20 than is useful. But in this number, we think that  
21 somewhere in here represents all of the winovers plus  
22 basic service plus two features. In other words,  
23 identical to dPi. These numbers up here, 40 and above,  
24 all of those don't qualify for a reason not applicable

1 today in that they could be -- they are not a winover. So  
2 we are actually able to graph the winovers plus 1FR plus  
3 two blocks, we might come out with 90 or 95 percent.

4 Q Let me back up a second and try to understand what  
5 I think you just said. At least as I read Complainant's  
6 Exhibit No. 1, and let's just take that one as an example,  
7 in the first couple of years you have this horizontal line  
8 that shows over the period of time that we are talking  
9 about that there were 28.8 percent of the the new  
10 customers --

11 A Exactly.

12 Q -- received a waiver of a line connection charge.  
13 Excuse me, 28 percent of the customers that purchased new  
14 service that had two or more of these blocking features,  
15 that 28 percent of that total universe of folks received a  
16 waiver of the line connection charge?

17 A That's correct.

18 Q So that by -- I was a history major and not an  
19 aerospace person, so you are in trouble when I start to  
20 trying to do math off the top of my head -- but that would  
21 appear to be about 68 or high 60 percent range of  
22 customers in that category that did not receive a waiver  
23 of the charge; right?

24 A Right. And, again, it those are new orders, not

1 necessarily winover orders. Winover would be a subset of  
2 orders.

3 Q Right. And so recognizing that the data that  
4 you've got is perhaps over inclusive of what you were  
5 trying to find out. I've got to decide this case on the  
6 basis of the evidence that is presented to me. So I've  
7 got to analyze what I've got before me, not what I might  
8 have had if we had another kind of evidence. But my  
9 concern is to go back to the question that I asked you  
10 originally: Assuming -- putting aside the data adequacy  
11 issues that Mr. Carver talked to you about -- assuming for  
12 purposes of discussion that 28.2 percent of new customers  
13 that received service and took two of these calling blocks  
14 during the '03/'04 period so that they received the waiver  
15 of the connection charge, why do you contend that some  
16 subset of that 28.2 percent represented customers who were  
17 given the benefit of this promotion? I think that is the  
18 ultimate thing I've got to get to. So why do you say I  
19 ought to find that?

20 A I think that what this chart represents,  
21 essentially, is a best-case scenario for AT&T. All these  
22 lines would move northward if we were actually able --  
23 Let's say for instance the assumption that there was no  
24 winovers at all that AT&T made, then this is what the

1 chart would be. If none of these are winovers, but the  
2 fact is some of these are winovers which would take out  
3 the portion that weren't ordered. And then after that,  
4 you just have to reasonably assume or use your inference  
5 and decide what you think based on your knowledge of how  
6 the phone system works is whether or not legitimately 40  
7 percent and 20 percent and 30 percent of people on a  
8 month-to-month basis have a disconnect in error.

9 Q Maybe I am not asking my question very well. And  
10 if I'm not, I apologize. Basically, what we've got  
11 according to the first half of Complainant's Exhibit No. 1  
12 is a representation that of the data you looked at that 28  
13 point something percent of the new service customers,  
14 regardless of why they received new service, that took two  
15 or more blocking features received a waiver of a line of  
16 credit or recieved a waiver of a line charge; right?

17 A That's correct.

18 Q That's what this shows?

19 A That's what this shows.

20 Q I understand what you told me about the data  
21 limitations. I have got to deal with the same data  
22 limitations you do. The question for me is, I believe:  
23 Was the representation made to the Commission that  
24 BellSouth did not provide a waiver of line connection

1 charge to its own customers when all those customers did  
2 was take new service, in that instance, in a winback  
3 situation, plus these two blocking features? Why should I  
4 find solely from the fact that we've got this 28.2  
5 percentage that we've already agreed what it is, why  
6 should I find that at least some subset of that represents  
7 folks in a winback situation who received new service who  
8 ordered two or more blocking features received a line  
9 connection -- a waiver of a line connection charge, and  
10 did so as a result of this promotion? That to me is what  
11 I am really trying to struggle with. Do you understand  
12 what I'm asking?

13 A I do. I am trying to figure out the best way to  
14 answer that. I think that --

15 Q And I may be too dense for you to tell me, but  
16 give it a shot.

17 A What we have done is we have just provided the  
18 data. We are asking the Commission to infer from the data  
19 conduct of AT&T. When we look at the data it looks like  
20 their excuses are incredible; that hurricanes when it  
21 doesn't really line up have a big effect, floods and  
22 tornados are they really affecting millions of people.  
23 And so the best answer in our opinion is that the line  
24 connection charge waiver was given because that is really



1 the only reason left. That is what we are saying and  
2 that's what we this the data shows. And it takes an  
3 inference to get there from the data, the fact that it  
4 ramps down when this dispute started; the fact that the  
5 numbers are way larger than what you would expect to see.  
6 We are asking the Commission to make that inference then.

7 Q So in essence what you are telling me is that you  
8 see this number and you don't believe -- what you are  
9 arguing then, I think, is that you've got this number,  
10 whatever it is, that derived in the manner that you  
11 described it and that you don't believe the alternative  
12 explanations are credible and, therefore, the only  
13 remaining possible explanation --

14 A Exactly.

15 Q -- that the waiver was granted contrary to Ms.  
16 Tipton's original testimony?

17 A Exactly.

18 Q Now you referred a minute ago in one of your  
19 answers to a ramp down. What is the ramp down, just so we  
20 will be clear as to what we are talking about for the  
21 record?

22 A The dispute started -- I don't know how to say  
23 when the dispute started, but AT&T essentially stopped  
24 paying these credits around September, October '04

1 timeframe. If you will look at this line graph, you will  
2 see October, they are giving something on the order of  
3 32/33 percent. And then November they dropped down to  
4 about 5 percent more. December they dropped down again.  
5 And in January they bottom out. So October '04 through  
6 January '05 ramp down --

7 Q So in essence the -- when you use the word ramp  
8 down, what you are talking about is the decline from the  
9 average over a two-year period of the 28 point something  
10 percent to the average of 14.4 percent over the succeeding  
11 two or three year --

12 A Exactly. The fourth quarter of '04 they change  
13 their policy is what the big graph looks like to us.

14 Q Now as I understand the Affidavit of Ms. Tipton,  
15 she would say, and I think Mr. Carver asked you some  
16 questions about this, that if you looked at -- and I get  
17 confused as to if we are talking about data from the  
18 billing system or ordering system, but we have data from  
19 two different sources. The green line data shown on  
20 Complainant's 1 is from one system. And the red line is  
21 from another. I understood you to say that you had not  
22 checked to see during the overlap period whether there  
23 continued to be this 14 percentage point discrepancy  
24 between the results using data from one system as compared

1 to data from another system. Did I understand that  
2 correctly?

3 A That's correct. It's a very time sensitive  
4 process to go through this and --

5 Q I was a young lawyer once too, I understand.

6 A Many a night was spent sitting and highlighting.

7 Q Anyway, why did you not go back and -- once the  
8 issue was raised BellSouth's -- and I will get AT&T right  
9 some day, Mr. Rankin, but I'm still struggling with that  
10 -- once AT&T raised the issue to the effect that you've  
11 got different numbers depending on which system you use,  
12 why did you not check the overlap and see whether the  
13 contention that AT&T was making about that point was  
14 correct or not?

15 A We -- First of all we didn't agree that it  
16 undercut our theory at all.

17 Q I understand that. But they're making the  
18 argument that it's a factual matter that if you were to do  
19 the analysis that you did on the billing system or  
20 ordering system whichever the first one comes from and  
21 extended it into the '05 period so that you looked at the  
22 time period when you had an overlap, their contention is  
23 that you get two different numbers depending on which  
24 system you use and that the number derived from the data

1 that the green line comes from remains higher than the  
2 number that you get from the data that the red line comes  
3 from.

4 A The reason is: We felt like it actually helped  
5 us. They said they gave us more promotions than what we  
6 came out with. And so we left our analysis as is. And if  
7 you guys want to accept that, we thought we were in a  
8 better position.

9 Q My concern is -- and this is the reason I asked  
10 the question, I'm not trying to be mysterious -- you had  
11 talked to me earlier about your contention that some sort  
12 of a ramp down occurred as a result of the policy change.  
13 If you got -- and your explanation for why you believe  
14 there was a policy change had to do with the decline in  
15 the number of folks given line connection waivers as shown  
16 as the difference between the green line and red line, but  
17 if you get two different numbers over the same period from  
18 the two different sets of data, what does that do to you  
19 ramp down theory? That's why I'm asking.

20 A I guess I think that you're probably right here.  
21 It probably refutes that contention that we made that it  
22 does that. But it doesn't change --

23 Q It may or may not depending on what is shown if  
24 you attempted to validate what AT&T said.

1 A Sure.

2 Q Or depending on what the outcome was or the  
3 validation --

4 A And I don't know what that outcome is. We are  
5 going on Ms. Tipton's representations here. But it would  
6 take away the evil intent of AT&T, which, you know, I kind  
7 of drew that out of that ramp down that was there. But it  
8 doesn't change the underlying fact that the waivers were  
9 given.

10 COMMISSIONER ERVIN: Okay. Thank you.

11 EXAMINATION BY CHAIRMAN FINLEY:

12 Q A couple questions, Mr. Tepera, during your  
13 discovery and in the jurisdictions were you able to ask  
14 AT&T which customers got the line connection charge waiver  
15 because of promotions?

16 A Whether they got it because of promotion?

17 Q Right.

18 A They indicated to us that they didn't have any  
19 such, knowledge and so we crafted the questions as best we  
20 could to actually avoid the end ultimate thing. I mean,  
21 obviously that would be the best evidence to have in front  
22 of us.

23 Q Right. In looking at the AT&T CX Exhibit No. 3,  
24 Mr. Carver went over with you the six customers there and

1 the six accounts. And we really don't have any direct  
2 evidence as to why the line connection charge waiver was  
3 given in those six cases; right?

4 A That's correct.

5 Q And what I am hearing you say is that based on the  
6 totality of all this evidence, there is to be a strong  
7 inference that the line connection charge waiver was given  
8 as a result of an AT&T promotion?

9 A That's correct.

10 Q And at this stage of this case -- I mean, you are  
11 not a telecommunications expert, but you are a lawyer --  
12 at this stage of the case, what standard are we to apply  
13 to give you the relief that you want in this Motion for  
14 Reconsideration?

15 A Well I am up here for a witness. I don't know if  
16 that's -- is that appropriate for me to answer at this  
17 time. I would just say that if the Court came to a  
18 conclusion in its discession -- rather the Commission --  
19 came to a conclusion in its discretion that prior  
20 testimony wasn't factual, then under GS 32-80, it says you  
21 guys have a right to amend prior Orders and reverse prior  
22 Orders.

23 Q But we don't have direct evidenc~~t~~ that it's not  
24 factual. We are basing it on inferences to take your side

1 of the case?

2 A That's correct, to the extent this isn't direct  
3 evidence, then, no. This is the sole evidence we  
4 submitted.

5 Q But you would say it's a very powerful inference?

6 A That's correct.

7 EXAMINATION BY COMMISSIONER KERR:

8 Q Let me wade around in this for a second and see if  
9 Commissioner Ervin has follow up. Let me go over what you  
10 were talking about on Complainant's Exhibit No. 1 with  
11 Commissioner Ervin, and try to ask you a little more  
12 directly than he did: What you are attempting to explain  
13 about the '05 data that came from the second type of data  
14 before you received the supplementation that included the  
15 billing data for '05 you had gotten ordering system data  
16 first as I understood Mr. Carver's opening statement, and  
17 then you got billing. The representation you have  
18 provided where you did not go a re-examine or examine that  
19 second '05 data seemed to indicate there was a precipitous  
20 drop in the vertical access, the percentage of the total  
21 and you accepted that and believed you had an explanation  
22 for why that might have been?

23 A That's correct.

24 Q Mr. Carver has raised a point that when you didn't

1 go back and look at the second set of '05 data we provided  
2 you, and Ms. Tipton's Affidavit in the case that it would  
3 be consistent with the '03 and '04, roughly that is what  
4 Ms. Tipton said. Or is that accurate?

5 A That is my understanding.

6 Q It seemed to me in your discussion with  
7 Commissioner Ervin, I just want to make sure I understood,  
8 is: If Ms. Tipton is correct, it confirms the high level  
9 of total waivers and you don't need to explain away the  
10 drop. I mean, your case is supported by what Ms. Tipton  
11 says, you go back and re-examined it and it were  
12 consistent with '06/'07 data it would confirm the drop  
13 that you illustrated here. So heads you win, tails you  
14 don't lose as to the ultimate question you are asking us  
15 -- the ultimate inference. We might infer for a different  
16 reason, high level versus drop. But nonetheless, you  
17 think we could make the inference either way.

18 A Yes. I think we were happy that they said they  
19 actually gave the waiver more than what I said.

20 Q At that point wasn't necessary to go back and  
21 confirm what Ms. Tipton said?

22 A Correct.

23 Q Let me just ask you a couple of questions -- - one  
24 question actually. I've looked -- Looking in the record



1 where I can find the actual question that was asked in  
2 Florida that gave rise to this, and I found Footnote 3 to your  
3 Motion for Reconsideration --

4 MR. MALISH: In Florida or North Carolina?

5 COMMISSIONER KERR: In Florida.

6 A I have a copy of that here. I had planned on  
7 showing that on a projector, but I didn't have one.

8 Q And that's one thing I want to do at the end is  
9 make sure we've got in evidence what we want in evidence.  
10 It seems to me that the information that was given in  
11 response to your inquiry is by your own admission over  
12 inclusive. And it also suffers from not providing -- It's  
13 over inclusive in terms of scope, but it also doesn't  
14 provide the specific point of information about any one  
15 account that we really need, which is was it a winover  
16 account or not?

17 A That's correct. We are forced to deal with the  
18 fact that they just don't have good evidence in their  
19 system.

20 Q My question is: As I read the discovery that was  
21 propounded, it was, in fact, over inclusive. In other  
22 words, did you ever ask specifically for information on  
23 winover accounts that were LFR with two features and  
24 receive the LCCW?

1 A I'll say to that specific question this is  
2 actually drafted by Chris Malish who does have a lot more  
3 expertise in these areas with the aid of his client and  
4 through their general knowledge of the system they knew  
5 they were going to get back "N" orders that aren't going  
6 to distinguish whether they are winbacks. And you can't  
7 actually figure out from them what was a line connection  
8 charge waiver and what wasn't promotion.

9 Q But for instance, have you asked for the total  
10 number of waivers or winovers in Florida during this  
11 period?

12 A I think what I am trying to say is that Mr. Malish  
13 in drafting this was aware that information definitely  
14 does not exist. And so we are trying to get as close to  
15 that as we can and what is actually going to exist in the  
16 system.

17 Q Let me just ask a more generally: As  
18 Commissionerr Ervin I think correctly discussed with you  
19 there's a fairly significant inference that we are being  
20 asked to make here. I think as Chairman Finley pointed  
21 out, we are being asked to make it at a somewhat unusual  
22 point in time in the litigation. And so we all seem to  
23 agree that there is a piece of information missing. And  
24 let me just ask you as the witness: What attempts, if

1 any, have been made that you are aware of to obtain  
2 evidence as to the ultimate question that we are being  
3 asked to infer? In other words, if it happened you  
4 confirmed for yourself that it doesn't exist or what other  
5 efforts have been made to confirm that it does exist?

6 A As a timeline matter, I think we learned from Ms.  
7 Tipton that she had discussed the actual policy of AT&T.  
8 And so we had already known what the policy was from two  
9 years ago in the hearing in this Commission. So we are  
10 trying to go beyond that. And that is what RFI 119 was  
11 designed to do. You go beyond what the policy is and see  
12 what the actual underlying practice is.

13 MR. MALISH: Commissioner Kerr, I can clarify  
14 that. We didn't ever ask a particular question: How many  
15 of these are winbacks versus regular in regards to the  
16 specific accounts that are in the data of a thousand  
17 pages. Nor did we ask, in general, how many of your  
18 customers are winbacks as opposed to something else  
19 because our understanding is that data does not capture by  
20 any of their systems. And they have said that before.  
21 They said it over the net. If the Commission is  
22 interested in having that, either we can request that  
23 information from them and you can postpone your decision  
24 until that is produced or the Commissioners, I guess, or

1 staff of the Commission can ask for that directly from  
2 BellSouth. But, again, we don't think it exists. We  
3 don't have it under oath, but we don't think that it  
4 exists.

5 COMMISSIONER KERR: That is all I have.

6 EXAMINATION BY COMMISSIONER ERVIN:

7 Q A long the same lines, and I'm not really too hung  
8 up on who answers the question, Mr. Malish. Have you ever  
9 asked for the backup data that underlies Ms. Tipton's  
10 assertion as to the reasons that at least some subset of  
11 these folks received a waiver of the connection charge?

12 A (By Mr. Malish) We haven't done that, Commissioner  
13 Ervin, and that is something that would be useful to have.  
14 Of course, they haven't volunteered it either, which I  
15 find interesting. But, of course, in this particular case  
16 we are not really in a discovery period.

17 In the Florida case this material was actually  
18 provided to us on the eve of the initial hearing in  
19 Florida. And the supplemental -- that hearing got  
20 continued for other reasons -- the supplemental was  
21 provided to us about a month after the original hearing.  
22 We requested the opportunity to conduct additional  
23 discovery on these things, and we were denied by the  
24 Florida Commission -- BellSouth resisted that discovery

1 and based on that resistance, the Florida Commission did  
2 not permit the additional discovery to go forth. So we  
3 don't have anymore follow-up discovery in Florida or  
4 anywhere.

5 MR. CARVER: I know it's probably not my turn to  
6 speak, but I disagree with the aspect of Mr. Malish's  
7 rendition of what occurred in Florida. So, may I just put  
8 on the record the chronology that we believe pertained  
9 there?

10 MR. MALISH: I am not sure that it's relevant.

11 COMMISSIONER KERR: Why don't we do this: Why  
12 don't we try to make some progress and maybe in your  
13 summation -- The record will note your objection. And why  
14 don't you lay out what you think you need to in summation?

15 MR. CARVER: That will work. Thank you.

16 EXAMINATION BY CHAIRMAN FINLEY:

17 Q Mr. Tepera, just looking at your Exhibit No. 1  
18 here, green and red lines and the change in the place of  
19 the lines in 2005. Are we being asked to draw as an  
20 inference that BellSouth or AT&T have one policy with  
21 respect to this line waiver for 2005 and a different  
22 policy after that?

23 A I think that is what that graph shows. But I  
24 don't think it actually affects the case. I found it

1 interesting when I graphed this. But either way the line  
2 simply shows that people were given this waiver. If  
3 Ms. Tipton is correct in that the green line should  
4 actually continue on if we looked at the other data it  
5 simply takes away the fact that the policy was changed and  
6 shows that they continue to give the waiver then.

7 Q Pursuant to promotion?

8 A Pardon me?

9 Q They continued to give the waiver pursuant to  
10 promotion?

11 A Correct.

12 Q Am I correct in my understanding that these  
13 blocking features AT&T gives to its customers free of  
14 charge?

15 A They don't cost additional beyond ordering new  
16 services, that's correct.

17 Q What would motivate a policy of AT&T to give up as  
18 a promotion a line waiver charge for a customer that  
19 subscribes to those blocking features if the customers get  
20 the blocking features for free anyway?

21 A Well they get more people to sign up. It's a  
22 larger market share. They offer these promotions out  
23 there. It's only -- That is motivation to have more  
24 customers that way.

1 CHAIRMAN FINLEY: Okay. That's all I have.

2 COMMISSIONER KERR: Questions on the

3 Commission's questions?

4 REDIRECT EXAMINATION BY MR. MALISH:

5 Q Mr. Tepera, can I get you to look at Exhibit 3,  
6 the pie chart?

7 A Witness complies.

8 Q If you had -- First of all, is the data you used  
9 for analyzing 2005 the data that BellSouth contends is the  
10 more reliable data or the less reliable data.

11 A The more reliable data.

12 Q So you analyzed what they already claimed to be  
13 the more reliable data for 2005.

14 A That's correct.

15 Q Okay. So is that one of the reasons why you  
16 didn't go back and analyze the other 2005 data?

17 A Yes.

18 Q All right. If you had used the 2005 data instead  
19 of the "unreliable" 2005 data from AT&T, how would that  
20 affect the way the pie chart on Complainant's Exhibit 3  
21 would look?

22 A It would increase it by -- It would increase the  
23 red area; with respect to the blue area by, I don't know,  
24 maybe 10 percent, 15 percent probably.

- 1 Q So red triangle would be bigger?
- 2 A Correct.
- 3 Q So the end result would be that there were more  
4 waivers given?
- 5 A That's what I tried to explain earlier. We didn't  
6 really care that they said that the red -- I mean the  
7 other 2005 data was different because they actually said  
8 it was more. We felt like that helped our case.
- 9 Q Okay. Now, I think Commissioner Ervin was, I  
10 don't mean to clarify this, but it might help: The red  
11 piece of the pie there, that is every order in which the  
12 line connection charge was waived for whatever reason;  
13 correct?
- 14 A Correct.
- 15 Q And Mr. Carver, you listened to his opening  
16 statement; correct?
- 17 A I did.
- 18 Q And he identified four reasons for why that line  
19 connection charge might be waived?
- 20 A Yes.
- 21 Q One is a promotion?
- 22 A Correct.
- 23 Q One was disconnect in error?
- 24 A Correct.



- 1 Q One is natural disaster?
- 2 A Correct.
- 3 Q And one is the split billing situation; correct?
- 4 A Yes.
- 5 Q And do you recall how much of this pie Ms. Tipton  
6 said involved disconnects in error in her testimony in  
7 Florida?
- 8 A When I was there she said 15 percent. So that  
9 would be a --
- 10 Q Thin slice of --
- 11 A Thin slice of the red was disconnect in error.
- 12 Q Then you plotted the hurricane which is a major  
13 natural disasters in Florida; right?
- 14 A Correct.
- 15 Q Did there appear to be no correlation?
- 16 A To me there doesn't appear to be a correlation.  
17 That's left for anyone's judgment. But, no, there doesn't  
18 appear to be any.
- 19 Q And have you heard from anybody how often split  
20 billing situations take place? Is that frequent or  
21 infrequent?
- 22 A Infrequent is my understanding. It seems like  
23 it's a very usual situation.
- 24 Q And you understand that to be a situation for

1 example when there are two roommates in the same house and  
2 one will take the line with them; correct?

3 A Yes. I think it's either that or two roommates in  
4 a house and they actually want to get two bills. That is  
5 my understanding. It's so infrequent that I don't really  
6 know what it is.

7 Q So of the four reasons, 15 percent of this thin  
8 slice of the pie appears to be disconnect in error if we  
9 can take Ms. Tipton at face value; correct?

10 A Correct.

11 Q And then natural disasters appear to be negligible?

12 A Correct, yes.

13 Q And split billing is something that is so rare you  
14 have never heard of it before?

15 A Correct.

16 Q Even though you have been working on this case  
17 with me for two years?

18 A Correct.

19 Q So that leaves the majority of it to being  
20 attributable to -- what's the fourth option?

21 A Something else, a promotion is the only other  
22 option given. I think that it's relevant there. I think  
23 Mr. Carver said that Ms. Tipton identified 15 percent of  
24 the people were given a waiver because of disconnects in

1 error in his opening. And that essentially takes care of  
2 the entire 14.4 percent that we are dealing with there. I  
3 think that there's some confusion there. We are talking  
4 about 15 percent of people who are given a waiver versus  
5 15 percent of the entire population, which I think is a  
6 misunderstanding that you have, if I understood your  
7 opening correctly. Fifteen percent of the entire  
8 population, you are right, that would take care of the  
9 whole thing. But it's only 15 percent of the 15 percent.

10 Q Fifteen percent of the red?

11 A Correct.

12 Q All right, sir.

13 COMMISSIONER KERR: Anything else.

14 MR. MALISH: Nothing further.

15 COMMISSIONER KERR: Questions on the  
16 Commission's questions, Mr. Carver?

17 MR. CARVER: I just have one or two clarifying  
18 questions.

19 RE-CROSS-EXAMINATION BY MR. CARVER:

20 Q You stated at one point that you had heard in  
21 Florida that there were something like a million new  
22 orders one year; is that correct?

23 A No. Since 2005 there was 1.65 -- I think 1.648  
24 million new orders since 2005.

1 Q Okay. So the Appendix 3, assuming -- and  
2 obviously we have been disputing on if this is reliable --  
3 but if this is reliable, then that would be every customer  
4 that ordered basic service and two blocks during the  
5 entire five-year period. And the number of accounts  
6 represented there are 18,000?

7 A You know, I don't know actually the number. I did  
8 some quick math and I came up with actually about double  
9 that. But if you actually counted --

10 Q Well, I believe that is what Ms. Tipton said in  
11 her Affidavit.

12 A Okay.

13 Q So you've got 18,000 there of customers who had  
14 this particular ordering profile over a five-year period.  
15 And your contention is that over the whole five-year  
16 period was that it was about 20 percent waived?

17 A Right.

18 Q So we take 20 percent of that then what we are  
19 talking about is roughly 3600 customers?

20 A If the original number is 18,000, yes.

21 Q So we are talking here about 3600 customers  
22 against new orders that would run into the millions;  
23 correct?

24 A Correct.

1 MR. CARVER: Thank you. That's all I have.

2 EXAMINATION BY COMMISSIONER ERVIN:

3 Q I'm sorry, Mr. Tepera, I should have asked you  
4 this earlier: In one of your answers to me and, again, in  
5 your discussion with Mr. Malish a second ago you made the  
6 point that in your understanding of the situation that the  
7 number of instances in which line charges were waived and  
8 not correlate closely with hurricanes --

9 A Correct.

10 Q -- you said something like that, didn't you?

11 A Correct.

12 Q Talk to me a little bit about what your basis for  
13 making that contention is. I mean, you've got the  
14 hurricane plotted in time on here, and I have marked the  
15 category to help me a little bit. But you look, for  
16 example, in September of '05 and August and October of '05  
17 you've got hurricane Katrina which, according to the  
18 chart, was a Category 1 hurricane, which I gather is the  
19 weakest.

20 A Right.

21 Q Then you have Hurricane Wilma as Category 4. Tell  
22 me why based on the monthly variation in the number of  
23 instances in which the line charge was waived under the  
24 circumstances discussed causes you to conclude that

1 there's not much of a correlation.

2 A I think if you look at say -- I can't tell the  
3 exact months on here because there are no vertical lines.  
4 But there's a large spike between what appears November  
5 '03 and December '03. There's a large spike again March  
6 '06 to April '06. Then May '06 for two months. And these  
7 spikes happen at random times. It goes up. It goes down.  
8 The exact same thing happened when there was a hurricane  
9 as happens when there's not a hurricane. That is  
10 essentially what I am saying. You have ramps up and down  
11 up and down. The first three happened to be on an upward  
12 sling. The last ones, you know, stay level around the  
13 period of the hurricanes. There are bigger ramps  
14 sometimes when going vertical when there is not a  
15 hurricane to when there is a hurricane. So I just  
16 concluded that it turns out to be noise.

17 Q Give me an example of what you think you would see  
18 if there was some correlation. Maybe that would help me.  
19 Let's say we've got the Katrina on August 25, 26 of '05,  
20 and you've got Wilma on October 24 of '05. Assuming that  
21 you were to see a correlation between hurricanes and the  
22 number of waivers, what would you think you would see?

23 A My first conclusion is that would have to go up,  
24 of course.

1 Q At the time of the hurricane?

2 A Well these orders -- the underlying ordering, it  
3 doesn't say the actual date of the connection. It only  
4 says the month of the connection. So a June 2007  
5 connection, for instance, you don't know if that was the  
6 first of June or the 30th of June.

7 Q Right.

8 A And so generally you would expect it to be the  
9 month of the hurricane simply because you hope that AT&T  
10 gets out and connect pretty quickly. And only if it  
11 happened at the end of the month would that rollover into  
12 the next month. So I expect the month of the hurricane to  
13 have a larger spike. And it might actually be helpful if  
14 we look at the first page of Appendix 2, so that we don't  
15 have to guess as to what these numbers are. It lays it  
16 out in the actual percentages. So for instances Hurricane  
17 Wilma is a Category 4 storm which means a very strong in  
18 October of 2005. You see --

19 Q I see 33 waivers.

20 A Exactly. 33 waivers. It went up 1 percent there.  
21 The month before for Katrina, August, you can see the same  
22 sort of patterns whether a hurricane was there or not.

23 Q Basically your test then would be that relatively  
24 close in time to the date of the hurricane you would

1 expect to see a spike in the number of waivers granted in  
2 the event that there was a correlation between hurricane  
3 activity and the number of waivers?

4 A That's correct.

5 Q And that's the basis for your statement that I  
6 asked you about.

7 A Right. And you see spikes all the time whether  
8 there was a hurricane or not. And so because it happens  
9 when there isn't a hurricane and it happens when there is  
10 a hurricane, I see no correlation between them.

11 COMMISSIONER ERVIN: Thank you.

12 EXAMINATION BY COMMISSIONER KERR:

13 Q Let me at the risk of beating this horse further  
14 to death, I think what you are saying is you are not  
15 testifying as to what the correlation would be or should  
16 be but having plotted the hurricanes on this chart, it  
17 doesn't seem to be a particular effect caused by the  
18 timing of the hurricane?

19 A That's correct.

20 COMMISSIONER KERR: Any further questions on  
21 Commissioner Ervin's last questions?

22 (No response.)

23 If not, I think that is it for Mr. Tepera. You  
24 can be excused. Mr. Malish, any other witnesses?



1 MR. MALISH: We will have cross-examination of  
2 Ms. Tipton, but I understand that is to be --

3 COMMISSIONER KERR: Let me ask you, we've got  
4 some exhibits that we needs to deal with. We have  
5 admitted Complainant's Exhibits 1, 2, and 3. And we have  
6 admitted the Affidavit. We have not dealt with the  
7 Appendices to the Motion itself, which were referred to  
8 and discussed in the Affidavit. You may not want to, but  
9 in looking at the record wanted to see -- I don't want to  
10 make a mistake and not have something in --

11 MR. MALISH: That is one of the reasons we tried  
12 to change his Affidavit into the direct testimony. We  
13 tried cure that by bringing -- by renaming those  
14 Appendices as exhibits and include them as the next  
15 exhibits in order from those left off in the prior  
16 hearing. So I am recommending that we at least rename  
17 those exhibits -- those Appendices as Exhibits and  
18 introduce them into the evidence.

19 COMMISSIONER KERR: So that would be as -- So we  
20 would mark Appendix 2 as Complainant's Exhibit 4, and  
21 Appendix 3 as Complainant's Exhibit 5, and you move their  
22 admission?

23 MR. MALISH: Correct.

24 COMMISSIONER KERR: And then I understand they

1 are a summary of the data requests that would be Appendix  
2 2. And then 3 is the actual response you got.

3 MR. MALISH: That would be the actual data.

4 COMMISSIONER KERR: Right, the data.

5 MR. MALISH: The chart is all that was in

6 Exhibit 1.

7 MR. TEPERA: That's Exhibit 1, but it doesn't  
8 have the hurricane stuff on it.

9 MR. MALISH: I think we're safe. We will  
10 replace the original Appendix 1 with Complainant's 1, 2,  
11 and 3. And then we will have 4 the Appendix 2 and 5 being  
12 all data.

13 COMMISSIONER KERR: Mr. Carver, any objection?

14 MR. CARVER: I have no objection.

15 COMMISSIONER KERR: So admitted.

16 (Whereupon, Complainant's Exhibits 1, 2, 3,  
17 4 and 5 were admitted.)

18 Mr. Carver, you had three cross-examination  
19 exhibits.

20 MR. CARVER: Yes, sir. And I would like to move  
21 all three of them.

22 MR. MALISH: No objection. But I want to make  
23 sure we have them.

24 MR. CARVER: Actually the first one was a

1 derivative of theirs. So I will need to make copies and  
2 provide it.

3 COMMISSIONER KERR: Yes. What I was going to  
4 suggest is: The first one was his marking of your Exhibit  
5 No. 1 to illustrate that part of his cross-examination.  
6 So if you will provide a copy of that -- copies of that  
7 while y'all are here probably -- but if you will provide  
8 the court reporter and counsel a copy of that, that will  
9 be admitted. And 2 and 3 will be admitted as well.

10 (Whereupon, AT&T CX 1, 2, and 3 were  
11 admitted.)

12 Anything further from dPi?

13 MR. MALISH: Just what we might have in  
14 cross-examination of Ms. Tipton.

15 COMMISSIONER KERR: We've been going a couple  
16 hours. Let's take a break and we will come back with Ms.  
17 Tipton.

18 (Whereupon, a recess was taken.)

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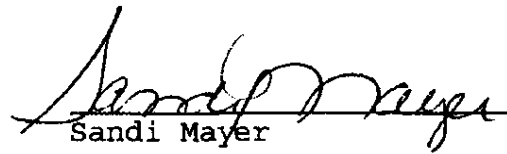
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The undersigned Court Reporter certifies that this is the transcription of notes taken by her during this proceeding and that the same is true, accurate and correct.

  
Sandi Mayer  
Court Reporter II