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2 DATE: Tuesday, April 15, 2008
3 DOCKET NO.: P-55, Sub 1577
4 TIME IN SESSION: 11:50 A.M - 3:16. P.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 VOLUME II

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

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INDEX

PAGE

Direct Examination by Mr. Carver.	3
Cross-Examination by Mr. Malish	31
Redirect Examination by Mr. Carver.	76
Examination by Chairman Finley.	82
Examination by Commissioner Ervin	87
Examination by Commissioner Kerr.	96
Recross Examination by Mr. Malish	105

EXHIBITS ADMITTED

PAGE

Tipton Exhibits A & B.	4
Tipton Exhibits C & D (filed under seal)	5

P R O C E E D I N G S

1
2 COMMISSIONER KERR: Mr. Carver.

3 MR. CARVER: Thank you, Commissioner. AT&T
4 calls Pam Tipton.

5 PAM TIPTON; Being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. CARVER:

8 COMMISSIONER KERR: Be seated and pull the mike
9 closer.

10 Q. Ms. Tipton, would you please state for the record
11 your full name and your business address.

12 A. Yes. My name is Pam Tipton and my business
13 address is 675 West Peachtree Street, Atlanta, Georgia,
14 30375.

15 Q. And by whom are you employed and in what capacity?

16 A. I'm employed by AT&T as Director of Wholesale
17 Regulatory Policy.

18 Q. And in this proceeding you have submitted an
19 affidavit that's 18 pages long; is that correct?

20 A. Yes.

21 Q. And attached to the -- I'm sorry, just a moment.
22 I apologize. And attached to that affidavit there are two
23 exhibits?

24 A. I believe that's correct. Let me pull it up just

1 to make sure. I believe that we actually have four
2 exhibits.

3 Q. Four exhibits?

4 A. Four exhibits.

5 Q. Thank you. And if you were to give live testimony
6 today, would your testimony be consistent with the
7 affidavit that you filed?

8 A. Yes, it would.

9 Q. Okay.

10 MR. CARVER: And with that, I would like to
11 request that Ms. Tipton's affidavit be inserted into the
12 record along with her exhibits to the affidavit, number
13 one through four.

14 MR. MALISH: No objection.

15 COMMISSIONER KERR: So admitted.

16 (Whereupon, the prefiled affidavit of Pam
17 Tipton will be reproduced in the record at
18 this point the same as if the questions had
19 been orally asked and the answers orally
20 given from the witness stand.)

21

22 (Whereupon, Tipton Exhibits A and B were
23 admitted into evidence.)

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(Whereupon, Tipton Exhibits C & D were
admitted into evidence and filed under
seal.)

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FILED
DEC 17 2007

Clark's Office
N.C. Utilities Commission

NORTH CAROLINA
BEFORE THE UTILITIES COMMISSION

In the matter of:)
)
dPi Teleconnect, L.L.C)
v.) Docket No. P-55, Sub 1577
AT&T North Carolina)
)

AFFIDAVIT OF PAM TIPTON

1. My name is Pam Tipton. The following statements are made under oath and are based on personal knowledge.

2. I am currently employed by AT&T (formerly BellSouth Telecommunications, Inc.) as a Director – Regulatory Policy and Support, Wholesale Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

3. I have 20 years experience in telecommunications, with my primary focus in the areas of process development, services implementation, product management, marketing strategy and regulatory policy implementation. In my role as Director, I am responsible for implementing state and federal regulatory mandates for AT&T Wholesale and determining the impact of such mandates on the Wholesale business unit.

4. On August 25, 2005, dPi Teleconnect, L.L.C. ("dPi") filed a complaint with the North Carolina Utilities Commission (the "Commission") alleging that AT&T (which, at the time of dPi's complaint, was BellSouth) was

withholding promotional credits that were due to dPi under the Line Connection Charge Waiver ("LCCW"), Secondary Service Charge Waiver ("SSCW") and the Two Features for Free ("TFFF") promotions. On June 7, 2006, the Commission issued its Order Dismissing Complaint, ruling in AT&T's favor. After receiving certain data from AT&T in another proceeding in another state, dPi filed a Motion for Reconsideration with the Commission on November 19, 2007 ("Motion for Reconsideration").

5. In its Motion for Reconsideration, dPi asks the Commission to reconsider its previous findings because dPi asserts that the testimony I provided during the hearing was incorrect. dPi bases its claim upon discovery produced in a similar proceeding in the state of Florida.

6. The purpose of my affidavit is to address issues raised by dPi in its Motion for Reconsideration. I also explain: (1) what data AT&T produced in Florida; (2) why dPi's analysis of the data is incorrect; and (3) how dPi's conclusions are inaccurate and misleading. I will also provide additional information that contradicts dPi's assertions.

I. **Data Provided to dPi by AT&T**

7. dPi requested AT&T to "identify any and all occurrences, on a month to month basis beginning January, 2002, on an end user ordering BellSouth basic service plus any two of the three following features: ...call return block...repeat dialing block...call tracing block..." (See Footnote 3, Motion for Reconsideration.) Because dPi's request focused on how retail customers order their service, AT&T attempted to fulfill the request based on data from its retail

service ordering system. AT&T developed a methodology to extract certain data from service orders that met the parameters of dPi's data request. However, pursuant to AT&T's standard record retention guidelines, actual service order data is only retained for a period of 24 months. Thus, on September 26, 2007, AT&T provided dPi the first set of data, which closely matched dPi's request and was compiled from service order data from January 2005 through August 2007 ("Service Order Data").¹

8. For time periods extending beyond 24 months, only partial data is retained. The data that is retained is in a format that is not readily searchable and that may be contained in different source files, depending on the nature of the data. Therefore, the information that dPi sought could not be extracted from the service ordering systems from which the Service Order Data was taken. However, in an abundance of caution and in an effort to be responsive, AT&T developed a second methodology to provide a surrogate to the Service Order Data for the time period prior to January 2005. This second methodology required extensive programming to extract the pertinent information from customers' accounts. On November 7, 2007, AT&T provided dPi the second set of data for May 2003 through December 2005 based on extracts from billing records and a financial database ("Billing Data") that, together, provided a close surrogate to the Service Order Data.²

¹ AT&T was able to provide an additional six months of service order data because the extra data (January 2005 – July 2005) had been maintained for other business needs.

² Although dPi's request asked for charges billed to AT&T's customers, neither set of data contains the amount customers were actually charged for the

9. While AT&T has made every attempt to provide dPi the information dPi requested, AT&T's legacy systems were not designed to produce data to be used in forensic analysis as dPi has attempted. The service order system is designed to accept customer telecommunications and billing request information, translate that information into a service order that contains: (i) a Bill Section (containing administrative information); (ii) a Service and Equipment section (containing Universal Service Order Codes ("USOCs"), Field Identifiers ("FIDs"), other information that enables telecommunications services to be provisioned and billed); and (iii) a Remarks section for any special instructions. A service order flows from the front end interfaces, through the network provisioning and inventory systems, and when completed, posts to the billing system. The billing system is designed for the express purpose of rendering consumer and business customer bills. Certain portions of the information contained on rendered bills are retained in AT&T's systems. Separately, revenue information, classified by product code and certain billing phrase codes, is retained in AT&T's financial systems. Some of this data is retained, and some is not. The bottom line is the service ordering system and the billing records are not designed to provide a permanent record as to why certain activities, such as the waiving of charges, took place. Trying to recreate service order activity from data stored in multiple systems based upon service requests that were processed in the past, in an

services, due to the limitations in data retained in AT&T's systems. Instead, the data sets contain a table-driven entry that contains the revenue associated with the particular service. The table is refreshed on the last Friday of every month and could result in information that was relevant at the time the customer placed their order to be dropped from the reports provided to dPi.

attempt to determine the circumstances surrounding the order, will not provide meaningful results. AT&T tried to explain this to dPi, but dPi was insistent on receiving the data. The problem is not with the data or AT&T's systems: the problem is that dPi has requested information thinking that it would provide a definitive answer about what customers ordered and why certain waivers were given. The systems are not designed to provide that level of information, so any conclusions drawn from the data are purely conjecture.

A. Detail of What the Service Order Data Contained and Shortcomings of Data

10. The Service Order Data provided to dPi contained all "new" type service orders (referred to as "N" orders, as explained below) for AT&T retail end users that had two or more of the free call blocking USOCs (i.e., BCR, BRD and/or HBG) for the time period of January 2005 through August 2007.³ Specifically, the report contained the following data: 1) the month and year the service order posted to the bill; 2) the billing account number; 3) the service order number; 4) an indicator regarding whether a non-recurring charge waiver code was present on the service order, either in the billing section or adjacent to a particular USOC; 5) the basic class of service and certain other USOCs, such as certain TouchStar® or Custom Calling features that might have qualified the order for the LCCW promotion; and 6) an indicator for monthly recurring revenue associated with the particular USOC service. AT&T believes that the Service

³ BCR is the USOC for blocking the TouchStar® Call Return Feature. BRD is the USOC for blocking the TouchStar® Repeat Dialing Feature and HBG is the USOC that blocks the TouchStar® Call Tracing Feature.

Order Data comes closer to providing the information dPi requested than does the Billing Data. It provides a snapshot picture in time of the services a customer ordered when establishing service. dPi attached AT&T's responsive documents to its Motion for Reconsideration. See Appendix 3: 9/26/07 Supplemental Item 1-19, pages 000001-000685.

11. On October 8, 2007, dPi sent AT&T a letter requesting clarification regarding the Service Order Data. On October 29, 2007, AT&T provided dPi a written explanation of the data. Both dPi's October 8th letter and AT&T's October 29th letter are attached hereto as Exhibit A.

12. In its letter to dPi, AT&T explained that it was able to identify "new" service orders because AT&T's ordering systems utilize an order number naming nomenclature that aligns with the activity being performed. Order numbers beginning with an "N" indicate a "new account" and are used anytime a billing account is being established. This may include either a brand new account (e.g. new customer, split billing of an existing account, or reacquisition/win-back) or the re-establishment of a previously disconnected account (e.g. disconnection in error, re-establishment after force majeure, or re-establishment following disconnect for non-pay). Importantly, AT&T also highlighted that not all new "N" orders are reacquisition or win-back customers and that A&T had not yet determined a method to identify separately this class of customers. Further, from the data AT&T provided, there is no way for AT&T (or for dPi) to determine whether a particular service order is for a reacquisition customer or for some other activity as described above.

B. Detail of What the Billing Data Contained and Shortcomings of Data

13. Because service order data was not available prior to 2005 and dPi insisted that AT&T produce data for 2003 and 2004, AT&T had to reconstruct the data by extracting certain information from different sources. Thus, AT&T recreated data from billing and financial database records. Extracting data from different databases that are not designed to store the information in the manner dPi requested and then combining the data into one report results in data that is not as complete or as accurate as the Service Order Data.

14. Unlike service order data in which an "N" service order constitutes a new service account, AT&T had to develop a surrogate methodology to filter its billing systems for *potential* new accounts. AT&T isolated accounts by searching the field "Date of Installation" to determine the first month a billing account might have been established. Then, AT&T cross-referenced such accounts with its financial database records to ensure that during the month when "Date of Installation" occurred, the customer was only billed for a partial month ("fractional billing"). The two filtering searches were the only way AT&T could have isolated potential "new accounts". Once AT&T determined which accounts met those parameters, AT&T provided relevant data that had been retained regarding these accounts. This included whether the accounts had the call block USOCs (i.e., BCR, BRD and/or HBG), whether any revenue-generating TouchStar® or Custom Calling Feature USOCs that might have qualified the account for the LCCW promotion appeared on the account, and whether any non-recurring charges

("NRCs") were retained in the database. AT&T used NRCs since it did not have service order records that showed whether a waiver had been applied to the order. If an account showed "\$--" in the "Non-Recurring Charges Billed" column, it can be *assumed* that a waiver of certain charges had been placed on the account, but it cannot be concluded with certainty.

15. However, dPi's "analysis" of the data supplied by AT&T called into question the comparability of the billing data to the service order data. Prior to supplying the data to dPi, AT&T had made little or no attempt to perform a side by side comparison of the overlapping year of data provided (2005), primarily because AT&T did not know how dPi planned to use the data. Since the filing of dPi's Motion, AT&T's billing and IT managers have compared the two sets of 2005 data and determined that not only were there a significant number of discrepancies between the two sources, but there was clear evidence that the billing and financial data were missing components, thus distorting the number of accounts with no non-recurring charges.

16. dPi attached a portion of the Billing Data to its Motion for Reconsideration. See Appendix 3: 11/09/07 Supplemental Item 1-19, pages 000001-000295.

II. EXAMINATION OF DPI'S ANALYSIS OF DATA

17. dPi represents that the data AT&T produced shows that AT&T has been providing its reacquisition/win-back customers who subscribe to basic service and two or more call blocks with the LCCW promotion since 2003.⁴ AT&T has previously informed dPi of the limitations in the data, which, in the form that dPi requested, is not sufficient for the analytical purposes that would lead to a reliable conclusion. Nevertheless, dPi has presented its conclusions to the Commission in a way that mischaracterizes the data. For the reasons explained below, dPi has presented invalid conclusions based on a combination of faulty analyses and misrepresentations.

18. First, the data itself cannot be used to perform the analysis dPi is trying to perform. The "N" orders represent all new billing accounts that are established, whether for completely new accounts, for re-established accounts or for reacquisition/win-back accounts. There is no way to distinguish among these various activities without reviewing the actual service order issued -- and in some cases, the service order information proves inconclusive. Thus it is impossible to determine from the data supplied if a particular customer's account qualifies for the LCCW promotion.

19. In addition, the waiver codes listed in the data set are used for multiple applications and/or promotions and do not represent just the LCCW promotion. In fact, AT&T's use of these waiver codes pre-dates the

⁴ In order to qualify for the LCCW promotion, an AT&T retail customer must be coming back to AT&T (reacquisition or win/back) and purchase Complete Choice, PreferredPack or basic service and two features.

implementation of the LCCW promotion. An example of waiving certain non-recurring charges as provided for in the tariff are restoration of service following a natural disaster or disconnection in error. During 2004 and 2005 (a time period essential to dPi's argument), Florida was severely impacted by hurricanes and many customers' service was temporarily disconnected. Based on AT&T's tariff, when a customer's home is destroyed, AT&T waives the line connection charge when the customer establishes service (thus initiating an "N" order) (i) at their temporary location and (ii) then again when they return to their permanent location and reestablish service. Another example of a waiver that is unrelated to the LCCW promotion is a split-bill situation where roommates are dividing one billing account with two existing lines into two separate billing accounts. In that case, the service representative initiates an "N" order, makes the notation of the billing change and places a waiver code to waive any non-recurring charges that might typically apply to a new order. Regardless of the reason for waiving a non-recurring charge, one or more of the universal waiver codes (WNR, WSO and/or WLC) would appear on the service order.

20. Contrary to dPi's statements, there is no way that dPi could have analyzed the Service Order Data and properly concluded that AT&T was inappropriately giving its retail customers the LCCW promotion every time a waiver code appeared on an account. Yet, dPi misrepresents the data with authoritative statements such as, "BellSouth *had* been awarding the LCCW promotion to its end users who had ordered ... basic service and two of the three call blocks..." and "[t]hose not receiving [the] LCCW promotion include, for

example: new accounts as opposed to reacquisitions and winovers, splitting of existing accounts, and re-establishment of previously disconnected service." (Motion for Reconsideration, page 4 and Appendix 1, page 2 and 3.) Such conclusions simply cannot be drawn from the data AT&T provided. In fact, it is impossible to tell from this data whether the line connection charges were waived under the LCCW promotion or given for some other reason.

21. Second, the two different data sets (the Service Order Data (2005-2007) and the Billing Data (2003-2005)) cannot be combined and analyzed as if they were comparable to each other. The two sets of data were pulled from completely different sources and do not provide comparable results. A comparison of the Service Order Data and the Billing Data reveals that there are a total of 5,063 unique accounts listed for January 2005 through December 2005. Of those, 946 accounts are included in the Service Order Data that are not included in the Billing Data and 724 accounts are included in the Billing Data that are not included in the Service Order Data. One explanation for the difference is that a customer could have placed a service order, which was included in the Service Order Data, but then modified his or her service before the end of the month when the billing data was updated. (See footnote 2 above.) Such change could impact whether the account was captured in the Billing Data because any modifications during this window (from the service order date until the end of the month) could affect the class of service associated with the customer or any features either added or dropped. Without reviewing each instance of why an

account was captured in one set of data and not in the other, there is no way to know for sure what caused the discrepancies in the data.

22. In addition, when comparing the two sets of data, it would be appropriate that when a waiver is included on the service order, the "Non-Recurring Charges Billed" column would have a "\$--". However, after running a comparison, AT&T found that there are 8 accounts that had waiver codes (based on Service Order Data), but non-recurring charges appeared in the Billing Data, while 438 accounts appeared to not have a non-recurring charge, but no waiver was associated with the same account. Non-recurring charges can only be waived in the billing system using a billing instruction waiver code. Such discrepancies raise significant concerns about the data and its comparability.

23. The data sets conflict with each other in such a way as to highlight AT&T's concern about (a) the reliability of the Billing Data in determining whether any waivers were actually granted and (b) the data's use for dPI's purpose. The difference between the data sets also demonstrates that despite AT&T's best efforts, the data was not consistently captured using both methodologies. Trying to draw conclusions by comparing the results from the Billing Data and the Service Order data cannot provide anything but faulty conclusions.

24. To provide a better understanding of why the two sets should not be compared, attached hereto as Exhibit B is a side-by-side comparison of the 2005 percentages for each set of data. Using dPI's apparent methodology of

analyzing the Billing Data,⁵ the percentage of accounts with no non-recurring charges for 2005 appears to average approximately 29%. Conversely, the Service Order Data, a significantly more reliable source of data for the same time period, demonstrates that approximately 14% of accounts had waivers present. Thus, dPi's graphic depiction on page 1 of its Appendix 1 is an inaccurate depiction of the data provided to dPi. The top line should not stop at the end of 2004, but should continue into 2005 with everything else remaining the same.

25. In fact, dPi would lead this Commission to believe that AT&T only provided the Billing Data for 2003-2004. However, when dPi filed its Motion and attached its Appendix 3, it failed to include the Billing Data supplied by AT&T for January 2005 to December 2005, instead representing that Appendix 3 consisted of the totality of AT&T's data production. It is difficult to believe that dPi mistakenly neglected to file over 100 pages with the Commission, especially given that the missing data represents an omission of exactly one year of data: *the one year of data that undercuts dPi's theory and analysis.* Additionally, it is inconceivable that someone could look at the two sets of data and not question its reliability. Yet, dPi never asked AT&T to clarify the data; it simply asked for a general explanation about what was included. In order to ensure that the Commission has a complete record of the data produced in this case, attached

⁵ dPi did not include an explanation on the methodology used in analyzing the Service Order Data or the Billing Data. However, in reviewing dPi's numbers, it appears that dPi limited the number of accounts to just those with 2 or more blocks and no other features and then counted the number of accounts with zero in the "Non-Recurring Charges Billed" column.

as Exhibit C are the pages from the Billing Data that represent the missing year of data (January 2005-December 2005; Bates Pages 000295-000403).

26. Finally, dPi has misinterpreted the data provided and has drawn erroneous conclusions. dPi performed an "analysis" of the data (i.e., a count of waiver codes) claiming that approximately 15% of the service orders issued from January 2005 through August 2007 had waivers associated with those accounts and that those waivers were granted as a result of the LCCW promotion. dPi then concludes that 100% of the 15% were granted the LCCW because they were reacquisition customers. Such conclusion cannot be found in the facts presented, nor is it even remotely true. As previously explained, there are many reasons why a waiver may be applied to an account. Just because an account may have a waiver code does not mean that the waiver is the result of the LCCW promotion. Yet, dPi provides no explanation regarding its methodology or its conclusion. Conversely, dPi appears to assume 85% of AT&T's retail customers are denied a waiver because they are not reacquisition customers. dPi appears to believe that, for each new retail account for basic service that has two or more call blocks and a waiver, it means that the customer is a reacquisition and that AT&T granted the waiver because of the LCCW promotion. None of these conclusions can be found in the facts of the data provided.

27. Based on the above analysis, it is clear that dPi: (i) ignored information from AT&T that indicated that the data could not result in any reliable analysis; (ii) proceeded with an analysis based on data it mischaracterized; (iii) presented evidence to this Commission that was incomplete and misleading; and

(iv) provided conclusions that are based on speculation and faulty data. Based on these reasons, dPI's analysis has no merit and should be ignored.

iii. AT&T's Analysis of the Data

28. In response to dPI's claims, I performed an analysis of the data provided to dPI using appropriate assumptions and taking into consideration the data limitations noted above. My analysis focused primarily on the Service Order Data since it more closely aligns to dPI's initial discovery request and because of the issues associated with the Billing Data discussed above. Attached hereto as Exhibit D is a matrix summarizing the Service Order Data. The matrix demonstrates the scale of orders at issue in this proceeding. In particular, the matrix shows that AT&T processed almost 1,650,000 new orders from January 2005 to August 2007. Of those, only 18,621 service orders were for basic service with two or more free blocks, meaning, only 1.13% of all "N" orders initiated by AT&T are in the pool of orders that dPI is analyzing. Further, of those 18,621 orders, only 2,571 had waivers associated with the order but did not have TouchStar® feature USOCs, thus reducing the percentage of orders that dPI claims AT&T should not have granted the waiver to to 0.16% of AT&T's retail "N" orders.

29. The 2,571 orders identified above represent approximately 14% of a universe of 18,621, the orders for basic service with two or more call blocks. This is consistent with the number reflected in dPI's Appendix 1. However, contrary to dPI's assumptions, I recognize that there are multiple reasons for

waivers to appear on service orders. Thus, in order to understand the reason for the waivers on the accounts and to determine if all 14% received the LCCW promotion, as dPi suggests, I reviewed a random sample of 136 service orders that fell into dPi's classification of waived charges.

30. My review revealed that many of the service orders did not provide a significant amount of new information. However, I was able to ascertain that a significant number of service orders did have explainable reasons for the waiver and these were not a result of the LCCW promotion as dPi claims. There were many orders that contained the waiver because the retail customer either had been disconnected in error, had purchased a bundled offering with two or more chargeable services and/or features or had purchased a non-packaged offering with two or more chargeable services and/or features. dPi's claim that all of the approximately 14-15% of service orders that received a waiver were for reacquisition customers receiving the LCCW promotion was proven to be inaccurate. The fact is there were no specific indicators that any of the waivers were given as a direct result of the LCCW promotion.

IV. Conclusion

31. In February 2006, I represented AT&T before the Commission in this proceeding and provided specific information based upon my knowledge at the time. Commissioner Kerr asked me several questions about whether AT&T granted the LCCW promotions to its reacquired or win-back end user customers who were similarly situated with dPi's customers. I responded that AT&T had not

and does not grant the LCCW promotion to any reacquired or win-back customers who only order basic service and two or more free call blocks. It was *not* and still *is not* AT&T's policy to grant the LCCW to customers similarly situated to dPi's customers, that is, customers with only basic service and two or more free call blocks. Our promotions are not designed to provide financial rewards, such as billing credits, as an incentive for requesting free items. As previously noted, nothing submitted in dPi's Motion for Reconsideration supports the conclusion that AT&T has deviated from its policies. Nevertheless, in an abundance of caution, AT&T has developed additional training materials for service representatives to ensure that promotions are properly administered.

32. As I have demonstrated, the data dPi asked AT&T to produce in discovery cannot lead to valid conclusions about AT&T's application of waivers to service orders. The data does not reveal which customers qualified for the LCCW promotion nor does it reveal whether customers received the promotion. dPi attempts to avoid this fundamental issue by mischaracterizing the data through its "analysis" and by misrepresenting to the Commission what AT&T actually produced in Florida by redacting an entire year's worth of data. dPi's contention that all of the waivers are attributable to the LCCW promotion is incorrect. The data AT&T provided in response to discovery is not what dPi claims, and it does not support dPi's conclusions. AT&T has properly applied the


waiver of non-recurring charges for force majeure, split billing, and reconnection following disconnection in error among other valid reasons. AT&T has not made a practice of granting the line connection charge waiver to customers who only purchase basic service and two or more free call blocks.

This concludes my affidavit.

This 17th day of December, 2007


Pamela A. Tipton

Sworn to and subscribed before me this 17th day of December, 2007.


NOTARY PUBLIC

MICHELE F. DABLER
Notary Public, Douglas County, Georgia
My Commission Expires November 3, 2008

1 By Mr. Carver:

2 Q. Ms. Tipton, I'm going to ask you to summarize your
3 affidavit, but before you do that -- typically with
4 witnesses I ask them if they have any changes to their
5 affidavit, but I'm going to do something a little bit
6 different now because I understand that I misspoke in my
7 opening, so I'm going to ask you if you can correct the
8 statement that I was including?

9 A. Yes. Earlier in his opening statement, Mr. Carver
10 represented that there was a portion of the orders that I
11 had reviewed that had the basic service and the two blocks
12 and the waiver. Approximately 15 percent of those were as
13 a result of disconnection in error. And when he was doing
14 his opening, he represented that that then could be
15 applied to the whole pie, if you will, on the exhibit.

16 The service order review that we conducted was
17 actually only those accounts that had basic service and
18 the two free items and the waiver code, so that would have
19 only been a slice and so I just wanted to make sure that
20 was corrected.

21 MR. CARVER: And I apologize for the mistake.

22 COMMISSIONER KERR: Let the record reflect Doug
23 Lackey never would have let a witness do that. You might
24 send him that part of this transcript.

1 MR. CARVER: It's a new day.

2 COMMISSIONER KERR: A new AT&T, right.

3 Q. Ms. Tipton, could you summarize your testimony,
4 please?

5 A. Yes. When I was here two years ago in 2006, I
6 testified that our customers who order basic service and
7 only two or more of these free blocks do not qualify for
8 the line connection charge waiver promotion. And as
9 Mr. Carver referenced this morning, and I repeat again,
10 that was true then and it's true now. And, in fact, the
11 work that I have done since that time has done nothing but
12 convinced me of that fact.

13 DPi is claiming otherwise based on discovery
14 that we provided in a related case in Florida, and we've
15 looked at some of that this morning. However, if you look
16 at the data carefully, you will see that it proves
17 nothing, really.

18 AT&T responded to the discovery request with an
19 abundance of caution, recognizing that our systems were
20 just not designed for retrospective analysis, especially
21 not several years after the customer interaction that
22 actually caused the order to be processed. Our systems
23 are actually designed to receive and process orders to
24 cause those to provision service and to actually bill the

1 customer the charges that they owe.

2 We also have systems that capture data for our own
3 internal accounting, but their -- those systems are just
4 not designed for, to use Mr. Carver's phrase, for forensic
5 analysis purposes. The fact is the data just simply
6 cannot be used to perform analysis like dPi has intended,
7 so any conclusions that they have drawn really are just
8 conjecture.

9 AT&T has made a number of attempts to explain to
10 dPi the deficiencies in the data, including a letter that
11 I attached to my affidavit that Mr. Carver issued last
12 fall. From the data that is provided, it is impossible to
13 distinguish reacquisition customers from basic new
14 connects or for reconnections or for other types of
15 services, yet dPi claims that line items that had a waiver
16 code on the discovery response absolutely had the line
17 connection waiver promotion granted.

18 Waiver codes are actually used for a number of
19 business purposes other than a line connection charge
20 waiver promotion and those very same waiver codes have
21 been in effect long before the promotion was ever
22 designed. Yet dPi presents their argument as if the
23 presence of that code means the promotion was granted.

24 So for example, waiver codes are also used

1 following a disconnection in error and the reestablishment
2 of service. They're also used for this situation that we
3 talked about earlier, this split billing that have been
4 raised earlier because it was also contained in Mr.
5 Carver's letter that was given to dPi this fall to help us
6 explain the data and some of the reasons behind it.

7 These codes are also used for granting promotions
8 that are not at issue here.

9 Now, even if the data were reliable for the
10 forensic analysis that's trying to be accomplished here,
11 it doesn't show what dPi claims it shows; that is that
12 AT&T made a practice of applying line connection waiver
13 charge promotion to its own customers that ordered only
14 basic service and these two free items.

15 Of the 18,621 AT&T new service orders during the
16 2005 and 2007 time frame that only had the -- that had the
17 basic service and only these two free items, only 2,571 of
18 those had a line connection charge waived for some reason.
19 That's approximately 14 percent on average across the
20 two-year time frame. And that's hardly a demonstration
21 that AT&T made a practice of always granting the line
22 connection waiver promotion to its customers that were
23 similarly situated to dPi.

24 But let's take a closer look at that 14 percent.

1 To understand why the charges were waived, I took a random
2 sampling of the service orders in that pool of requests
3 only those that had the basic service and two free items
4 and there was a waiver code present. These appeared on
5 face value to be the same services that dPi has in its
6 request.

7 Now, I'll admit some of the orders I looked at had
8 no additional information or had no information that would
9 help me understand why the waiver code was present on the
10 service order. You can look at various sections on the
11 service order, whether there is a related order that I
12 might need to go look at and see what was going on in the
13 related order. There may be additional USOCs that were
14 not captured that may have represented that bundled
15 services were actually offered. There are remarks on the
16 service order that can indicate why a waiver is provided
17 or what's actually going on on the service order.

18 Many of those -- the service orders I reviewed did
19 have information that gave me some insight as to why the
20 waiver code was present. And as you heard earlier this
21 morning, I believe a fairly significant number -- and I
22 don't remember exactly, but it's around 15 percent -- of
23 the orders that I reviewed were as a result of
24 disconnection in error. There were orders that were

1 restorations due to a hurricane or due to house fires.
2 There were a number of orders that were a result of split
3 billing. Now, I don't know the circumstances behind it,
4 but it clearly says split billing. There are also service
5 orders that were the reestablishment of service for
6 customers who had been disconnected for non-pay. And it's
7 a general practice that if it's paid in full, it's
8 reestablished within 30 days.

9 What's important is that none of the service
10 orders that I reviewed had any indication in the remarks
11 or otherwise that the waiver was granted specifically as a
12 result of the line connection charge waiver promotion.

13 In summary, dPi has literally concocted this story
14 that AT&T changed its policy midstream to avoid payment of
15 the resale credits. They completely ignored that -- that
16 2005 year of data from the earlier set of data. It
17 specifically refutes their claim. And they ignore the
18 fact that the data that was provided lacked sufficient
19 detail to demonstrate what they actually claim.

20 Attached to my affidavit, not in chart form -- or
21 in the graphical form, but in chart form is a side-by-side
22 comparison of the 2005 data. And I would represent to you
23 that the line continues as Mr. Carver suggests.

24 And, in fact, the trend does not trend down to the

1 lower percentage as is represented on the exhibit that was
2 provided this morning. In fact, the trend line from the
3 early set of data continues with that up-and-down motion
4 just as it had for the 2003 and 2004 period.

5 They enabled that trend line to go down to look
6 like there was a trend because of the way they built their
7 spreadsheet by having the '02 and '03 -- or the '03 and
8 '04 data, excuse me, in a line and then they picked up
9 with the '05 data from the new data set, so when they
10 graphed it, of course that's going to make it look like
11 it's connected when it really isn't.

12 So there should have been two completely separate
13 graphs. And I have, in fact, done that, I just don't have
14 it as an exhibit. But I compared that just because I was
15 curious once I saw their graph.

16 The problem is not with the data itself or with
17 AT&T's systems, the problem is that dpi is trying to use
18 the data that's been provided to determine exactly what
19 customers ordered and exactly why the waiver was granted
20 as proof that AT&T always grants this promotion when its
21 customers that have just the basic service and only the
22 two free items are ordered. And so the fact is the data
23 simply does not provide that proof. That concludes my
24 summary. Thank you.

1 MR. CARVER: The witness is available for
2 cross-examination.

3 COMMISSIONER KERR: Mr. Malish.

4 MR. MALISH: Thank you, Commissioner.

5 CROSS-EXAMINATION BY MR. MALISH:

6 Q. Ms. Tipton, do you remember when we were doing
7 this case here roughly two years ago one of the things
8 that Commissioner Kerr was specifically interested in was
9 two things, basically BellSouth's actual practice as to
10 how it treated its own customers and the existence of the
11 written policy document that predated the dispute?

12 A. Yes.

13 Q. Do you remember your testimony to Mr. Kerr on
14 those issues?

15 A. Yes. At the time I had spoken with the retail
16 organization and heard from several different people about
17 what our policies and practices are, as well as how the
18 promotion was actually designed. And he asked
19 specifically if I had seen any methods and procedures type
20 document and at that time I had not.

21 Q. With regard to the documents, I mean, you're here
22 to testify about BellSouth's policy in this particular
23 issue, correct?

24 A. That's correct.

1 Q. I mean, it strikes me as odd that you wouldn't
2 review the written policies that were part of BellSouth
3 policy.

4 A. And I have to agree there. And I asked for those
5 written policies and unfortunately in preparation for the
6 hearing, I didn't ask in enough time to get to the right
7 people.

8 I have gotten to the right people since then and I
9 have reviewed a significant number of documents, including
10 those that are available for the service representatives
11 themselves who are on the retail side of the house
12 interfacing with our own retail customers and deciding
13 whether a particular request does or does not meet the
14 particular promotion criteria.

15 Q. And, in fact, we did some discovery on that and we
16 went over it, for example, in Florida two weeks ago?

17 A. That is actually not correct. What we went over
18 in Florida is the methods and procedures provided on the
19 wholesale side of the house to the service representatives
20 who are reviewing the resale request for credit to
21 determine if those resale accounts meet the criteria
22 specified by the retail promotion.

23 Q. Well, isn't it true that dPi asked BellSouth to
24 produce copies of BellSouth's internal training billing

1 dispute policy documents related to BellSouth's granting
2 or denying promotion credits to CLECs, included, but not
3 limited to, directions or training materials to account
4 managers, billing department employees, employees involved
5 in settling dispute resolution, et cetera? Didn't we ask
6 for that in discovery?

7 A. Yes, you did, and we responded to that discovery.

8 Q. And yes, you did. And you provided us with a
9 document, presumably the document you're just talking
10 about, right?

11 A. Correct. And that document was responsive to the
12 request because --

13 Q. Right.

14 A. -- the request was for granting of resale credits,
15 and that's a wholesale activity and we provided you with
16 the documents, methods and procedures and et cetera for
17 the wholesale side of the house.

18 Q. And that document was created in May of 2005,
19 correct?

20 A. I believe so. I can't remember exactly, but that
21 sounds about right.

22 Q. And this dispute started in August, September
23 2004?

24 A. Correct.

1 Q. So the written policy that was created by
2 BellSouth's Christy Segal [phonetic] was some seven to
3 nine months after this dispute arose?

4 A. That's correct. Because the procedure was created
5 -- it's not actually a policy, it's a method and
6 procedure. And it was directed towards the service
7 representatives who were actually reviewing the service
8 orders that had been submitted by dPi associated with a
9 request for credit.

10 At the time the dispute arose, we didn't have a
11 process in place at all to review the promotional credits,
12 and instead had relied on the CIECs to provide request for
13 credits that were valid and we recognized that that was
14 not a good assumption and so we had to take the time to
15 develop an actual process. And part of that was
16 developing this procedure that was actually documented and
17 then provided to the reps who actually screened the
18 requests that came in.

19 Q. And I guess it was necessary to have those
20 procedures because in the past they weren't being
21 followed, were they, they were being done differently?

22 A. As I just stated, we didn't have a process for
23 screening promotional -- requests for -- resale
24 promotional requests.

1 Q. Well, what about retail?

2 A. We certainly had retail procedures, yes.

3 Q. The other thing that Commissioner Kerr asked you
4 about was what y'all were doing in practice. And he
5 wanted to know whether y'all -- what your retail customers
6 that were taking -- or that were making orders for
7 basically basic service plus the TouchStar blocking
8 features that we're talking about here, what they were
9 being charged. Do you recall that line of questioning?

10 A. Yes, I do.

11 Q. And you said that you had run queries on that,
12 right?

13 A. Actually I believe what I said is that I had asked
14 my contacts on the retail side to determine if we had
15 customers that were similarly situated as dPi's. I don't
16 remember the exact question; I don't remember my exact
17 words, but I do recall what I asked of these -- of this
18 contact; to determine if we had any of our own retail
19 customers here in North Carolina who had ordered only the
20 basic service and the two free items that were
21 reacquisition customers, had they been granted this
22 promotion. And what I was told was there were none.

23 Q. Okay. What kind of queries were run?

24 A. I do not know.

- 1 Q. Who did you ask?
- 2 A. Liz Stockdale [phonetic].
- 3 Q. And that's it?
- 4 A. Yes.
- 5 Q. How long did it take for you to get an answer
- 6 back?
- 7 A. I don't recall because I don't -- all I know is
- 8 that I was going to Liz to ask for the information and I
- 9 honestly don't know how she acquired the information.
- 10 Q. A day or two?
- 11 A. No.
- 12 Q. Weeks?
- 13 A. I honestly do not recall. That was more than two
- 14 years ago.
- 15 Q. So you just asked someone do y'all give this? You
- 16 didn't actually ask to have a computer search run, did
- 17 you?
- 18 A. My understanding of what Liz did is -- and again,
- 19 it's been a -- I haven't talked to her in a long time
- 20 about this, but my understanding of what she did is we
- 21 used to have a center that was in place only for
- 22 processing of reacquisition orders. I don't believe that
- 23 exists anymore. So my understanding is she went to
- 24 whoever was responsible for that center and asked them

1 this question.

2 Q. So you have no idea what happened really?

3 A. I do not sit in the service center, if that's what
4 you're asking.

5 Q. When you answered the question of Commissioner
6 Kerr and again my question about running a query, does
7 that imply to you that a search is made through a computer
8 or electronic data systems?

9 A. Yes, it does.

10 Q. It does not -- running a query is not asking
11 someone a question, right?

12 A. Correct.

13 Q. So you represented to the Commission that a
14 computer query had been run, when in fact you had no
15 personal knowledge whether one had actually been run or
16 not?

17 A. I testified based on what was conveyed to me by
18 someone that was representing the retail organization and
19 I believe that to be factual.

20 Q. But basically you were doing this based on what
21 somebody told you based on what somebody had told them,
22 correct?

23 A. Let me make sure I'm clear here. I went to Liz
24 Stockdale and asked her to find out this information.

1 When she came back to me, she said "I asked for" -- and I
2 don't remember. She probably told me the name and I just
3 don't remember -- "I asked for them to tell me if we have
4 granted the promotion" -- first of all, if there were any
5 customers that had requested only basic service and just
6 the two blocks; and if so, had we granted the promotion on
7 any of those.

8 And for whatever time period Liz requested the
9 information for, we actually had no similarly situated
10 customers. We had none during whatever time frame that
11 was here in North Carolina that had only the basic service
12 and just the two free -- or two or more free blocks.

13 Q. And was that run through the same system that
14 y'all ultimately ran the queries through in Florida?

15 A. Given what I understand about what Liz asked, I
16 don't think so.

17 Q. And I don't want you to assume anything. I only
18 want you to tell us what you actually know as a matter of
19 fact here today. Could you do that for me, please? And
20 if you don't know, I just want you to say I don't really
21 know --

22 A. Okay.

23 Q. -- because I think that's how we got into some
24 trouble the last time.

1 And you don't recall how long it took you to get
2 the answer back from Ms. Stockdale?

3 A. No.

4 Q. You have no idea whether it was a matter of days
5 or a matter of weeks?

6 A. No.

7 Q. Did you think it was important to ask that
8 question to begin with?

9 A. Yes.

10 Q. Obviously or you wouldn't have asked the question,
11 right?

12 A. Correct.

13 Q. But you didn't preserve the query or the data that
14 was actually examined, did you?

15 A. No, I didn't. And quite frankly, there has been
16 -- in BellSouth, there has been a very, very stringent
17 bright line drawn between the wholesale and the retail
18 side of the business because there is a significant risk
19 of customer proprietary information, about alleging that
20 there is bad competitive activity if data is shared. And
21 so as a member of the wholesale organization, there is a
22 limit to what the retail organization can and will provide
23 me in terms of detail.

24 Now, since that time I've gotten certainly some

1 buy-in from the attorneys on the retail side to permit me
2 to look at actual retail data with the understanding that
3 I cannot share it with anyone else in the organization
4 that's not associated specifically with this case. We
5 proceeded with an extreme amount of caution when we were
6 approaching this case for that reason.

7 Q. Well, I mean, if there's a Chinese wall between
8 wholesale and retail, how do y'all know what retail does?

9 A. Because I have contacts, such as Ms. Stockdale,
10 with whom I can go. I have a number of other contacts
11 now. It took, as I recall, six or seven different contact
12 programmers, data analysts and service order experts and
13 database experts for us to actually produce the volume of
14 data that we produced from the 2003 through to the 2007
15 time frame.

16 Q. And is --

17 COMMISSIONER KERR: Mr. Malish, let me -- I'm
18 going to interrupt you just because I'll forget this
19 question. And I apologize, but I'm going to do it.

20 Before we took a break, a lot of the discussion
21 questions from counsel and questions from the
22 commissioners were -- I mean, the conclusion was the
23 answer to the ultimate question that we're being asked to
24 infer can't be answered. I mean, the data doesn't exist

1 to answer that question.

2 It seems like when you were asked that question
3 previously and you checked with Ms. Stockdale, you
4 presumed it was a question that could be answered and that
5 she had answered it for you and that's what you relayed to
6 us, is that --

7 THE WITNESS: Yes. That's correct, yes.

8 COMMISSIONER KERR: Have you since learned that
9 that's a question that's just not capable of being
10 answered by the organization; retail, wholesale? I mean,
11 it doesn't matter really to me. I mean, the burden -- or
12 the question is being posed to the entire organization.

13 Have you since learned that -- at the time you
14 thought it was a question that could be answered, you
15 asked Ms. Stockdale, you relied on her answer and you
16 provided that to us.

17 THE WITNESS: That's correct. And I --

18 COMMISSIONER KERR: Have you since learned that
19 it's a question that can't be answered by the
20 organization? Is that kind of where we end up today?

21 THE WITNESS: Yes. Here's my understanding, and
22 -- is that there at one point in time -- and I honestly
23 don't know whether this center still exists, but there was
24 a center that would process only promotional reacquisition

1 type orders. My understanding is that is where Ms.
2 Stockdale went to ask the question. I certainly presumed
3 it was a question that could easily be answered, quite
4 frankly. I actually presumed that there should be some
5 special code that went on service orders that said this is
6 a reacquisition order and this is a result of the
7 promotion. I made that assumption. I never clarified
8 that.

9 When we got the discovery request and asked this
10 question again, what we were told was there's absolutely
11 no indicator on the service order other than what remarks
12 might have been entered manually by a service rep that
13 indicates whether it is a reacquisition customer or not;
14 and there's absolutely nothing that indicates that a
15 waiver has been placed on the order specifically as a
16 result of the promotion.

17 So when I was given the answer by Ms. Stockdale,
18 I was hearing her answer through my filter assuming that
19 there was some specific indicator that was easily
20 identifiable on the service order. And we subsequently
21 learned there is no such indicator.

22 COMMISSIONER KERR: Let me just follow up
23 briefly and then I'll get out of your way, I promise.

24 There was at one point a reacquisition center as

1 you testified. Either at that time or now or both, I
2 guess, do you track -- it would seem to me it would be
3 reasonable to track the success of various promotions so
4 that at some level -- you know, if it's your marketing
5 folks -- you have some idea of the number of win-backs or
6 re-authorizations that you have. Is that fair to say? I
7 mean, do you know? Let me ask first so we don't end up
8 here a third time. Do you know whether or not that's
9 true?

10 THE WITNESS: First let me say I would presume
11 that that would be a very reasonable thing to do. And --

12 COMMISSIONER KERR: But let me ask you do you
13 know that you do it?

14 THE WITNESS: What I know is that there are
15 certainly administrative reports that estimate our
16 win-backs. We actually received a discovery request from
17 dPi specifically asking for the actual percentage. And
18 when we inquired with retail, they said we don't know
19 definitively.

20 We have administrative reports that estimate it
21 and they estimate it based on some criteria. I'm not
22 really quite sure what they do. I think it has something
23 to do with a correlation between the addresses that
24 received a direct mail piece and the addresses of orders

1 that come in or something like that, but we don't know for
2 sure with 100 percent accuracy how many reacquisition
3 customers we have.

4 COMMISSIONER KERR: One more question, area of
5 question. I think much of this discussion today has and
6 will continue to focus on whether or not those
7 re-acquisitions received the promotional discount. Do you
8 have personal knowledge or do you have evidence to confirm
9 that they, in fact, did not receive the promotional
10 discount?

11 THE WITNESS: Yes. The service orders that I
12 reviewed that were taken from the subset, right -- so I
13 looked at orders that only were within the subset that had
14 just basic service, just the two or more free items and
15 had a waiver code present on the service order. And of
16 those service orders there were a significant number where
17 the waiver was on the service order for reasons other than
18 a promotion.

19 Now, there are orders that you -- you can't
20 tell; you have no idea why.

21 COMMISSIONER KERR: And what I think you said is
22 "I looked at some. They had other explanations as to why
23 they got the waiver." And what I think I asked, a little
24 bit of a --

1 THE WITNESS: Okay.

2 COMMISSIONER KERR: -- different question, which
3 is do you have knowledge or do you have evidence that of
4 the re-authorizations, which you've testified clearly have
5 win-backs, do you have any evidence to positively prove
6 that they did not receive the promotion?

7 THE WITNESS: I think the answer to that is no,
8 if I'm understanding the question, so I'm going to repeat
9 it back to you. Do I have evidence that can demonstrate
10 100 percent that we never granted the promotion to these
11 similarly situated customers? No.

12 I think the only way that we could do that is if
13 we reviewed 100 percent of the service orders and went
14 back and interviewed every single service rep for every
15 single order and said did you grant this waiver or did you
16 waive the charges on this service order as a result of the
17 promotion.

18 COMMISSIONER KERR: And just clarify it. Your
19 testimony is you've looked at a sample and you don't see
20 evidence that you did, but your testimony is that you do
21 not have evidence that you did not grant the waiver
22 because of your policy or practice?

23 THE WITNESS: That's correct.

24 COMMISSIONER KERR: Thank you. And I apologize,

1 but I would have lost my train of thought, so go ahead.

2 Q. Ms. Tipton, some of Commissioner Kerr's
3 questions -- maybe this is a rabbit trail, maybe it's not,
4 but I --

5 COMMISSIONER KERR: Go ahead. It's my fault if
6 it is.

7 Q. I'm curious about this reacquisition center. Who
8 ran that?

9 A. I don't know.

10 Q. Where was it?

11 A. I don't know that either.

12 Q. You know, and it's not in existence anymore?

13 A. I don't know that either. I'm presuming because
14 we've changed structure a lot since -- over the years and
15 especially since the merger.

16 Q. All right. And Ms. Stockdale, the one that you
17 asked these questions back two years ago roughly, she
18 still with the company?

19 A. Yes.

20 Q. Is there anything -- is she in good health more or
21 less? Is there any reason why she couldn't come and
22 testify about these things?

23 A. I don't know.

24 Q. Not so far as you know?

1 A. Yeah. I don't know.

2 COMMISSIONER ERVIN: Can I ask one even more
3 basic than that. You may have said who Ms. Stockdale was
4 and maybe I'm the only one in the room who didn't hear it,
5 but who is Ms. Stockdale?

6 THE WITNESS: She is in what I believe is the
7 marketing organization in consumer -- the consumer retail
8 side of what was BellSouth and is now AT&T.

9 COMMISSIONER ERVIN: Do you know what her job
10 title was?

11 THE WITNESS: No. I don't recall.

12 COMMISSIONER ERVIN: She's just somebody in that
13 side of the company?

14 THE WITNESS: Yes. I've been acquainted with
15 her for many years and I think her title has changed many
16 times over many years, so I just don't recall.

17 COMMISSIONER ERVIN: Mr. Malish, we have
18 thoroughly disrupted you by now. I don't know what else I
19 can do to accomplish that result and I'm not trying to.

20 MR. MALISH: Yeah. Maybe the more questions
21 y'all ask the fewer questions I ask, so --

22 COMMISSIONER ERVIN: We usually don't shed that
23 much light.

24 Q. Now, Ms. Tipton, I want to talk about these

1 billing and ordering sets of data that y'all provided in
2 general, the thousand pages that Mr. Tepera was referring
3 to. Are you with me?

4 A. Yes.

5 Q. All right. Y'all are complaining that this was
6 not -- these systems were not built to provide the
7 information that dPi asked of BellSouth, correct?

8 A. Correct.

9 Q. Nevertheless, the data is in those systems,
10 correct? I mean, that's where it came from. It was mined
11 out of those systems.

12 A. Well, of course the data that was produced was in
13 those systems, but, you know, for example, the service
14 order information -- let me back up.

15 I don't have the question in front of me, but the
16 question that was asked was to provide BellSouth's retail
17 customers that had ordered the basic service and the two
18 or more free blocks. And so we provided a list -- the
19 only way to get that information that we knew of at the
20 time was to look at the actual service orders that were
21 processed.

22 The question also asked for "and the amount of
23 charges that were billed." And service orders do not
24 contain billing information, so we had to try to align

1 what is a service order, which is based on a service order
2 number and it has a telephone number on it, and somehow
3 triangulate that to data that resides in some other
4 system.

5 And they could not find a way to get the actual
6 billed charges that were specifically associated with that
7 service order because the billing database can't be
8 queried by service order number and it can't be queried
9 with certainty on timing. So we had to use a static table
10 that listed the prescribed charge for a particular USOC,
11 but it was not the charge that actually necessarily
12 appeared on the bill.

13 That table was populated if a bill carried had
14 run, but if an order had completed in the meantime, it
15 would wipe away the input that was on that table. So --
16 you know, and AT&T tried to explain some of that in its
17 letter that was written last fall. But that's just one
18 example of some of the issues we've had with trying to
19 produce the data that had been requested.

20 Q. And I think we can -- I'm willing to agree with
21 you that maybe that data is imperfect. That's what y'all
22 are saying, right?

23 A. Yes. It's not perfect, right.

24 Q. But that's your best effort at getting that

1 information for us and for the Commission, isn't it?

2 A. Yes, it is.

3 Q. For both years, for both sets of data, that's the
4 best you could do for the years in question?

5 A. Yes.

6 Q. You did your best to get the information that was
7 requested?

8 A. Yes.

9 Q. And when I say you, I mean the organization
10 because I know you didn't go and write the computer
11 program or whatever that found this stuff.

12 Now, I want to talk, if I can, with you about your
13 examination of the data, the information. Do you --
14 excuse me. If I may approach. I'm going to bring you the
15 court reporter's copy of our Exhibits 1 through 3.

16 Okay. And Ms. Tipton, can you flip to the pie
17 chart for me, which is 3, okay?

18 A. Uh-huh.

19 Q. And I'm assuming you would agree with Mr. Tepera
20 that if we used the data from 2005 that y'all call more
21 reliable, the red sector of this pie would grow and the
22 blue sector would shrink?

23 A. I disagree. This data appears to represent the
24 totality from May '03 to May '07 --

1 Q. Right.

2 A. -- right?

3 Q. Yes.

4 A. Which means that if you look at the '03 to '04
5 data that dPi used that has a higher percentage --

6 Q. Right.

7 A. -- and the '05 to '07 has a lower percentage --

8 Q. Right.

9 A. -- if you take out the higher percentage data from
10 this red pie, the red slice, the red slice is going to
11 shrink.

12 Q. Yeah. I think -- maybe I asked the question
13 backwards. What I thought I was asking is that if we had
14 used the unreliable data for 2005, the one that y'all are
15 saying has a higher occurrence of waivers being granted,
16 the red would expand and the blue would shrink?

17 A. Yes.

18 Q. Okay. So we just had a mixup --

19 A. Okay.

20 Q. -- on that question. So you agree that if we had
21 used what y'all call the unreliable data, this pie chart
22 would be less blue and more red?

23 A. Yeah. And actually we characterize it as the
24 billing data, which is the early data; and the service

1 order data, which is the later data.

2 Q. Okay. And, again, if you had had a person that
3 had ordered basic service plus the blocks, but was not a
4 win-over or reacquisition customer and was not involved in
5 a hurricane or other act of God and wasn't a line
6 splitting charge and it wasn't a disconnect or reconnect
7 in error, that they wouldn't qualify for having their line
8 connection charge waived? Is that generally true?

9 A. Well, there certainly could be other reasons why
10 the line connection charge was waived, and I think I
11 talked about some of those others. There could be some
12 other promotion that's not at issue here.

13 Q. Like what?

14 A. I don't know. The waiver code is put on a service
15 order -- the only waiver code that is unique to a line
16 connection charge is the WLC code.

17 There are two other codes: One is WNR; the other
18 one is WSO. And those codes can appear either in the bill
19 section or immediately next to a service order, and we
20 reported both in the data, and so WNR could waive
21 something other than the line connection charge, we don't
22 know. You can't -- you know, it's -- you can't tell that.

23 Q. My question is for somebody that didn't have any
24 of those other special unusual act of God or disconnect or

1 reconnect, you know, the other excuses for being in the
2 red, if they didn't have those and they were not a
3 reacquisition or win-over, they wouldn't qualify for the
4 promotion, correct?

5 Let me -- do you want me to rebuild the
6 hypothetical?

7 A. I'm sorry. I'm just having difficulty following
8 your question.

9 Q. Okay. I'll rebuild the hypothetical.

10 A. Okay.

11 Q. A person ordering basic service, 1FR, plus two to
12 three blocking features, no act of God, no disconnect or
13 reconnect in error, no split-billing situation, no house
14 fires, and again, not a win-over and not a reacquisition,
15 would you expect to see them not getting a waiver for the
16 line connection charge?

17 A. Well, again, there could have been some other
18 promotion that had the waiver code on it. When I reviewed
19 the service orders, I identified, I think --

20 Q. If you don't mind, if I --

21 MR. CARVER: I object to his interrupting the
22 witness. She was trying to explain her answer.

23 MR. MALISH: She's straying from the
24 hypothetical that I postulated and so it's just not

1 relevant what she's getting ready to say. I would like to
2 rephrase or withdraw the question and rephrase it to make
3 sure we're on the same page because it's just not useful
4 to allow her to talk at length about something that I'm
5 not asking about. If --

6 COMMISSIONER KERR: I was about to allow you to
7 withdraw the question if you'll stop.

8 MR. MALISH: I'll withdraw the question.

9 Q. Ms. Tipton --

10 COMMISSIONER KERR: Ask her another question.

11 Q. -- would you please concentrate with me on this
12 issue, okay. The customer is taking nothing but basic
13 service -- 1FR, right, that's basic service -- TouchStar
14 blocking features -- and you know what those are, HBG,
15 BCR, BRD --

16 A. Okay.

17 Q. -- all right. You with me so far on the
18 hypothetical?

19 A. Yes.

20 Q. -- not entitled to have their connection charge
21 waived because of a natural disaster; not entitled to have
22 it waived because of a split-billing situation; not
23 entitled to have it waived in a situation involving a
24 disconnect in error; and not entitled to the line

1 connection charge waiver because they are not a win-over
2 or reacquisition customer, we would expect that person to
3 not have the line connection charge waived, am I correct?

4 A. No.

5 Q. Why not?

6 A. Because that customer -- if they only had the
7 reacquisition, it could have been -- for example, I
8 mentioned -- I mentioned this in my summary. I ran across
9 several where the customer had been disconnected or
10 disabled because they had not paid their bill. That's
11 just one example.

12 Q. Okay.

13 A. And if it is paid in full within a 30-day time
14 frame, typically -- I can't say a hundred percent of the
15 time, but typically BellSouth or AT&T would restore the
16 service if the customer paid in full and would not charge
17 a line connection fee because they had been a customer of
18 AT&T and it was simply a billing issue.

19 Q. And that's not -- that's different from suspend
20 and restore?

21 A. I guess. I mean, I'm simply going by what I saw
22 in the service orders and how that was interpreted to me
23 from the folks who do service order type work.

24 Q. Okay. What other possibilities might there be out

1 there?

2 A. Well, you presented me a hypothetical. At present
3 I'm not thinking of any other reasons under your
4 hypothetical, but that certainly is purely a hypothetical.

5 Q. Right. So those people, I went through the list
6 and you added to the list, those people who were
7 disconnected for failure to pay their bill and they were
8 reconnected because they paid it very quickly, those
9 customers would all be in the blue section of the pie,
10 right?

11 A. The ones that were not included in your list?

12 Q. That's right.

13 A. In your hypothetical, probably. But again --

14 Q. There's --

15 A. -- there's also -- there are also the reasons
16 designated in the tariff that Mr. Carver went over this
17 morning that are valid reasons for a waiver to appear.
18 And I don't remember all those from memory, but there
19 were, I don't know, six to ten of them.

20 Q. Those are the acts of God that we were talking
21 about?

22 A. Well, I don't know. I've got the tariff up here
23 with me. I'm happy to review it. Changing from
24 touch-tone to rotary dial, changing from a private to

1 semi-private listing, changing primary listing or
2 transferring service.

3 Q. But none of those are line connection charges, are
4 they? Those lines are already there.

5 A. Well, it says that the service charge, which is
6 the line connection charge, may apply because of the type
7 of order that has to be issued to invoke this type of
8 activity.

9 Q. Are there any other promotions besides the line
10 connection charge waiver promotion that would apply to
11 somebody taking a basic service plus TouchStar blocking
12 features?

13 A. Well, there's no promotions that would apply --

14 Q. Thank you.

15 A. -- absolutely not.

16 Q. Now, you said that you examined a total of 136
17 orders that came out of the red section of the pie, for
18 want of a better way to say it. Would you agree with
19 that?

20 A. I examined 136 service orders from the 2005 to
21 2007 time frame and that represented a universe of 2,571
22 orders, not 5,052 orders.

23 Q. Okay. And can you tell us -- dPi provided
24 BellSouth along with the Commission with basically a

1 thousand pages of Bate's stamped orders. Can you direct
2 us to any one of those specific orders that you actually
3 examined?

4 A. I'm not prepared to do that today, but I certainly
5 can do that, yes.

6 Q. Well, did you do that?

7 A. I pulled -- the specific orders that I reviewed
8 came from the discovery that we provided to dPi.

9 Q. But you can't tell us sitting here today which are
10 the ones that you examined?

11 A. I don't have those committed to memory and it's a
12 stack of about -- about that tall, so -- but yes, I could
13 identify them if I took the time to go back through the
14 discovery and mark them on the discovery.

15 Q. You said, and I recall correctly, in Florida that
16 approximately -- well, that the biggest of those numbers
17 -- of those that you examined, the biggest number of
18 falling into the single area were, I believe, disconnect
19 in error and reconnect, approximately 50 percent --

20 A. That's correct.

21 Q. -- that's correct? So how many total actual
22 numbers are we talking about there?

23 A. I believe it was 21 or 22. I don't remember
24 exactly, but it was around 21, 22.

1 Q. And if I were to represent to you that 15 percent
2 would be approximately 18 or 19, would that sound better
3 to you?

4 A. I recall that the number that were disconnected in
5 error was more than 20.

6 Q. How many were the result of a natural disaster?
7 Specifically, how many?

8 A. I honestly don't recall. I believe it was less
9 than ten.

10 Q. How many was specifically the result of a
11 split-billing situation?

12 A. I don't recall that number.

13 Q. Less than five?

14 A. I do not recall.

15 Q. Less than ten?

16 A. Again, I do not recall.

17 Q. How many were the result of house fires?

18 A. I don't know.

19 Q. Less than ten?

20 A. I don't know.

21 Q. I'm trying to just bracket it for us.

22 A. Mr. Malish, I don't recall the precise numbers, so
23 you can go up the scale, but I do not recall the actual
24 number that was the result of house fires.

1 Q. How many were as a result of -- have we covered
2 everything? That's it?

3 We did disconnect and reconnect in error; we did
4 natural disaster, less than ten; split-billing situation
5 you don't know; house fires you don't know, correct?

6 A. Right. And I believe, just for clarity, that we
7 included house fire in with natural disaster because
8 there's no indication. It just says house fire. So it
9 could have been, you know, lightning or something else.
10 So we lumped house fire and hurricane into one category.

11 Q. And we've established that you can't think of any
12 other promotion that would apply to customers taking basic
13 service plus just those TouchStar blocking features
14 besides the line connection charge waiver; is that
15 correct?

16 A. Yes. There's no promotion, that's correct.

17 Q. So we're talking of the order that you examined,
18 sounds like approximately 30 to 35 total out of 136 that
19 you looked at that had some other explanation besides line
20 connection charge waiver or some other promotion?

21 A. Actually, as I tried to explain earlier, with the
22 service orders that I reviewed, one of the things I
23 discovered when we actually got to the service orders is
24 that a number of them had bundling USOCs on them and

1 that's something that we hadn't thought about. And so in
2 many of those bundles, I don't recall how many, but would
3 have qualified under a line connection waiver promotion
4 because there are a bundle of services. So --

5 Q. So how many?

6 A. I'm sorry, I just don't recall. What I remember
7 is that we had probably up to about 60 or 70 percent of
8 the orders appeared to have some reason why a rep may have
9 granted the -- may have waived the charge on the service
10 orders that we looked at.

11 Q. On bundling?

12 A. For any reason. I mean, I did this service order
13 review months and months and months ago. I just don't
14 recall. I remember the numbers that jumped out at me.

15 The disconnect in error was something that was,
16 quite frankly, a real surprise because it is kind of
17 embarrassing that our company would disconnect if it --
18 you know, to be representative of a universe, that we
19 would disconnect in error that large of a percentage of
20 our customers.

21 Q. Do you think that might be a statistical anomaly?

22 A. I have no idea. But, you know, we checked with
23 our statistician on a proper sample size given this, you
24 know, 2,571 orders that appeared to have just the, you

1 know, the basic service and free blocks. And a review of
2 somewhere between 130 and 139 gave us a reasonable
3 assurance that we were A, representing the universe that
4 we were looking at; and B, would give us a statistically
5 balanced sample within, if I recall correctly, around, you
6 know, 93, 4, 5 percent.

7 Q. Now, you prepared your analysis after having seen
8 the thousand pages that were highlighted, right?

9 A. Actually, I prepared -- I started the service
10 order review as soon as I received the data that we then
11 provided to dPi.

12 Q. You mean you started it before -- before the
13 motion for reconsideration was filed in this case?

14 A. Actually, I -- now that I'm thinking about it, I'm
15 not positive. But I remember looking at the data and
16 thinking, hmm, this is odd. I don't remember exactly when
17 we asked for the service orders.

18 Q. Your -- the reason I ask is that your testimony,
19 your affidavit appears to be responding to the things that
20 dPi was saying.

21 A. Yes.

22 Q. So I'm assuming there's a benefit of a thousand
23 pages of highlighted records and the tabulations and the
24 graphs?

1 A. I don't recall the specific timing, no. Certainly
2 my affidavit was responding to what dPi filed.

3 Q. Did you know -- did you not read the motion for
4 reconsideration and the affidavit for -- of Mr. Tempera?

5 A. Certainly I did, yes.

6 Q. So notwithstanding that, you didn't try to be more
7 specific about the actual numbers of things that you were
8 seeing?

9 A. Quite frankly, what I understood I was trying to
10 do is to see did the data show what dPi and Mr. Tepera
11 claimed it showed. And what I discovered is the data did
12 not, it absolutely did not show.

13 Q. Well, so far you've been able to identify
14 basically from this segment of people that were granted
15 the line connection -- or granted a waiver of the line
16 connection, you've been unable [sic] to identify a sliver
17 that you can specifically rule out because you were able
18 to go back and find that 15 percent had a disconnect in
19 error, which sounds unusually high to you, so that perhaps
20 it might be an anomaly, and other acts of God. And beyond
21 that you can't say definitively one way or the other why
22 that line connection charge was waived?

23 A. And that's correct. I believe I represented that
24 in my summary. There were a number of the orders that had

1 no information on the service order, which is the only
2 source I have to go to absent going back and interviewing
3 the actual service reps that issued those orders. And the
4 likelihood of a rep recalling any particular order is
5 highly unlikely. The only source I have is what's
6 contained on that service order.

7 Q. And so -- and if I recall you correctly, I think
8 you said there's a code on the service -- on whatever, the
9 data, for -- you can't tell what promotion there is,
10 there's just a code that there's a promotion?

11 A. Actually there is no -- I assumed that there would
12 have been a code --

13 Q. Right.

14 A. -- but there is no code indicating that there's a
15 promotion.

16 Q. It's the same code for whether there's a promotion
17 or it's done for some other reason is really what's going
18 on, right?

19 A. What we're talking about here is the waiver code
20 that's used for a number of persons -- of purposes.

21 Q. Including promotion?

22 A. Including promotions.

23 Q. Yes. Now, to go back to this bundling issue where
24 you said you went through and you saw some that had

1 bundles that would qualify under the promotion, correct?

2 A. Correct.

3 Q. Are you aware that there is in this data numerous
4 instances where a promotion code is indicated, but the
5 data shows us that the -- that there are extra features on
6 there and therefore it's not really responsive to the
7 question of identifying only situations involving basic
8 service plus the blocks?

9 A. Well, the question that was given to us in
10 discovery didn't ask us to restrict it to only -- to
11 customers that had only basic service and two blocks. It
12 asked us for our customers who had requested basic service
13 and free blocks and so we included the entire universe of
14 customers that asked for that. Because dPi also asked for
15 other types of services, too, so we interpreted the
16 question literally and responded to it.

17 Q. Okay. Do you understand that there was
18 clarification between the attorneys that we want only
19 1FR's plus the blocks? That may be something that wasn't
20 shared with you.

21 A. I don't recall seeing that correspondence.

22 Q. In any event, you understand that that thousand
23 pages of data contains orders that have more than 1FR plus
24 just the blocks, correct?

1 A. Yes.

2 Q. Yes. And are you aware that we went through line
3 by line and embedded those -- removed from the tally those
4 instances where there was additional features on the
5 lines?

6 A. Yes. And when I did my service order review I
7 also went through and eliminated -- I used the actual
8 spreadsheet data that we used in providing the discovery
9 and I went through and I filtered out any of the orders
10 that had those additional USOCs appearing on the line.
11 And I used that as my basis for drawing the service order
12 sample.

13 When I saw the service orders themselves, there
14 were, in fact, USOCs that were not included on the report
15 itself that we didn't realize could have been applicable.

16 Q. Now, you said earlier that your examination of the
17 data absolutely rebuts the possibility that this line
18 connection charge was waived because of the line
19 connection charge waiver promotion?

20 A. Yes.

21 Q. Do you stand by that now?

22 A. Yes, I do. And the reason is because what we're
23 talking about here is of -- you know, I'll call this
24 whole pie -- well, actually, I'm not going to refer to

1 your exhibit.

2 The orders that are in question here are those
3 that have the basic service and just the free blocks and
4 the charge was waived. And dPi is alleging that we grant
5 the promotion 100 percent of the time; we grant the
6 promotion, number one, to that bunch of customers and that
7 we do it 100 percent of the time.

8 Number one, what the data shows is that we only
9 granted a waiver of the charges 14 percent of the time.
10 And of the 14 percent, we whittled that 14 percent by
11 looking at the service orders and realizing there were --
12 there are a number of reasons why a waiver code appeared
13 on the service order.

14 DPi's exhibit says those not receiving the line
15 connection waiver promotion include new accounts as
16 opposed to reacquisition, win-overs, splitting of existing
17 accounts, reestablishing a previously disconnected
18 service. The truth is all of those things are in that red
19 slice on this exhibit. It absolutely refutes dPi's claim
20 that we granted the promotion for the red slice.

21 Q. Well, how do you know that? I thought we just
22 went over this and you looked at items in the red slice
23 and we found a handful basically which would allow you to
24 determine that you hadn't granted the promotion and the

1 rest of your examination was indeterminate; you couldn't
2 tell from looking at it what the promotion -- why it was
3 waived at all. Is that not what you said? Would you like
4 me to restate the question?

5 A. I think I understand your question. And I said
6 there were a number where we could not tell at all. But
7 what's in not being able to tell at all, I don't know if
8 the promotion was granted; I don't know if the promotion
9 was not granted.

10 Q. Right.

11 A. But what I do know is that it is not a practice,
12 it is not the way the promotion was designed to include
13 these basic service and free blocks as a part of the
14 promotion and, therefore, the data supports that policy
15 and practice.

16 Q. Well, how can you say what the practice was if you
17 don't have personal knowledge of it?

18 A. Because I have reviewed the service order
19 documentation; I have reviewed the cost analysis that
20 supported the promotion when it was developed and this is
21 important.

22 Q. But that's not the practice. You're talking about
23 what you believe the intent to have been.

24 A. Right.

1 Q. And I want you to concentrate on the practice.

2 A. Right. And if it were our practice to grant the
3 line connection waiver promotion to customers that only
4 had basic service and the two free blocks, you would have
5 likely seen almost 100 percent of the charges waived. You
6 would not see this slice. You would see -- the whole pie
7 would be red.

8 Q. But not if they're not win-over or reacquisition.

9 A. Okay. So of those that were reacquisition, you
10 would see 100 percent of those and that is not what I
11 found in the data.

12 Q. And you don't know what percentage of these are
13 win-over or reacquisition customers, do you?

14 A. I don't know from the data that was supplied.
15 There's no way to know that.

16 Q. Right.

17 A. When you get a service order, some of those
18 indicate that they're reacquisition, but not all of them.

19 Q. And to go back to something that you mentioned
20 earlier, there were an estimate -- somebody gave you an
21 estimate of how many new customers that y'all had were
22 win-over or reacquisition customers. Do you recall that?

23 A. I don't recall saying that someone gave me an
24 estimate or the percentage of re-acquisitions, no.

1 Q. Well, do you know what the -- what BellSouth
2 estimates is -- estimates its percentage of new orders to
3 being win-over or re-acquisitions?

4 A. No, I don't.

5 Q. Is it more than 50 or less than 50?

6 A. I do not know the number at all.

7 Q. What was the estimate that you were talking about
8 earlier? Do you recall using the word estimate in
9 connection with win-over, reacquisition?

10 A. I believe what I said was I'm aware that the
11 retail side of the business has management reports that
12 estimate what percentage of customers -- or what -- how
13 our re-acquisitions are tracking. What was -- and this
14 was conveyed to me by the data analysts who were trying to
15 answer dPi's discovery request. And what they indicated
16 is we do not have a mechanism for identifying 100 percent
17 of our re-acquisitions. We cannot do that.

18 Q. So what's --

19 A. There's no --

20 Q. -- the estimate?

21 A. They did not disclose the estimate. They did not
22 -- the data folks didn't have the report in front of them.

23 What we were seeking was to see if we had a method
24 for responding to the discovery request. And quite

1 frankly -- you know, unless we can provide data that we
2 are certain accurately reflects our reacquisition numbers,
3 we don't want to do that because dPi has misrepresented
4 the data we have provided and we've provided lots of
5 clarification about what the data does and doesn't say.

6 So there is no -- we do not have a 100 percent
7 count of what our reacquisition customers look like.

8 Q. So what do you want us to assume about the amount
9 of reacquisition customers y'all have? Isn't BellSouth
10 losing line count, generally speaking? Isn't that in
11 their Section 13 filing? Isn't that the purpose of the
12 reacquisition promotions to begin with?

13 MR. CARVER: I'm going to object to it. I think
14 there were about three questions there.

15 COMMISSIONER KERR: Ask one at a time.

16 Q. Isn't the problem that BellSouth is facing is
17 declining line count? Isn't that one of the problems it's
18 facing?

19 A. Yes.

20 Q. Isn't that one of the reasons for these promotions
21 to begin with?

22 A. Well, certainly it is, but the promotions are
23 geared to bring in additional revenue.

24 Q. Well, hold on.

1 A. And if we -- and if --

2 COMMISSIONER KERR: Let her answer.

3 A. And we target a specific type of customer and the
4 promotion is designed to bring in customers that are going
5 to generate incremental revenue. So, you know, if we were
6 going to have a promotion that included -- you know, you
7 had to have -- the free blocks were going to qualify, we
8 would have just offered it to any customer regardless of
9 what they ordered.

10 Q. Y'all make money off every single customer you
11 serve, don't you?

12 A. I would presume so.

13 Q. So having the customer that you can get from
14 somebody else would be a customer that you can make money
15 on, right?

16 A. Yes. But --

17 Q. So then --

18 A. -- less so if the line connection charge is waived
19 without incremental revenue above the basic service.

20 Q. Isn't [sic] your tariff have a built-in profit for
21 every state that you do business in for regular retail
22 customers?

23 A. I can't address our retail services --

24 Q. Well --

1 A. -- you know, with that specificity.

2 Q. I mean, you've been working in the business for 20
3 years. Isn't there a profit built in to every aspect of
4 your business?

5 A. I cannot address that. I mean, what I do know is
6 that we are not permitted to offer our services below
7 cost.

8 Q. Right.

9 A. And so with every promotion that's developed, we
10 have to develop a cost analysis that we are willing to
11 share with the Commission or Commission Staff upon
12 request.

13 And in the case of this specific promotion, I was
14 able to review the cost analysis that was performed and it
15 clearly contemplates the revenue associated with the basic
16 service and revenue associated with features for which
17 there is a charge.

18 Q. Well, if that's true, how do you explain your \$100
19 cash-back promotions that you give to people?

20 A. I am not on the retail side. I don't -- I'm not
21 familiar with promotions that are not at issue in this
22 case.

23 Q. But, I mean, you're testifying about the tariffs
24 -- first you tell us you don't know about how the tariffs

1 work and how whether you're allowed to make money or not
2 and then you tell us that the, you know, the law is that
3 you can't do anything at a loss. So it appears to me as
4 though you pick and choose the questions you want to
5 answer that you believe that you're qualified to answer.

6 COMMISSIONER KERR: Is that a question?

7 MR. MALISH: No. That's sidebar actually.

8 COMMISSIONER KERR: Well, let's --

9 MR. MALISH: I'll withdraw the question.

10 COMMISSIONER KERR: Okay. Let's go off the
11 record for a second. It's at 1:00.

12 (DISCUSSION HELD OFF RECORD.)

13 Q. Ms. Tipton, it seems to me like at the end of the
14 day, at the worst, there -- the worst for dPi -- of the --
15 of the orders you analyzed, there's at least 30 to
16 40 percent that you can't explain one way or the other at
17 the very least?

18 A. I'm trying to answer this with a yes or no and I
19 can't figure out how to do that, so let me go back and
20 restate something I stated earlier.

21 To my best recollection, I can recall that there
22 were pretty clear reasons for at least 60 to 70 percent.
23 What I also recall is there was, you know, some
24 questionable area in there. For example, there was

1 bundled USOC and there was one chargeable feature. So the
2 question is could there possibly have been some other
3 special promotion going on? I don't know.

4 Then there was a percentage of orders that I had
5 zero information to provide me insight. I have to believe
6 right, wrong or indifferent that there is definitely some
7 service rep error in there. There's no explanation why a
8 charge would be waived and we have brought those to the
9 attention of the retail side of the house to say this is a
10 problem. Here are the actual service orders; we gave them
11 the service order numbers. But I believe that there are a
12 percentage of orders that are nothing other than a service
13 rep trying to appease a customer or something else. I
14 just don't know. But that is certainly within part of
15 what I've looked at.

16 Q. Of the only ones that you were actually able to
17 identify though, you had 15 -- the majority was 15 percent
18 for disconnect and reconnect, in order; and then in
19 descending order from there natural disaster -- maybe not
20 in direct descending order, but all underneath that,
21 natural disaster, split-billing situation, house fire,
22 which I guess you were including in the natural disaster.
23 Those were the ones you were specifically able to identify
24 as not qualifying.

1 A. And the ones with bundled USOCs.

2 Q. Okay. The ones with bundled USOCs -- are you
3 changing your testimony now that 15 percent was the most
4 and that was related to disconnect in error?

5 A. That is my recollection.

6 Q. So bundled or unbundled USOCs has got to be 15
7 percent or less, right?

8 A. Again, just based on recollection. I don't know
9 definitively. I just don't recall.

10 Q. Okay.

11 MR. MALISH: Thank you. No further questions.
12 I pass the witness.

13 COMMISSIONER KERR: Let's adjourn for lunch and
14 come back at 1:45.

15 (RECESS - 1:06 P.M. TO 1:50 P.M.)

16 COMMISSIONER KERR: All right. I think we're
17 ready to go back on the record. And Mr. Carver, redirect?

18 MR. CARVER: Yes, sir. Thank you.

19 REDIRECT EXAMINATION BY MR. CARVER:

20 Q. Ms. Tipton, I just have a few questions in two or
21 three different areas. I want to talk a little bit more
22 about the sample that you did from the -- your orders that
23 were granted waivers. The sample of, I believe you said,
24 136 service orders?

1 A. Yes.

2 Q. Why 136?

3 A. We were trying to make sure we reviewed enough
4 service orders that they would be representative of the
5 overall universe. And given the time frame we were under,
6 we didn't want to be, you know, just this magnificently
7 huge request because it takes resources to find and pull
8 and print the service orders and then I personally
9 reviewed all of them.

10 So in looking at the total universe, which was the
11 only 2,571, our statistician indicated that pulling
12 between 130 and 139, I believe, would provide us a
13 reasonably statistically significant sample.

14 Q. Okay. And out of those 136 orders, did any of
15 them have an affirmative indication that the waiver had
16 been given as a result of the promotion?

17 A. No. None of them did.

18 Q. And I think you testified before that 60 to 70
19 percent of them appeared to have a justification of the
20 waiver other than the promotion?

21 A. That's correct. And let me clarify that because I
22 think we got kind of twisted around when I was talking
23 about that.

24 So what we were talking about to begin with is 14

1 percent of the orders that are similarly situated dPi's
2 orders actually had the charge waived. So between 60 and
3 70 percent of those waivers are explainable. So now we're
4 down to -- okay, so 60 or 70 percent of 14 is -- I'll just
5 say eight percent is somewhat explained, so that leaves
6 about five percent of all of the orders that are similar
7 to dPi's with basic service and only two free services
8 that got a charge waived for some unknown reason.

9 And so, you know, again, I said before I'm not
10 sure if that's due to rep error or some rep discretion
11 that shouldn't have been granted, I don't know.

12 Q. So then if we take that 136 and sort of
13 extrapolate to the universe in general, that would mean
14 that if we take all of the customers that did not get the
15 waiver and the ones that we have some affirmative
16 indication -- again, we're extrapolating from the sample
17 -- that they got the waiver for a legitimate reason, those
18 two together, that would cover about 95 percent of the
19 customers?

20 A. Yes.

21 Q. So about five percent would be unexplained?

22 A. Yes.

23 Q. And zero percent are customers who we have an
24 actual indication that the promotion was the reason for

1 the waiver?

2 A. Correct.

3 Q. Now, in response to a question that Mr. Malish
4 asked you earlier and I think you referenced in passing
5 your investigation both at the -- prior to your testimony
6 and since your testimony.

7 So my question is since you've testified here two
8 years ago, have you had the occasion to go back and try to
9 analyze this question further of what we do with our
10 retail customers under these circumstances?

11 A. Yes, I have. And I think I referenced some of
12 that earlier. When we were originally preparing for the
13 hearing, unfortunately I didn't really think far enough
14 ahead to try to find the right people that could get me
15 access to the documentation I needed.

16 Since that time I've reviewed extensively the
17 actual training materials and even the service rep scripts
18 -- I believe they're called scripts. I'm not positive --
19 that are on-line and available to the retail service
20 representatives that are processing our retail customer
21 requests as they come in.

22 I've also, as I mentioned, reviewed the cost
23 analysis that was performed on a regional basis for the
24 line connection charge waiver promotion specifically and

1 it shows the economics that underlie the promotion itself,
2 which I think is very instructive, that the promotion was
3 designed to not include these free -- any type of free
4 feature or block or whatever. So even if it is something
5 that is defined as a TouchStar feature, but there is no
6 charge associated with it, that is not contemplated under
7 this promotion.

8 Additionally, I have talked to -- I've actually
9 called the managers who are responsible for the consumer
10 center and talked with them about how this -- the
11 promotions are rolled out to their service reps and how
12 the training is conducted. And I understand that they --
13 when they have a new promotion, they do morning meetings
14 and things like that. So I've had a chance to really look
15 at a lot of the material, talk to a whole bunch more
16 people other than just Ms. Stockdale.

17 I've reviewed the retail service orders that are
18 from BellSouth customers and I've looked at some of the
19 service orders from dPi's customers.

20 Q. In specific reference to the scripts that the
21 customer service representatives use and to the training
22 materials, can you tell us what specifically that told you
23 about the situation? Did that shed any light on the
24 situation?

1 A. Yes. It was consistent with the way that our
2 promotion is described in that it clearly says that the
3 line connection charge waiver promotion is granted only if
4 a customer -- of course our focus is on Complete Choice
5 and the big package bundled services that provide a lot of
6 revenue, but it says the customer must at a minimum have
7 purchased the basic service and two features.

8 There was a lot of discussion about how to
9 actually utilize the waiver codes and there were, you
10 know, documentation about some of the other promotions as
11 well.

12 Q. Okay. And one other topic I wanted to ask you
13 about, there was some discussion about customers who were
14 reconnected after they lost service because of a disaster.
15 And specifically I think there was some talk about
16 hurricanes.

17 If a customer lost service as a result of a
18 hurricane and then was reconnected, would they be
19 reconnected in the same month as the hurricane typically?

20 A. I think it depends. Certainly there are some
21 occasions where especially temporary housing might
22 possibly be connected -- for example, like an apartment or
23 something. You know, I'm not as familiar with the Florida
24 hurricanes as I am with Louisiana hurricanes. What we

1 have seen is that customers typically are moving into
2 hotel type housing for sometimes four to six weeks,
3 sometimes longer, then they move into a transitional
4 housing arrangement that's like an apartment.

5 So when they move into an apartment, they would
6 get their service established at the temporary location
7 without a line connection charge. Then when they were
8 able to move back to their permanent residence, the line
9 connection charge would be waived again.

10 So certainly some of the waivers associated with
11 hurricanes might occur in the same month, but I would
12 argue that they would more typically occur more than one
13 month after the hurricane actually hit, depending on the
14 severity of the hurricane.

15 Q. Thank you.

16 MR. CARVER: That's all I have.

17 COMMISSIONER KERR: Questions from the
18 Commission? Chairman Finley.

19 EXAMINATION BY CHAIRMAN FINLEY:

20 Q. Just a few questions about policy that the service
21 reps follow. Is it my -- is my understanding correct that
22 during this period of time that we're talking about here,
23 that retail service representatives, they would have been
24 giving customer services clear instructions that in the

1 situation that we're talking about here, the two free
2 blocks, residential FR service, in that situation that
3 they were not to give the waiver as a result of a
4 promotion?

5 A. That's correct.

6 Q. And you talked about rep error or perhaps rep
7 discretion. When you talk about discretion, were the
8 instructions that the service reps given -- that they had
9 no discretion, then, to make that choice and give that
10 waiver as a result of a promotion?

11 A. They do not have that -- correct. They do not
12 have that discretion. And being a former supervisor of
13 service reps -- I didn't supervise the retail side, I
14 supervised wholesale, but we considered rep discretion in
15 circumstances like waiving any type of charge really to be
16 a rep error. And so they would -- when discovered, they
17 would be counseled on it.

18 Which is why earlier I mentioned when we found
19 those service orders that appeared to have no explanation
20 as to why the charge were waived, I turned those over to
21 the retail side and I said "These need to be investigated
22 and you need to determine if corrective action is needed"
23 because you can tell who issued a service order based on a
24 code that's actually on the service order.

1 So, you know, my view -- not being part of that
2 organization, but my view is there needed to be some
3 corrective action if, in fact, it was an error.

4 Q. Are you aware of any situation where a service
5 representative, in spite of what the policy might have
6 been, in error gave a customer a waiver of a line charge
7 thinking that this was an appropriate promotion for that
8 customer to have?

9 A. I don't know that specifically. It would go back
10 to making some inferences based on what I saw in the
11 service order, but I don't know that for sure.

12 Q. There's been some discussion of a change in policy
13 in early 2005. Are you telling me that that is a change
14 in the wholesale policy?

15 A. Actually there was no change in policy. That's
16 dPi's representation of what happened. And if you'll
17 allow me, I'm not sure that you were here to participate
18 in the original hearing, so I'll just briefly explain.

19 We had been receiving requests for promotional
20 credits from resellers like dPi and had been granting 100
21 percent of whatever the reseller submitted for credit
22 without checking any of it. And around the
23 August/September time frame, Lost Key, who is an agent of
24 dPi and a number of other resellers who pulls together all

1 the information necessary and submits those credit
2 requests on behalf of the resellers, sent us thousands and
3 thousands and thousands of telephone numbers requesting
4 credit all at the same time.

5 It was during that time frame that one of the
6 hurricanes hit Florida. Lost Key happened to be located
7 somewhere in the Panhandle. Mr. Watson, who runs that
8 company, called the product manager at the time
9 responsible for resale and asked her to please do him a
10 favor and go ahead and process a particular request
11 expeditiously so that he could get paid so he could use
12 that to help restore his home and his business and so she
13 did.

14 And the amount was so large that it caused her to
15 stop and think, wait a minute, I'm just granting these
16 without question, shouldn't I be looking at them and
17 evaluating to see whether they're valid or not because I
18 could be giving away -- giving back money that I really
19 should not be authorizing to return.

20 So that was in, again, I think, the September 2004
21 time frame. And we didn't have a process in place, and so
22 the first thing she did was go up her management chain and
23 then across to retail to determine the specific criteria
24 that underlie the promotion; first of all, the design of

1 the promotion and then how retail defines reacquisition
2 and win-over, how it defines and qualifies whether a
3 retail customer is qualified or not.

4 Right, wrong or indifferent, that took a whole lot
5 more time than I think anyone would have expected. So we
6 got those things clarified and documented and a review
7 process put in place somewhere around the February 2005
8 time frame where we started doing a review of all the
9 requests we had been receiving. By then it was, I think,
10 up close to 200,000 telephone numbers we were trying to
11 review. The first credits then were actually placed on
12 the bills for dPi in early April and then the May bill
13 periods.

14 So then the document that Mr. Malish referred to
15 earlier was a wholesale method and procedure that was
16 implementing the process that we started using in
17 February. So it was documenting for those wholesale
18 service reps how you review the dPi or other reseller
19 service orders to determine if, in fact, they qualify.

20 Q. So that was on the wholesale side of the Chinese
21 wall?

22 A. Yes, exactly. And so there never was a change in
23 policy. The same line connection charge waiver promotion
24 has been in effect at least since 2004. I'm pretty

1 certain it's been in effect longer than that.

2 It has not changed except in certain states it
3 went from qualifying if you had one paid-for feature, it
4 changed to where you had to have two paid-for features.
5 That's the only change I'm aware of. But so far as how
6 we're applying that promotion, it has not changed.

7 Q. So are you aware of any situation on the retail
8 side of the house where for some reason or another the
9 service representatives were getting their instructions
10 crossed up?

11 A. That is -- I don't know that for certain. That's
12 certainly what I have supposed and why I went back to the
13 retail organization after reviewing these service orders.

14 And I believe that they have, as a result of our
15 inquiry, have actually updated the on-line documentation
16 that is presented to the service reps to make sure that it
17 is abundantly clear. But again, I reviewed it before it
18 was updated. And so I think they're just trying to make
19 sure that we are executing properly and being true to how
20 the promotion was designed.

21 Q. All right.

22 CHAIRMAN FINLEY: That's all I have.

23 COMMISSIONER KERR: Commissioner Ervin.

24 EXAMINATION BY COMMISSIONER ERVIN:

1 Q. Just to stay on that topic for a second. You
2 talked about the adoption of the written wholesale policy
3 with Chairman Finley a minute ago. What documentation
4 existed prior to that time on the retail side with respect
5 to this program, if any?

6 A. To my knowledge what was available is the
7 documentation that I reviewed.

8 Q. Which was?

9 A. I think the system is called Compass [phonetic].
10 I'm not positive I've got that remembered correctly. And
11 BellSouth had gone to a paperless environment for service
12 reps, so other than any morning meeting notes that might
13 have been covered in a team meeting setting, all of their
14 documentation is accessible on-line.

15 So if they are performing a particular activity,
16 they go and access this on-line system to provide
17 procedures on how to do things; scripts on how to speak to
18 customers; on I think just about any topic that they might
19 run into, including promotions.

20 Q. Was there a written -- I mean, as I recall from
21 the prior hearing, having had the good or bad fortune to
22 be here for it, we were talking about essentially in this
23 case claims for credits for service connected and
24 somewhere in that '04/'05 time frame.

1 During that time frame, what documentation existed
2 on the retail side for service reps concerning the
3 circumstances under which they were to be waiving line
4 connection charges under the promotion that's at issue
5 here?

6 A. It is my understanding based upon what has been
7 represented to me that the documentation I reviewed this
8 past fall was the documentation that was existing at the
9 time we had the earlier hearing.

10 I had requested to view any written documentation
11 and unfortunately the people I was talking with at the
12 time either didn't know it existed, didn't know how to
13 access it --

14 Q. And you're talking about the time. You're talking
15 about prior to the '06 hearing?

16 A. Yes. Yes, sir.

17 Q. Okay.

18 A. But that -- what I was told is that same
19 documentation has been there for the duration.

20 Q. And what -- just so the record's clear, what did
21 the documentation that you reviewed that you understood to
22 be applicable in the '04/'05 time frame say about what
23 were the conditions under which a person was entitled to
24 the line connection charge waiver promotion on the retail

1 side?

2 A. That the customer must purchase at a minimum basic
3 service and two features. The way the documentation is
4 designed is it really directs the service rep to try to
5 sell Complete Choice and some of the other, you know,
6 higher paying or charged bundled services, but it says
7 several times within the document I reviewed that the
8 customer must at a minimum have purchased basic service
9 and two features.

10 Q. And when it says purchased, did the documentation
11 explicitly say that the features that were used to qualify
12 for this promotion had to be ones for which a separate
13 charge was made?

14 A. I don't recall. I do not recall.

15 Q. Now, you talked at some length with Mr. Malish
16 about the results of your examination of the 136 different
17 service records to try to ascertain what the reason for
18 the granting of the line connection waiver was. And you
19 described that you selected that number by virtue of the
20 advice given to you by your statistician.

21 Now, your affidavit says that there was a random
22 selection made, but it doesn't say how that random
23 selection was made. How did you randomly select the ones
24 that you looked at?

1 A. In this case, we took the data in electronic
2 format and advised the service center that was pulling the
3 request that we needed to have a random collection of the
4 orders printed and I gave them the total that needed to be
5 printed and I asked them to do so from a variety of
6 months. And I didn't specify anything about any of the
7 actual accounts or order numbers or months or anything. I
8 said "I need you to print me just a random sampling of
9 those orders."

10 Q. But you didn't say every third order --

11 A. No.

12 Q. -- or something like that?

13 A. No, I did not.

14 Q. The actual selection, then, was made by the folks
15 at the service order center except for your specifications
16 you had to have some different months?

17 A. Yes, that's correct.

18 Q. Now, I was frankly left in some state of confusion
19 as a result of your statistical discussion with Mr. Malish
20 and let me see if I -- tell me if I've understood you
21 correctly.

22 Of the 136, I've heard you testify several times
23 that about 60 to 70 percent of those service orders you
24 found some explanation for why the line connection charge

1 was waived?

2 A. That's correct.

3 Q. That about 15 percent of the 136 waivers had to do
4 with disconnection of service in error?

5 A. Yes.

6 Q. That the -- it sounded as -- or maybe it was 22 or
7 low 20's or something like that, right?

8 A. Correct. I actually went back and looked through
9 my data, so I believe there are about 27 or 28 of the
10 orders were disconnect in errors.

11 Q. All right. Did you see why -- what -- as a result
12 of your subsequent view, did you get the answer to any of
13 the other questions that Mr. Malish asked you about the
14 reasons that line connection charges were waived in this
15 sample?

16 A. Yes. There were -- I'm not the best at
17 remembering actual numbers, so I'm kind of -- I'll get it
18 approximately right.

19 So of those orders that had -- that were
20 disconnected in error, we had -- that represented, you
21 know, close to -- I guess it's between 15 and 20 percent.
22 Of those that had a bundled USOC and other chargeable
23 features on there, that represented 30-something percent.
24 I don't remember the exact number. Then we had billing

1 issues that represented another five to six percent.

2 Q. Billing issues being the split-billing type thing
3 that you discussed with Mr. Malish?

4 A. Split-billing type thing, disconnect for non-pay
5 and then reconnection, that type of thing.

6 Q. Okay. And what else was there, if anything?

7 A. I think that was all. So in total when you add up
8 disconnection errors, all the billing and all those that
9 had bundles with other chargeable USOCs on them, it
10 actually added up to 61 or 62 percent.

11 Q. Now, another place that I was somewhat left in a
12 bit of a state of confusion as a result of your discussion
13 with Mr. Malish was on the questions that he asked you
14 concerning the steps that you took to learn the
15 information that you communicated to Commissioner Kerr
16 here at the prior hearing.

17 And just tell me without -- I'm going to try not
18 to interrupt you. It's hard for a trial lawyer not to.
19 But the word query was used in your answer. I was fishing
20 around in the file to see if I could come up with the
21 quote. I'm not going to be able to do that, but what did
22 you do or what verification did you -- or what
23 verification activities had you engaged in that permitted
24 you to make the statement that you made to Commissioner

1 Kerr in the last hearing?

2 A. The first thing I did is I called my contact, who
3 was Liz Stockdale, and asked her to identify if we had
4 any -- any of our retail customers who had requested only
5 basic service and just these free blocks that we're
6 talking about here, HBG, BCR, BRD.

7 I didn't ask her to go a specific avenue or I
8 didn't know where she was going to get the information
9 from. And when -- and I asked her to identify if we had
10 any of those, did we grant the promotion, the line
11 connection charge waiver promotion.

12 And my recollection about what happened was that
13 she came back and said that she had asked for a query to
14 be run and that --

15 Q. And you understood query to mean what?

16 A. That somebody accessed some type of information
17 that was in electronic format --

18 Q. Okay. And so --

19 A. -- but I don't know what that accessed.

20 Q. So you just -- so please continue.

21 A. Yes. And she said -- and I didn't know the time
22 frame that she looked at or anything. She said, "Pam,
23 given the time frame that was looked at, there were no
24 customers that met that criteria." And what I understood

1 that to be was there were no customers during whatever
2 that time frame was that were either in -- that were
3 similarly situated dPi customers or were granted the
4 promotion.

5 Q. All right. Do you now know what time frame was
6 involved?

7 A. No. I do know that Liz -- Liz could not remember.
8 And we -- I went back and asked her after the hearing.
9 And actually after the -- after dPi had filed their
10 request with the Commission. And she said, well, what I
11 recall was I just asked him to look at one month because I
12 thought that would be indicative. I didn't know that at
13 the time, but she said "I just asked for one month."

14 Q. All right. And so when you say there were no
15 customers, what you meant was that you're not saying that
16 there were no customers who selected 1 -- purchased 1FR
17 service, got two of these features -- I mean, that there
18 were no such customers, you're just saying that there were
19 some such customers, as you understood what was told to
20 you, but that nobody got the credit waiver or are you
21 saying something else?

22 A. It's -- to be honest with you --

23 Q. Because it could mean two different -- you could
24 mean two different things.

1 A. Yes.

2 Q. It could mean on the one hand there weren't any
3 customers in that month, assuming that your memory about
4 that is correct. There were no customers in that month
5 that opted for 1FR service plus two of these call blocking
6 features and nothing else. It could mean that or it could
7 mean that there were such customers, but that none of them
8 were given the waiver of the line connection charge.

9 Which of the two did you -- which of the two was
10 what we're talking about?

11 A. And I have to apologize, but sitting here today I
12 cannot recall. I do know at the time that we had the
13 hearing two years ago it was very fresh in my memory
14 because I had fairly recently had the discussion with her,
15 but sitting here today I honestly cannot recall.

16 Q. All right. Thank you.

17 EXAMINATION BY COMMISSIONER KERR:

18 Q. Ms. Tipton, let me just ask a couple of pretty
19 basic questions. With respect to the sample that you
20 looked at in the 130-some-odd and we've worked back to --
21 we've explained 60 or 70 percent of those, which leaves 30
22 or 40 of them unexplained in round numbers. In other
23 words, they got the waiver, but you're not -- it's not
24 apparent looking at the booked orders.

1 And again, the issue here I think is -- you know,
2 I guess what Mr. Malish would hope you could find and you
3 would maybe hope not to find, although everybody wants the
4 truth, is that, wow, these folks were all win-backs.
5 Those 30 or 40 were win-backs and we gave them the waiver
6 charge.

7 Any thought given to -- I mean, how could you
8 determine -- other than through your data, there's some
9 other ways you can determine it. It seems to me you might
10 be able to -- you could call those 30 or 40 customers and
11 say, you know, were you served by someone else and come --
12 and came back to BellSouth or AT&T; or it would seem to me
13 that maybe you could look at each of those account
14 histories and see if we had service, same name, same
15 address, we lost service and suddenly that service came
16 back to us.

17 Am I being too simple in my thinking?

18 A. I don't think so. I think we never -- truthfully
19 never contemplated actually calling customers because
20 that's kind of restrictive action.

21 Q. I understand that. And my point is just -- and
22 let me say, I sit here and say -- you know, I've been a
23 BellSouth customer for as long as I've been anybody's
24 customer, I guess, except I did switch to MCI or somebody

1 for a while and either they went out of business or I
2 switched, I don't remember, but -- and now -- and then I
3 came back.

4 And I would guess you could look at my account and
5 you would have -- you would know that I was a customer
6 from 1985 to some point in time; I wasn't a customer; same
7 person, same address, and now I'm a customer again. And I
8 don't mean to over-simplify, I just -- sometimes stepping
9 back from this is helpful.

10 A. And again, I'm not going to profess to be an
11 expert on how our systems keep data. My understanding of
12 how they do it is based on telephone number. And so if --
13 though -- and what I'm saying is going to be purely
14 conjecture. But I think that's a reasonable assumption,
15 but I believe it's only a reasonable assumption if the
16 same telephone number was used.

17 So if you were a BellSouth customer and you went
18 to MCI or whoever, but you kept the same telephone number
19 when you came back, then we might be able to look it up.

20 Q. And I think that I got to that really simple and
21 probably poor set of questions because I was wondering,
22 you know, once you had the waivers -- the accounts
23 identified by Mr. Tepera in his analysis, whether or not
24 you couldn't just somehow cross-reference those by account

1 with win-backs or re-authorization of some sort.

2 I mean, it would just seem to me that it's just
3 not nearly as complicated. I'm frankly stunned that it's
4 this hard to answer this question given what I'm sure is
5 the level of sophistication of the information that y'all
6 have about your customers.

7 And I don't mean to imply that people haven't made
8 their best efforts, it's just kind of odd that we stumbled
9 upon an unanswerable question like this.

10 A. You know, I think the best way to explain is that,
11 you know, it's unfortunate, but true. The provisioning
12 system and billing systems that we're using are the same
13 ones that have been in existence since the 80's. And it's
14 a monumental process every time we try to even introduce a
15 new product because they are just incredibly antiquated.

16 And, you know, to be honest with you, as a
17 wholesale manager, I was quite frankly somewhat floored
18 that we didn't have a mechanism that even identified at
19 the promotion level when a service order is issued. But
20 the system had a lot of limitations about what's kept and
21 what's retained.

22 Now, I will tell you, when I did the service order
23 reviews, when I came across a service order that was part
24 of our sample and it had a related order to it, we tried

1 to go look at that related order to see if that uncovered
2 any additional information, and in a couple of cases it
3 did and other cases it didn't.

4 Q. Let me just also ask you -- I think Commissioner
5 Ervin asked you a series of questions of do you know
6 whether or not anyone ever was granted the waiver in touch
7 with the promotion. I think you said you weren't aware.

8 I suspect there might be some error, service
9 customer error that might have resulted in a -- in your
10 summary, and I think it's seen in your affidavit on the
11 top of the second page, that first bullet point -- and
12 they're not numbered, which is why I said I think it's the
13 -- it is the top of the same page -- that is that AT&T
14 made a practice of granting the waiver promotion for its
15 customers that purchased.

16 And just the significance of practice there as you
17 use it is what?

18 A. And, I'm sorry, on my summary you're --

19 Q. The first bullet point on the top of Page 2 of
20 your summary. And you're basically denying dPi's claim
21 that you made a practice of doing this. Frankly, as a
22 lawyer, seems like there's a little bit of wiggle room
23 there.

24 And I think Commissioner Ervin has asked you do

1 you know if we ever did it and you answered that, but I
2 did want you to clarify for me what you meant by "we
3 didn't make a practice of doing this."

4 A. You know, again, I tried to gain access to as many
5 resources as I can. And I wasn't trying to use play-on
6 words, that was my word. And that is that -- you know,
7 I've talked -- at first I was dealing only with Liz
8 Stockdale because that's who I was directed to.

9 And with all due respect to my previous counsel, I
10 was restricted in talking just with Liz. I was -- because
11 of this bright line between the retail and wholesale
12 organization. And --

13 Q. Let me just --

14 A. Sure.

15 Q. -- warn you while you're answering. You don't
16 need to share with us conversations or anything you had --

17 A. Okay.

18 Q. -- with your lawyers.

19 A. So I have now spoken with people who are working
20 in the centers and training service reps. I've talked
21 with the people who designed the promotion; I've talked to
22 people that designed the tariff that supported the
23 promotion; I talked to people who wrote the morning
24 meeting notes and training materials that's on the web.

1 I've talked to a lot of people about what -- the intent of
2 the promotion, how our service reps are trained and how
3 it's intended for us to implement the promotion.

4 Honestly, when there are -- our -- the way it
5 works, when a retail customer calls in, we still have a
6 human, unless the order is placed on the web, in which
7 case I don't think the promotion is ever granted, but I
8 don't know for sure, but we have a human who's sitting
9 there typing in the service order. And any time you have
10 a human typing in a service order and making judgment
11 calls, I can't say that a service rep didn't say, well,
12 I'm just going to grant the promotion. I can't say that.

13 But I can tell you that every conversation that
14 I've had and the documents I've looked at, they've all
15 been consistent. And so I turn that, all of that together
16 as it's not our practice to grant the promotion when it's
17 only the basic service and non-chargeable features,
18 blocks, whatever you want to call them.

19 And the other thing to back that up is in the
20 tariff during this time frame -- it's no longer there;
21 it's been removed from the North Carolina tariff -- but we
22 used to have things in the tariff our own research
23 uncovered, this thing called multi-feature discounts. And
24 clearly in the tariff was the language that said items

1 that have no charge do not qualify under multi-feature
2 discount plans. So, you know, it just consistently
3 reinforced that our practice is not to include
4 non-chargeable items in our promotions.

5 Q. Now, let me just ask you for purposes of the
6 record today, beyond the things you've done that you just,
7 I think, done a good job of summarizing the efforts you
8 made to answer this question, are there other things that
9 you just haven't been able to get done? I mean, is there
10 a way to the best of your knowledge to answer this
11 question inside BellSouth that you just for whatever
12 reason haven't been able to pursue or --

13 A. I'll tell you --

14 Q. Is there a person -- is there a person who should
15 know? Is there information you haven't been able to get
16 your hands on?

17 A. I don't think so. But I'm going to tell you this,
18 you've given us a new idea, which I don't think anybody
19 that we've talked to has suggested, and that is to try to
20 see if any of the telephone numbers that fall in that
21 small bucket where the waiver was put on the service
22 order, to see if those -- if there's any history on those
23 particular telephone numbers.

24 And I don't know if we can do that, but I'll go

1 see if we can. It's admittedly a very labor intensive
2 process and it's important -- let me just go back to this
3 list real quick.

4 You know, we had -- in just the two years we have
5 the service order data from, there were 18,621 service
6 orders that had a 1FR and free blocks. And so to be
7 truthful, we really should have to look at all 18,621 of
8 those and see if we could determine were there
9 re-acquisitions and win-overs that didn't get the waiver
10 in addition to the ones that did. Because we've taken
11 that 18,000 universe and shrunk it down to the 2,571 that
12 did get the waiver. And so my guess is there's a whole
13 bunch of those others that were reacquisition customers
14 that didn't get the waiver. And so --

15 Q. Of course, for purposes of this litigation would
16 probably -- don't need to know that.

17 A. Yeah.

18 Q. Unless I'm one of them. Okay. Let me just ask it
19 this way: Is there anything else you can think of that --
20 any other idea or any other source of information inside
21 your company that might be helpful in trying to answer
22 this question definitively?

23 A. No. Because I have tried every which way I can to
24 try to be definitive in trying to answer the question.

1 And, you know, collectively there's a bunch of us working
2 on it and we have not come up with anything else.

3 Q. Thank you.

4 COMMISSIONER KERR: Questions on the Commission
5 questions?

6 MR. MALISH: I have some, yes.

7 RE-CROSS EXAMINATION BY MR. MALISH:

8 Q. Ms. Tipton, I want to -- there's a handful of
9 areas that I want to follow up on, but I guess I'll just
10 start with those percentages again.

11 And if I can, do you have your testimony or your
12 affidavit, I guess, in front of you?

13 A. Yes.

14 Q. If you look at paragraph 30 with me, please. I'm
15 looking halfway through paragraph 30 where you're talking
16 about the 136 service orders that you were looking at.
17 Are you with me?

18 A. Yes.

19 Q. And I'm starting with the sentence where you say,
20 "There were many" -- we're talking about the ones that you
21 reviewed. You said, "There were many orders that
22 contained the" -- excuse me, let me back up to another
23 sentence.

24 "However, I was able to ascertain that a

1 significant number of service orders did have explainable
2 reasons for the waiver and these were not a result of the
3 LCCW promotion as dPi claims. There were many orders that
4 contained the waiver because the retail customer either
5 had" -- then you break it out here. You start making a
6 list, right? Okay. The list begins with "been
7 disconnected in error, had purchased a bundled offering
8 with two or more chargeable services and/or features or
9 had purchased a non-packaged offering with two or more
10 chargeable features [sic] and/or features," right?

11 A. Yes.

12 Q. Okay. And am I correct in my recollection of your
13 testimony earlier today and your testimony in Florida was
14 that you were explaining how many of these 136 orders were
15 basically a valid excuse for why that thing was waived to
16 begin with? You said that the majority of them were in
17 disconnect for error or disconnect in error. Do you
18 remember saying that?

19 A. Actually, no. I think what I said was I recall
20 that it was somewhere around 15 percent.

21 Q. Okay. So -- and do you recall saying that that's
22 the single area that had the most problems associated with
23 it?

24 A. What I recall saying was that particular line item

1 is the one that jumped out at me because I was surprised
2 that the number was as large as it was.

3 Q. Okay. Well, that -- you were kind of dismayed
4 that y'all had that many disconnects in error, right?

5 A. Correct.

6 Q. But also I think what you were saying is that that
7 -- that was the one single largest particular reason for
8 the line connection charge being waived?

9 A. That was the one single -- yes. Because the way
10 that we had tabulated our orders at the time -- and I had
11 not gone back and refreshed on all of that prior to the
12 hearing. I just had remembered this disconnect in error
13 -- but we had broken out the bundled service offering and
14 those that just had other chargeable features on them, but
15 for purposes of explaining round percentages, we lumped
16 all those together into, you know, bundled offering with
17 two or more other chargeable features that represent
18 30-some percent of all of the orders I reviewed.

19 Q. Okay. I'm getting a little bit confused because
20 now I think what I've been hearing you say is 15 percent
21 were attributed to the reason disconnect and then
22 reconnect because of disconnect in error, right?

23 A. Approximately.

24 Q. And then I'm -- now I think I'm hearing you say,

1 in addition, there was 30 percent approximately that
2 actually got the waiver because they had other items
3 bundled in with them, other features or something?

4 A. Yes.

5 Q. So really the 15 percent number was not the
6 biggest number. Are you changing your testimony now to
7 say that the biggest thing was actually this bundling
8 issue?

9 A. Yes. In total, yes, the biggest was the bundling.
10 The single line item that jumped out at me was the
11 disconnection in error.

12 But we -- you know, I looked at the bundle itself
13 and what all the individual features were associated with
14 that bundle. And so all of those numbers individually
15 didn't tell me a lot, so I rolled all of those together;
16 all the ones that had a bundle and then had two or more
17 chargeable features, that all added up to something more
18 than 30 percent. So it didn't -- it wasn't a, wow, we
19 have, you know --

20 Q. Well, I'm getting confused now. Was it more than
21 30 percent or more than 60 percent?

22 A. The bundle and multiple features is more than 30
23 percent. Then you add in the disconnect in error, which
24 gets you up to high 40-something percent, and then there's

1 other -- you know, all of the billing related things; the
2 hurricane related things.

3 So you add all of those explainable reasons
4 together and it got to 61 or 62 percent of the orders I
5 reviewed.

6 Q. So that's your best -- from BellSouth's
7 perspective, best way -- the best spin that y'all can put
8 on this is that you can explain away 60 percent of these
9 orders?

10 A. I can explain 60 percent of the 14 percent that
11 got a waiver. So --

12 Q. Okay.

13 A. You know, it's 14 percent of the entire universe
14 of the similarly situated customers. So now we're really
15 down to around five percent of the entire universe, those
16 similarly situated customers.

17 Q. Now, if you are talking about a situation where
18 there's bundling, that's adding in features, right?

19 A. Yes.

20 Q. That's not a similarly situated customer, is it?

21 A. That's correct. But we didn't realize that those
22 were actually part of the sampling that was reviewed.

23 Q. Okay. So those are actually neutral. Those just
24 don't belong in the analysis at all, correct?

1 A. Perhaps they don't.

2 Q. Because if we're trying to look -- all we want to
3 look at is those customers getting basic service plus the
4 blocks and that's all we want to look at. And any time
5 you have a line in there that has something besides that,
6 you busted the paradigm, right?

7 A. Yes, you have. But again, I was simply trying to
8 evaluate the data that we had which we thought represented
9 one thing and to try to understand -- I was simply trying
10 to understand why these waivers appeared. And so I pulled
11 a sample, I did the service order review and I'm providing
12 you what I determined during the service order review.

13 Q. Okay. So it's unfair to say that 30 percent of
14 the similarly situated customers didn't get the line
15 connection charge waived because they really weren't
16 similarly situated, were they?

17 A. After the review, we determined that they weren't.

18 Q. Okay.

19 A. But to really look at whether we appropriately
20 executed, if you will -- you know, I purposely skewed my
21 service order review. I purposely skewed it to look only
22 at those that got a waiver. I didn't look at any of those
23 that didn't get the waiver.

24 Q. Right.

1 A. And so truthfully, I should look at all of those
2 that we think are just the 1FR and just the free blocks --

3 Q. Right.

4 A. -- and see how those were treated.

5 Q. Right. Well, that's what we asked you to provide
6 us, isn't it?

7 A. No, it's not. Not based on what I saw as the
8 request.

9 Q. You're not aware that we, amongst the attorneys,
10 communicated that -- that what we were asking for is POTS
11 plus blocks only; POTS, plain old telephone service, plus
12 blocks only?

13 A. Can I see what you're referencing?

14 Q. You sure can.

15 COMMISSIONER KERR: How about showing her lawyer
16 before you show it to her.

17 Q. Ms. Tipton, to go back a moment, I mean, do you
18 see all of the communications between the lawyers?

19 A. No, I do not.

20 Q. Do you go to all the motions to compel hearings?

21 A. No.

22 Q. Do you see all the e-mails that go back and forth
23 between the lawyers?

24 A. No.

1 Q. Do you recall that there was a discovery dispute
2 between BellSouth and dPi about whether y'all would
3 provide any of this information?

4 A. Yes, I do.

5 Q. Were you aware that there were e-mail between me
6 and Andrew Shore, the predecessor to Mr. Carver here, and
7 to other lawyers after Mr. Shore's request making sure
8 that what we're talking about is only like kind of
9 customers, POTS plus blocks?

10 MR. CARVER: I'm going to object. I think this
11 goes well beyond the Commissioners' questions.

12 MR. MALISH: It may go on beyond the
13 Commissioners' questions, but it's responsive to a claim
14 she's made in response to a question we've asked following
15 up on that.

16 COMMISSIONER KERR: Overruled.

17 A. I'm sorry, what was your question?

18 Q. Well, you don't know what went on between the
19 lawyers?

20 A. No, I certainly don't. I know some of it, those
21 things that were discussed in meetings, but I would not
22 expect to know everything that goes on between the
23 lawyers.

24 Q. Right. So it's really not fair for you to come up

1 here and say that what we were trying to get from y'all
2 was something more besides POTS plus blocks because you
3 don't know.

4 A. Is that a question? I'm sorry.

5 Q. It's a statement. Do you disagree with it?

6 A. That it's not fair for me to -- I'm sorry, can you
7 phrase it as a question?

8 Q. Ms. Tipton, do you think it's fair for you to try
9 to tell the Commissioners what we were asking for in
10 discovery, we being dPi?

11 A. I can represent my understanding and
12 interpretation because I've been involved in the
13 development of this case from the very beginning and
14 worked extensively with the data analysts that were trying
15 to be responsive to those requests. That's what I can
16 reflect in my testimony.

17 Q. And if I represent to you that there was numerous
18 communication between us and BellSouth's attorneys trying
19 to make sure that all we got was POTS plus blocks, do you
20 have any information that would allow you to refute that?

21 A. No.

22 Q. Does it make any sense for us to be asking for
23 anything besides POTS plus blocks?

24 A. I don't know because we received a lot of

1 discovery that I'm not sure why it was asked, so I can't
2 get inside of --

3 Q. Okay. Makes sense for us to compare apples to
4 apples though, right?

5 A. Certainly.

6 Q. All right. Again, take a look at our pie chart,
7 Exhibit 3, okay, please. I think what you're saying is
8 with regards to your analysis of 136 data point, they all
9 came from the red sector, right?

10 A. No. They came from a portion of the red sector.

11 Q. Well, none of them came from the blue sector?

12 A. Correct.

13 Q. All right. And if you had analyzed the blue
14 sector and you might have found 30 percent of that blue
15 sector wasn't for POTS plus blocks either?

16 A. It's possible.

17 Q. And your reason why it would be different from one
18 or the other?

19 A. I haven't looked at that data, so I can't say.

20 Q. You had a discussion with Commissioner Finley
21 about the policy of BellSouth with regards to making these
22 things available at -- these promotions available at
23 resale. Do you recall that?

24 A. I remember my discussion with Commissioner Finley,

1 yes.

2 MR. MALISH: And Commissioners, here we get into
3 a situation -- if I may make some sidebar comment. Our
4 witnesses on this subject would be Steve Watson and Brian
5 Bolinger, so try to cross-examine her on what -- you got
6 into an area that wasn't really what we were contemplating
7 being part of the scope of today's hearing, so I'll try to
8 do my best to get the original policy out of her, but I
9 would like to state on the record that our version and our
10 evidence of what the policy was is not the same as what
11 Ms. Tipton's is based on. Which her's is going to be
12 based on hearsay testimony of people that's she talked to,
13 but I'll see what I can do with that.

14 COMMISSIONER KERR: Let me -- I mean, it's
15 clearly within the scope of what Chairman Finley asked, so
16 I think you're okay there. Your explanation was -- you
17 kind of lost me as to what you were trying to explain and
18 since you felt I ought to know about it, I think I ought
19 to understand what you were trying to --

20 MR. MALISH: Well, the parties have competing
21 explanations or theories or facts about what the policy
22 was. We just got one side of the story from somebody who
23 got her information second or third hand from other people
24 because she wasn't involved. Our witness with firsthand

1 knowledge isn't here because that wasn't part of the scope
2 of the --

3 COMMISSIONER KERR: Right. Didn't testify. But
4 I assume this testimony was part of the transcript from
5 the original hearing. And let me just tell you what --
6 why I'm probing a little further is I don't want to --

7 MR. MALISH: Right.

8 COMMISSIONER KERR: -- necessarily open up the
9 door to gather again.

10 MR. MALISH: Right.

11 COMMISSIONER KERR: Now, it might be that we
12 have to, but --

13 MR. MALISH: Right.

14 COMMISSIONER KERR: -- I didn't want my silence
15 to be viewed as acquiescence that you then -- we needed to
16 get back together and you bring some more witnesses. So
17 it seems to me you -- it's clearly within the cross --
18 within the scope of recross because of Commissioner
19 questions.

20 I think you can ask her what questions you need
21 to and then when you argue it to us, you'll either have
22 Mr. Watson's testimony in the prior transcript or some
23 other transcript or you won't is kind of what it sounded
24 like to me you were trying to ask.

1 MR. MALISH: Thank you.

2 Q. Now, Ms. Tipton, you did not become involved in
3 this case until after the dispute arose between dPi and
4 BellSouth, correct?

5 A. Actually, not -- I guess you could say it's
6 correct. I got involved in March of 2005 when there was
7 an informal letter filed with this Commission by dPi. So
8 there was no formal complaint filed, but there had been a
9 letter of inquiry filed with the Commission.

10 Q. And they had applied for these credits back in
11 2003 or 2004 or that time period and that's what -- wasn't
12 getting paid, which is what triggered the letter, correct?

13 A. Actually, my understanding is that dPi had not
14 applied for credits until August of 2004 was the very
15 first time we received a request for credit from dPi.

16 And I need to clarify, I was not specifically
17 involved in the case with dPi. I was involved on the
18 periphery with the discussions about making sure we
19 understood the retail promotion so that we could properly
20 implement them on the resale side of the house. So I was
21 involved in the periphery of that discussion, but it was
22 not targeted at dPi at all. It was a general discussion.

23 Q. And that discussion about what the retail -- or
24 what the retail promotion means, that's the thing that

1 took y'all like from August to -- August of 2004 until
2 springtime of 2005 to get that pinned down?

3 A. Actually I believe it started in September. And
4 since the North Carolina hearing, I've also gone back and
5 talked to the attorneys that were involved in those
6 discussions so that I could understand that time frame and
7 what transpired.

8 And what was explained to me was that it was a
9 much bigger issue than these specific one or two
10 promotions. It was about making sure there was a very
11 clear understanding about what reacquisition meant, what
12 win-over meant and a whole bunch of other quagmires
13 associated with promotions in general that got thrown into
14 the mix.

15 And it took us from that September time frame
16 until probably early January to get that clarified so that
17 we could begin executing on it in February. So it was --
18 we're talking about October, November, December --
19 probably about four months.

20 Q. The obligations provided at retail -- excuse me,
21 at resale, even promotions that are provided at retail, is
22 something that has been in existence since 1996, 1997 at
23 the beginning of the Act, correct?

24 A. That's correct.

1 Q. And I guess what you're telling me is that as of
2 2004, 2005 BellSouth still didn't know what it was that it
3 was supposed to be doing with promotions to give them to
4 resellers?

5 A. Actually, BellSouth had made an erroneous
6 assumption that CLECs would submit requests that qualified
7 under the promotions that were both published on the
8 website and in the tariff. And so we were not doing
9 anything to qualify those. We were just granting all of
10 those and providing credits back.

11 Q. All right.

12 A. So we were complying with the Act by granting
13 credits. What we had failed was that we were granting too
14 many credits.

15 Q. Okay. Now, you weren't involved in the credit
16 processing prior -- any part of it prior to -- in 2004,
17 correct?

18 A. In 2004 I was not, no.

19 Q. You understand that Steve Watson was involved,
20 correct?

21 A. Yes.

22 Q. And that he worked with the designated employees
23 of BellSouth to try to put together ways to get the
24 promotional price that CLECs were entitled to? Either

1 you're aware of that or not.

2 A. I'm aware that Steve had communication with the
3 resale product managers, and Christy Segal was the one in
4 particular. And Christy indicated that the work that she
5 did with Steve and leading up to September 2004 was simply
6 about format of a spreadsheet and the contents of the
7 spreadsheet that could be submitted.

8 Q. And are you aware that he -- the contact with
9 Ms. Segal was in summertime of 2004, correct?

10 A. Yes.

11 Q. And you're aware that he actually began this --
12 working on this -- processing these kind of orders with
13 BellSouth's Stanley Messinger in the fall and, I guess,
14 early winter of 2003?

15 A. He talked -- yes. And I'm aware of that. And
16 I've also talked with Stanley. And Stanley said that
17 never did they talk about the actual qualifications or
18 promotions or qualifying the requests that came in. It
19 was simply about process about how to fill out a bar form
20 and in what format that would be sent in for processing so
21 that credits could be put on the bills.

22 Q. All right. And you're aware that Mr. Watson and
23 Mr. Messinger processed small batches of orders to begin
24 with to see if things were done correctly; is that true?

1 A. That's not an accurate depiction of what occurred.

2 Q. Okay.

3 A. You know, Stanley indicated --

4 Q. Well, hold on. I'm asking if that's an accurate
5 depiction of Mr. Watson's testimony?

6 MR. CARVER: I'm going to object.

7 COMMISSIONER KERR: Yeah. Let me -- we've
8 gotten a little bit crossed up here. I actually don't
9 think that's what you asked her. And so if you want to
10 ask her if she knows what Mr. Watson's prior testimony
11 was, she can answer whether she does or she doesn't.

12 Q. All right. Let's do it that way, then,
13 Ms. Tipton. Are you aware of Mr. Watson's prior testimony
14 that he worked with Mr. Messinger to get the promotion
15 requests in a workable format for both sides?

16 A. I can't speak to what Mr. Watson testified here in
17 North Carolina.

18 Q. What --

19 A. I heard what he testified in Florida last week,
20 but I cannot --

21 Q. Okay.

22 A. -- I can't recall what he testified here.

23 Q. Well, let's just talk about Florida. It's the
24 same process whether he testified about it here or whether

1 he testified about it in Florida, he's still talking about
2 the same thing, putting together this process with Stanley
3 Messinger in fall/winter of 2003, right?

4 A. My recollection of Mr. Watson's testimony did not
5 specify an actual time line.

6 And even though I had previously talked with
7 Stanley, I was sitting there with my Blackberry in the
8 hearing room and I typed a message to Stanley immediately
9 following Mr. Watson's testimony in Florida and asked him
10 specifically, "Did you ever work with Steve Watson in
11 developing a process to screen and grant these credits?"
12 And his response was "No. The only thing I worked with
13 Mr. Watson was in instruction on how to complete the bar
14 form and how to send them into an e-mail address."

15 Q. Okay. So you're talking now about Mr. Messinger's
16 testimony or what his opinion is?

17 A. Mr. Messinger was --

18 Q. Is that not what you just did?

19 COMMISSIONER KERR: How about letting her answer
20 the question before you interrupt her. Go ahead.

21 A. I'm speaking about what Mr. Messinger relayed to
22 me was his experience in working with Mr. Watson.

23 Q. Okay. My question was about what Mr. Watson said,
24 right?

1 A. Yes.

2 Q. Okay. So when you're telling the Commission about
3 what Mr. Messinger told you, that's not responsive to my
4 question about what Mr. Watson's testimony was, was it?

5 A. I believe I answered your question about what
6 Mr. Watson testified in Florida --

7 Q. Okay.

8 A. -- and I further explained that answer with the
9 information I have from our BellSouth contact Mr. Watson
10 was trying to represent.

11 Q. So the answer to my question is -- the part that
12 you talked about of what Mr. Messinger told you was not
13 responsive to my question about what Mr. Watson said?

14 COMMISSIONER KERR: Tell you what, Mr. Malish,
15 I'm going to ask you to -- you don't need to lecture the
16 witness. I think she's doing her best to answer your
17 questions. So if you'll ask the question and then you'll
18 give her a chance to answer it, then ask another question,
19 okay?

20 MR. MALISH: Thank you.

21 Q. Isn't it true, Ms. Tipton, that Mr. Watson
22 submitted requests for promotion credits on behalf of
23 teleconnects in January of 2004?

24 A. I don't know.

1 Q. Isn't that what he testified to?

2 A. I do not know all of Mr. Watson's testimony.

3 Q. Do you recall seeing that in any of his written
4 testimony?

5 A. I may have read it at some point, but it's been a
6 long time since I read Mr. Watson's testimony and I
7 certainly have not focused on it.

8 Q. Well, you heard his summary in Florida two weeks
9 ago, right?

10 A. Yes, I did.

11 Q. And he talked about how these promotion credits
12 were granted by BellSouth to teleconnects in January of
13 2004, didn't he?

14 A. I cannot sit here today and testify as to the
15 specifics of Mr. Watson's testimony that took place in
16 Florida last week. I remember a few details about that
17 because they conflicted directly with the information I
18 had previously been provided by our representatives. But
19 I cannot sit here and regurgitate for you word for word
20 even my own testimony, much less Mr. Watson's.

21 Q. I understand that. I'm not asking you to do it
22 word for word. What about February of 2004? BellSouth
23 provided the credits in January and February of 2004,
24 didn't they?

1 A. Again, I cannot testify as to what was granted to
2 which customer when and in what amount. What I have
3 represented as my understanding is that we were granting
4 100 percent of the requests that we were receiving up
5 until about September of 2004.

6 So January and February occurred prior to 2000 and
7 -- September of 2004. I'm assuming that that means we
8 granted those promotional credit requests. I don't know
9 who the customers were and I don't know the amounts.

10 Q. Okay. Same question for all the way through
11 April. Same answer?

12 A. Yes.

13 Q. And Mr. Watson submitted requests for the same
14 promotion on behalf of another CLEC called Budget Phone in
15 the summer of 2004, correct?

16 A. Again, I don't know. I'm familiar with the Budget
17 Phone request that was granted which caused Christy Segal
18 to step back and want to establish a review process. I
19 don't know when that was submitted. I do know that it was
20 granted sometime in August or September because it
21 followed whatever hurricane had taken place in the
22 Panhandle.

23 Q. And you're saying that all of these things, every
24 time that this was done, if these credits were given for

1 LCCW promotions or 1FR plus these blocking features that
2 it was done by mistake?

3 A. Yes.

4 Q. Okay. Either that or these CLECs were trying to
5 cheat y'all, right?

6 A. I'm not --

7 Q. Either it was all --

8 A. What was your question?

9 Q. Either it was just a mistake on your part or it
10 was actively cheating by the CLECs, right?

11 A. I'm not going to try to characterize what CLECs
12 were trying to do. What I'm representing is that we did
13 not have a mechanism in place to review the requests that
14 came in prior to our review process which actually began
15 in around the February of '05 time frame.

16 Q. And the Budget Phone was a big one, too. That was
17 almost a million dollars, wasn't it?

18 A. Yes, it was a big one.

19 Q. Yeah. And BellSouth routinely back bills CLECs
20 for billing mistakes, doesn't it?

21 A. Yes, it does. But it doesn't do so 100 percent of
22 the time.

23 Q. Doesn't do it in trivial instances, for example,
24 right?

1 A. I just know that we do not -- we're not always
2 able to go back and back bill for services because
3 sometimes we have resource constraints.

4 Q. And y'all didn't go back and back bill
5 teleconnects or Budget Phone for these LCCW promotions
6 that y'all paid them, did you?

7 A. To the best of my knowledge, I don't think we have
8 gone back. And the primary reason for that is resources.
9 We have one resale product manager and we had access to
10 literally a handful of service reps. And by the time we
11 were trying to grant the credits that were valid credits,
12 we had over 200,000 requests in the pipeline that had to
13 be processed.

14 And I know that we just don't have the resources
15 to get through all of everything that was backlogged plus
16 what's coming in the door to go back. And it's our loss
17 because we gave up -- our belief is that we gave up
18 credits that we should not have given up. So it is our
19 loss.

20 Q. Well, y'all don't look at every single order
21 request for promotion credit that's been -- that gets sent
22 in, do you?

23 A. We do now, yes.

24 Q. You do now, but you didn't back then?

1 A. For a period of about a little over a year we did
2 not.

3 Q. And y'all --

4 A. Ever since then we have.

5 Q. Y'all were looking -- or just pulling a
6 statistical sample?

7 A. Correct.

8 Q. Right. So you didn't have to look at every single
9 order in order to try to do a back-bill?

10 A. That's correct. But it's still an extremely time
11 consuming process because it requires pulling up the
12 actual service order that installed the service and
13 sometimes looking at related orders to determine if that
14 would have qualified or not.

15 Q. One of the things that you discussed with
16 Commissioner Finley was what appears on a service order
17 when a promotion is granted. And I would like to get some
18 clarification on that.

19 Can you tell me what appears on a service order
20 when a promotion is properly granted in general?

21 A. I'm not sure I had a discussion that talked about
22 what's on the order when a promotion is properly granted.
23 What I described was that the waiver codes that are used
24 in granting a promotion such as the line connection charge

1 waiver promotion -- because promotions can also be, you
2 know, two features for free or can be some other type of
3 rebate, but we'll focus on the line connection charge
4 waiver promotion. And in that instance what I would
5 expect to see on the service order would be the -- at
6 least the basic service and at least two or more
7 chargeable features and I would expect to see a waiver
8 code.

9 Q. Okay. And what would that waiver code be?

10 A. According to the service rep instructions, I would
11 expect it to be a WLC code. What is also used -- had been
12 used was WSO or WNR.

13 Q. Okay. And WSO and WNR, those are the codes that
14 we are seeing in the thousand pages that Mr. Tepera was
15 looking at, right?

16 A. Correct.

17 Q. Okay. So it doesn't tell us anything one way or
18 the other -- there is no code that we should be looking
19 for to see if the promotion was properly granted or not?

20 A. There's --

21 Q. There's nothing to tell us that, is there?

22 A. There's not a unique code to tell us about a
23 particular promotion being granted, that's correct.

24 Q. So if Mr. Tepera saw that code appearing in the

1 thousand pages of spreadsheets, that meant either a
2 promotion had been granted or the waiver had been granted
3 for some other reason, right?

4 A. Correct. And I believe Mr. Carver sent a letter
5 in October of last year describing that.

6 Q. Now, you were talking with Commissioner Ervin and
7 Commissioner Finley about all the documentation of the
8 retail policies and how there are clear instructions that
9 are in the documentation. Do you recall --

10 A. Yes.

11 Q. -- talking about those things? Specifically where
12 are those clear instructions?

13 A. There in --

14 Q. What documents?

15 A. It's an on-line system that I believe is called
16 Compass.

17 Q. And when precisely were those on-line documents
18 available?

19 A. It's my understanding they've been available for
20 as long as the system has been in existence. Now,
21 particular to this promotion, I'm assuming that those
22 follow the rollout of the promotion, whenever that was.

23 Q. And why have y'all not provided printouts of those
24 either in discovery or in your testimony as attachments to

1 your testimony?

2 A. Well, the printouts associated with Compass were
3 not at issue here and I don't believe they were really
4 necessary. But I was prompted to go, you know, keep
5 searching to see if I could find those after Commissioner
6 Kerr asked some questions that he asked me at the hearing.

7 Q. Would your answer about the scripts -- I'm using
8 -- putting that in quotes here -- that the scripts -- if I
9 asked you similar questions about the scripts, where they
10 are, when they were created or why you didn't bring them,
11 would that be included with your testimony about the
12 Compass documents?

13 A. Yes. It's all one in the same.

14 Q. And you say that these things, you reviewed them
15 for the first time in the fall of 2007?

16 A. I don't remember exactly when I reviewed them. It
17 was probably -- the first time we got access to them was
18 probably summer or fall of '07.

19 Q. And you don't know when those were updated?

20 A. No, I don't.

21 Q. You don't know what the version looked like in
22 2003 and 2004?

23 A. No. What was represented to me was that that
24 really hadn't changed much because the promotion had not

1 changed.

2 Now, it's my understanding that they have been
3 modified somewhat since we've gone through this because
4 I've shared with retail about what I view as potential
5 human errors, whether that's in granting the promotion or
6 not. I think we need to make sure that from a fiduciary
7 responsibility standpoint that we don't have service reps
8 that are just waiving charges without a justified reason
9 for doing so.

10 So, you know, in kind of a caution, we have
11 specifically requested that retail make that very clear
12 about how the waiver code should be used, when they should
13 be authorized to be used and how to apply the promotions.

14 Q. And you made those recommendations in the fall of
15 2007?

16 A. Again, I don't remember. Time's flying these days
17 and it was probably sometime between summer and fall. But
18 it took us literally months to track down these actual
19 documents.

20 Q. But the bottom line is that you looked at those
21 documents and you recommend that they be clarified to make
22 it clear that these blocking features wouldn't qualify for
23 the promotion?

24 A. Actually, that's not what I recommended. What I

1 recommended was "here are some service orders that had
2 charges waived. I would recommend you look at the
3 documentation yourself and determine if there's a better
4 way to describe how waiver charges are used."

5 I did not say clarify this promotion. I was
6 talking in general about the documentation that's given to
7 service reps about how to use waiver codes and when to use
8 them and about documenting remarks to explain why a
9 certain action is taken on a service order.

10 Q. Now, I believe you testified that you thought that
11 the materials were clear?

12 A. Yes.

13 Q. And yet I think you also testified that, you know,
14 y'all had to get a bunch of lawyers together from October
15 to March, October of 2004 to March of 2005, to try to
16 define what all these items were.

17 A. And -- you know, I'll just give you one example.
18 The question was is a reacquisition defined by the same
19 telephone number; is it defined by the same customer name;
20 is it defined by a combination of the same telephone
21 number and customer name; is it defined by a service
22 address with the same customer name? So there were a lot
23 of clarity that had to be gained on what the retail
24 business was doing so that we would know how to qualify on

1 our side.

2 And the retail organization had their
3 understanding, but you have -- it was always going through
4 this filter of the attorneys -- no offense, but it was
5 going through the filter of the attorneys to make sure
6 that we weren't sharing inappropriate information across
7 the business units. So that was, you know, just one of
8 several questions that was being clarified between the two
9 business units.

10 MR. MALISH: I'm going to check my notes to make
11 sure I don't have anything else.

12 Q. The last thing I want to ask about, Ms. Tipton.
13 Do you have a copy of your testimony from the hearing here
14 at the Commission two years ago?

15 A. My written testimony or the transcript?

16 Q. The transcript.

17 A. No, I don't.

18 Q. All right. I want to ask you about something that
19 you said on Page 245. And I think what I'm going to do,
20 if I may approach, is just direct your attention to a
21 portion of the transcript.

22 MR. CARVER: Could I see it?

23 MR. MALISH: I'm looking at Page 245, Lines 14
24 through 18.

1 MR. CARVER: Okay.

2 Q. I'm looking at Page 245, excuse me, Lines 14
3 through 17. And this is Commissioner Kerr's questions
4 about the query that y'all run.

5 And what you informed the Commission is -- let me
6 read this to you and tell me if I got it right. "I asked
7 specifically for a query to be run to determine if any
8 BellSouth end users had been granted a line connection
9 waiver that had only basic mobile service and two of these
10 blocks with nothing else."

11 Did I read that correctly?

12 A. Yes.

13 Q. And so in that testimony you're not talking about
14 the promotion, are you?

15 A. No.

16 Q. You're just talking about whether any end users
17 had been granted a line connection waiver in a situation
18 where they were only taking the basic local service and
19 the two -- two of the free blocks, right?

20 A. Well, in slang speech I didn't mention the
21 promotion. But in talking with Liz because I've been
22 talking with her back and forth about this promotion,
23 that's what we were talking about was the line connection
24 charge waiver promotion.

1 Q. Okay.

2 A. I'm clear about that.

3 Q. You're clear about that now?

4 A. No. I'm clear about what I asked her because we
5 had had multiple conversations about this specific
6 promotion; they understand clearly about what was at issue
7 and that's what I was trying to get to.

8 Q. Okay. So your testimony says what it says?

9 A. Yes, it does.

10 Q. And if it says that you asked to have a query run
11 to see if end users with this configuration had been
12 granted a line connection waiver, you're saying now that
13 what you meant to say was did they get it as a result of
14 the line connection charge waiver promotion; is that what
15 you're trying to say now?

16 A. It's what I asked Liz to do.

17 Q. Okay.

18 MR. MALISH: I'll pass the witness.

19 COMMISSIONER KERR: Mr. Carver?

20 MR. CARVER: No questions.

21 COMMISSIONER KERR: Anything else?

22 (No Response.)

23 Okay. I think that's all for Ms. Tipton.

24 (Whereupon, the witness was dismissed.)

1 Anything further?

2 MR. RANKIN: I've got these AT&T Cross Exhibit
3 No. 1. We copied it during the lunch hour, so I'll hand
4 that out.

5 COMMISSIONER KERR: All right. Anything further
6 from you, Mr. Carver? We admitted your exhibits, didn't
7 we?

8 MR. CARVER: Yes, I believe we did, so I have
9 nothing else.

10 COMMISSIONER KERR: Okay. So I guess we're
11 done. Anything further from you, Mr. Malish?

12 MR. MALISH: We had talked about a closing
13 statement kind of thing. I think we're going to do
14 written closing statements instead, so --

15 COMMISSIONER KERR: And I was going to ask --
16 let's just -- but we're done with the witnesses and --

17 MR. CARVER: Yes.

18 COMMISSIONER KERR: -- everybody's okay?

19 MR. CARVER: Yeah. And I would agree to the
20 extent we're going to brief, I don't see a need for
21 closing statements.

22 COMMISSIONER KERR: Okay.

23 MR. MALISH: The one thing that I would like --

24 COMMISSIONER KERR: I suggest you properly read

1 your panel, both of you, by the way.

2 MR. MALISH: The one thing that I would like to
3 do, Commissioner Kerr, is I would like to submit a copy of
4 the testimony that Steve Watson did in Florida on this
5 issue about the -- what the policy was and how it was
6 developed in 2003 and 2004. I think it was only briefly
7 touched on originally when he first did this here at the
8 North Carolina Commission.

9 COMMISSIONER KERR: Okay. Why don't we do this,
10 if you will -- excuse me, why don't we do this. Why don't
11 you work with Mr. Carver and see if he objects to your
12 doing that and -- I mean, if y'all can work it out, that's
13 fine. Tell him -- show him what it is you propose to
14 submit.

15 If you can't reach agreement, then you can
16 submit it and ask that it be considered and then you can
17 raise whatever objection you want to raise.

18 MR. CARVER: I mean, and I could just say now as
19 a general proposition, the only objection I would have is
20 the idea of taking specific aspects of the Florida
21 transcript and trying to insert them into this record
22 without having other questions or requests of the witness
23 or whatever.

24 What I would not object to is taking the entire

1 Florida transcript and just filing it with this Commission
2 and this Commission can make whatever use of it it deems
3 appropriate.

4 COMMISSIONER KERR: So why don't y'all work that
5 -- why don't y'all talk about that and then we'll consider
6 how to do deal with that.

7 Let me ask you, Mr. Malish, one other thing that
8 had jumped out at me. And as I mentioned to you all off
9 the record, I know y'all got lots of other things going
10 on, but it seems to me that if y'all -- if there's any
11 stipulations as to facts that you all can reach agreement
12 on, that too might be helpful in just trying to narrow
13 this down to kind of what's left for us to deal with.

14 But in your motion you had asked for the -- you
15 had asked us -- this is the last line, Page 7 of your
16 motion, that we "at least re-open the case to require
17 BellSouth to present, in a format similar to Appendix 3,
18 the orders actually processed in North Carolina." And the
19 way this went this morning, it seemed to me that you all
20 had stipulated that the Florida evidence would apply up
21 here and so --

22 MR. MALISH: We're willing to stipulate to it if
23 -- it kind of doesn't matter to us. I mean, there -- when
24 we filed the motion, we didn't know whether they would

1 oppose that or not.

2 COMMISSIONER KERR: Here's what I was going to
3 -- would suggest. I know you did this at the time you did
4 it and now the case has developed. So, you know, part of
5 what you all could do is help us narrow down exactly what
6 it is you're asking us to do here. And I think part of
7 that would be factual findings you think we need to make.
8 I think it might be a prayer for relief, but it seems to
9 me y'all advanced the ball somewhat since the request that
10 we've got and that kind of jumped out at us.

11 And let's just -- I mean, we take this very
12 seriously, but we also want to make sure we know what
13 we're being asked to do and that we only are being asked
14 to do what we need to do.

15 MR. MALISH: We'll confer.

16 COMMISSIONER KERR: All right. I think this
17 transcript will be ready in about a week. I checked
18 during lunch. Typical form is 30 days from the day that
19 -- the mailing of the transcript for briefs, post-hearing
20 briefs. Let's do that with the understanding that you all
21 are going to work on some of these other matters and if
22 you need additional time or need that extended or want to
23 do something else, you know, I'm available to work with
24 counsel to accommodate your schedules, okay.

1 MR. MALISH: Thank you.

2 COMMISSIONER KERR: Anything else?

3 MR. MALISH: Thank you.

4 COMMISSIONER KERR: All right. Thank you.

5 We're adjourned.

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7 Whereupon, the hearing was adjourned.

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CERTIFICATE

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



Candace Covington
Court Reporter II