

3. The February 23, 2006, deposition transcript of Brian Bollinger in *In the Matter of BellSouth Telecommunications, Inc., Complaint of dPi Teleconnect, LLC*, Docket No. P-55, Sub 1577 before the North Carolina Utilities Commission.

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BEFORE THE  
NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Complaint of dPi  
Teleconnect, LLC  
Against BellSouth  
Telecommunications, Inc.                   Docket No.  
Regarding Credit for                   P-55, Sub 1577  
Resale of Services  
Subject to Promotional  
Discounts

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DEPOSITION OF  
BRIAN BOLINGER

February 23, 2006  
9:31 a.m.

675 West Peachtree Street  
Atlanta, Georgia

Valerie N. Almand, CCR-B-531, RPR, CRR

## 1 APPEARANCES OF COUNSEL

2

3 On behalf of the Plaintiff:

4 ANDREW D. SHORE, Esquire

5 BellSouth Corporation

6 Suite 4300

7 675 West Peachtree Street

8 Atlanta, Georgia 30375

9 404.335.0714

10 404.614.4054 (facsimile)

11 andrew.shore@bellsouth.com

12

13 On behalf of the Defendant:

14 CHRISTOPHER MALISH, Esquire

15 Foster Malish &amp; Blair, L.L.P.

16 1403 West Sixth Street

17 Austin, Texas 78703

18 512.476.8591

19 512.477.8657 (facsimile)

20 chrismalish@fostermalish.com

21

22 Also Present: Pam Tipton

23

24

25

1                   Deposition of Brian Bolinger

2                   February 22, 2006

3           BRIAN BOLINGER,

4           having been duly sworn, testified as

5 follows:

6           EXAMINATION

7           BY-MR.SHORE:

8           Q. Can you state your name and your  
9 business title and address, please, for the  
10 record?

11          A. Sure, my name is Brian Bolinger. My  
12 business title is vice-president of legal  
13 affairs for dPi Teleconnect and our address  
14 is 2997 LBJ Freeway, Suite 225, Dallas,  
15 Texas, 75234.

16          Q. Brian, you're a lawyer; right?

17          A. I am a lawyer.

18          Q. And when did you graduate from law  
19 school?

20          A. 1998.

21          Q. And I take it given that you are a  
22 lawyer you understand what a deposition is  
23 and how it works?

24          A. I do.

25          Q. And you understand that you're under

1 oath.

2 A. I do.

3 Q. Okay. I won't belabor you with the  
4 rules of the deposition. I will just remind  
5 you that if at any time you need to take a  
6 break for the restroom or anything else, just  
7 let me know.

8 A. Okay.

9 Q. I'm happy to accommodate you.

10 Do you have any corrections or  
11 revisions to make to your prefiled testimony  
12 in the North Carolina case which is the  
13 proceeding that we're taking this deposition  
14 in?

15 A. The only correction which for some  
16 reason didn't get changed when we submitted  
17 it was dPi provides telecommunications  
18 services to residential customers only.

19 Q. Okay. Tell me, you're in your  
20 direct testimony?

21 A. Yes, my direct testimony.

22 Q. Okay. What page?

23 A. Page 1, Lines 25 and 26, the last  
24 two words of Line 25 and the first word of 26  
25 should be deleted.

1 Q. We should just strike and business?

2 A. Yes.

3 Q. All right. Any other corrections or  
4 revisions to either your direct or your  
5 rebuttal testimony?

6 A. Not that I'm aware of.

7 Q. Other than the exhibits that were --  
8 that dPi submitted with its prefiled  
9 testimony in this case did you consult any  
10 other documents in preparing either your  
11 direct or your rebuttal testimony?

12 A. The only documents that I consulted  
13 in reviewing for this would be just  
14 correspondence that has gone back and forth.

15 Q. Correspondence between yourself --

16 A. Between myself and BellSouth.

17 Q. Was that in the preparation of your  
18 testimony or to prepare for your deposition  
19 today or both?

20 A. Both.

21 Q. Okay. Does that correspondence  
22 include the correspondence that you attached  
23 as part of your exhibits?

24 A. Yeah, I believe so. I don't think  
25 there's anything else in there that's new.

1 Q. That was my question. Is there  
2 anything else in there that dPi hasn't filed  
3 as an exhibit that you consulted?

4 A. No.

5 Q. Did you prepare any of dPi's  
6 Exhibits 1 through 7?

7 A. Yeah, I need to take a look at them.

8 Q. Yeah, do you have those?

9 A. The first exhibit, I think I  
10 submitted that, I did that one.

11 Q. Okay. And that's the screen shot  
12 from the BellSouth website?

13 A. Yes.

14 Q. Okay. Did you print that off of  
15 BellSouth's website?

16 A. Yes.

17 Q. When did you do that?

18 A. Sometime in the middle of 2005. I  
19 don't know the exact date.

20 Q. All right. Any other of dPi's seven  
21 exhibits that you are responsible for or that  
22 you prepared?

23 A. Obviously I didn't prepare Number 2  
24 because that's a BellSouth document. Three,  
25 I did not -- did not prepare.

1 (A discussion ensued off the  
2 record.)

3 A. We've done 1 and 2 so far; right?

4 Q. Yeah, my question was which of the  
5 exhibits did you personally prepare?

6 A. I prepared 6, and actually this is  
7 correspondence we're talking about.

8 Q. Yes.

9 A. And that's it.

10 Q. Okay. Who prepared 3, 4, 5 and 7?

11 A. Lost Key Telecom.

12 Q. And Mr. Watson, Steve Watson will be  
13 able to answer my questions about those?

14 A. He should be, yes.

15 Q. You're not the right guy to ask  
16 about those; is that fair to say?

17 A. You can ask.

18 Q. Okay.

19 A. But I didn't prepare them, so I  
20 don't know if I can answer.

21 Q. Okay. What role did you take in the  
22 preparation of Steve Watson's prefiled direct  
23 testimony?

24 A. I didn't take any role in his  
25 testimony.



1 Q. Okay. Did you discuss it with him  
2 before it was prepared?

3 A. I don't think so.

4 Q. Did you review a draft of it before  
5 it was filed?

6 A. I think I reviewed a draft of it,  
7 but I don't know if it was before it was  
8 filed or after it was filed. I didn't make  
9 any comments or suggestions or changes.

10 Q. Okay. So you took care of my next  
11 question, then, good.

12 Who wrote Mr. Watson's testimony; do  
13 you know?

14 A. I don't know. It came from Foster  
15 Malish, but I don't know who wrote it.

16 Q. Let me ask you about Exhibit 7.

17 A. Okay.

18 MR. SHORE: Let me go off the record  
19 for a second.

20 (A discussion ensued off the  
21 record.)

22 Q. Brian, are you the vice-president of  
23 legal and regulatory affairs at dPi or just  
24 legal?

25 A. My job covers both. My official

1 title is of legal affairs, but it covers the  
2 legal and regulatory side.

3 Q. Tell me what your responsibilities  
4 are in that position.

5 A. My responsibilities are to negotiate  
6 contracts, whether it be with other telephone  
7 companies, vendors.

8 We sell our services through agents,  
9 so I do agent agreements.

10 It's to ensure that we are in  
11 compliance with all public utility  
12 regulations where we do business.

13 My job also -- though it's not  
14 entitled so, oversees the human resources  
15 department, and also I'm in charge of  
16 reviewing tariff filings and making sure that  
17 we're adhering to what our tariff's say.

18 Q. How many lawyers are employed at  
19 dPi?

20 A. One.

21 Q. That's you; right?

22 A. Yep.

23 Q. Are you responsible for any  
24 litigation that dPi may be involved with also  
25 as part of your job responsibilities?

1           A. Managing it, yes. If we get  
2 involved in any litigation we hire outside  
3 counsel.

4           Q. But it falls under your arm?

5           A. Yes.

6           Q. How long have you been employed by  
7 dPi?

8           A. Almost six years.

9           Q. And did you work as a lawyer before  
10 you came on with dPi?

11          A. I did.

12          Q. And where was that?

13          A. It was in Indianapolis for a  
14 commercial construction company.

15          Q. What was the name of that company?

16          A. Smock Fansler Corporation.

17          Q. How long were you employed there?

18          A. I believe a couple of years.

19          Q. And what generally were your  
20 responsibilities as a lawyer at Smock  
21 Fansler?

22          A. At a high level, very similar to  
23 what I do at dPi. I was in charge of all the  
24 legal functions of the company, with five  
25 unions that we worked with that we employed

1 people who were members of those unions, so I  
2 did deal with union agreements, OSHA  
3 compliance, construction, and also did all  
4 the HR stuff.

5 Q. Other than Smock Fansler and at dPi  
6 have you been employed anyplace else as a  
7 lawyer?

8 A. Not as a lawyer, just where I  
9 clerked in law school.

10 Q. Smock Fansler was your first job out  
11 of law school?

12 A. Yes.

13 Q. And did you go straight from there  
14 to dPi or was there some period in between?

15 A. No, I went straight from there to  
16 dPi.

17 Q. Who do you report to?

18 A. I report to David Dorwart, who's our  
19 president and CEO.

20 Q. And you probably need to spell that  
21 for the court reporter.

22 A. It's D-O-R-W-A-R-T.

23 Q. As part of your responsibilities  
24 negotiating contracts on behalf of dPi do you  
25 negotiate enter connection agreements with

1 other telephone companies?

2 A. Yes.

3 Q. Did you negotiate dPi's enter  
4 connection agreement with BellSouth?

5 A. Yes.

6 Q. Are you familiar with that?

7 A. Uh-huh. I smiled, because there was  
8 not a lot of negotiation that takes place.

9 Q. Were you the person at dPi that  
10 signed that agreement?

11 A. No, David Dorwart signed it.

12 Q. I take it that he signed it at your  
13 recommendation?

14 A. Uh-huh. (Nods head.)

15 Q. Is it fair to say generally speaking  
16 that the interconnection agreement that dPi  
17 has with BellSouth governs the relationship  
18 between those parties, at least in terms of  
19 the items that are addressed in the  
20 interconnection agreement?

21 A. Yeah, as long as they adhere to what  
22 the state utility commissions --

23 Q. And are there a section of the  
24 interconnection agreement between the parties  
25 that addresses resale?

1 A. I believe so, yes.

2 Q. Are you considered -- are you an  
3 officer of dPi?

4 A. Technically, no.

5 Q. You said technically. Are you part  
6 of the senior management team?

7 A. I'm part of the senior management  
8 team, but as far as officially an officer of  
9 the organization, no.

10 Q. How many employees does dPi have?

11 A. About sixty.

12 Q. And what are dPi's annual revenues,  
13 approximately?

14 A. Anywhere from 20 to 30 million.

15 Q. Have you served as a witness  
16 previously to this case?

17 A. I have testified once before, yes.

18 Q. Okay. And where was that? What  
19 forum?

20 A. It was in Dallas, it was a criminal  
21 proceeding. The prosecutor wanted subscriber  
22 information for one of our customers in a  
23 criminal case.

24 Q. That's your only experience  
25 testifying?

1 A. That's it.

2 Q. Have you submitted prefiled  
3 testimony in any case other than the one that  
4 we're here discussing today?

5 A. I don't believe so, no.

6 Q. Have you been deposed previously?

7 A. No.

8 Q. Great. Happy to enjoy it with you.  
9 This is my first time taking a deposition  
10 also.

11 A. All right.

12 Q. All right. DPi's headquartered in  
13 Dallas?

14 A. Yes.

15 Q. Okay. And who owns dPi?

16 A. The structure of ownership of dPi is  
17 100 percent of dPi is owned by dPi Holdings.  
18 DPi Holdings is owned by David Dorwart and  
19 Rentway, Incorporated.

20 Q. Rentway?

21 A. Uh-huh.

22 Q. And Rentway is a publically traded  
23 company?

24 A. Yes.

25 Q. And what business is it in?

1 A. It is in the rent-to-own business.

2 Q. Rents household, mostly household  
3 appliances?

4 A. Yeah, furniture, appliances,  
5 jewelry, televisions, electronics, things of  
6 that nature.

7 Q. And where is Rentway headquartered?

8 A. Erie, Pennsylvania.

9 Q. Where does dPi provide  
10 telecommunications services? Strike that.

11 How many different states does dPi  
12 provide telecommunications services?

13 A. I believe we provide  
14 telecommunications services in 28 states  
15 currently.

16 Q. Does it provide services in SBC's  
17 region, for lack of a better term?

18 A. Yes.

19 Q. How about Verizon?

20 A. Yes.

21 Q. And we now BellSouth, of course.

22 A. Yes.

23 Q. How about Quest?

24 A. Yes.

25 Q. I was going to ask you, but I think



1 we covered this at the beginning when you  
2 made that correction to your testimony.

3 DPI provides only residential --

4 A. Yes, that's correct.

5 Q. -- service in North Carolina?

6 A. Yes.

7 Q. How about generally speaking, does  
8 it provide only residential service in all 28  
9 states?

10 A. Yes, that's correct.

11 Q. Does dPi own any telecommunications  
12 facilities that are located in North  
13 Carolina?

14 A. No, no. I mean, technically we are  
15 deemed a fixed base provider because of the  
16 interconnection agreements and things of that  
17 nature, but we own no facilities.

18 Q. Is it fair to say all of dPi's  
19 services are provided by reselling the  
20 services of other carriers?

21 A. Yes and no, either through resale or  
22 through UNE, which technically isn't resale.

23 Q. No, it isn't. DPI doesn't own any  
24 switches.

25 A. No.

1           Q. Does dPi have tariffs that it files  
2 with state commissions?

3           A. Yes.

4           Q. In those tariffs does it set forth  
5 its prices for retail services?

6           A. It does.

7           Q. And does it make any other filings  
8 or have anything else that's publically  
9 available where dPi sets forth its prices for  
10 retail services?

11          A. Not to the public.

12          Q. DPi, if I understand correctly, dPi  
13 does not file a tariff in North Carolina. Is  
14 that accurate? Or do you know whether that's  
15 accurate?

16          A. I do not know if North Carolina  
17 requires a tariff or not, off the top of my  
18 head.

19          Q. Do you know what -- dPi has  
20 something that it calls its basic residential  
21 telephone service? Is that fair to say?

22          A. Yes. I mean, you know, depending on  
23 which company we're dealing with and what  
24 area of the country and things of that  
25 nature, we have different names, but, you

1 know, we have a basic line, yes.

2 Q. And in BellSouth's region in North  
3 Carolina particularly do you have a service  
4 that you call basic service?

5 A. We just have our -- yeah, our basic,  
6 our basic telephone service.

7 Q. What does the customer get when it  
8 buys basic telephone service from dPi in  
9 North Carolina?

10 A. I believe they get just your typical  
11 local dial tone in their home and in North  
12 Carolina I'm not sure if there is any long  
13 distance attached to that, but there may be,  
14 and then that's about it.

15 Q. Do they get, with basic service does  
16 the customer get any features?

17 A. Not if they just order basic  
18 service, no, unless they order them or they  
19 order a package.

20 Q. I understand we've got a big dispute  
21 in this case about the way dPi and BellSouth  
22 defines features, so when I ask you that  
23 question to the extent it matters I'm going  
24 to Troy to boil that down so we can make sure  
25 we're talking about the same thing.

1           A.  Okay.

2           Q.  Because I think it's pretty clear  
3           from the filings in this case that there are  
4           some things that dPi may consider features  
5           that BellSouth doesn't, but I'll try to be  
6           clear about that.  If I'm not you can ask me.

7           A.  I assumed you meant when you said  
8           features, I assumed you meant call waiting or  
9           caller ID.

10          Q.  Those are examples of features that  
11          BellSouth considers features, absolutely.  
12          When a customer in North Carolina gets basic  
13          service from dPi does it automatically get  
14          blocks of certain features?

15          A.  Yes.  We block all toll  
16          restrictions, or all toll -- all functions  
17          that could charge a toll on the customer's  
18          bill.

19          Q.  Does that include the BRD block that  
20          we were talking about in this case or not, as  
21          a part of basic service?

22          A.  Yes.  I mean, if they just order  
23          basic service, that would be -- that USOC  
24          would be put on there.

25          Q.  And is it put on there automatically

1 when a customer orders basic service?

2 A. Yes.

3 Q. And does -- will dPi take that off a  
4 customer's account if a customer requests it?

5 A. Only in the event that the customer  
6 orders something differently.

7 Q. And does that, in fact, happen?

8 A. Sure.

9 Q. And when you say differently, what  
10 do you mean by that?

11 A. The customer calls and they decide  
12 that they want to actually have three-way  
13 calling. A change order would be submitted  
14 and the USOC for that TouchStar feature will  
15 be removed and the other USOC for that  
16 TouchStar feature will be implemented.

17 Q. Does dPi have any customers that  
18 just have basic dial tone, no vertical  
19 features but don't have any of the blocks on  
20 their lines?

21 A. Not that I'm aware of.

22 Q. If a customer requested that from  
23 dPi would dPi provide it?

24 A. I'm not exactly sure how the  
25 provisioning works in BellSouth's lend, so

1 I'm not sure that we could do that.

2 Q. Does dPi provide -- excuse me, does  
3 dPi charge its customers for BRD and other  
4 types of denials of use blocks?

5 A. No, only in the event that we are  
6 charged.

7 Q. And BellSouth doesn't charge dPi for  
8 those blocks; correct?

9 A. I know in North Carolina they don't.

10 Q. Other than dPi's litigation over  
11 these promotional credits does dPi currently  
12 involved in litigation with any other ILECs?

13 A. I believe we're still involved in a  
14 minor proceeding with SBC over some  
15 overcharges, or I guess now AT&T over some  
16 overcharging, that's with a number of  
17 different telephone companies are involved in  
18 that one.

19 Q. And where is that case pending?

20 A. South Texas somewhere.

21 Q. Is it in court or for a state  
22 utility commission?

23 A. It's a good question, but court.

24 Q. Other than that and of course the  
25 cases with BellSouth has dPi been involved in

1 litigation with any other ILECs over the  
2 course of your employment there?

3 A. I don't believe so.

4 Q. Has dPi ever been -- had its  
5 services turned off by an ILEC?

6 A. Yes.

7 Q. And tell me about that.

8 A. A few years ago BellSouth turned us  
9 off because BellSouth, we paid -- when we  
10 paid our bill they credited it to the wrong  
11 band and so we had a very high positive  
12 balance on one band and a very high negative  
13 balance on another band and for some reason  
14 they refused to transfer between bands and we  
15 were shut off for awhile until we threatened  
16 to file a complaint at the commission, and  
17 then all of a sudden they could then transfer  
18 between bands.

19 Verizon at one point shut down our  
20 service in Maryland because of a billing  
21 dispute/reconciliation problem we were  
22 having.

23 Q. When was that?

24 A. That was actually fairly recently.

25 Q. 2006?

1 A. I think it was late 2005.

2 Q. Okay. And how long was dPi's  
3 service in Maryland shut off by Verizon?

4 A. 48 hours, maybe.

5 Q. And what was the nature of the  
6 dispute? Why did Verizon shut you off?

7 A. We had several billing disputes that  
8 were pending, and we worked through a company  
9 to audit our bills by the name of CGM, and  
10 CGM had gotten the authorization to  
11 circumvent the typical dispute process forms  
12 that Verizon has companies fill out and  
13 actually e-mail spreadsheets.

14 Because the spreadsheets were  
15 e-mailed and not submitted in the customary  
16 way and form for some reason they were not  
17 entered into Verizon's system, and so Verizon  
18 did not recognize them.

19 Q. And any other circumstances where  
20 you've been shut off?

21 A. I think that's it.

22 Q. All right. Let's talk about dPi's  
23 relationship with Lost Key.

24 A. Uh-huh.

25 Q. Who's the person at dPi responsible



1 for that relationship?

2 A. I am.

3 Q. And when did dPi first start working  
4 with Lost Key?

5 A. Summer of 2004, I believe.

6 Q. And how did that come about?

7 A. I was in a meeting that Steve Watson  
8 was in. I can't remember exactly what the  
9 meeting was about, but there were several  
10 telephone companies there. And Steve and I  
11 began talking about the different promotion  
12 always that different companies had running  
13 and our ability to receive those promotions  
14 based on the FCC's ruling, and he stated that  
15 he had started a company to manage and  
16 monitor the promotion always, and so we began  
17 discussions about how his company could help  
18 us since we didn't have the manpower for it.

19 Q. Was that meeting sometime in the  
20 summer of 2004 time frame or prior to that  
21 time?

22 A. I believe it was probably the spring  
23 2004.

24 Q. And did you know Steve Watson  
25 previously?

1           A. I had met him previously, yes.

2           Q. Okay. And how did you know him  
3 previously?

4           A. He had previously been an owner of a  
5 CLEC that technically would have been a  
6 competitor of ours, so I had known him  
7 through just being in the industry.

8           Q. What CLEC was that?

9           A. I think the name of his company was  
10 Teleconnects.

11          Q. And what was the meeting that you  
12 hooked up with Mr. Watson in the spring of  
13 '04, what capacity was he there? Was he  
14 there representing Lost Key or in some other  
15 capacity as well?

16          A. I'm not exactly sure, because I  
17 can't exactly remember which meeting it was,  
18 so I don't know what his capacity. I just  
19 know that we were in a meeting together and  
20 we began talking about it, but there were  
21 several meetings that I attended during that  
22 time frame and I'm not exactly sure which one  
23 it was.

24          Q. Does dPi has a contract with Lost  
25 Key?

1 A. Yes.

2 Q. And what does that contract provide?

3 A. The contract basically says that for  
4 any promotions that Lost Key is able to file  
5 on our behalf and obtain credits on our  
6 behalf, we will pay Lost Key a commission for  
7 any amounts -- based on the amounts received.

8 Q. Does that cover, I know it covers  
9 the BellSouth states. Does it cover other  
10 states as well?

11 A. It covers -- it's basically ILEC  
12 specific and it covers -- off the top of my  
13 head I'm not exactly sure if it's BellSouth  
14 only, but I believe it would cover any RBOC  
15 or ILECs that he obtains promotions from.

16 Q. Has Lost Key at any time submitted  
17 promotion credit requests to any RBOC other  
18 than BellSouth on behalf of dPi?

19 A. At this point, no.

20 Q. And I think you said it was a -- you  
21 paid Lost Key based on a commission  
22 structure?

23 A. Uh-huh.

24 Q. Was the fee arrangement?

25 A. Five percent.

1 Q. Just across-the-board, 5 percent?

2 A. Well, it started out, I think it  
3 was, if I remember correctly, I think it was  
4 10 percent for anything prior to the contract  
5 date that was received and 5 percent moving  
6 forward, so we're at 5 percent now.

7 Q. What's the contract date,  
8 approximately?

9 A. Summer of '04.

10 Q. So if I understand correctly, to the  
11 extent Lost Key submitted credit requests for  
12 the time period prior to that you would pay  
13 Lost Key 10 percent of credits it received  
14 and on a going forward basis it would be 5  
15 percent?

16 A. 5 percent moving forward, yes.

17 Q. And Lost Key has, in fact, obtained  
18 promotional credits from BellSouth; has it  
19 not?

20 A. Yes, some of them, yes.

21 Q. Do you know what amount?

22 A. Specifically, no, because it changes  
23 continually. But it's a few hundred thousand  
24 dollars.

25 Q. And has dPi paid Lost Key its

1 commissions?

2 A. I believe so.

3 Q. Some at 10 percent, some at 5  
4 percent, I take it?

5 A. Yeah. (Nods head.)

6 Q. Do you pay Lost Key anything else  
7 other than these commissions for credits?

8 A. We'll pay for -- if we ask him to do  
9 consulting type services as far as breaking  
10 down different things, we'll pay him for his  
11 time and material doing that. As far as  
12 payments to them, I think that's it.

13 Q. That kind of got a little ahead of  
14 me, which is fine.

15 Other than this promotion credit  
16 request work that Lost Key does for dPi has  
17 Lost Key done any other work for dPi

18 A. Not outside of that realm. I mean,  
19 they've broken down things and run reports  
20 and things of that nature which we've paid  
21 him on a time and material basis, but outside  
22 of the realm of promotions, no.

23 Q. And what kind of work, other than  
24 the promotion credit requests that you paid  
25 extra for, has Lost Key performed? You what

1 did ask them to do?

2 A. Oh, just, you know, things like  
3 typically the reports he generates are  
4 ILEC-specific, so he'll say something like,  
5 you know, to date dPi has submitted \$1.5  
6 million of promotional disputes with  
7 BellSouth and received \$200,000 of credits,  
8 and because of the nature of the business,  
9 you know, we obviously -- when this dispute  
10 started we had to file a complaint on a  
11 state-specific basis, so I know that I asked  
12 Steve hey, can you break that down by state  
13 so we know how much it is, so he had to do a  
14 different report and things of that nature  
15 and we paid him for that.

16 Q. Has all that work been in the  
17 context of dPi's litigation with BellSouth?

18 A. I believe so, yes.

19 Q. And how much have you paid Lost Key  
20 for that work? Is it an hourly rate?

21 A. Yeah. It's, maybe it's -- I don't  
22 know exactly what it is but I think it's  
23 something in the nature of 80 or 85 dollars  
24 per hour.

25 Q. And what amount have you paid Lost

1 Key so far cumulatively for that work?

2 A. I don't know.

3 Q. Who at Lost Key do you deal with?

4 A. Steve Watson.

5 Q. Anyone else?

6 A. No.

7 Q. Do you know if Mr. Watson is the  
8 person that's performing this work on dPi's  
9 behalf or not?

10 A. I do not know.

11 Q. Does Lost Key have other employees?

12 A. I know he has some IT people, but I  
13 don't know -- I've never been to Steve's  
14 office, so I don't know how many people he  
15 has or who he employs.

16 Q. Do you know the names of any other  
17 Lost Key employees other than Steve Watson?

18 A. I think he has a programmer by the  
19 name of Ed Brunet, something similar to that.

20 Q. Okay. Anybody else?

21 A. I know that Steve and his son Chris  
22 started the company together, but I don't  
23 know how involved Chris still is with the  
24 organization because Chris has become the  
25 owner of another CLEC.

1 Q. What CLEC is that?

2 A. Seven bridges communications, I  
3 believe.

4 Q. Do you know if Steve Watson has an  
5 ownership in seven Bridges?

6 A. I don't know.

7 Q. Is Seven Bridges a competitor of  
8 dPi?

9 A. They're small, I don't know much  
10 about them, but I would say the answer is  
11 probably yes.

12 Q. Do you know if Steve Watson performs  
13 any work on behalf of Seven Bridges?

14 A. I don't know.

15 Q. Would that be okay with you? Would  
16 it be okay with dPi if Steve Watson had a  
17 membership interest or worked on behalf of a  
18 competitor of dPi?

19 A. Yeah, it would, as long as he did  
20 the job for us, I don't think it would  
21 matter.

22 Q. I may have asked you this, and if I  
23 did I apologize, but I can't remember.

24 At any time have you interacted with  
25 anybody at Lost Key other than Steve Watson?



1           A. Well, I've interacted with obviously  
2 Steve, Chris prior to his purchase, and I  
3 know at one point Chris's -- or excuse me,  
4 Steve's daughter Stephanie was helping him  
5 out when he first got started so I talked to  
6 her from time to time, but that's -- and I  
7 think I may have talked with Ed Brunet early  
8 on about how to exchange data.

9           Q. What was Chris Watson's role? Why  
10 did you have occasion to talk to him?

11          A. If Steve wasn't around.

12          Q. Chris was sort of the number 2 guy  
13 at the company and Steve was the number 1  
14 guy; is that fair to say?

15          A. I don't know how the org chart was  
16 spelled out, but you could contact either one  
17 of them.

18          Q. And how about Stephanie Watson?

19          A. What was the question?

20          Q. Did you have any contact with her?

21          A. Minimal, right when we started.

22          Q. Is she Steve's -- how is she related  
23 to Steve?

24          A. His daughter.

25          Q. And what did you talk to her about?

1           A. I spoke with Stephanie in the very  
2 early stages, so we were talking about -- it  
3 was in regard to the contract negotiations,  
4 getting the contracts back and forth.

5           Q. Kind of the administerial part of  
6 things? Is that --

7           A. Yeah, I guess you could say that.

8           Q. Now, I take it that each month --  
9 well, I know for a fact, but would you agree  
10 with me that each month Lost Key submits  
11 promotional credit requests to BellSouth on  
12 behalf of dPi?

13          A. I believe that's accurate. I hope  
14 it's accurate.

15          Q. And fair to say that Lost Key does  
16 some work, there's some work involved with  
17 its efforts on behalf of dPi?

18          A. Oh, absolutely.

19          Q. Who does that at Lost Key? Do you  
20 know?

21          A. I don't know. I don't know if Steve  
22 does it, if Ed does it, if somebody else does  
23 it. I don't know.

24          Q. Who determines, when I say who, I  
25 mean -- let me ask it this way.

1           Is it Lost Key's sole discretion to  
2 determine what promotional credits to apply  
3 for with BellSouth, or does dPi play some  
4 role in determining why for this one and not  
5 for that one?

6           A. DPi absolutely plays a role in what  
7 gets applied for and what doesn't get applied  
8 for.

9           Q. Okay. Tell me how that process  
10 works.

11          A. Initially when we first started we  
12 identified specific credits that we would  
13 apply for. Some we specifically said let's  
14 wait on, and would look -- we looked at the  
15 individual promotions, what their  
16 requirements were, how we ordered our  
17 service.

18                 We went to the BellSouth tariff to  
19 see if we qualified, and if we did we would  
20 tell Lost Key or we would decide to have them  
21 file for those promotional credits on our  
22 behalf.

23          Q. And that was a cooperative effort  
24 between dPi and Lost Key?

25          A. Yeah.

1 Q. Was that for the time period kind of  
2 for the bill dates before Lost Key came to  
3 work for you?

4 Because I remember you said you were  
5 going to apply for some credits and did, in  
6 fact, apply for some credits on a retroactive  
7 basis. Was that work done for that time  
8 period or is that for the past time period  
9 before Lost Key was engaged and going forward  
10 also?

11 A. It's both, I mean, past and going  
12 forward.

13 Q. So for each promotional credit that  
14 dPi applies for, I understand Lost Key  
15 actually submits those requests for you; is  
16 that correct?

17 A. That they submit it for us?

18 Q. Yes.

19 A. Yes.

20 Q. For each of those requests is there  
21 a consultation between dPi and Lost Key as to  
22 what y'all ought to apply for?

23 A. You mean on a monthly basis?

24 Q. Yes, sir.

25 A. No.

1 Q. Is it on a promotion basis?

2 A. It's on deciding -- the way it works  
3 is you decide on a promotion to apply for and  
4 Lost Key's responsibility is to write a  
5 program that will read the data provided by  
6 BellSouth, extract the data that meets the  
7 requirements of a promotion in accordance  
8 with BellSouth's tariff, extract that data,  
9 put it in a form, which is then approved by  
10 BellSouth and submitted to BellSouth in their  
11 customary procedure.

12 Q. Are you the person at dPi that does  
13 that work with Lost Key?

14 A. For the most part, yes.

15 Q. Who else at dPi is involved?

16 A. I will -- typically I will do the  
17 work with Lost Key, discuss it with our  
18 senior staff, and as a group we will make the  
19 determination on whether to submit for that  
20 promotion or not.

21 Q. What factors go into making that  
22 assessment of whether or not to submit -- ask  
23 for credits for a promotion?

24 A. Oh, there's a number of factors.  
25 How we purchase our service, if it's even

1 allowed, you know -- excuse me. You know, a  
2 lot of the RBOCs or ILECs now have bundled a  
3 number of services together in a promotional  
4 credit type fashion which is still very gray  
5 as far as how that could benefit us or how we  
6 could get involved in that promotion, so if  
7 it's something that in our opinion is in a  
8 very gray area we will not apply for those.

9 Q. Is what you're referring to there --  
10 let me make sure I understand it.

11 What you're saying is there are some  
12 things that ILECs provide, some promotions  
13 that the ILECs have that are not subject to  
14 the resale requirements of the  
15 Telecommunications Act, and there are some  
16 things that you're not so sure whether they  
17 apply or not but there's a gray area?

18 A. I would say it's mostly gray. You  
19 know, they'll add long distance in and say  
20 because long distance is not regulated then  
21 the entire promotion is not available to --  
22 for resale, and there's some disagreement as  
23 to how that would work.

24 Q. Let me try to see if I can approach  
25 this in a noncontroversial way, because I'm

1 not trying to litigate that issue today.

2 Is it your understanding that the  
3 ILEC's position generally is that bundled  
4 offerings are not subject to the resale  
5 requirements?

6 A. I would say that that's --

7 Q. And let me strike that.

8 A. I'm not trying to --

9 Q. When you bundle local service with  
10 nonregulated service is it the ILEC's  
11 position that those are not subject to the  
12 resale requirements?

13 A. Yes, I would say that that is the  
14 ILEC's position.

15 Q. Has dPi made a determination not to  
16 apply for credits for those types of  
17 promotions, at least to date?

18 A. Yes, to date we have chosen not to,  
19 yes.

20 Q. And is dPi's decision based on the  
21 ILEC position that it's not subject to  
22 resale, that those things are not subject to  
23 resale?

24 A. Certainly the ILEC's position is a  
25 factor. We have chosen not to do that

1 because we do not want to get into a  
2 large-scale billing and reconciliation  
3 dispute with the LEC at this point, until  
4 some jurisdiction or some commission has made  
5 a formal ruling on that, and once that  
6 happens we'll either feel more comfortable or  
7 less comfortable, and then we'll decide.

8 Q. Are you familiar with the proceeding  
9 the North Carolina commission conducted last  
10 year, maybe concluded last year over the  
11 2004 -- 2005 --

12 A. The informal?

13 Q. No, the formal proceeding addressing  
14 resale requirements, do you have any  
15 familiarity with that? I don't have the  
16 docket number with me.

17 A. I think I know what you're talking  
18 about, yes.

19 Q. And do you have any recollection  
20 about whether or not the North Carolina  
21 commission addressed in its order whether or  
22 not bundled service offerings, that is  
23 service offerings with regulated and  
24 nonregulated products, were subject to  
25 resale?



1           A. I do not recall.

2           Q. I won't ask you about that. I think  
3 that's fair.

4           A. I don't know if we're talking about  
5 the same one anyway.

6           Q. Is dPi paying Steve Watson for his  
7 time preparing prefiled testimony to be filed  
8 in this case?

9           A. You know, I don't know. We haven't  
10 discussed it and I don't believe we've  
11 received a bill for it, so I don't know.

12          Q. If you receive a bill are you going  
13 to pay?

14          A. Probably.

15          Q. I want to -- I think we were talking  
16 about the factors that dPi considers when it  
17 determines whether or not to apply for  
18 credits for promotion, and you told me about  
19 there's this bundle issue.

20          A. Well, that's one of them. I just  
21 gave you an example.

22          Q. Right. What are the other factors?

23          A. You know, it all boils down to how  
24 comfortable we feel with the promotion,  
25 whether there's been a state commission

1 ruling on it, what the FCC rules state, again  
2 how we order service, things of that nature.

3 Q. A couple times you talk about, refer  
4 to promotion requirements, and I just want to  
5 figure out that what you're referring to  
6 there are the requirements that the ILEC --  
7 let's talk about BellSouth, that BellSouth  
8 would have for its customers to qualify for  
9 that promotion in question? Is that what  
10 you're referring to?

11 A. Well, there's several -- I won't say  
12 several, but there's a few requirements. One  
13 is the FCC ruling on time periods and things  
14 of that nature. Promotion is only available  
15 for a CLEC if it lasts longer than 90 days,  
16 so we have to look at that, how long does it  
17 last, and then you have to go to the  
18 promotional tariff that is filed by BellSouth  
19 or another ILEC and read through that tariff  
20 to see how -- what the rules as BellSouth's  
21 or any other ILEC state are the rules for  
22 obtaining that promotion.

23 Q. Okay. And in the case in North  
24 Carolina with BellSouth, where did dPi go to  
25 look at what the rules are for a promotion?

1           A. First we looked at the date of the  
2 promotion, obviously, and then we went and  
3 looked at the promotional tariff that  
4 BellSouth filed.

5           Q. And have you included those tariffs  
6 as exhibits to your testimony? Why don't you  
7 look at Exhibit 2?

8           Do you have an extra copy of that?  
9 Do you need a copy, Chris?

10           Okay. Exhibit 2 there, the first  
11 page is a letter from BellSouth to the North  
12 Carolina Utilities Commission dated January  
13 12th, 2004. Do you see that?

14           A. Uh-huh, yes.

15           Q. And the second page is a letter,  
16 December 17th, 2004.

17           A. Correct.

18           Q. Kind of a followup to some prior  
19 correspondence, and then the third page is  
20 entitled -- which was attached to those  
21 letters, at least it references that it was,  
22 I think, executive summary line connection  
23 charge waiver extension, do you see that?

24           A. Yes.

25           Q. And it sets forth the promotion, the

1 promotion specifics and the restrictions and  
2 eligibility requirements. Do you see that?

3 A. Yes.

4 Q. Is that type of document -- are  
5 those the types of documents that dPi looks  
6 at when you say you look at what the  
7 promotion requirements or eligibility  
8 criteria are?

9 A. It's one of them, yes.

10 Q. What else do you look at? I  
11 understand the SCC rulings, but I'm talking  
12 about specific filings or publically  
13 information that BellSouth makes available.

14 A. Well, for this specific promotion,  
15 you'd go in and you'd look at what is the  
16 Complete Choice, and what packages do we have  
17 that mirror the Complete Choice or that are  
18 very close to the Complete Choice which we  
19 can tweak a little bit to meet whatever the  
20 requirements of the Complete Choice is.

21 The same thing with the Preferred  
22 Pack plan.

23 And then the third one, you'd go to  
24 what are TouchStar features and look to see  
25 what BellSouth has identified -- what USOCs

1 BellSouth has identified as far as TouchStar  
2 features and see if we use those.

3 Q. But do you use -- I mean, my  
4 question is do you use this document, this --

5 A. Yes, it would be one of --

6 Q. -- line connection charge waiver to  
7 determine what the requirements are for the  
8 line connection charge waiver promotion? Is  
9 that fair?

10 A. It would be one of the documents,  
11 yes.

12 Q. Okay. What else would you look at  
13 for the line connection charge waiver? Other  
14 than the filing that BellSouth makes with the  
15 North Carolina commission, what else would  
16 you look at in North Carolina to determine  
17 whether or not -- what the requirements are  
18 for a dPi customer perhaps to be entitled to  
19 that promotion?

20 A. Well, this document does not detail  
21 what all is involved in BellSouth's Complete  
22 Choice, so we'd have to go look at Complete  
23 Choice, and it doesn't detail what's involved  
24 in BellSouth's Preferred Pack, so we'd have  
25 to go do that.

1           And this document does not identify  
2           what the TouchStar features are or what the  
3           USOCs are, which is, you know, how do you  
4           order it.

5           So you have to look at the USOCs,  
6           what USOCs are involved with the TouchStar  
7           features or any of the other plans, so you  
8           have to go find out what is involved in all  
9           of that.

10          Q.   Okay.  And where do you get that  
11          information?

12          A.   That would be either off of  
13          BellSouth tariffs or off of their website.

14          Q.   Is it fair to say that you get the  
15          promotion requirements from the documents  
16          that BellSouth files with the North Carolina  
17          commission and then perhaps when things need  
18          to be defined you go to other sources to find  
19          out how you would define those terms?  Is  
20          that --

21          A.   Yeah, what's included in those  
22          terms, yes.

23          Q.   For example, let's look at this  
24          line, it's Page 3 of your Exhibit 2, line  
25          connection charge waiver extension.

1           The first part there says plan  
2 promotion and it talks about the date that  
3 it's extended to and what's included,  
4 Complete Choice, Preferred Pack, basic  
5 service and two custom calling features. I'm  
6 paraphrasing; right?

7           A. Uh-huh.

8           Q. Then it has specifics, then it goes  
9 down to restrictions, eligibility  
10 requirement.

11           Assuming you have the definitions  
12 from any other source or are able to obtain  
13 them, can we agree that the eligibility  
14 requirements are set forth in that document  
15 that we're looking at, Exhibit 2?

16           A. Yes.

17           Q. And, for example, one eligibility  
18 requirement for the line connection charge  
19 waiver promotion is that the customer had to  
20 be taking -- or not be taking service from  
21 BellSouth, it had to be a new customer,  
22 either a reacquisition or a winover or a new  
23 customer. That's one of the eligibility  
24 requirements for the line connection charge  
25 waiver generally; isn't it?

1           A. I would say, as it applies to us, I  
2 would say no.

3           Q. It has to be a new customer for dPi  
4 as it applies to you.

5           A. Correct.

6           Q. But in BellSouth's --

7           A. Correct. In BellSouth's mind, it  
8 would be, yeah, it would be whoever the  
9 company is that's giving the promotion or  
10 applying for the promotion in that case.

11          Q. BellSouth sets out in its promotions  
12 and then makes available to CLECs like dPi  
13 and files with the commission, it is the  
14 requirements for its retail customers to  
15 qualify for that promotion. These are retail  
16 promotions for BellSouth's retail customers;  
17 right?

18          A. I would say yes. I don't think  
19 BellSouth has ever done a promotion for  
20 resale customers.

21          Q. And can we agree that for a reseller  
22 of BellSouth services, end user to qualify  
23 for one of BellSouth's promotions, that end  
24 user has to meet the same eligibility  
25 requirements that BellSouth's end user would



1 have to meet to get the promotion?

2 A. I don't know if I can answer that,  
3 because the -- what the criteria is is what  
4 BellSouth has filed in the tariff, and we  
5 have no way of knowing operationally what  
6 BellSouth provides their own customers.

7 We just know what they filed in  
8 their tariff, their promotional tariff with  
9 the commission, so I don't know.

10 Q. Well, if BellSouth makes a filing  
11 with the commission or otherwise makes a  
12 promotion available to its retail customers  
13 and there are certain criteria under any  
14 promotion in order to get the benefits of  
15 that promotion, do you agree that dPi's  
16 customer would have to meet the same  
17 qualifications to get credit for that  
18 promotion, for dPi to get a credit for that  
19 promotion?

20 A. That dPi's customer would have to  
21 meet whatever the criteria is in the tariff,  
22 the promotional tariff to --

23 Q. And when you say promotional tariff,  
24 are you referring to this document we're  
25 looking at, Exhibit -- line connection charge

1 waiver extension?

2 A. It's what's filed with the  
3 commission. We just call it a promotional  
4 tariff. I don't know if it has a different  
5 technical name.

6 Q. Yeah, I mean, regulatory lawyers  
7 like me, we think of tariffs as those things  
8 with really fine print that have lots of  
9 things that nobody understands on them, and  
10 I'd like to think that this -- I don't think  
11 we include this line connection charge waiver  
12 extension document as technically a tariff,  
13 but you're including that when you say the  
14 promotional tariff, that's what you're  
15 referring to?

16 A. Yes.

17 Q. Okay. And so, you know, for example  
18 if you look at the one we've been looking at,  
19 the first criteria there, just to use an  
20 example of what we agreed on, the customer  
21 must not have had local service with  
22 BellSouth.

23 For dPi's customer to get the  
24 benefits of that promotion and for dPi to get  
25 a credit for that promotion, dPi's customer

1 would have to be a new customer to dPi or  
2 coming back to dPi.

3 A. Correct.

4 Q. Not having had existing service with  
5 dPi.

6 A. Well, the way it's written when  
7 BellSouth initially said a win or a win back  
8 customer, I can think of -- I don't think I  
9 can think of any example where a customer  
10 would not meet that criteria.

11 Q. All right. But I'm looking at  
12 simply this document, and the first  
13 requirement, using as an example -- we agreed  
14 that dPi's customers had to meet the same  
15 criteria for dPi to get a promotional credit  
16 that BellSouth customers would have to meet  
17 to get the promotion; right?

18 A. Yeah, and according with what was  
19 filed, yes.

20 Q. And one example of that for the line  
21 connection waiver would be the customer's got  
22 to be a new customer, so for BellSouth retail  
23 the customer could not have had pre-existing  
24 service with BellSouth, and then for dPi to  
25 get credit based on that promotion the

1 customer couldn't have been an existing dPi  
2 customer. Is that correct?

3 A. Yes, if they were -- yeah, correct.

4 Q. I'm not trying to be tricky.

5 A. No.

6 Q. I promise. Not yet, anyway.

7 Once -- when dPi makes a  
8 determination as to what credits -- excuse  
9 me, what promotions to apply for credits for,  
10 I take it there's some internal discussion at  
11 dPi, there's some consultation with Lost Key,  
12 and then you turn it over to Lost Key to  
13 handle the mechanics?

14 A. Yes.

15 Q. Is there any written communication  
16 with Lost Key as to what it's supposed to do  
17 or is that done verbally?

18 A. What they're supposed to do --

19 Q. Well, do you send something in  
20 writing to Lost Key that says please apply  
21 for credits for the line connection waiver?

22 A. It did be either or both.

23 Q. Is it dPi's intent that when Lost  
24 Key applies for promotional credit requests  
25 on behalf of dPi that do so only for

1 customers that meet the eligibility  
2 requirement for that promotion?

3 A. Yes, to the extent that they can.

4 Q. Let's --

5 A. Yeah.

6 Q. What do you mean, to the extent they  
7 can?

8 A. To the extent -- you know, we're  
9 getting the -- you're just getting data, so  
10 to the extent that they can extract that data  
11 and read it in such a form that they can  
12 identify which meets the criteria, yeah.

13 Q. Under your contract with Lost Key is  
14 Lost Key authorized to act as an agent for  
15 dPi for purposes of applying for promotional  
16 credits?

17 A. Yes.

18 Q. Let's just talk about this line  
19 connection charge waiver.

20 A. Okay.

21 Q. And let's assume for a second that  
22 BellSouth and dPi don't have any dispute  
23 about what a feature is or what features have  
24 to qualify. Let's just try to make it simple  
25 for the purposes of this question, at least.

1           Say that the general requirement for  
2 the promotion is that the customer has got to  
3 buy local service, basic service and two  
4 features. We're not going to fight about the  
5 definition of it or what the purchase of a  
6 feature is.

7           A. Okay.

8           Q. We can agree, then, that for dPi to  
9 be entitled to a credit under that promotion,  
10 its resale customer would also have to take  
11 the purchase from dPi, basic service and two  
12 features; can we not?

13          A. Yeah, assuming that we agree about  
14 everything else, yes.

15          Q. We agree on that. And can we also  
16 agree, then, that it would not be appropriate  
17 for dPi to apply for a credit under that  
18 promotion for a customer that takes basic  
19 service and no features, assuming we don't --

20          A. Yeah.

21          Q. Can we agree on that, assuming we  
22 don't have a definitional dispute again.

23          A. Yes, that's correct.

24          Q. And, likewise, can we agree that it  
25 wouldn't be appropriate for dPi to apply for

1 credits for customers under that same  
2 promotion that have basic service and one  
3 feature? No dispute about what a feature is,  
4 for purposes of my question.

5 A. Yeah, if the promotion is two. I  
6 know at one point BellSouth had on their  
7 website was one.

8 Q. We'll get to that. This is a  
9 hypothetical.

10 A. dPi would not expect payment for  
11 that, no.

12 Q. And if dPi applied for a credit,  
13 under those circumstances you would agree  
14 that BellSouth would rightfully be entitled  
15 to deny credit if the customer didn't have  
16 any features, or one feature, in the example  
17 that we're talking about.

18 A. Under the hypothetical, yes, on a  
19 line-by-line basis, yes.

20 (Recess.)

21 Q. (By Mr. Shore) When did you first  
22 become involved in what I think you call in  
23 your testimony is the dispute with BellSouth  
24 over promotional credits?

25 A. As far as the involvement with the

1 dispute would be October 9th of 2004.

2 Q. Do you remember that or have you got  
3 that date written down somewhere?

4 A. Well, our billing date is October  
5 8th and we were told that we would receive  
6 our credits on October 8th and -- actually, I  
7 shouldn't say -- it would probably be around  
8 October 15th or 16th when we got our bill  
9 from our October 8th billing and it showed no  
10 credits.

11 Q. When did Lost Key first submit  
12 promotion credit request to BellSouth for  
13 dPi?

14 A. September of 2004.

15 Q. And what month's billing did that  
16 first request include? Did it go back?

17 A. Yes, it was back. It was a fairly  
18 large submission.

19 Q. Went back to January of '04; is that  
20 right?

21 A. I would say that's safe. It might  
22 have even gone back into '03. I don't know  
23 exactly.

24 Q. So it was eight or ten months' worth  
25 of billing that dPi was requesting credits



1 for at that one time.

2 A. Correct.

3 Q. And then when the next bill came the  
4 very next month and there was no credit,  
5 that's when you got involved?

6 A. Well, I was involved with it the  
7 whole time, and your question was involved in  
8 the dispute.

9 Q. Right.

10 A. And I guess technically when we were  
11 expecting those credits and we'd been told  
12 that they would be on our October bill and  
13 they didn't show up, then you start getting  
14 involved saying hey, you know, what happened,  
15 so -- and I guess technically that's when the  
16 dispute started.

17 Q. Did someone tell you that some  
18 credits would appear on your October  
19 statement, a dPi statement?

20 A. I believe I saw, and I don't know if  
21 it was directly to me, but I believe I saw  
22 correspondence saying that they would be on  
23 your November bill.

24 Q. Who was that correspondence from?

25 A. Again, I'm not sure. There was so

1 many people -- or are there so many people  
2 here at BellSouth that I've dealt with, but  
3 if I had to wager a guess it would probably,  
4 my guess would probably be Kristy Seagle.

5 Q. And who was it to?

6 A. Again, I don't know if it was to me  
7 or to Steve Watson.

8 Q. Was it an e-mail or a letter?

9 A. I believe it was an e-mail, yes.

10 Q. You attached some correspondence  
11 between -- to and from BellSouth personnel as  
12 an exhibit to your testimony, Exhibit 6;  
13 right?

14 A. Okay.

15 Q. Do you have other written  
16 communications to or from BellSouth personnel  
17 regarding this dispute that you did not  
18 include within Exhibit 6?

19 A. I don't know. There's a ton of  
20 correspondence, or there's a lot of  
21 correspondence, and I don't know if there's  
22 one e-mail missing, but this is -- I don't  
23 know.

24 Q. Sitting here today --

25 A. Without sitting at my computer and

1 going through all the e-mails, I don't know.

2 Q. Sitting here today are you aware of  
3 any piece of correspondence that you had with  
4 BellSouth over this dispute that is not  
5 included in this Exhibit 6?

6 A. No, I can't specifically identify  
7 any.

8 Q. When you told me earlier that you  
9 had prepared Exhibit 6 is that --

10 A. Well, I had sent this correspondence  
11 over to Foster and Malish, so it's  
12 technically from my e-mail box.

13 Q. And was it your intent in doing that  
14 that you included all correspondence with  
15 BellSouth or just selected correspondence?

16 A. I believe I sent everything with  
17 regard to this matter over.

18 Q. And when you look over Exhibit 6  
19 sitting here today you can't identify  
20 anything that's missing.

21 A. There's nothing that jumps out.

22 Q. What happened -- you say you got  
23 involved on October 9th of 2004. What did  
24 you do?

25 A. I probably called -- and it was

1 probably -- it was later than that, because  
2 we would have had to have gotten our bill and  
3 run the data to see if there were credits  
4 applied to it.

5 I probably called Steve Watson and  
6 said hey -- he either called me or I called  
7 him, I don't know who identified it first,  
8 and I think I actually -- we probably  
9 identified it first, because at that time we  
10 were getting the CDs and shipping them to  
11 him, so I probably called Steve Watson just  
12 to let him know that the credits weren't  
13 applied.

14 Q. Okay. And did you ask him to do  
15 something?

16 A. I don't remember that conversation,  
17 but I would assume I asked him will you get  
18 in touch with BellSouth and figure out why it  
19 wasn't applied.

20 Q. And what happened next?

21 A. I believe we were told that the  
22 credits would be applied on our November 8th  
23 billing.

24 Q. Did someone tell you that verbally?

25 A. Again, I don't remember if it was

1       verbally or written, and I don't remember if  
2       it was directly from BellSouth or from Lost  
3       Key.

4           Q.   At any time did you have any  
5       conversations with representatives of any  
6       folks at BellSouth about these credits?

7           A.   Verbal like over the telephone?

8           Q.   Yeah, in person, telephone.

9           A.   In person, no. Telephone calls,  
10       yes, many times.

11          Q.   And who did you speak to on the  
12       telephone?

13          A.   I know I've spoken with Kristy  
14       Seagle, Leisa Mangina, I believe I spoke with  
15       Gary Patterson, I know I've spoken with Steve  
16       Lund, Maxine Alagar, I had a conversation  
17       with when she was still here. Did I say  
18       Leisa Mangina?

19          Q.   Yes.

20          A.   As far as talking on the phone, I  
21       think those are the only people I can  
22       remember actually talking on the telephone  
23       to.

24          Q.   At any time did anyone from  
25       BellSouth tell you that dPi would receive

1 credit for every single credit request that  
2 it submitted to BellSouth, promotional credit  
3 request that it submitted?

4 A. Yes. Early on they were telling us  
5 that they were going to pay us a hundred  
6 percent.

7 Q. Who told you that?

8 A. It was either Kristy Seagle or Leisa  
9 Mangina.

10 Q. When did --

11 A. It was early on. It was up until  
12 the first of the year.

13 Q. Are you talking about -- when you  
14 say early on, do you mean like in the fall of  
15 '04 time frame?

16 A. It was between September when we  
17 submitted them until the end of that year,  
18 because you get billed on a monthly basis, so  
19 for October, November and December we were  
20 fully expecting to get credited for  
21 everything that we submitted.

22 Q. And what exactly were you told that  
23 led you to believe that?

24 A. That you will see those credits on  
25 your next billing.

1 Q. Okay.

2 A. So I assume when you say -- when the  
3 person says you will see those credits, those  
4 credits are referring to the credits that we  
5 applied for.

6 Q. Were you told by anyone at BellSouth  
7 during that time frame, let's say anytime in  
8 2004, that BellSouth would be reviewing your  
9 credit requests and determining -- making a  
10 determination as to whether they were  
11 appropriate or not?

12 A. I've had several conversations or  
13 correspondence on that issue, but I don't  
14 know the exact time frames of that.

15 Q. When dPi first submitted this first  
16 batch of promotional credit requests was it  
17 your understanding that BellSouth would  
18 conduct some assessment of those, or just pay  
19 them, pay what you requested?

20 A. We're under the assumption that  
21 BellSouth would do the same thing they do  
22 with all the billing disputes, and that would  
23 be they would analyze what we submit and pay  
24 accordingly. But we were fairly confident in  
25 what we submitted, that it met the

1 requirements.

2 Q. At a time period in fall of '04  
3 where you said that you were led to believe  
4 that you were going to get a credit in the  
5 full amount of the credit request, was it  
6 your understanding from BellSouth they had  
7 conducted any assessment prior to making any  
8 such statements to you?

9 A. I'd assume that they had had it  
10 audited just like they do any other billing  
11 dispute, the normal process.

12 Q. Do you know whether they did that?

13 A. I have no idea how the internal  
14 workings work.

15 Q. Did anyone at BellSouth ever tell  
16 you we've audited your promotional credit  
17 requests and we're going to give you the  
18 credits next month, for example?

19 A. In that time frame?

20 Q. Yes.

21 A. I don't recall if anybody said that  
22 or not.

23 Q. At some point I guess BellSouth told  
24 you that it wasn't going to issue you credits  
25 in the full amount of your credit request.



1           A. Yes. BellSouth -- it was strange.  
2           Up until from September of 2004 to until the  
3           end of March 2005 all of the submissions that  
4           we had put in, none had been rejected and  
5           none had been -- none had been formally  
6           rejected by BellSouth.

7           Q. Had you received any credits up  
8           through March of '05?

9           A. I believe we had received something  
10          like seven or nine thousand dollars of  
11          several -- out of maybe seven hundred  
12          thousand dollars that we had submitted.

13          Q. When did you receive that?

14          A. Sometime between -- I don't think we  
15          got anything in October, so I think it's  
16          sometime between November and March.

17          Q. Was any of the credit attributable  
18          to the line connection charge waiver  
19          promotion?

20          A. I don't know. Off the top of my  
21          head I can't tell you.

22          Q. What happened in March? Something  
23          happened in March?

24          A. Yeah. You know, we had been  
25          informed and under the impression that we

1 were going to get paid in October and it  
2 didn't happen and we were told November and  
3 it didn't happen, we were told December, then  
4 we were told that BellSouth was -- the  
5 payment of the credits were being withheld  
6 because it had been escalated to BellSouth's  
7 legal department to determine the definition  
8 of a win or a win back customer, let's see.

9 Q. When was that that you were told  
10 that?

11 A. That was sometime, I believe, in  
12 December of -- late December of 2004.

13 Q. Did someone at BellSouth tell you  
14 that?

15 A. It's in an e-mail correspondence.

16 Q. That's part of your exhibit?

17 A. I believe so, yes.

18 Q. Anyone tell you that verbally?

19 A. We were having so many -- I mean,  
20 you know, you'd send e-mails, you'd pick up  
21 the phone, you'd do e-mails, so I can't tell  
22 you what conversation happened and what form  
23 of communication, but we were told that it  
24 was -- had been escalated to the legal  
25 department and there would be a resolution by

1 the first of January, and then it got bumped  
2 to the middle of January, and then I can't  
3 remember.

4 I don't think we were told that it  
5 would be -- nobody ever told us that it would  
6 be on February's billing, but then we were  
7 told -- we were specifically told that we  
8 would be receiving our credits mid March, and  
9 when that did not happen I went to the North  
10 Carolina Public Utility Commission and filed  
11 an informal complaint, which got -- really  
12 got the ball rolling at that point.

13 Q. When you said you filed an informal  
14 complaint, is that the letter that's attached  
15 as part of your Exhibit 6?

16 It's an e-mail, I'm sorry, it's at  
17 the very end of Exhibit 6.

18 A. An e-mail to Lynn Pierce?

19 Q. Yes. Is that what you referred to  
20 as the informal complaint filed?

21 A. Yes, I made a call to the North  
22 Carolina commission and said hey, we're  
23 having an issue here, you know, what's the  
24 protocol?

25 And she said, well -- and I believe

1 I spoke to Ms. Pierce, and she said here's  
2 what you do, send me an e-mail -- she said  
3 file an informal complaint, send me an  
4 e-mail, outline the issue and let us help  
5 mediate. I said great.

6 Q. So you sent this e-mail that's here  
7 that's dated March 22nd as part of Exhibit 6?

8 A. Yes.

9 Q. Okay. What happened next?

10 A. There was communication and  
11 correspondence with the commission. I  
12 believe the commission sent, probably sent  
13 this e-mail to BellSouth, asked for a  
14 response.

15 I believe the response -- and I  
16 could be wrong, but I believe the response  
17 came from Gary Patterson, and that's when I  
18 began communicating with him, and he said  
19 that the communication was an itemization of  
20 promotion, what we applied for and how much  
21 BellSouth was going to recognize and pay on  
22 our April bill, so -- and it was two or three  
23 hundred thousand dollars at that point.

24 Q. What was two or three hundred  
25 thousand dollars?

1           A. How much that BellSouth was going to  
2 credit our next bill.

3           Q. And did BellSouth issue you a credit  
4 on April of '05?

5           A. Yes or no. I believe they credited  
6 part of that, and then the other part came in  
7 May.

8           Q. Did BellSouth give you all the  
9 credits that Mr. Patterson told you that they  
10 were going to, that it was going to?

11          A. I believe so, yes. There was some  
12 communication. I think it was Louis Suebe,  
13 if I pronounced the name correctly. I  
14 believe I had some correspondence with him  
15 where he came me one number and Mr. Patterson  
16 gave me a different number, they were apart.  
17 There was some discrepancy between the two.

18                    But I believe we got paid what  
19 Mr. Patterson, his number. So the answer to  
20 your question is yes.

21          Q. And we know dPi wasn't satisfied  
22 with receiving that amount of credit?

23          A. It was less than -- I believe it was  
24 less than 30 percent of the total outstanding  
25 that we had at that time, so no, we were not

1 satisfied.

2 Q. It was less than 30 percent of the  
3 amount that you had applied for?

4 A. Yes, that we had outstanding on our  
5 books.

6 Q. When dPi applies for a promotional  
7 credit from BellSouth how do y'all book that  
8 in your accounting department?

9 A. As far as how it's booked, I don't  
10 know. I'm not in the accounting department  
11 with the CPAs, so I don't know how they book  
12 it.

13 Q. What happened next?

14 A. I believe I sent an e-mail out to  
15 Mr. Patterson thanking him and asking, you  
16 know, there's a difference of, let's say, six  
17 hundred or seven hundred thousand dollars.

18 Q. Those numbers were regionwide and  
19 not just North Carolina; is that right?

20 A. Yeah, it's BellSouth, in the  
21 nine-state -- I don't know what you guys call  
22 it here, your nine-state footprint. It would  
23 be the entire footprint of BellSouth.

24 And I asked him, we still had this  
25 outstanding issue of five or six hundred

1 thousand dollars, you know, how do we go  
2 about receiving those funds, and I think his  
3 response was simply that on the line  
4 connection fee waiver we did not qualify.

5 Q. What happened next?

6 A. There was a barrage of e-mails and  
7 communication back and forth, and that's when  
8 it -- you know, I guess it turned  
9 adversarial.

10 Q. At some point BellSouth made it  
11 clear it didn't believe you were entitled to  
12 any further credits?

13 A. Well, what we were told was that --  
14 let me think if I can get this, because we  
15 were told several things.

16 We were told first that BellSouth  
17 was trying to determine the definition of a  
18 win or win back customer.

19 Q. When was that?

20 A. That was early on. That was --

21 Q. December of '04? Okay.

22 A. And my response was well, you guys  
23 have been doing this for years. How do you  
24 not know what the definition of it is?

25 And then they came back and I think

1     they -- one of the correspondence I got said  
2     well, it's over in retail trying to figure  
3     out their consideration of the features, and  
4     I think I responded because I wasn't sure  
5     what that meant.

6             And then Mr. Patterson said we did  
7     not qualify, and I responded to that, and  
8     then I believe Ms. Seagle came back and  
9     said -- oh, actually Mr. Patterson at one  
10    point said the reason you do not qualify is  
11    because you did not order basic service and  
12    two TouchStar features for the line  
13    connection fee waiver, and I responded and I  
14    said, you know, here's what we order, we do  
15    this on all of our orders. Here's what your  
16    tariff states. We believe we're in  
17    compliance.

18            And then Kristy Seagle responded  
19    back and said the TouchStar features -- or  
20    she said something to the fact of the tariff  
21    reads you must purchase local service and two  
22    TouchStar features.

23            The features that dPi ordered had no  
24    price associated with them, and because there  
25    was no price associated with them BellSouth



1 was of the opinion that we didn't purchase  
2 them, and --

3 Q. Let me stop you there.

4 A. Okay. So that's kind of --

5 Q. I think we might have covered this  
6 earlier, but let me just make sure.

7 DPI pays BellSouth the same amount  
8 if it gets just basic service or if it gets  
9 basic service and these blocks or denials of  
10 features that are at issue in this case;  
11 correct?

12 A. I believe so. I think there are  
13 some -- I think so.

14 Q. DPI doesn't pay BellSouth for these  
15 denials per use, the BRD and those blocks;  
16 does it?

17 A. There is no per item charge for  
18 that, no.

19 Q. Is there any charge at all for that?

20 A. Well, we get billed for what we  
21 order, yes.

22 Q. Is there any itemization on the bill  
23 for those --

24 A. No, there's no per item charge.

25 Q. There's no itemization on

1 BellSouth's bill for the BRD or the BRG  
2 block.

3 A. That's correct.

4 Q. And if dPi doesn't get those blocks  
5 it gets billed the same amount as if it did;  
6 correct? I think we covered that earlier.

7 A. Yeah, and I think I answered I don't  
8 know, and I still don't because I don't know  
9 understand how it works.

10 I don't know if you can order -- I  
11 think if you don't put the blocks on there  
12 then you have the TouchStar feature. I could  
13 be wrong there. I mean, it's either one  
14 block you have it and one block you don't --  
15 or I'm sorry, one USOC -- one TouchStar USOC  
16 you have it, one TouchStar USOC you don't  
17 have it, I think.

18 But I'm not in the provisioning  
19 department so I don't know -- and I don't  
20 know LENS very well, so I don't know exactly  
21 how it works.

22 Q. Dpi doesn't contend that it has to  
23 pay more when it gets the BRD and BRG denials  
24 than it would if it didn't get those; does  
25 it?

1 A. No, we don't.

2 Q. Is it dPi's contention that it  
3 purchases BRD denial?

4 A. Yes.

5 Q. Is it dPi's contention that it  
6 purchases BRG denial?

7 A. Yeah, I'm not -- but if that's one  
8 of them, yes.

9 Q. And it's your contention that that's  
10 the case even though there's no charge for  
11 those denials; is that fair?

12 A. Yes. Our contention that purchase  
13 includes the -- when you say purchase, it  
14 includes the entire transaction, and so we  
15 order and we are charged and that's the  
16 transaction, regardless.

17 In our mind it's no different than  
18 buying a house. You couldn't tell me how  
19 much your doorknob on your front door is, but  
20 you purchased that when you purchased the  
21 house, and to us it's the same rationale.

22 Q. I think we were in the spring of '05  
23 time frame, we were talking about the dispute  
24 with BellSouth.

25 A. Yeah.

1           Q. At some point did BellSouth inform  
2           dPi that it had made an audit or a review of  
3           dPi's credit requests and it wasn't going to  
4           pay the totality of those because of this  
5           issue about features that we've been  
6           discussing?

7           A. The first time that the audit popped  
8           up or we were aware, I believe we were aware  
9           of an audit, I think it was Mr. Patterson's  
10          response to the informal complaint in North  
11          Carolina.

12          Q. You don't think it's inappropriate  
13          that BellSouth review your credit request and  
14          determine whether or not appropriate; do you?

15          A. Oh, absolutely not. We expected  
16          them to.

17          Q. Other than this issue about features  
18          that we've talked some about today, did  
19          BellSouth tell you that some of the other --  
20          it was denying requests for other reasons  
21          other than this definitional issue of a  
22          purchased feature?

23          A. Yeah, actually, and I can't remember  
24          the time frame, but one of the reasons that  
25          were given, and I don't know if it was given

1 to us or the North Carolina commission, was  
2 that either all or a large portion of the  
3 line connection fee waiver was denied because  
4 the customers were not resale, they were UNE.

5 And we responded, you know, hey, our  
6 customer base at the most in any given time  
7 period at that time had been 8 percent, so  
8 you're denying 80 percent of our claims and  
9 on the basis of 8 percent of our customers  
10 are UNEs, so that didn't seem to make sense  
11 to me, so those were denied.

12 And then I think there have been  
13 some, a few here or there or a few that maybe  
14 were customers that might have moved and, you  
15 know, just other odds and ends that may not  
16 have actually been in 100 percent compliance  
17 with the regulations. There were a few of  
18 those, I think.

19 Q. Can we agree -- or let me ask you  
20 this, can we -- can dPi agree that some of  
21 the promotional credits it applied for it was  
22 not entitled to?

23 A. Yeah, I think there are some that  
24 when you -- when BellSouth audited the bill I  
25 think there were a small amount that dPi is

1 not entitled to, but -- and I'm not sure how  
2 we can -- if we can determine that prior to  
3 submitting the bill.

4 Q. Does dPi contend that BellSouth has  
5 made its line connection charge waiver  
6 promotion available to its retail customers  
7 who have purchased basic service and just  
8 these denials per use blocks that are at  
9 issue in this case?

10 A. I don't think we know if BellSouth  
11 does that or not.

12 Q. Do you have any evidence that would  
13 suggest that that's the case?

14 A. Right now no, I don't have any.

15 Q. In your testimony you state, and you  
16 referred to it earlier, that at some time  
17 BellSouth reduced its requirement for the  
18 line connection charge waiver promotion to  
19 basic service and one feature rather than  
20 two. You remember that part of your  
21 testimony.

22 A. Yeah. I don't know if we said they  
23 reduced it, we just said at some point it was  
24 on the website that in order to get this you  
25 only had to have one.

1 Q. And in your testimony you cite to  
2 that website which is Exhibit 1 to your  
3 testimony; correct?

4 A. I'm trying to find this.

5 Q. Let me turn to it and help you.

6 A. Yes, yes, you're right, I'm sorry.

7 Q. And is that Exhibit 1, that part  
8 from BellSouth's corporate website, is that  
9 the only source for dPi's contention that the  
10 line connection charge waiver promotion  
11 required only one feature?

12 A. Yeah, to my knowledge, yes.

13 I mean, I don't know if BellSouth  
14 was giving it to their customers if they had  
15 one feature or whatever, but it was different  
16 than what the promotional filing had stated.

17 Q. Have you ever seen any promotional  
18 filing that BellSouth made with the North  
19 Carolina commission stating that to qualify  
20 for the line connection charge waiver you  
21 only had to get basic service and one  
22 feature?

23 A. Huh-uh. (Shakes head.)

24 Q. No?

25 A. No, I'm sorry.

1           Q. We just need to be clear for  
2 Valerie's benefit.

3           A. I forgot.

4           Q. And have you ever seen any posting  
5 on BellSouth's interconnection website that  
6 it made the line connection charge waiver  
7 promotion available in North Carolina for  
8 customers who purchased only basic service  
9 and one feature?

10          A. No, I'm not sure they do on the  
11 interconnection website, I'm not sure they do  
12 anything with promotions.

13          Q. You're contending that they don't,  
14 or you just don't know?

15          A. I would say no, because I don't know  
16 if they -- I don't think that they put  
17 anything with regard to promotions out on the  
18 interconnection site, at least I've never  
19 seen any.

20          Q. Just so we can nail this down, dPi's  
21 contention that the line connection charge  
22 waiver promotion required only basic service  
23 and only one feature is based solely on this  
24 snapshot from BellSouth's website that's your  
25 Exhibit 1.



1           A. Yeah, that's the only information, I  
2 guess.

3           Q. And what time period is it that dPi  
4 says that the line connection charge waiver  
5 promotion required basic service and only one  
6 feature?

7           A. Well, it would appear at least  
8 until -- I don't know when it would have  
9 started, because, you know, I don't know when  
10 this would have been posted, but according to  
11 the website the offer ran through the end of  
12 the year, or actually December 26th of 2005.

13          Q. Okay. DPi in this case is asking  
14 the North Carolina commission to order  
15 BellSouth to credit it money that dPi  
16 contends it ought to credit; right?

17          A. DPi is asking the commission to rule  
18 on the filings that BellSouth made in North  
19 Carolina with regard to the promotions, and  
20 if they rule in our favor then obviously it  
21 would bring additional credits to us.

22          Q. And how many additional credit are  
23 you asserting that dPi is entitled to from  
24 BellSouth? There's a number in your  
25 testimony that's 185,000 dollars and some

1 change. Is that number --

2 A. Probably not now, because it changes  
3 every month, actually, probably changes every  
4 day with every order that's submitted.

5 Q. But you don't submit credit requests  
6 every day.

7 A. No, we submit them once a month  
8 based on our billing.

9 Q. So through the time period of the  
10 requests that had been submitted to your  
11 testimony was the number 185,000 and some  
12 change?

13 A. Yeah, I believe so.

14 Q. Does that 185,000 include credit  
15 requests for dPi customers that had basic  
16 service and just one feature, using dPi's  
17 definition of feature?

18 A. I don't think so. I think it was --  
19 it would be at least two.

20 Q. So dPi isn't claiming promotional  
21 credits for any customers that had basic  
22 service and just one feature using dPi's  
23 definition for any time period?

24 A. I think everything we've submitted  
25 had basic service and two features.

1 Q. Does dPi agree -- is dPi agreeing  
2 that it's not entitled -- if we take dPi's  
3 definition of a purchased feature --

4 A. Uh-huh.

5 Q. Is it dPi's position that it's not  
6 entitled to credits under the line connection  
7 promotion waiver for any dPi customers that  
8 had basic service and just one feature, again  
9 using dPi's definition of a feature?

10 A. That dPi is not entitled to credit?

11 Q. Yes, sir.

12 A. I would say that I don't know,  
13 because my answer would be if BellSouth was  
14 adhering to what they posted on their website  
15 with their retail customers and they did so  
16 for a period of 90 days or longer, then I  
17 think BellSouth is required to pay dPi for  
18 every customer that had local service and one  
19 feature, just as BellSouth was doing.

20 Q. Do you know whether or not BellSouth  
21 ever made the line connection promotion  
22 waiver available in North Carolina for  
23 customers that had just basic service and one  
24 feature?

25 A. I don't know, because I don't know

1     how BellSouth was doing it internally and  
2     there was never a filing made with the  
3     commission, so the only notice that we had of  
4     that would have been the website here.

5           Q.   And if we were -- if we can agree  
6     for a second -- I'm asking you to agree with  
7     this for purposes of my question -- that  
8     BellSouth never made the line connection  
9     charge waiver promotion in North Carolina  
10    available in North Carolina or elsewhere, for  
11    that matter.

12          A.   If we can agree that they never did?

13          Q.   Yes, for customers that purchased  
14    basic service and one feature only.  For  
15    purposes of my hypothetical please agree with  
16    me on that part.

17          A.   Okay.

18          Q.   We could then agree that dPi would  
19    not be entitled to promotional credits under  
20    the line connection charge waiver promotion  
21    for any of its customers that had merely  
22    basic service and one feature; could we not?

23          A.   Yeah.  I mean, there was never a  
24    filing made at the commission, so my opinion  
25    is that if a filing was made it runs along

1 that we would be entitled to that, but since  
2 there was never a filing made and if that was  
3 never available to the retail customers of  
4 BellSouth, then no, I would say that we're  
5 not --

6 Q. dPi wouldn't be entitled to it  
7 either; correct?

8 A. No.

9 MR. MALISH: I'm going to object to  
10 the form of the question and the  
11 responsiveness of the answer just  
12 because I'm not sure I followed it, but  
13 it sounds like you guys may have known  
14 what you were talking about.

15 THE WITNESS: Yeah. I think.

16 Q. (By Mr. Shore) I don't think I  
17 asked you this question, might have not.

18 A. Okay.

19 Q. If I did, it's going to be  
20 repetitive.

21 Does dPi contend that BellSouth  
22 waived its line connection charge for any of  
23 its retail customers that purchased basic  
24 service and only one feature in North  
25 Carolina at any time in 2005?

1           A. I don't think dPi knows if it did or  
2           not, because we don't -- again, there was  
3           nothing filed, and we don't know what the  
4           internal operations of BellSouth are, so --

5           Q. You don't have any evidence that  
6           BellSouth did that; do you?

7           A. Nothing other than what was posted  
8           on the website.

9           Q. But you don't have any evidence that  
10          BellSouth waived a line connection charge for  
11          a customer that purchased basic service and  
12          just one feature; do you?

13          A. No.

14          Q. What does dPi charge its customers  
15          for basic service in North Carolina?

16          A. It depends.

17          Q. Okay.

18          A. It depends on what ILEC we're  
19          dealing with and it depends on what area the  
20          person lives in, if it's in -- you know, if  
21          it's a resale customer or if it's under a  
22          local wholesale agreement or whatever the  
23          interconnection agreement for unbundled is,  
24          so it just depends on where the customer is  
25          and what --

1 Q. Okay. Let's try to narrow it down  
2 so we can cut to the chase.

3 A. Okay. That was a pretty general  
4 question.

5 Q. In this case, this litigation is  
6 about resale -- dPi's resale, right, only?

7 A. Right.

8 Q. And dPi's business is entirely  
9 prepaid business?

10 A. Yes.

11 Q. And who's the -- what's the market  
12 for that?

13 A. Well, I mean, our typical customer  
14 is construed as one of about three different  
15 types of consumer: What the banking industry  
16 determines is bankless or cash and credit  
17 constraint consumer; a customer that for  
18 whatever reason has been disconnected from an  
19 ILEC and the ILEC is demanding, one, payment  
20 for past charges, two, some sort of deposit,  
21 and, three, the proration of the first month  
22 and the second month on the first bill, and  
23 so the customer cannot afford to make that  
24 payment; and, the third, a third type of  
25 customer would just be somebody who doesn't

1     like the ILEC -- we get that every once in  
2     awhile -- or, you know, maybe a parent or a  
3     child who is -- a parent who's buying for  
4     their child or a child who's buying for an  
5     elderly parent and they want to know exactly  
6     what the phone bill's going to be, and so  
7     they try and limit the toll calls. We get  
8     that from time to time.

9             But primarily it's a cash and credit  
10     constrained consumer.

11            Q. And when dPi resells BellSouth's  
12     basic service in North Carolina what does it  
13     charge its customer?

14            A. You know, off the top of my head I  
15     don't know what the exact charge is.

16            Q. Is that something you could find out  
17     pretty easily?

18            A. Oh, yeah.

19            Q. Okay. Would you agree to do that  
20     between now and the hearing next week?

21            A. Yeah.

22            Q. And if y'all can get that to me  
23     ahead of time, probably?

24            MR. MALISH: I'm sure it's in their  
25     tariff.



1           (A discussion ensued off the  
2 record.)

3           MR. MALISH: Why is it relevant?

4           MR. SHORE: Well, I'll figure that  
5 out at the hearing. It's certainly  
6 relevant for discovery purposes. Okay.  
7 Thank you.

8           And I'll just ask, this is an  
9 official request that you have your  
10 counsel or either you, I don't really  
11 care, e-mail that to me at some time  
12 when y'all get back.

13          MR. MALISH: I'm not going to agree  
14 to it unless it's public record, because  
15 I don't see -- we can talk about it more  
16 later -- whether it's truly discoverable  
17 or not, but I'm not going to agree to it  
18 on the record now.

19          MR. SHORE: Okay, and I don't want  
20 to fight about it now. Maybe y'all can  
21 tell me before the hearing or tell us at  
22 the hearing, either way, whatever y'all  
23 prefer.

24          THE WITNESS: Okay.

25          Q. (By Mr. Shore) When dPi signs up a

1 new customer does it ask -- as part of that  
2 process does it ask that customer whether or  
3 not it wants the BCR and BCD blocks on its  
4 line?

5 A. Not specifically, no.

6 Q. Well, generally does it ask?

7 A. The way it works is a customer  
8 either signs up for basic, a basic line and  
9 then they want features -- they don't want to  
10 be charged for features, and so at that point  
11 we will put the -- in this case the TouchStar  
12 features USOCs will be BCR and BCD that we  
13 put on there, or they will order basic  
14 service and then in this case one TouchStar  
15 feature, and so we'll put the USOC that's  
16 associated with that or they'll order a  
17 package and whatever's involved in that  
18 package, we'll order that, so it just depends  
19 on how they make their order.

20 Q. As part of dPi's sales process, a  
21 customer calls dPi sales representative and  
22 says I want basic service, that's all I want,  
23 does dPi say do you want these blocks, BCR --  
24 or USOCs, which are BCR and BCD?

25 A. No. If a customer calls into our

1 call center and says, you know, I want basic  
2 service, then we assume that they don't want  
3 to be charged for the TouchStar features, and  
4 so we put on the TouchStar feature USOC which  
5 does not allow a charge for that, which is  
6 BCR, BCD or whatever it may be.

7 Q. Does dPi specifically tell its end  
8 user customer that it's putting those blocks  
9 on?

10 A. No. I think it's pretty much  
11 understood in the prepaid industry. That's  
12 why it's prepaid.

13 Q. Do dPi's bills to its end users  
14 reflect that it's got these blocks, denials  
15 per use, on its line?

16 A. I don't believe so.

17 Q. Does dPi send any correspondence to  
18 its customers that indicate that those blocks  
19 are on its line?

20 A. No, I don't think so.

21 Q. In your testimony you made a  
22 statement, something to the effect that  
23 BellSouth has paid credits to other carriers  
24 in the past with the same orders as dPi. Are  
25 you referring to basic service and these

1 BCR/BCD denials per use orders?

2 A. Yeah. I would say whatever, you  
3 know, is in contention in this dispute, that  
4 other companies very similar to dPi has  
5 received payments from.

6 Q. And what is the basis for you to  
7 make that statement?

8 A. Well, there's a number of reasons  
9 that, you know, I believe that to be true.

10 I know that when our promotional  
11 filing was first made in September of '04 I  
12 know that we were submitted, our data was  
13 submitted alongside another company's data,  
14 and I know they got paid 100 percent of what  
15 they submitted, and I think it was within 30  
16 or 60 days, and we got paid 20 to 25 percent  
17 eight months later.

18 Q. What other CLEC are you referring  
19 to?

20 A. Budget Phone.

21 Q. Do you know for a fact sitting here  
22 today that Budget Phone received promotional  
23 credits from BellSouth for resold customers  
24 that had basic service and only these denials  
25 per use features that are at issue in our

1 case?

2 A. I know Budget Phone has -- they're  
3 in the prepaid industry. I know that they  
4 have -- you can order basic service only as  
5 well as packaged, so they have very similar  
6 structures in the types of service they  
7 provide.

8 So saying I know for 100 percent  
9 fact, I've never looked at their data, but  
10 based on the industry, the type of consumer,  
11 the type of orders, the type of service  
12 provided, and as large as they are, because  
13 they're bigger than dPi is, I think it's safe  
14 to assume that since they got paid 100  
15 percent of what they submitted that there  
16 would be customers in that data, especially  
17 because it was going back several months as  
18 well so it was a very large filing, that  
19 those would include customers for which we  
20 have been denied.

21 Q. I'm going to have to ask you that  
22 question again.

23 Do you know for a fact that Budget  
24 Phone received credit for BellSouth under the  
25 line connection charge waiver promotion for

1 any customer that had only basic service and  
2 these denials per use features that don't  
3 have any charge associated with them?

4 A. For a fact, no, I've never seen  
5 their data, so I couldn't tell you that.

6 Q. Now, this amount in your testimony  
7 that we talked a little bit about, this  
8 \$185,000 and some change, I think it's  
9 \$185,719.49, when does that go through, that  
10 claim? What time period does that claim go  
11 through; do you know?

12 A. It would be from September of '04  
13 until sometime right around when the filing  
14 was made.

15 Q. And it actually goes back -- doesn't  
16 it go prior to '04 for billing date purposes?

17 A. Well, for billing date, yes.

18 Q. And does that amount that you  
19 reference in your testimony, is that just for  
20 amounts under the line connection charge  
21 waiver promotion that BellSouth has denied  
22 because it doesn't believe that dPi has  
23 purchased the requisite number of features  
24 with basic service, or does it include other  
25 amounts?

1           And let me ask you this, Brian. Is  
2           that the only amount -- is that the only  
3           issue that dPi is asking the commission to  
4           resolve in this case?

5           Are you asking it to order that  
6           BellSouth issue you credits for other  
7           promotions also other than the line  
8           connection waiver charge? Have you abandoned  
9           those requests?

10          A. Since dPi filed the informal  
11          complaint back, BellSouth has been fairly  
12          responsive on paying promotions, all of the  
13          promotions applied for with the exception of  
14          the line connection fee waiver, and I believe  
15          the line connection fee waiver makes up 99  
16          percent of our outstanding monies owed today.

17          So, you know, the 185 number is  
18          whatever 99 percent of that is is probably  
19          what's owed for the line connection fee  
20          waiver. Is it all on?

21          MR. MALISH: Uh-huh.

22          Q. I'm not trying to be tricky, I'm  
23          trying to figure out what it is that y'all  
24          are asking the commission to do. I can't  
25          present my case unless I know.

1           A. It's very close, and it all changes,  
2           and so it's tough. But at the time that that  
3           was filed, the 185 number is pretty accurate.

4           Q. Yeah. And what I'm trying to figure  
5           out is --

6           MR. MALISH: It's only -- I can  
7           stipulate on the record that that's only  
8           for line connection charge and not for  
9           any other promotion.

10          MR. SHORE: Okay. And is it only  
11          for this dispute about number of  
12          features or whether features qualify,  
13          because BellSouth has denied some of the  
14          line connection charge promotion  
15          requests for other reasons and so I'm  
16          trying to --

17          MR. MALISH: There are -- the only  
18          thing that -- we'll stipulate that the  
19          only thing that's in dispute is line  
20          connection charge waiver.

21          The vast majority of that is for  
22          the -- do the two features qualify as  
23          features or not. There is a small  
24          number that is related to moves or  
25          trance -- some that were denied not



1           because they didn't have --

2           MR. SHORE: Right, there are some  
3 other reasons for some of them.

4           MR. MALISH: Yeah. Looks like that  
5 adds up to approximately \$3,000, because  
6 the grand total is 188.

7           MR. SHORE: Yeah. I guess, I mean,  
8 do you want to go off the record or do  
9 you want to do this on the record?

10           (A discussion ensued off the  
11 record.)

12           Q. (By Mr. Shore) Brian, after  
13 discussing this with Mr. Malish and myself  
14 and you, am I correct in understanding that  
15 dPi is abandoning its claims for promotional  
16 credits for all promotions other than the  
17 line connection charge waiver?

18           A. Yes, going back, yes, that is  
19 correct.

20           Q. Does dPi concede that it is not, in  
21 fact, entitled to at least a portion of the  
22 credits for which it applied for promotions  
23 other than the line connection charge waiver?

24           A. I don't think we concede that we're  
25 not entitled to it.

1           I would say that BellSouth has paid  
2 a substantial amount of those claims, and  
3 therefore whatever's remaining is not worth  
4 arguing over.

5           But I don't think we -- I would say  
6 that I disagree that we concede that we're  
7 not entitled to those. It's just not worth  
8 fighting over.

9           Q. Okay. So it's your contention that  
10 take the line connection -- other than the  
11 line connection promotion, dPi has applied  
12 for some credits and BellSouth has credited  
13 dPi for a portion of the credits that dPi  
14 applied for.

15           It's your contention, although  
16 you've abandoned the claim in the litigation,  
17 but it's dPi's contention that it is  
18 rightfully entitled to those credits?

19           A. I don't know if it -- off the top of  
20 my head and not saying the line and all kind  
21 of stuff, I don't know that we can say that  
22 we are or are not entitled to those.

23           We're just not going to -- your  
24 question before was about conceding that  
25 we're not entitled to, and I don't know if we

1 are or not, so I don't want to concede any.

2 Q. Okay. Can you point me to any  
3 BellSouth document, what I mean is documents  
4 that describe BellSouth's line connection  
5 charge waiver promotion, where BellSouth says  
6 in order to be eligible for the line  
7 connection charge waiver you've got to buy --  
8 strike that.

9 You've got to order basic service  
10 and some number of features?

11 A. Your question was any document from  
12 BellSouth?

13 Q. Yeah, you know, any of these things  
14 that we looked at earlier or similar type  
15 documents where BellSouth says to get the  
16 promotion you've got to order basic service  
17 and some number of features.

18 A. The only -- I believe the only  
19 document or any type of document that I have  
20 from BellSouth stating something similar to  
21 that is I think I've got correspondence from  
22 Gary Patterson and from Kristy Seagle saying  
23 that our line connection fee waivers were  
24 denied because we didn't order basic service  
25 and two TouchStar features, and then

1       subsequently, you know, a few months later  
2       they changed it to from order to purchase.

3           Q.   Can we agree that all of BellSouth's  
4       filings with the North Carolina commission  
5       and its postings about its line connection  
6       charge waiver state that customers have got  
7       to purchase basic service and requisite  
8       number of features?

9           A.   To my knowledge, I think that's the  
10       verbiage used, yes.

11          Q.   You can't point me to any that say  
12       order; can you?

13          A.   No.

14          Q.   Can you point me to any that say  
15       take?

16          A.   I don't believe so.

17          Q.   In each instance BellSouth  
18       eligibility requirements state purchase; do  
19       they not?

20          A.   I believe so, yes.

21          Q.   Have you read Ms. Tipton's testimony  
22       in this case?

23          A.   Yes.

24          Q.   And do you recall in her direct  
25       testimony Ms. Tipton talked about the amount

1 of credits that BellSouth has issued to dPi  
2 from 2004, I think it was until about January  
3 of '06, at that time?

4 A. I remember reading something about  
5 that, yes.

6 Q. Do you have any dispute with the  
7 numbers that Ms. Tipton gave?

8 A. You know, I don't know -- again, it  
9 changes from time to time, and depending on  
10 what BellSouth has in their records and what  
11 we have in our records, you know, I don't  
12 know how accurate that number is. It grows  
13 every month, so . . .

14 Q. Right. As I recall, Ms. Tipton --  
15 we can look at it if we need to, I don't know  
16 that we need to.

17 A. And I don't remember what the number  
18 is, so . . .

19 Q. Does dPi contend that Ms. Tipton got  
20 the numbers wrong for the time period she  
21 referenced?

22 A. No, but I don't know -- I mean,  
23 there's nothing that is glaring, but I don't  
24 know how accurate that number is.

25 Q. I think we covered this earlier too,

1 and we're getting close enough to lunch that  
2 I really don't want to be repetitive, not  
3 that I do any other time, but do we agree  
4 that under BellSouth's line connection charge  
5 waiver promotion the customer had to be  
6 coming to BellSouth and not be an existing  
7 customer?

8 A. Yeah, correct.

9 Q. I think we covered this earlier, now  
10 that I said the question.

11 A. Or the CLEC or whomever was applying  
12 for the promotion.

13 Q. In dPi's case it couldn't be an  
14 existing dPi customer to get the promotion  
15 credit.

16 A. Yes.

17 Q. Okay. You read Ms. Tipton's  
18 testimony, I take it, her direct testimony  
19 about -- which discussed promotions other  
20 than the line connection charge waiver  
21 promotion?

22 A. Yes, I read it. I don't recall a  
23 lot of it but I remember reading it.

24 Q. And sitting here today do you  
25 disagree with anything Ms. Tipton said about

1 the promotions other than the line connection  
2 charge waiver promotion in her testimony?

3 A. Without rereading it, you know, I  
4 don't think I could answer.

5 Q. Has dPi undertaken any analysis to  
6 determine whether or not what Ms. Tipton had  
7 to say was accurate?

8 A. No, because if you're dealing with  
9 everything but the line connection fee  
10 waiver, you know, we've been paid the vast  
11 majority of what we applied for, and  
12 therefore we don't think the remaining  
13 amounts that -- you know, whatever the  
14 discrepancy is between what we've been paid  
15 for and what we've applied for, is big enough  
16 to fight over, so, you know, we haven't done  
17 any extra work on that, no.

18 Q. And I take it you don't plan to.

19 A. Not unless we start being denied in  
20 the future.

21 Q. Has dPi consulted with a  
22 statistician regarding BellSouth's process  
23 for auditing its credit request process?

24 A. No, because we don't know what the  
25 process is.

1 Q. Do you plan to do that between now  
2 and the hearing next week?

3 A. I don't think so.

4 Q. Has dPi consulted with anybody other  
5 than Lost Key regarding this dispute and  
6 legal counsel, obviously? I'm not asking  
7 about that.

8 A. There's a -- you know, there's a  
9 contingent of CLECs or prepaid companies that  
10 all work together, so you share general  
11 concerns, comments, you know, what's  
12 happening with different companies.

13 So there's a -- quite a few  
14 companies, people that I know at different  
15 companies that work in conjunction with each  
16 other to help with the understanding of  
17 things and information that gets transferred  
18 back and forth.

19 Q. Has dPi engaged anybody other than  
20 Lost Key to help it with this case?

21 A. No.

22 Q. Does it plan to?

23 A. I don't believe so.

24 Q. Do you recall reading in  
25 Ms. Tipton's testimony where she stated that



1 BellSouth's statistical analysis revealed  
2 that BellSouth had issued credits to dPi in  
3 excess of amounts that dPi was entitled to?

4 A. Yeah, I think she said there was  
5 something of that nature, about the analysis.

6 Q. Has dPi conducted any analysis to  
7 determine whether or not she's correct?

8 A. I do not believe so.

9 Q. Does it plan to do that?

10 A. I do not believe so.

11 MR. SHORE: Let's take a five-minute  
12 break and I'll look over my notes, and  
13 we're pretty close to being done.

14 (Recess.)

15 Q. (By Mr. Shore) Let's go back on the  
16 record. I had indicated before we went back  
17 on the record that I didn't believe I had any  
18 further questions for Mr. Bolinger and he  
19 said he needed to clarify something, so I  
20 want to give him that opportunity to do that  
21 on the record, and go right ahead, Brian.

22 A. You had asked me when we were going  
23 through correspondence and you had asked me  
24 if anything jumped out and I said no, but in  
25 response to the court reporter's question on

1 a spelling in looking through here it appears  
2 that there is some correspondence which kind  
3 of relates to this issue that is not  
4 included.

5 Q. In your exhibit, you mean?

6 A. Yes.

7 Q. Okay. And was that correspondence  
8 included with the materials that you sent to  
9 your lawyer?

10 A. I believe so.

11 Q. All right. What is that that's  
12 missing?

13 A. Well, there's some correspondence --  
14 this may be long, and I apologize -- but  
15 after we submitted our initial promotional  
16 credit forms and were expecting to be paid on  
17 the -- on our billing date, which is the 8th  
18 of the month, and at some point after three  
19 or four or five months or so of being told  
20 you'll get paid on next month's bill, you'll  
21 get paid on next month's bill, you'll get  
22 paid on next month's bill, we decided to  
23 invoke the portion of the interconnection  
24 agreement that says you don't have to pay  
25 amounts that are in dispute, and so we

1 started withholding payments from the bill.

2           And so as we were withholding  
3 payments then the collection process started,  
4 and so there's correspondence going back and  
5 forth saying hey, we just received a demand  
6 for payment of, you know, \$200,000, but we  
7 have \$700,000 in dispute.

8           We're being proactive so we would  
9 not get shut off and let everybody know we've  
10 got this disputed amount in here and hey, you  
11 better not shut us off because we have these  
12 disputes, and there's some of that  
13 correspondence in there.

14           I don't know how relevant it is to  
15 the issue here, but there is correspondence  
16 that goes back and forth and we were told,  
17 you know, hey, it's been manually put into  
18 your account notes that you have all these  
19 outstanding promotional disputes and you will  
20 not be -- there will not be a block, a  
21 blockade or an embargo placed on your account  
22 because of the outstanding balance, but those  
23 letters are automatically generated every  
24 month so you'll continue to receive them, but  
25 I just wanted to get written confirmation

1 every month.

2 And there is an individual that I  
3 dealt with there, Louis Suebe, and his -- I  
4 can't -- that correspondence is not in here.

5 So it kind of relates to this case,  
6 but --

7 Q. Is dPi continuing to engage in  
8 self-help or is it paying its bills as they  
9 come due?

10 A. We got to a point where we withheld  
11 800 or 850,000 dollars and then made the  
12 determination to continue to pay the bills  
13 every month outside of that, so I think we  
14 have somewhere between 800 and 850,000  
15 dollars that are sitting out there that's  
16 directly tied to the promotional credits, and  
17 it just stays that way every month.

18 MR. SHORE: Okay, I don't have  
19 anything else.

20 (Whereupon, the deposition was  
21 concluded at 11:54 a.m.)

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1 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3 I hereby certify that the foregoing  
4 transcript was reported, as stated in the  
5 caption, and the questions and answers  
6 thereto were reduced to typewriting under my  
7 direction; that the foregoing pages represent  
8 a true, complete, and correct transcript of  
9 the evidence given upon said hearing, and I  
10 further certify that I am not of kin or  
11 counsel to the parties in the case; am not  
12 in the employ of counsel for any of said  
13 parties; nor am I in any way interested in  
14 the result of said case.

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1                   Disclosure Pursuant to Article  
2       8(B) of the Rules and Regulations of the  
3       Board of Court Reporting of the Judicial  
4       Council of Georgia, I make the following  
5       disclosure:

6                   I am a Georgia Certified Court  
7       Reporter, here as a representative of  
8       Alexander Gallo & Associates, Inc., to report  
9       the foregoing matter. Alexander Gallo &  
10      Associates, Inc., is not taking this  
11      deposition under any contract that is  
12      prohibited by O.C.G.A. 5-14-37 (a) and (b).

13                  Alexander Gallo & Associates,  
14      Inc., will be charging its usual and  
15      customary rates for this transcript.

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20                  VALERIE N. ALMAND, CCR-B-531

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