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P R O C E E D I N G S

(Transcript follows in sequence from Volume 1.)

COMMISSIONER McMURRIAN: And, Mr. Malish, you may call your next witness.

MR. MALISH: Thank you. Our next witness is Steve Watson.

STEVE WATSON

was called as a witness on behalf of dPi Teleconnect, L.L.C., and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MALISH:

Q All right. Mr. Watson, would you please state your full name for the record, please?

A Steve Watson.

Q And you were employed by whom now?

A I was employed by dPi Teleconnect as a consultant billing agent.

Q Okay. And the name of your company that you work through is what?

A I'm sorry. I didn't hear that.

Q The name of the company that you work through is Lost Key?

A Lost Key Telecom.

Q Okay. And you've already been sworn in in this case; right?

1 A Yes, I have.

2 Q All right. And you prepared some prefiled testimony
3 in this docket, and that's what's sitting in front of you; is
4 that correct?

5 A Yes. That's correct.

6 Q All right. And are there any particular changes or
7 corrections that you want to make to it at this time?

8 A No, there's not.

9 Q All right. Were I to ask you the questions the way
10 they're written, would your responses be the same as the
11 written responses there to those questions?

12 A Yes, they would.

13 Q All right. Would you like to go ahead and summarize
14 your testimony for the Commissioners, please?

15 Before we do that, Mr., Mr. Watson, we'd like to have
16 the, the prefiled testimony of Mr. Watson inserted into the
17 record as though read.

18 COMMISSIONER McMURRIAN: Show it done. Thank you.

19 BY MR. MALISH:

20 Q Okay. Now, Mr. Watson, would you like to briefly
21 summarize your testimony for the Commissioners?

22 COMMISSIONER McMURRIAN: Mr. Malish, before we do
23 that we need to identify his exhibits; right?

24 MR. MALISH: Okay.

25 COMMISSIONER McMURRIAN: He has exhibits -- just

1 identify them at this time.

2 MR. MALISH: They would be dPi FL-1 through dPi FL-5,
3 and they are numbered on the Consolidated Exhibit List 17, 18,
4 19, 20 and 21.

5 COMMISSIONER McMURRIAN: Thank you. Show those
6 identified. Thank you.

7 (Exhibits 17, 18, 19, 20 and 21 marked for
8 identification.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re:) DOCKET NO. 050863-TP
)
dPi Teleconnect, L.L.C. v.)
BellSouth Telecommunications, Inc.)

DIRECT TESTIMONY OF STEVE WATSON ON BEHALF OF dPi TELECONNECT

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

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

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

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

This dispute involves certain promotional credits which BellSouth failed to credit dPi.

1 **Please tell us about the process for claiming credits.**

2 To understand the dispute, one must understand its origins – namely, BellSouth’s “promotion
3 process” which, at the time relevant to this case, operated in practice if not by design to enrich
4 BellSouth as the expense of its small competitors.

5 At the times relevant to this complaint, BellSouth was unable to bill resellers the correct
6 amount (including promotional discounts) for the services they ordered when the order was
7 submitted. By comparison, SBC’s systems allow one to apply for a promotional credit as a part of
8 the provisioning order, and reject the order if it does not qualify for the promotion. The credit is
9 applied to the price immediately and the discount reflected on the same bill; the CLEC pays no more
10 than what it actually owes for the service from the beginning.

11 In contrast, the practical effect of BellSouth’s “inability” or refusal to bill these charges
12 correctly on the front end means that BellSouth automatically overcharges every reseller for every
13 service the reseller orders that is subject to a promotional discount. Then BellSouth shifts the burden
14 on to the reseller to (1) figure out how much BellSouth has overcharged the reseller, and (2) dispute
15 BellSouth’s bills accordingly. If a CLEC is not aware that this is how the system is supposed to
16 work and does not know to apply for these promotions, BellSouth retains their money.

17 For those CLECs who generally understand that they must apply for these credits,
18 BellSouth’s system makes it as difficult as possible for the reseller to dispute the bills to BellSouth’s
19 satisfaction. First, the credit request must be meticulously documented, listing details of every order
20 for which credit is requested. But getting the data to populate these forms is a Herculean task in
21 itself: it must come from BellSouth’s billing and ordering data, which BellSouth has traditionally
22 provided to resellers only on either a paper bill, or electronically in a “DAB” file, which has data

1 locks built into it, making downloading of the raw data exceptionally difficult. To make matters
2 worse, in dPi's experience next to no one at BellSouth can explain how to get the data out of the
3 "DAB" files, because BellSouth does not maintain its own data in such files, and its employees
4 simply are not equipped with the knowledge to answer questions about how to unlock its secrets.
5 Figuring out how, as a practical matter, to apply for these credits takes a large amount of resources
6 in time and money. Some CLECs appear to have simply thrown their hands in the air and given up.

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

16 The system is backwards, failure prone, and grossly inefficient. And at every step of the way,
17 whether consciously designed to that end or not, the system works to enrich BellSouth at the CLEC's
18 expense.

19 My business is hired to apply for credits from BellSouth. As dPi's agent in this process, we
20 review the data BellSouth provides dPi regarding the services BellSouth has sold dPi, and calculate
21 which promotions dPi is entitled to under the promotions then in effect. We then submit requests

1 for promotional credits on dPi's behalf, and Bellsouth evaluates or audits those requests and issues
2 or denies credit as it sees fit.

3 It was a long process applying for these credits. When I first got involved in trying to claim
4 credits on behalf of CLECs, back in 2003, Bellsouth's "promotional credit processing department"
5 appeared to consist of one person: Stanley Messinger; he was later replaced by Christy Siegel, who
6 was in turn superseded by Keith Deason in the second half of 2005. These were the people tasked
7 with helping CLECs navigate the promotional credit filing process – that is, verifying what
8 promotions CLECs were in fact eligible for, and how to apply and secure those credits. I don't know
9 how this "department" fit into Bellsouth's organizational structure, but they were not part of
10 Bellsouth's billing and collections department, nor were they part of Bellsouth's wholesale
11 operations. It was obvious when I first started calling that they simply didn't get hardly any
12 promotional credit requests, nor any questions about how to qualify and apply for such credits.
13 Frequently they did not know the answers to questions on these subjects, and sometimes a decision
14 by one person would be reversed by his or her successor. Oftentimes, it seems that policies were
15 made on the spot, on an *ad hoc* basis. In essence, we were feeling our way through "the system"
16 together, and I relied on what they told me about what was creditable and how to apply for those
17 credits.

18 At any given time, Bellsouth has a number of promotions going at once. We apply for all
19 those that are available to dPi, and manage any disputes over promotion payments/credits with
20 Bellsouth. In dPi's case, it has disputes with Bellsouth on a number of promotional credits. In North
21 Carolina, nearly 99% of the money involved was tied to a single dispute about dPi's eligibility for
22 a single kind of promotion: the Line Connection Charge Waiver. We are not sure if that is the case

1 here in Florida because we do not have discovery response back yet, but my testimony will mainly
2 focus on that one promotion.

3 **Tell us about that.**

4 For the past few years, Bellsouth has put out a promotion that it calls the Line Connection
5 Charge Waiver. Generally, it provides that Bellsouth will waive the line connection charge for
6 customers who switch to Bellsouth and take at least basic service and two Touchstar features.

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

11 For some of our clients, Bellsouth paid essentially 100% of credit applied for. For example,
12 Budget Phone, who has a claim roughly double the size of dPi's, was paid in full. Previously,
13 Bellsouth had similarly paid Teleconnex in full for these promotions. These entities' product mix
14 to their end users was also essentially very similar to dPi's. However, Bellsouth credited dPi only
15 about a small fraction of the amounts applied for.

16 From September 2004 to April 2005, Bellsouth was unable to explain why it was refusing
17 to pay these credits. On numerous occasions over this period, Bellsouth's Christy Siegel and/or other
18 employees promised that these payments would be forthcoming. However, in about April of 2005,
19 Bellsouth stated that it would not be paying these credits applied for almost entirely on the grounds
20 that dPi had not qualified for the credits because, notwithstanding the fact that dPi had purchased
21 Bellsouth's basic service with two or more Touchstar features, the Touchstar features that dPi had
22 included in its orders (e.g., BCR and BRD blocks) "did not count" because Bellsouth did not levy

1 a separate charge for these particular Touchstar features. In North Carolina, the overwhelming
2 majority of the time a credit request was denied, it was denied because Bellsouth decided that dPi
3 did not have the requisite number of Touchstar features. We are not sure if that is the case in Florida
4 because we do not have discovery responses back yet, but we assume that is the basis for rejection.

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

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

16 **Does Bellsouth owe dPi any amounts for wrongfully denying promotion credits for this**
17 **reason?**

18 Yes indeed. BellSouth has wrongly denied crediting tens of thousands of dollars just on the
19 line connection charge waiver alone. We are not sure of the exact number because we do not have
20 discovery responses back yet. There is also thousands of dollars in Secondary Service Charge
21 Waiver credits and Two Features For Free credits which were improperly denied.

1 Does this conclude your testimony?

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

3 Respectfully Submitted.

4
5 FOSTER MALISH BLAIR & COWAN, LLP

6 

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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that true copy of the foregoing document has been filed with the Florida
20 Public Service Commission and served upon Defendant BellSouth through its below-listed attorneys
21 on this 25th day of July, 2007.

22 
23 _____
24 Chris Malish

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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4 In Re:) DOCKET NO. 050863-TP
5)
6 dPi Teleconnect, L.L.C. v.)
7 BellSouth Telecommunications, Inc.)
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9 **FIRST AMENDED REBUTTAL TESTIMONY OF STEVE WATSON ON BEHALF OF**
10 **dPi TELECONNECT**
11

12 **Q: I know you have reviewed Bellsouth's direct testimony. What's your response?**

13 A: I find it twisted that BellSouth seems to suggest that dPi is trying to defraud
14 BellSouth. The first question one should be asking is – “Why can't BellSouth bill the
15 CLECs correctly to begin with?” Why is this whole “credit” process necessary to begin
16 with? BellSouth's retail customers are billed correctly when they signed up. If Bellsouth
17 retail customers signed up thinking (correctly) that they were entitled to special promotional
18 pricing, only to find out that he or she had been billed much more, there would be an uproar.
19 This agency and the Attorney General's office would be flooded with complaints. Because
20 at bottom, to consistently overcharge for service in this way is a “bait and switch” deceptive
21 trade practice.

22 BellSouth is attempting to shift the Commission's attention from the “white elephant
23 in the middle of the room” – namely, that the practical effect of Bellsouth's “promotion
24 process” is to unjustly enrich Bellsouth at the expense of its small competitors.

25 **Q: Please explain.**

26 A: It is grotesque that Bellsouth cannot bill resellers the correct amount (including
27 promotional discounts) for the services they order when the order is submitted. I know from

1 experience that SBC (before its merger with BellSouth) did so: SBC's systems allowed one
2 to apply for a promotional credit as part of the provisioning order, and rejected the order if
3 it does not qualify for the promotion. The credit was applied to the price immediately and
4 the discount reflected on the same bill; the CLEC paid no more than what it actually owed
5 for the service from the get-go.

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

14 Again, for those CLECs who generally understand that they must apply for these
15 credits, Bellsouth's system makes it as difficult as possible for the reseller to dispute the bills
16 to Bellsouth's satisfaction. First, the credit request must be meticulously documented, listing
17 details of every order for which credit is requested. But getting the data to populate these
18 forms is a Herculean task in itself: it must come from Bellsouth's billing and ordering data,
19 which Bellsouth has traditionally provided to resellers only on either a paper bill, or
20 electronically in a "DAB" file, which has data locks built into it, making downloading of the
21 raw data exceptionally difficult. To make matters worse, next to no one at Bellsouth can
22 explain how to get the data out of the "DAB" files, because Bellsouth does not maintain its

1 own data in such files, and its employees simply are not equipped with the knowledge to
2 answer questions about how to unlock its secrets. Figuring out how, as a practical matter,
3 to apply for these credits takes a large amount of resources in time and money. As you can
4 imagine, this has resulted in a great many CLECs simply throwing their hands in the air and
5 giving up. Bellsouth keeps their money too. I know of several CLECs that have gone out
6 of business who never realized before they went under that Bellsouth actually owed them
7 hundreds of thousands of dollars in promotional credits.

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

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

21 **Q: In what manner did dPi decide to apply for credits?**

22 **A:** Basically by doing what Bellsouth has asked us to do. When I first got involved in

1 trying to claim credits on behalf of CLECs, back in 2003, Bellsouth's "promotional credit
2 processing department" appeared to consist of one person: Stanley Messinger; he was later
3 replaced by Kristy Seagle, who was in turn superseded by Keith Deason in the second half
4 of 2005. These were the people tasked with helping CLECs navigate the promotional credit
5 filing process – that is, verifying what promotions CLECs were in fact eligible for, and how
6 to apply and secure those credits. I don't know how this "department" fit into Bellsouth's
7 organizational structure, but they were not part of Bellsouth's billing and collections
8 department, nor were they part of Bellsouth's wholesale operations. It was obvious when I
9 first started calling that they simply didn't get many promotional credit requests, nor any
10 questions about how to qualify and apply for such credits. Frequently they did not know the
11 answers to questions on these subjects, and sometimes a decision by one person would be
12 reversed by his or her successor. Oftentimes, it seems that policies were made on the spot,
13 on an *ad hoc* basis. In essence, we were feeling our way through "the system" together, and
14 I relied on what they told me about what was creditable and how to apply for those credits.
15 As CLECs began to figure out that they were entitled to promotion discounts, and how to
16 apply for them, the credit requests grew, to the point that in later 2004, Bellsouth began to
17 spend more resources on managing the influx of requests – redoing forms and processes and
18 so on.

19 **Q: What merit is there in Bellsouth's hints that dPi has cheated the system?**

20 A: None. Bellsouth's suggestion that dPi somehow cheated the system is simply
21 incredible to me. First, we worked with Bellsouth's staff in order to try to apply for these
22 credits as directed by Bellsouth. dPi simply cannot be blamed for following Bellsouth's

1 directions. Second, Bellsouth conveniently fails to mention those situations – for example.
2 with the CREX one time nonrecurring charge – that when the parties revisited whether it was
3 appropriate for dPi to have those charges credited, and concluded that it was not, these claims
4 were immediately dropped. dPi acted in good faith and stopped pursuing those credits that
5 it was not entitled to. It is only asking BellSouth to credit amounts to which dPi is entitled.
6 To have that somehow twisted to make dPi look like the bad actor is skewing the facts in the
7 worst possible way.

8 Finally, Bellsouth fails to acknowledge that those instances of “double-dipping” the
9 Secondary Service Charge Waiver are statistically inconsequential. Transcr. Pam Tipton p.
10 15 (July 23, 2007). The overwhelming amount of credit applied for and denied were for the
11 Line Connection Charge Waiver (“LCCW”) Promotion, which accounts for more than 98%
12 (\$78,947.73 of the \$80,428.17) of the dollars at issue between the parties. In the parallel
13 proceeding in North Carolina, the vast majority of the time, dPi was denied credit under this
14 promotion because Bellsouth refused to “count” as Touchstar features those features selected
15 by dPi, such as the Touchstar blocks. This is the case in Florida as well. Seventy-five
16 percent of all amounts denied for LCCW (\$58,210 of \$78,947) were denied because AT&T
17 did not count blocks as Touchstar features – even though they are listed as such in the tariff.

18 **Q: How did dPi qualify for LCCW promotions it applied for?**

19 A: All – *ALL* – dPi has to do to qualify for the line connection charge waiver is
20 purchase Basic Service with one or more Touchstar features.¹ In every situation in which dPi

¹ See dPi Exhibit 3, a screenshot taken from Bellsouth’s website during the summer of 2005. In relevant part, the promotion provides:

Connection Fee Waived

1 applied for the promotional credit, it ordered at least Basic Service plus two or more
2 Touchstar features, including Touchstar blocks.² In short, using the words from Bellsouth's
3 own promotion, dPi is entitled to the promotion because it has "purchase[d] ... Bellsouth
4 Basic Service with at least one feature" and thus has "qualif[ie]d] for a waiver of the local
5 service connection fee."

6 Bellsouth initially agreed with this interpretation because when we were first getting
7 set up and running test batches together, it approved all orders configured this way.
8 Furthermore, after initial testing, BellSouth was crediting other CLECs (such as Budget
9 Phone) with millions for promotional rates for orders essentially identical to dPi's.
10 BellSouth now claims it was "fleeced" by these CLECs – yet BellSouth has never attempted
11 to backbill, bring a claim, or otherwise seek recovery of these amounts – despite the fact that
12 it routinely aggressively pursues backbilling and collections efforts in connection with other
13 claims.

14 The reality is that at some point Bellsouth determined that if they interpreted the
15 promotion the way they profess it should be interpreted now, they could avoid paying these
16 credits to CLECs without unduly affecting their own client base, since so few of BellSouth's
17 customer base would take basic service with just the blocks. This is because the product that

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

2

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

1 dPi sells, which is a set-rate bill which prevented the user incurring accidental or
2 unauthorized additional charges, is more attractive for dPi's customer base but not
3 BellSouth's. In order to prevent the end user from incurring extra charges, call blocks were
4 placed on the lines. Such a product meant that typical order of a customer with poor credit
5 – the profile of virtually all of dPi's customers – would qualify for the promotion with the
6 two blocks. The typical order of a customer with good credit – who tended to be BellSouth's
7 customers – would not have these blocks.

8 Once BellSouth realized this, it switched its interpretation of the promotion. No
9 longer would the LCCW be credited if the order met the plain language of the qualifying
10 criteria but only if it met the tortured reading of the promotion that favored BellSouth.
11 BellSouth displays its tortured reading most clearly in Pam Tipton's sly change of language
12 in her testimony that the customers did not qualify because "many of these dPi end users did
13 not **purchase any features.**" Transcr. Pam Tipton p 10 (July 23, 2007) (bold added). Of
14 course, nothing in the promotion required dPi's customers to **purchase features**, but rather
15 to **purchase service** with Touchstar features. In reading the promotion qualification,
16 BellSouth must completely ignore its ten-word listing of different qualifying services to reach
17 the result it wants.³

18 This is the heart of the dispute. BellSouth hopes dPi (and the Commission) merely
19 glosses over the promotion without attempting a precise reading of the promotional language.

3

In relevant portion, "Customers who switch their local service to BellSouth from another provider and **purchase BellSouth® Complete Choice®, BellSouth® Preferred Pack, or BellSouth Basic Service** with at least one feature can qualify." BellSouth has to skip over everything bolded to reach its desired result. See footnote one for the complete text of the promotion.

1 If one is precise and accurate, it is plain and obvious that dPi should be credited for the
2 LCCW.

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

7
8 A: Essentially. And as Brian Bolinger said, there is no getting around the fact that dPi
9 has in fact ordered Basic Service with Touchstar features. If Bellsouth does not wish its
10 promotion to apply to all Touchstar features, it should do like SBC did, and alter its
11 promotion so that the promotion specifically lists those features that Bellsouth requires to
12 qualify for the promotion.

13 The Commission should hold Bellsouth to the plain language of the qualifying
14 criteria that Bellsouth *itself* created and force Bellsouth to interpret it in the manner Bellsouth
15 *itself* originally interpreted it. It is only now, after it has become clear that more dPi
16 customers qualify for the promotion than Bellsouth customers, that Bellsouth changed its
17 interpretation.

18 dPi’s orders meet the qualifying criteria exactly, and should be credited.

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

20 A: We have reviewed Bellsouth’s position on this, and compared it to the language of
21 the promotion. We agree upon further consideration that the promotions should not apply
22 to transfers.

23 **Q: Does this conclude your testimony?**

24 A: For now. But I reserve the right to supplement or amend it at hearing.

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Respectfully Submitted,

FOSTER MALISH BLAIR & COWAN, LLP



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1 BY MR. MALISH:

2 Q So if you'd like to go ahead with your summary of
3 your testimony, please.

4 A I want to go back to kind of the process or kind of
5 the genesis of the whole thing. In late 2003, early 2004,
6 employed by Teleconnex, we -- going through the tariffs and
7 everything we realized there were some promotional
8 opportunities for our company and we went ahead and engaged in
9 a process to try to figure out how to do that, the how-to. And
10 my account manager at BellSouth put me in contact with a
11 Stanley Messinger. And Stanley, I worked, worked extensively
12 with him to develop a process of how I was to, to submit,
13 submit the data with regards to the Line Connection Charge
14 Waiver and two other promotions at that time.

15 We -- I submitted batches of data, test data to
16 Stanley and, which was identical to the dPi data, and we
17 submitted with the 1FR the BCR, BRD and HBG profile and we had
18 those okayed by him.

19 We proceeded to then, once we got the go-ahead from
20 Stanley, to go ahead and start submitting, submitting the
21 files. In January of '04 we submitted three profiles of
22 promotions. We submitted the Line Connection Charge Waiver,
23 the Secondary Service Charge Waiver and the two features for
24 free. And once we submitted those, they were paid
25 approximately within 30 days. We again did the same process in

1 February, filed the three promotions, Line Connection Charge
2 Waiver, Secondary Service Charge Waiver and the two features
3 for free, and again they were, they were paid again within 30
4 days. And again, we did the same thing again in March and in
5 April.

6 In the summer of '04 I terminated my, well, ended my
7 relationship with Teleconnex and started a consulting company,
8 which was Lost Key Telecom. As opposed to some of the manual
9 processes that we did early on in '03 and '04, Lost Key and our
10 programmer, and we began to embark on more of an electronic
11 process to get the data. And we developed some processes and
12 we went and met -- went to Birmingham in the summer, I believe
13 in July. Maxine Alagar for BellSouth in the dispute
14 department, she set up meetings with me to meet with Heidi
15 Beard, herself and Christy Siegel. And Christy Siegel came on
16 probably in the, around April of '04. She took Stanley
17 Messinger's place as, I guess, Promotional Manager is what we
18 called him, but I understand they were a Product Manager for
19 the wholesale side or interconnection services.

20 We brought to them forms that we were going to submit
21 electronically, we brought to them samples of the data. And in
22 the meantime we had two companies under contract at that time,
23 we had Budget Phone and we had dPi Teleconnect, of which would
24 be our first submittals of data.

25 Our last meeting was in the early part of August. We

1 met again with Heidi Beard and Christy Siegel, and Maxine
2 Alagar was there also to go over everything we had put together
3 at that point to get their, their approval, their okay. We
4 submitted two large batches, one for Budget Phone, which was
5 paid in the early part of September, probably the middle of
6 September, and I had a, a tentative approval also for dPi that
7 they would get paid. And they did not get paid. BellSouth
8 completely reversed their position on paying dPi. And we did
9 not, at that point we didn't get any explanation from them.
10 And we had a whole correspondence of e-mails, and Brian
11 Bolinger was involved in that process to try to find out why.
12 But at that point I had been promised -- Lost Key Telecom in
13 the correspondence that we had with BellSouth/AT&T that we went
14 over and over several times to find out why they had been
15 denied, and we did not get anything official at that point.

16 We contacted a Jim Maziarz, who was Christy Siegel's
17 boss, and tried to get a response from him and information, and
18 that went all the way into right before the holidays. And we
19 got kind of a letter back from him with regards to the
20 definition of what a winback and a reacquisition was. So they
21 said that their legal department was defining that before they
22 would make a decision on the dPi Teleconnect account. That's
23 pretty much a summary of the processes.

24 COMMISSIONER McMURRIAN: Mr. Malish, do you tender
25 for cross?

1 MR. MALISH: We do.

2 COMMISSIONER McMURRIAN: Commissioner Skop.

3 COMMISSIONER SKOP: Thank you, Madam Chair. Just a
4 quick question to the witness.

5 I guess you served as a, as a consultant, correct, to
6 dPi?

7 THE WITNESS: Yes.

8 COMMISSIONER SKOP: And how much were you paid for
9 providing the promotional opportunity product to your client?

10 THE WITNESS: We, we got paid on the percentage
11 recovered.

12 COMMISSIONER SKOP: Okay. Thank you.

13 COMMISSIONER McMURRIAN: Mr. Carver.

14 MR. CARVER: Yes, Commissioner. Thank you.

15 CROSS EXAMINATION

16 BY MR. CARVER:

17 Q Good afternoon, Mr. Watson.

18 A Good afternoon.

19 Q In answer to the question that Commissioner Skop just
20 asked, you said that you were paid on the credit request on a
21 commission basis; is that correct?

22 A That's correct.

23 Q Does that extend to this proceeding? In other words,
24 if dPi prevails in this proceeding, do you get a cut of it?

25 A Yes, I would.

1 Q Okay. And obviously if they don't prevail, then you
2 wouldn't get any money; correct?

3 A That's correct.

4 Q Okay. Now you were talking about the time frame of
5 2004 in your summary when you had conversations with BellSouth
6 personnel. And, well, let me just say one thing at this point.
7 Obviously we're AT&T now. We were BellSouth then. I may be
8 using those terms interchangeably, but you know I'm talking
9 about my client; right?

10 A Yes.

11 Q Okay. In 2004 when you had those conversations with
12 BellSouth personnel, you did not specifically tell them that
13 you were planning on submitting blocks as features, did you?

14 A No, we didn't have direct conversation about that.

15 Q And in fact in the conversations you had you always
16 told them that what you would be submitting were TouchStar
17 features; correct?

18 A I did not have a conversation with them about that.

19 Q You did not have a conversation in which you told
20 them you would be submitting TouchStar features?

21 A I had a conversation with them about submitting the
22 Line Connection Charge Waiver.

23 Q Okay.

24 A And the Secondary Service Charge Waiver and the two
25 features for free.

1 Q Okay. Let me ask you this. Do you remember giving a
2 deposition in this proceeding on September 18th, 2007?

3 A Yes.

4 Q Okay. Let me show you your transcript from that
5 deposition and then I have a question.

6 Look at that page. Now if you'll look in your
7 deposition that you gave in this proceeding to Page 64, Lines
8 14 through 18, and I'm going to read into the record the
9 question and answer that appeared.

10 A What were the lines again, please?

11 Q It starts at Line 14, the question starts with the
12 word "Okay." It says, "Okay." Are you with me now, Line 14?

13 A Yes.

14 Q Okay. The question and answer there, "Okay. But my
15 question was did you ever discuss specifically with any, with
16 anyone at BellSouth during that time whether blocks counted as
17 features?"

18 And your answer is, "We never had a conversation
19 about blocks. We had a conversation about TouchStar features."
20 Is that the answer that you gave under oath in your deposition?

21 A Yes.

22 Q Thank you.

23 Now the process by which you submit credit requests
24 on behalf of dPi, that's a regional process; correct?

25 A Yes.

1 Q But you would look at the tariffs for each state?

2 A Correct.

3 Q Now in general to determine the criteria for a
4 promotion you would look to the tariff; correct?

5 A Correct.

6 Q Now if you saw a promotion on the website, you'd
7 check to make sure that it was consistent with the tariff,
8 would you not?

9 A Yes, I would.

10 Q And if the promotion was based on something -- well,
11 let me put it this way. If you saw a promotion on the website,
12 you wouldn't submit that without first checking the tariff;
13 correct?

14 A Well, actually what I would do is I would submit, I
15 would take and copy the promotion and I'd e-mail it to the, at
16 that time I would e-mail it to Stanley Messinger or to Christy
17 Siegel and ask them was that, was that a promotion that we
18 could submit.

19 Q Okay. And without doing that, you would not submit
20 the promotion; correct?

21 A No.

22 Q Okay. Now I'd like to ask you to turn to the exhibit
23 to your testimony that is dPi FL-3. I believe it's on staff's
24 list as Number 19. This is the screen shot. Do you have that
25 with you? I have extra copies, if you need it.

1 A Yes. Yes, I have a copy and -- I also have two
2 copies.

3 Q Now this document, this is something that you found
4 on the BellSouth website in July of 2005; correct?

5 A This is their, their retail site offering.

6 Q Okay. But my question was you found it on the
7 website in July of 2005; correct?

8 A Yes, we did.

9 Q Okay. And after you saw it, you contacted someone at
10 AT&T/BellSouth; correct?

11 A Correct.

12 Q Okay. And the person you contacted was Christy
13 Siegel; is that correct?

14 A It was either Christy or Keith Deason. I'm not sure.

15 Q Okay. Do you still have your deposition with you?

16 A Yes, I do.

17 Q Okay. If you'll turn to Page 57, we'll see if this
18 refreshes your recollection. Line 8, beginning at Line 8 going
19 through Line 9 it says, "So you talked to somebody?"

20 Answer, "Contacted, I believe, Christy Siegel."

21 Does that refresh your recollection?

22 A Yes. Thank you.

23 Q Okay. And she told you that it was a mistake, didn't
24 she?

25 A What was a mistake?

1 Q That this particular screen shot, that the language
2 in it was a mistake.

3 A She said that she would have to check with retail.
4 She didn't -- with regards to what part?

5 Q Well, here's what I'm getting to. If you look on the
6 same page of the deposition, Line 10 and 11, it says, "Okay.
7 And what did she say about it?"

8 Answer, "She told me she thought it was a mistake."

9 Is that what she told you?

10 A That's what she told me.

11 Q Okay. And a few days later you checked back on the
12 website and you found that the promotion was gone, didn't you?

13 A I don't know about a few days. I think it was
14 probably, probably a little, a little bit more than a few days
15 in length and time.

16 Q About ten days?

17 A I don't know the exact days.

18 Q Okay. If you would, turn in your deposition to the
19 next page, Page 58, Lines 12 through 15. And there are a
20 couple of questions and answers there. The first -- I'm
21 beginning on Line 9. Are you on Page 58?

22 A Yeah. I just looked at -- yeah.

23 Q Okay. Question, "Okay. And as far as you know -- I
24 mean, we're assuming it's a mistake but it got corrected within
25 a week."

1 "Yes."

2 "Okay. And when I say a week, I mean from the time
3 you noticed it on the website until the time you checked back
4 it had been changed."

5 "Roughly, I would say roughly ten days to be exact."

6 A Roughly.

7 Q So it was corrected in ten days?

8 A Roughly ten days.

9 Q Okay. And as a result of this snapshot you didn't
10 change any of your practices, did you?

11 A Change any of our practices as far as what we were
12 submitting?

13 Q Yes.

14 A During what time period?

15 Q During this time period, July of 2005.

16 A No, we did not.

17 Q Okay. Now let's turn to your testimony, specifically
18 your rebuttal testimony, the amended rebuttal, Page 5. Just
19 let me know when you're there. Are you there?

20 A Yes.

21 Q Okay. Look at Line 19, please. This is the bottom
22 of the page. And your testimony says. "All," and then you
23 repeat the word "All dPi has to do to qualify for the Line
24 Connection Charge Waiver is purchase basic service with one or
25 more TouchStar features." Do you see that language?

1 A Yes.

2 Q And then there's a footnote, and the footnote
3 references dPi Exhibit 3; correct?

4 A Correct.

5 Q In other words, that's the same exhibit we've been
6 talking about.

7 A That's correct.

8 Q This is the same one you were told was a mistake;
9 correct?

10 A Correct.

11 Q The same one that was taken off the website in ten
12 days; correct?

13 A That's what I understood, it was taken off in ten
14 days.

15 Q Okay. Now the language that you cited here, this
16 language from the, the snapshot, this language is not in the
17 tariff, is it?

18 A I'm not sure.

19 Q Okay. Well, if you look at the exhibit to your
20 testimony, dPi FL-2, we have what's labeled as General
21 Subscriber Service tariff excerpt pertaining to Special
22 Promotions offered by BellSouth. That's your own exhibit. Do
23 you see that?

24 A Yes.

25 Q Okay. Now this tariff that's attached to your

1 testimony as an exhibit, it does not contain the language that
2 you've quoted in your testimony on Page 5 as being the
3 standard, does it?

4 A A little farther on I say, "In every situation in
5 which dPi applied for the promotional credit, it ordered at
6 least basic service plus two or more TouchStar features,
7 including TouchStar blocks. In short" --

8 Q I'm sorry. Are you reading from another part of your
9 testimony?

10 A Yes, on Line 20.

11 Q Okay. Well, let's stick with the part I asked you
12 about.

13 A Okay.

14 Q What you say here is the standard, and you repeat
15 this at the bottom of Page 5 in the footnote, you talk about it
16 in Page 6, you quote from the snapshot extensively. My
17 question is the language in this snapshot, the language that
18 was only on the website for ten days, the language you knew was
19 a mistake, that's different from the tariff language, isn't it?

20 A I'm not sure about what the tariff said on that. I
21 just quoted what was in the retail site in my testimony there.

22 Q So you didn't check the tariff to see what the
23 standard was?

24 A We had seen, we had seen some tariff with that, with
25 that, with the one feature in there. We had seen some tariff

1 on that. And I, I wouldn't have that document in front of me,
2 but that would be something I could research.

3 Q It's not attached to your testimony anywhere, is it?

4 A No, I believe it's not.

5 Q Okay. So your testimony under oath is that this
6 language wasn't just in the snapshot, that at some point it was
7 in a tariff, and you know that for a fact?

8 A I believe I had seen it, we had seen it in a tariff.

9 Q Okay. But in the tariff that you've attached to your
10 testimony, again, that language doesn't appear in this tariff,
11 does it?

12 A No, it does not.

13 Q And you already told me that ultimately you always go
14 by what's in the tariff; correct?

15 A Well, ultimately we submit, we submit it over to the
16 Product Manager for approval ultimately.

17 Q Okay. But didn't you agree with me earlier that the
18 tariff is what determines the terms of the promotion?

19 A Well, yes, the tariff does. Exactly. But we always
20 submit it to the Product Manager for approval, always.

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

22 COMMISSIONER McMURRIAN: Ms. Tan.

23 MS. TAN: Staff has no questions for Mr. Watson.

24 COMMISSIONER McMURRIAN: Commissioners, any questions
25 for Mr. Watson?

1 Okay. Mr. Malish for redirect.

2 MR. MALISH: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MALISH:

5 Q Mr. Watson, you wanted to tell us something about
6 your testimony at Page 5, Line 20, and Line 1 of Page 6 in
7 response to the questions that Mr., Mr. Carver was asking you.

8 A Page 5, what line? I'm sorry.

9 Q The last line, 19, 20.

10 Let's see. Line 20, the last half of that line is
11 the new situation which explains what it was that -- how you
12 applied. Let me ask it a different way.

13 Does your testimony say what was in the orders that
14 dPi submitted to get the LCCW promotion?

15 A With regards to with one feature or with the two
16 features?

17 Q Well, does your testimony say what dPi or Lost Key
18 submitted on behalf of dPi, how the orders were configured?
19 What does it say on Page 6, Line 1?

20 A Basically we, we submitted the orders with 1FR BCR,
21 BRD and HBG with two Touch, with TouchStar features.

22 Q So regardless of what the website said and regardless
23 of what the tariff said, in every instance the orders that
24 y'all submitted in order to get credit had basic service plus
25 two or more of those TouchStar features, HBR, excuse me, HBG,

1 BCR and BRD?

2 A Correct.

3 Q So you never submitted any that were just one; is
4 that correct?

5 A No, we did not.

6 Q So there were always at least two?

7 A Yes. That's correct.

8 MR. MALISH: All right. Pass the witness.

9 COMMISSIONER McMURRIAN: Okay. I think we need to
10 take up exhibits, if I can find them.

11 MR. MALISH: In that case, dPi moves for the
12 admission of Exhibits 17, 18, 19, 20 and 21.

13 COMMISSIONER McMURRIAN: Any objection?

14 MR. CARVER: No objection.

15 COMMISSIONER McMURRIAN: Okay. Show those moved into
16 the record. Thank you.

17 (Exhibits 17, 18, 19, 20 and 21 admitted into the
18 record.)

19 And, Mr. Watson, you may be excused.

20 THE WITNESS: Thank you.

21 COMMISSIONER McMURRIAN: Thank you.

22 And, Mr. Carver, you may call your witness.

23 MR. CARVER: Thank you, Commissioner.

24 AT&T calls Pam Tipton. We may need a moment. Should
25 we just take a break or would you rather wait for her?

1 COMMISSIONER McMURRIAN: Maybe a five-minute break.
2 But, you know, it's almost 3:00, so I don't want to take very
3 long. But I understand she probably --

4 MR. CARVER: We'll locate her quickly.

5 COMMISSIONER McMURRIAN: Thanks.

6 (Recess taken.)

7 Okay. We'll go back on the record.

8 And Mr. Carver.

9 MR. CARVER: Thank you, Commissioner. AT&T calls Pam
10 Tipton.

11 Are you ready for me to proceed, Ms. Tipton, or do
12 you need a second?

13 THE WITNESS: I just need one minute.

14 PAM TIPTON

15 was called as a witness on behalf of AT&T Florida and, having
16 been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CARVER:

19 Q Ms. Tipton, would you please state your full name and
20 your business address.

21 A Yes. My name is Pam Tipton. My business address is
22 675 West Peachtree Street, Atlanta, Georgia 30375.

23 Q By whom are you employed and in what capacity?

24 A I'm employed by AT&T as the Director of Wholesale
25 Regulatory Policy.

1 Q And in this docket you have prefiled 19 pages of
2 direct testimony with four exhibits; is that correct?

3 A Yes.

4 Q And you've also filed rebuttal testimony of 17 pages
5 with five exhibits; correct?

6 A It's just one exhibit, but it's PAT-5.

7 Q Okay. Yes. Thank you. Let me make that correction.
8 So you have five in total?

9 A Yes.

10 Q And then you also filed a supplement to your rebuttal
11 testimony which was four pages and no exhibits; correct?

12 A Yes.

13 Q Do you have any changes to your testimony?

14 A No.

15 Q If I asked you the questions that appear in your
16 testimony today, would your answers be the same?

17 A Yes, they would.

18 MR. CARVER: Commissioner, I request that the
19 witness's testimony be inserted into the record as though given
20 from the stand, and I'd also request that her exhibits be
21 marked for identification.

22 COMMISSIONER McMURRIAN: Okay. Show her prefiled
23 testimony inserted into the record as though read, and
24 Exhibits, I believe that's 22, 23, 24, 25 and 26 marked.

25 MR. CARVER: Thank you.

1 COMMISSIONER McMURRIAN: Thank you.

2 (Exhibits 22, 23, 24, 25 and 26 marked for
3 identification.)

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AT&T FLORIDA
DIRECT TESTIMONY OF PAM TIPTON
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 050863-TP
JULY 23, 2007

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH AT&T ("AT&T"), AND YOUR BUSINESS ADDRESS.

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

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Arts in Economics from Agnes Scott College in 1986, and a Masters Certificate Project Management from George Washington University in 1996. I am currently pursuing my Masters in Business Administration from Emory University's Goizueta School of Business, which I will complete in May 2008.

I have nearly 20 years of experience in telecommunications, with my primary focus in the areas of process design, services implementation, product management, marketing strategy and regulatory policy

1 implementation. I joined Southern Bell in 1987, as a manager in
2 Interconnection Operations, holding several roles over a 5-year period
3 including process development and execution, quality controls and
4 services implementation. In 1994, I became a Senior Manager with
5 responsibility for End User Access Services and implementation of
6 Virtual and (later) Physical Collocation. In 2000, I became Director,
7 Interconnection Services, responsible for development and
8 implementation of Unbundled Network Element ("UNE") products and,
9 later, development of marketing and business strategies. In June 2003,
10 I assumed responsibility for implementation of state and federal
11 regulatory mandates for Local and Access markets and management of
12 the Local, Access and Wireless switched services product portfolio.
13 Following a brief appointment in Regulatory and External Affairs, I
14 returned to the wholesale organization in March 2007.

15

16

17 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

18

19 A. I address the issues raised by the Complaint filed by dPi Teleconnect,
20 L.L.C. ("dPi") with the Florida Public Service Commission ("PSC") on
21 November 8, 2005, and explain why dPi is not entitled to the
22 promotional credits that it is seeking in this proceeding.

23

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25

1

2 Q. BRIEFLY SUMMARIZE WHAT IS AT ISSUE.

3

4 A. dPi resells AT&T retail residential telephone services to primarily
5 credit-challenged consumers on a pre-paid basis. Some of these
6 resold services are subject to AT&T promotional discounts. AT&T
7 makes its applicable retail promotions available to dPi in Florida by
8 giving it a credit for the value of the promotion *as long as the dPi*
9 *end user meets the same criteria that an AT&T customer must*
10 *meet to qualify for the same promotion.*

11

12 dPi is seeking credits under AT&T's promotions, however, in some
13 instances for end users that *do not* meet the eligibility criteria for
14 the promotions. For example, AT&T's Line Connection Charge
15 Waiver ("LCCW") promotion requires the *purchase* of basic service
16 and the *purchase* of two additional features. dPi contends that
17 zero-charge usage blocks that dPi places on most, if not all, of its
18 customers' lines qualify as "purchased features". Not only does dPi
19 pay nothing for these features, it does not charge its customers, nor
20 does it even tell its customers that the blocks exist.

21

22 dPi asks this Commission to order AT&T to issue dPi promotional
23 credits for its end user customers that do not meet the qualifications
24 for the promotions in question. Only specific rate elements
25 identified as part of a promotion are eligible for billing credits. Thus,

1 dPi is not entitled to promotional credits for *customer requests* that
2 do not meet the specific promotion criteria, nor is it entitled to
3 receive credits for *service elements* that are not included in the
4 promotions offered by AT&T to its own retail customers.

5

6 Q. IN ITS COMPLAINT, DPI ALLEGES THAT AT&T REFUSES TO
7 ISSUE DPI PROMOTIONAL DISCOUNT CREDITS. IS THE DPI
8 COMPLAINT ACCURATE WITH RESPECT TO THOSE
9 ALLEGATIONS?

10

11 A. Absolutely not. AT&T has issued promotional credits to dPi for
12 resale accounts applicable to dPi's Florida end users in an amount
13 in excess of \$83,000 as of the April 2007 billing cycle. In AT&T's
14 nine-state Southeast Region, AT&T has issued credits to dPi in
15 excess of \$600,000 as of the April 2007 billing cycle.

16

17 Q. IS AT&T ATTEMPTING TO AVOID THE PAYMENT OF PROPER
18 COMPENSATION TO DPI FOR PROMOTIONAL SERVICE
19 CREDITS?

20

21 A. No. AT&T's objective is to pay the correct and proper promotional
22 credit amounts in accordance with the provisions of the
23 interconnection agreement and in compliance with the eligibility
24 criteria which qualify service requests for each promotion. When a

1 request qualifies, AT&T pays the requisite credit. When a request
2 does not qualify, AT&T does not pay.

3

4 Q. WHAT ARE THE SPECIFIC PROVISIONS IN THE
5 INTERCONNECTION AGREEMENT BETWEEN AT&T AND DPI
6 THAT GOVERN THE ISSUANCE OF PROMOTIONAL CREDITS?

7

8 A. The parties' interconnection agreement ("Agreement") states:
9 "Where available for resale, promotions will be made available only
10 to End Users who would have qualified for the promotion had it
11 been provided by BellSouth directly." See Agreement, Attachment
12 1, Exhibit A, a copy of which is attached as Exhibit PAT-1.

13

14 Per the clear language in the Agreement, dPi is entitled to
15 promotional credits only for dPi end users that meet the *same*
16 promotion criteria that AT&T retail end users must meet in order to
17 receive the benefits of a promotion.

18

19 Q. IS THIS LANGUAGE OR SIMILAR LANGUAGE STANDARD IN
20 AT&T SOUTHEAST'S INTERCONNECTION AGREEMENTS WITH
21 OTHER CLECS?

22

23 A. Yes.

24

25

1

2 Q. PLEASE DESCRIBE THE PROCESS BY WHICH CLECS CLAIM
3 AND RECEIVE PROMOTIONAL DISCOUNT CREDITS?

4

5 A. Each month, reseller CLECs submit Credit Request Forms to AT&T
6 with accompanying spreadsheets detailing end user account
7 information for the accounts which the CLEC claims qualify for a
8 designated promotion. By submitting the request for credit, the
9 CLEC is representing to AT&T that its end users meet the same
10 criteria that AT&T's end users must meet to receive the same
11 promotional credit.

12

13 When AT&T (which, at the time of dPi's complaint, was BellSouth)
14 began processing requests for promotional credits, we trusted
15 CLECs to submit valid credit requests for qualifying accounts. In
16 the fall of 2004, AT&T discovered some of the requests did not
17 appear to be valid. After working through a number of details
18 regarding the specific qualifiers for promotions and ensuring that
19 parity requirements were met, AT&T implemented a sampling
20 process in early 2005 to validate CLEC requests for promotional
21 credits. For each monthly credit request submission, AT&T pulled
22 a sample from the submission and performed an audit. Based on
23 the percentage of valid qualifying requests from the audit sample,
24 AT&T applied the resulting "percentage qualified" to the total credit
25 amount requested to determine the credit actually given to the

1 CLEC for that particular credit request submission. As an example,
2 if a resale CLEC requested \$1,000 in promotion credits, and
3 AT&T's sampled review revealed that 60% of the end user
4 accounts for which the CLEC *claimed* a credit actually qualified for
5 the promotion, then AT&T applied the qualifying percentage of 60%
6 (in this example), to the original amount of requested promotion
7 credits. This resulted in a credit of \$600 to the requesting CLEC vs.
8 the \$1,000 originally requested. Because of the intense manual
9 effort required to validate CLEC requests, AT&T began the
10 development of an automated verification process mid-year 2005
11 that was implemented in April 2006. The automated process
12 evaluates 100% of the accounts submitted on each request for
13 resale billing credit.

14

15 Q. PLEASE DESCRIBE THE PROMOTIONS AT ISSUE IN THIS
16 COMPLAINT AND EXPLAIN HOW AN END USER WOULD
17 QUALIFY FOR EACH PROMOTION.

18

19 A. While a majority of dPi's claim applies to just one promotion, the
20 Line Connection Charge Waiver, there are three promotions at
21 issue in the complaint: 1) the Line Connection Charge Waiver
22 promotion (LCCW); 2) the Secondary Service Charge Waiver
23 promotion (SSCW); and 3) 1FR plus Two Features for Free
24 promotion (TFFP). Attached as Exhibit PAT-2 are representative
25 tariff pages for these three promotions from BellSouth's Florida

1 GSST, Section A.2.10(A). These tariff pages were in effect in
2 2005, a timeframe central to the period at issue in this proceeding.

3

4 The LCCW provides for a credit of the applicable nonrecurring line
5 connection charge (installation charge) for the service requested
6 (e.g., a basic local flat-rate residential line). For an AT&T retail end
7 user to qualify for AT&T's retail LCCW promotion, the end user
8 customer must be a customer whose service is currently with a
9 carrier *other than* AT&T and who is now ordering service as an
10 AT&T "win-over", or reacquired, customer. In addition, the
11 customer must have purchased a minimum of basic local service
12 and a designated number of Custom Calling or TouchStar®
13 features. Thus, per the terms of the parties' Agreement, for dPi to
14 receive a credit under the LCCW promotion, its end user must
15 likewise be a customer that is not a current dPi customer, has
16 become a win-over or reacquired customer for dPi *and* the
17 customer must have purchased the designated number of Custom
18 Calling or TouchStar® features in accordance with the terms of the
19 promotion.

20

21 The second promotion for which dPi requested credit is the
22 Secondary Service Charge Waiver (SSCW). This promotional
23 waiver applies when changes are made to certain features or
24 services on an *existing* AT&T end user account. Thus, for a dPi
25 customer to qualify for the SSCW promotion the customer must

1 already be a dPi end user and the service request must be adding
2 or changing features/services on the account. For example, an
3 existing dPi customer wishing to add or change custom calling
4 features will incur a Secondary Service Charge since the customer
5 remains a dPi customer and is not changing local service providers.

6
7 The third promotion for which dPi requested credits is the Two
8 Features for Free promotion. Under this promotion, AT&T
9 reacquisition or win-over customers who purchased basic local
10 service plus two Custom Calling or TouchStar® features qualified
11 for a credit for the features during the contiguous 12-month period
12 immediately following the installation of the qualifying basic local
13 service. Again, the dPi customer must be a re-acquired or
14 competitive win-over and have purchased the requisite number of
15 qualifying features in order to qualify for this promotion.

16

17 Q. PLEASE EXPLAIN WHY DPI'S ACCOUNTS DID NOT QUALIFY
18 FOR THE REQUESTED PROMOTIONAL CREDIT(S).

19

20 A. Depending on the promotional credit for which dPi applied, dPi's
21 non-qualifying requests generally fell into five categories:
22 • Less than the required number of features were purchased
23 • The promotion only applies to *new* customers and the credit
24 request was submitted for an existing dPi customer

- 1 • The promotion only applies to *existing* customers and the
- 2 credit was submitted for a new customer
- 3 • The request for credit extended beyond the term of the
- 4 promotional offer
- 5 • The request was a duplicate request.

6 The majority of customers for whom dPi requested credits based on
7 the LCCW promotion, and for whom AT&T denied credits, did not
8 qualify because the end user did not subscribe to the required
9 number of purchased features. Indeed, many of these dPi end
10 users did not purchase *any* features. AT&T's own retail end users
11 in that position are not eligible for the LCCW promotion, so dPi is
12 not entitled to promotional credits for those end users. Other
13 requests for credit under the LCCW promotion were denied
14 because the request was a duplicate request.

15
16 As outlined above, the SCCW promotion is available to existing
17 customers. Most of the non-qualifying accounts submitted by dPi
18 for the SCCW promotion were denied because the accounts were
19 new customers to dPi and were not part of their existing customer
20 base.

21
22 Regarding the Two Features for Free promotion, DPi improperly
23 requested credits for existing dPi customers and not reacquisition
24 or win-over customers. Therefore, these accounts did not meet the
25 qualifying criteria for the Two Features for Free promotion. Some

1 of dPi's requests for credit under this promotion extended beyond
2 the 12-month contiguous billing period for the promotion and thus
3 were denied.

4

5 Attached as Proprietary Exhibit PAT-3 are examples of accounts for
6 which dPi submitted promotional credit requests that AT&T denied
7 because the dPi end user did not meet the eligibility criteria for the
8 specified promotion. There are two examples each of the improper
9 credit claims described above for the Line Connection Waiver
10 promotion, the Secondary Service Charge promotion, and the Two
11 Features for Free promotion. A cover sheet provides a summary
12 description of each example. Attached thereto are copies of the
13 actual service orders for which dPi claimed credit. For each of the
14 examples, AT&T notes what was requested and the specific reason
15 for denial.

16

17 Q. HAS AT&T PERFORMED ANY OTHER REVIEW OF DPI'S
18 PROMOTIONAL CREDIT REQUESTS?

19

20 A. Yes. As described above, prior to the implementation of an
21 automated verification process, AT&T performed a sample audit of
22 credit requests. As part of the preparation for my testimony, AT&T
23 recently completed a review of the remaining requests in Florida
24 (those not originally sampled) for the period of January 2005
25 through December 2005.

1

2 Q. WHAT WAS THE RESULT OF THIS REVIEW?

3

4 A. There are three distinct outcomes. First, the review of the
5 remaining accounts validated the outcome of our initial sample.
6 Second, it appears AT&T overpaid credits to dPi. Third, the review
7 establishes that dPi did not have any checks and balances in their
8 process to ensure only valid requests were submitted.

9

10 Q. HOW DID THE REVIEW VALIDATE THE OUTCOME OF AT&T'S
11 INITIAL SAMPLE?

12

13 A. When the data from AT&T's recent review was combined with the
14 data from AT&T's initial review, 75% percent of dPi's requested
15 credit for January 2005 through December 2005 did not meet the
16 qualifications for the applicable promotion.

17

18 Q. HOW DOES THAT COMPARE TO THE PERCENTAGE OF DPI'S
19 REQUESTS FOR CREDIT FOR ALL PROMOTIONS THAT AT&T
20 ACTUALLY DENIED IN THAT SAME PERIOD?

21

22 A. The percentage actually denied was 71%.

23

24

25

1 Q. WHAT WERE THE RESULTS SPECIFICALLY FOR THE LCCW
2 PROMOTION?

3

4 . Again, combining the data from AT&T's review, which in total is a
5 100% review of dPi's requests for credit for the period from January
6 2005 to December 2005, AT&T determined that 84% of dPi's
7 requests for the LCCW credit did not qualify for the LCCW
8 promotion. AT&T initially denied 82% of dPi's LCCW requests for
9 the same time period and, thus, over-paid dPi for the LCCW
10 promotion during this time period.

11

12 Q. WHAT WERE THE RESULTS FOR THE SECONDARY SERVICE
13 CHARGE PROMOTION?

14

15 A. AT&T determined that, in total, 87% of dPi's credit requests did not
16 qualify for the SSCW promotion. The percentage of invalid SSCW
17 accounts submitted by dPi for credit and initially denied by AT&T
18 was actually 68%. Thus, it appears that dPi received more credit
19 than it was entitled for the SSCW promotion.

20

21 Q. WHAT WERE THE RESULTS FOR THE TWO FEATURES FOR
22 FREE PROMOTION?

23

24 A. AT&T determined that 19% of the requests submitted by dPi did not
25 qualify for the Two Features for Free promotion. The percentage

1 initially denied by AT&T was actually 5%. Again, as with the LCCW
2 and SSCW promotions, it appears that dPi received more credit
3 than it was entitled.
4

5 Q. WHAT DO YOU CONCLUDE FROM THE MOST RECENT
6 EVALUATION OF THE PROMOTIONAL CREDITS SUBMITTED
7 BY DPI?
8

9 A. First, and importantly, AT&T's most recent examination of the
10 promotion credit requests submitted by dPi validates AT&T's
11 previous actions in response to dPi's inflated requests for
12 promotional credits. Second, it confirms that dPi seemingly
13 systematically inflated its requests for promotional credit by
14 submitting duplicate claims for credit as well as requesting billing
15 credit under particular promotions for elements not included in the
16 promotions. Further, it is apparent that dPi neglected to apply the
17 most basic qualification tests on the accounts it submitted to AT&T
18 for credit.
19

20 Q. WHY DO YOU CONCLUDE THAT DPI MADE LITTLE OR NO
21 ATTEMPT TO ENSURE THAT THE CREDITS IT REQUESTED
22 COMPLIED WITH THE CRITERIA TO QUALIFY FOR A
23 PROMOTIONAL CREDIT?
24

1 A. Based on dPi's promotional credit requests, it appears to AT&T that
2 dPi represented that *all* of its "new" end user accounts were eligible
3 for credits and did not attempt to validate whether or not the
4 accounts met all of the eligibility criteria for such credits. AT&T's
5 review of those resale accounts, however, demonstrated that a
6 significant percentage and, in some cases, all of the submissions
7 for a specific promotion do not qualify for promotional credits.
8 Further, dPi submitted requests under certain promotions that, on
9 their face, were impossible for the request to qualify: existing
10 customer accounts were submitted under promotions that were
11 only available to new customers and those same new customers
12 were also submitted under promotions that only applied to existing
13 customers. In other words, the same account was submitted for
14 mutually exclusive promotions.

15

16 Q. WHAT DO YOU MEAN BY AN ACCOUNT BEING SUBMITTED
17 FOR MUTUALLY EXCLUSIVE PROMOTIONS?

18

19 A. dPi's claims include requests for credit in the same month for the
20 same end user telephone number for both the Line Connection
21 Charge Waiver promotion and the Secondary Service Charge
22 Waiver promotion. As I discuss above, the LCCW applies only to
23 new reacquired or win-over customers and the SCCW promotion
24 applies only to existing customers. A review by AT&T of the credit
25 submissions for a random month, January 2005, reveals that dPi

1 submitted requests for credit and attempted to "double-dip" by
2 applying for both promotions such that *all of the accounts*
3 submitted for credit under the SCCW promotion were also
4 submitted for credit under the LCCW promotion credit request.

5

6 Q HAS AT&T EXPRESSED ITS CONCERNS TO DPI ABOUT THE
7 HIGH NUMBER OF ACCOUNTS SUBMITTED FOR CREDIT THAT
8 WERE FOUND TO BE INELIGIBLE?

9

10 A. Yes. AT&T has been in contact with dPi on numerous occasions
11 about the large number of accounts submitted by dPi for credit that
12 were determined by AT&T to not be in conformance with the
13 qualifying criteria for AT&T's promotions and the reasons that the
14 accounts were denied by AT&T for payment to dPi.

15

16

17 Q. HAVE PROCEEDINGS BEEN HELD IN ANY OTHER AT&T
18 SOUTHEAST STATE TO RESOLVE IDENTICAL dPi
19 COMPLAINTS? IF SO, WHAT WAS THE OUTCOME?

20

21 A. Yes. Hearings were held in North Carolina on March 1, 2006 in
22 Docket No. P-55, Sub 1577. In that proceeding, dPi filed an
23 essentially identical complaint to that filed by dPi in Florida. Just
24 prior to the hearing, dPi narrowed the scope of its complaint to just
25 the LCCW promotion. The Commission found in AT&T's favor on

1 all counts in its *Order Dismissing Complaint* [NCUC *Order*
2 *Dismissing Complaint*, Docket No. P-55, Sub 1577, issued June 7,
3 2006, at p7]. In this Order, the North Carolina Utilities Commission
4 ("NCUC") highlighted that AT&T and dPi had jointly agreed to
5 methodology for determining the limits of any promotion in their
6 voluntarily-negotiated Agreement:

7

8 On page 7 of its *Order Dismissing Complaint*, the NCUC referenced
9 Attachment 1, Exhibit A of the Agreement (as provided in Exhibit
10 PAT-1 to this testimony) and stated:

11

12 The following language governs this Commission's
13 interpretation of this promotion:

14

15 "Where available for resale, promotions will be made
16 available only to End Users who would have qualified for
17 the promotion had it been provided by BellSouth
18 directly."

19

20 Under the clear language of this provision, promotions are
21 only available to the extent that end users would have
22 qualified for the promotion if the promotion had been
23 provided by BellSouth directly.

24

25 NCUC *Order Dismissing Complaint*, Docket No. P-55, Sub
26 1577, issued June 7, 2006, at p7.

27

28 The NCUC further found that dPi end user accounts that only had
29 the zero-charge usage blocks are not eligible for LCCW
30 promotional credits because similarly situated BellSouth end users
31 are not entitled to such credits. For the Commission's

1 convenience, a copy of the North Carolina Order is attached as
2 exhibit PAT-4.

3

4 Q. WHAT IS THE CURRENT STATUS OF THIS CASE?

5

6 A. Following the NCUC's denial of dPi's Motion for Reconsideration
7 and dPi's Motion for Emergency Relief (Temporary Restraining
8 Order and Temporary Injunction) and/or Stay of Effective Date of
9 the Commission's Order, dPi appealed the case. AT&T and the
10 NCUC have separately moved for summary judgment.

11

12

13 Q. IN ITS FLORIDA COMPLAINT, DPI ALLEGES THAT AT&T
14 ADMITTED ITS OBLIGATION TO ISSUE ADDITIONAL CREDITS
15 TO DPI. IS THAT AN ACCURATE STATEMENT?

16

17 A. I am not sure what dPi is referring to with this statement in the
18 complaint. AT&T will issue credits to dPi, or any other qualifying
19 CLEC, for customers that meet promotion eligibility criteria and will
20 deny credit requests by dPi (or other CLECs) for customers that do
21 not meet the promotion eligibility criteria.

22

23 Q. DPI ALSO ALLEGES IN ITS COMPLAINT THAT AT&T PAID
24 SIMILAR CREDITS TO OTHER CLECS WITH ESSENTIALLY

1 IDENTICAL CLAIMS, BUT REFUSES TO ISSUE THE CREDITS
2 TO DPI. HOW DO YOU RESPOND?

3

4 A. As I discussed above, AT&T previously trusted that, when a CLEC
5 requested a promotional credit, the CLEC had already screened its
6 end users to determine eligibility for the promotion for which it was
7 asking for a credit. Prior to using a verification process, some
8 CLECS were able to receive credits for which they were not
9 entitled.

10

11 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

12

13 A. Yes.

14

15

16

17

18

19

20

21

22

23

24

25 DM #685128

1 AT&T FLORIDA
2 REBUTTAL TESTIMONY OF PAM TIPTON
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 050863-TP
5 AUGUST 20, 2007
6

7 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS
8 PROCEEDING?

9
10 A. Yes, I filed Direct Testimony on July 23, 2007.
11

12 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?
13

14 A. My Rebuttal Testimony responds to portions of the Direct Testimony
15 filed on July 23, 2007, by Brian Bolinger and Steve Watson on behalf of
16 dPi Teleconnect, L.L.C. ("dPi").
17

18 Q. BEFORE GETTING INTO SPECIFICS OF MR. BOLINGER'S AND MR.
19 WATSON'S TESTIMONY, ARE THERE ANY GENERAL COMMENTS
20 YOU HAVE ABOUT DPI'S TESTIMONY?
21

22 A. Yes. Mr. Watson devotes the majority of his testimony to discussing
23 matters that have nothing to do with the issues in this proceeding. Mr.
24 Watson discusses at great length the process by which AT&T Florida
25 ("AT&T") reviewed CLEC requests for promotional credits in the past.

1 This process is not at issue in this proceeding. dPi's complaint
2 mentions nothing about the process by which AT&T reviewed CLECs'
3 request for promotional credits. dPi's complaint centers on its claim
4 that it did not receive promotional credit that it believes it is entitled to.
5 (dPi Complaint, p. 3.) Thus, this Commission issued an *Order*
6 *Establishing Procedure* that set forth two issues:

7

8 (1) Is dPi entitled to credits for the AT&T Florida line connection
9 charge waiver promotion when dPi orders free blocks on resale
10 lines; and

11

12 (2) Is dPi entitled to any other promotional resale credits from
13 AT&T Florida?

14

15 Nowhere in these two issues is the process by which AT&T reviews
16 CLECs' request for promotional credits mentioned.

17

18 The only issue that is before this Commission is whether dPi is entitled
19 to credits for reselling certain AT&T promotions; more specifically,
20 whether dPi's end users would have qualified for the specific promotion
21 requested had they been an AT&T end user.

22

23 Moreover, Mr. Watson's testimony does not even relate to current
24 conditions. Mr. Watson makes general references to events that
25 occurred between 2003 and 2005. Many of Mr. Watson's comments
26 relate to processes that, as I mentioned in my direct testimony, have
27 not been utilized since that time. AT&T developed and instituted an

1 automated review process in 2006 so the process that Mr. Watson
2 discusses in his testimony no longer exists.

3

4 Finally, it is important to note that this entire dispute is over credit
5 requests that dPi claims are valid, but which, with a few exceptions, dPi
6 no longer submits. For example, in June 2007, dPi only submitted 42
7 Line Connection Charge Waiver ("LCCW") promotional credit requests
8 for service orders in the state of Florida and no requests for credits
9 under the Secondary Service Charge Waiver ("SSCW") promotion or
10 the Two Features for Free ("TFFF") promotion. (The TFFF promotion is
11 no longer available.)

12

13 Q. ON PAGE 1, LINES 19-21, MR. BOLINGER STATES THAT AT&T "IS
14 REQUIRED BY LAW TO MAKE AVAILABLE FOR RESALE ANY
15 PROMOTIONS THAT BELLSOUTH MAKES AVAILABLE TO ITS
16 CUSTOMERS" AND THAT THIS CASE ARISES "BECAUSE OF
17 BELLSOUTH'S REFUSAL TO EXTEND ITS PROMOTIONAL PRICING
18 TO DPI." ARE MR. BOLINGER'S STATEMENTS ACCURATE?

19

20 A. No. Based on the law and dPi's Interconnection Agreement with AT&T,
21 AT&T is required to make available for resale any promotion to dPi that
22 dPi's end user would qualify for *if that same end user had been an*
23 *AT&T end user.*

24

25 AT&T is not *refusing* to extend its promotional pricing to dPi. AT&T has

1 denied dPi's request for these particular promotional credits because
2 dPi does not qualify for the promotion, specifically because dPi's end
3 user customers do not qualify. When reselling promotions, a CLEC's
4 end user customer must meet the same requirements as an AT&T retail
5 end user customer in order to qualify for the promotion. dPi's end user
6 customers did not meet these requirements, and therefore, dPi's
7 requests to receive credit were denied.

8
9 **Issue 1(a): Is dPi entitled to credits for the AT&T Florida line**
10 **connection charge waiver promotion when dPi orders free blocks on**
11 **resale lines?**

12 **(b): If so, in what amount?**

13

14 Q. WHY DID AT&T DENY DPI'S REQUEST FOR PROMOTIONAL
15 CREDITS UNDER THE LCCW PROMOTION?

16

17 A. It is an undisputed fact that the LCCW promotion has specific
18 requirements that must be met in order for a customer to qualify for the
19 promotion. One of the specific requirements of the LCCW promotion is
20 that "the end user customer must purchase a minimum of basic local
21 service and two Custom Calling or TouchStar® features." AT&T denied
22 most of dPi's requests for credit for the LCCW promotion because the
23 orders submitted by dPi did not satisfy this criterion.

24

25 Q. PLEASE EXPLAIN YOUR STATEMENT THAT DPI (OR ITS END
26 USERS) DID NOT SATISFY THIS REQUIREMENT?

1

2 A. Most of the orders dPi submitted under the LCCW promotion appears
3 to have been based on dPi's assumption that calling blocks (also known
4 as billing blocks) are "features". However, calling blocks are not
5 features. Calling blocks allow AT&T's end users to prevent the
6 activation of certain features that have a per-use charge. Specifically,
7 calling blocks prevent a caller from being able to use, and thus incur
8 charges for using, certain features such as Call Return, Repeat Dialing
9 and Call Tracing.

10

11 Q. WHAT IS THE DIFFERENCE BETWEEN A FEATURE AND A
12 CALLING BLOCK?

13

14 A. A feature is an optional enhancement to a customer's basic service that
15 the customer chooses to purchase at a set monthly rate. A calling
16 block is a way to prevent a feature from being activated on a per call
17 basis. A review of the tariff illustrates this distinction.

18

19 For ease of reference, attached as Exhibit PAT-5 is a copy of Section
20 A.13.19.4 of AT&T Florida's GSST Tariff. This section refers to the
21 Rates and Charges for TouchStar® Services. The first feature listed,
22 Call Return, allows a customer to place a call to the telephone number
23 associated with the most recent call received "at the touch of a button"
24 and has a monthly recurring rate of \$6.95 or a per activation charge of
25 \$1.25. If a customer chooses to subscribe to the service on a monthly

1 basis, and have unlimited use of Call Return, then they can purchase
2 the feature for \$6.95. If the customer chooses not to subscribe to the
3 service, but periodically wants to activate their Call Return feature, all
4 they have to do is dial *69 and a \$1.25 will be charged to their
5 telephone bill. The scenario of subscribing to a TouchStar® feature on
6 a monthly or per activation basis is the same for Repeat Dialing and
7 Call Tracing. Most telephone lines are equipped to allow the use of
8 TouchStar® features without a customer actually having to subscribe on
9 a monthly basis, which is why there is the per activation charge.

10

11 Alternatively, if a customer wants to ensure that these features are not
12 able to be utilized on their telephone line and thus incur no additional
13 charges, AT&T allows the customer to request a call block, free of
14 charge, which prevents the activation of a feature. This blocking
15 capability is described as "Denial of Per Activation" in Exhibit PAT-5. A
16 customer must request the block be put in place.

17

18 Q. IF A NEW CUSTOMER COMES TO AT&T AND PURCHASES A
19 SINGLE LINE AND REQUESTS TWO OR MORE OF THESE CALL
20 BLOCKS ON THEIR TELEPHONE LINE, WOULD THAT CUSTOMER
21 QUALIFY FOR THE LCCW PROMOTION?

22

23 A. No. Again, call blocks are not features and AT&T would not qualify its
24 own customers for the LCCW promotion if they requested only these
25 call blocks. The entire purpose of a sales promotion is to provide

1 customers with an incentive to purchase additional services at an
2 additional price. The premise of offering promotions from any
3 business's perspective is simple: encourage customers to purchase
4 additional products or services that generate more revenue for the
5 business and the business will give the customer a discount. In this
6 case, AT&T waives the line connection charge.

7
8 It makes no sense to *encourage* the ordering of call blocks because the
9 blocks do not generate any additional revenue. Again, call blocks are
10 simply a mechanism that AT&T provides to customers *at no charge*,
11 and which the customer uses to ensure that users of his/her telephone
12 line do not activate any feature on a per call basis that would incur
13 additional charges on the bill.

14

15 Q. WHAT WOULD A CUSTOMER NEED TO PURCHASE IN ORDER TO
16 QUALIFY FOR THE LCCW PROMOTION?

17

18 A. First, the customer must be a new customer. Once meeting that
19 requirement, the customer must purchase either a packaged local
20 service such as Complete Choice or Preferred Pack or he/she must
21 purchase a local line *and* two features – a feature that has unlimited
22 use and a monthly recurring charge. For example, if a customer, who is
23 initiating service with AT&T also subscribes to Call Return and Repeat
24 Dialing, he/she would qualify for the LCCW promotion. That is, the new
25 customer would order and pay for their local service plan plus an

1 additional \$12.90 per month - \$6.95 per month for Call Return and
2 \$5.95 per month for Repeat Dialing.

3

4 Q. DOES DPI SELL CALL BLOCKS TO ITS OWN CUSTOMERS?

5

6 A. No. dPi neither pays AT&T for call blocks nor charges its end user
7 customers for call blocks. Since neither dPi nor its end user customers
8 pay for call blocking, it is not a "purchased" feature. In the North
9 Carolina proceeding on this same issue, Mr. Bolinger stated that dPi
10 places these blocks on all dPi end user customers' lines to ensure that
11 dPi's customers do not incur per activation charges on their accounts.
12 Mr. Bolinger even stated that it is standard industry practice to put these
13 call blocks in place in the prepaid industry and that many times the end
14 user customer is not even aware that the blocks are in place. (North
15 Carolina Hearing Transcript, p. 83-84.) Thus, dPi customers are not
16 selecting call blocking themselves nor are they purchasing the blocks
17 from dPi. Rather, the blocks are a way that dPi limits its customers' use
18 of their telephone service to serve dPi's own business interests.

19

20 Despite the fact that dPi (and its customers) pays nothing for call
21 blocks, dPi is seeking to use its placement of these blocks on its
22 customer's lines to obtain additional credits (that it does not qualify for)
23 beyond the resale discount for the line. Finally, not only does dPi not
24 pay anything for the block, when it does receive a promotional credit, it
25 does not pass the credit on to its customers. (North Carolina Hearing

1 Transcript, p. 64 and 67.) Thus, dPi's request for credit is just an
2 attempt to receive a windfall by gaming the process.

3

4 **Issue 2(a): Is dPi entitled to any other promotional resale credits from**
5 **AT&T Florida?**

6 (b): If so, in what amount?

7

8 Q. DID MR. BOLINGER OR MR. WATSON ADDRESS WHY THEY
9 BELIEVED DPI SHOULD HAVE RECEIVED CREDITS RELATING TO
10 THE SECONDARY SERVICE CHARGE WAIVER ("SSCW")
11 PROMOTION OR THE TWO FEATURES FOR FREE ("TFFF")
12 PROMOTION?

13

14 A. No. Unlike Issue 1, neither dPi witness offered any explanation for why
15 dPi should receive credit for their invalid requests with respect to the
16 SSCW promotion and the TFFF promotion. As I explained in my direct
17 testimony, AT&T denied dPi's credit requests because dPi failed to
18 meet the qualifications of the promotions at issue. With respect to the
19 SSCW promotion, dPi submitted credit requests on service orders for
20 new customers when one of the requirements for the SSCW promotion
21 is that the customer must be an existing customer. With respect to the
22 TFFF promotion, dPi submitted credit request for customers whose
23 service no longer qualified for the TFFF either because the credit
24 request was beyond the term of the promotion or the customer was an
25 existing customer and the promotion only applies to new customers.

26

1 In addition, before going to hearing in North Carolina, dPi agreed to
2 drop the SSCW promotion and TFFF promotion issues from the
3 complaint proceeding in North Carolina because the issues surrounding
4 those promotional credits were a small portion of dPi's complaint and
5 dPi had been satisfied with AT&T's responsiveness in relation to those
6 issues. Whether dPi will drop these issues in this proceeding is yet to
7 be determined.

8

9 Q. ARE THERE ANY OTHER ISSUES YOU WOULD LIKE TO
10 ADDRESS?

11

12 A. Yes. Considering that the majority of Mr. Watson's and Mr. Bolinger's
13 testimony revolved around AT&T's prior review of dPi's promotional
14 credit request, it is important for AT&T to clarify the record on several
15 key points raised in their testimony.

16

17 First, Mr. Watson (page 5) and Mr. Bolinger (page 3) suggest that AT&T
18 credited CLECs in an unfair manner during 2004. Nothing could be
19 further from the truth. There are several facts that are missing in their
20 statements that are relevant to their assertions.

21

22 In August and September 2004, Lost Key began submitting thousands
23 of promotional credit requests for several different CLECs it
24 represented. These requests covered a six-month to a year backlog of
25 CLEC service orders. AT&T was in the process of working through the

1 voluminous number of requests when Mr. Watson contacted AT&T and
2 requested AT&T to prioritize Budget Phone's credit request and
3 process it as soon as possible. Lost Key's operations had been
4 severely damaged as a result of Hurricane Ivan in September 2004 and
5 Mr. Watson, who is compensated on a percentage basis of how much
6 money he recovers for his clients (see NC Hearing Transcript, p. 50),
7 needed his commission fee in order to continue his business
8 operations.

9
10 So in September 2004, AT&T, assuming that Budget Phone's requests
11 were valid and qualified promotional credit requests, credited Budget
12 Phone almost 100% of the credit Budget Phone applied for. Shortly
13 after issuing the credit, AT&T realized that Budget Phone had received
14 credit for promotions that it did not qualify for, and that many of the
15 promotions that had been submitted by Lost Key on behalf of its CLEC
16 clients during the August and September 2004 timeframe also did not
17 meet the qualifications of the promotions as submitted. AT&T
18 immediately suspended granting credits to *all* CLECs and began
19 reviewing the requests for promotional credits to ensure that the credit
20 request met the terms of the promotion.

21
22 AT&T's only misstep during this time period is that it trusted Lost Key
23 and the CLECs it represented to submit valid promotional credits for
24 which their end users actually qualified. Unfortunately, CLECs,
25 including those CLECs represented by Mr. Watson, took advantage of

1 the system and filed requests for which they did not qualify. At this
2 point, AT&T concluded that it needed to develop a verification system to
3 ensure that proper requests were granted and improper requests were
4 denied.

5

6 Q. DID AT&T DEVELOP SUCH A VALIDATION PROCESS?

7

8 A. Yes. During the September 2004 through February 2005 timeframe,
9 AT&T developed a standard methodology of how to sample the data
10 the CLECs had submitted in order to process the thousands of credit
11 requests that had been submitted by Lost Key in August and
12 September 2004. AT&T implemented the sampling process in March
13 2005 and began issuing credits to CLECs based upon the results of the
14 sampling in April 2005. The process AT&T developed was applied
15 uniformly to all CLECs and any claim or implication of inconsistency is
16 false. Mr. Watson should be aware of this considering that his clients
17 were treated in accordance with this methodology.

18

19 Recently, AT&T undertook an additional review to ensure the validity of
20 the sampling process that was used prior to March 2006, and
21 specifically to validate AT&T's handling of dPi's 2005 promotional credit
22 requests. As discussed in my direct testimony, AT&T reviewed all of
23 dPi's service orders that had not been included as part of the original
24 sample, combined the results of those "not initially sampled" with the
25 "initially sampled" requests and concluded that AT&T had actually over-

1 credited dPi.

2

3 Q. HAS AT&T UNDERTAKEN ANY FURTHER REVIEWS?

4

5 A. Yes. In order to ensure that AT&T has processed dPi's credit requests
6 properly, AT&T has undertaken, and just completed, a review of dPi's
7 January thru March 2006 credit requests as well as dPi's 2004 LCCW
8 promotional credit requests.

9

10 Q. PLEASE PROVIDE A SUMMARY OF THE RESULTS FOR THE
11 JANUARY THROUGH MARCH 2006 DPI PROMOTIONAL CREDIT
12 REQUESTS.

13

14 A. Based upon the same 100% validation methodology used to analyze
15 the 2005 credit requests, AT&T reviewed all of dPi's January through
16 March 2006 service orders that had not been included in the original
17 sample and combined the results of this review with the results of the
18 initial sample.

19

20 Similar to the results from the 2005 validation process that I discussed
21 in my direct testimony, the results for January through March 2006
22 validated the outcome of AT&T's initial sample. When the data from
23 AT&T's recent review was combined with the data from AT&T's initial
24 sample, 67% of dPi's requested credit for January through March 2006
25 did not meet the qualifications for the applicable promotion. Based on

1 AT&T's initial sample, AT&T only denied 64% of dPi's promotional
2 credit request.

3

4 Q. WHAT WERE THE RESULTS FOR THE SPECIFIC PROMOTIONS AT
5 ISSUE FOR THE JANUARY THROUGH MARCH 2006 TIMEFRAME?

6

7 A. With respect to the LCCW promotion, based upon AT&T's initial
8 sample, AT&T denied 71% of dPi's promotional credit requests, but
9 after completing the 100% validation, AT&T determined that 74% of
10 dPi's promotional credit requests failed to meet the qualifications for the
11 LCCW promotion.

12

13 With respect to the SSCW promotion, AT&T's denial rate for both the
14 initial sample and the 100% validation was 88%.

15

16 With respect to the TFFF promotion, AT&T's initial sample denial rate
17 was 8%. After completing the 100% validation review, AT&T
18 determined that the denial rate should have been 6%. Thus, in this one
19 instance, AT&T denied dPi \$15.21 for which dPi qualified.

20

21 Q. WHAT ABOUT THE RESULTS FROM THE 2004 VALIDATION
22 REVIEW?

23

24 A. Using the same methodology, AT&T just completed a 100% validation
25 review of dPi's 2004 LCCW promotional credit requests. Based upon

1 AT&T's initial sample, AT&T denied 52% of dPi's promotional credit
2 requests. As a result of the 100% validation, AT&T determined that
3 71% of dPi's promotional credit requests failed to meet the
4 qualifications for the LCCW promotion.

5

6 Q. DID AT&T PERFORM THE 100% VALIDATION PROCESS ON THE
7 2004 SSCW PROMOTIONAL CREDIT REQUESTS OR THE TFFF
8 PROMOTIONAL CREDIT REQUESTS?

9

10 A. No. AT&T did not perform its 100% validation process on either dPi's
11 SSCW promotional credit requests or dPi's TFFF promotional credit
12 requests because AT&T initially granted dPi a 100% credit for these
13 requests in 2004.

14

15 Q. BASED ON THE VALIDATION RESULTS FROM JANUARY 2004
16 THROUGH MARCH 2006, ARE THERE ANY CONCLUSIONS TO BE
17 DRAWN.

18

19 A. Yes. It is clear from the results that dPi was granted more credit
20 requests than it qualified for. From the multitude of results provided,
21 only once during the time period under review (January 2004 through
22 March 2006) did AT&T's sampling process create a result that favored
23 AT&T over dPi and that result was only a \$15.21 error. In every other
24 instance, AT&T either granted dPi exactly what it deserved to be
25 credited or, in some cases, granted credits to dPi for which it did not

1 actually qualify. Thus, while the sampling process may not have been
2 perfect, the complete review of dPi's credit requests reveals that with
3 one small exception, every error was in dPi's favor.

4

5 Also, it is important to recognize that the process AT&T just validated is
6 the not the process that AT&T is currently using. AT&T developed and
7 has implemented an automated process that reviews 100% of a
8 CLEC's promotional credit requests

9

10 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

11

12 A. Yes. Mr. Watson and Mr. Bolinger attempt to obscure the issues
13 and the facts in this case. This case is not about the process AT&T
14 follows to issue promotional credits to CLECs. The issue is
15 whether dPi is entitled to credits under certain promotions. The
16 answer to that question for the majority of dPi's promotional credit
17 requests, and for all of the requests AT&T denied, is "no". Most of
18 dPi's promotional credit requests did not meet the criteria of the
19 promotion in question and therefore, dPi is not entitled to these
20 credits. AT&T's resale obligation requires that it treat dPi as it
21 treats its own retail end user customers. AT&T has done that.
22 When dPi met the requirements of a particular promotion, AT&T
23 granted dPi the credits it requested. When dPi (and its customers)
24 did not qualify for a promotional credit, AT&T properly denied dPi's
25 request.

1

2 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

3

4 A. Yes.

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AT&T FLORIDA
SUPPLEMENTAL REBUTTAL TESTIMONY OF PAM TIPTON
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 050863-TP
SEPTEMBER 25, 2007

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed Direct Testimony on July 23, 2007 and Rebuttal Testimony on August 20, 2007.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL TO THE TESTIMONIES OF DPI'S WITNESSES?

A. My Supplemental Rebuttal Testimony responds to portions of the Amended Direct Testimony and Amended Rebuttal Testimony of Brian Bolinger and the Amended Rebuttal Testimony of Steve Watson, filed on September 14, 2007, on behalf of dPi Teleconnect, L.L.C. ("dPi").

Q. IN GENERAL, WHAT DO YOU ADDRESS?

A. In previous rebuttal testimony, Mr. Bolinger and Mr. Watson said that they would amend their respective testimonies to include the amounts at issue and the reasons for the denials. They have now done so.

1 However, they also each filed additional testimony on other matters.
2 My testimony is to address these other, newly introduced areas.

3

4 Q. DID MR. BOLINGER ADD ANYTHING IN HIS AMENDED DIRECT
5 TESTIMONY TO WHICH YOU WISH TO RESPOND?

6

7 A. Yes. The changes Mr. Bolinger made to his direct testimony primarily
8 consisted of adding two exhibits, (dPi FL-2 and FL-5), both of which
9 were in dPi's possession prior to the filing of its direct testimony on July
10 23, 2007. Specifically, Mr. Bolinger testified in his prior testimony that
11 "on numerous occasions over this period, BellSouth's employees
12 promised me that these payments would be forthcoming" (amended
13 direct testimony, page 3, lines 17-18). In his latest testimony, Mr.
14 Bolinger added "See dPi's Exhibit FL-5, copies of email
15 communications between the parties on this subject." However, these
16 emails do not support Mr. Bolinger's claim. Specifically, there is no
17 email in which AT&T says that it will credit *all* of dPi's credit requests.
18 In fact, the emails in Exhibit FL-5 support my prior testimony that Lost
19 Key had submitted thousands of promotional credit requests and it was
20 taking AT&T Florida an extended period of time to validate all of the
21 submitted promotional credit requests. The exhibit shows that AT&T
22 Florida was in contact with Lost Key in October 2004, February 2005
23 and April 2005 and that AT&T Florida had specifically told Lost Key that
24 it would take time to process the volume of requests Lost Key had
25 submitted. No where in the exhibit does it show that AT&T Florida told

1 Lost Key or dPi that it would be crediting all of dPi's promotional credit
2 requests.

3

4 Q. ARE MR. BOLINGER'S (ON PAGES 3, LINE 24 THROUGH PAGE 4,
5 LINE 5) AND MR. WATSON'S (ON PAGE 7, LINES 9-16))
6 DESCRIPTIONS OF LOST KEY'S INVOLVEMENT IN DEVELOPING
7 AT&T'S APPROVAL PROCESS ACCURATE?

8

9 A. No. dPi played no role in developing AT&T's approval process. Also,
10 at no time did Lost Key submit *test batches* of promotional credit
11 requests that were approved. In fact, there were never any test
12 batches sent by Lost Key. The only thing that Lost Key asked AT&T to
13 review was the format of how it intended to submit promotional credit
14 requests. It was this form that AT&T evaluated and agreed would
15 satisfy the submission process. Lost Key then simply submitted
16 thousands of promotion credit requests within a 60-day period and
17 inundated AT&T with these requests. Never during this time frame did
18 Lost Key submit "small batches" of requests to AT&T in order to
19 determine if the orders qualified for the LCCW (or any other) promotion.

20

21 Q. HOW DO YOU RESPOND TO MR. BOLINGER'S (PAGE 4 LINES 4-5)
22 AND MR. WATSON'S (PAGE 7, LINES 9-16) CONTENTIONS IN
23 THEIR RESPECTIVE AMENDED REBUTTAL TESTIMONIES THAT
24 OTHER CLECS RECEIVED CREDITS FOR REQUESTS LIKE THOSE
25 SUBMITTED BY DPI?

1 A. Mr. Bolinger and Mr. Watson both argue, in effect, that because one
2 CLEC received invalid credits that it was not entitled to that dPi should
3 also receive credits for similar invalid requests. It's similar to a person
4 standing in line at a soft drink machine, who watches another person
5 put a dollar in the machine, then get his drink plus \$100.00 in quarters
6 as change. It would be ridiculous for the person waiting his turn to
7 argue that he, too, is entitled to \$100.00, but this is analogous to dPi's
8 position. When dPi submitted valid requests, those credit requests
9 were paid. dPi has no entitlement to a windfall, just because some
10 other CLEC may have had credit requests paid before AT&T
11 discovered that they were invalid.

12

13 The fact is that most of dPi's promotional credit requests do not qualify
14 for the promotion at issue and AT&T has the right to deny such
15 requests. dPi has submitted invalid requests and should pay AT&T the
16 outstanding balances that it owes. dPi's "unfairness" argument has no
17 merit.

18

19 Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL
20 TESTIMONY?

21

22 A. Yes.

23

1 BY MR. CARVER:

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

4 A Yes. And I apologize in advance because a lot of
5 this we have heard a lot about this morning, but I would like
6 to provide a summary to you.

7 ILECs are obligated to make their retail offerings
8 available to CLECs for resale at Commission-prescribed
9 discounts. And pursuant to the interconnection agreement
10 between AT&T and dPi, where available for resale, promotions
11 will be made available only to end users who would have
12 qualified for the promotion had it been provided by AT&T
13 directly.

14 As you heard in testimony this morning and this
15 afternoon, the dispute is about the promotional credits
16 available for resale under the parties' interconnection
17 agreement. And what it really boils down to is which of dPi's
18 accounts actually qualify for those promotional credits.

19 As you've also heard a little bit about earlier
20 today, there are three promotions at issue in this complaint
21 and I'd like to describe them briefly.

22 The Line Connection Charge Waiver promotion is
23 available only to a reacquisition or winover customer and it
24 requires that the customer purchase a basic service and at
25 least two features. This promotion, as we've heard, is the

1 lion's share of what's at stake in this particular complaint.

2 Second is the 1FR plus two features for free. This
3 is also only available to reacquisition or winover customers.
4 And it's when a customer purchases basic service, they can get
5 two features for free for up to 12 months.

6 And then third is the Secondary Service Charge Waiver
7 which is only available to existing customers, and it applies
8 when certain changes are made to that existing customer
9 account.

10 For the Line Connection Charge Waiver promotion, dPi
11 alleges that the blocking or the restriction of certain feature
12 capabilities for which there is no charge somehow counts as a
13 purchased feature under AT&T's promotion. We've heard a lot
14 about what the differences are between a feature and a block,
15 and I'll make my attempt to bring a little bit more clarity,
16 but I really think there's been too much focus on the
17 difference between feature and block. It's really about what's
18 been purchased.

19 Generally speaking, a feature creates functionality.
20 So Mr. Carver this morning referenced the Call Return, which is
21 *69, which creates the functionality of returning a call that
22 was just missed. In this complaint the blocks that are in
23 question are considered a denial per use of a feature.

24 Well, let's spend a minute talking about promotions
25 and how all this fits together. The whole idea of a promotion

1 is to entice customers to purchase more services that generate
2 more revenues. AT&T's consumer promotions typically provide
3 customers an incentive to purchase additional services that are
4 revenue producing services in exchange for a discount.

5 Despite the fact that AT&T's Line Connection Charge
6 Waiver promotion requires the purchase of basic service and at
7 least two features, dPi's position is that the free blocks or
8 denial per use that it places on practically every customer
9 request somehow qualifies. These are not features that have
10 been purchased, thus they do not qualify for the Line
11 Connection Charge Waiver promotion and cannot be permitted to
12 qualify for the request for credit that dPi seeks.

13 This morning you also heard some testimony from
14 Mr. Bolinger and Mr. Watson, and unfortunately I need to say
15 that they have in my opinion grossly misrepresented both the
16 timeline and the facts associated with how BellSouth or AT&T
17 has processed and granted their requests. This is explained in
18 my rebuttal testimony. And as we go through the
19 cross-examination, I will try to set the record straight on
20 some of that.

21 But more importantly is the intent behind our
22 actions. And in 2004 I want to be very clear that there was no
23 process in place at all to review and audit requests that came
24 in from CLECs regardless of who it was from. And any
25 representation that that took place prior to March of 2005 is

1 erroneous. It's unfortunate that we did not have a business
2 process and in hindsight it probably was not a very good
3 business decision, but the fact is it didn't exist. And when a
4 very large, significant submission was made in August of 2004,
5 it frankly raised a red flag: Are we following the appropriate
6 steps as a business to scrutinize that these are valid? And it
7 took some time and albeit perhaps too much time to develop the
8 right process to ensure that we were providing service at
9 parity to our CLEC customers as we were providing to our retail
10 customers. And I'll get into more of that as the
11 cross-examination goes, but I felt it was very important to set
12 the record straight there.

13 That concludes my summary. Thank you.

14 MR. CARVER: The witness is available for
15 cross-examination.

16 COMMISSIONER McMURRIAN: Commissioner Argenziano.

17 COMMISSIONER ARGENZIANO: I have a few questions, if
18 it's the right time.

19 COMMISSIONER McMURRIAN: Sure.

20 COMMISSIONER ARGENZIANO: And there may be some more
21 as we go along.

22 Thank you. I appreciate that, Ms. Tipton. Let me
23 ask you this, let me go back to features and the blocking.

24 THE WITNESS: Uh-huh.

25 COMMISSIONER ARGENZIANO: Okay. Is a feature a

1 blocking? Is that the same, one and the same or not?

2 THE WITNESS: Well, earlier we looked at pages from
3 the tariff, and what I would describe to you are the names of
4 the actual features are the items on the tariff pages that have
5 a capitalized letter next to them. So I don't recall if you've
6 still got the tariff pages that were handed out to you.

7 COMMISSIONER ARGENZIANO: Unfortunately I have tariff
8 pages for like many, many different years.

9 THE WITNESS: For days?

10 COMMISSIONER ARGENZIANO: So maybe the ones that
11 apply to the time that dPi was utilizing whatever language was
12 on at that time that they felt that they were due the promotion
13 benefit.

14 THE WITNESS: Yes. Attached to my direct testimony
15 as PAT-2 are the tariff pages as they were in effect as of the
16 day when my testimony was filed, which was July of 2007, and
17 that time period is certainly covered in this complaint. Now
18 what you'll notice and will perhaps help clarify some questions
19 first before I answer you directly is in the upper right-hand
20 column of every tariff page is an effective date.

21 COMMISSIONER ARGENZIANO: Right.

22 THE WITNESS: And you'll see a different date per
23 page. And that's because language might be changed from time
24 to time, features or language might be added or deleted. And
25 typically when there is a change filed, there's an action code

1 to the right that indicates. Unfortunately I don't know what
2 all those mean. But I do recall -- I think C might mean
3 change, but I don't know any of the others. So what's attached
4 to my testimony reflects what was in effect as of July 2007.
5 So if you will --

6 COMMISSIONER ARGENZIANO: Okay. But may I interrupt
7 here?

8 THE WITNESS: Yes.

9 COMMISSIONER ARGENZIANO: As of 2007. But wasn't the
10 time frame that dPi is talking about back in 2004? So then
11 what's the relevancy of you giving me the, the 2007?

12 THE WITNESS: Okay. And actually -- sorry, I gave
13 you the wrong reference. PAT-2 is the promotional pages.
14 PAT-5 is actually the TouchStar features section, which
15 directly gets at your earlier question.

16 COMMISSIONER ARGENZIANO: Okay. And if you would
17 tell me your answer to that question: Is a block a feature?

18 THE WITNESS: It depends. So if you look under --

19 COMMISSIONER ARGENZIANO: I'm not a lawyer.

20 THE WITNESS: Yeah.

21 COMMISSIONER ARGENZIANO: So to me legalese doesn't
22 go. It depends on -- and I don't mean it that way. I just, I
23 don't -- what I need is a real definitive answer.

24 THE WITNESS: Okay. If you'll turn with me to
25 Page -- if you have my exhibit, that's probably the easiest way

1 to refer you. It's my Exhibit PAT-5. And at the bottom
2 right-hand corner it says Page X of X. And if you'll go to
3 Page 4 of 15. Excuse me.

4 COMMISSIONER ARGENZIANO: I'm probably on the wrong
5 page here. PAT -- hang on one second. I am on the wrong one.
6 Okay. And what page again, please?

7 THE WITNESS: Page 4 --

8 COMMISSIONER ARGENZIANO: 4 of 15.

9 THE WITNESS: -- of 15.

10 COMMISSIONER ARGENZIANO: Okay. I need glasses for
11 this.

12 THE WITNESS: Oh, okay. Yeah. It is kind of small.

13 COMMISSIONER ARGENZIANO: Go ahead.

14 THE WITNESS: The alpha, capital E, Call Block, that
15 is the name of an actual feature called Call Block. And then
16 underneath it you'll see it describes this feature, provides
17 the customer the ability to prevent incoming calls from up to
18 six different telephone numbers. So in this case the item
19 referenced at capital E is in fact a feature that is named Call
20 Block. However, what is at issue in this complaint, if you'll
21 permit me to use this term, we've, we've, kind of all of us,
22 AT&T, dPi as well, use the slang term "block" because it is
23 something that prevents something from happening. So if you
24 block the doorway, you're preventing someone from going through
25 the door. But you won't see the term "block" used in this

1 tariff in terms of the Call Return feature, which is one of the
2 features that's really at issue in this case.

3 So you heard Mr. Bolinger refer to the HBR, the BRD,
4 the HBC USOCs. Those are actually denials per use of an actual
5 feature. They are not in and of themselves features. So if
6 you'll turn back with me to Page --

7 COMMISSIONER ARGENZIANO: Go ahead.

8 THE WITNESS: -- Page 1 of 15 of that same exhibit.

9 COMMISSIONER ARGENZIANO: Uh-huh.

10 THE WITNESS: You'll see the capital letter A. Call
11 Return is the name of the feature. And you'll see there it
12 says, "This feature enables a customer to place a call to the
13 telephone number associated with the most recent call
14 received." So the name of the feature here is called Call
15 Return.

16 Now I'm sorry to take you all the way through my
17 exhibit, but then if you'll now flip with me to Page 12,
18 actually Page 11 of 15, this takes you to the rates and charges
19 section associated with each of the features. So you'll see at
20 the bottom of the page again capital letter A for residential
21 and then number one is Call Return. That's the name of the
22 feature.

23 Underneath that is a small letter a that begins
24 describing the rates and charges associated with the feature
25 called Call Return. And you'll have to turn to the next page

1 to see the small letter c where the denial of per activation is
2 listed.

3 COMMISSIONER ARGENZIANO: Okay. Can I ask you a
4 question?

5 THE WITNESS: Uh-huh.

6 COMMISSIONER ARGENZIANO: Go back to 11 of 15 under
7 A.

8 THE WITNESS: Uh-huh. Under A.

9 COMMISSIONER ARGENZIANO: Number 8 under Calling
10 Number Delivery Blocking. Isn't that considered a TouchStar
11 service?

12 THE WITNESS: Calling Number Delivery Blocking. I'm
13 sorry. On which page?

14 COMMISSIONER ARGENZIANO: 11 of 15.

15 THE WITNESS: Oh, up under 13.19.3; right?

16 COMMISSIONER ARGENZIANO: Right. Isn't Call Blocking
17 just considered a feature?

18 THE WITNESS: That number nine is what you're
19 referring to?

20 COMMISSIONER ARGENZIANO: Yeah. Eight and nine
21 and --

22 THE WITNESS: Eight and nine. Okay. Eight and nine
23 are just like the one I pointed out to you earlier that is like
24 Call Block. Yes, that is also a feature.

25 COMMISSIONER ARGENZIANO: Okay. What is the

1 difference in your opinion of what dPi is telling me is a Call
2 Blocking, is a feature, which they believe enables them to
3 benefit from the promotion? I can't, I don't hear -- I hear --
4 I'm not sure what the difference is. To me if Call Blocking is
5 a feature, well, then maybe they are right, and I'm trying to
6 get from you why they're not.

7 THE WITNESS: Right. And at the very beginning of
8 my, or in the middle, I guess, of my summary I said, I believe
9 this, that there's been so much focus on the definition of
10 feature versus the block, and we've used the term "block" in
11 slang terms. What we really should have been calling it is
12 denial per use.

13 COMMISSIONER ARGENZIANO: Okay.

14 THE WITNESS: That being said, what is at issue is
15 whether features were purchased. And when you purchase
16 something, you pay for it.

17 COMMISSIONER ARGENZIANO: But now -- Madam Chair, if
18 I may. But going back to the change in tariff as indicated
19 that there was a ten-day, we understand there's a mistake and
20 we removed some language that said that the TouchStar features
21 were included. So if it was just as you say, then why remove
22 the language if it meant just purchasing? What I'm trying to
23 figure out is if that tariff within that ten days had the
24 language of TouchStar features but then was also indicated to
25 dPi or whoever the gentleman was, I'm sorry, that this was an

1 error, then for that ten days wouldn't dPi be allowed those
2 promotions because of that language that was in there as
3 TouchStar features?

4 THE WITNESS: Yeah. And unfortunately --

5 COMMISSIONER ARGENZIANO: But just ten days.

6 THE WITNESS: Yeah. I didn't have Mr. Watson's
7 testimony before me while he was testifying, so I'm going from
8 recollection. And if someone would like to show me
9 specifically what exhibit -- what I recall was being discussed
10 was a screen shot from our website, not a tariff.

11 COMMISSIONER ARGENZIANO: No. There's a tariff in my
12 hand that indicated -- and I believe, and somebody needs to
13 correct me if I'm wrong, that that was corrected within ten
14 days on that tariff. Madam Chair.

15 MR. CARVER: The discussion was about a screen shot,
16 which was FL-3. That was not a tariff. That was a promotion.

17 COMMISSIONER ARGENZIANO: Okay.

18 MR. CARVER: And may I take a copy of it to the
19 witness?

20 COMMISSIONER ARGENZIANO: But also wasn't there
21 something on the tariff that was corrected?

22 MR. MALISH: I think I have it here.

23 COMMISSIONER ARGENZIANO: From December 26th, 2004,
24 that originally had TouchStar features included and then was
25 changed on the 26th of 2004 to say that, let's see,

1 PreferredPack service or basic service and two features will be
2 waived instead of TouchStar features? Is that correct?

3 Indicating to me that the company realized there was a mistake.

4 MR. CARVER: I'm not familiar with that. The witness
5 may know the answer.

6 THE WITNESS: Yeah. What I thought was being
7 referenced was an exhibit to Mr. Watson's testimony. And if
8 you don't mind, Mr. Malish, would you please scoot the page
9 over so that that longer column of text -- go to the very
10 bottom of that page.

11 COMMISSIONER McMURRIAN: If it helps any, and it may
12 just muddy it more, there were two different exhibits under
13 Mr. Watson's testimony. One was a tariff. It was dPi FL-2 was
14 a copy of the tariff, a part of the tariff. And dPi FL-3 was
15 the other part, was the Web site that he was referencing. I
16 don't know if that helps, Commissioner, but --

17 MR. CARVER: May I show her the exhibit?

18 COMMISSIONER McMURRIAN: Sure.

19 THE WITNESS: And so, Mr. Malish, since you've got it
20 up on the screen, do you mind moving the, sliding the paper
21 upwards so that you can see the bottom of the long text? And
22 do you mind zooming in on that text at the very bottom, the
23 part that begins "The customer must switch their local
24 service." Thank you.

25 And this bullet that I'm referring to says, "The

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

5 So the tariff page does in fact reference custom
6 calling and TouchStar features. So I just wanted to be clear
7 it wasn't that the tariff page didn't reference TouchStar
8 features.

9 COMMISSIONER ARGENZIANO: Okay. That's from
10 12/26/04. I believe that dPi had testified before that there
11 was a prior tariff or there was an additional tariff that then
12 removed the TouchStar. And then if you can elaborate again on
13 the promotion that was -- I'm trying to figure out where the
14 correction was made, if it was made on the tariff and the
15 promotion and what time frame that was.

16 THE WITNESS: It's my understanding that the mistake
17 was made on our website, not on the tariff. That there was a
18 website listing -- generally our website will have general
19 information about what was available at the time throughout the
20 nine BellSouth states.

21 COMMISSIONER ARGENZIANO: Okay. And if I can, if it
22 was a mistake on the website, what was the differences between
23 the tariff at that time and the website?

24 THE WITNESS: My understanding is the tariff
25 referenced two features, the Web site referenced one.

1 COMMISSIONER ARGENZIANO: And did the tariff at that
2 time indicate the TouchStar?

3 THE WITNESS: Yes.

4 COMMISSIONER ARGENZIANO: Okay. Now we get back to
5 that. The TouchStar then, you're saying that TouchStar does
6 not include the Call Blocking --

7 THE WITNESS: Yeah. Let me see if I can --

8 COMMISSIONER ARGENZIANO: -- as a feature?

9 THE WITNESS: No.

10 COMMISSIONER ARGENZIANO: I'm sorry. I'm trying to
11 really get it clear in my mind.

12 THE WITNESS: That's okay. No. I understand. I
13 understand. I mean, you know, we've all -- some of us have
14 been in telecom an awfully long time. And if you haven't,
15 these tariffs are just gibberish, and actually they're
16 gibberish to some of us who have been in telecom for a long
17 time.

18 If I can take you back to PAT-5, which is the section
19 in the tariff which describes the TouchStar features.

20 COMMISSIONER ARGENZIANO: Which page?

21 THE WITNESS: It was my entire Exhibit PAT-5.

22 COMMISSIONER ARGENZIANO: Okay. Uh-huh.

23 THE WITNESS: And the way that our tariff is
24 generally set up, it will have a section which provides the
25 definition of the feature, the service offerings to speak in

1 generic terms. Okay? In this particular section the
2 definitions of the service offerings says definitions of
3 feature offerings, and that's at A13.

4 COMMISSIONER ARGENZIANO: I've got it.

5 THE WITNESS: Okay. So then everything, every item
6 that you see with a capital Alpha next to it is the service
7 name for our features that are considered TouchStar features
8 under this particular tariff. So if it has a capital letter,
9 you can call it a feature under this tariff. So that's kind of
10 step one.

11 COMMISSIONER ARGENZIANO: If it has a capital letter.

12 THE WITNESS: Yeah. So A is Call Return. And then
13 you turn the page and you'll see Section A continues onto the
14 next page, and then you'll see B, capital B. The next feature
15 is called Repeat Dialing and that's the name of a feature. And
16 then the next page you'll see the capital C, and that would be
17 Call Selector. And I won't keep going, but you get the idea.

18 COMMISSIONER ARGENZIANO: But now let me ask you, if
19 I may, on the AT&T Complete Choice plan you list as a feature
20 Call Blocking.

21 THE WITNESS: Uh-huh.

22 COMMISSIONER ARGENZIANO: Or Anonymous Call Blocking.
23 And is -- I mean, I would take that as a feature. And then
24 looking back at your definitions of feature offerings, I have
25 to read through the whole thing to understand.

1 THE WITNESS: Yeah. I mean, there are certainly
2 features in the tariff that have the word "blocking" as a part
3 of their service name because part of what that feature does is
4 to create a block. Now what's at issue in this particular
5 complaint is simply whether there was a purchase of features.
6 And AT&T has considered the purchase of a feature to
7 contemplate that a charge was paid. That when a service order
8 came in to initiate the service, there was a code on that
9 request that said I'm requesting this service that I intend to
10 pay for on a monthly recurring basis. That's called a
11 subscription. So they're subscribing or purchasing that
12 particular service. And the way that our promotions have been
13 designed contemplates that these, that the features that
14 qualify under the promotion have a charge associated with them.

15 We are obligated under, I believe, Florida Statute,
16 but I'm sure it's under Commission rules that we cannot offer
17 our services below cost. So I'm actually pretty certain that
18 staff is familiar -- we have to be ready any time we offer a
19 promotion to provide the evidence that this promotion is not
20 being offered below cost. So there's always a cost analysis
21 that's performed associated with every promotion. And our
22 promotions are designed, this Line Connection Charge Waiver
23 promotion at issue is designed with a clear contemplation that
24 the features are, number one, purchased and that they have a
25 charge associated with them.

1 COMMISSIONER ARGENZIANO: Okay. And my last question
2 is, so then the error, if there was one made, was on the
3 website.

4 THE WITNESS: Yes.

5 COMMISSIONER ARGENZIANO: But you do not feel there
6 was an error in the tariff --

7 THE WITNESS: No.

8 COMMISSIONER ARGENZIANO: -- or the promotion itself.
9 Well, the promotion on the website, there was an error, but not
10 on the tariff.

11 THE WITNESS: That's correct.

12 COMMISSIONER ARGENZIANO: The tariff you're saying
13 basically tells you that's not part of the features that we
14 have in this promotion.

15 THE WITNESS: That's correct. And just to clarify, I
16 mean, there have been occasions over the past however many
17 years where a slightly different version of a promotion might
18 run in one state versus another state. And I can't really
19 address the reasons for that, but they could be different.

20 COMMISSIONER ARGENZIANO: Right. Okay. Thank you.

21 COMMISSIONER McMURRIAN: Commissioner Skop.

22 COMMISSIONER SKOP: Thank you, Madam Chair.

23 Ms. Tipton, I have some questions along the same
24 lines of Commissioner Argenziano. I thought she raised some
25 excellent points.

1 Starting with Page 1 of -- and I just want to go
2 through this again briefly to clarify my thoughts to make sure
3 I understand the scope of your testimony. But under PAT-5,
4 Page 1, under the first description of TouchStar service it
5 defines what TouchStar service is.

6 Moving to -- and I think the example that you used on
7 Page 2 was Call Return as one of the features that you can
8 subscribe to for purchase. And correct me if I'm wrong. I
9 don't want to put words in your mouth.

10 THE WITNESS: Yes. That's correct.

11 COMMISSIONER SKOP: And at the bottom of that feature
12 it talks about something where this usage option can be
13 restricted at the customer's request at no charge. And I
14 think -- or if I can understand correctly, I think part of the
15 problem here is the term "block" --

16 THE WITNESS: Yes.

17 COMMISSIONER SKOP: -- is being used interchangeably
18 for two different things to the extent that, one, it's not
19 really a block in the instance that I just stated but more of a
20 restriction or a denial of the feature or use of the feature or
21 you're denied access to use the feature. Is that --

22 THE WITNESS: That's correct.

23 COMMISSIONER SKOP: Okay. And then moving on to
24 Page 4 where you use the feature known as Call Block, that's
25 used in a different context. That's used as a feature, I

1 think, available for purchase, as a subscription; is that
2 correct?

3 THE WITNESS: That is correct.

4 COMMISSIONER SKOP: Okay. And then moving on, I
5 think, to Page 12 where the, that Call Block feature is
6 identified in terms of the rates under line item A(5), that
7 actually shows the rate that a consumer would have to pay per
8 line for that feature; is that correct?

9 THE WITNESS: That's correct.

10 COMMISSIONER SKOP: Okay. And then moving back to
11 the prior page on Page 11, I think Commissioner Argenziano
12 raised an excellent point on this one. Because I actually had
13 it highlighted here earlier in the day because I was trying to
14 figure this out myself. Because, again, I think part of the
15 issue is blocking is used loosely, interchangeably for two
16 different contexts and that causes confusion, at least on my
17 part.

18 But under line item eight where it says Call Number
19 Delivery Blocking, if you read all of that, that, that's
20 typically not available to any given customer, I think. It's
21 more for domestic violence. There has to be some prerequisite
22 to go with that like domestic violence or private domestic
23 abuse and law enforcement like to protect -- like if I were a
24 law enforcement officer, you know, I'd want to keep my number
25 private or something like that, or if I were a domestic abuse

1 victim, I might be able to protect my number that way. So --
2 or as a Commissioner, yeah. I have enemies. (Laughter.) So I
3 just wanted to kind of clarify that point.

4 Because to me I looked at that as, okay, is that a
5 feature? And I think at first look it's kind of misleading
6 because, at least I was misled because I was like, "Oh, okay.
7 Yeah. This is simple. I understand it. It kind of supports
8 dPi's argument." But then upon a further reading I was kind of
9 like, "Well, does that really mean a feature in the sense that
10 it's available to everyone?"

11 So moving on from that, the only other question that
12 I had for you, you mentioned that there was a mistake on the
13 website. And I need to clarify in my mind, because dPi raised
14 a good point, I think Commissioner Argenziano raised an
15 excellent point, is that, you know, if there's an ambiguity
16 there and it's for a finite period of time until something gets
17 corrected, then, you know, maybe the tie goes to the runner or
18 something.

19 But I'm looking at Page, I think, 2 because this was
20 the one I was familiar with and I think it was used in the dPi
21 example. If you look on Page 2 for the Call Return feature.

22 COMMISSIONER ARGENZIANO: Of PAT-5?

23 COMMISSIONER SKOP: PAT-5. Yes, ma'am. And then
24 move back to the rates for that feature, which I think began on
25 Page 11, which is the, at the bottom there for Call Return, the

1 monthly rate is \$6.95 and that's for the feature. But if you
2 flip the page and go to Page 12 under line item (c), denial per
3 activation, there's no charge, which is consistent with what we
4 read on Page 2.

5 But what concerns me is the footnote because the
6 footnote speaks to features. And so, again, loose language
7 kind of makes things even more confusing. But I just think
8 that, you know, you mentioned that the mistake was on the
9 website. But how would you explain perhaps the features used
10 in context of something that's not a feature? Because, I mean,
11 denial of per activation, I mean, is arguable because, again,
12 that's like a blocking that's being used synonymously for
13 something else or interchangeably for something that's really a
14 denial or restriction maybe. I don't know. It depends on
15 whose side you're, you're buying into here. But when you look
16 at the footnote, then it talks about a feature. So it becomes
17 like a circular argument, which, you know, again, we're dealing
18 with \$68,000 and you'd hope that people would be able to
19 resolve this. But, you know, it's left to us to resolve, so
20 I'm trying to work my way through the process.

21 And it does seem that in places, you know, you can
22 argue in support of certain arguments and other arguments, so
23 those kind of fail because of ambiguities. So, again, I'm
24 trying to work myself through this. So if you could just
25 explain that. Because I think we've kind of -- at least you've

1 described that the word "block" can be used interchangeably or
2 is used interchangeably. And, again, and I'm babbling, but the
3 feature part on that footnote, I need some clarification on
4 that, please.

5 THE WITNESS: Okay. Sure. I'll first start by
6 saying that I think there certainly is some ambiguity in the
7 tariff, and that's always, it's been an issue as long as I've
8 been with the company, which has been 20 years. And the folks
9 that write the tariffs are not necessarily the ones that design
10 the promotions. So the best way for me to answer -- well,
11 first of all, I've actually asked this question of the folks on
12 the retail side of the house. I'm on the wholesale side of the
13 business and so my customers are CLECs and interchange carriers
14 and wireless carriers.

15 And so the retail folks, this is their tariff. And
16 when I asked them about this, the response I got from the
17 tariff person was, "Oh, well, that footnote was really
18 referring to the actual feature." And I said, "Well, you've
19 got to admit it's a little misleading."

20 And the tariff writers, again, are not the people
21 writing the promotion. The people writing the promotion are
22 marketing people. And when they see, they're talking about a
23 feature, they're talking about something that's available for
24 purchase. And so I'm not sure that I can clearly answer, you
25 know, I'm not sure that I can clearly say that you're right or

1 you're wrong. What I can tell you is the intent behind the
2 promotion itself, the way that it's defined internally, and the
3 support that has gone into the cost analysis, if you will,
4 about what the feature intends to have available.

5 COMMISSIONER SKOP: And thank you. And I appreciate
6 you addressing that head-on instead of being evasive. I mean,
7 it was -- again, I just think that's a good thing to address
8 that and have that candor.

9 The only other question I had, and I think my
10 colleague Commissioner Argenziano has a follow-up, but on the
11 PAT-1, Page, Page 1 of 1, the footnote attachment that we were
12 handed earlier that turns about a footnote. And Chairman
13 Carter, he's not with us today, but he likes to talk about the
14 famous legal footnotes, how they come back to haunt us. But
15 this footnote here, Footnote 2, "Where available for resale,
16 promotions will be made available only to end users who would
17 have qualified for the promotion had it been provided by
18 BellSouth directly."

19 I need to know two things on that footnote. First
20 and foremost, I need your interpretation of the footnote. Is
21 that to mean that the promotion has to flow down to the end
22 user, like the intent behind that footnote? But, secondly,
23 when was that footnote put in there? Because I think that's
24 also instructive to the things we need to sort out. Because if
25 this was a remedial footnote, then, you know, the timing and

1 how staff is going to look at this is all going to play a
2 factor in how we're able to sort this out.

3 THE WITNESS: Let me address your second question
4 first. This note is a part of the effective interconnection
5 agreement that governs the period of time of the complaint.
6 And it would -- once an agreement is negotiated it is not
7 modified except by formal amendment. And so it has been a part
8 of the resale attachment to the interconnection agreement and
9 in force for the whole term of that. I do not happen to know
10 without talking to the CLEC negotiations team specifically when
11 the agreement was executed and when it expired. I know that
12 sometime in between when the complaints got filed and where we
13 stand today, excuse me, that a new agreement has been reached
14 between the parties. So I, I don't -- perhaps counsel or one
15 of the witnesses for dPi could actually address that
16 specifically, but I don't know the actual dates.

17 COMMISSIONER SKOP: I guess staff will sort that one
18 out for us in the posthearing. But, again, if you had to
19 interpret Footnote 2, could you, could you give your opinion as
20 to what the footnote means in terms of the intent of the
21 promotions and who's supposed to benefit from them?

22 THE WITNESS: Certainly. I will tell you that
23 there's really two important things. The first is my personal
24 interpretation. And, again, I wasn't the drafter and I'm not
25 going to profess to being an attorney because I'm not. But

1 when I read this footnote and studied it and talked with the
2 product management folks, the intent is that the end users for
3 the reseller seeking credit under a promotion must be, must
4 have qualified by the end user's request the same as if they
5 were our end user directly. Meaning that end user requested
6 the service that qualified under the promotion, whatever that
7 promotion is, in order for them to qualify as a customer of the
8 reseller.

9 COMMISSIONER SKOP: Okay. And just one brief
10 follow-up. So in that same regard or to your point, in terms
11 of end user, would dPi be considered the end user?

12 THE WITNESS: No.

13 COMMISSIONER SKOP: Thank you.

14 COMMISSIONER ARGENZIANO: Madam Chair.

15 COMMISSIONER McMURRIAN: Go ahead, Commissioner
16 Argenziano.

17 COMMISSIONER ARGENZIANO: Thank you. To that point,
18 Number 2, "Where available for resale, promotions will be made
19 available only to end users who would have qualified for the
20 promotion had it been provided by BellSouth directly." Isn't
21 that contrary to the federal law that I heard earlier today
22 saying that the promotion should go down evenly this way?

23 THE WITNESS: Well, I couldn't really see the diagram
24 that Mr. Malish was showing because I was in the back of the
25 room.

1 COMMISSIONER ARGENZIANO: Well, basically it said
2 that here's AT&T offering a promotion to its retailers and the
3 retailers would get that benefit and that it should also be
4 provided to dPi. And I'm not sure that's correct. That's just
5 what was presented to me. Should be presented to dPi and then
6 to their, who they're reselling it to. And this seems contrary
7 to the federal law. I don't know if you know. Maybe someone
8 else can answer that.

9 But before we do that, let me ask Ms. Tipton
10 another question. Intent is great, but how would dPi know that
11 if it's ambiguous? So my point is and I think that, you know,
12 there's -- dPi may want to take advantage of that beyond the
13 ten-day correction, which I think is wrong. I don't think you
14 have a right to that in my opinion. I don't know, but I need
15 more information.

16 What I'm trying to figure out, within that ten days
17 that it was not corrected, to me it seems like the intent that
18 you say may have been there doesn't mean too much to a company
19 who may have taken it at face value because it is ambiguous.
20 Do you, do you agree with that or do you -- I don't know if
21 that's right to ask or not, to be honest with you.

22 THE WITNESS: Let me address your -- I think I've got
23 two questions here and I need to go back and clarify. The
24 mistake that was made on the, on the Web page was whether it
25 required the purchase of one feature versus the purchase of two

1 features. And I cannot say with 100 percent certainty, but I
2 can say with a pretty significant amount of certainty that dPi
3 does not place orders with only one element on it. So it
4 wouldn't have qualified for this supposed promotion with one
5 feature for many of its orders anyway, even if just for ten
6 days.

7 COMMISSIONER ARGENZIANO: Madam Chair. Unless the
8 Call Blocking, which you offer on your, I forgot what it's
9 called, customer care provisions or whatever it is, unless
10 they're considering Call Blocking a second feature.

11 THE WITNESS: Correct. Now I want to go back and
12 address your intent question.

13 COMMISSIONER ARGENZIANO: Okay.

14 THE WITNESS: As I mentioned in my summary, we flat
15 out didn't have a business process in place to audit or review
16 the requests that were submitted by any CLEC, not just dPi.
17 And in the August of 2004 time frame there were over 100,000
18 telephone numbers submitted, requests for credit. That's an
19 overwhelming number.

20 COMMISSIONER ARGENZIANO: Right.

21 THE WITNESS: And I would like to characterize,
22 recharacterize what happened because dPi is alleging that we
23 have either, we've inappropriately, we've treated them unfairly
24 and we've done it on purpose. And during that time frame
25 Christy Siegel was the Resale Product Manager and Christy had

1 been in that role for less than a year. And she received this
2 massive number of credits, the significance of which had not
3 ever been submitted to what was BellSouth at the time. And she
4 relayed to me that she received a call from Mr. Watson. It was
5 right after one of the hurricanes had hit the Panhandle. I
6 cannot recall which one. And he conveyed to her, "Christy, my
7 business has been destroyed and I need you to please process
8 the credit requests for Budget Phone posthaste," and she did.
9 And when she processed it, she realized this is -- something,
10 something just doesn't sit right. And as a manager in the
11 business she had an obligation to at least ensure that what she
12 was returning to the CLECs was valid. She had not checked
13 that. And so Mr. Bolinger made it feel like she had this
14 violent reaction and that was bad and she went about trying to
15 find a way to deny credits. That is not at all what happened.

16 COMMISSIONER ARGENZIANO: And, Madam Chair, if I may.
17 I will not even -- I'm not even suggesting that. I understand
18 what you're saying is defending against what dPi said. But
19 let's put that aside. In my mind right now, let's say forget
20 intent, it was done on purpose or whatever, if it's ambiguous
21 and you have a sloppy plan in place where you don't verify what
22 your promotion is, and, I'm sorry, but that's what it seems
23 like to me, but you did get it once you realized that, oh, my
24 God, we have to, we have to have some verification and maybe
25 tighten this up a bit. This company is stuck in the middle

1 saying, you know what, we had this, this was what was ambiguous
2 and it looked like to us at that time, but there's a small
3 frame that I see, that time. And even putting aside them
4 saying it's done on purpose or whatever, I would think they'd
5 have a reasonable expectation with what I'm hearing here to
6 believe because there's some ambiguous language there, again,
7 putting, blaming, on purpose or whatever aside, I would think
8 that there's some kind of reasonable expectation by them to see
9 that this is what we're due at this time. And the company, of
10 course, once you realized how many there were, there were
11 verifications that this is not what we meant. But how is the
12 company to know what you meant until you correct it?

13 THE WITNESS: Right. And we communicated that in
14 writing on numerous, numerous occasions beginning either in
15 March or April of 2005 and since then, and that's almost three
16 years ago.

17 COMMISSIONER ARGENZIANO: So, okay, so 2005 you
18 started to correct that. And then I guess later -- Madam
19 Chair. I'll ask again dPi what time frame they're talking
20 about. Because to me it really comes down to a window of
21 maybe, a window of time that is really critical here and after
22 that not. Thank you.

23 THE WITNESS: Uh-huh.

24 COMMISSIONER McMURRIAN: And I'm sorry to do this to
25 Mr. Malish. I actually have a couple of questions too or at

1 least one. Thank you for your patience.

2 Ms. Tipton, on Page 4 of 15 -- and I know we've gone
3 through this a few times.

4 THE WITNESS: Of PAT-5?

5 COMMISSIONER McMURRIAN: Yes. Of PAT-5. The Call
6 Block feature, and I think we've established that at least it's
7 AT&T's position that everything in capital letters, and E, Call
8 Block, would be considered a feature. DPi's provision of what
9 we've called a Call Block, I guess, earlier in this proceeding
10 and with some of the other witnesses have been sharing
11 information about the Call Block. We're talking about two
12 different Call Blocks. DPi's provision of a Call Block is not
13 E, Call Block, as described here. Is that your testimony?

14 THE WITNESS: That's correct.

15 COMMISSIONER McMURRIAN: Okay. And is it also your
16 testimony that the kind of Call Block that dPi is suggesting is
17 what's described on Page 2 of 15 of PAT-5, which is under --
18 and maybe it's not this specific one and you can help me figure
19 this out. But the language that Commissioner Skop referenced,
20 that very last sentence about "Access to the usage option can
21 be restricted at the customer's request at no charge," and then
22 we turned over and looked at the charges that were associated
23 with that, is that the type of Call Block that dPi is referring
24 to or is that your belief?

25 THE WITNESS: Yes. Yes. Yes. That's precisely what

1 they're referring to.

2 COMMISSIONER McMURRIAN: So that's sort of the
3 confusion in what you're saying, we're talking about Call --
4 and, of course, the wording there doesn't reference Call Block.
5 But you believe that's what we -- in earlier discussions when
6 we've talked about Call Block or at least in dPi's provision of
7 a Call Block, that's what you're talking about. And what was
8 the terminology you used that we should be using instead of
9 Call Block?

10 THE WITNESS: Yeah. The way it's referenced in the
11 tariff is denial of per activation. That's just a lot of
12 words. But if you turn to Page 12 of 15, you heard in
13 testimony from Mr. Bolinger the reference of the universal
14 service order codes. So it's the BCR, the BRD, and the HBG are
15 the three USOCs that are at issue that dPi and admittedly AT&T
16 has called Call Blocks more in the slang sense of the use of
17 the term "block" rather than the true meaning of block.

18 COMMISSIONER McMURRIAN: And none of those are
19 purchased by end users, either by BellSouth or by dPi end
20 users.

21 THE WITNESS: Correct.

22 COMMISSIONER McMURRIAN: Okay. I think that was all
23 of my questions, at least for now.

24 COMMISSIONER ARGENZIANO: Madam Chair, to that.

25 COMMISSIONER McMURRIAN: Commissioner Argenziano,

1 absolutely.

2 COMMISSIONER ARGENZIANO: This is also what you
3 agreed with Commissioner Skop was ambiguous somewhat.

4 THE WITNESS: Oh, it certainly is somewhat ambiguous.

5 COMMISSIONER ARGENZIANO: Okay. Thank you.

6 COMMISSIONER McMURRIAN: Mr. Malish, thank you.

7 MR. MALISH: Thank you.

8 CROSS EXAMINATION

9 BY MR. MALISH:

10 Q Ms. Tipton, from Mr. Carver's opening and from your
11 testimony I got the impression that there's basically three
12 main reasons why AT&T says that dPi is not entitled to these
13 promotions, these LCCW promotions. It started off being that
14 blocks are not features. Are y'all changing your position on
15 that?

16 A No. And I think we've had a lot of discussion about
17 that just now.

18 Q Right.

19 A And that is we jointly, AT&T and dPi, continue to
20 refer to these same three USOCs that I just referenced as
21 blocks. And so it's the slang use of the word "blocks" rather
22 than the term of art "blocks" as in the actual name of the
23 feature Call Block. So when we -- in my testimony and -- I
24 mean, I don't pretend to speak on behalf of Mr. Carver, but my
25 testimony has similar references to blocks as not being

1 features. And what we're referring to is the more slang use or
2 generic use of the term "block," which is the denial of the per
3 use or denial of per activation, and that is not a feature.

4 Q And we've been litigating this case in one
5 jurisdiction or another for more than two years now, haven't
6 we?

7 A Yes, we have.

8 Q And isn't today the very first time that you have
9 asserted the position that HBG, BCR and BRD are not even really
10 Call Blocks?

11 A I recall, and I'd have to go back and read the
12 transcript to refresh my memory precisely, but I recall that in
13 North Carolina we got into this very similar discussion, you
14 and I did, as well as with the Commission, and we talked about
15 whether it really was a block or not. And I used the same
16 terminology to say I believe it's called denial per use in the
17 North Carolina tariff. I'm not positive, but I think it is.
18 So we tried to make that very same clarification in North
19 Carolina that it is not a feature in and of itself, these three
20 USOCs are not a feature in and of themselves. They are the
21 restriction against the use of the actual feature with which
22 they're associated.

23 Q Well, let's take a look at this again. A feature is
24 just a device for managing calls; right? It's a central office
25 call management device; right?

1 A Correct. Uh-huh.

2 Q That's what a feature is; right?

3 A Certainly.

4 Q Okay. Isn't denial per activation of Call Blocking a
5 call management device? It prevents the, that particular
6 telephone line from doing something; right?

7 A As BellSouth has offered it, just take you to the
8 specific example of the BCR USOC, which is contested in this
9 complaint, the BCR USOC does not represent Call Return, the
10 actual feature.

11 Q Okay. I'm not sure --

12 A The BCR --

13 Q Wait a second, ma'am.

14 A Excuse me. I wasn't finished.

15 Q I don't think you're answering --

16 MR. CARVER: Objection. He is interrupting the
17 witness while she tries to explain.

18 MR. MALISH: I am because she's not answering the
19 question that I was asking. She's giving something else.

20 The question was whether --

21 COMMISSIONER McMURRIAN: Mr. Malish, hang on just a
22 second. Are you still replying to the objection or are you
23 asking the question again?

24 MR. MALISH: Well, no. I guess I was replying to
25 the, to the objection.

1 COMMISSIONER McMURRIAN: Okay. Go ahead then.

2 MR. MALISH: Which is I am interrupting her because
3 she is not answering the question that I was asking. She's
4 giving me something else. And I need her to -- you know, it's
5 already almost 4:00. We need to be done as quickly as
6 possible, and I need to hone her in to answer my questions.
7 And if they want to come back on redirect and talk about other
8 things apart from my questions, they can do that. But I would
9 like us to be able to get out of here, you know, by the close
10 of your business day.

11 COMMISSIONER McMURRIAN: Me, too. But we are, but
12 we're -- the proper way is to ask a question, get a yes or no
13 answer and then elaborate, if it is a yes or no question, and
14 then get the elaboration. And we afforded your witnesses that,
15 that ability, too. So I just -- that's the only thing. But
16 you can reword your question and try it a different way.

17 MR. MALISH: Okay. I'll do that. I'll do that.

18 BY MR. MALISH:

19 Q We'll just take one of those, BCR. That is a call
20 management device, yes or no?

21 A I can't answer that question. I don't know.

22 Q Well, it prevents activity on that telephone number
23 line; isn't that correct?

24 A Yes, it does.

25 Q Okay. And what you're saying is you don't know if

1 that's a call management feature. You don't know if that is
2 for the purposes of call management. Is that what you're
3 saying?

4 A I don't know whether it's considered a call
5 management feature. What I can tell you is that the
6 description under the applications under TouchStar service
7 describes that TouchStar service is a group of central office
8 call management features. It's describing generally what the
9 TouchStar service is. The very next section then --

10 Q Right.

11 A -- defines the specific features that are offered
12 pursuant to TouchStar service. The specific feature that's
13 offered pursuant to TouchStar service in this instance you've
14 just pointed me to, which is BCR, is the Call Return feature.

15 Q Uh-huh. Okay. I understand that there are things
16 that are specifically defined with, with text in bold next to a
17 letter. I understand that.

18 My question to you is what that device is. What is
19 BCR? It's a call management device, isn't it?

20 A It is the denial of activation for the feature called
21 Call Return. That's what I can tell you it is. I'm not a
22 network expert. So I can read the words that are here on the
23 page the same as anyone else can.

24 Q Okay. So Call Block is a device that prevents the
25 ability of the customer to, what, let's see, provides the

1 customer the ability to prevent incoming calls. So if we're
2 preventing some kind of call, does that, is that a central, is
3 that a central office call management feature?

4 A Again --

5 Q It's a yes or no question. Is providing the customer
6 the ability to prevent incoming calls a central office call
7 management feature?

8 A I must deduce from the plain language in the tariff
9 that Call Block as referenced here as capital E is a central
10 office call management feature. The features that we're
11 talking about here are the features that are available for
12 purchase under promotions. I am not prepared to address the
13 network technicalities about whether something is a particular
14 central office call management feature or not. I can address
15 how our tariffs are generally designed and the intent behind
16 our promotions that we've made available to our retail
17 customers and to our resale customer.

18 Q So is the answer to my question at the end of all
19 that yes, no, or I don't know?

20 A I'll say I don't know.

21 Q Okay. So you don't know if preventing the customer's
22 ability to prevent, excuse me, providing the customer the
23 ability to prevent incoming calls is a central office call
24 management feature?

25 A Again, I must deduce --

1 Q It's a yes, no, or I don't know.

2 A I don't know.

3 Q Okay. What's your best estimated guess, your best
4 estimate?

5 COMMISSIONER SKOP: Madam Chair, may I interrupt
6 here?

7 Again, in the interest of time, I respect your right
8 to cross-examine, but I think the question has been asked and
9 answered at least twice now.

10 MR. MALISH: Yeah.

11 COMMISSIONER SKOP: And I would ask that you would
12 move on or at least ask the Chair to respectfully request that
13 you move on.

14 MR. MALISH: Okay.

15 BY MR. MALISH:

16 Q Do you understand that HBG, BCR and BRD, all three of
17 them, each of them are devices put on a phone line that manage
18 the calls that flow through that phone line?

19 A I would have to take issue with your
20 characterization -- no, first of all. Answer yes or no. I
21 would have to tell you that your characterization is incorrect.
22 BCR, BRD and HBG are universal service order codes that are put
23 on to a service order that then are provisioned to invoke some
24 type of provisioning activity.

25 Q Okay.

1 A I do not -- I can't address the network technical
2 components that are associated with each of those.

3 Q So those are codes entered in order to do something
4 on a line; correct?

5 A Yes.

6 Q All right. And the thing that is done on the line is
7 that it prevents, for example, for HBG it prevents Call Tracing
8 activation, right, that's what HBG does?

9 A HBG prevents the activation of the feature called
10 Call Tracing.

11 Q Okay. Similarly, BRD is a device put on the phone
12 line to prevent activation of Repeat Dialing.

13 A Again, it's not something that's put, it's not a
14 device that's put on the phone line. It is a USOC code that's
15 put on a service order that results in the inability to
16 activate the Repeat Dialing feature.

17 Q Okay. Something happens in a computer somewhere when
18 that code is put in there that prevents the caller from
19 activating Repeat Dialing on that phone line; correct?

20 A Yes.

21 Q All right. Same question for Call Return, BCR. You
22 put that code into the computer and that prevents the, that
23 phone line from being able to access -- which one is that --
24 Call Return; right?

25 A Yes.

1 Q All right. And this is something that the tariff
2 calls under the footnote a feature for each one of those
3 things; right? The footnote says that each one of those things
4 with those codes, HBG, BCR, BRD, is called a feature under the
5 footnote.

6 A It depends. Again --

7 Q Well, does Footnote --

8 A And, Commissioner, I apologize. I can't read your
9 name from here. But when I was asked previously by the
10 Commissioner about this particular language, when I went to the
11 tariff writer, the tariff writer described to me that what they
12 were referring to was the actual feature itself. But this is
13 not what the -- I mean, I'll have to admit there's ambiguity
14 here in the way the footnote reads because there is a footnote
15 attached to numerous elements on this page and the previous,
16 so.

17 Q Okay. But the footnote may not mean what the tariff
18 writer intended it to do, but as it stands here today on black
19 and white it's calling those items features. That's what that
20 footnote is doing; right?

21 A Or you could interpret it to be referring to the
22 feature as in what's in Number 1, Number 2, Number 3, Number 4,
23 et cetera.

24 Q Okay. I think the second thing that y'all were
25 focusing on was these blocks are free; therefore, there's no

1 purchase and it makes no sense because there's no revenue. Is
2 that a decent summary for the second main part of y'all's
3 argument?

4 A Yes. And we're specifically referring to the three
5 USOCs that we just talked about.

6 Q Okay. Now the fact that something is free doesn't
7 mean it's not a feature; correct?

8 A I'm sorry. Could you restate or rephrase that?

9 Q Just because something is free doesn't mean it's not
10 a feature; right? For example, we looked at some of those
11 blocks in there that were specifically listed as blocks and no
12 one could in their right mind say that they weren't features
13 and they had no charge; right?

14 A Correct.

15 Q So the fact that something is free doesn't mean it's
16 not a feature; right?

17 A True. I was -- sorry. I was looking at my attorney
18 because I saw him move towards the microphone.

19 MR. CARVER: Yeah. I just -- it seems to me like he
20 asked about three questions there. So, I mean, she was trying
21 to answer and then he asked another question. So, you know, in
22 the interest of clarity, if he could ask the question and then
23 let the witness respond.

24 MR. MALISH: Yes. I'm just trying to be clear.

25

1 BY MR. MALISH:

2 Q The fact that, the fact that a feature is free
3 doesn't mean it's not a feature; correct?

4 A Correct.

5 Q And the fact that a block is free doesn't mean it's
6 not a feature; correct?

7 A That particular, you know, if this, then that, that
8 is correct. I mean, just because --

9 Q Thank you. All right.

10 A -- a block is free, it could be a block and it could
11 be free and it could still also be a feature.

12 Q Okay. Now the other, one of the other things y'all
13 said is that it makes no sense because you generate no revenue
14 if we were to apply it the way that dPi is saying it's supposed
15 to be applied; is that correct?

16 A I could not understand the last part of your
17 question.

18 Q Y'all are saying that the way -- it makes no sense --
19 dPi's interpretation of the, of the promotion makes no sense
20 because y'all would never intend for it to be that way because
21 y'all would make no revenue, it wouldn't increase your revenue.
22 Didn't y'all say something like that?

23 A Yes. Because the intent of the promotion is to
24 generate more revenue.

25 Q Right.

1 A Through the purchase of additional services which
2 bill on a recurring basis.

3 Q Well, who is -- there's actually more things that you
4 have to do with this promotion besides just take those
5 services; right? I mean, there's only certain people who get
6 this; right?

7 A Correct.

8 Q Where is that language here? Okay. So the whole
9 purpose of this is actually right here. It's -- you're trying
10 to increase your line count; right?

11 A That's one objective.

12 Q One of the objectives is -- the whole -- this is
13 targeted only at winover or winback clients; is that correct?

14 A That's correct.

15 Q So you are trying to get new customers. This is
16 applying only to new customers, correct, or winback or winover?

17 A It's applying only to reacquisition and winover
18 customers.

19 Q Okay. So you're trying to attract a certain kind of
20 customer with this.

21 A Yes. And the type of customer we're trying to
22 attract is one that purchases more than just basic service,
23 because the idea is that those customers would stay with us for
24 longer than the payback period associated with the promotion
25 and we would thus have a higher revenue on a recurring basis

1 from that customer than from some customer who only ordered
2 basic service. If the promotion was intended to include free
3 features, we would have offered it to those who only bought
4 basic service.

5 Q Okay. So if you offered this to your customers that
6 only bought basic service plus those blocks, then what, we
7 should be able to get that too?

8 A Hypothetically if we offered a promotion that was
9 only for basic service, then also those that ordered basic
10 service and only the free blocks would also qualify.

11 Q Okay. Let me go back some more to this question
12 about it can't possibly be that we meant to only give it to
13 people who ordered things that cost money in addition to the
14 basic service.

15 One of the, one of the drives of this, and this is a
16 yes or no question, please, one of the drives of this promotion
17 is to get new customers away from somebody else; correct?

18 A It's to reacquire customers, yes.

19 Q And you make money on those customers not just in the
20 first month but, but month after month after month; correct?

21 A Correct.

22 Q You recoup your profit at different levels depending
23 upon what they buy from you; correct?

24 A Correct.

25 Q But getting them over to you for one thing allows you

1 to have a customer that you can recoup profit from at either a
2 greater or lower amount over an extended period of time; is
3 that true?

4 A That's true.

5 Q All right. And similarly isn't it easier for you to
6 upsell services to existing customers?

7 A I don't know.

8 Q Okay. But this is, this would be if they came to you
9 at a basic level, then you could upsell to them afterwards;
10 right?

11 A I mean, hypothetically, yes. But I can't address
12 whether we're more successful with a new acquire or with a
13 current customer.

14 Q Does AT&T ever give away baseball caps or souvenirs
15 or trinkets of one kind or another, Little League or Minor
16 League or National League baseball games?

17 A I can suppose that they do, but I don't know because
18 I've never been a recipient of one of those. So I assume they
19 do, but I don't know.

20 Q Gimme caps and stuff like that?

21 A I guess. Again, I'm on the wholesale side of the
22 business and not the retail side. So only if I had been a
23 recipient of one of those would I have known that that was
24 going on. So I just don't know.

25 Q Well, the point is that AT&T gives away a lot of

1 things without having a source of revenue directly associated
2 with it; isn't that true?

3 A It's, it's certainly possible. But, again, what's at
4 issue here is about a very specific promotion, how that
5 promotion was designed and how that promotion is executed. And
6 as I referenced in my summary or in my earlier comments, this
7 specific promotion was specifically designed contemplating that
8 there were revenue generating features acquired at the time the
9 basic service was ordered.

10 Q Okay. Well, the main drive of this is to get
11 customers; right? You're trying to win over customers; right?

12 A Trying to win over a certain type of customer.

13 Q We build y'all's customer base because y'all have
14 been experiencing customer loss to cell phones and to other
15 stuff; isn't that true?

16 A We certainly have been experiencing customer loss.
17 We're trying to get a certain type of customer, and that is a
18 feature rich customer.

19 Q Okay. I want to go back to this third thing because
20 I want to make sure we're on the same page here. It's the
21 third part of what was in Mr. Carver's opening statement. And
22 I think what you were saying, y'all were saying is that there
23 has to be an order by the end user. Do you recall that?

24 A Yes, I do.

25 Q Is that like the third leg of the tripod for AT&T?

1 A I'm sorry. Can you --

2 Q Is that the third of the three things that are the
3 reasons why dPi shouldn't, doesn't qualify for the promotion?

4 A Well, certainly that's one of them.

5 Q Okay. That's -- we talked about two of the other
6 ones. This would be the third one; right?

7 A Uh-huh. Uh-huh.

8 Q All right. I want to make sure we're talking about
9 the same thing. This is the chart that I copied from Leonardo
10 da Vinci. This is what I say the law is, which is that if AT&T
11 offers something at a retail customer, for example, a promotion
12 when they order 1FR plus blocks, then AT&T has to give the same
13 thing to dPi. Are you disagreeing with this scenario?

14 A You kind of referenced two different things because
15 you, you talked about whether an end user has to place the
16 order and then you show this picture which is saying if I give
17 retail 1FR plus blocks, I have to give dPi 1FR plus two blocks.
18 Those are two different questions to me. So which -- I'm not
19 sure which question you want me to answer.

20 Q Well, I just want to know -- it sounds to me like
21 maybe what you're saying is that your position is this. Let's
22 see if I can get this. Is this what you're saying is that what
23 we look at is really what dPi's retail customer is telling dPi,
24 that's one of the things that, that drives whether they're
25 entitled to the promotion?

1 A Well, if you go back to the plain language that was
2 agreed jointly between the two parties in the interconnection
3 --

4 Q Can I interrupt you just for a second and could I get
5 you to say yes or no and then explain?

6 A Yes.

7 Q You're saying -- so, yes, you're saying this is the
8 way it works. The dPi retail customer has to be the one that
9 initiates the specific request and -- I'm sorry. You go ahead.

10 A Yes. Because if you look at the plain language in
11 the interconnection agreement, it clearly says, "Where
12 available for resale, promotions will be made available only to
13 end users who would have qualified for the promotion had it
14 been provided by BellSouth directly." So what you have to
15 assume is if that arrow between dPi retail actually was drawn
16 over to AT&T retail, it would have been granted.

17 Q Okay. Now --

18 A So pretend that dPi is not there. So if that end
19 user and the features and functionalities that they requested
20 on their request that they submitted to dPi had instead been
21 submitted to AT&T retail, it would have been granted the
22 promotion.

23 Q Okay. And I just want to make sure that this is the
24 scenario that you say governs here today in this case.

25 A Regarding what service and features are requested and

1 qualify under the promotion, yes.

2 Q And not this one; correct? This is not right,
3 according to you.

4 A I'm simply reading the plain language that is
5 contained in the interconnection agreement that was voluntarily
6 negotiated between the parties.

7 Q Let's, let's do one thing at a time. Okay? You're
8 saying -- just go with me, yes or no. You're saying this
9 applies; yes?

10 A When it comes to the services requested, yes.

11 Q And this does not.

12 A And when you say this, you mean?

13 Q This, this scenario that I'm showing you. And I'm
14 going to show you the next one. You say this is not how it's
15 supposed to work in this particular case.

16 A And I'm sorry, Mr. Malish. I'm not understanding
17 what you're asking me about this particular diagram. Are you
18 saying with this, you're saying there's absolutely no regard to
19 the end user? Is that what you're asking me?

20 Q This chart here shows the scenario where if AT&T
21 provides 1FR, provides the promotion to its retail customer
22 ordering 1FR plus blocks, then dPi is also entitled to that
23 promotional pricing when it orders 1FR plus blocks. That's
24 what this scenario is supposed to represent.

25 A Okay. So you just asked me a very different question

1 from the one you asked me just a minute ago.

2 Q Okay.

3 A Okay? So if AT&T has a promotion that involves 1FR
4 plus blocks --

5 Q Uh-huh. Uh-huh.

6 A -- and dPi has end users who request 1FR plus blocks,
7 then, yes.

8 Q Okay. That's not --

9 A But you were asking me a generic question. The other
10 slide that you showed had no indication of services or anything
11 on it.

12 Q Yes. All right.

13 A So I'm just trying to make sure I'm clear.

14 Q Let's pretend --

15 MR. CARVER: I'm sorry. I have to object to this,
16 this line of cross. I mean, Mr. Malish has drawn a diagram
17 that doesn't reflect the law or the facts and he's trying to
18 show it to the witness and ask her essentially the same
19 question over and over and over until she, you know, adopts one
20 or the other. And it really does -- again, it's not based on
21 anything other than the fact that he's just drawn it. I think
22 at this point the witness has done the best she can to try to
23 answer his questions. But, I mean, what we keep hearing over
24 and over is, you know, pick a diagram, agree with this, and
25 there are just misrepresentations built into it.

1 COMMISSIONER McMURRIAN: Mr. Malish, I'll just add
2 I'm a little worried about the record because when you say this
3 scenario and that scenario, we're not, we don't have anything
4 in the record that we can point to later.

5 MR. MALISH: Okay.

6 COMMISSIONER McMURRIAN: So that's one concern I
7 have. I think we're going to take a five-minute break here
8 shortly, but I want to -- maybe everyone can address this on
9 the break or something and work on how to address perhaps
10 labeling your exhibit so that you can use it, marking it
11 somehow. Of course, we'll have to talk about entering it
12 later, too.

13 But perhaps the other way to go is in your questions,
14 just to go through exactly what all the assumptions are in your
15 scenario. I know that's going to take longer, but I'm not sure
16 you're going to get anywhere if you don't list all the
17 assumptions in your questions.

18 MR. MALISH: Okay.

19 COMMISSIONER McMURRIAN: Commissioner Skop.

20 COMMISSIONER SKOP: Thank you. I just wanted to jump
21 in and ask the witness a quick question.

22 You're familiar, I would take it, with the law on
23 resale under the federal code.

24 THE WITNESS: I'm generally familiar, yes.

25 COMMISSIONER SKOP: Okay. And then also too, is it

1 your understanding that AT&T and dPi have entered into the
2 interconnection agreement resale, this document?

3 THE WITNESS: Yes.

4 COMMISSIONER SKOP: Okay. And part of that
5 agreement, I guess, in voluntarily terms agreed to by both
6 parties would have been Footnote 2?

7 THE WITNESS: Yes.

8 COMMISSIONER SKOP: Okay. So basically I think that
9 answers the questions I had. Thank you.

10 COMMISSIONER McMURRIAN: I think, and I'm sorry to
11 interrupt your flow, Mr. Malish, but I think it would be -- I
12 think a few of us need a little five-minute stretch break. So
13 we'll take five minutes and try to be back at 4:21, if that's
14 right, and try to address how to get that information in the
15 record more clearly. Thanks.

16 (Recess taken.)

17 Okay. Let's go back on the record. And where were
18 we, Mr. Malish? We were talking about your diagram; right?

19 MR. MALISH: My lovely diagram. Yes. Thank you.
20 Let me try to do it this way instead. Can you fire me up
21 again, please? Thank you.

22 BY MR. MALISH:

23 Q Ms. Tipton, what I understand to be happening here is
24 that you're looking at this, you're looking at this exhibit to
25 an attachment to the -- well, you're looking -- I guess I

1 should be more precise. You're looking at a footnote to an
2 exhibit, to an attachment to the contract and you're reading
3 this language at the bottom. Let me get that better focused.
4 You're reading that language at the bottom, which says, "Where
5 available for resale, promotions will be made available only to
6 the end users who would have qualified for the promotion had it
7 been provided by BellSouth directly," you are reading that
8 language to work in a way that I've tried to represent with
9 this diagram which I have marked Exhibit 29. And this is
10 attempting to describe a situation where if AT&T gives its
11 retail customer the LCCW promotion in a situation where that
12 customer is only ordering basic line, that's 1FR plus the
13 blocks, AT&T doesn't have to give that to dPi unless it's dPi's
14 retail customer asking dPi for 1FR plus blocks. Isn't that
15 your position?

16 MS. TAN: Excuse me. This exhibit needs to be marked
17 by the presiding officer with a number.

18 MR. MALISH: Okay.

19 COMMISSIONER McMURRIAN: Mr. Malish, I'm assuming
20 that maybe the other diagram you're going to ask to mark 28.
21 So do you want to go ahead and mark --

22 MR. MALISH: Yes, Your Honor -- I mean, Commissioner.

23 COMMISSIONER McMURRIAN: Okay. We need a short
24 title. What about just we call the one I think that you had
25 marked 28 "dPi Diagram" -- do you want to say "Regarding

1 Parity, Number 1"?

2 MR. MALISH: Parity.

3 COMMISSIONER McMURRIAN: And then the one that you've
4 got marked as Number 29, "dPi Diagram Regarding Parity Number
5 2."

6 MR. MALISH: That sounds great.

7 COMMISSIONER McMURRIAN: Okay. So those are marked
8 as 28 and 29. Thank you.

9 (Exhibits 28 and 29 marked for identification.)

10 BY MR. MALISH:

11 Q All right. So again let me make sure we're on the
12 same page. I believe that what you're saying is that you're
13 looking at this footnote to this attachment, to this exhibit
14 or, excuse me, this footnote to this exhibit to this attachment
15 to the contract as saying that this is not the situation,
16 Exhibit 28 is not the situation, but Exhibit 29 is the
17 situation. Is that a fair summary of your position?

18 A Yes. Except that Exhibit -- this attachment to the
19 interconnection agreement doesn't, in the footnote doesn't
20 reference any specific promotions and your diagram has some
21 specific things on it. So from a generic perspective, ignoring
22 the 1FR plus blocks issue, yes, that diagram represents what
23 the interconnection agreement represents.

24 Q Okay. And I just have those blocks because those are
25 the ones that we're fighting about in this particular case. So

1 that makes sense to you why they're there; right?

2 A Yes.

3 Q All right. Did you read any of the rest of the
4 contract?

5 A I've reviewed portions of the contract, yes.

6 Q Okay. Do you think that that footnote should be
7 construed in accordance with the rest of the contract?

8 A I'm not sure I understand your question.

9 Q Do you want to try to harmonize that language there
10 in the footnote with the rest of the contract or, or not?

11 A My understanding about what this language represents
12 is it describes the exclusions and limitations associated with
13 the services that are actually available for resale. So
14 regarding promotions, this describes how promotions would be
15 limited or excluded or available for resale.

16 Q Okay. I'd like to mark the rest of the contract as
17 the next exhibit, which I think is 20 -- 30.

18 COMMISSIONER McMURRIAN: A short title?

19 MR. CARVER: I'm sorry. I don't know what Mr. Malish
20 has but I know that contract is about two inches thick. So
21 whatever he's got there is not the entire contract.

22 MR. MALISH: This is, this is excerpts from the rest
23 of the contract.

24 MR. CARVER: Okay. So those are -- I would request
25 that if he wants to put the contract into evidence, that the

1 entire contract go into evidence, not just portions he
2 selected.

3 MR. MALISH: Well, Your Honor, I don't have an
4 objection to that. I've selected portions because, as Mr. --
5 if they would like to put the whole thing in, that's fine with
6 me. I don't care. I've just selected out the ones that are,
7 that are applicable. You know, they've chosen to put in just a
8 footnote from a chart from, from the back of it. I would like
9 to put in all of the things that I have found that are relevant
10 to this issue. So we can just have two and y'all can flip
11 through the one that is easiest for y'all to work with.

12 COMMISSIONER McMURRIAN: Okay. I think we could show
13 Exhibit 30 as the entire contract, and it's okay to use
14 portions of it for cross, for your cross-examination. But
15 we'll show that Exhibit 30 would be the entire contract entered
16 in, proposed for Exhibit 30.

17 MR. MALISH: The only reason that I -- I just don't
18 have the whole contract with me to put in. So --

19 COMMISSIONER McMURRIAN: We can, I think we can take
20 care of that later, can't we? Or do we need to show it as
21 late-filed perhaps?

22 MS. TAN: That is correct. We can late file.

23 COMMISSIONER McMURRIAN: Okay.

24 MR. CARVER: Would you like for AT&T to provide that
25 as a late-filed or how should we go about that?

1 COMMISSIONER McMURRIAN: I think that's --

2 MR. MALISH: I think that needs, I think that needs
3 to be the way that it is. I'm offering excerpts. If they want
4 to offer the whole thing, they can. But I'm only offering
5 excerpts.

6 COMMISSIONER McMURRIAN: I think we just need one
7 exhibit that would have the entire -- I don't think we need two
8 exhibits, one with the part and one the entire thing. I think
9 we can show Exhibit 30 to be the entire diagram. It can be
10 late-filed. Are you amenable to -- and it's fine for you to
11 use the portions of it right now.

12 MR. MALISH: Yeah.

13 COMMISSIONER McMURRIAN: But for purposes of Exhibit
14 30 --

15 MR. MALISH: It's whatever, yeah, whatever is easiest
16 for the Commission. But I have a thin packet with flags and
17 highlights already on it. So y'all might --

18 COMMISSIONER McMURRIAN: Right. And like I said, you
19 can use that for purposes of cross. But for actual Exhibit 30
20 we'll show it as late-filed. I guess BellSouth can provide
21 that as a late-filed exhibit, but that would actually be Number
22 30. I just don't want to muddy up the record with two versions
23 of the same thing, just one part, one that's partial.

24 Commissioner Skop.

25 COMMISSIONER SKOP: Thank you, Madam Chair. Just a

1 quick question to staff on a procedural issue. When somebody
2 proffers an exhibit for identification and there's a valid
3 objection to enter the whole document, who has the burden on
4 providing that document?

5 MS. CIBULA: The party that offered the document
6 would have the burden. But it seems in this case AT&T has
7 volunteered to provide the document.

8 COMMISSIONER SKOP: Thank you.

9 COMMISSIONER McMURRIAN: You can go ahead,
10 Mr. Malish, as long as you're okay with BellSouth late filing
11 that entire document, then we are good to go.

12 MR. MALISH: Okay.

13 COMMISSIONER McMURRIAN: Thank you.

14 (Late-Filed Exhibit 30 identified for the record.)

15 BY MR. MALISH:

16 Q Ms. Tipton, did you see in the general terms and
17 conditions, Page 1, that this whole document is pursuant to the
18 the parties' wish to interconnect their facilities and exchange
19 traffic pursuant to Sections 251 and 252 of the Act?

20 A Yes.

21 Q Do you know -- do you -- you understand that the Act
22 is the Telecommunications Act of 1996; right?

23 A Yes.

24 MR. CARVER: I'm sorry. Could I -- I just now got
25 the document. They just handed it to me. I notice that it has

1 a date on the bottom of 2/28/03. I don't think this is the
2 current contract. Is it the intention to use excerpts from the
3 old contract or the new contract or are they the same?

4 MR. MALISH: Well, the new contract is -- they have a
5 totally different contract now.

6 MR. CARVER: Okay. So --

7 MR. MALISH: This is, this is my understanding of the
8 contract that was in effect at the time. You know, this is
9 from 2003. We're talking about a time frame of 2003, 2004,
10 2005 and on to the present.

11 COMMISSIONER McMURRIAN: Okay. So the portions that
12 we have in front of us are from a previous interconnection
13 agreement?

14 MR. MALISH: Well, these are the, this is the, from
15 the contract that the parties were operating under at the time
16 of the events central to this case.

17 So, for example, you will see at the back of this
18 packet that I've handed out is included the little exhibit, you
19 know, the spreadsheet or whatever. Can you fire me up? You
20 know, this has Ms. Tipton's, the one page that she pulled out
21 of the whole contract. So this is out of the same contract.

22 THE WITNESS: With an abundance of caution and at the
23 risk of saying something in deference to my attorney, but my
24 understanding is that the contract that was in effect during
25 the majority of what's been covered as the time frame of this

1 complaint was from the agreement reached in 2003. So this
2 should represent the contract that was in effect for the
3 majority of the time frame.

4 COMMISSIONER McMURRIAN: Okay. So, Mr. Carver, when
5 you file the late-filed entire document it will be consistent
6 with these portions?

7 MR. CARVER: Yes. The previous contract, I guess.
8 The one in effect in -- the one that became effective in
9 February 2003 I guess is the one I should file.

10 COMMISSIONER McMURRIAN: Okay. So maybe we need to
11 somehow show that in the title. It would be interconnection
12 agreement effective -- what was that date again?

13 MR. CARVER: The date on the document, I'm just going
14 by the footnote or a footer at the end of it, it looks like
15 2/28 of 2003.

16 COMMISSIONER McMURRIAN: Okay. Thank you for that
17 clarification. And, Mr. Malish, you can go ahead now. Thank
18 you.

19 MR. MALISH: Thank you.

20 BY MR. MALISH:

21 Q So again, Ms. Tipton, under general terms and
22 conditions this is being put together pursuant to, this
23 agreement is being put together pursuant to 251 and 252 of the
24 FTA; correct?

25 A Correct.

1 Q All right. And then did you see on Page 3 of the
2 GT&C Item Number 4? It says, "When dPi purchases
3 telecommunications services from BellSouth pursuant to this
4 agreement for the purposes of resale to end users such services
5 shall be subject to the same conditions that BellSouth provides
6 to its end users."

7 A Correct.

8 Q Okay. Did you see this provision here, general terms
9 and conditions, Section 18, where it says, "Where applicable,
10 this agreement shall be governed by and construed in accordance
11 with federal and state substantive telecommunications law,
12 including rules and regulations of the FCC and appropriate
13 Commission"?

14 A I'm sorry. I turned to the wrong page. If you'll
15 give me just a moment.

16 Q It's Page 15. There should be a little sticky there.

17 A Okay. Okay. Yes.

18 Q Okay. And you're aware that Section 251 is the
19 statute that gives BellSouth the duty to offer for resale at
20 wholesale rates any telecommunications service that the carrier
21 provides at retail to subscribers who are not
22 telecommunications carriers and also prohibits BellSouth from
23 imposing unreasonable or discriminatory conditions or
24 limitations on the resale of those services.

25 A Correct.

1 Q So you're -- and you're aware that under 47 CFR that
2 extends also to promotions; correct?

3 A I'm sorry. Can you say that again?

4 Q The law as expressed in 251, Section 251 is extended
5 to promotions by 47 CFR 51.613?

6 A Yes, I would presume so.

7 Q And again looking at the resale attachment, this is
8 on two pages, the retail attachment at Section 3.1 starting
9 there at the bottom, "Subject to effective and applicable FCC
10 and Commission rules and orders, BellSouth shall make available
11 to dPi for resale those telecommunications services BellSouth
12 makes available ... to customers who are not telecommunications
13 carriers." Did you see that?

14 A Yes.

15 COMMISSIONER SKOP: Excuse me, Mr. Malish. What was
16 the provision for that that you just referenced?

17 MR. MALISH: That one, the most recent one I was
18 talking about is in the resale attachment, so Attachment 1,
19 Resale, down at Section 3.1.

20 COMMISSIONER McMURRIAN: A page number might be
21 helpful.

22 MR. MALISH: Which is on Page, it's Page 3 of
23 Attachment 1. And the whole -- if you look down here at the
24 very bottom, I think that the whole contract, if you were to
25 have the whole contract, it's something like 1,735 pages. And

1 so this would be like Page 27 of 1,735.

2 COMMISSIONER McMURRIAN: Okay.

3 BY MR. MALISH:

4 Q And again, Attachment 1, Resale under Section 4,
5 "Resold services are subject to the same terms and conditions
6 as are specified for such services when furnished to an
7 individual end user of BellSouth," in the appropriate sections
8 of the tariffs. You saw that part?

9 A Yes.

10 Q Okay. Do you agree that they're trying to --
11 repeatedly throughout the contract they're trying to say, all
12 those provisions that I looked at are trying to say something
13 like this? Isn't that what those provisions essentially say?

14 A The provisions that we just looked at --

15 Q Yes.

16 A -- talked about that. But the question you asked me
17 before referenced a specific note regarding promotions.

18 Q Right.

19 A Which is equally a provision applicable to the
20 mutually agreed upon contract between the parties.

21 Q Let's just do one thing at a time. Okay?

22 A Uh-huh.

23 Q All those provisions that I just read from the
24 contract and from the FTA and from the CFRs, those are all
25 referencing this kind of situation; right? And I went over

1 about a half a dozen of them, didn't I?

2 A Yes, you did. And I can't say whether they preclude
3 the other diagram.

4 Q This document here, this footnote; right? And so
5 you're suggesting that this footnote be read and construed in
6 such a way as to create this situation; right? That's what you
7 said earlier. Do you stand by that now?

8 A Yes, I do.

9 Q Okay. So you're basically telling us that this
10 footnote to this exhibit, to this attachment to the whole
11 contract trumps everything else in the contract and federal
12 law?

13 A Actually, no. If you go back to the 4.2 that you
14 read earlier, which says, "Resold services are subject to the
15 same terms and conditions as are specified for such services
16 when furnished to an individual end user of BellSouth in the
17 appropriate section of BellSouth's tariffs," I think that ties
18 in specifically. Because the tariff language explicitly says
19 that the customer, customer who is an end user must purchase,
20 in the case of the complaint here, basic service plus two
21 features. So that's not dPi. That's the end user customer.

22 COMMISSIONER McMURRIAN: Excuse me, Mr. Malish.

23 Commissioner Skop has a question for a moment.

24 MR. MALISH: Sure.

25 COMMISSIONER SKOP: Thank you, Madam Chair.

1 And just a question for the witness. Again, I guess
2 the current line of questioning deals with parity. And I was
3 just wondering with respect to the prior provision under the
4 terms and conditions, I think it was 18 under governing law
5 where it references not only federal but state substantive
6 telecommunications law, in your opinion is this interconnection
7 agreement recognized under state substantive communications
8 law?

9 THE WITNESS: I'm sorry. Could you speak just a
10 little louder? I couldn't hear the last part of your question.
11 I'm sorry.

12 COMMISSIONER SKOP: Yes. I'm sorry. Under the
13 governing law provision under the general terms and conditions
14 of the interconnection agreement that's between the parties it
15 also speaks to state substantive telecommunications laws
16 equally applicable. And is this agreement in your opinion
17 recognized under state substantive telecommunications law as a
18 valid interconnection agreement between the parties?

19 THE WITNESS: That's my understanding, yes.

20 COMMISSIONER SKOP: Thank you.

21 BY MR. MALISH:

22 Q Okay. Ms. Tipton, I want to try to see if I can wrap
23 up with you. I want you to do something with me now. I want
24 you to assume with me the hypothetical situation because I know
25 you have a disagreement with me about this situation. But I

1 want you to assume with me that hypothetically speaking federal
2 law and the contract contemplate a situation where if AT&T
3 offers 1FR plus blocks at retail under the LCCW promotion, then
4 it must also offer that same promotion to dPi in a situation
5 where dPi orders 1FR plus those blocking features. Okay? Do
6 you understand the hypothetical?

7 A Yes.

8 Q The hypothetical we're operating under? I guess
9 really I should say the hypothetical is -- take out what these
10 actual, what the actual promotion terms are. We're just going
11 to say if AT&T offers it at retail to its customers, it has to
12 do the same to dPi. Okay?

13 A Okay.

14 Q All right. I want to talk now about what AT&T did in
15 actual practice with its customers. Okay? And I want to
16 direct your attention to Exhibit 13, which is the thousand plus
17 pages of, of spreadsheets that y'all sent us from AT&T's
18 ordering systems. Have you reviewed that information?

19 A I have to admit I haven't looked at all thousand some
20 pages, but I'm certainly very familiar with the content of
21 those pages generally.

22 Q Okay. And will you -- well, let me just do it this
23 way. There's two sets of documents here from two different, I
24 guess, systems; is that correct?

25 A There's two sets of documents from two different time

1 periods. And the reason for that is that the request was
2 specifically asking us to provide certain information based on
3 what our customers, our retail customers have ordered, and our
4 ordering data is only retained for 24 months. And so the
5 first -- the most recent set of data was for the period 2005
6 through 2006, January 1, 2005, through the end of 2007. And we
7 were able to use two different systems, part of it from the
8 actual ordering system and part from our billing databases.
9 The other set of data which was provided later and took a
10 considerable, both sets took quite a bit of work but the second
11 one even a more amount of work, came from a combination of
12 financial databases, tables and billing records.

13 Q Okay. Both of these responses to discovery were
14 attempting to provide information about the same thing, which
15 is what AT&T charged its own customers who signed up for new
16 service with only 1FR plus the blocks that we've been talking
17 about, BCR, BRD and HBG. Isn't that what the response was
18 intended to, in both sets of data to show?

19 A It was an attempt to do that, yes.

20 Q Okay. And you reviewed, if I recall correctly -- let
21 me see. Out of the -- let's see. Now the first set is the set
22 that y'all provided, which was the service order data, which
23 was from January of 2005 to August of 2007; correct?

24 A Yes. Uh-huh.

25 Q And that's what y'all are calling the most reliable

1 set of data; correct?

2 A It's more reliable but it's still not perfect.

3 Q Okay. And that's by contrast to the second set of
4 data which was from May of 2003 to December of 2005, which is
5 the, the billing data; correct?

6 A Correct.

7 Q And you analyzed material from the first set of data;
8 is that correct?

9 A Yes.

10 Q And in fact dPi filed the entire contents of this
11 thousand pages with the North Carolina Commission; correct?

12 A That's actually not correct.

13 Q All right.

14 A DPi filed with --

15 Q Okay. Hold on. Wait a second. Wait a second.

16 MR. CARVER: Objection. I would like for her to be
17 able to explain that. That is a very important point and I
18 would like the witness to be able to explain it.

19 MR. MALISH: All right. I'm going to restate my --
20 I'll withdraw the question and I'll restate the question.

21 BY MR. MALISH:

22 Q DPi filed with the North Carolina Commission data
23 from, let's see, all of, all of the service order data from
24 January 5 to August of 2006 and billing data from May of 2003
25 up to the end of 2004.

1 A I believe that's correct.

2 Q All right. And you analyzed part of that. I believe
3 you in fact filed an 18-page affidavit in North Carolina
4 discussing dPi's analysis and your own; isn't that true?

5 A Yes, I did.

6 Q Okay. So you talked for 18 pages about this stack of
7 documents and also what, what dPi had to say about that stack
8 of documents?

9 A Yes.

10 Q And you analyzed, you pulled, I guess, at random 136
11 of the 2,571 orders in the more reliable set of data; isn't
12 that correct?

13 A Yes, I did. And I want to make sure and characterize
14 this correctly. I pulled a random sampling of service orders
15 from the, what we will call the service order data because
16 that's the only data for which we actually had service orders
17 available.

18 Q Right. And so you looked at 136 of 200 --
19 2,571 orders.

20 A Correct.

21 Q And if I represent to you that that's 5.3 percent,
22 would you have any reason to disagree with me?

23 A Subject to check, no, I don't.

24 Q All right. So do you believe that's a representative
25 sample, that it's fair to do it that way?

1 A Actually we checked with our Ph.D. statistician who
2 is in-house, and his modeling suggests that 130 to 139 randomly
3 selected service orders would provide us a reasonable certainty
4 of the, that would represent the entire universe. So it would
5 give us approximately, I can't remember exactly, but it was
6 94 to 95 percent accuracy of representation.

7 Q And also you actually performed a tabulation of just
8 the data from 2005 to 2007; isn't that true?

9 A I'm sorry. I don't understand what you mean by
10 tabulation.

11 Q Let me show you this. Do you recognize this
12 document?

13 A Yes, I do.

14 Q I'm calling that a tabulation. That's your analysis
15 of AT&T retail service order data from 2005 through 2007;
16 right?

17 A Correct.

18 Q All right. And you put this together in response to
19 a similar analysis that was done by dPi; correct?

20 A Yes.

21 Q All right. And in your -- this is just your work
22 here; right? You're showing that in 2005 at least 10 percent
23 of the time AT&T was giving a waiver of the line connection
24 charge to customers who ordered nothing but 1FR plus BCR plus
25 BRD plus HBG.

1 A Yes. And let me explain.

2 Q Well, I know that you want to explain that there are,
3 there may be other reasons for it and we can get into that
4 later. I just want to --

5 MR. CARVER: Objection. The witness is trying to
6 explain. He stopped her before she could even begin.

7 MR. MALISH: That's right. I need to clarify what's
8 in this testimony on this document only. If they want to go
9 into more about something else, that's fine. But I have a
10 limited amount of time. I want to cover my points. They can
11 cover theirs in redirect.

12 MR. CARVER: The witness is entitled --

13 COMMISSIONER McMURRIAN: Mr. Malish, you can cover
14 your point after she finishes her answer. Again, I believe
15 that whenever your witnesses were on the stand, they were able
16 to finish their answer. And if they want to explain with
17 caveats and that sort of thing, I think they're okay. And then
18 if you need to follow up with more questions because of that,
19 then I think you're welcome to.

20 MS. TAN: Commissioner, is Mr. Malish intending to
21 mark this exhibit for, for the record or to mark this as an
22 exhibit in the record or mark it?

23 MR. MALISH: Well, I hadn't thought about it. But
24 then, yes, I should. So I think that brings us to 31.

25 COMMISSIONER McMURRIAN: And what would be a good

1 short title, Mr. Malish?

2 MR. MALISH: This is Pam Tipton's analysis of AT&T
3 retail service order data from 2005 to 2007.

4 COMMISSIONER McMURRIAN: Okay.

5 (Exhibit 31 marked for identification.)

6 And so I believe -- Ms. Tipton, did you want to
7 finish your answer?

8 THE WITNESS: Yes. Thank you.

9 If I could draw your attention to the bottom line at
10 the year of 2005, this will be the best way to describe it. So
11 you'll see total Florida residential N orders, which is
12 696,089. So that's the total number of N, meaning new type
13 residential orders, for the period of 2005.

14 When we were responding to the data request at dPi's
15 request, they asked us to identify our customers who had
16 requested basic service with at least two of the free blocks.
17 And under the promotion you'll remember that it only applies to
18 reacquisition customers. But we don't have a way to
19 distinguish reacquisition customers from brand new customers.
20 They all are issued on an N order type, and it's an
21 eight-character code and it just begins with the letter N.
22 That's opposed to an R for some types of records change or C
23 for certain types of other changes.

24 The next column indicates the total number of N
25 orders or new orders that had two or more free blocks. So of

1 the 696,000 N orders, there were 4,339 total N orders with two
2 or more of the free blocks. And then move over two other
3 columns, you'll see the number of N orders with the blocks and
4 also with the waiver code, and they had no other vertical
5 features or features, if you will, on that record. So there's
6 458 total.

7 And if you move to the last column, that represents
8 10.56 percent of all of the N orders that had two or more free
9 blocks, had the line connection waiver waived based upon a
10 waiver code that was actually placed on the service order.

11 What dPi is attempting to say is that because the
12 line connection charge was waived, that automatically says that
13 AT&T granted the promotion, and that is not true. Mr. Malish
14 has already asked me if I did my own review and you heard about
15 the 136 service orders. We found a number of reasons why the
16 line connection charge was waived, and those range from the --
17 the order might not have had vertical features but it had a
18 bundle, a bundled service offering. It could have been an
19 order that was originally for two lines and was split billed,
20 it was a part of perhaps roommates and one wasn't paying the
21 bill so it was an administrative split of the bill. It could
22 have been a disconnection in error. It could have been a
23 billing issue. It could have been a restoration of service
24 following some type of disaster, whether that's hurricane or
25 thunderstorm or fire. It could have been for some other

1 promotion that isn't at issue in this complaint.

2 BY MR. MALISH:

3 Q And, Ms. Tipton, you're looking right there at
4 calendar year 2005; correct?

5 A Yes.

6 Q And, of course, calendar year 2005 is when AT&T
7 promulgated its, I guess you want to call it, I don't know what
8 to call it, clarification of -- I guess it put out an internal
9 policy document clarifying that it should only be awarding this
10 LCCW promotion to, well, not with the blocks; correct?

11 A 2005 is when we received the clarification in the
12 wholesale business unit from the retail business unit about how
13 the promotion was implemented and what its intent was.

14 Q Okay. And also that's when, I guess, the sales reps
15 were instructed by way of this document, internal document that
16 that's how it needed to be done; correct?

17 A I'm not certain what specific document you're
18 referring to, so I can't respond to your question.

19 Q Now, Ms. Tipton, before AT&T provided us with this
20 stack of spreadsheets that goes through their actual orders, I
21 believe you testified to the Commission that y'all didn't,
22 y'all didn't give this to end users ordering this kind of
23 service at all. Isn't that what you said?

24 A I believe what I said is that AT&T does not grant the
25 line connection waiver promotion to our own retail customers

1 who order basic service and only two or more of the free, we've
2 been calling them blocks, so of the free denial per use, if you
3 will.

4 Q Okay. And take a look at Page 6 of your rebuttal for
5 me, please. Beginning on Line 18 the question is, "If a new
6 customer comes to AT&T and purchases a single line and requests
7 two or more of these Call Blocks on their telephone line, would
8 that customer qualify for the LCCW promotion?"

9 You answer, "No. Again, Call Blocks are not
10 features," and so on.

11 Do you want to change your testimony on that?

12 A No, I do not.

13 Q Okay. And is that just because that's the policy?

14 A No.

15 Q Are you differentiating between policy and practice
16 and that's why you don't want to change?

17 A I'm not differentiating at all.

18 Q Okay. Do you recall telling the North Carolina
19 Commission that y'all had run these queries and that they had
20 shown none or no customers were getting the line connection
21 charge waived?

22 A My recollection was the specific question that was
23 asked of me by Commissioner Kerr was whether we had done any
24 kind of investigation ourselves. And my response was, yes, I
25 had asked to find out if we had any customers who had ordered

1 only the 1FR and the two, two or more of the free blocks and
2 were granted the line connection waiver promotion. That was
3 the specific question I asked. And the response that I got
4 from the retail organization was, no, there were none for the
5 State of North Carolina.

6 Q Okay. And you ran a query; is that correct?

7 A I don't know what was done. I asked the question of
8 the, the retail folks and I was given a response.

9 Q And that was in March of 2006; correct?

10 A I don't recall the actual time frame.

11 Q Okay. Well, if I represent to you that the hearing
12 in North Carolina took place March 1 of 2006, would you have
13 any reason to gainsay that?

14 MR. CARVER: Wouldn't it be easier just to show her
15 the transcript, I mean, rather than testing her memory as to
16 the date of the hearing?

17 MR. MALISH: Well, I don't have the complete
18 transcript.

19 MR. CARVER: Well, I do, and I'd be happy to provide
20 it to the witness.

21 MR. MALISH: Very good. Let's do that then.

22 THE WITNESS: Thank you.

23 BY MR. MALISH:

24 Q And I'm looking at -- first of all, what's the date,
25 please, Ms. Tipton?

1 A Yes.

2 Q It's March 1?

3 A Yes. The date of the hearing was March 1.

4 Q All right. And I'd like you to look at Pages 244 and
5 245. And you can glance at that for a second, if you will,
6 because this is, this is what was important to Commissioner
7 Kerr, wasn't it? He wanted to know if y'all were providing
8 this service to any of your retail customers. That's what he
9 wanted to know.

10 A Correct.

11 Q He was actually asking essentially this question as
12 represented by --

13 A I would disagree. He was asking me what we have
14 granted to our retail customers. So that's not necessarily
15 that.

16 Q Well, because if you --

17 A It's one-half of that.

18 Q He wanted to know because it was important to his
19 decision to know as to, to know what y'all did with y'all's
20 retail customers in order to decide what should happen with
21 dPi. That's why he wanted to know that; isn't that true?

22 A Perhaps, but I can't read Commissioner Kerr's mind.
23 I'm sorry.

24 Q Okay. So he's asking you that question. Then I'm
25 going, I'm going to look at your testimony on Page 245 and I'm

1 going to try to read it from Lines 14 through 22. And I'd like
2 you to tell me if I got that right. Okay?

3 He's asking you about this issue about what y'all
4 provide to your own end users who order, or if they order 1FR
5 plus the blocks. And you say, "What I can tell you is that I
6 asked specifically for a query to be run to determine if any
7 BellSouth end user had been granted a line connection waiver
8 that had only basic local service and two of these blocks with
9 nothing else, two or more of these just free features, free
10 whatever they are. And I was told -- you see, I do it too."
11 And you're referring there to calling the blocks features;
12 right?

13 A Correct.

14 Q "What I was told is there are none." Did I read that
15 correctly?

16 A Yes.

17 Q Okay. Would you flip over to Page 246, you continue
18 with your response after having said that there are none. And
19 you say, "It's the way the promotion has been designed. We've
20 had this promotion, the sign available for several years, and
21 that's the application and the practice, the way that it has
22 always been applied." Did I read that correctly?

23 A Yes.

24 Q And then if you'll look over on Page 247 I ask some
25 questions of my own. This is from Lines 12 through 18.

1 "Ms. Tipton, I believe you stated that y'all ran a
2 query and that the result of that query was that SBC had never
3 given its end users this, the benefits of this promotion in a
4 situation where they had the basic service plus, plus one or
5 two or more of the blocks; is that correct?" And you said,
6 "Yes." Did I read that correctly?

7 A Yes.

8 Q Okay. In fact, y'all had not run any kind of an
9 analysis like you did here in Florida; isn't that true?

10 A That's not true because --

11 Q You saw, you saw a stack of papers like this in North
12 Carolina?

13 A I did not see a stack of papers. I asked the
14 question, I asked the question if we can run a query. I don't
15 know how that was invoked, I don't know how they accomplished
16 it. But what happened was the retail contact went to their
17 data folks, they ran what I'll call a query against the North
18 Carolina data, and for whatever -- I didn't even ask for a
19 specific time period so I don't know what specific time period.
20 And the response I got is there were no customers who had
21 actually requested at the, for that particular time frame that
22 had requested the basic service and two free features, two free
23 blocks.

24 Q There would be no customers at all?

25 A There were none.

1 Q Okay. So do you think that maybe somebody didn't
2 actually run the query and just told you that they had?

3 A I'm sorry. Can you repeat that?

4 Q Never mind. I'll withdraw the question.

5 A I just couldn't hear you. I'm sorry.

6 Q Let's look at some more of your analysis. And,
7 again, this is just the analysis after 2005; right?

8 A It's 2005 through 2007.

9 Q Okay. In 2006, again, we're just looking at only
10 your retail customers that order 1FR basic service plus the
11 blocks, BCR, BRD, HBG; correct?

12 A Which column are you referring to?

13 Q Well, they're all the same. They're all looking at
14 who orders those services that way.

15 MR. CARVER: I'm sorry. This is one of the -- this
16 is sort of an objection but just a general comment here. One
17 of the problems with the use of this projector is he keeps
18 showing her pieces of documents and she can't really tell what
19 they are. I mean, the headings are cut off so that she's
20 having to ask him to clarify which, you know, what it is that
21 he's asking. And, you know, throughout this, I mean, I've
22 tried to be very patient. But if Mr. Malish continues to put
23 documents up and to show pieces of documents and to not, you
24 know, give the witness the entire document so that she can
25 basically look at it and have a fair opportunity to testify

1 about it -- I mean, if it weren't for the overhead, I mean,
2 he'd give her the document and she'd have it. But instead this
3 has continually been used in this way. I mean, again, what
4 we've got here is a part of one page and we can't see headings,
5 we can't see anything. And I'd just object to this, you know,
6 continuing fragmenting of documents so that the witness can't
7 see the entire thing that she's being asked to comment on.

8 BY MR. MALISH:

9 Q Ms. Tipton, what is your hand resting on right now?

10 A It's resting on a copy, but I don't have a clue which
11 column you're asking me a question about.

12 Q How many columns are there with, across the, across
13 the middle of the page with 2006 in it? We're looking at 2006;
14 right?

15 A One, two, three, four, five. One, two, three, four,
16 five, there's five columns.

17 Q And everything, everything in this whole thing, this
18 whole document is talking about situations in which your end
19 users or AT&T's end users ordered basic service plus HBR,
20 excuse me, HBG, BCR and BRD only and nothing else.

21 A No, it's not. That's why I'm confused. Because the
22 column that I described earlier, and this is the reason why I
23 wanted to describe this document clearly in the record, the
24 first column to the right of the order year is the total number
25 of residential N orders.

1 Q Okay.

2 A Total.

3 Q You're looking at, you're looking at this second
4 column over there.

5 A Yes.

6 Q That's not something that was included in the, in the
7 Exhibit 13, the spreadsheets. The total number of N orders was
8 not included in the spreadsheets; correct?

9 A No, it was not.

10 Q The only thing that was in the spreadsheets was those
11 orders which were 1FR, BRD, BCR and HBG; isn't that correct?

12 A It included the column immediately to the right,
13 which is N orders with two or more free blocks which may have
14 also had other features associated with them.

15 Q Okay. And in 2006 what this column over here is
16 showing us is that the percentage went up.

17 A The percentage of --

18 Q In two thousand --

19 COMMISSIONER McMURRIAN: Mr. Malish, I have to say I
20 can't follow your questions either. So I'm trying to have
21 patience, too, but perhaps you need to make copies and hand
22 them out so that we can all follow what you're talking about.
23 When you say things like "this" and that sort of thing, you're
24 going to have to be more clear, I think.

25

1 BY MR. MALISH:

2 Q Well, Ms. Tipton, isn't it true that your analysis
3 showed that in 2006 BellSouth processed 7,132 requests from its
4 own retail users for basic service plus just the blocks;
5 correct?

6 A Yes.

7 Q And it waived the line connection charge in 885 of
8 those cases.

9 A Okay. Let me, let me re, re -- say my first answer.
10 The 7,132 are N orders that have two or more free
11 blocks. They may also have other features. The 885 is only
12 orders that have just those free, I'll just call them for ease
13 those free blocks. Okay? They might not be blocks.
14 885 orders out of the 7,132 had only the HBR, BRD, et cetera,
15 and there was a waiver code present on the service order.
16 That's what that 885 represents.

17 Q So, so was it waived or not, the line connection
18 charge?

19 A The line connection charge was waived. That does not
20 mean the Line Connection Charge Waiver promotion was granted.
21 There's a big difference.

22 Q Okay. Of course we'll, we can debate what the
23 significance of this data shows.

24 This is 2007, this is -- and, again, this is
25 analyzing data that was provided by AT&T just prior to your

1 testimony, your original testimony in August of 2007; isn't
2 that correct?

3 A I honestly don't remember the specific dates when
4 data was actually provided, because I know that it took us a
5 long time to get all of this data pulled together.

6 Q Okay. This is, this is data showing August of 2007.

7 A Uh-huh.

8 Q Just follow along this line with me. If I'm reading
9 this correctly, in August of 2007, which is the time you were
10 providing your testimony to this Commission, there were 798 of
11 the kinds of orders that dPi used to, used to make, and 152 or
12 19 percent of them or more than 19 percent of them got the line
13 connection charge waived.

14 A That's what the data shows. Yes.

15 Q And, in fact, the data from 2003 through 2004 that
16 you didn't analyze showed more, didn't it?

17 A Actually you cannot draw that conclusion from the
18 data that was provided.

19 Q Okay. You're saying that the data that was provided
20 for 2003 and 2004 is so unreliable that you can't draw any
21 conclusion from it whatsoever?

22 A Well, let me describe some of the differences.

23 Q Well, that's not the question.

24 MR. CARVER: I'm sorry. He cut her off before she
25 explained her previous answer and went to the next one. I

1 think she should be able to explain why they're not reliable.

2 COMMISSIONER McMURRIAN: Mr. Malish, if that's not
3 your question, ask the one that is your question and let's move
4 ahead.

5 MR. MALISH: Okay. Let me --

6 COMMISSIONER McMURRIAN: When, when a witness can
7 answer yes, no, or I don't know and then explain -- and I do
8 think it would be nice to have brief explanations if that would
9 suffice because it is, the hour is late and we are going to
10 still have questions from staff probably and perhaps the
11 Commissioners as well. And I'm not sure how much longer we're
12 going to be able to keep at this, but --

13 BY MR. MALISH:

14 Q Let me, let me just point out one more thing on this
15 graph before we leave this subject. You have down here the
16 total. We've been looking in this column here. You have the
17 total, the percentages of, of the lines that were ordered like
18 dPi's were and how many of those were given the waiver;
19 correct?

20 A Correct.

21 Q We come down here to the bottom and I think this must
22 be a typo here. You have it as .16 percent as the, as the
23 average of 10.56, 12.41 and 17.15 or 17.17. So that must be a
24 typo, isn't it?

25 A Actually it was my mistake in grabbing a cell because

1 what I should have -- this is an Excel spreadsheet. And so
2 when I built the calculations, I should have grabbed the cell
3 which has the number of 18,621, but instead I grabbed the cell
4 immediately next to it and didn't catch the response until I
5 saw the printed form in what we actually filed. So the correct
6 percentage that should be there is 13.8 percent.

7 Q Okay. That's what I have there; right?

8 A Oh, yes. There you go.

9 Q Okay.

10 A I have it on my copy, too.

11 Q But my number that I hand wrote there is the correct
12 one; right?

13 A Yes, for that cell. What the .16 represents is,
14 that's actually the percentage of N orders that have these free
15 blocks and a waiver code. That's the percentage of all the N
16 orders issued in Florida for the time period reflected here.

17 Q Hang on a second. I want to make sure that I
18 understood you correctly. I thought that this column was all N
19 orders of any kind.

20 A Yes.

21 Q Okay. And so this number here at the bottom of that
22 column is just all numbers of any kind, all new orders of any
23 kind.

24 A Yes.

25 Q Okay. So this 0.16 is how many got the waiver out of

1 all N orders of any kind.

2 A Correct.

3 Q That's not really apples to apples though; right?

4 We're talking about dPi's orders as compared to AT&T's retail
5 orders.

6 A Correct.

7 Q Okay.

8 A Now I would like to go back and answer the question
9 that I was not permitted, if that's okay.

10 Q Well, let me just withdraw that question and --

11 MR. CARVER: No. I object to that because she had
12 given the yes or no answer and now she's entitled to provide
13 her explanation.

14 COMMISSIONER McMURRIAN: I'm going to look to staff
15 on this because I honestly don't remember this coming up
16 before. So could you --

17 MS. CIBULA: If he withdraws the question, then the
18 question is withdrawn and she doesn't need to answer.

19 BY MR. MALISH:

20 Q Okay. My question to you, Ms. Tipton, is about the
21 data from 2003 and 2004. Okay. And that data shows much
22 higher percentages of orders configured like dPi's being given
23 a waiver of the connection charge. Isn't that true?

24 A No, that's not true. The 2003 -- the data we
25 provided to dPi was actually 2003 to 2005 and they've used only

1 the 2003 to 2004 portion of it. And in order to extract that
2 data there's a big difference between that time frame and the
3 '05 to '07 time frame we just looked at. The '05 to '07 I
4 refer to as the service order data. The 2003 to 2005 data,
5 which they've used the '03 to '04 period, I refer to that as
6 the billing data just to keep it simple.

7 The service order data has an actual waiver code. So
8 we can tell for sure that a waiver code was applied to a
9 service order which caused the line connection charge to be
10 waived. We do not know whether that charge was waived as a
11 result of the Line Connection Charge Waiver promotion or not.
12 And that's very important. The early data, which I call the
13 billing data, does not have a waiver code because we cannot
14 access the actual service order. We had to rely on billing
15 data, and waiver codes are not retained in billing data. So we
16 do not know that the charges were actually waived.

17 The only thing we could look at is the very last day
18 of the month snapshot of what was on the billing record the
19 last day of the month. And that -- the query that was run was
20 very complicated, so I'll try to make it really simple. They
21 had to look at partial -- months that had partial billing in
22 them and compare that to a date of installation date, which is
23 a manually adjustable date. So at best we have a guesstimate of
24 the actual date of installation based on the fact that there
25 was partial billing in the billing data on the same month that

1 the date of installation reflected. So from March of 2003, if
2 there happened to be partial billing in that month on a
3 particular telephone number and a date of installation showed
4 March 15th, then we assumed that that was when the service was
5 installed. And unfortunately date of installation can be
6 manually changed. If the snapshot is taken the last day of the
7 month -- so if the bill period which is the date upon which
8 that customer's bill is run happens to fall, I'm just going to
9 say March the 7th and the new install occurred on March the
10 15th, the bill will not have run and captured the installation
11 for that particular month. So we would show a completed date
12 of install, March 15th, we would show zero dollars in the
13 billing data. So it would look like the charges were waived.
14 And, in fact, those charges were billed in April the following
15 month when the bill actually ran, and there was no way to
16 correct for that. It was impossible to do. And we tried over
17 and over to explain to dPi the fallacies associated with this
18 data. But in an attempt to try to provide responsive
19 information, we did.

20 Q So the bottom line, Ms. Tipton, is that the material
21 that you provided from 2003 through 2005 is your best attempt
22 to identify those situations in which your customers ordered
23 basic service plus the blocks and the blocks only and whether
24 they received a charge for the connection, the line connection.

25 A That was --

1 Q That was your best attempt to get that information.

2 A That was our very -- our best attempt. Yes.

3 Q And that -- and this data shows, now you may want to
4 argue about what the data means, but the data in this set of
5 materials shows that at a higher percentage than what we talked
6 about for 2005 to the present, that the end users of AT&T had
7 their line connection charge waived.

8 A I cannot say that they had the line connection charge
9 waived. And I can tell you that I have spent hours on the
10 phone with the data analysts, and they recommended to
11 Mr. Carver that we not produce the data at all because they
12 felt like it flat just was not responsive. And Mr. Carver felt
13 like it was very important to be responsive, that we would
14 provide clarification as to our concerns about the data. So I
15 cannot tell you that those charges were waived. We have too
16 many issues with the data itself. There's -- we have an
17 overlap of '05 and we were actually able to make a comparison
18 of just the '05 data, and there are a tremendous number of
19 discrepancies with the '05 data.

20 Q And your comparison of the two showed that the data
21 from the one set that you call unreliable was around
22 29 percent; correct?

23 A I don't recall off the top of my head. I just
24 remember that it was significantly more.

25 Q It was about 10 percent difference, 10 percentage

1 points.

2 A Again, I don't know the actual percentage. I just
3 know that it was significantly greater.

4 Q Let me show you just one page out of Exhibit 13.
5 This one is Bate stamped 000047.

6 And, again, this is attempting to show all the
7 situations where there's 1FR plus BRD or BCR, excuse, BCR, BRD,
8 for example, correct?

9 MS. TAN: Excuse me. I believe this is confidential
10 information as filed with the Commission.

11 MR. CARVER: Yes, it is. This is BellSouth
12 customer-specific information. The account numbers allow for
13 identification of the customers, and this is something that by
14 the statute can't be publicly disclosed.

15 COMMISSIONER McMURRIAN: Mr. Malish, I suggest you
16 take it off the overhead now until we sort this out.

17 Ms. Tan? Have we, have we actually stated any
18 numbers on the record?

19 MR. MALISH: No. Well, I stated the number of the
20 page, not any of the account numbers.

21 MR. CARVER: If I may, some of what he's shown are
22 summaries and it's not at problem. The problem is that
23 particular document and the other documents like it, because
24 it's a spreadsheet and on the left-hand side of each line in
25 the spreadsheet is a customer identification. So I think that,

1 that's the first one, I believe, that's confidential because
2 that's not part of the summary. That's part of the actual run
3 that is customer specific.

4 MR. MALISH: How about if I cover the account number
5 up?

6 MS. TAN: No. That's not --

7 COMMISSIONER McMURRIAN: Ms. Tan.

8 MS. TAN: In fact, you received an e-mail from us
9 on -- you should have confidential information filing.

10 COMMISSIONER McMURRIAN: There's information I know
11 in the Order Establishing Procedure about how to treat
12 confidential data, and I'm pretty sure we don't use it during
13 the hearing unless we pass it out in red folders and we all
14 look at it.

15 MS. TAN: Right. If you recall -- that's correct.
16 If you recall, on March 7th I sent an e-mail reminding the
17 parties that if they were to use an exhibit at the, at the
18 hearing, that the information would need to be presented in the
19 red folder and, and then picked up. And I can state in the OEP
20 where it says, "When confidential information is used in the
21 hearing, parties must have copies for the Commissioners,
22 necessary staff and the court reporter in red envelopes clearly
23 marked with the nature of the contents and with confidential
24 information highlighted. Any parties wishing to examine the
25 confidential material that is not subject to an order granting

1 confidentiality shall be provided a copy in the same fashion as
2 provided to the Commissioners." This has been filed as
3 confidential and, therefore, you would need to present it to us
4 in red folders.

5 MR. MALISH: All right.

6 COMMISSIONER McMURRIAN: Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Madam Chair. And to
8 staff also, it's my understanding that dPi has retained local
9 counsel, and would it be appropriate for local counsel to have
10 advised them of that? I mean, that's the purpose for having
11 local counsel, I would imagine.

12 MS. TAN: That would be helpful.

13 COMMISSIONER McMURRIAN: Okay. Ms. Tan, what do we
14 do, just move on? Have we --

15 MR. MALISH: Let's just move on.

16 COMMISSIONER McMURRIAN: Hold on, Mr. Malish. I
17 wasn't asking you. With all due respect, I wasn't, I wasn't
18 addressing you.

19 Ms. Tan, have we done something that we need to take
20 care of now or that we take care of later or is, or is the
21 showing of the information on the overhead, is it something we
22 can --

23 MS. TAN: Currently we are okay. Because the
24 information is not available for everyone here within red
25 folders, it is our recommendation that we do move on. But as

1 to confidentiality, we are okay at this time.

2 COMMISSIONER McMURRIAN: Mr. Carver, do you have any
3 concern or objection, I guess? I'm not really sure -- I've
4 never had this happen before, so I have to --

5 MR. CARVER: I think we're -- I mean, technically, I
6 guess, there was publication of the information in violation of
7 the statute and in violation of Commission procedures.
8 However, in this instance the problem we've been having with
9 the overhead kind of helped us because it was only up there a
10 second and we couldn't really read it. And I feel fairly
11 certain that nobody copied down or memorized the customer
12 identification. So I'm not sure what to say. I think
13 technically it is a violation of the statute. I doubt if
14 anybody really, you know, based on that brief look could
15 identify any particular customers. So I think it's maybe no
16 harm, no foul, although there was a foul. That's kind of all I
17 can say.

18 COMMISSIONER McMURRIAN: Okay. And, Mr. Malish, I'll
19 let you have the last word since I cut you off a second ago.
20 But I think if we, I think the best thing is to --

21 MR. MALISH: I'm very happy to move on.

22 COMMISSIONER McMURRIAN: Okay.

23 MR. MALISH: Thank you.

24 BY MR. MALISH:

25 Q Let me just do it this way, Ms. Tipton. That, that

1 data from 2003, 2004, 2005 from the billing data, that contains
2 columns which say, which identify whether there was, whether
3 there was a nonrecurring charge billed or not; correct?

4 A Correct.

5 Q And a line connection charge is a nonrecurring
6 charge; correct?

7 A Yes.

8 Q Okay. So if a line connection charge had been
9 billed, you would ordinarily expect it to see, you would
10 ordinarily expect it to appear under nonrecurring charges
11 billed.

12 A Ordinarily you would. But I described earlier the
13 problems with the data and I'll just let it rest at that.

14 Q Okay.

15 MR. CARVER: If I may while there's a pause, there's
16 a problem that we're sort of talking about, which I believe is
17 this proceeding is webcast, so, you know, people can see it
18 live on the Web. What we're trying to figure out is if it's
19 also recorded there so that if someone could go in, you know,
20 roll to that particular frame and look at it and get the
21 customer information, and I'm not sure we have an answer yet.
22 But I just wanted to sort of say there may be more of a problem
23 than I thought.

24 COMMISSIONER McMURRIAN: Do we want to take a break?
25 Would anyone like a break at this moment? Okay. Let's take a

1 five-minute break. I know that we are getting very close to
2 6:00 and I've been told that that's when our air conditioning
3 goes off. So if you think we're testy now. (Laughter.) So
4 let's take a five-minute break and we will try to actually
5 stick to the five minutes this time and try to see what we can
6 do. Thank you.

7 (Recess taken.)

8 Okay. I think we'll go back on the record. We'll go
9 back on the record. And I don't think there's anything we can
10 do at the moment about the confidential information, so we'll
11 just let that, we'll let those working on that continue to work
12 on it. And we will continue with cross-examination,
13 Mr. Malish.

14 MR. MALISH: Thank you.

15 BY MR. MALISH:

16 Q Ms. Tipton, do you remember saying words to the
17 effect of, that if AT&T had credited CLECs, for example, like
18 Budget Phone with LCCW promotion credits in situations where
19 they had ordered service with IFR plus the blocks, that that
20 was a mistake?

21 A Okay. Let me make sure, I want to make sure I'm
22 understanding your question.

23 Q Okay.

24 A That if we had granted promotional credits to Budget
25 Phone when they had, under the Line Connection Charge Waiver

1 promotion and they had only ordered basic service and just
2 those free blocks.

3 Q Right.

4 A Was that a mistake? And, yes, the answer is yes.

5 Q Okay. And that's part of what happens. Christy
6 Siegel looked at, approved those orders for Budget Phone and
7 didn't approve them for dPi, and the fact that they approved
8 them for Budget Phone was a mistake.

9 A Well, I don't know that Christy ever went back and
10 relooked at all of the Budget Phone requests. We've just never
11 talked about it.

12 Q Isn't it true though that AT&T or BellSouth back then
13 never made any attempt to go back and back bill Budget Phone to
14 recover for those promotional awards?

15 A I'm not sure. As of the time of the North Carolina
16 hearing I know that we had not, but I'm not sure if they've
17 done so since then.

18 Q Okay. And as of, as of September 24, 2007, you still
19 had not made any attempt to try to do a back bill to Budget
20 Phone; is that correct?

21 A I don't believe so, but, again, I'm not sure.

22 Q If you said that in your deposition, do you have any
23 reason to change your testimony?

24 A No.

25 Q Would you like me to read your deposition from

1 September 24, 2007, on that subject?

2 A I'd be happy to take your word for it. I'm sure it's
3 well documented.

4 Q Okay. So at least through September of 2007 there
5 hasn't been any attempt to back bill Budget Phone.

6 A Correct.

7 Q But isn't it true that generally speaking any time
8 there's a mistake in billing, BellSouth routinely goes back and
9 tries to recoup those monies through back billing, generally
10 speaking?

11 A Generally speaking we would. But in the case of
12 resale we've been extremely constrained with resources. So
13 it's just a matter of determining whether we process all of the
14 wave of credits that's coming in and trying to do so in a
15 timely manner versus doing the back billing, which is what I
16 understand prevented them from correcting that error
17 immediately after it happened. Because, as we all know, it
18 took several months to clear the backlog that occurred as a
19 result of the original denial.

20 Q Do you know how long under the contract you have to
21 back bill? Is it like two years?

22 A I think it's two years, but I'm not certain.

23 Q Okay. The, the document that I was referring to
24 earlier about the policy, if I show this on the screen -- let
25 me give you an extra copy. I'll hand you a copy of a document.

1 A Thanks.

2 Q It's actually part of a discovery response in the
3 same litigation in Louisiana. And does that have a copy of the
4 resale promotion policy on it?

5 A My understanding is this is the instructions that
6 were provided to the service representatives that were doing
7 the sampling validation process.

8 Q So this is not for marketing people that are trying
9 to sign people up?

10 A No.

11 Q Okay. And when was this document created?

12 A I'm not certain. I don't see a date on it.

13 Q Okay. If you'll look at the first page of the
14 document response, do you see there where the lawyer, whoever
15 is answering this question on behalf of BellSouth says it was
16 created in May 2005?

17 A Yes.

18 MR. MALISH: Okay. I guess, Madam Chairman,
19 Chairwoman, Commissioner McMurrin, I would like to mark this
20 one as the next, next exhibit, and then -- which I believe is
21 32.

22 COMMISSIONER McMURRIAN: Right. And a short title?

23 MR. MALISH: And then -- beg pardon?

24 COMMISSIONER McMURRIAN: Just a short title.

25 MR. MALISH: We'll call it BellSouth's Internal

1 Resale Promotions Policy Documents. So BellSouth's Internal
2 Resale Promotions Policy Documents.

3 COMMISSIONER McMURRIAN: Thanks.

4 (Exhibit 32 marked for identification.)

5 MR. MALISH: And then I would move for the admission
6 of Exhibits 27 through 32, and I can put those on the overhead
7 one at a time, if that would help.

8 COMMISSIONER McMURRIAN: You're talking about the
9 exhibits we previously marked for this witness?

10 MR. MALISH: Previously marked.

11 COMMISSIONER McMURRIAN: I don't think you need to
12 put them on the overhead. I think we can just take up whether
13 or not there are any objections and enter them. Is this the
14 appropriate -- are you through with your cross-examination?

15 MR. MALISH: Yes.

16 COMMISSIONER McMURRIAN: Is this the appropriate
17 time, Ms. Tan, to enter in, to take up entering in these
18 exhibits or do we need to do it after other parties have
19 crossed and then --

20 MS. TAN: At this time I think we would do
21 Mr. Carver's redirect and then at the end enter in dPi's -- I
22 believe it's two, is it two documents? Three documents, I
23 believe, that he'll be entering in -- or, wait. No. One,
24 two -- five documents.

25 COMMISSIONER McMURRIAN: In any case, we can take

1 them up, we should take them up after the redirect?

2 MS. TAN: Yes.

3 COMMISSIONER McMURRIAN: Okay. All right.

4 Mr. Malish, don't let me forget. We'll come back. Mr. --

5 MR. CARVER: Does staff have questions?

6 MS. TAN: Staff has no questions.

7 MR. CARVER: Thank you.

8 COMMISSIONER McMURRIAN: Hold on just a second.

9 Commissioner Skop.

10 COMMISSIONER SKOP: Yes. Thank you, Madam Chair.

11 I just wanted to go back and clarify a prior comment
12 that I made regarding local counsel prior to the break because
13 I feel it was necessary.

14 Having local counsel is a tremendous resource when
15 out-of-state practitioners are trying to navigate an unfamiliar
16 procedural process. And it's my subsequent understanding that
17 dPi retained local counsel late in the process, and I think
18 there's lessons to be learned there. But my apologies,
19 Mr. Horton, if that was misconstrued on my part. But as
20 recognized by the Bar, there is a tremendous benefit in the
21 state for having local counsel. Thank you.

22 COMMISSIONER McMURRIAN: And, Ms. Tan, still no
23 questions?

24 MS. TAN: That is correct.

25 COMMISSIONER McMURRIAN: Okay. Mr. Carver.

1 MR. CARVER: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. CARVER:

4 Q Ms. Tipton, I just have a few clarifying questions.
5 Early on in the cross Mr. Malish asked you some
6 questions about what are features and what are blocks and can
7 features be purchased and can blocks be purchased. So I just
8 have one or two follow-ups on that particular question.

9 The denial of per activations, I mean, regardless of
10 what we call it, is it something that is purchased?

11 A No.

12 Q Can you explain why that is?

13 A Because that service, if you will, is offered at no
14 charge.

15 Q Okay. Thank you. Now let's go to -- I believe it
16 has been marked as Hearing Exhibit Number 13, but this is
17 AT&T's supplemental response, the thousand-page document that
18 Mr. Malish spent some time talking to you about. Just so that
19 the record is clear, let me ask you generally, from this
20 document is it possible to tell whether a particular retail
21 customer received a waiver of the line connection charge
22 pursuant to the LCCW promotion?

23 A No. It's actually impossible to tell that from this
24 data.

25 Q Okay. And I -- could you explain why that is,

1 please?

2 A Yes. What I called previously the service order
3 data, which is the 2005 through 2007 data, lists service orders
4 that were issued on behalf of our retail customers when they
5 ordered basic service and at least two of the free blocks, and
6 it shows whether a waiver code was present on the service
7 order. So it's binary, yes or no there was a waiver code
8 present. It does not provide a reason for why the waiver code
9 was present. And after spending some time reviewing the data
10 and specifically looking at the service orders that we pulled,
11 it was even more abundantly clear that you could not tell from
12 the report that was provided, first of all, whether the
13 customer was even a reacquisition customer or a brand new
14 customer.

15 And, secondly, for all the reasons I previously
16 testified to, we found all kinds of reasons why the line
17 connection charge was waived. We had a lot of those orders
18 that were split billed, it's just a records change, no line
19 connection charge should be billed in that instance. We had a
20 number that were a restoration of service following some
21 disaster, whether it was fire or hurricane. It wasn't a
22 tremendous percentage but we had some. We had a pretty
23 significant number of lines that were just flat out
24 disconnected in error. So those clearly didn't have the Line
25 Connection Charge Waiver promotion granted, but yet they show

1 up in this report because the line connection charge was waived
2 because the waiver code is on the order.

3 And the other set of data which I called the billing
4 data, there's no waiver code to look at. We did our best guess
5 to show that nonrecurring charges were billed or not billed,
6 but that was simply based on some logic that was applied to
7 relate data in actually three completely different sources and
8 we did it based on date of installation, and it just created
9 kind of a moving target, but it was a best effort.

10 Q Now for the '05 through '07 data, and I know you've
11 just testified that the waivers, that we can't tell the reason
12 for the waiver, but the percentage of waivers for that time
13 period, do you remember what the percentage was?

14 A For the, I'm sorry, for the '05 to '07?

15 Q Yes.

16 A On average waiver codes were present on approximately
17 14 percent --

18 Q Okay.

19 A -- of all of the orders that had just 1FR and just
20 the two, two or more of these free blocks, for lack of a better
21 way to call them.

22 Q Okay. So then obviously the inverse would be true,
23 86 percent of the orders didn't have a waiver.

24 A That's correct.

25 Q Okay. Now I want to ask you a little bit about the

1 service orders themselves. Now as I understand your testimony,
2 the document that Mr. Malish asked you about was an extraction
3 from AT&T's databases; correct?

4 A Yes.

5 Q And the source information for that extraction
6 ultimately would be the service orders that were created at the
7 time that the retail customer made the order; is that correct?

8 A Yes. The retail service orders, and then the USOC
9 revenue was pulled from somewhere totally different. It was
10 just pulled from a data table.

11 Q Now I believe you testified that you had sampled 134
12 of these orders; is that correct?

13 A 136.

14 Q 136. And did you -- I believe you also testified
15 that you were advised that that was a statistically valid
16 sample?

17 A Yes. The statistician indicated that that gave us,
18 and I can't remember the exact percentage, but it was north of
19 90 percent of assurance of reflection of the overall universe.

20 Q Now when you actually looked at the service orders,
21 did any of them indicate the reasons that the customers
22 received the waivers?

23 A I'm sorry. Can you say that again? I got distracted
24 by some movement over here.

25 Q Yeah. When you went beyond the document that dPi

1 asked us to produce and you looked at the actual service
2 orders, did any of those 136 service orders indicate the reason
3 why the waiver was given?

4 A Some of the service orders gave a reason why the line
5 connection charge was waived. And the ones that have specific
6 instructions in the remark sections typically were those that
7 said line connection charge waived, restoration following
8 hurricane, or line connection charge waived, disconnect in
9 error. There were a lot of the service orders that did not
10 have any explanation at all in the remarks section.

11 Q Okay. Do you remember, of the ones that were
12 disconnected in error, do you remember what percentage of the
13 136 specifically indicated that they were disconnected in
14 error?

15 A About -- it was approximately 15 percent. I don't
16 remember exactly, but it was approximately 15 percent of the
17 service orders we reviewed had the charge waived because it was
18 a disconnect in error.

19 Q Okay. So the number disconnected in error that you
20 identified in your sample, that's actually a larger percentage
21 than the total number of waivers given out of these 18,000
22 accounts; correct?

23 A I think so.

24 Q Okay. I think -- well, if I understand --

25 A I follow that logic.

1 Q If I understand you, you said 15 percent from the
2 sample were waived because of disconnection error. A total of
3 14 percent were waived in the '05 to '07 time frame.

4 A Oh, that's -- yes, that's true.

5 Q Okay. Now of these 136 service orders that you
6 looked at, did any of them indicate that the line connection
7 waiver was given as a result of the LCCW promotion?

8 A No, none of them did.

9 Q Not a single one?

10 A No.

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

12 COMMISSIONER McMURRIAN: Okay. So I guess we need to
13 take up exhibits. Maybe we need to, Mr. Malish, maybe we need
14 to take them up maybe in groups. Let's start with Exhibit 28
15 and 29. You wanted to enter those in the record.

16 MR. MALISH: I do. But unfortunately, Commissioner,
17 I want to do a recross on some of the things that Mr. Carver
18 just brought up.

19 MR. CARVER: Objection.

20 COMMISSIONER McMURRIAN: Mr. Malish, we don't
21 typically do recross, but I will turn to the, to the experts to
22 my left.

23 MS. CIBULA: I agree, we don't do recross.

24 MR. MALISH: The problem, Your Honor, excuse me,
25 Commissioner, is that he's brought up some stuff about the

1 percentage of the, of the waivers and what they were given for,
2 and I would like to go in and nail that down. So it sounds to
3 me like there was 14 percent of the, excuse me, approximately
4 15 percent of the ones that got waivers where they were able to
5 identify it for a particular reason but that's all.

6 COMMISSIONER McMURRIAN: Mr. Malish, I'm going to
7 grant the objection. And we do not do recross here, and I
8 think that, I think that that's probably spelled out in some of
9 our procedural things, but I'm not, I'm not sure. But I'm
10 going to uphold the objection.

11 MR. MALISH: In that case then we would go ahead and
12 move for the admission of Exhibits 27 through 32.

13 COMMISSIONER McMURRIAN: Okay. Let's take up 28 and
14 29 together just because I think this might be simpler to talk
15 about those together. Are there any objections to the entry of
16 Exhibits 28 and 29 that were -- those were the two dPi diagrams
17 regarding parity. Any objection?

18 MR. CARVER: No. Actually I hate to jump ahead, but
19 just to save time, I don't have any objections to anything that
20 they want to put in. I feel confident the Commission can
21 determine what weight to assign to it.

22 COMMISSIONER McMURRIAN: Okay. Well, the -- okay,
23 you did get a little ahead of me.

24 MR. CARVER: I'm sorry.

25 COMMISSIONER McMURRIAN: With regard to Exhibit 30 --

1 well, the reason I was going to take them up separately is
2 Exhibit 30, I believe, you were going to late file.

3 MR. CARVER: Yes. Yes. I'm sorry.

4 COMMISSIONER McMURRIAN: When can you get that for
5 us, Mr. Carver?

6 MR. CARVER: I would say within a matter of days.
7 Probably by Monday.

8 COMMISSIONER McMURRIAN: Is that -- okay. So Monday.

9 Okay. So no objections with regard to Exhibits 28
10 through 32, so we'll show all those entered.

11 (Exhibits 28, 29, 30, 31 and 32 admitted into the
12 record.)

13 Did we enter in Exhibit -- we entered in Exhibit 27
14 earlier, didn't we?

15 MS. TAN: Yes. It was entered with Mr. Bolinger.

16 COMMISSIONER McMURRIAN: That's right, Mr. Bolinger.
17 Okay. I just wanted to make absolutely sure.

18 Okay. So show Exhibits 28 through 32 entered into
19 the record.

20 MS. TAN: In addition, Commissioner, we need to
21 either get copies of the single page exhibits or they'll need
22 to provide it to us by Monday.

23 COMMISSIONER McMURRIAN: Mr. Malish, is it your
24 preference to leave copies of your, leave the copies of the
25 diagram or leave the version that you have or to make copies

1 and submit them by Monday?

2 MR. MALISH: I'm going to let Doc, Mr. Horton make
3 the decision.

4 COMMISSIONER McMURRIAN: Okay.

5 MR. HORTON: Commissioner, if it's okay, if he will
6 provide those copies, I'll make sure that we copy them and
7 circulate them.

8 MS. TAN: Staff is okay with that. On Monday, by
9 Monday?

10 MR. HORTON: I would hope so.

11 MS. TAN: Okay.

12 COMMISSIONER McMURRIAN: Do we need to do anything to
13 show those late-filed or is it okay just to show on the record
14 that those will be entered in Monday or provided Monday,
15 entered in today, provided Monday?

16 MS. TAN: At this point they would be late-filed, so
17 they can just label them as late-filed exhibits with the
18 number.

19 COMMISSIONER McMURRIAN: Okay. With the appropriate
20 number.

21 MS. TAN: Yes.

22 COMMISSIONER McMURRIAN: Thank you. Bear with me.

23 THE WITNESS: May I be excused from the witness
24 chair?

25 COMMISSIONER McMURRIAN: Yes, Ms. Tipton, you may be

1 excused. Thank you.

2 THE WITNESS: Thank you.

3 COMMISSIONER McMURRIAN: Okay. And did we also,
4 Mr. Carver, did we enter in, I don't think we did, Ms. Tipton's
5 exhibits?

6 MR. CARVER: No, ma'am.

7 COMMISSIONER McMURRIAN: 22 through 26.

8 MR. CARVER: Yes. I'd like to move those into
9 evidence at this time, please.

10 COMMISSIONER McMURRIAN: Any objection?

11 MR. MALISH: No. I thought they were already
12 admitted.

13 COMMISSIONER McMURRIAN: I think we marked them but I
14 don't think I entered them. So show those entered into the
15 record as well.

16 (Exhibits 22, 23, 24, 25 and 26 admitted into the
17 record.)

18 Okay. Staff, are there additional matters that we
19 need to take up at this time?

20 MS. TAN: At this time staff would like to review the
21 upcoming significant dates.

22 COMMISSIONER McMURRIAN: Okay.

23 MS. TAN: All right. The transcript will be due on
24 April 14th, the briefs will be due on April 30th, and the
25 recommendation will most likely come out on June 5th.

1 COMMISSIONER McMURRIAN: Okay. Any other matters
2 before we conclude this hearing? Thank everyone for bearing
3 with us. I think we --

4 MR. MALISH: I would like to thank everyone for
5 bearing with me, so.

6 COMMISSIONER McMURRIAN: Mr. Malish, we realize that
7 you have not been in proceedings before this Commission before,
8 but I think we'll, we'll -- I think we all got through it and I
9 appreciate your patience.

10 MR. MALISH: I will try to do better next time.

11 COMMISSIONER McMURRIAN: Thank you all. This hearing
12 is adjourned.

13 (Hearing adjourned at 6:07 p.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14th day of April, 2008.

Linda Boles
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