

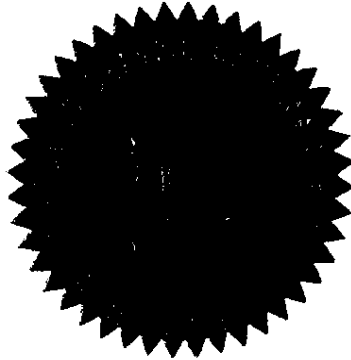
5. The April 3, 2008 hearing transcript of the Florida Public Service Commission in *In the Matter of Complaint by dPi Teleconnect, LLC against BellSouth Telecommunications, Inc. for Dispute Arising under the Interconnection Agreement*, Docket No. 050863-TP.

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050863-TP

In the Matter of:

COMPLAINT BY DPI-TELECONNECT, L.L.C.
AGAINST BELL SOUTH TELECOMMUNICATIONS,
INC. FOR DISPUTE ARISING UNDER
INTERCONNECTION AGREEMENT.



VOLUME 1

Pages 1 through 149

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PROCEEDINGS: HEARING

BEFORE: COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Thursday, April 3, 2008

TIME: Commenced at 9:34 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official Commission Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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I N D E X

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P R O C E E D I N G S

1
2 COMMISSIONER McMURRIAN: Good morning. We'll call
3 this hearing to order.

4 Staff, would you please read the notice.

5 MS. TAN: Pursuant to notice issued March 14th, 2008,
6 this time and place has been set for an administrative hearing
7 in Docket Number 050863-TP, complaint by dPi Teleconnect,
8 L.L.C., against BellSouth Telecommunications, Inc., for dispute
9 arising under interconnection agreement.

10 COMMISSIONER McMURRIAN: Thank you. Now we'll take
11 appearances.

12 Mr. Gurdian.

13 MR. GURDIAN: Good morning, Commissioners. Manny
14 Gurdian on behalf of AT&T Florida.

15 MR. CARVER: Good morning. Phillip Carver on behalf
16 of AT&T Florida.

17 MR. HORTON: Good morning, Commissioners. Norman H.
18 Horton, Jr., Messer, Caparello & Self. And also I'd like to
19 enter an appearance for Mr. Christopher Malish of Foster,
20 Malish, Blair & Cowen, L.L.P., in Austin, Texas, on behalf of
21 dPi Teleconnect, L.L.C.

22 COMMISSIONER McMURRIAN: Thank you, Mr. Horton.

23 Staff?

24 MS. TAN: Lee Eng Tan on behalf of staff.

25 COMMISSIONER McMURRIAN: Thank you. Staff, I

1 understand we have some preliminary matters.

2 MS. TAN: Yes, Commissioner. There is a motion for
3 reconsideration and its accompanying request for oral argument,
4 and AT&T has filed opposition of that request. It is at the
5 Commission's discretion to allow oral argument regarding the
6 motion for reconsideration. Should the Commission decide to
7 allow oral argument, staff's recommendation would be to allow
8 each party five minutes.

9 COMMISSIONER McMURRIAN: Commissioners, is there a
10 motion on oral argument or any questions of staff?

11 COMMISSIONER SKOP: A question for staff. I guess
12 the staff recommendation is to deny oral argument.

13 MS. TAN: No. Staff's recommendation is to allow
14 oral argument.

15 COMMISSIONER SKOP: Okay. At the discretion of the
16 Chair, I'd make a motion to, to have oral argument consistent
17 with your discretion.

18 COMMISSIONER ARGENZIANO: I second.

19 COMMISSIONER McMURRIAN: Okay. Is that for five
20 minutes per side, is that --

21 COMMISSIONER SKOP: Yes. I think that would be
22 appropriate.

23 COMMISSIONER McMURRIAN: Okay. I guess we will begin
24 with oral argument. And, staff, which party should go first?

25 MS. TAN: DPi, for it's dPi's motion for

1 reconsideration.

2 COMMISSIONER McMURRIAN: Okay. Mr. Horton.

3 MR. HORTON: Mr. Malish will present the argument.

4 COMMISSIONER McMURRIAN: Thank you.

5 You have five minutes, Mr. Malish.

6 MR. MALISH: Thank you, Commissioner.

7 First of all, Commissioners, I would like to talk to
8 you about what it is that we are asking y'all to reconsider.
9 This has to do with Florida's response, excuse me, AT&T
10 Florida's response to the discovery request that we had which
11 they presented to us a couple of days before the original
12 hearing date and then again in, in November of 2007. It --
13 this is what it is. It's over 1,000 pages of spreadsheet,
14 okay, with about 33 to 35 entries per page.

15 What I'm asking the Commission to reconsider is the
16 admission of Steven Tepera's testimony in which he went through
17 this over 1,000 pages, highlighted those bits and pieces of it
18 that were instrumental or important to, or within it, and
19 summarized those in a series of charts and graphs.

20 Now -- is this on?

21 COMMISSIONER McMURRIAN: You want to make sure that
22 that mike is on there beside you too so the court reporter can
23 hear you as you --

24 MR. MALISH: Okay. Thank you.

25 Basically the data request was for AT&T to go back

1 through its records and show us what they actually charged in
2 situations where customers, their retail customers got basic
3 service plus the TouchStar blocking features, HBG, BRD or BCR.
4 And Mr. Tepera went through all of that and he was able to
5 tabulate all of those results and reproduce them in graphs,
6 which basically helps make sense of 1,000 pages of data.
7 That's something that will have to be gone through -- it's not
8 allowed in with Mr. Tepera's testimony. That will have to be
9 gone through basically item by item with, I suppose, with Pam
10 Tipton, AT&T's witness. In the alternative, staff or somebody
11 from the Commission would have to analyze each of those 1,000
12 pages themselves. So I think it's intensely labor saving to
13 have that before the Commission. Let me go back to my chair.

14 And I have a timeline here. Could you go ahead and
15 pass that out for me, please? Doc, you know who to give it to,
16 so why don't you let him have it.

17 Basically AT&T has objected to this coming in on the
18 grounds that it's prejudicial. And I would agree with them, it
19 is prejudicial, because anything that tends to have probative
20 value in a case, whether it's for one side or another, is
21 prejudicial. The question is not whether it's prejudicial.
22 The question is whether it is unfairly prejudicial, whether it
23 is, whether it comes to them as a surprise and whether they
24 have an opportunity to respond to it or not. And the reality
25 of it is that this material is their own material. It's their

1 own exhibit that we have gone through and summarized. And
2 Mr. Tepera's testimony is almost the same as items that were
3 presented to the North Carolina Commission in November of 2007.
4 It also appeared in substantively the same form in other sister
5 states where this same kind of litigation is being conducted
6 because, as you know, this is a nine-state problem that dPi has
7 had.

8 So this information has already been before AT&T. In
9 fact, they have already prepared a response, an 18-page written
10 response by lawyers and an 18-page, a separate 18-page
11 affidavit by Pam Tipton addressing this material and dPi's
12 testimony on this in other states. It's already filed that,
13 for example, in North Carolina.

14 So what they are saying is, gee, we don't have time
15 to put together a response. And that's disingenuous because
16 the reality of the matter is they have already got one in the
17 can and they've had it on their word processors since at least
18 December 17th of 2007. So, yes, they're prejudiced because it
19 hurts their case, because it shows the truth about what they
20 gave to their retail customers, but it's not unfairly
21 prejudicial because they have known about it for a long time.

22 I will also point out that this material was
23 initially made available to us two or three days before the
24 original hearing. When it was made available to us we asked
25 for a continuance, it's true, because that was a lot of

1 material for us to go through without having any advanced
2 warning of what was in it. That request for continuance was
3 denied and we got ready to go with that stuff in three days.

4 In this case, Mr. Tepera's testimony that was
5 actually filed in Florida was filed 27 days ago, nearly four
6 weeks ago. So if it's enough time to be ready to talk about
7 this for us back in, back in September of '07, if three days
8 was enough time for us to be ready to talk about it at the
9 hearing, then 27 days ought to be enough for AT&T to talk about
10 it since, after all, it is their own material that we have
11 analyzed, and they have seen the analysis and already prepared
12 a response in another, in another place.

13 Now --

14 COMMISSIONER McMURRIAN: Mr. Malish --

15 MR. MALISH: Yes.

16 COMMISSIONER McMURRIAN: -- in keeping with the
17 motion, we're at five minutes. Actually already a little past,
18 so --

19 MR. MALISH: Oh, I'm sorry. Just to wrap up then,
20 it's not unfairly prejudicial to them, they know what it is,
21 they've seen it, they've had time to respond to it and they've
22 already prepared. And we are willing to keep the record open
23 past today's close of the proceedings so that they can resubmit
24 whatever else they would like to change to the testimony that
25 they already have prepared for North Carolina on this exact

1 same issue.

2 COMMISSIONER McMURRIAN: Thank you, Mr. Malish.

3 Mr. Carver or Mr. Gurdian, which?

4 MR. GURDIAN: Good morning, Commissioners. My name
5 is Manny Gurdian.

6 DPI ignores the Commission's standard on
7 reconsideration; hasn't even addressed it whatsoever. In her
8 order, the Prehearing Officer found that dPi failed to
9 demonstrate why the additional testimony should be allowed less
10 than three weeks before the hearing in light of the fact that
11 dPi could have sought to supplement this testimony back in
12 December of '07 when they filed Mr. Tepera's affidavit in North
13 Carolina. In addition, the Prehearing Officer determined that
14 the filing at this late date would be prejudicial to AT&T. The
15 Prehearing Officer found that dPi did not justify its request
16 to file additional testimony in light of the April 3rd hearing
17 and denied the requested relief.

18 DPI's motion for reconsideration fails to meet the
19 Commission's standard for review. The Prehearing Officer
20 carefully reviewed dPi's arguments and rejected them. DPI
21 presents nothing justifying reconsideration of the Prehearing
22 Officer's order. DPI simply argues points that should have
23 been argued in its motion for leave to file additional
24 testimony or repeats the same arguments that were presented to
25 the Prehearing Officer in their original motion.

1 The order denying the motion was well within the
2 Prehearing Officer's authority. Pursuant to Rule 28-106.211,
3 the Prehearing Officer may issue orders necessary to promote
4 the just and speedy determination of all aspects of the case.
5 This is what the Prehearing Officer did in this case, denied
6 the motion because it would have -- it prevented delay.

7 Both sets of testimony that dPi is trying to have
8 entered into the record here could have been filed months
9 earlier. DPi does not address why it didn't file the
10 testimonies prior to March 7th, 2008, three weeks before the
11 April 3rd hearing date. DPi, by not addressing why it did not
12 file the testimonies earlier, concedes that it had no valid
13 basis for delaying the filing.

14 DPi could have filed the testimonies back in
15 December, back in January and even February of '08. It didn't.
16 DPi has engaged in procedural gamesmanship by waiting until the
17 last minute to file the testimonies. DPi either made a
18 conscious decision to, one, delay the filing in a last-ditch
19 attempt to delay the hearing or held back the testimony in an
20 attempt to disadvantage AT&T.

21 AT&T would be unfairly prejudiced by the late-filed
22 testimony. While AT&T is aware of the topic addressed in the
23 testimony, Mr. Tepera has not filed testimony in any other
24 state. DPi -- excuse me. AT&T has not previously filed
25 rebuttal testimony to this testimony that they're trying to get

1 in.

2 So I would, I would ask the Commission to deny dPi's
3 motion and on the basis of: One, they failed to meet the
4 Commission's standard for reconsideration; two, the Prehearing
5 Officer was well within her discretion and authority to deny
6 dPi's requested relief; three, both sets of testimony could
7 have been filed months earlier than dPi chose to file them and
8 dPi has failed to completely explain this delay; four, dPi's
9 inexplicable filing of the testimony can only be viewed as an
10 attempt to disadvantage AT&T; and, five, AT&T will in fact
11 suffer unfair prejudice in this case because of dPi's belated
12 filing of the testimony. Thank you.

13 COMMISSIONER McMURRIAN: Thank you.

14 I guess it would be appropriate, Commissioners, to
15 hear staff's recommendation on the motion for reconsideration
16 first, and then if you have follow-up questions for them or the
17 parties, we'll do that.

18 So I guess we'll hear from staff. Ms. Tan.

19 MS. TAN: Yes, Commissioner. As Mr. Gurdian has
20 stated, the standard of review for a motion for reconsideration
21 is whether the motion identifies a point of fact or law which
22 was overlooked or which was failed to be considered in
23 rendering the order. In a motion for reconsideration it is not
24 appropriate to reargue matters that have already been
25 considered. Rather, in the instant case it appears that dPi

1 takes issue with how the timeliness issue was evaluated and
2 consequently simply reargues the merits today. This is not a
3 point of -- a proper basis for reconsideration.

4 Therefore, because dPi has failed to identify a point
5 of fact or a law which was overlooked or which was not
6 considered in the rendering of the order, staff recommends that
7 the motion for reconsideration be denied. Thank you.

8 COMMISSIONER McMURRIAN: Commissioner Skop.

9 COMMISSIONER SKOP: Thank you, Madam Chair.

10 I also feel that dPi has not met the standard of
11 review for reconsideration. And I concur with the staff
12 recommendation at this time and would like to make a motion to
13 deny the motion for reconsideration, subject to further
14 comments from my colleagues.

15 COMMISSIONER McMURRIAN: Do we have a second or
16 further questions?

17 COMMISSIONER ARGENZIANO: Second.

18 COMMISSIONER McMURRIAN: All in favor, say aye.

19 (Unanimous affirmative vote.)

20 Okay. The motion for reconsideration has been
21 denied. And I guess that brings us to our next preliminary
22 matter, Ms. Tan, perhaps stipulated exhibits.

23 MR. MALISH: Commissioners, I don't know if this is
24 the right time to do this, but y'all can let me know if it
25 isn't. We will, of course, need to be making an offer of proof

1 on the subject of this testimony, and is that -- is what we --
2 is what we -- is what we have just done sufficient to
3 constitute an offer of proof to preserve our ability to appeal
4 on this subject or is that something that we need to do again
5 during the formal hearing and the presentation of evidence?

6 COMMISSIONER McMURRIAN: Mr. Malish, let me turn to
7 our legal experts.

8 MS. TAN: Yes, that is a proper offer of proof.

9 MR. MALISH: Okay. I would make -- I would like to
10 make sure that the timeline that we passed out is included as
11 part of the record then. Is there, is there any way that I
12 need to do that? Does that need to be marked?

13 COMMISSIONER McMURRIAN: Mr. Malish, this hasn't been
14 included in any of the discovery or any of the stipulated
15 exhibits and all already, has it?

16 MR. MALISH: No.

17 COMMISSIONER McMURRIAN: This is something you just
18 passed out this morning.

19 MR. MALISH: That's correct. That's correct. It's a
20 summary of the facts, some of which were not in our motion,
21 which explain why it is unjust to not allow this testimony to
22 come in.

23 COMMISSIONER McMURRIAN: Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Madam Chair.

25 I'd like to hear from staff on that because I guess

1 as an attorney also I have a concern that might be entering
2 evidence that's not in the record.

3 MS. CIBULA: This is Samantha Cibula on behalf of the
4 Commission. They do not need to enter their own timeline in to
5 preserve their objection and their right to appeal. It's
6 sufficient that they raised their objection to the motion for
7 reconsideration. And if it does go on appeal, the court
8 would -- and decides to overturn the Commission, then they
9 would probably likely tell us to rehave the hearing and then
10 they could offer that evidence in. They do not need to enter
11 that into the record at this point.

12 MR. MALISH: What I'm trying to do is to make sure
13 that the timeline is part of the record so that if on appeal --
14 so that it is available to a court, an appellate court
15 reviewing the proceedings. I need to make sure that it is in
16 the record.

17 MS. CIBULA: That's not necessary.

18 COMMISSIONER McMURRIAN: Commissioner Argenziano, go
19 ahead.

20 COMMISSIONER ARGENZIANO: Yes. I understand they do
21 not need to do that today, but can they?

22 MS. CIBULA: I guess it's within the Commission's
23 discretion to put that into the record, but I advise that we do
24 not need to have that done today.

25 MR. CARVER: And I object to placing it into the

1 record because this is not evidence. This is dPi's summary of
2 the evidence or version of the evidence. It's essentially
3 their argument as to what transpired. It's not any actual
4 documentation that demonstrates what transpired. And just in
5 the couple of minutes that I've had to glance at it I've
6 noticed at least one thing that's drastically misstated, that
7 is absolutely not, not fairly stated. And that's on Page 2,
8 they have "February 4th through 11 AT&T initiates attempts to
9 depose Steven Tepera and Steve Watson." We initiated attempts
10 to depose them in Alabama. In the Alabama proceeding they did
11 raise this issue timely. They raised it through the issue of
12 Mr. Bolinger who will be testifying and we can cross him then.
13 But we were trying to take the deposition of those other two
14 witnesses for purposes of the Alabama hearing.

15 Now the Alabama hearing was set to go in a couple of
16 weeks but it's been continued and we currently have no trial
17 setting for that, for that case. So I anticipate that we will
18 try to depose Mr. Tepera and Mr. Watson to the extent that that
19 is an issue that's been timely and appropriately raised in that
20 proceeding. The way it's stated here, it makes it look as if
21 we were trying to depose them to gather information for this
22 proceeding, and it's just not true. That's not what happened
23 at all.

24 Now that's just one thing that jumps out at me. But
25 I think it illustrates the point that this is their version of

1 what occurred. It's argument. It's not, it's not evidence,
2 it's not anything that should go into the record. It's simply
3 the kind of argument that they're free to make in the appellate
4 court, if they wish. But I think for them to categorize this
5 as evidence and try to put it into the record as if it's facts
6 rather than argument and opinion, I believe that's
7 inappropriate and I object.

8 COMMISSIONER McMURRIAN: Commissioners, just to share
9 my thoughts -- hold on, Mr. Malish.

10 MR. MALISH: Uh-huh.

11 COMMISSIONER McMURRIAN: It seems unusual for someone
12 to try to enter something in the record as part of their oral
13 argument. That is, I've sat through a lot of hearings. It's
14 pretty unusual. I'm not sure that it can't be done.
15 Ms. Cibula said it's up to our discretion. But it seems to me
16 that there are other ways for you to get this information into
17 the record during the regular cross-examination.

18 MR. MALISH: The problem is that many of the things
19 that are in here are procedural matters that are not directly,
20 are not directly connected to this case, this particular case
21 in Florida. Of course, the testimony that we're talking about
22 here is replicated from state to state to state since the
23 litigation on the same subject matter, the question of whether
24 the LCCW promotions were made properly or not made properly to
25 dPi goes on in nine different states. It's the same testimony

1 of the same people over and over again.

2 And what this is -- basically I will swear to this
3 because you're talking about a lawyer's replication of the
4 procedural things that have taken place in this litigation, not
5 just in Florida but in the entire nine-state region. And so
6 what I would like to do is I would like to swear to the truth
7 of the matters in this. The only purpose of that is to
8 preserve this for appellate review. And, of course, it won't
9 be part of y'all's decision-making in this case. It is -- it
10 may be superfluous to the record and they can argue about that
11 it means nothing later. But it's important to us to have it in
12 the record at this time and appellate judges can decide later
13 whether it's important or not. Obviously it's not important
14 for y'all's decision on the merits, but it is important for us
15 to preserve the record. And typically what happens, I think,
16 in like, for example, a court of law would be that we'd offer
17 it, everybody objects, and we understand that it's in the
18 record for the purposes of appeal but it is not evidence in the
19 case.

20 COMMISSIONER McMURRIAN: Mr. Malish, I'll turn to
21 staff and get their opinion on this. But I -- there's a reason
22 we have deadlines for parties filing testimony, so that the
23 other side has an opportunity to file some kind of rebuttal to
24 that testimony. And I appreciate the fact that you're willing
25 to swear to it, but that's not -- the attorneys swearing to

1 information is not usually the way a technical hearing is done
2 under the statutes as far as I understand it. But I will turn
3 to staff before I get myself in a mess and say something wrong
4 here, but I will turn to them and get their input on this.
5 Thank you.

6 Ms. Cibula.

7 MS. CIBULA: The document is not needed for appeal
8 purposes. The -- they've objected to our ruling on the motion
9 for reconsideration and that's enough to preserve the issue on
10 appeal, and that document is not needed to be placed into the
11 record. It almost seems like it's a way of trying to
12 circumvent our process in getting this evidence into the
13 record, and that's not appropriate at this point.

14 MR. MALISH: Well, the --

15 COMMISSIONER McMURRIAN: So, Ms. Cibula, as far as
16 ruling on this in some way, do we even need to make a ruling on
17 the request to put this in the record somehow or do we just
18 move on?

19 MS. CIBULA: I would just move on.

20 COMMISSIONER McMURRIAN: Thank you. Okay.

21 MR. MALISH: In that case, I'll offer it and then
22 that way it'll be in the record and y'all just --

23 COMMISSIONER McMURRIAN: Mr. Malish, it won't be in
24 the record at this time because you offer it, I don't believe.

25 MR. MALISH: I will offer it and the Commission can,

1 can -- can not admit it. And at this point in time dPi moves
2 to offer the timeline on the Florida Public Service
3 Commission's decision to not permit supplemental testimony into
4 the record. And I don't have a number for that. I'll let the
5 court reporter tell us what's the next number they would like
6 to assign to this exhibit.

7 COMMISSIONER McMURRIAN: Commissioner Skop.

8 COMMISSIONER SKOP: Thank you, Madam Chair. Can I
9 take a -- can we take a brief second before we rule on that so
10 I can confer with legal staff?

11 COMMISSIONER McMURRIAN: Absolutely. We'll take a
12 short five-minute break.

13 COMMISSIONER SKOP: Thank you.

14 (Recess taken.)

15 COMMISSIONER McMURRIAN: We'll go back on the record,
16 if everybody is ready.

17 Commissioner Skop.

18 COMMISSIONER SKOP: Thank you, Madam Chair.

19 After conferring with legal staff and noting that dPi
20 has formally objected to the denial for reconsideration, that's
21 adequately protected the record for appeal. And I think that
22 in lieu of continuing to persist in trying to admit evidence,
23 we need to move on, and I would respectfully request the Chair
24 of the proceeding to advise dPi accordingly.

25 COMMISSIONER McMURRIAN: Mr. Malish, I agree. I

1 believe that you have on the record stated your concerns about
2 your proposed exhibit on this timeline. I think that you have
3 preserved your right to, for appeal, and I think it is time to
4 move on.

5 MR. MALISH: Okay.

6 COMMISSIONER McMURRIAN: So we will move on to staff,
7 and staff will go through the procedure regarding the
8 stipulated exhibits.

9 MR. MALISH: I'm sorry.

10 COMMISSIONER McMURRIAN: Mr. Malish, I'm sorry. We
11 are going to move on at this point.

12 MR. MALISH: I understand that we're going to move
13 on, Your Honor. I need to -- I'm making -- I'm offering this
14 as part of my offer of proof for it to be in the record, not as
15 part of the evidence but simply as part of the appellate
16 record.

17 COMMISSIONER McMURRIAN: Ms. Cibula, one more time,
18 and this is the last time, Mr. Malish.

19 MR. MALISH: And y'all can refuse to let it in.
20 That's fine. I understand. But I just need to have that
21 ruling.

22 COMMISSIONER McMURRIAN: Mr. Malish, I am turning to
23 Ms. Cibula now. Thank you.

24 MS. CIBULA: And I believe you have refused to let it
25 in and we can just move on now.

1 COMMISSIONER McMURRIAN: Thank you.

2 Ms. Tan.

3 MS. TAN: Commissioners, staff has compiled a list of
4 discovery and testimony exhibits that we believe can be entered
5 into the record by stipulation. In an effort to facilitate the
6 entry of these exhibits, we have compiled a chart that we have
7 provided to the parties, the Commissioners and the court
8 reporter. I would suggest that the list itself be marked as
9 the first hearing exhibit and that the discovery exhibits be
10 marked thereafter in sequential order as set forth in the
11 chart.

12 COMMISSIONER McMURRIAN: Show those exhibits marked
13 as indicated, Exhibits 1 through 16, I believe. Is that right?

14 MS. TAN: Correct.

15 And at this time staff requests to move into the
16 record Exhibits 1 through 16.

17 COMMISSIONER McMURRIAN: Show --

18 MR. MALISH: No objection from dPi.

19 MR. CARVER: No objection.

20 COMMISSIONER McMURRIAN: Thank you. I was about to
21 pass over that part. I thought we had a stipulation already,
22 but thank you both for getting that on the record. And show
23 Exhibits 1 through 16 admitted into the record as shown on
24 Exhibit Number 1. Thank you.

25 (Exhibits 1 through 16 marked for identification and

1 admitted into the record.)

2 MS. TAN: Excellent. And the remaining exhibits, the
3 remaining identified exhibits will be proffered by the
4 respective parties at the time that their witnesses are
5 testifying.

6 COMMISSIONER McMURRIAN: Thank you. Any other
7 preliminary matters?

8 Okay. We'll move into opening statements. I think
9 we settled on 15 minutes each side. Is that right, Ms. Tan?

10 MS. TAN: That is correct.

11 COMMISSIONER McMURRIAN: And dPi would go first
12 again, is that -- okay. Mr. Malish, you have 15 minutes.

13 MR. MALISH: Thank you, Commissioner.

14 COMMISSIONER McMURRIAN: Thank you.

15 MR. MALISH: Commissioners, I prepared a little cheat
16 sheet so you can -- to make it easier for you to follow along
17 as I go through my presentation, which Mr. Horton will be
18 distributing here.

19 To give you an overview about what we'll be talking
20 about both in my opening today and during the course of the
21 presentation of the entire hearing, we're going to talk a
22 little bit about the basic law on resale in telecommunications,
23 the promotion credit process which is at the bottom of this
24 proceeding in particular, and then the particular promotion in
25 dispute under the credit promotion process, which in this

1 particular case is the Line Connection Charge Waiver. Then
2 I'll talk a little bit about how dPi qualifies for the
3 promotion, and then I want to talk a little bit about the
4 various "yeah, buts" that we have from BellSouth. "Yeah, but
5 dPi is not entitled to that promotion for," fill in the blank.
6 There's various reasons for it and we'll get to those in a
7 moment.

8 I need to go over the law on resale to put this case
9 in context. There's a bunch of court opinions on it, but
10 everything basically derives from the Federal
11 Telecommunications Act of 1996. So 47 U.S.C. 251(c), which is
12 the basic duties of incumbents requires that ILECs such as
13 BellSouth have the duty to offer for resale at wholesale rates
14 any telecommunications service that the carrier provides at
15 retail to subscribers who are not telecommunications carriers
16 like dPi.

17 And then under 251(c) (4) (B) they have, BellSouth has
18 a duty to not prohibit and not impose unreasonable or
19 discriminatory conditions or limitations on the resale of such
20 communications service. And that's been developed a little
21 further by the FCC in 47 C.F.R. 51.613(a) (2). And basically
22 that provision is there in front of you, but basically what it
23 says is that if BellSouth provides a service or a price at
24 retail, it must provide it to dPi at a wholesale discount,
25 period, even with promotions, unless those promotions run for

1 less than 90 days, which is not the situation here.

2 Now this is important because -- this is what the law
3 says. You can sum it up this way. If AT&T provides something
4 to its retail customer, then dPi can get the same thing from
5 AT&T at a discount just the same as if it were standing in the
6 shoes of the retail customer. The reason why that's important
7 in this particular case -- there's two reasons that it's
8 important. First of all, because the evidence that's come into
9 the case so far, including the stack of documents that
10 Mr. Tepera analyzed, those are the raw datas in the file. That
11 shows that for this Line Connection Charge Waiver that we're
12 talking about, AT&T repeatedly and systematically gave that
13 waiver, that Line Connection Charge Waiver to its own retail
14 customers taking service the same way that dPi's orders were
15 placed, and I'll talk about that a little bit more in the
16 future or later in my presentation.

17 The other reason why this idea is important, that if
18 AT&T gives it to its retail customers it has to give it to dPi,
19 is because AT&T has raised a claim in this case that
20 contradicts, that contradicts the law. This is the law. AT&T
21 is saying we don't have to do that. We only have to give
22 something to dPi if whatever it is we give to dPi, dPi turns
23 around and gives to its customers. These are third parties.
24 These are not related to the relationship between AT&T and dPi
25 or between AT&T and its own retail customers. This is a faulty

1 analysis that goes against the law and it goes against parts of
2 the contract too, and we'll talk about that later. That's why
3 it's important to know what the law says about promotions and
4 retail offerings.

5 Mr. Watson is going to talk about the promotion
6 credit process. And basically what it is is they have, AT&T
7 has its tariffed prices and then they have special deals which
8 are promotions. Under the laws I described earlier they are
9 required to make that available to AT&T, excuse me, to dPi at
10 the wholesale rate. The problem that we have here in the
11 BellSouth region is that unlike in the, in the former SBC, SWBT
12 and Ameritech and other regions like that, although BellSouth
13 automatically provides its retail end users with correct
14 pricing, it doesn't do that for its wholesale users. So, for
15 example, if the -- I'm making up promotion right now. If it's
16 \$10 off when you sign up, if you were a retail customer and you
17 signed up with AT&T, you would automatically get \$10 off your
18 bill. There would be nothing more to do about it.

19 By contrast, here in the BellSouth territories what
20 happens is BellSouth charges the full retail rate every single
21 time regardless of whether the promotion applies. So in
22 practical effect they are every single time overcharging the
23 CLEC for the services they are providing to the CLEC. And it
24 becomes incumbent upon the CLEC to go through the data, the
25 billing data and generate what's called BAR requests, billing

1 adjustment requests. They have to go back through and ask to
2 have the money given back to them that they're entitled to to
3 begin with. The problem is that this process is extremely
4 complicated, and if at any step along the way you get something
5 wrong, your request for credit is denied. And so as a
6 practical effect, BellSouth keeps your money. That's one of
7 the problems that we're dealing with in this particular
8 instance. Now this, this applies for all promotions, not just
9 the LCCW promotion that we're talking about now.

10 Basically in this particular case the other
11 promotions have fallen by the wayside because the LCCW
12 promotion, they've either been paid after, after negotiation
13 or, you know, after we've wrangled through it we've found that
14 the other ones, the amount in dispute is basically mini,
15 miniscule -- very tiny compared to, very tiny compared to the
16 amount of attorney time and witness time that it would take to
17 actually litigate those particular other promotions. So the
18 promotion that's in dispute today in this case is the Line
19 Connection Charge Waiver. And that's on -- there's a little
20 number eight at the bottom of one of those pages that you have
21 there, and that's -- and that promotion provides that they
22 will, they will waive the line connection charge in a situation
23 when the customer switches their local service to BellSouth and
24 purchases any one of the following three sets of things:
25 BellSouth Complete Choice plan, BellSouth PreferredPack plan or

1 BellSouth basic service and two custom calling or TouchStar
2 local features.

3 DPI is a reseller primarily to credit challenged,
4 credit challenged customers, residential customers. Almost
5 every one of their customers is somebody that has been
6 disconnected for not paying BellSouth or somebody else. These,
7 these are not the most -- the best customers to have, but
8 that's the niche that dPi works in. So basically everyone that
9 they have is somebody that has been fired by BellSouth or by
10 another carrier. So as a consequence they are getting --
11 everyone that they get they're getting because they haven't
12 been able to make their payments to BellSouth or somebody else.

13 Every line that dPi orders from BellSouth is ordered
14 with a minimum package of POTS, 1FR, that's basic telephone
15 service plus two or more of the following TouchStar blocks
16 known by their universal service ordering codes of BCR, BRD and
17 HBG. That's Block of Call Repeat, Block of Repeat Dialing, and
18 HBG is Block of Call Trace. Okay? Those are all TouchStar
19 features that are listed in the tariff.

20 Now historically BellSouth has paid or awarded these
21 promotions. They've done it with their retail customers and
22 they've done it with other CLECs. For example, you'll hear
23 from Steve Watson, who basically put together the promotion
24 credit processing process with, with, with BellSouth, that, you
25 know, we submit these orders this way, they looked at them

1 together and it was approved. Okay. So historically they've
2 done it. They did it for most of 2004, January, February,
3 March, April of 2004. Then there was, there was a lull when
4 there was none of these being processed, and then they did it
5 again in the summer of 2004 before dPi submitted its, made its
6 submissions and they were cut off. All right? So dPi made its
7 submissions in approximately August, September of 2004 and
8 didn't hear anything for almost nine months about whether these
9 promotions were going to be granted or not.

10 And we find out afterwards that internally BellSouth
11 was going through a series of sort of how can we find a way to
12 not pay these? And this was communicated in one way or another
13 to us during discovery or actually during the course of the, of
14 the proceedings. The first "yeah, but," "Yeah, but we don't
15 have to pay" was "those customers aren't winovers, are not
16 reacquisitions." And that was essentially dropped because when
17 they realized the customer base that dPi has is basically
18 everybody that's been fired from somebody else or disconnected
19 from somebody else. So that went from like September of '04 to
20 January of '05. And that was a big one for BellSouth because
21 that's why so many of their own customers don't qualify for
22 this promotion because most of their own retail customers are
23 not somebody that they have won from some other carrier because
24 they are the monopoly down here.

25 The second "yeah, but" was, "Hey, these things aren't

1 features, BCR, BRD, HBG, those are not features." The problem
2 with that though is that these items, these USOCs are
3 specifically listed in the TouchStar, TouchStar feature section
4 of the tariff, and we'll go over that in this case. The tariff
5 refers to these things specifically as features. Historically,
6 in the UNE analog to resale they are referred to as features
7 and they're repeatedly referred to as features by BellSouth's
8 own employees.

9 The next sort of "yeah, but" was -- and that's gone
10 from January to 2005 to the present is, "Yeah, but these aren't
11 things that you have purchased at additional cost." So they're
12 reading in some additional language there, "not purchased at
13 additional cost." If you look at the promotion, what the
14 promotion says, the words in it do not have additional costs
15 anywhere in there. It just basically says you have to buy one
16 of the following three packages: BellSouth Complete Choice
17 plan, BellSouth PreferredPack plan or basic service and two
18 local features. That's that little slide with the Number 13 at
19 the bottom of, in the bottom right-hand corner. And, of
20 course, terms of contracts like this are construed most
21 strongly against the party who drafts them. This is sort of a
22 universal construction, common law construction of contracts
23 theorem. So if they're saying it's ambiguous, then if it's
24 ambiguous, it has to be construed against them. And, of
25 course, as I've mentioned before, dPi always purchases at

1 least, unless the customer orders something more extravagant,
2 basic service with those blocks.

3 The next "yeah, but" that BellSouth came up with is
4 basically from January of '06 to the present is, "Yeah, but our
5 end users don't get this." And what turns out is that although
6 that's what they say in their testimony, the actual billing and
7 provisioning data that they provided in this case shows that,
8 in fact, they did give this Line Connection Charge Waiver to
9 their retail customers repeatedly and systematically from two
10 thousand and -- let's see, is it 2003 -- from May of 2003, the
11 first data point that we have, all the way up to the present.
12 And, and percentages ranging from approximately 15 to
13 approximately 40 percent of the time when a BellSouth end user
14 submitting an order configured the way dPi's orders are
15 configured, that BellSouth end user gets the discount. And the
16 best explanation for why the other 85 to 60 percent don't get
17 it is because they don't qualify for another reason, that being
18 that they aren't winback or winover customers.

19 The last of the "yeah, buts" is made for the first
20 time, I think, in September of '06, and it's basically this
21 idea that I showed you before that we have a footnote in the
22 contract that trumps federal law. Remember, the law says that
23 if AT&T makes it available at retail, it has to make it
24 available to dPi at wholesale, period, end of story. There's a
25 footnote attached to a chart at the back of the contract with

1 some language in it that AT&T is now saying allows them to
2 perform a different inquiry. They say it doesn't matter if we
3 gave it to our retail customer. What we, AT&T, get to do is we
4 get to -- we have to make sure that if we gave the discount to
5 you, you must also have given it to your customer, and your
6 customer must have made specific requests to dPi for the things
7 that dPi ordered from us. So they're putting additional
8 restrictions beyond what the law allows. The law just says if
9 AT&T gives it to their retail, they have to give it to dPi. It
10 doesn't matter what dPi does with it after the fact. That's
11 what the law says. But they're saying that the contract
12 excuses them from, from that analysis. Okay?

13 They point to a footnote. But, in fact, if you read
14 the rest of the contract, you will see that the rest of the
15 contract, if you don't look at just a footnote at the back and
16 try to interpret it in a certain way to help their side, if you
17 read the rest of the contract, it says that the contract as a
18 whole is basically supposed to be an interconnection agreement
19 pursuant to Sections 251 and 252 of the FTA. Those are the
20 provisions that I talked with you about at the beginning of my
21 presentation, the one that says they have the duty to offer at
22 resale the same services they offer to their own retail
23 customers.

24 Another part of their contract says parity. When dPi
25 purchased tele, excuse me, telecommunications services from

1 BellSouth pursuant to this agreement, such services shall be
2 subject to the same conditions that BellSouth provides to its
3 end users. So the conditions that are important are the
4 conditions between AT&T and its end user and not between dPi
5 and dPi's end user. Furthermore, the contract provides that
6 the governing law, under the governing law provision that the
7 contract will be governed by and construed in accordance with
8 federal and state substantive telecommunications law, including
9 the rules and regulations of the FCC, which are the provisions
10 that I showed you at the beginning of this presentation.

11 COMMISSIONER McMURRIAN: Mr. Malish, can you wrap up
12 in less than one minute?

13 MR. MALISH: I can.

14 COMMISSIONER McMURRIAN: Because we already passed
15 15, and I'm going to have to give BellSouth the same amount of
16 time, but I think we need to stick with what we said. So if
17 you could wrap up.

18 MR. MALISH: Well, you see the rest of what it says
19 in the contract and we'll go over that in the hearing.

20 Bottom line is that at the end of the day in Florida
21 BellSouth wrongfully denied \$58,210 in promotions by refusing
22 to count the BCR, BRD and HBG as qualifying features and denied
23 a further \$19,737 as being not winbacks.

24 Sorry for running over.

25 COMMISSIONER McMURRIAN: Thank you.

1 Mr. Carver, Mr. Gurdian? Mr. Carver.

2 MR. CARVER: Actually before I begin, I have a couple
3 of exhibits that, to Ms. Tipton's testimony that Mr. Gurdian
4 will be passing out. I'd like to provide them to the
5 Commission and staff to look at while I'm talking. I think it
6 will help understand our argument.

7 (Pause.)

8 Thank you. As you can imagine, AT&T disagrees with
9 most of what Mr. Malish said. In our view this is really a
10 very simple and straightforward case. DPi claims that it's
11 entitled to promotional credits. We believe that they're not,
12 and we believe that you can determine that they're not based on
13 only three things. The first thing are the requirements of the
14 retail promotion. Those are set forth in the tariff. They're
15 very clear and they set forth what a retail customer must do to
16 qualify.

17 The second thing, and I'll discuss each of these in a
18 little bit more detail later, but I just wanted to set out the
19 three up front. The second thing is the terms of the resale
20 agreement. Now, as Mr. Malish said, AT&T does have to make
21 this retail promotion available to other CLECs or to CLECs for
22 resale, and we do, we make it available to them. However, they
23 have to qualify. And since they're not retail customers, they
24 obviously can't buy from a tariff, so there has to be some
25 mechanism to make it available to them, and that mechanism is

1 the interconnection agreement. And it has the terms that the
2 parties negotiate for that resale. And if we look at the
3 language of the interconnection agreement and of the terms in
4 it, we can see that dPi doesn't qualify.

5 The third thing -- there are four or five key facts
6 that you'll need to consider. And if you look at these facts
7 against these two documents, the tariff and the interconnection
8 agreement, you can see that they absolutely do not qualify.
9 And I'd like to talk about each of those three in a little bit
10 more detail.

11 The first thing that we passed out, the first page is
12 a copy of the actual tariff. This is an exhibit to
13 Ms. Tipton's testimony. And what I've done is I've highlighted
14 in yellow the parts that are applicable to the dispute that we
15 have. The things that I haven't highlighted are things
16 relating to Complete Choice, that type of thing, and those just
17 aren't at issue here.

18 So we look at what's highlighted. The retail
19 promotion says that the line connection charge will be waived
20 for residential customers who purchase basic service and two
21 features. And the "and" in that last line or the next to the
22 last line is very important because the requirement under the
23 clear language is that there must be a purchase of the basic
24 service and there must be a purchase of the features. And I
25 need to talk a little bit about what features are in the

1 context of the tariff and in the context of the way this works.

2 Basically a feature would be something like, say, for
3 example, Call Return. Excuse me for a moment. If a customer
4 is thinking about getting Call Return, they really have three
5 options. The first thing they can do is they can subscribe to
6 Call Return. And if they subscribe to Call Return, then that
7 would count toward the two features that they would need to
8 qualify for the promotion. That's their first option.

9 Their second option is they can decide that they
10 don't want to subscribe to Call Return but they do want to have
11 the option of using it on a per use basis. For example, even
12 if you don't subscribe to Call Return, you can pick up the
13 phone, you can dial *69, and the call will be returned and
14 there is a per use charge for that.

15 The third option that the customer has is that they
16 can place a block on the line so that Call Return can't be used
17 even on a per use basis. For example, if they have children,
18 they may not want them to use it, they may not want to incur
19 those costs. So the options are subscribe to the service, have
20 the service available on a per use or block the service so that
21 it can't be used at all.

22 And there's a crucial difference which will really
23 play a big part in this case between features and blocks. A
24 feature -- call return is the feature, and there are others,
25 Call Trace and several others, and these provide something to

1 the customer. They provide a function, something the customer
2 uses, and the customer pays for these. A block is not a
3 feature. A block is something that disables the feature and
4 there's no charge for that. That's specifically in the tariff
5 that when a customer wants to engage the blocks, there is no
6 charge. So that's basically the promotion in a nutshell. It's
7 not that complicated. It's really just expressed in a few
8 operative words in the tariff.

9 Now we go to the interconnection agreement. And,
10 again, I just want to emphasize that this case really has
11 nothing to do with availability of the promotion because we are
12 required by law to make it available, but dPi still has to
13 qualify. I mean, our retail customers have to qualify. DPi's
14 customers have to qualify. So the availability issue is, is
15 really not the issue at all. The issue is whether or not they
16 qualify. And, again, since they are reselling the service,
17 they are offering it pursuant to the terms of a resale
18 agreement and it's part of the interconnection agreement.

19 And if you'll look at the second page that I gave
20 you, at the bottom of that chart there is a line which has
21 language that the parties specifically negotiated. And I just
22 want to mention this was not an arbitrated agreement, this was
23 something the parties negotiated and they put it into this
24 agreement. And it says, "Where available for resale,
25 promotions will be made available only to end users who would

1 have qualified for the promotion had it been provided by
2 BellSouth directly." That's the operative language. Okay? So
3 the two standards that really apply here are the tariff and
4 this particular language.

5 Now here are the facts that are important. And,
6 again, there are really only about four or five of them, and
7 these are for the most part uncontroverted, at least based on
8 the testimony that's been prefiled.

9 First of all, when dPi signs up a customer for basic
10 local service, they automatically place blocks on the
11 customer's line every single time so that the customer can't
12 engage features. And they don't ask the customer's permission.
13 In fact, they don't even tell the customer they're doing it.
14 The block is there every single time. Then after the fact they
15 don't tell the customer, so the customer has absolutely no
16 knowledge that these blocks have been placed on their line.

17 Then dPi takes these blocks and submits them to AT&T,
18 claims that they're features, and then they try to get the
19 promotional credit. So they're not submitting any features at
20 all. They are submitting free blocks, blocks available at no
21 charge. Then after the fact -- in some instances they do have
22 customers who order features and the Line Connection Charge
23 Waiver is given to those customers, the ones who qualify. But
24 when dPi gets that money back, when they get the credit, they
25 don't give it to the customer. They keep it. So the customer

1 has no knowledge of this entire event. They have absolutely no
2 knowledge of what's occurred. So when we look at those facts
3 and we look at the standard, you can see that dPi is not
4 entitled to the credits that they're seeking. And they don't
5 qualify for three reasons, and they're very straightforward.

6 The first is that the promotion requires the purchase
7 of features. Since dPi is submitting blocks, they aren't
8 submitting features. Again, there's a distinct difference
9 between features and blocks. So since dPi submits no features,
10 since they submit only blocks, they can't qualify.

11 The second reason is blocks are free of charge. And
12 the language that I pointed out to you early specifically says
13 that there must be a purchase of features. Adding blocks at no
14 charge does not constitute a purchase.

15 And the third reason is there's no order. I mean, if
16 we go back and we look at the resale agreement, it specifically
17 said that the promotion would be made available to the end
18 user, which means if the end user has a qualifying order, then
19 the promotional credit is given to dPi. And, granted, dPi can
20 do whatever they want with it, but the customer has to order.
21 That's what the language means when it says "made available to
22 the customer."

23 Well, in this case the customers ordered nothing.
24 DPi simply placed blocks on their lines without telling them
25 that they were doing it in order to try to generate discounts.

1 Now they may have had other business reasons for doing it. I'm
2 not denying that. But the fact is they placed these on the
3 customer lines and then they submitted the blocks, not
4 features, to try to generate the waiver.

5 So those are the three reasons: No purchase, they're
6 not features, are not blocks, and the customers didn't order
7 anything.

8 Now the last thing I want to talk about very briefly
9 is Issue 2. And you'll notice that dPi didn't talk about that
10 at all. That's because there are two other promotions, they're
11 relatively small promotions. And when I say small, I mean the
12 amount of money in controversy is relatively small. And I'm
13 just going to touch on them by noting that Ms. Tipton covers at
14 some length in her testimony the reasons that dPi does not
15 qualify. DPi does not address them in their testimony at all.
16 So those two features that are addressed in Issue 2, the facts
17 are, the evidence is uncontroverted.

18 So if you look at Issue 2 and Issue 1, in each
19 instance dPi has failed to qualify for their promotional
20 credits, and for that reason you should find in favor of AT&T.
21 Thank you.

22 COMMISSIONER McMURRIAN: Thank you, Mr. Carver.

23 Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Madam Chair.

25 And I'd like to also ask staff -- but I just had some

1 follow-ups to Mr. Malish's opening comments and I just wanted
2 to see if this would be the appropriate time to ask two brief
3 questions before we went into witnesses.

4 MS. TAN: If you have questions, you may ask them at
5 this time.

6 COMMISSIONER SKOP: Thank you.

7 Mr. Malish, I just wanted to reflect upon two points,
8 just trying to come up to speed on the issues before us. In
9 your opening statement you mentioned or alleged that BellSouth
10 effectively keeps your money, and I just wondered whether
11 you're offsetting amounts that dPi owes to BellSouth currently,
12 thereby, you know, effectively keeping their money? So I'm
13 just interested in that.

14 MR. MALISH: The answer is yes and no.

15 COMMISSIONER SKOP: Okay.

16 MR. MALISH: Sorry. For part of the time dPi did not
17 offset and for part of the time it did. So -- and I don't know
18 the breakdown. I mean, Mr. Bolinger will probably know when
19 he's questioned on the stand if y'all ask him that question.
20 But the way I understand it is that they were supposed to be
21 getting this back and they weren't. And they, you know, waited
22 more than nine months and it was promised them and they didn't
23 get it and then they started offsetting after that.

24 COMMISSIONER SKOP: And then secondly -- and I do
25 appreciate the little PowerPoint slide because it's, you know,

1 easy to kind of comprehend the issues.

2 Looking at the things before us, and I was just
3 wondering as you went along in the presentation, and I've heard
4 what AT&T has stated, apparently there's, there seems to be a
5 tension between, as you state, the law and the footnote that
6 provides some additional restrictions that AT&T imposes upon
7 dPi in that footnote. And I was just wondering why equity
8 wouldn't support the imposition of those additional
9 restrictions, I guess, to the extent that in one scenario AT&T
10 is offering it directly to the consumer, but yet in the
11 capacity that I think is being engaged upon by your company,
12 you're essentially doing it to arbitrage the promotions to
13 enhance creating value to your bottom line as opposed to
14 passing those through directly to the consumer.

15 MR. MALISH: Let me try to restate your question to
16 make sure I understand what you're, what you're asking me.

17 I think you're asking me would it be equitable for
18 dPi to pass on whatever discounts it gets from AT&T to its end
19 users.

20 COMMISSIONER SKOP: No. I think what I'm saying is
21 it seems to be that, you know, the restrictions that you
22 take exception to that are imposed by AT&T, and I believe
23 Footnote 2 of the attachments that they provided seems to imply
24 that, you know, the promotions, the intent of the promotions is
25 to pass that value directly down to the consumers such that

1 they benefit. So that's an equal parity of offering a
2 promotion in the same sense as offering a promotion that they
3 have to offer to you guys. But essentially what I think may be
4 happening here is that dPi is leveraging that promotion to
5 extract value that's ultimately not passed down due to
6 consumers, so and the extent that, you know, maybe unclean
7 hands -- you know, maybe equity would come in. I just wanted
8 to get your take on that

9 MR. MALISH: Okay. Well, to begin with, you have to
10 realize that AT&T doesn't do any promotions for the benefit of
11 the CLECs. So the promotion is created originally as a way to
12 somehow improve the business of AT&T and not to improve the
13 business of --

14 COMMISSIONER SKOP: I understand. Let me, let me
15 get -- let me stop you there and get you back on point. What
16 I'm trying to get at is that in AT&T's scenario, the, the
17 promotion extends directly to the consumer. Here it's being
18 intercepted by the middleman with some of the perhaps benefit
19 not reaching the consumer. So how can you distinguish between
20 those two in terms of the required offering?

21 MR. MALISH: Okay. Well, because the way the law
22 is -- the way the law works is that what essentially happens
23 with a promotion like that is that it allows, it allows AT&T to
24 undercut its basic retail tariff pricing. And so if the
25 promotion is not extended to dPi, then, then AT&T will be

1 selling things at a rate that's actually below its retail rate.
2 And so dPi will be paying more -- even though it's supposed to
3 be getting that same service at wholesale, it's actually paying
4 more for a service that, that AT&T is offering to its customers
5 at retail. So the wholesale rate is higher than the actual
6 effective retail rate.

7 Now obviously if there's enough savings involved, dPi
8 can pass some or all of that on to its own customer. That's up
9 to the discretion of dPi. But, for example, in a case like
10 this where it doesn't get the money, it doesn't get the reduced
11 rate from AT&T, it can't pass it on because then it'll be
12 operating at an actual loss. It will be selling things for
13 less than what it has to pay for them.

14 Now that footnote, I don't think it says what AT&T
15 claims that it says. They're asking you to interpret that or
16 they will be asking you to interpret that footnote in a way
17 that conflicts with federal law. I don't think that's the way
18 that the footnote ought to be interpreted. That's just the way
19 they're asking you to interpret it.

20 COMMISSIONER SKOP: I understand. And I mean, like I
21 say, I think that in the course of, the course of your opening
22 argument, I mean, you touched upon the relevant law, the
23 controlling law, the fact that contracts are, you know,
24 typically construed against the drafter, you know, which is an
25 equitable principle in itself. But also, too, one of the

1 things that, that you pointed out was the governing law, and I
2 believe that was on Slide 17 where it talks with state
3 substantive telecommunications law, and I think that's where we
4 come in in trying to make sure that, you know, that in the
5 cases of disagreements that, you know, we consider all the
6 facts and look at what's actually happening.

7 MR. MALISH: Uh-huh.

8 COMMISSIONER SKOP: As opposed to, you know, the just
9 mere technicality or, you know, looking at something. But I
10 just wanted to flesh that out a little bit and I do appreciate
11 your responses, and I think my colleagues have questions.

12 COMMISSIONER McMURRIAN: Commissioner Argenziano.

13 COMMISSIONER ARGENZIANO: You're going to have to
14 forgive me because I am not an attorney, was not as
15 well-educated as my colleague as far as attorney lingo. I'm
16 going to speak the lingo I know because it touches the same
17 base, and anybody watching out there who's not an attorney may
18 feel a little bit like I do sometimes trying to really -- what
19 did -- what was that, and maybe, maybe saying the same thing.
20 But what I see, first of all, I look at the law. Say, hey,
21 what is the law telling me? And what I see that within the
22 short-term promotions that they describe, within the promotion
23 there are qualifications obviously.

24 Now it seems to me that you're saying that you're not
25 being offered the credit for these promotions but you're not

1 qualifying for the promotions. That's what I see. You're
2 arguing you are qualifying and I guess by using the blocks.
3 AT&T has got customers who are qualifying and using features.

4 So the next step I go to is, okay, if, if dPi is
5 qualifying, what does it take to qualify? And what I'm looking
6 at is the same thing that the AT&T customer, the end user has
7 to qualify.

8 I have -- and I think maybe you haven't explained to
9 me enough -- I don't see where you qualify. I think the offer
10 is being, it's being offered to you, but I don't see where
11 you're qualifying for the offer. And to me, it seems like
12 maybe in your words because the block -- I mean, the customers
13 may not be the best customers or they may be risky customers.
14 The business has to protect itself, so you want this promotion
15 because you're in that niche, as you say, that may help your
16 company when you have customers that may not be the best
17 customers. But if you don't qualify -- and I think you need to
18 emphasize to me more where you qualify. Because you're -- the
19 end user at AT&T is benefiting from that and, of course, AT&T
20 is because they have a customer who is buying additional
21 features. You're not buying the additional features. You're
22 putting blocks on because these -- it may be the business
23 decision you make because of the niche you're in, but you are
24 benefiting -- but you want to benefit from the promotion
25 without buying, and I, and I just don't see the connection

1 where you qualify.

2 MS. TAN: Before Mr. Malish speaks, I'd like to say
3 that I think that perhaps what Mr. Malish can do is tell the
4 Commissioner which witnesses will be discussing that
5 information.

6 COMMISSIONER ARGENZIANO: Thank you.

7 MR. MALISH: Okay. And, Commissioner Argenziano, the
8 question comes down to -- it's a matter of, I guess,
9 interpretation of that language in the promotion as to what is,
10 what is necessary in order to qualify. They're saying that
11 those features are not, those HB -- BCR, BRD and HBG TouchStar
12 blocking features are not features. That's their position.
13 That's their policy that they have adopted and that's a policy
14 that they adopted only after they had made a practice of
15 paying --

16 COMMISSIONER ARGENZIANO: Okay. Can I stop you for a
17 second there?

18 MR. MALISH: Yes.

19 COMMISSIONER ARGENZIANO: Can I stop you? But -- and
20 the way I see that -- because that would be taken into
21 consideration. If you're doing that, if you're offering that
22 promotion for the, maybe the type of feature, not feature, the
23 blocking that is not considered a feature, if you're giving
24 that to somebody else, well, then I would look at that.

25 MR. MALISH: Yes.

1 COMMISSIONER ARGENZIANO: But could it be more of
2 oversight and saying just sloppy on the part of AT&T for
3 allowing their own promotion to be taken advantage of and then
4 they realize and say, hey, this is not what we meant to begin
5 with? And I'll, I'll reserve that for the right witness that
6 you may have, but that's the way I'm taking that.

7 MR. MALISH: The point of it is that if AT&T -- the
8 question is how are they going to interpret that? The problem
9 is that they have interpreted it with their own retail users
10 that select nothing but plain old telephone service plus these
11 blocking features. They have given that promotion to their own
12 retail customers. In other words, customers of theirs at
13 retail who submit orders configured exactly the same way that
14 dPi submits orders get the benefit of the promotion but dPi
15 does not. That's what they're -- that's the problem. And --
16 I'm sorry.

17 COMMISSIONER ARGENZIANO: And I thought that ended.
18 I thought from what I read and what I've come to the conclusion
19 was that that to me may have been big mistakes on your own part
20 and then coming to the realization, hey, we're not even
21 verifying what we're giving promotional credits to. And I
22 don't know if that still continues. And I don't know -- I want
23 to put us in the proper -- it may have to be for witnesses
24 coming up. But if you have those witnesses, maybe they can at
25 the time answer those for me on both points.

1 MR. CARVER: Yes. Of course. I'm sorry. If I could
2 just respond.

3 Yes. Ms. Tipton will be able to answer those
4 questions.

5 COMMISSIONER ARGENZIANO: Okay. Ms. Tipton.

6 MR. MALISH: And, of course, the problem is not what
7 their policy is but what their practice is. Because their
8 policy may be, geez, our policy is we never give this out and
9 that's their stated policy. But if their practice is they
10 always give it out --

11 COMMISSIONER ARGENZIANO: Uh-huh.

12 MR. MALISH: -- then we're having a problem. All
13 right? Because the practice is what's important, it's the
14 practice.

15 COMMISSIONER ARGENZIANO: Well, Madam Chair, to that
16 point, to the proper witnesses at the proper time I'm going to
17 want some information on when that -- is it still being
18 practiced and is it not and that's --

19 MR. MALISH: And actually this is all in the past.
20 This has gone away.

21 COMMISSIONER ARGENZIANO: Ah, then you just answered
22 my question. Thank you. Okay.

23 COMMISSIONER McMURRIAN: Any other questions?

24 Sure, Commissioner Skop.

25 COMMISSIONER SKOP: And I want to thank Commissioner

1 Argenziano for that because she put it in the plain language
2 that I was trying to articulate.

3 COMMISSIONER ARGENZIANO: You did very well.

4 COMMISSIONER McMURRIAN: I think I thank her more
5 than you do as another nonattorney.

6 I think that brings us to the point where we'll hear
7 from the witnesses. So first I'll ask all witnesses present to
8 stand with me and raise your right hand while I administer the
9 oath.

10 (Witnesses collectively sworn.)

11 Thank you. Two other quick reminders. Witnesses are
12 permitted five minutes each to summarize their testimony.
13 We're going to take direct and rebuttal together. And that
14 brings us to dPi; you may call your first witness.

15 MR. MALISH: Thank you, Commissioner. Our first
16 witness is Brian Bolinger.

17 COMMISSIONER McMURRIAN: There in front of the
18 microphone, Mr. Bolinger. That's okay. Take your time.

19 BRIAN BOLINGER

20 was called as a witness on behalf of dPi Teleconnect, LLC, and,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MALISH:

24 Q Mr. Bolinger, could I get you to please state your
25 name and address for the record?

1 MR. CARVER: Excuse me. I'm sorry to interrupt, but
2 if I could just raise a literal housekeeping matter. I can't
3 really see the witness because they have an apparatus on the
4 table there that's blocking the view. Would it be possible for
5 them to move that so that I could see the witness as he
6 testifies?

7 COMMISSIONER McMURRIAN: We'll get some help with
8 that.

9 MR. CARVER: Thank you.

10 (Pause.)

11 COMMISSIONER McMURRIAN: Can you see him, Mr. Carver?

12 MR. CARVER: Yes.

13 COMMISSIONER McMURRIAN: Thank you. Go ahead,
14 Mr. Malish. Sorry about that.

15 BY MR. MALISH:

16 Q Mr. Bolinger, we were going to have you state your
17 name and address for the record, please.

18 A Sure. My first name is Brian, and that's B-R-I-A-N.
19 Last name is Bolinger, B-O-L-I-N-G-E-R.

20 Q And you work for dPi; correct?

21 A I do.

22 Q And tell us what capacity.

23 A My capacity for dPi Teleconnect is I'm their Vice
24 President of Legal Affairs.

25 Q And did you prepare in this case and prefile direct

1 and rebuttal and supplemental testimony?

2 A I did.

3 Q And do you have any changes or corrections to make to
4 this testimony at this time?

5 A Actually the only change that I would have is my
6 first amended direct testimony. I think there's a typo in
7 there that dPi Teleconnect provides services to residential and
8 business customers. We have no business customers. We only
9 provide services to residential customers. Other than that,
10 it's accurate.

11 COMMISSIONER McMURRIAN: Mr. Bolinger, I just wanted
12 to see what page and what line, if you could.

13 THE WITNESS: Page 1, Line 18 begins with the word
14 "provides."

15 COMMISSIONER McMURRIAN: So you would strike "and
16 business"?

17 THE WITNESS: Yes, ma'am.

18 COMMISSIONER McMURRIAN: Okay. Thank you.

19 BY MR. MALISH:

20 Q All right. And so with those changes, if I were to
21 ask you all the questions that are in the testimony, would you,
22 in the written testimony, would you, would your answers be the
23 same as what's there in writing?

24 A Yes.

25 MR. MALISH: Okay. At this point I would like to

1 request that the prefiled testimony of Mr. Bolinger be inserted
2 into the record as though read.

3 COMMISSIONER McMURRIAN: Yes. Show that done.

4 Thanks.

5 BY MR. MALISH:

6 Q And, Mr. Bolinger, there are some -- here we go. No,
7 that's not it. Here it is right here. There are some exhibits
8 that are attached to your testimony. Let's see. Those would
9 be -- they're all attached to Steve Watson's. These are all
10 for Steve Watson. Okay. There are no exhibits attached to
11 your testimony, are there?

12 A In what I brought up here I have Christy Siegel's
13 deposition, but that may have been attached to Steve Watson's,
14 not mine.

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1 this argument encompassed the lion's share of the total dollars in dispute in North Carolina and does
2 in Florida as well.

3 **What's the Line Connection Charge Waiver promotion?**

4 Generally, the Line Connection Charge Waiver promotion provides that Bellsouth will waive
5 the line connection charge for customers who switch to Bellsouth and take at least basic service with
6 two Touchstar features – at least, two features are required according to Bellsouth's tariffs. *See* dPi's
7 Exhibit FL-2, a copy of the tariffed promotion.

8 This promotion has been around for a couple of years; dPi's claims go back to January of
9 2004.

10 In August 2004, dPi began submitting credit requests through Lost Key pursuant to
11 Bellsouth's procedures. For some reason, Bellsouth credited dPi only a small fraction of the
12 amounts applied for.

13 Soon after Bellsouth's initial refusal to credit the amounts requested, Steve Watson notified
14 me of the situation so that I could monitor it and participate in the dispute resolution process. From
15 September 2004 to April 2005, Bellsouth was unable to explain why it was refusing to pay these
16 credits. On numerous occasions over this period, Bellsouth's employees promised me that these
17 payments would be forthcoming. *See* dPi's Exhibit FL-5, copies of email communications between
18 the parties on this subject.

19 However, in about April of 2005, Bellsouth stated that it would not be paying these credits
20 applied for almost entirely on the grounds that dPi had not qualified for the credits because,
21 notwithstanding the fact that dPi had purchased Bellsouth's basic service with two or more
22 Touchstar features, the Touchstar features that dPi had included in its orders (e.g., BCR and BRD

1 blocks)¹ “did not count” because Bellsouth did not have a separate charge for these particular
2 Touchstar features. In North Carolina, the overwhelming majority of the time a credit request was
3 denied, it was denied because Bellsouth decided that dPi did not have the requisite number of
4 Touchstar features, since it refused to count the Touchstar blocks that dPi had on the lines. We are
5 not sure if this is the basis for denial in Florida because we do not have responses to discovery, but
6 for now we will assume that BellSouth is consistent with their denials.

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

8 Essentially none. The fact of the matter is that all that is required to qualify for these
9 promotion is the purchase of basic service with two (or sometimes one, if you use the promotion
10 description from Bellsouth’s website) Touchstar features. In every case where Bellsouth denied
11 credit on the grounds that dPi did not qualify because it had not purchased Bellsouth’s basic service
12 with two features, dPi *had* in fact taken Bellsouth’s basic service with at least two additional
13 Touchstar features, such as the BCR and BRD blocks, among others.² Bellsouth simply chooses not
14 to “count” these features. There is no dispute that the blocks ordered are listed by Bellsouth as
15 Touchstar features. There is no dispute that Bellsouth has paid credits of far higher amounts to other

1

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

2

BellSouth has also contended that the Touchstar BCR, BRD, and HBG blocking features are not features at all. However, they are described in the Touchstar feature portion of the tariff, where they are listed with other features, and are specifically referred to as features. *See* Exhibit dPi FL-1, an excerpt from the tariff. Furthermore, BellSouth employees repeatedly referred to these features as features during communications between the parties; *see* Exhibit dPi FL-5.

1 carriers (such as Budget) with the same service orders (i.e., basic service plus Touchstar blocks) in
2 the past. Now Bellsouth is simply fabricating an excuse to avoid having to pay these credits to dPi.

3 **Does Bellsouth owe dPi any amounts for wrongfully denying promotion credits for this**
4 **reason?**

5 Yes. Our billing agent (Lost Key) has calculated that Bellsouth has wrongfully denied tens
6 of thousands of dollars in promotional credits just on the line connection charge waiver alone. There
7 are also credits owed for other promotions, such as the Secondary Service Charge Waiver promotion
8 and the Two Features For Free promotion which were improperly denied.

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

10 In North Carolina, yes. We are not sure in Florida yet because we do not have responses to
11 discovery.

12 **Does this conclude your testimony?**

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

14 Respectfully Submitted,

15 **FOSTER MALISH BLAIR & COWAN, LLP**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

1
2
3
4 In Re:) DOCKET NO. 050863-TP
5)
6 dPi Teleconnect, L.L.C. v.)
7 BellSouth Telecommunications, Inc.)
8

9 **FIRST AMENDED REBUTTAL TESTIMONY OF dPi TELECONNECT'S BRIAN**
10 **BOLINGER**
11

12 **Q: Overall, what is your response to Bellsouth's testimony?**

13 A: Generally speaking, Bellsouth spends most of its breath addressing essentially
14 irrelevant issues. Its direct testimony is focused on issues which represent less than 2% of
15 the total dollars at issue – the Two Features for Free promotion and the Secondary Service
16 Charge Waiver. The main issue in this complaint is the Line Connection Charge Waiver
17 (“LCCW”) Promotion. It accounts for about 98% of the total credits and thus it will be the
18 focus of my rebuttal testimony. See dPi Exhibit FL- 4, a spreadsheet showing LCCW
19 promotion credits applied for by dPi and denied by BellSouth.

20 **Q: Does focusing on the Line Connection Charge Waiver (“LCCW”) Promotion simplify**
21 **issues for the Commission?**
22

23 A: Vastly. As noted above, the dispute over this promotion accounts for more than 98%
24 of the dollars at issue between the parties. Frankly, the cost of litigation far surpasses the
25 minuscule amount at issue for the other two promotions. Had this been known earlier, these
26 claims likewise could have been dismissed earlier. From here out, dPi will concentrate only
27 on the LCCW promotions.

28 In the parallel proceeding in North Carolina, the vast majority of the time, dPi was
29 denied credit under this promotion because Bellsouth refused to “count” as Touchstar

1 features those features selected by dPi, such as the Touchstar blocks. That is the same being
2 used here in Florida. Seventy five percent of all LCCW promotions (\$58,210 of \$78,947)
3 were denied because AT&T claimed there were not enough features.

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

8
9 **A: Exactly. And there is no getting around the fact that dPi has in fact ordered Basic**
10 **Service with Touchstar features. If Bellsouth does not wish its promotion to apply to all**
11 **Touchstar features, it should do like SBC (prior to its merger with Bellsouth), and alter its**
12 **promotion so that the promotion specifically lists those features that Bellsouth requires to**
13 **qualify for the promotion.**

14 BellSouth does not address this issue in any detail in its testimony. It seems to hinge
15 its position on the fact that the North Carolina Utilities Commission decided that dPi was not
16 entitled to the LCCW credit because the North Carolina Utilities Commission found that
17 BellSouth did not actually provide the credit to its end users with identical orders as dPi's
18 customers. Transcr. Pam Tipton p.17 (July 23, 2007) .

19 Of course, this completely ignores the fact that Bellsouth **did** originally interpret its
20 promotion the as the plain language reads, and as dPi contends it should be interpreted. Lost
21 Key worked with BellSouth in developing the automated system for processing these
22 promotions. Small test batches of orders were sent to BellSouth for evaluation and approval
23 before the larger batches were sent; and BellSouth approved those orders for LCCW credits
24 with POTS plus blocking features. BellSouth allowed CLECs such as Budget Phone to

1 claim this credit under dPi's interpretation originally. It was only after Bellsouth realized
2 that by changing its interpretation of the promotion it could avoid extending the LCCW
3 credit to many CLECs without affecting its own customer base, because of differing natures
4 of the customers bases of BellSouth and dPi. In other words, BellSouth switched its business
5 practices and stopped awarding LCCW promotions to its end users with orders substantially
6 the same as dPi's for the sole reason that more dPi users would be harmed than Bellsouth end
7 users. This business decision of Bellsouth can *in no way* affect whether or not an order
8 qualifies for the promotion.

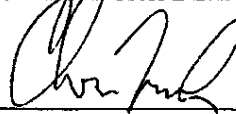
9 The Commission should simply read the text of the LCCW promotion according to
10 its plain meaning – as both Bellsouth and dPi did initially – and compel BellSouth to extend
11 the LCCW promotion pricing to dPi. Going forward, Bellsouth should amend its promotion
12 language to specify those features which will no longer qualify for the promotion if it does
13 not want CLECs such as dPi to qualify for the promotion with basic service plus two blocks.

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

15 **A: Yes – for now. But I reserve the right to supplement or amend it at hearing.**

16 Respectfully Submitted,

17
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1 BY MR. MALISH:

2 Q Do you have a summary of your testimony,
3 Mr. Bolinger?

4 A I can provide one, yes.

5 Q Okay. Would you, please?

6 A Sure. Basically my testimony boils down to
7 contradicting exactly what Mr. Carver has said. And I will
8 give you a little history. I know Mr. Malish has done that as
9 well. But in a nutshell this case boils down to the Line
10 Connection Charge Waiver that was operating between January of
11 2003 through mid 2004. And what occurred was we or dPi
12 submitted for three separate promotions during that time. And
13 as is common in the industry, we went back as far as we could
14 and submitted everything in one batch and sent it over to
15 BellSouth. And we did that through Lost Key Telecom, for which
16 Mr. Watson is the owner.

17 On the same day dPi submitted their request a company
18 very similar to dPi submitted identical information. That --
19 the other company was paid in full by BellSouth. And then what
20 we learned subsequently through Christy Siegel's testimony at
21 BellSouth was she was amazed, or I think she used the word
22 "shocked" that the numbers were so high, and so she
23 individually stopped the program.

24 So unbeknownst to us the program had ceased. All we
25 knew is we did not get paid for the credits that we had

1 requested or that the other company, which is Budget Phone, got
2 paid for. So month after month I would talk to people at
3 BellSouth and they would tell me, "It'll be on your next
4 month's billing," and it wouldn't show up. And I would call
5 them and say, "What happened?" "I'm not sure. I don't know
6 what happened. It'll be on next month's billing." It was
7 always next month, next month, next month. It was never, "Hey,
8 we're reviewing the process." It was never, "You've been
9 denied because of." It was always, "You will get it next
10 month." So it grew to several hundred thousand dollars.

11 MR. CARVER: I'm sorry. I'm going to have to object.
12 What the witness is saying now in his last several comments are
13 not anywhere in his testimony. I mean, beginning with the part
14 about ending the program, Ms. Siegel up 'til now, none of that
15 is in either his direct or rebuttal testimony.

16 COMMISSIONER McMURRIAN: Mr. Malish? I mean, I can
17 add while you think about it that the summary is supposed to be
18 a summary of the testimony. So if it is outside the scope,
19 then I think we would ask the witness to stay within the scope
20 of his testimony that's prefiled. But you're welcome to
21 respond to that, to the objection.

22 MR. MALISH: I wasn't, I wasn't paying that much
23 attention. I'm sorry.

24 THE WITNESS: Ma'am, could I respond?

25 MR. MALISH: But, you know, Mr. Bolinger, if you'll

1 summarize your testimony that's written and then --

2 THE WITNESS: I thought I was.

3 MR. MALISH: Okay. Well, and then if you, if you
4 would further like to respond to, for example, some of the
5 questions that Commissioner Argenziano or Commissioner Skop
6 asked during the, right before this, then you can do that, too.

7 THE WITNESS: Sure. Okay.

8 MR. MALISH: We'll get to that in a second.

9 THE WITNESS: Okay. Well --

10 COMMISSIONER McMURRIAN: Just -- hold on just a
11 second. I'll look to staff.

12 MS. CIBULA: Well, it appears that --

13 COMMISSIONER McMURRIAN: Should --

14 MS. CIBULA: -- that their attorney told him to stick
15 to the summary of his testimony and that's what they're going
16 to do. So I think we can --

17 COMMISSIONER McMURRIAN: Okay. We'll move on.

18 THE WITNESS: Well, I thought I was, so I will try to
19 the best I can.

20 So in any event, it grew to a large amount and what
21 we did was we basically withheld payment. Up until then we had
22 been paying 100 percent, so we withheld payment because we
23 tried to get a decision made one way or the other. We didn't
24 know what was going on.

25 At that point we were submitted with demand letters

1 for payment and forced to file at the -- initially we just
2 filed in North Carolina at the Commission and subsequently in
3 all other states. Ironically, within seven days of filing in
4 North Carolina two of the three promotions were paid nearly in
5 full, which left the Line Connection Charge Waiver.

6 So -- but during this time when they, when they were
7 telling us why they were denying it, which started about in
8 April, they would give us several different excuses or, as
9 Mr. Malish points out, "yeah, buts." And so in each one we
10 would shoot them down. The first one, I believe, actually was,
11 "Well, all of those are UNE-P customers." And our response
12 was, "At a maximum our UNE-P customer count was 8 percent of
13 our total customer base, so how can 100 percent of the
14 promotions be all UNE-P customers? That doesn't make any
15 sense." So that was quickly withdrawn.

16 Then they would say, you know, several different
17 things up to "They're not features." And I would say, "Well,
18 in your tariff they're listed as features. On your website
19 they're listed as features. In UNE-P you charge them as
20 features. When communicating with you, you talk about them as
21 they are features. So how are they not features?" And then it
22 changed to, "Well, you didn't pay for them."

23 MR. CARVER: I'm sorry. Objection. None of this is
24 in his testimony either.

25 COMMISSIONER McMURRIAN: Mr. Malish, do you want to

1 show us where this discussion is in the testimony, or respond
2 to that however you wish?

3 MR. MALISH: I'm sorry.

4 BY MR. MALISH:

5 Q Mr. Bolinger, if that's not in your testimony, you
6 can look at your testimony.

7 A Okay.

8 Q And then I know that the other Commissioners had
9 questions that I bungled answering and I will direct you to
10 those, too. But try to stick to what's in your testimony.

11 A I'm trying to. I haven't memorized it verbatim. I'm
12 just giving --

13 COMMISSIONER McMURRIAN: And, Mr. Bolinger, if it
14 makes it easier, we can come back to the Commissioners'
15 questions at the time the Commissioners ask questions, too.
16 You don't have to try to fit that in your summary. If you want
17 to just summarize -- we have about -- I'll give you another
18 minute because of the objections.

19 THE WITNESS: Okay.

20 COMMISSIONER McMURRIAN: But I think you need to wrap
21 up.

22 THE WITNESS: Sure. Sure. And I thought -- I've
23 been deposed so many times and questioned so many times, unless
24 you -- it's hard to tell which is what.

25 But, so in a nutshell, the excuse after excuse, to be

1 perfectly honest, I'm not exactly sure -- well, I can't say
2 that. Never mind.

3 So then it has come down to basically us saying that,
4 yes, we do qualify and we were wrongly denied those promotional
5 credits that have been paid out to not only their own customers
6 but to also other CLECs.

7 COMMISSIONER McMURRIAN: Mr. Malish, do you tender
8 the witness for cross?

9 MR. MALISH: I want to follow up a couple of things
10 with Mr. Bolinger about the questions that Commissioner Skop
11 and Commissioner Argenziano --

12 COMMISSIONER McMURRIAN: Mr. Malish, we'll just do
13 that at the time that the Commissioners jump in and ask
14 questions, and we can do that really at any time, the
15 Commissioners can jump in with their questions, but you don't
16 need to pose them to him.

17 MR. MALISH: Okay. Okay. Then we do.

18 COMMISSIONER McMURRIAN: Thank you.

19 Mr. Carver. Or if Commissioners want to jump in now,
20 that's perfectly appropriate, too. It's either way.
21 Commissioner Argenziano, would you like -- sure.

22 COMMISSIONER ARGENZIANO: I just want to clarify with
23 you. You're saying that you felt, or you're saying that you
24 felt that AT&T -- actually not felt. You said that AT&T paid
25 almost in full for those promotions which now they're saying

1 were never meant to be part of that promotional package but
2 they paid that.

3 THE WITNESS: Up until the denial of our claim for
4 the Line Connection Charge Waiver, BellSouth, to my knowledge
5 BellSouth was paying other CLECs very similar to dPi that
6 ordered exactly the same way dPi did.

7 COMMISSIONER ARGENZIANO: No, that's not the
8 question. The question is I think you said that they paid dPi
9 almost in full for the --

10 THE WITNESS: There were three, there were three
11 promotions initially at issue in this case and in all cases in
12 all BellSouth states. There's a Line Connection Charge Waiver,
13 there's a Secondary Service Charge Waiver, and then there was,
14 yeah, two features for free. So all you had to do is order
15 basic service, you got two features for free.

16 They didn't -- for, you know, nine months or so we
17 were not paid on any of those that we filed. We were, we were
18 granted zero credits or almost zero credits. There's always
19 credits on a bill.

20 COMMISSIONER ARGENZIANO: Okay. Okay. If I can,
21 because I'm trying to -- at that time dPi had two features to
22 the end user? Was the end user -- did -- let me put it this
23 way. Did BellSouth pay for features that the end user had
24 requested? Is that the payment you're talking about?

25 THE WITNESS: What happens is, as Mr. Malish kind of

1 explained in his opening, we are charged 100 percent of the
2 wholesale rate in month one. So if I order, let's say two
3 features, I order -- I call BellSouth.

4 COMMISSIONER ARGENZIANO: As dPi or a customer, end
5 user?

6 THE WITNESS: As an individual. I call as an
7 individual, as a BellSouth end user, I call BellSouth and I
8 order basic service. They will tell me, "Yes, sir, you get two
9 features for free. What would you like?" And I would order
10 those and I would not be charged.

11 As dPi Teleconnect when I call BellSouth and say "We
12 have a customer that ordered basic service and we want these
13 two features placed on them," and when they say features here
14 in this context, they're talking about Call Waiting, Caller ID,
15 Three-Way Calling, you know, those type of, of features you can
16 add to your line, they will charge dPi Teleconnect in full for
17 those features, the retail price for those features. So if
18 Caller ID is ten bucks and Call Waiting is \$5, we will get
19 charged \$15 for those features. We have to then go back to
20 them and say, "Wait a minute. Wait a minute. See this line
21 here on our bill? This line should have been under your two
22 features for free plan, so please pay us back our money that
23 you charged us." They did not do that for a period of nine
24 months. When we filed in North Carolina, within a week the two
25 features for free and the Secondary Service Charge Waivers were

1 nearly paid in full.

2 COMMISSIONER ARGENZIANO: Okay. Thank you.

3 THE WITNESS: That is what I meant by that.

4 COMMISSIONER McMURRIAN: Commissioner Skop.

5 COMMISSIONER SKOP: Thank you, Madam Chair.

6 I just wanted to, I guess, clarify in your position,
7 dPi's position is that the blocks qualify as features; is that
8 correct?

9 THE WITNESS: Yes, sir.

10 COMMISSIONER SKOP: Okay. And previously I think, as
11 my colleague Commissioner Argenziano has fleshed out, you guys
12 initially submitted the paperwork for getting the promotional
13 refunds or, for lack of a better word, whatever they were, and
14 some of those at least initially were approved; is that
15 correct?

16 THE WITNESS: For us, no.

17 COMMISSIONER SKOP: Not for you? Okay.

18 I guess in your opinion, in looking at the -- there
19 appears to be a tension again between the blocks and the
20 features, but also to the additional requirements that, you
21 know, the statutory requirements and then you have the
22 contractual issues and then you have this footnote. But in
23 equity in your opinion is it fair for a company like dPi --
24 although, you know, it's implied or seems to be on your
25 arguments that it's implied that you qualified for promotions,

1 I think that it probably turns on blocks versus features. But
2 in your opinion is it fair for a company like dPi to
3 essentially request that this money be refunded but it not be
4 passed through to the consumer? Ultimately you guys are trying
5 to leverage or arbitrage or in plain terms just profit by this
6 promotion. Is that true?

7 THE WITNESS: That is not true.

8 COMMISSIONER SKOP: Okay. Could you please explain
9 that?

10 THE WITNESS: Absolutely. And Mr. Carver, I'm sure,
11 will ask me this question. He will ask, "At the time did you
12 pass the promotions through to your customers?" And my answer
13 will be, "No, because we did not get the promotions." Had we
14 gotten the promotions, yes, absolutely, we would have put them
15 into our model and we would have passed them through to our
16 customers. However, if you don't pay it, we can't pass it
17 through because you're talking about, oh, somewhere in the
18 neighborhood of a hundred thousand dollars a month of pure cash
19 flow, and you can't support your business that way.

20 We have -- currently today there are several
21 promotions going on whereby BellSouth or AT&T, they're paying
22 100 percent. Those promotions are passed through to the
23 customer. We have recently become ETC certified in many states
24 and are offering a Lifeline product for a dollar to our
25 customers who qualify. We try -- it doesn't make business

1 sense whatsoever not to pass them through because we have
2 competitors out there and we have AT&T out there and everybody
3 else who's passing them through. So, no, that's absolutely not
4 true. We do not try and profit off of it. But we have to
5 first make sure we're going to get paid or we'll go out of
6 business.

7 COMMISSIONER SKOP: Okay. So, so based on that, let
8 me make sure that I understand what you said. To the extent
9 that if, if you qualified for the promotion and those funds
10 were paid to dPi from BellSouth, that those amounts would be
11 passed through to the consumer and would not be retained by
12 dPi.

13 THE WITNESS: Yes. The way the process works -- and
14 it's different in BellSouth territories than it is in most
15 every other state. Because there is this lag time and forms
16 you have to fill out and approval you have to get from
17 BellSouth before they will refund your money, the process takes
18 a little longer to pass through to the customer than, let's
19 say, it does in a former SBC state where you put, where you put
20 the code on the form and it automatically gives you the
21 discount. You can easily then pass that through to the
22 customer.

23 Here, because you don't know when they -- if, if
24 BellSouth were to come out with a promotion today and we read
25 the promotion, read all the requirements of the promotion,

1 looked at our product offerings and said, okay, we qualify for
2 this promotion, we have absolutely no idea if they're going to
3 pay it until they start. And they're usually three to four
4 months in arrears. And so for a period of three to four months
5 we will not pass that through because we don't know if
6 BellSouth is going to honor their promotion to us. Once they
7 start paying on a regular basis, we change our pricing, offer
8 it to the customer and pass that through. But until then we
9 simply cannot because we can't afford the cash flow crunch
10 if -- you know, in this case it's been four years and they
11 haven't paid it yet.

12 COMMISSIONER SKOP: Thank you. And just one quick
13 follow-up.

14 Again, I think the reason I'm asking that is because
15 it's very important for me and I think probably also my
16 colleagues to understand the motivation, the true motivation of
17 exactly what's going on here. Because, again, you know, it
18 would be somewhat skeptical on face absent, you know, some of
19 the explanation that you've provided to assume that by, you
20 know, asserting that blocks are features and trying to avail
21 yourselves of a promotion that may or may not be the intent of
22 the promotion that AT&T sees it in their eyes. But, you know,
23 on face it seems, you know, somewhat opportunistic to the
24 extent that if that weren't -- you know, why are you doing that
25 and why -- you know, is it for yourself or is it for your,

1 truly for the customers? And it seems like you've added some
2 clarity to that. But, you know, at least on face it seems very
3 skeptical by virtue of it's almost as if you're trying to
4 exploit or leverage a loophole to take advantage of something.
5 And, you know, again, it's important to me to understand the
6 motivation behind that. Is that for the corporate benefit or
7 is it truly for the benefit of the customers, which would be
8 consistent with the flow down through an AT&T promotion offered
9 directly to its consumers. Thank you.

10 COMMISSIONER McMURRIAN: Commissioner Argenziano.

11 COMMISSIONER ARGENZIANO: Okay. A couple of things.
12 One, you mentioned a website where AT&T or BellSouth, I guess,
13 lists features.

14 THE WITNESS: Uh-huh.

15 COMMISSIONER ARGENZIANO: And I've been trying to
16 find that. And I found something that says, "What is a
17 feature?" And it basically says, "A feature is an enhancement
18 to a product. A product may have one or more features. Caller
19 ID, Caller Waiting Deluxe and Three-Way Calling are examples of
20 features." And I'd like to know if there's another spot where
21 you're referring to.

22 THE WITNESS: Yes, ma'am, there is. I have a piece
23 of paper over there with a Web address that will take you right
24 to it.

25 COMMISSIONER ARGENZIANO: Okay. I'll take that.

1 THE WITNESS: Where it tells you the TouchStar
2 features.

3 COMMISSIONER ARGENZIANO: But the other thing I want
4 to go back to, because to me it comes back to what the law
5 says, what the promotion includes, and then what, how AT&T or
6 BellSouth is practicing that promotion. And what you said
7 before when I asked you about the features, you said that in
8 cases where BellSouth had end users that had two features, that
9 had basic service and then had two features which BellSouth was
10 giving for free, I think that's what you said, and you're
11 saying dPi had the exact same. Meaning the exact same as
12 features or are you adding the blocked, the blocks in as
13 features?

14 THE WITNESS: I'm adding, in that case with the two
15 features for free, features -- and there is an argument over
16 what is a feature. So that would be AT&T's definition of a
17 feature, meaning the customer had basic service and Call
18 Waiting and Caller ID.

19 COMMISSIONER ARGENZIANO: Right. And with all due
20 respect, it's their promotion, so I guess they can include what
21 they want in their promotion. But what I'm trying to get at is
22 if there were instances that they were the exact same features.
23 Let's get blocks off the table.

24 THE WITNESS: Well, and that's what I'm saying, they
25 were. Yes, ma'am.

1 COMMISSIONER ARGENZIANO: Okay. They were not
2 blocks. We're talking about additional features, there's Call
3 Waiting, Caller ID or something like that, and you see that
4 BellSouth gave the two features for free. And in that case
5 it's -- if that were the case, then it's an identical -- this
6 is really what I'm trying to get, Madam Chair, is it the same?
7 Because what I heard before was there was blocking, which I
8 think is different than a feature, especially if it's not
9 charged for. But what I'm trying to get at and I want to make
10 clear and make sure that that's what you're saying is that they
11 were identical features, putting blocks aside, as BellSouth was
12 giving or that you think BellSouth was giving to their end
13 users, which you felt you had a right to get, those end users
14 had a right to get the benefit of.

15 THE WITNESS: Yes.

16 COMMISSIONER ARGENZIANO: Is that what you're saying?

17 THE WITNESS: In that situation they, they withheld
18 payment of those for nine months, and not until we filed in
19 North Carolina was it paid.

20 COMMISSIONER ARGENZIANO: And, Madam Chair, if he can
21 at the right time get me that website, I'd like to see that,
22 please. Thank you.

23 COMMISSIONER McMURRIAN: Perhaps someone can -- can
24 someone get that for you, Mr. Bolinger?

25 THE WITNESS: I've got it. Mr. Malish has it in his

1 hand.

2 COMMISSIONER McMURRIAN: Okay. I think we might as
3 well do it now.

4 MR. MALISH: Can we put it on the projector?

5 COMMISSIONER McMURRIAN: I suppose.

6 THE WITNESS: Okay. This is off, as you can see,
7 it's off of AT&T/BellSouth's website where it lists BCR and BRD
8 both as Touchstars, which is, which TouchStar indicates that
9 they are TouchStar features.

10 COMMISSIONER McMURRIAN: Does that document have a
11 Web address on it, Mr. Bolinger?

12 THE WITNESS: I think it's at the bottom.

13 COMMISSIONER McMURRIAN: Okay.

14 THE WITNESS: There it is.

15 MS. TAN: Commissioners, does someone want to make
16 that into the record, read that into the record, make it into
17 an exhibit?

18 COMMISSIONER McMURRIAN: Mr. Bolinger, if you can, if
19 you can read it, go ahead and read it into the record.

20 MR. MALISH: I'll read it in. Oh, all right. Well,
21 you can. Go ahead.

22 COMMISSIONER McMURRIAN: I think it's best if the
23 witness reads it in. Go ahead, Mr. Bolinger.

24 THE WITNESS: The URL of that document is
25 <https://apps.interconnection.BellSouth.com/usoc/>

1 usoc_keyword.jsp.

2 COMMISSIONER ARGENZIANO: Ms. Tan, is that -- or,
3 Ms. Cibula, procedurally how do we address this?

4 MS. CIBULA: Someone might want to make that page an
5 exhibit in the record since there seems like there's other
6 information on that web page that is being pointed to.

7 MR. MALISH: Commissioner McMurrrian, we can just mark
8 that particular one as the next exhibit in order and label it
9 as a screen shot of the Web site and then the actual page will
10 be in your record.

11 COMMISSIONER McMURRIAN: You want to make it a
12 late-filed exhibit of some sort or is it just to mark this page
13 he has with him?

14 MS. CIBULA: They can mark that page right now and
15 enter it into the -- identify it and --

16 COMMISSIONER McMURRIAN: Okay. Let me -- so,
17 Mr. Malish --

18 MR. CARVER: Could we get a copy of that if it's
19 going to be an exhibit?

20 COMMISSIONER McMURRIAN: I think we need to. Should
21 we perhaps, maybe we should take --

22 MS. CIBULA: Maybe we should take a break.

23 COMMISSIONER McMURRIAN: Okay. You want to take ten
24 minutes? Okay. We'll take a ten-minute break and try to get
25 that in order and we'll be back in ten. Thanks.

1 (Recess taken.)

2 We'll go back on the record. And, Mr. Malish, I
3 think we probably need to mark this exhibit, and I think it
4 would be Exhibit Number 27. Is that --

5 MR. MALISH: Yes, ma'am.

6 COMMISSIONER McMURRIAN: Okay. And we'll need to put
7 a short title. How about AT&T USOC Lookup Tool just for short.

8 MR. MALISH: Yeah. That's fine.

9 MR. CARVER: And, I'm sorry, what was the number?

10 COMMISSIONER McMURRIAN: 27.

11 MR. CARVER: Thank you.

12 (Exhibit 27 marked for identification.)

13 And do the Commissioners have any other questions at
14 this time? Or we'll go on to Mr. Carver, and if there are
15 questions later, we can do that.

16 Okay. I believe, Mr. Carver, you're up. Thank you
17 for being patient.

18 MR. CARVER: Thank you.

19 CROSS EXAMINATION

20 BY MR. CARVER:

21 Q Good morning, Mr. Bolinger. My name is Phil Carver
22 and I represent AT&T. Before I get to the questions that I
23 have prepared, I would ask a couple of things that are
24 follow-ups to what you testified about just now.

25 In response to a question from Commissioner Skop, I

1 believe you said that when AT&T gives you credits, then you
2 pass them on to your customer; is that correct?

3 A Yeah. We change our models to pass -- once we know
4 that the, the promotions for which we file will be paid on a
5 regular basis, then we change our model to pass those through
6 to our customers.

7 Q Okay. Let me ask you, do you remember testifying in
8 a similar proceeding in North Carolina on March the 1st, 2006?

9 A I do remember that testimony.

10 Q Okay. I've got -- if I may approach the witness, I'd
11 like to take him a copy of the transcript of that hearing.

12 Okay. Mr. Bolinger, if you would look at the page
13 that I've opened that transcript to, it's Page 64 beginning on
14 Line 16 going through Line 24. Do you see that? Are you
15 there?

16 A Line 24?

17 Q No. Line 16.

18 A Oh, I'm sorry.

19 Q Yes, if you'll begin there. I'm going to read the
20 question and answer.

21 A Uh-huh.

22 Q Question, "And when BellSouth gives dPi those
23 credits, dPi doesn't pass those on to its end users, does it?"

24 "Well, it's been impossible to pass those on to our
25 end users because we've had to wait ten months to get them. In

1 the prepaid environment the average customer sticks around from
2 six to eight months. So by the time we actually receive the
3 dollar amount, the customer is most likely already gone so we
4 can't pass it to the customer."

5 Is that what you testified in North Carolina?

6 A Yes. I testified that if we waited ten months, the
7 typical prepaid customer would have disconnected from us and
8 there is no customer to pass it on to.

9 Q Right. So in North Carolina you testified that it
10 was impossible to pass the promotional credits on.

11 A Yeah. When AT&T waits ten months to pay their
12 promotional credits, it is impossible. Yes.

13 Q Okay. Now in Ms. Tipton's testimony she states
14 that -- this is on Page 4 of her direct testimony. She states
15 that in Florida AT&T has paid \$83,000 worth of credits to dPi
16 through April of 2007. Do you take issue with that number?

17 A Total for all credits since the beginning of time?

18 Q Yes. Through April of 2007.

19 A No, I don't take issue with that. I don't know what
20 that number is, but --

21 Q So is it your testimony that every time one of those
22 \$83,000 of credits was given to a customer, that you gave that
23 customer back to the -- you gave that credit back to the
24 customer that ordered the service that generated the credit?
25 Is that your testimony?

1 A My testimony is --

2 Q I'm sorry, sir. Could I have a yes or no, please?

3 Is that what you're telling us?

4 A No. What I have told you is that when we are
5 confident that AT&T will pay the promotion on a regular and
6 systematic basis in accordance with the promotion, that we
7 change our pricing model to reflect the reduced price to dPi.
8 It does not say that when John Smith orders service from us,
9 that we will automatically give him that promotion. Because
10 until we understand if AT&T is going to pass that promotion to
11 us, which is why we are here, we cannot change our model to
12 reflect the promotional pricing.

13 Q Have you given -- well, okay. So you're talking
14 about future pricing. My question though is this \$83,000 of
15 credits that have been given to you, did you pass those back to
16 the customers that ordered the service that generated the
17 credits, yes or no?

18 A I have no idea.

19 Q Okay. And in Ms. Tipton's testimony she also says
20 that throughout the region we paid dPi \$600,000 in credits.
21 You also, I assume, have no idea whether you passed any of
22 those back to the customers; would that be correct?

23 A If you're asking if I passed them down individually
24 to each individual customer, I have no idea because I don't
25 know the retention of those customers or anything else.

1 What I can tell you is that once AT&T decides to
2 start paying the promotions systematically and regularly, we
3 change our pricing model to reflect those promotions in our
4 pricing.

5 Q Okay. But just so we're clear, I'm not talking about
6 future pricing and different customers. I'm saying that, you
7 know, John Smith orders the line. As a result of that line you
8 get a \$30 credit.

9 A As AT&T --

10 Q I'm sorry. I'm not through, sir.

11 A Oh, I'm sorry. I thought you were.

12 Q I'm sorry. I paused because I was trying to frame my
13 question. My fault.

14 Do you take that \$30 and give it back to John Smith
15 if AT&T gives it to you?

16 A We do not do it on an individual customer basis. We
17 do it on a package basis if AT&T is paying the promotion. Now
18 we have to wait because, unlike the other ILECs in the country,
19 AT&T does not notify us if we qualify up-front. We have to
20 wait anywhere from 90 to 120 days before we get the decision
21 that, yes, you do qualify. But typically, for whatever reason,
22 we are only paid about 75 percent with no reason given as to
23 why 25 percent was denied. So if you would like us to pass
24 100 percent on to our customers, I would say that we would need
25 to get paid 100 percent. We pass everything that we know we

1 are going to get systematically and regularly in arrears
2 because it's not done real-time like you all do with your
3 customer, in arrears. Then we pass that through to our
4 customers who order that same package, we put the model
5 together, whereby customers who order that package will get the
6 reduced price. If you want to know if I paid John Smith, I
7 have no idea.

8 COMMISSIONER McMURRIAN: Mr. Carver, I want to jump
9 in. Commissioner Argenziano has a question.

10 COMMISSIONER ARGENZIANO: Yes. And I, what I need to
11 know here -- regardless of whether we like the fact if dPi
12 takes the money and sends it back down to the end user or not
13 is not my question, I think, at this point. I'm trying to
14 figure out is the law or the promotion specific to them giving
15 back to the end user? Because if not, I don't see where it's
16 pertinent at this point. What I'd like to know is --

17 MR. CARVER: Well, yes, I think it is relevant.

18 COMMISSIONER ARGENZIANO: I'm not saying it's not
19 relevant.

20 MR. CARVER: Yes, ma'am.

21 COMMISSIONER ARGENZIANO: I'm trying to go to the
22 point, if it's not specified in law or in your promotion that
23 it go back to the end user, then it's not the point.

24 MR. CARVER: And I'd like to respond to that. This
25 is why I think it's important. The law does not specifically

1 require that they give it to the customer. But certainly when
2 Congress passed the Act and the FCC interpreted the Act, they
3 contemplated that it would be passed on to the customer because
4 the whole point was that CLECs, you know, should be allowed to
5 price compete.

6 Now if you're asking is there a legal requirement?

7 No. But here's why it's important.

8 COMMISSIONER ARGENZIANO: Madam Chair, can I -- and I
9 don't mean to cut you off and I'll give you every opportunity,
10 and I'm not taking defense on whether it's right or wrong. I'm
11 looking at a company that maybe takes customers that are not
12 the best, that other people don't want, and maybe there's a
13 reason sometimes they don't pass on. So I'm not judging that.
14 I'm trying to stick to, you know, understanding what is at
15 point here, and I'm not sure if it's not required by statute or
16 promotion why it would be at point. That's all I'm -- I'm not
17 making judgment on it one way or the other. I'd rather it go
18 back to the end user always.

19 MR. CARVER: Right. And if I may respond to that.
20 The reason it's relevant is because, our position in this is
21 that under the language of the interconnection agreement the
22 end user has to place an order. And the way dPi conducts their
23 business, the end user doesn't place an order and they have no
24 idea what dPi is doing. Since they don't get the credit back,
25 that doesn't alert them to this entire process. So, you know,

1 I'm not saying they have to give it back, but it's just simply
2 evidence that goes to the fact that they're not end user
3 orders.

4 COMMISSIONER ARGENZIANO: Madam Chair, one more and
5 I'll move on. And I understand that because I believe that the
6 end -- I believe that they have to place an order also to
7 trigger the promotion. But it doesn't, still doesn't -- I'm
8 not even going to belabor it. I think I made my point and just
9 trying to -- I understand what you're saying. When the end
10 user places the, the order, dPi then -- oh, God, I'm going to
11 get it all messed up. You understand my point is what I'm
12 saying.

13 MR. CARVER: Yes, ma'am.

14 COMMISSIONER ARGENZIANO: I understand where you're
15 going with the end user having to place the order and not just
16 dPi placing the order.

17 MR. CARVER: Yes, ma'am. Yes, ma'am.

18 COMMISSIONER ARGENZIANO: But that's like two
19 different things to me.

20 MR. CARVER: And, again, we're not arguing that
21 they're legally required to give it to the end user. We're
22 just saying that that is evidence of the fact that the dPi
23 customer doesn't place an order.

24 BY MR. CARVER:

25 Q Okay. Mr. Bolinger, I'd like to ask you about the

1 document that's been marked as Exhibit 27, the one that was
2 just put up on the overhead. Do you have that in front of you?

3 A Okay.

4 Q Now if you go down to the bottom where it says, "BBC,
5 TouchStar, Block BusyConnect," and then there are other codes,
6 and for each it begins with the word "TouchStar" then goes into
7 the blocking, is the word "feature" anywhere in that?

8 A The word -- I do not see the word "feature" anywhere
9 in there.

10 Q Okay. And the word "feature" isn't anywhere on this
11 document at all, is it?

12 A No. The word "TouchStar" is, which is what the
13 document contemplates.

14 Q Okay. So your position is that anything that comes
15 under the general category of TouchStar is necessarily a
16 feature.

17 A No. In the original promotion, in the tariff which
18 was applicable at the time, which was a year prior to the
19 tariff that you all passed out a little earlier which was dated
20 December 2004, which was after all of this occurred, I believe
21 the promotion said that in order to get the Line Connection
22 Charge Waiver you had to purchase basic service and two
23 TouchStar features, which was subsequently removed in the
24 December tariff that you passed out. And so if you look for --
25 when you have -- you have to understand, when we are trying to

1 figure out if we qualify for a promotion or not, there's two
2 things you can do.

3 MR. CARVER: I object. This is not responsive. I
4 mean, I know the witness is entitled to explain. But my
5 question is just on this document are the blocks identified as
6 features? And he's gone off an entire explanation about some
7 history that has nothing to do with my question. I mean, if I
8 could just have an answer to the question, are blocks
9 specifically identified as features on this document?

10 THE WITNESS: Are blocks specifically -- no, they're
11 identified as Touchstars.

12 BY MR. CARVER:

13 Q So that's a no?

14 A I said, no, they are identified as Touchstars.

15 Q Sorry. I didn't hear that.

16 Now I think you said earlier that dPi provides only
17 residential service in Florida?

18 A Yes. Residential service throughout the country.
19 Yes.

20 Q And Florida would be the same; correct?

21 A Yes.

22 Q So when you serve these customers in Florida, do you
23 serve all of them by reselling AT&T's services?

24 A I'm not exactly sure I understand that question. We,
25 we serve AT&T -- we serve whatever the predominant incumbent

1 is. We have agreements with most. And it may be under resale
2 or it may be under local wholesale depending on what the
3 customer wants to purchase.

4 Q In Florida do you provide any service through UNES?

5 A Off -- currently?

6 Q Yes.

7 A Off the top of my head, I don't know. I believe we
8 are, are licensed, but I don't know if we have any packages
9 that we are actively selling customers that are on the UNE
10 platform or the local wholesale platform. No.

11 Q Okay. When a dPi end user orders basic local
12 service, dPi automatically puts the BCR, BRD and HBG blocks on
13 the end user's line; correct?

14 A Yes.

15 Q And when dPi places these blocks on customers' lines,
16 you don't ask the customers' permission to do that, do you?

17 A No. When you order service, there are several --
18 there's a litany of things that you place on customer accounts.
19 And so we don't line, go item by item and ask them if we could
20 place each line item on their account. No.

21 Q Well, do you specifically tell the customer that
22 you're putting the blocks on their line?

23 A In our pricing patterns --

24 Q I'm sorry. Could I have a yes or no? Do you
25 specifically tell the customer --

1 A Well, it depends.

2 Q -- you're putting the blocks on their line?

3 A It depends. Most likely no, but it still depends.

4 Q Do you remember giving your deposition in the North
5 Carolina proceeding on February 23rd, 2006?

6 A Yes.

7 Q Okay. I'd like to give you a copy of that
8 deposition.

9 A Okay. Are we done with this one?

10 Q Yeah. There may be more, so why don't you hold on to
11 it. Just put it to the side. You'll need it eventually.
12 You're being asked about that one now.

13 Okay. I'd like for you to look at Page 90 of your
14 deposition in North Carolina, the question and answer beginning
15 at Line 7 and ending at Line 12.

16 Question, "Does dPi specifically tell its end user
17 customer that it's putting those blocks on?"

18 Answer, "No. I think it's pretty much understood in
19 the prepaid industry. That's why it's prepaid."

20 Now is that the testimony that you gave under oath in
21 North Carolina?

22 A Absolutely. We do not specifically have any rules or
23 regulations in place where we instruct our call center reps to
24 go through line item by line item.

25 Q Okay. And after you put the block on the customer's

1 line, the bill that you send to the customer doesn't indicate
2 that the block is on the line, does it?

3 A No.

4 Q And dPi doesn't send the correspondence to the
5 customer to indicate that the blocks are on the customer's
6 line, does it?

7 A No.

8 Q So when dPi puts a block on the customer's line
9 without the customer's knowledge, without the customer's
10 consent and the customer knows nothing about it, then obviously
11 the customer hasn't ordered the block, have they?

12 MR. MALISH: Objection. Form.

13 THE WITNESS: I would say that we are no different
14 than AT&T in the sense that if a customer calls AT&T and orders
15 basic service, AT&T does not tell the customer that they did
16 not order Caller ID, does not put nonordered Caller ID on the
17 customer's bill and does not send them a letter saying,
18 "Customer, do you realize you did not order Caller ID?"

19 BY MR. CARVER:

20 Q So your answer is, no, the customer is not placing an
21 order, your customer, under those circumstances; is that
22 correct?

23 A No, my answer is not no. The customer absolutely is
24 placing an order.

25 Q Well, the customer is placing an order for basic

1 local service. My question was isn't it true that they are not
2 placing an order for blocks, yes or no?

3 A They are not specifically placing an order for
4 blocks. No.

5 Q Thank you.

6 COMMISSIONER McMURRIAN: Hang on a second,
7 Mr. Carver.

8 Commissioner Skop.

9 COMMISSIONER SKOP: Thank you. And I apologize for
10 doing this because normally I wouldn't interrupt your
11 cross-examination, but just to that same point that was made,
12 when a customer signs up for basic service, are you disclosing
13 that your conduct in terms of putting in the things to qualify
14 for the promotion, is the customer even aware of that?

15 THE WITNESS: Probably -- most likely -- well --

16 COMMISSIONER SKOP: Yes or no.

17 THE WITNESS: It --

18 COMMISSIONER SKOP: Yes or no.

19 THE WITNESS: I would say if we are getting paid
20 regularly, the answer is yes.

21 COMMISSIONER SKOP: Listen. Yes or no, is the
22 customer aware that you're seeking a rebate on their behalf?

23 THE WITNESS: I'm sorry, Commissioner. That's not a
24 yes or no question because we don't -- can -- if I may
25 elaborate just a little bit.

1 COMMISSIONER SKOP: Well, it's very, very important
2 to me because, again, I think --

3 THE WITNESS: I understand. I'm sorry.

4 COMMISSIONER SKOP: Just hold on. Let me speak.
5 Okay?

6 THE WITNESS: I'm sorry.

7 COMMISSIONER SKOP: Just be quiet for a second.

8 Commissioner Argenziano raised an excellent point
9 about the relevance of, you know, being able to -- whether the
10 rebate is passed down to the consumer or not and that's a very
11 valid question and that's just part of the intent. The other
12 part of this is whether legally they qualify to, to put the
13 hand in the cookie jar and tap the promotion. I understand
14 that. But the bottom line is part of our job is to look out
15 for the consumer, and if you're taking a unilateral action on
16 your own for your own profit of the company at the behest of
17 the consumer and the consumer has no knowledge, then you're
18 acting independently on your own to put money in your own
19 pockets. And really I think that's what it comes down to, is
20 your conduct -- excuse me. That's where it comes down to,
21 notwithstanding being able to avail yourself of the promotion,
22 is your conduct, in fact, equitable?

23 THE WITNESS: Yes, sir, I understand that. The
24 question you asked though was not a yes or no question in the
25 sense that I believe you asked if we let the customer know if

1 we were going to apply for a credit. And the answer to that
2 question would be no because you don't tell the customer you're
3 going to apply for a credit. You're going to tell the
4 customer, "Sign up with us and you don't get a connection fee.
5 There's zero connection fee." And so in that sense the answer
6 is, yes, the customer is fully aware that they're not going to
7 be charged the connection, which is what the connection charge
8 waiver does. It waives the \$40 connection fee. So we tell our
9 customers that there will not be a connection fee.

10 COMMISSIONER SKOP: Thank you. I think my colleague
11 has a question.

12 THE WITNESS: Yes, ma'am.

13 COMMISSIONER McMURRIAN: Commissioner Argenziano.

14 COMMISSIONER ARGENZIANO: Let me just try to say this
15 in a way that -- I have my personal opinion about end user. I
16 believe I'd like to see them reap the benefits. But then again
17 if you have a company that is taking people that other
18 companies won't, there may be reasons sometimes to -- the real
19 question, I think, and, Commissioner Skop, tell me, I don't
20 want to put words in your mouth, is are you making the customer
21 aware that they could get the end user benefit? I think that's
22 really the question here rather than saying is the company
23 saying do you know we get a benefit by you -- because if it's a
24 blocked call anyway, I don't think they're getting any benefit.
25 They're trying to, I think, but they're not. But I think the

1 real question would be is do you, do you make the customer, the
2 end user aware that they could be getting the benefit of the
3 features that the company is promoting? I think that's the way
4 I --

5 COMMISSIONER SKOP: And I think that's correct. I'm
6 struggling this morning to frame my questions.

7 THE WITNESS: I'm a little, a little confused. We
8 will let the customer know that there's no connection fee,
9 "Sign up today with no connection fee." But if you're asking
10 us if we tell the customer, "Hey, Mr. Customer, don't sign up
11 with us. If you go to BellSouth, you can" -- okay. We tell
12 the customer, we give the customer what promotion is available.
13 So, for example, the LCCW, Line Connection Charge Waiver, we
14 will tell the customer, "Sign up today for \$24.99 and we'll
15 waive the connection fee." Because we -- it's not getting --
16 we're not getting charged by BellSouth because of the waiver
17 promotion, and they're paying it systematically and regularly
18 so we can expect to get paid and not be charged \$40, and so
19 then we pass that through to the customer.

20 COMMISSIONER ARGENZIANO: And I don't want to belabor
21 the point and get -- but I think sometimes it helps to clarify,
22 and forgive me, I'll just make this last comment to see. I
23 think to try to articulate it a little better is that you're,
24 you're using the blocked, the blocking, whatever it's called,
25 as a feature that you are trying to get credit for. Are you

1 telling the consumer on that feature, not feature but blocking
2 that there's a credit for that? I think that's trying to
3 narrow it down, and then I'm going to leave it alone from
4 there.

5 THE WITNESS: Well, when you place an order -- when
6 BellSouth comes out with a promotion, so let's say they come
7 out with a Line Connection Charge Waiver, there's two things
8 you can do. You can call your BellSouth rep who will tell you,
9 go look in -- if you call the BellSouth rep and say, "How do
10 you qualify," they'll say, "Go look at the tariff." Or you can
11 go to the tariff yourself, which is what we do. So we have to
12 go to the tariff and see what the tariff says. For this
13 particular instance if you go to the tariff that was in effect
14 in early 2004, you will see that these, what we placed on our
15 orders are defined in BellSouth's own tariff, filed in the
16 State of Florida, they're defined as TouchStar features over
17 and over and over. They're footnoted and at the bottom, this
18 feature, da, da, da, da, da.

19 So when we looked at that, we said, "Hey, we ordered
20 this with this, this, this, this and this on every order. We
21 qualify." And so when BellSouth has paid other CLECs and we go
22 to the tariff and we go to the promotion and it all looks as
23 though we are doing everything aboveboard, then we apply for
24 it.

25 COMMISSIONER ARGENZIANO: Madam Chair. But doesn't

1 it also include the word "purchase"? If you don't purchase
2 blocking, then it's probably not --

3 THE WITNESS: Yes. And that was about number three
4 in the "yeah, buts" that BellSouth has come up with. And if
5 you look at the definition of purchase in any dictionary, you
6 can go to Black's Law, you can go to anywhere, in no way does
7 it say you have to purchase each individual item.

8 For example, when I was talking to the BellSouth rep,
9 I asked her, "Do you own a house?" She said, "Absolutely." I
10 said, "How much did the doorknob on your front door cost you?"
11 She said, "I have no idea." I said, "Well, then you didn't
12 purchase that doorknob." She said, "What do you mean?" I
13 said, "If you're telling me I have to purchase this and I have
14 to purchase this and I have to purchase this and you have to
15 itemize them on my bill or I didn't purchase them, then, then
16 when you bought your car, how much did your horn cost, because
17 it wasn't itemized on your car."

18 We placed an order with BellSouth for this package.
19 They sent us a bill for that package. Had they not, had they
20 not billed us at all, I believe that would be a valid argument,
21 but they billed us and we paid them. Therefore, in our mind we
22 purchased everything that we ordered.

23 COMMISSIONER McMURRIAN: I have one, I have one
24 question, too.

25 THE WITNESS: Yes, ma'am.

1 COMMISSIONER McMURRIAN: Mr. Bolinger, do you have
2 what Mr. Carver passed out with his opening statement, which
3 was that one page from the General Subscriber Service tariff?

4 THE WITNESS: I don't think so. I think I looked at
5 it when he initially passed it out.

6 COMMISSIONER McMURRIAN: Okay. Maybe somebody can
7 get you one.

8 MR. CARVER: Oh, I'll be happy to take a copy to him,
9 unless they --

10 COMMISSIONER McMURRIAN: Okay.

11 MR. CARVER: Apparently they have it.

12 MR. MALISH: Can I put it on the screen?

13 COMMISSIONER McMURRIAN: If that's okay for
14 Mr. Bolinger. As long as he's able to see it.

15 THE WITNESS: I think I can see it.

16 COMMISSIONER McMURRIAN: Okay. My question is --
17 because in some of your answers to Commissioner Argenziano you
18 talked about the TouchStar features and that's what the tariff
19 said, and I do see TouchStar in certain places on the sheet,
20 but the part that Mr. Carver highlighted here, it says "or
21 basic service and two features will be waived." So can you
22 explain to me -- you keep saying that it's two TouchStar
23 features. Is it somewhere else on this sheet that you're
24 referring to and then we're talking about two different
25 sections of the tariff or is it --

1 THE WITNESS: No, ma'am. I don't think.

2 COMMISSIONER McMURRIAN: -- that the tariff changed?
3 Can you explain?

4 THE WITNESS: I believe that it was a tariff change.
5 If you look at the date on that tariff, I believe it's December
6 of '04.

7 COMMISSIONER McMURRIAN: Uh-huh.

8 THE WITNESS: Our, our promotion, the Line Connection
9 Charge Waiver that we applied for we applied for in August of
10 '04 prior to that coming out in December. So what we were
11 operating under was a previous tariff. And I believe the
12 wording is very similar with one key exception, and the key
13 exception is basic service and two TouchStar features.

14 COMMISSIONER McMURRIAN: Okay. And so -- and my
15 follow-up question to that is is it your testimony that a
16 TouchStar feature includes Call Blocking?

17 THE WITNESS: Absolutely, as defined by BellSouth.

18 COMMISSIONER McMURRIAN: As defined. Okay. Where
19 did BellSouth define TouchStar feature as Call Blocking? Does
20 that take us back to the exhibit?

21 THE WITNESS: It's, it's all over. I mean, several
22 times, several times. And I could walk you through that, if
23 you'd like.

24 COMMISSIONER McMURRIAN: Is there something that you
25 can point to? Is Exhibit 27, the Web page, is that the basis

1 for your --

2 THE WITNESS: No. That, that we were looking for
3 TouchStar because there was some argument. They would say,
4 "Well, it's not TouchStar. It's not a TouchStar feature." And
5 so really the reason for that was they defined it as TouchStar.

6 That was not meant -- I believe the question, you
7 know, was is there a website somewhere where you can look at
8 it? And I said, yes, and we just had that example. But that
9 was not meant to be, as Mr. Carver was trying to point out,
10 feature related. It was just trying to be TouchStar related.

11 MR. MALISH: And, Commissioner McMurrrian, if I may
12 interject. The stuff that you're probably looking for is
13 contained in Exhibit PAT-5.

14 COMMISSIONER McMURRIAN: Okay. So --

15 MR. MALISH: And I was going to go over that with
16 Ms. Tipton in her cross-examination.

17 COMMISSIONER McMURRIAN: And we can do that then.

18 MR. MALISH: It wasn't really part of his direct
19 testimony. But we can -- I can go over it with him or give him
20 the materials to go over with you, if you would like to do it
21 now.

22 COMMISSIONER McMURRIAN: That's quite all right. We
23 can wait until Ms. Tipton. I was thinking that that may be the
24 best way to approach it anyway. Thank you.

25 Mr. Carver, you can continue.

1 MR. CARVER: Yes. Thank you.

2 COMMISSIONER McMURRIAN: Thanks.

3 BY MR. CARVER:

4 Q I apologize. I'm having some allergy problems. So
5 if I have to stop and clear my throat from time to time, I
6 apologize.

7 I can't remember who asked the question, but in
8 response to one of the Commissioner's questions I think you
9 said that dPi does not charge its customers for line
10 connection; is that correct?

11 A I did not say that.

12 Q Okay. Well, that's what I wanted to clarify.
13 Because when AT&T charges dPi a line connection charge, dPi
14 passes that charge on to its customers, doesn't it?

15 A Absolutely. When we're charged, we have to pass it
16 through.

17 Q Okay. Let's talk, go back to blocks for a moment.
18 In the context of resale, AT&T does not charge dPi anything for
19 the BCR, the HGB or the BRD blocks; isn't that true?

20 A There is no line item charge. No.

21 Q And dPi doesn't charge its customers anything for
22 these blocks; correct?

23 A No.

24 Q No, you don't?

25 A No. No, we don't.

1 Q Okay. Thank you. That's all I have.

2 COMMISSIONER McMURRIAN: Ms. Tan.

3 MS. TAN: Staff does have some cross-examination
4 witnesses -- questions.

5 CROSS EXAMINATION

6 BY MS. TAN:

7 Q Mr. Bolinger, in September of 2004 you had Lost Key
8 Telecom on behalf of dPi submit a request for promotional
9 credits to AT&T for the Line Connection Charge Waiver; is that
10 correct?

11 A I believe that was the correct time. Yes, ma'am.

12 Q Okay. And did any of these requests for credits
13 submitted by Lost Key consist of only one purchase of -- of the
14 purchase of 1FR and feature Call Blocks?

15 A I'm not sure. I know there was -- on -- there has
16 been some discussion that at one point in time there was a
17 promotion out there that was basic service and one TouchStar
18 feature, so we may have put it in there. But we did not, you
19 know, intentionally put on anything that we didn't think we
20 qualified for.

21 Q Okay. And when did Lost Key on behalf of dPi submit
22 the majority of the requests for promotional credits? Do you
23 know the time frame?

24 A In -- with regard to this particular filing? Because
25 we do it every day today, so.

1 Q With regards to the issues presented in this filing.

2 A Yeah. I think it was -- we did -- the vast majority
3 was right about that time. August or September was the
4 majority of them for 2004.

5 Q Okay. And do you agree that when you are discussing
6 two features for free, it is a separate promotion from the Line
7 Connection Charge Waiver which activates a purchase, which
8 activates in this case with a purchase of a BellSouth basic
9 feature with at least two features?

10 A Yeah. And I may not have been clear. With the two
11 features for free there were some very specific requirements in
12 that promotion. For example, they -- BellSouth identified
13 exactly what you could choose. You had to choose -- there were
14 either three or four and you had to take two of those. And so
15 if you didn't have two of those on your bill, then you did not
16 qualify. It was extremely clear and very strict as to what you
17 could or could not order on that. With the line connection it
18 was just two TouchStar features.

19 Q Okay. And under discussion today is the Line
20 Connection Charge Waiver rather than the two features for free.

21 A Yes, ma'am.

22 MS. TAN: No further questions.

23 COMMISSIONER McMURRIAN: Thank you, Ms. Tan.

24 Any more questions from the Commissioners before I
25 turn it to Mr. Malish for redirect?

1 Okay. Mr. Malish, any redirect?

2 MR. MALISH: Thank you. Thank you, Commissioner
3 McMurrrian.

4 REDIRECT EXAMINATION

5 BY MR. MALISH:

6 Q Mr. Bolinger, I would like to visit with you about
7 your customer base in general for starters. Is it fair to say
8 that you have a large group of people who have difficulty
9 making their telephone bill payments?

10 A I would say, you know, in a nutshell traditionally
11 the answer would be yes.

12 Q Is that why they come to you in the first place?

13 MR. CARVER: Objection. This is beyond the scope of
14 the cross-examination. Redirect should be limited --

15 MR. MALISH: The relevance will be very clear in
16 short order.

17 MR. CARVER: It's not a relevant -- I'm sorry. I'm
18 not objecting on the relevance issue. I'm objecting that he's
19 gone outside the scope of the cross-examination and, therefore,
20 he's violating the Commission procedure.

21 MR. MALISH: This is going into some of the items
22 that Mr. Carver -- this is -- I'm laying a predicate for some
23 questions that clarify some of the things that Mr. Carver was
24 attempting to get Mr. Bolinger to say which have to do with how
25 customers order things from dPi.

1 COMMISSIONER McMURRIAN: I'll look to our legal
2 staff.

3 MS. CIBULA: Redirect is supposed to pertain to the
4 cross-examination. So if it is going outside of the
5 cross-examination, then it shouldn't be allowed.

6 MR. MALISH: I understand. But Mr. Carver in his
7 cross-examination --

8 COMMISSIONER McMURRIAN: Mr. Malish, perhaps it's
9 better just to make -- ask the question you want to ask, which
10 ties to the testimony, to the cross-examination that's occurred
11 before. I agree with Ms. Cibula that it should -- when I heard
12 the question, I'll say I was immediately thinking it was beyond
13 what we'd heard in cross-examination.

14 MR. MALISH: All right.

15 BY MR. MALISH:

16 Q Well, Mr. Bolinger, I want to revisit with you a
17 subject that Mr. Carver has raised, which is what dPi's
18 customers order from dPi. Okay? Are you with me?

19 A Yes.

20 Q Okay. You've got to answer with a yes or a no or
21 something besides a nod of the head.

22 Are they generally interested in, in having a fixed
23 price for what it is that they're buying from you?

24 A Yes. Our customers typically come to us and obtain
25 our service because they know from month to month for the most

1 part exactly what they're going -- their telephone bill will
2 be. It's easy to budget.

3 Q And is your basic package geared towards making sure
4 that the customer is guaranteed a specific price every month
5 for the telephone service they get?

6 A Yes.

7 Q And that's important to those customers?

8 A Absolutely.

9 Q All right. And do you, do you disclose to a customer
10 every single USOC that goes on to an order that you use to
11 provision a level of service that they select from you?

12 A I don't think any company could or would. There's
13 just a litany of different things that you have to put on every
14 order.

15 Q Right. So I think I'm going to go up to you and
16 order basic service. When you go place an order for that, it's
17 more than checking off a single box, isn't it?

18 A Absolutely. It's four or five pages.

19 Q Yeah. And you don't tell the customer, "I have to
20 check off 50 boxes in these four or five pages," do you?

21 A No.

22 Q Okay. All of the various components that go into
23 making that order come true for that customer, they don't know
24 the specific technical details; correct?

25 A Not unless they're extremely informed on

1 telecommunications.

2 Q All they know is they want a specific price
3 guaranteed per month; isn't that true?

4 A Yes.

5 Q And in order to make sure they get what they ask for,
6 is it necessary for you to put those blocks on the line?

7 A Yes. Because those blocks inhibit per charge or per
8 action charges that would be, would be billed on that account.

9 Q Okay. So, for example, if some -- if a woman with
10 children comes to you and orders service and those blocks
11 aren't on there, could their children, could her children use
12 her telephone to run up a bunch of charges that she doesn't
13 want to pay?

14 A No. In fact, that's why a lot of customers come to
15 us for that exact reason.

16 Q Okay. I'm saying without the blocks on there.

17 A Oh, without the blocks on there, could -- absolutely.

18 Q So if she wants to guarantee that she gets that one
19 fixed price month after month, it is necessary for you in order
20 to be able to guarantee that to her to put the blocks on there;
21 correct?

22 A Yes.

23 Q Now you have other offerings that allow access to
24 those features; correct?

25 A We do.

1 Q You know, the other features, Call Waiting and all
2 the other more extravagant features; right?

3 A Yes. We have a package where I think you can, you
4 get up to six or seven different features as BellSouth is
5 referring to.

6 Q And so the customer has the choice. They can choose
7 basic guaranteed fixed price service for just the basics;
8 correct?

9 A Right.

10 Q Or they can order something with more access to more
11 extravagant features if that's what they want.

12 A Yes. We have three basic packages.

13 Q Okay.

14 A Kind of a, you know, basic, basic package, a middle
15 of the road package, which typically will have Call Waiting and
16 Caller ID on it. But, again, even with Call Waiting and Caller
17 ID we've got to put the USOCs on there to block all of, you
18 know, Call Returns, Three-Way Calling, everything else, just
19 like any phone company would. And then we have a premiere or
20 gold or the top package which has everything. And customers
21 can also, if they don't want any of those packages, can buy
22 basic service and then items a la carte.

23 Q Okay. But in order for you to oblige their direction
24 to you, "I want basic service only and no other charges with a
25 fixed price every month," in order to honor that commitment to

1 them, you generate an order and that order includes the blocks;
2 is that correct?

3 A Yes.

4 MR. CARVER: If you're giving the witness a document,
5 could I see a copy of it?

6 MR. MALISH: I'm going to put it on the overhead.

7 MR. CARVER: Okay. Thank you.

8 BY MR. MALISH:

9 Q Mr. Bolinger, that's a page out of the tariff that's
10 marked as plaintiff's exhibit or, excuse me, PAT, Exhibit
11 PAT-2, Page 1 of 6; correct?

12 A Yes.

13 Q That's a page out of the tariff talking about
14 features and the charge waived there; right?

15 A It's a section that talks about what charges are
16 waived. And I haven't seen the whole thing, so it's waived if
17 you order something.

18 Q It just says features but it doesn't say TouchStar;
19 right?

20 A Right. That is correct.

21 Q And here's 27, which says TouchStar but no features.

22 A That is correct.

23 Q That's what Mr. Carver got you to admit, it says no
24 features; right?

25 A Right.

1 Q But -- and, by the way, why are there only Bs on that
2 page?

3 A I believe when you do that lookup, there's an
4 alphabet up top and you can click A, B, C, D. And so because
5 BCR and BRD both begin with B, it could be those are the ones
6 that popped up.

7 Q And it's your contention that these are TouchStar
8 features?

9 A It's my contention that, yes, those are absolutely
10 TouchStar features as defined by AT&T.

11 Q Okay. I'm going to show you what's been admitted as
12 Exhibit PAT-5. This is Page 1 of 15. This at the beginning of
13 TouchStar service. Have you seen that before?

14 A Yes.

15 Q What is TouchStar service?

16 A It's a group of central office call sequences. And I
17 can't read the rest of it, but --

18 Q Does that say "TouchStar service is a group of
19 central office call management features offered in addition to
20 basic telephone service"?

21 A I think so. I can't read it. It's too small. I'm
22 sorry.

23 Q Give me another copy. Do you have one? If I zoom
24 in, does this help you?

25 A Tremendously. Yeah. TouchStar service is a group of

1 central office call management features. Yes.

2 Q All right. And then it goes on to say, "TouchStar
3 service consists of the following features," and then the rest
4 of the tariff is going to describe those; correct?

5 A That is correct.

6 Q So TouchStar is features; correct?

7 A Absolutely.

8 Q It's call management features; right?

9 A Yes. And, you know, I believe that's why the 2004
10 tariff that Mr. Carver passed out eliminated the TouchStar
11 features and just put in their features.

12 Q Because it's understood that that's what they are?

13 A Yeah. When you put TouchStar in there, you're
14 talking about features.

15 COMMISSIONER McMURRIAN: Mr. Malish, I'm going to let
16 Commissioner Skop jump in with a question while we're on that
17 point.

18 COMMISSIONER SKOP: I just have a question for the
19 witness because I've been following along in that same section
20 and, again, this is a very thin line on many different regards.
21 And I do appreciate, you know, business looking to exploit
22 ambiguity, if you will.

23 On that same exhibit, Page 2 of 15, where it
24 discussed the Call Return feature at the very bottom of
25 Paragraph A, it states, "Access to the usage option can be

1 restricted at the customer's request at no charge." I think
2 that's the blocking part of that, and I just wanted to get you
3 to elaborate a little bit. It's highlighted there. Again,
4 because I'm trying to compare and contrast and work through the
5 ambiguous nature of the language that probably could be a
6 little bit more tighter, exclude certain things. But I see
7 Page 1 of 15, I see Page 2 of 15, and then going back to the
8 charges on Page -- which option is that? Call Return -- bear
9 with me for one second. Call Return on Page 12 of 15 where it
10 shows the -- maybe it's -- no. Call Return on Page 11 of 15 it
11 shows actually the monthly rate. And I know there's been some
12 discussion about, you know, the charges or the purchases
13 analogy that the witness made, which was, you know, an equally
14 valid analogy.

15 I'm just trying to flesh this out because I do think
16 that there is -- it dwells on small details and these very
17 details are the ones that either make or break your case. I'm
18 trying to make sure that I understand completely because I do
19 see, you know, what -- there's two sides to every story and
20 certainly it's, we're arguing over words. But if you could
21 flesh that out, I'd appreciate it.

22 THE WITNESS: Sure. I think there are -- I think, I
23 think you're right. I mean, you know, the first, the first
24 issue is, you know, are BCR and BRD TouchStar features? And I
25 think by looking at BellSouth's own tariff there's absolutely,

1 positively no question that they are TouchStar features.

2 And then the second issue is, did BellSouth offer it
3 to its own customers? Again, I don't think it's unquestioned
4 that or I don't think you can have any question that they did
5 not offer or that they offered it to their own customers
6 exactly the way we ordered it.

7 If you are -- I'm going to try to do this as quickly
8 as possible. I think the easiest --

9 MR. MALISH: I think maybe I can help.

10 COMMISSIONER SKOP: Actually let me just interject in
11 there to -- again, not to consume too much time, but I think
12 I'll limit my question to this.

13 On Page 2 of 15 it defines the feature, which the
14 feature is Call Return, and I'm interested in how the block is
15 actually the feature. So I think that -- it seems like you
16 have to imply that the block is inherent within the feature
17 itself. But, I mean, clearly the feature on Page 2 of 15 is
18 the Call Return, and that's the feature offerings. And it
19 seems like the, the block is basically an election to either
20 enable or disable that feature. So that's what I'd like you to
21 flesh out for me, please.

22 THE WITNESS: Sure. I think the easiest way to do
23 that would be to turn to Page 12 of 15, at least the quickest.

24 MR. MALISH: Hold on. Let me, let me -- I've got all
25 that.

1 THE WITNESS: And if you look at Call Return there
2 under (1)(C), denial of per activation, do you see that line
3 there? Where the USOC is BCR --

4 COMMISSIONER SKOP: Yes, I see that.

5 THE WITNESS: And the footnote on there is a one.
6 The footnote under one, and it says "Note 1: These features
7 are available to the following types of service where
8 facilities permit: Single line residence, multi-line
9 residence, and PBX trunks." So BellSouth right there is saying
10 BCR is a feature. Again, if you look down at -- where is the
11 other one -- HBG under Call Tracing, (6), Call Tracing, (6)(c),
12 denial of per activation, HBG, Footnote 1, "These features are
13 available."

14 COMMISSIONER SKOP: Okay. I think you answered my
15 question. I just have one quick follow-up.

16 THE WITNESS: Sure.

17 COMMISSIONER SKOP: With respect to the tariff before
18 us, and noting the points that you've alleged, if the tariff
19 were -- if the tariff were subsequently amended to tighten up
20 the language, would you still have your argument other than
21 based on prior conduct? If the tariff changed, would you still
22 be eligible in your mind for --

23 THE WITNESS: Depending on what the tariff is, maybe
24 or maybe not. They -- and really one of two things could
25 change, the tariff or the promotion. What has occurred since

1 this started in 2004 is that, that the promotions that are
2 coming out now are very specific, very well-written, just like,
3 you know, we talked about the two features for free where they
4 said you have to have X, Y or Z or you don't qualify. They
5 are, they are doing that now. And currently, you know, for the
6 promotions that we apply for, we get the vast majority of them
7 back. We get them credited to us.

8 COMMISSIONER SKOP: And just finally one, one
9 follow-up question, and I don't know if you have knowledge of
10 this. And if you don't, just tell me. But on the exhibit that
11 we, that we had that was on the overhead previously, the PAT-2,
12 the second page of that exhibit where the footnote in question
13 was, do we know when that footnote was in place? Was that
14 footnote in place or was it recently revised to include that
15 footnote?

16 THE WITNESS: I couldn't tell you when that footnote
17 was put, you know, on that document.

18 COMMISSIONER SKOP: Okay. Thank you.

19 THE WITNESS: Thank you.

20 COMMISSIONER SKOP: Actually let me just jump in one
21 more time. Just in general, I respect the fact that, again,
22 what you guys are trying to do. I don't necessarily know if I
23 like it or not, but I do respect -- I see what you're trying to
24 do.

25 THE WITNESS: Thank you. Thank you.

1 COMMISSIONER SKOP: So it just -- I think it boils
2 down to the interpretation of the language and then, you know,
3 equitable principles. But I'm just trying to follow along and
4 basically understand what I see to be happening before us, so.

5 THE WITNESS: And if I could, if I could comment.

6 COMMISSIONER SKOP: Briefly.

7 THE WITNESS: Just brief. You know, all we are
8 trying to do, and I think we will prove this today, is if
9 BellSouth gives it to their customers, we want to at least have
10 the opportunity to give it to ours. That's all we're asking.

11 COMMISSIONER SKOP: But would you agree they're
12 giving it to their customers in a completely different context
13 than you are? You guys are looking at the, at the blocking as
14 qualification. And I think that under BellSouth's context they
15 would expect the customer to pay for the actual featured
16 service, the one that they get the money for.

17 THE WITNESS: I would absolutely disagree with that,
18 as the thousand pages will show.

19 COMMISSIONER SKOP: Okay. Thank you.

20 COMMISSIONER McMURRIAN: Mr. Malish.

21 BY MR. MALISH:

22 Q At the expense of retracing some ground here. So,
23 Mr. Bolinger, under the tariff we see here that the BCR and BRD
24 and HBG are listed there as a feature; correct?

25 A Yes.

1 Q Now are these devices, are these devices that are
2 used to manage the calls to the particular end user's telephone
3 number, are they call management features?

4 A Incoming call management features?

5 Q Yes.

6 A Not, not incoming.

7 Q Does this, does this allow the end user to manage the
8 calls that he or she gets or gets to make?

9 A No. No. She can -- the customer can receive as many
10 calls or make as many calls as they want with our service.

11 Q Well, but these -- if you put this BCR or BRD or HBG,
12 that manages the kinds of calls that can be made by that
13 customer.

14 A Yes.

15 MR. CARVER: I'm going to object. His witness has
16 answered. Now he's cross-examining his own witness.

17 THE WITNESS: I misunderstood the question.

18 MR. MALISH: That's not illegal. That's not grounds
19 for an objection.

20 BY MR. MALISH:

21 Q So, so the BRD, the HBG and the BCR --

22 COMMISSIONER McMURRIAN: Mr. Malish, hold on just a
23 second. Staff? I mean, we had an objection and he responded
24 and I didn't really rule on anything, so I'm just looking for
25 your input.

1 MS. CIBULA: Well, I guess it's up to you to let --
2 whether you want to let him clarify the question or --

3 MR. CARVER: And my objection, if I may, is just that
4 he's treating his witness as if he is adverse and he's asking
5 him leading questions.

6 COMMISSIONER McMURRIAN: I will -- I did hear,
7 Mr. Malish, hear the answer to his witness's question and say,
8 "but," and then went on with another question. So it sounded a
9 little bit like that to me, too, but I --

10 MR. MALISH: Sure. But you --

11 COMMISSIONER McMURRIAN: Why don't we just issue a
12 caution and you be careful about how you proceed.

13 MR. MALISH: I understand. But obviously at this
14 point we've been through direct and cross and questions from
15 you, so I need to give tailored, very carefully, narrowly
16 tailored follow-up questions to clarify things that may still
17 be confusing.

18 COMMISSIONER McMURRIAN: And hold on just a second,
19 too.

20 Commissioner Argenziano, did you --

21 COMMISSIONER ARGENZIANO: I just took it as it was
22 clarifying. I think he had not made it clear what his real,
23 real question was.

24 MR. MALISH: Thank you.

25 COMMISSIONER McMURRIAN: You can proceed.

1 MR. MALISH: I do that, I do that all too frequently.

2 BY MR. MALISH:

3 Q So these blocking features are call management
4 features?

5 A Yes. To a certain extent, yes.

6 Q Okay. Now, and is it correct to say that they are
7 defined here in the TouchStar features section of the tariff?

8 A Yes.

9 Q Okay. Have you seen Page 4 of 15 of Ms. Tipton's
10 testimony, which is Section A13.19 of the tariff, which is some
11 more features itemized?

12 A Yes.

13 Q And that's showing that Call Block is a TouchStar
14 feature, isn't it?

15 A Yes.

16 Q And down here under (f), Call Tracing is a feature.
17 And then subject to the availability of the facilities, access
18 can be restricted at no charge. That's the -- is that the HBG
19 block?

20 A Yes.

21 Q So the fact that something is a block does not mean
22 it cannot be a feature?

23 A No. For example, if you look at Call Block there, in
24 E the last sentence says, "Additionally, this feature will not
25 block calls from coin or cellular telephones or operator

1 assisted calls."

2 Q So it's referring to Call Block as a feature. And,
3 of course, it's listed as an E, one of the main ones; correct?

4 A Yes. Without the feature on there it is a per use
5 charge. If you put a feature on there, the feature either
6 turns it all the way on or the feature will turn it all the way
7 off. Either way it is still putting a feature on the, on the
8 line.

9 Q Here's another section from, another section from the
10 tariff. Can you read that?

11 A Yes. It says, "Calling number delivery blocking."
12 Is it permanent? It's sort of small.

13 Q Permanent.

14 A And then "Calling number delivery blocking per call."

15 Q And that's another TouchStar feature listed under the
16 list of TouchStar features specifically available under the
17 tariff, isn't it?

18 A Yes. Those are two blocks that you use with
19 TouchStar features.

20 COMMISSIONER McMURRIAN: Hang on a second, Mr.
21 Malish.

22 Commissioner Skop.

23 COMMISSIONER SKOP: Yes. Just one more question.

24 Again, on Page 2 of 15, I guess we're focusing on the
25 access to the usage option can be restricted at the customer's

1 request at no charge. I think previously in your testimony you
2 indicated when you give your offerings to customers, that there
3 are certain options, I think you stated the gold option, that
4 allowed the consumers to make an express informed choice to add
5 features at additional cost. Is that correct?

6 THE WITNESS: Yes. Unlimited features. Yes.

7 COMMISSIONER SKOP: Okay. And so the corollary of
8 that I think that you guys are implying, and this is where I'm
9 trying to tie this to the language, is that when they elect the
10 fixed price option, that that implies that they are requesting
11 that these features be blocked so they can't utilize them.
12 Because, again, the language of the tariff says "restricted at
13 the customer's request," but it's almost implied that they're
14 requesting it, or I think that's what you guys -- I mean, I
15 don't see express customer request here.

16 THE WITNESS: I don't think any telephone company
17 could say that for all their customers who order basic service
18 they have express customer requests to, to not allow Call
19 Return or to not allow Caller ID. It's just the customer
20 ordered just a basic line, just what's referred to as a POTS
21 line, plain old telephone service.

22 COMMISSIONER SKOP: Okay. I'm -- again, I'm just
23 trying to put that in perspective. With your business model,
24 again, you focus on people that have been denied service in the
25 past, so obviously they're very price conscious; whereas, you

1 know, with AT&T, if I were going directly to a customer, I
2 might ask them, "Okay, well, here's the implication. Do you
3 want this feature, do you want it?" It might be more customer
4 service oriented; whereas, yours is just a feature that's on a
5 fixed price, a firm fixed price.

6 Again, I'm just, I'm trying to distinguish the words
7 because, again, the tariff does say "at the customer's
8 request." But it's not, in your case, in your business model
9 it's not a formal request. It's just kind of implicit that in
10 order to keep the fixed price you have to do certain things.

11 THE WITNESS: Well, I would say that we are no
12 different than AT&T in that we try and upsell customers to
13 bigger packages and things of that nature because obviously the
14 revenue is greater, as AT&T does. However, our typical
15 customer doesn't have the, usually the, you know, the necessary
16 funds to pay for, for that upsell. And so they say, "No, I
17 just want basic service."

18 And I would also tend to believe that if, if I were
19 to call AT&T today and say "I just want basic service and basic
20 service only," they're not going to tell me all of the blocks
21 and everything they're putting on my account. It's just if I
22 order basic service, I am implicitly saying I don't want
23 anything else other than basic service, which is our basic plan
24 which 85 percent of our customers take. And if they say, if we
25 say, you know, "We will give you basic service" and they say,

1 "What is that", we will absolutely tell them, "We put basic
2 service on your account. We block all usage charges outside so
3 you know exactly what your bill is going to be every month."
4 But if they call us and just say, "I want basic service," we
5 don't have a policy to sit there and tell them exactly what's
6 on their bill. No.

7 COMMISSIONER SKOP: I'll defer to Commissioner
8 Argenziano. I think she --

9 COMMISSIONER McMURRIAN: Go ahead, Commissioner
10 Argenziano.

11 COMMISSIONER ARGENZIANO: Madam Chair, a question of
12 Commissioner Skop.

13 COMMISSIONER McMURRIAN: Sure.

14 COMMISSIONER ARGENZIANO: You were just referring to
15 which tariff, the one of 2003 or 2006? And can you show me
16 where it says the "at the customer's request," because I think
17 I lost it?

18 COMMISSIONER SKOP: I think it was at Tab PAT-5.

19 COMMISSIONER ARGENZIANO: All right.

20 COMMISSIONER SKOP: On Page 2 of 15.

21 COMMISSIONER ARGENZIANO: 2 of 15. Okay. So that's
22 the two thousand and --

23 COMMISSIONER SKOP: 1996 tariff.

24 COMMISSIONER ARGENZIANO: 1996?

25 COMMISSIONER SKOP: Yes, ma'am.

1 COMMISSIONER ARGENZIANO: Okay. My question, I
2 guess, is didn't it keep changing?

3 COMMISSIONER SKOP: It may have. I mean, that's part
4 of the problem I'm facing here is what, what has changed, what
5 has evolved, because I think it's --

6 COMMISSIONER ARGENZIANO: Right. And I guess, Madam
7 Chair, for staff to be contemplating at the proper time is
8 since the tariff keeps changing or the promotion keeps changing
9 or both do, at what point is the company, you know, I mean, if
10 I'm operating under the 2004 tariff that included TouchStar
11 features, then I would be reasonably expected to, for that
12 period of time until there was another tariff change or
13 promotional change to be in that plan.

14 And what I'm seeing is that there are several
15 different plans, and I need to figure out -- because I'll be
16 honest with you, and I'll give you time, I just, and I lost it
17 on the screen, but I just pulled up another website of AT&T
18 which did include features as Call Blocking and had a charge
19 for it and then no charge under promotional plans. I think
20 it's the Complete --

21 THE WITNESS: Complete Choice?

22 COMMISSIONER ARGENZIANO: Complete Choice, and under
23 that it showed. So I'm thinking -- for staff, I guess, under
24 the 2004, if I were dPi and that language was on there that
25 said TouchStar features, well, then maybe there's a reasonable

1 expectation of being eligible for that promotion at that time.
2 And in the 2004 I don't see where it says the customer has to
3 request it. So those things all have to fall in place for
4 each, to me for each kind of contract or tariff or promotion to
5 understand where this company may be entitled and where they
6 may not, and that's what I need from staff.

7 COMMISSIONER SKOP: Absolutely. I would echo that.
8 Because, again, it's a sliding scale and we're dealing with,
9 we're dwelling on small details. And each, each tariff needs
10 to be explicitly analyzed in relation to whether there is any
11 merit for a request for adjustment that could be, you know,
12 advocated. I don't know what the answer is, but the analysis
13 needs to be detailed and, you know, reflect each individual
14 tariff in relation to the claims alleged.

15 MS. TAN: Those are very important concerns and that
16 is something that staff will touch upon in our recommendation
17 to the Commissioners in the posthearing, at the posthearing
18 recommendation.

19 COMMISSIONER McMURRIAN: And just to add, I think
20 another idea, maybe when Witness Tipton comes to the stand we
21 can ask her questions about their tariff filing that's attached
22 to her testimony too and have her explain the date changes and
23 how the tariffs were revised over time.

24 MR. CARVER: Yes. I think she can address those.

25 COMMISSIONER McMURRIAN: Okay. Thank you.

1 Mr. Malish.

2 BY MR. MALISH:

3 Q I'll continue going through the TouchStar features or
4 TouchStar service tariff. And, Mr. Bolinger, I'd like to again
5 be looking at A13.19 again, which is TouchStar service
6 continued, and direct your attention to Item 13 at the bottom.
7 We're talking about the various things you can get under
8 TouchStar service. The blocks that we've been talking about,
9 are those ones that are listed under denial of per activation
10 Call Return and denial per activation of Repeat Dialing?

11 A Yes. That would be, you know, the BCR and BRD USOCs.

12 Q And those are mentioned in the TouchStar tariff again
13 on this page.

14 A Yes.

15 Q All right. This is the page that we talked about
16 with the pricing for the BRD, the BCR and the HBG, and they're
17 showing there's no charge for those; right?

18 A Correct.

19 Q Do you remember the other blocks that we talked about
20 that we saw in the tariff?

21 A Yes.

22 Q Do you see the pricing for those? Again, we're
23 looking at the TouchStar service tariff A13.19.

24 A Yes. The calling number delivery blocking permanent
25 and the calling number delivery blocking on a per call basis.

1 Q Okay. It's the continuation, it's the next page.
2 It's page 13 of 15 of PAT-5.

3 A Yes.

4 Q Look -- so those are those other blocks that were
5 specifically listed as features. And what's the rate for
6 these?

7 A There's no charge for those feature blocks either.

8 Q Okay. So there's no charge for those features.

9 COMMISSIONER McMURRIAN: Hang on, Mr. Malish.
10 Commissioner Skop.

11 COMMISSIONER SKOP: Yeah. Just one question, I
12 guess. The tariff that we're referring to is in the time frame
13 of the late 1990s, and I'm kind of wondering how, how is that
14 relevant in relation to the time frame of your claims that you
15 may have for the promotions?

16 MR. MALISH: The way that the tariffs work is that
17 they're submitted, you know, they're submitted.

18 COMMISSIONER McMURRIAN: Mr. Malish, I think we need
19 to let the witness answer that question.

20 MR. MALISH: I doubt if he knows, but all right.

21 COMMISSIONER SKOP: I'll withdraw my question. But I
22 guess my concern is if we're dealing with a tariff that's --
23 because I see one here that's for 2004, and I think
24 Commissioner Argenziano raised that question. So I'm trying to
25 find temporally where we are at in this, you know, this --

1 THE WITNESS: And I'll try to answer. I think, I
2 think that for a long period of time the tariff was pretty
3 stagnant and you'd just go to the tariff and, and you'd look at
4 it. Since the advent of, you know, the Internet where they can
5 put it up on a website and a lot of different law changes that
6 have occurred, tariffs have become more frequently changed in
7 the last few years than they were. But that's just my, my
8 opinion.

9 COMMISSIONER SKOP: Let me cut you off there. Did
10 your claims arise prior to 2004?

11 THE WITNESS: No. Our claims arise beginning January
12 of 2004, I believe, and go through, you know, whatever we were
13 denied up through 2005.

14 COMMISSIONER SKOP: Okay. So you stated that your
15 claims arose beginning in January 2004; is that correct?

16 THE WITNESS: I believe that is correct. Yes.

17 COMMISSIONER SKOP: Okay. Thank you.

18 BY MR. MALISH:

19 Q Mr. Bolinger, y'all have tariffs just like AT&T;
20 correct?

21 A Yes, we have to file tariffs.

22 Q And they're, whatever, 100 pages long; correct?

23 A Yes.

24 Q And when you have a change that you want to make to a
25 portion of a tariff, do you replace the whole tariff?

1 A No. You just amend the current tariff on file.

2 Q And so what do you do, you submit a new page?

3 A Yes. Or pages. Yes.

4 Q And does each page say at the top of it this is
5 amended such and such a date?

6 A Yes.

7 Q So when you go online to look at dPi's tariff, is it
8 going to have, let's say, 100 pages, but each one of those
9 pages may have a different effective date?

10 A Several, several pages would.

11 Q Right.

12 COMMISSIONER McMURRIAN: Commissioner Skop.

13 COMMISSIONER SKOP: Thank you, Madam Chair. Just one
14 other follow-up question, too.

15 Do you guys have a -- because I have not come across
16 it in my materials, but in the summary of the testimony you've
17 mentioned that thousands of dollars are owed and other
18 promotions are owed. Do you guys have a compilation list of
19 what you're alleging by year or month that --

20 THE WITNESS: We can give it to you by month, by
21 telephone number.

22 COMMISSIONER SKOP: Okay. Staff, would -- or Madam
23 Chair, would that be --

24 COMMISSIONER McMURRIAN: Let me follow up.

25 Mr. Bolinger, is it in the testimony or the exhibits

1 that are part of the case already, I think was his question?

2 THE WITNESS: Okay. I just thought he was asking if
3 it was available. I know we, we -- dPi has provided it to our
4 attorneys. I couldn't tell you, you know, what exhibits are in
5 and what aren't. So I don't know the answer to that one.

6 MR. MALISH: Commissioner Skop, I'm not sure if
7 you're asking -- in this case right here we've only provided
8 numbers for the LCCW, I think. If you are asking about the
9 other ones --

10 COMMISSIONER SKOP: No. I'm only, only strictly
11 limited to this docket. That's the only thing I was wanting to
12 look at. Because, again, I'm trying to figure out
13 temporally -- I know the explanation of tariffs, that you don't
14 amend every page every time you do an amendment. It's a page
15 by page with an effective date and I'm okay with that. I'm
16 just trying to, again, get all the pieces in front of me so I
17 can kind of, you know, kind of form my opinion based on the
18 evidence that I'm hearing as to, you know, what I'll ultimately
19 think about the evidence. Thank you.

20 COMMISSIONER McMURRIAN: Perhaps after the lunch
21 break perhaps we can revisit whether or not that's in the
22 testimony somewhere and just revisit that question and see if
23 there's some way to get that question answered.

24 THE WITNESS: And, ma'am, you have to understand that
25 it's an ever changing number because each month you're filing

1 promotions and some of them are getting credited, some of them
2 are getting denied. We're appealing why they denied it. And
3 so in Florida every month that number changes.

4 COMMISSIONER McMURRIAN: I understand that. I think
5 though, Mr. Bolinger, we would be interested in the number that
6 would be at issue in this case, not the number changing after
7 that.

8 THE WITNESS: Correct. I think, I think at the time
9 we filed the number was something -- in Florida specifically I
10 think it was somewhere in the neighborhood of \$77,000.

11 MS. TAN: Commissioner, that is dPi Florida 4.

12 COMMISSIONER McMURRIAN: Thank you. DPi-4. It's the
13 exhibit number dPi FL-4.

14 MS. TAN: It would be Exhibit Number 20.

15 MR. MALISH: I'm sorry. The number should be in
16 dPi-4. I keep turning this on and off the wrong way.

17 COMMISSIONER McMURRIAN: Commissioner Skop, do you
18 want the witness to look at dPi-4 and perhaps ask questions
19 with respect to that or do you want to just look at it later
20 and --

21 COMMISSIONER SKOP: Look at it later.

22 COMMISSIONER McMURRIAN: Okay. Mr. Malish, you can
23 continue with your redirect.

24 BY MR. MALISH:

25 Q There is, there is one thing that I'm, I'm not sure

1 we need clarification on, so I'm going to try to clarify it
2 just to be on the safe side because I'm afraid that there might
3 be some confusion between the two features for free promotion
4 and the LCCW promotion where AT&T is complaining that we don't
5 qualify because they're saying the features that we take are
6 free and not at additional cost. So I'm afraid that those have
7 gotten mixed together, and I'm going to ask some pointed
8 questions on those;

9 A Okay.

10 Q Are those two different promotions?

11 A Absolutely.

12 Q All right. And I think you said earlier that the,
13 the, what is it, the two features for free promotion has a
14 specific kind of, of features that you have to, you have to
15 take and they're specifically identified.

16 A Yes.

17 Q And that's different from the LCCW promotion that
18 we're talking about here which just leaves it open to any
19 feature; correct?

20 A Any TouchStar feature, yes.

21 Q All right.

22 A So you need two TouchStar features.

23 Q Okay. And there is no overlap between the, those two
24 promotions; correct?

25 A There is in a sense.

1 Q Okay. You cannot qualify for both of those
2 promotions in the same --

3 A No, you could not double dip. But you could have one
4 order that qualified for more than one promotion, but you have
5 to pick and choose which promotion you're going to apply for.
6 You cannot apply for them both.

7 Q Okay. And there's another thing that we need to
8 clarify. DPi has -- is complaining that it has not been
9 credited for promotions that it sought under the, promotional
10 credits that it sought under the LCCW promotion in situations
11 where it was passing orders that consisted of basic service,
12 which is 1FR; correct?

13 A Correct.

14 Q Plus two of the following three blocks: HBG, BCR or
15 BRD; correct?

16 A That is correct.

17 Q That's how the orders were configured by dPi which it
18 was seeking to get credit from, from AT&T; is that correct?

19 A Yes. Those are all part of the order. The orders
20 are very long, but those are all part of the order.

21 Q And did AT&T retail customers submit orders to AT&T
22 which consisted, just like dPi's, of 1FR, that is basic
23 service, plus two or more of the, of the BCR, BRD or HBG
24 features and none others?

25 A Yes.

1 MR. CARVER: Objection. Now what he's doing -- this
2 is nowhere in his testimony at all. What he's now trying to do
3 is to get the witness to say on the stand what is in the
4 testimony that the Commission has said that he could not
5 prefile. This was in the supplemental testimony of Mr.
6 Bolinger. The Commission did not allow that filing, and now
7 he's trying to get it in.

8 MR. MALISH: Commissioner McMurrrian, this is
9 precisely what Commissioner Argenziano was asking Mr. Bolinger
10 to answer for her, and I need to make sure that the record is
11 clear what the situation is here.

12 COMMISSIONER McMURRIAN: Can you, can you restate the
13 question for me? I was actually busy trying to check on -- in
14 fact, we need to also check the status of where we are because
15 I think we're going to need to take a break. I think the court
16 reporter really needs one and probably us, too.

17 MR. MALISH: All right.

18 COMMISSIONER McMURRIAN: Anyway, can you restate your
19 question for me? We'll deal with this and then maybe we'll
20 talk about taking a break early.

21 MR. MALISH: The, the question is comparing the kinds
22 of orders from AT&T retail users to AT&T corporate with the
23 kinds of orders that were sent by dPi to AT&T corporate. And
24 we're establishing that -- Mr. Bolinger has said that the
25 orders that dPi sends in are configured with 1FR, BCR, BRD and

1 HBG and no other features. And the question was earlier from
2 Commissioner Argenziano, are those the same as the ones that
3 were being submitted by AT&T's retail customers to AT&T? And I
4 need to make sure that this is clear for the record whether
5 that happened or not because that's, I think, what Commissioner
6 Argenziano wanted to know. Because that's -- we've got to
7 compare apples to apples. Are the orders from AT&T retail
8 customers the same as the orders from dPi to AT&T?

9 COMMISSIONER McMURRIAN: Mr. Carver.

10 MR. CARVER: And my objection is this: If you look
11 at the testimony that was prefiled according to the rules of
12 the Commission, there was absolutely nothing by Mr. Bolinger on
13 that point. They tried to supplement on the eve of hearing and
14 they were denied.

15 Now if Mr. Malish wants to get into this, he has a
16 discovery exhibit and he can cross-examine Ms. Tipton and he
17 can ask questions about it. Because, you know, obviously they
18 think this exhibit means something, we think it means nothing,
19 and we don't think it shows what they claim it shows. And he
20 can ask her about that because it's cross-exam and he's free to
21 bring it up. But what he's doing now is he's been specifically
22 prohibited -- what dPi is doing is they've been specifically
23 prohibited from augmenting their testimony to add this through
24 this witness because it was done at the last minute. Now
25 they're waiting even later and they're trying to elicit this

1 testimony from the witness on the stand. So I think it is a
2 circumvention of the Commission's prior order, it's a violation
3 of your procedures and it just shouldn't be allowed. Again, he
4 can deal with this through Ms. Tipton, if he wishes to.

5 MR. MALISH: Commissioner McMurrin, Mr. Carver, if
6 he had an objection like that, he waived it when Ms., when
7 Commissioner Argenziano asked the same question and he did not
8 object. So Commissioner Argenziano has opened the door. There
9 was no objection. This is now a proper matter for clarifying
10 reexamination. The question has been asked. It is important
11 to the Commission to know the answer. It's been asked of
12 Mr. Bolinger. He is allowed to respond to it. If Mr., if
13 Mr. Carver's objection was ever valid, he waived it when he let
14 the door open on this subject. I'm sorry, but that's just the
15 way it is.

16 COMMISSIONER McMURRIAN: Well, thank you, Mr. Malish,
17 for telling me the way it is.

18 MR. MALISH: I'm sorry. I get carried away.

19 COMMISSIONER McMURRIAN: Staff, would you, would you
20 please respond to what we've heard about the question and
21 whether it's gone outside the scope of the cross-examination?
22 I know that we asked a lot of questions and, quite frankly,
23 I've sort of lost track of if the redirect that Mr. Malish is
24 asking is on point with the cross-examination that was asked.

25 Or why don't we do this. I think we all need a

1 break. Let's give everyone time to think about it and we will
2 rule on that objection and start back at that point.

3 Commissioner Skop.

4 COMMISSIONER SKOP: Also, too, in considering the
5 Chair's request, can you also opine as to whether a
6 Commissioner question opened the door, because I don't think
7 the Commissioners are on trial here. So I just, I just think
8 that we should be free to ask questions, but that necessarily
9 on a procedural basis doesn't open the door in the manner in
10 which it's been alleged. Thank you.

11 MS. TAN: Certainly. That sounds good. We'll go
12 ahead and --

13 COMMISSIONER McMURRIAN: I think it may not hurt for
14 us to sort of look back at where we've been in the last few
15 minutes and think about that before, before I make a ruling on
16 that. So we'll take a lunch break.

17 Commissioners, how long would you like? At least an
18 hour?

19 COMMISSIONER ARGENZIANO: Give staff time.

20 COMMISSIONER McMURRIAN: Yeah. Give them time. An
21 hour okay? Okay. I guess we will come back at 10 'til 2:00.
22 We're adjourned until 10 'til 2:00.

23 (Recess taken.)

24 We'll reconvene the hearing. And I believe when we
25 broke we were going to hear from staff and some Commissioners

1 had questions for staff and we were getting direction from them
2 regarding the objection that was put forward. So I'll turn it
3 over to Ms. Tan.

4 MS. TAN: Thank you. It is staff's recommendation or
5 belief that the Commissioners are allowed to ask whatever they
6 want regarding dPi. However, this certainly does not open the
7 door for dPi to introduce testimony that the Commission has
8 previously denied. The purpose of redirect is to rehabilitate
9 the witness from cross. However, Mr. Carver is correct in that
10 this appears to be leaking into the testimony that was denied.
11 Therefore, staff advises that Mr. Malish ask, reask his
12 previous question only.

13 COMMISSIONER McMURRIAN: Commissioners, any other
14 questions before I go ahead? Okay.

15 All right, Mr. Malish, I'm going to take staff's
16 recommendation and we'll let you ask that one question and then
17 I think we need to move on from there.

18 MR. HORTON: Commissioner, could I ask for some
19 clarification?

20 COMMISSIONER McMURRIAN: Sure.

21 MR. HORTON: I understand this ruling, but I think in
22 every hearing I've been involved, if a Commissioner asked a
23 question, the company was allowed to follow up and get some
24 clarification. I understand this ruling. But, but are -- is
25 the recommendation that we can't follow up on a Commissioner's

1 question?

2 COMMISSIONER McMURRIAN: No. That's not the way I
3 understand it, and we can turn back to them. But the way I
4 understand it is that Commissioners, of course, can ask
5 questions and go wherever they may and ask whatever questions
6 that interest them, and I think that on redirect I think you
7 can address those questions. But as Lee Eng, as Ms. Tan,
8 sorry, said, that the purpose of redirect is to rehabilitate
9 the witness. I don't think that it opens the door to anything
10 that might be related to a question the Commissioner brought
11 up. I don't think that because they brought up something on a
12 subject that you can raise a question on any subject. Now feel
13 free to respond because I'm learning this, too.

14 MR. HORTON: Well, I think -- I know many times, in
15 fact, we just had a hearing where we followed up on some
16 Commissioners' questions. Commissioners are certainly free to
17 ask anything that they have an interest in, but sometimes there
18 may be instances where the witness's response doesn't go -- is
19 confused or isn't quite complete, and I think in every instance
20 counsel has been allowed to follow up and clarify the record
21 for the purpose. I agree it doesn't open the door to a whole
22 lot of brand new testimony, but --

23 MS. CIBULA: And if I could interject, there's also
24 the problem where there's testimony that wasn't allowed in this
25 proceeding, and I think the problem is that we're leaking into

1 that testimony and it was specifically not allowed and that's
2 the problem we're having.

3 COMMISSIONER McMURRIAN: Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: Because I'm fairly new at
5 this also and I'm not sure sometimes of the quasi-judicial --
6 and due process, I want to make sure there's always due
7 process. But to be quite frank, there are things that have
8 been discussed today that opened up information that had I
9 known about previously I may not have voted not to enter that
10 information into the record. So that's why I asked those
11 questions because there are things becoming apparent that I
12 needed to have to make a logical and fair determination. So in
13 due respect with that, I know we voted against it, to move to
14 have that introduced. But because of the fact there was so
15 much information that was coming up, I thought those questions
16 were pertinent, not meaning to get into the whole, the whole
17 thing here. But if I had known that, some of that information
18 ahead of time, I may have had a different vote at the
19 beginning.

20 COMMISSIONER McMURRIAN: I think that's perfectly
21 appropriate. And I, and I wasn't meaning to say at all that
22 Commissioners shouldn't ask questions about the stuff that
23 didn't come in. I think that's perfectly okay. And I think,
24 as we were talking about with Mr. Horton, I think that
25 following up on those things that are raised is okay. I think

1 that if they start trying to veer because it's somehow related
2 to something in testimony that wasn't allowed and that it's
3 really just a backdoor way of perhaps getting into that
4 testimony, I don't think that's appropriate. And I think we
5 were getting to that line.

6 MR. HORTON: Well, Commissioner, to that, and I know
7 you don't want to prolong this, but, but -- and even Mr. Carver
8 earlier -- I don't think the fact that you did not allow our
9 testimony to go in means that we do not have an opportunity to
10 cross-examine on some of, some of the points that would have
11 been brought out on that testimony had it been allowed to go
12 in. So I, I -- if, if the staff is saying that we can't
13 address anything that was in that testimony, I would certainly
14 disagree with that because I think that we do have the
15 opportunity in cross-examination to bring some of those points.
16 I think that's perfectly appropriate.

17 COMMISSIONER McMURRIAN: It was my understanding,
18 too, Mr. Horton, that, and I think we talked about this this
19 morning whenever that testimony wasn't in, that you still would
20 have the ability to try to get in certain information through
21 cross as long as you were following the normal procedures and
22 guidelines for appropriate cross and redirect and that sort of
23 thing. But that doesn't mean that, you know, you'll
24 necessarily be successful in getting it in. It depends, of
25 course, on the rules at the time. But --

1 MR. HORTON: I understand. Thank you, ma'am.

2 COMMISSIONER McMURRIAN: Anything else? And if you
3 want to clarify something I've said, because, of course, I'm
4 not an attorney either, so bear with me. Anything else?
5 Commissioners?

6 Okay. I guess we'll move along. Mr. Malish, it's--
7 Mr. Malish, you can continue your redirect.

8 MR. MALISH: Thank you.

9 COMMISSIONER McMURRIAN: With that understanding that
10 we need to move along.

11 BY MR. MALISH:

12 Q Mr. Bolinger, I believe that Commissioner Argenziano
13 had a question for you earlier before lunch asking basically is
14 there a comparison between the kinds of orders that dPi is
15 processing, that is, or submitting for promotions, namely 1FR
16 plus HBG plus BCR plus BRD blocks and the kinds of orders that
17 AT&T is getting and awarding promotions on from its retail
18 customers?

19 A The answer to that question is that in my opinion,
20 absolutely, yes. I mean, their customers don't order the way
21 our customers order as, in as high a percentage. But in
22 reviewing the data that they submitted, the answer is, is
23 without a doubt, yes, that they are customers who order like
24 our customers did, did receive the credits.

25 Q Okay. Now there's another topic that was discussed

1 before lunchtime, which was the issue of, you know, whether a
2 specific particular individual customer of yours, you know, I
3 don't know if you were saying John Smith or John Doe or
4 whatever, the question was brought up whether, you know, if
5 y'all apply for a promotion on a telephone line that's assigned
6 to John Smith, whether that, whether that is directly passed on
7 to the customer. Do you recall that line of inquiry?

8 A Yes.

9 Q Okay. And what was the answer to that?

10 A If it's directly passed on to the customer, like to a
11 John Smith? The answer is, is we don't go back and pass it on
12 to Mr. Smith's personal account, no.

13 Q Is there a reason for that?

14 A Well, there is -- the specific reason why we don't
15 individualize it is that even though on BellSouth's BAR form
16 that we have to fill out to apply for our credits, I believe
17 it's at a BTN or a billing telephone number level. When we
18 receive the credits back from BellSouth, they come in a lump
19 sum credit per BAN or billing account number. And so a billing
20 account number and a billing telephone number are two
21 completely different things. A billing telephone number is on
22 an individual basis. A billing account number, you know, and
23 I'll just throw numbers out, but we may have, let's say, 15,000
24 customers in a particular area with BellSouth and they may be
25 on five different BAN numbers. So if you just get a lump sum

1 credit on one BAN, you have no idea at a billing telephone
2 number level what customers were approved and what were denied,
3 and rarely do we ever see 100 percent approval. So you can't
4 pass it through to Mr. Smith.

5 MR. MALISH: We'll pass the witness.

6 COMMISSIONER McMURRIAN: Commissioner Skop.

7 MR. MALISH: Actually I think I have to admit the --

8 COMMISSIONER McMURRIAN: Commissioner Skop has a
9 couple of questions and then we'll do that. That will give you
10 a few minutes to get situated.

11 COMMISSIONER SKOP: Thank you. Just, I just had two
12 quick questions or actually one question and then just a
13 general comment. But I just wanted to know whether dPi's
14 strategy to take advantage of the LCCW promotion, was that
15 developed in-house or was that developed through a third party?

16 THE WITNESS: The -- I think I worked on that, I
17 personally worked on that promotion with the help of Mr. Watson
18 and Lost Key. And the way it would typically work at that time
19 back in 2003, I think, was that the promotions would be -- the
20 promotions at that time were very difficult to find. So it
21 wasn't -- it's not like, you know, BellSouth would knock on our
22 door and say, "Hey, we've got this promotion here that you can
23 take advantage of." So we would have to go digging through
24 documents to try and find what was going on at the time. And
25 when you found one -- that was part of Mr. Watson's job was to

1 find them and bring them to me and say, "Hey, these are the
2 promotions going on." And then we would sit down and look at
3 how we were doing business, what the, what the tariff was, if
4 we, if we, if our packages that we were ordering met the
5 requirements, excuse me, and, if not, should we change up a
6 package to meet the requirements to get a promotion, things of
7 that nature. So I would say they were developed in-house with
8 Lost Key's help.

9 COMMISSIONER SKOP: So just I guess as a follow-up to
10 that then. I guess would it be true to say that Mr. Watson was
11 retained as a consultant by your firm?

12 THE WITNESS: Yes.

13 COMMISSIONER SKOP: Okay. And then just as a general
14 point -- and, again, you know, I tried to follow what's going
15 on here. But in looking at the dPF -- or dPi-FL-5 thing with
16 the summary of what they're looking to claim as monies owed, I
17 noted that it appears to be \$68,000. And I guess, you know,
18 certainly it's within the rights of the parties to litigate
19 disputes that arise. And -- but just in the totality of the
20 circumstances it seems like a tremendous amount of resources
21 are being put into such a small number, and, you know, the
22 resources of the Commission are valuable also. And I just
23 wonder if the, if the parties have ever engaged in good faith
24 settlement negotiations to try and resolve this dispute between
25 them. I mean, because it seems like there is a lot of

1 resources being expended over a very small number, and I'd just
2 like to get some feedback from either of the parties or the
3 witness as appropriate.

4 THE WITNESS: I would say that we have had -- first
5 of all, I'd say I agree with you, and being here is the last
6 place that we wanted to be. And we've never been here, as a
7 company we have never been in one of these actions before this,
8 the totality of this thing. The problem is we filed a claim in
9 North Carolina and were instructed by BellSouth that unless we
10 had a docket number in every state, they were going to collect
11 in all other states, and so we had to file in every single
12 state.

13 That being said, we have, we have talked settlement.
14 It's debatable whether or not it was in good faith, but we have
15 talked settlement and reached an impasse very quickly.

16 COMMISSIONER SKOP: Thank you. I respect that. I
17 just wanted to -- you know, it's always good when the, when the
18 parties can reach agreement such that the resources don't need
19 to be expended on litigating the matter. Thank you.

20 THE WITNESS: You're welcome.

21 MR. MALISH: And, Commissioner Skop, I think that
22 although Florida is a fairly small number, the totality of the
23 BellSouth states added up to closer to a million.

24 COMMISSIONER SKOP: And, believe me, I have a full
25 appreciation for what's really going on here. So that's --

1 again, I'm just trying to just lay it out on the table. Thank
2 you.

3 COMMISSIONER McMURRIAN: Mr. Carver, before we leave
4 that topic, is there anything you want to say since Mr. Malish
5 added something? I just think it should be fair.

6 MR. CARVER: Yeah. No. I don't disagree with, with
7 the statement that there have been negotiations. Actually we
8 had -- the case was originally set to go to hearing in October
9 and just a couple of days before the trial the parties filed a
10 joint motion to continue the case so that we could try to
11 discuss settlement negotiations. And we tried to have a global
12 settlement and talk about all nine states and that effort went
13 on for a number of weeks and it just didn't work out. So I
14 think at this point -- I mean, I guess each side has a
15 different view as to who was being reasonable and who wasn't,
16 but I can assure you that we've had global discussions and they
17 went on for a period of weeks late last year.

18 COMMISSIONER SKOP: And just as a follow-up to that,
19 global settlements are nice, but I'm more concerned with the
20 issue before us in Florida.

21 MR. CARVER: Well, we tried to split it out by states
22 because, because -- it just hasn't worked, that hasn't worked
23 out either unfortunately. And we do have -- I mean, we have,
24 just as a point of information, in Louisiana the amount in
25 controversy is about \$12,000. So you'd think certainly we'd be

1 able to settle that, but we haven't even been able to get that
2 done. But we have tried.

3 COMMISSIONER SKOP: Thank you.

4 COMMISSIONER McMURRIAN: Mr. Malish.

5 MR. MALISH: And we will be talking more about
6 Louisiana.

7 COMMISSIONER McMURRIAN: All right. You probably
8 need to address exhibits, if any.

9 MR. MALISH: The only exhibit that we -- yeah. The
10 only exhibit that was brought up with Mr. Bolinger's testimony
11 is the one that we marked at the end, Exhibit 27, which is the
12 screen shot that was captured from the AT&T website. And it
13 has -- the title we're going to use for this one is USOC Lookup
14 Tool. That's Number 27, which we offer at this point.

15 COMMISSIONER McMURRIAN: Okay. Mr. Carver, any
16 objection?

17 MR. CARVER: No objection.

18 COMMISSIONER McMURRIAN: Okay. Show it entered into
19 the record.

20 (Exhibit 27 admitted into the record.)

21 And I believe, Mr. Bolinger, you're excused.

22 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)
 :
2 COUNTY OF LEON) CERTIFICATE OF REPORTER

3

4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of said
11 proceedings.

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a relative
14 or employee of any of the parties' attorneys or counsel
15 connected with the action, nor am I financially interested in
16 the action.

17 DATED THIS 14th day of April, 2008.

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