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March 18, 2010

VIA OVERNIGHT MAIL

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RECEIVED

MAR 19 2010

PUBLIC SERVICE
COMMISSION

Re: dPi Teleconnect LLC, Complainant v. BellSouth Telecommunications, Inc.,
d/b/a AT&T Kentucky, Defendant
PSC 2005-00455

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and five (5) copies of Brief of AT&T Kentucky.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties of Record


792834

CERTIFICATE OF SERVICE – 2005-00455

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 18th day of March 2010.

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Mary K. Keyer

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DPI TELECONNECT, L.L.C)	
)	CASE NO.
COMPLAINANT)	2005-00455
)	
V.)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
D/B/A AT&T KENTUCKY)	
)	
DEFENDANT)	

BRIEF OF AT&T KENTUCKY

I. SUMMARY OF POSITION

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) offered a retail Line Connection Charge Waiver (“LCCW”) Promotion that waived the line connection charge for certain residential customers who purchased basic service and one or two features, depending on the time period. dPi Teleconnect, LLC (“dPi”) resells AT&T Kentucky’s basic service to its end users. When it does so, dPi routinely places free blocks on its end users’ lines to keep them from using (and incurring charges for) certain features. dPi’s end users do not order these blocks, and dPi does not inform its end users that it places these blocks on their lines. dPi pays nothing to AT&T Kentucky for these blocks, and dPi does not charge its end users for the blocks.

In this Docket, dPi seeks LCCW promotional credits from AT&T Kentucky going back to January 2004, claiming that the free blocks it places on its end

users' lines are "purchased features" that qualify for the LCCW Promotion.¹ AT&T Kentucky disagrees (as have the North Carolina Utilities Commission ("NCUC"), a federal district court in North Carolina, the Florida Public Service Commission ("Florida Commission"), and a federal district court in Florida),² for good reason. If a restaurant says "purchase a sandwich and two side items, and we'll give you a free slice of pie," then customers who buy a sandwich, cole slaw, and fries get a free slice of pie. dPi, however, bought a sandwich, asked for and received a free packet of ketchup and a free cup of water, and now it is saying it should also get a free slice of pie. Because dPi did not meet the requirements of the LCCW Promotion, AT&T Kentucky denied dPi's LCCW promotional credit requests, just as it would have denied the LCCW Promotion to an AT&T Kentucky retail customer who only purchased a line and asked that two free blocks be placed on that line.

¹ Direct Testimony of dPi Witness Tom O'Roark ("O'Roark Direct") at 9-10. In its Complaint at paragraph 9, dPi also claims that it is entitled to credits associated with the Secondary Service Charge Waiver and the Two Features for Free Promotions but has failed to provide any evidence regarding these credits or promotions. In fact, dPi chose to produce no evidence regarding these promotions because the dollar amounts were inconsequential. See Rebuttal Testimony of dPi Witness Tom O'Roark ("O'Roark Rebuttal") at 1 ("For all practical purposes, [the non-LCCW promotions] are irrelevant because discovery revealed the dollar amounts related to these promotions to be so small."). AT&T Kentucky, therefore, respectfully requests a Commission ruling in its favor on dPi's Complaints regarding these promotions.

² See Exhibit PLF-6 for the NCUC's June 7, 2006 Order, and AT&T Kentucky's Notice of Filing filed with the Commission on January 27, 2010, for the additional orders of the NCUC, Florida Commission, and the North Carolina and Florida federal courts. While these commission and court orders are not binding on this Commission, AT&T Kentucky respectfully requests that the Commission consider them as persuasive authority in this Docket.

II. FACTS

A. dPi's Market Niche

dPi is a reseller³ that operates as “a prepaid company.”⁴ Accordingly, it “sells primarily to the credit challenged customer.”⁵ dPi's witness Tom O'Roark testified that “essentially every single one of dPi's new customers is someone who was formerly a customer of BellSouth or another provider and who left after getting into trouble over their phone bill.”⁶

B. The Interconnection Agreements

Two different interconnection agreements (“Interconnection Agreements” or “Agreements”) were in effect during the time period at issue (2003 to the present), and both of those Interconnection Agreements were the result of voluntary negotiation as opposed to arbitration.⁷ Section 4.2 of the Resale Attachment to each of these Agreements provides that “resold services can only be used in the same manner as specified in [AT&T Kentucky's] Tariffs” and that resold services are “subject to the same terms and conditions as are specified for such services when furnished to an individual customer of [AT&T Kentucky] in the appropriate section of [AT&T Kentucky's] Tariffs.” Additionally, Exhibit A to the Resale Attachment to each of these Agreements provides that “[w]here

³ O'Roark Direct at 1.

⁴ See March 1, 2006 Transcript of the hearing of the companion proceedings that dPi brought, and lost, before the NCUC (“*2006 NCUC Transcript*”) at 81. The *2006 NCUC Transcript* was filed with the Commission on February 10, 2010, pursuant to the Commission's February 9, 2010 Order. Copies of the relevant portions of the *2006 NCUC Transcript* that are cited in AT&T Kentucky's Brief are attached in **Exhibit A**.

⁵ O'Roark Direct at 14.

⁶ O'Roark Direct at 14.

⁷ The Parties' 2003 and 2007 negotiated Agreements are on file with the Commission. See April 25, 2003 and April 23, 2007 letters, attached hereto as **Exhibits B and C**, respectively, from the Commission to the Parties stating that Commission Staff completed its review of the Agreements and found the Agreements “in compliance with federal and state law and with previous Commission orders.”

available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T Kentucky] directly.”⁸

C. The Retail Promotion

The LCCW Promotion provides that the line connection charge will be waived for reacquisition or win-over residential customers who “switch their local service to [AT&T Kentucky] and subscribe to ... [AT&T Kentucky] basic service and two (2) custom calling (or Touchstar) local feature(s).”⁹ The Promotion provides the same waiver if the end user purchases other designated services (e.g., BellSouth[®] Complete Choice[®] service, BellSouth[®] PreferredPack^(SM) service), but those other services are not relevant in this Docket because dPi relies solely on its purchase of basic service for resale.¹⁰ dPi claims it is entitled to credits going back to January 2004 based on the free blocks it automatically places on its customers’ lines.¹¹ AT&T Kentucky does not waive and would not waive the line connection charge under this promotion for an AT&T Kentucky end

⁸ Direct Testimony of AT&T Kentucky Witness Scot Ferguson (“Ferguson Direct”) at 5; Exhibit PLF-1. In the 2007 Agreement, the language is identical with the non-substantive exception that the word “Customers” is used in place of the words “End Users.”

⁹ See Exhibit PLF-2 (Letter to Commission dated December 7, 2005). The earlier LCCW Promotion required the purchase of only one feature. See Exhibit PLF-2 (Letter to Commission dated December 17, 2003). See *also*, O’Roark Direct at 9 (Mr. O’Roark cites to “dPi Exhibit 2, BellSouth’s documents establishing qualifying criteria for the promotion.”) It should be noted that there were no exhibits attached to Mr. O’Roark’s Direct Testimony. AT&T Kentucky believes Mr. O’Roark is referring to dPi KY-2 that was attached to Brian Bollinger’s Direct Testimony filed on May 1, 2008, which Mr. O’Roark’s testimony replaced. dPi KY 2 at ¶ 5 provides that “[t]he customer must switch their local service to [AT&T Kentucky] and purchase...[AT&T Kentucky] Basic Service and two custom calling (or touch star) local feature(s).”

¹⁰ O’Roark Direct at 10 (“in every situation in which dPi applied for the [LCCW] promotional credit, it ordered at least Basic Service plus two or more [blocks].”).

¹¹ O’Roark Direct at 9.

user who only purchased basic local service and asked that two free blocks be placed on his or her line.¹²

D. The Blocks at Issue

When dPi resells basic service to its end users, it places one or both of the following on its end users' lines: Block Call Return and Block Repeat Dialing.¹³ As their names imply, these blocks prevent an end user from using a particular feature.¹⁴

Call Return is a feature that allows an end user to "place a call to the telephone number associated with the most recent call received, whether or not the call was answered or the number is known."¹⁵ An end user can pay a monthly rate for this service, or she can pay for the service on a "per-use" basis.¹⁶ Block Call Return (or Denial of Per Activation, as it is described in the AT&T Kentucky Tariff and Price List) that is at issue in this Docket prevents an end user from using the Call Return feature, and is available without charge.¹⁷

Repeat Dialing is a feature that "automatically redials the last number the

¹² Ferguson Direct at 18; Rebuttal Testimony of AT&T Kentucky Witness Scot Ferguson ("Ferguson Rebuttal") at 11.

¹³ O'Roark Direct at 10; *Id.* at n.4 ("dPi's basic offering always includes the TouchStar[®] blocks."). dPi's witness O'Roark also testified that dPi includes Block Call Trace on these lines (O'Roark Direct at 10), but that block is not available in Kentucky (Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.4.A), therefore, is not relevant to this Docket.

¹⁴ The blocks at issue in this case are not included as Features in the Definitions of Feature Offerings in the Kentucky Tariff at § A13.19.2. See Exhibit PLF-4 and Ferguson Rebuttal at 7-8. The blocks are described under specific Features as a method to restrict access to the "per activation" option of particular features at no charge and are not represented to be a Feature themselves. *Id.* at 8.

¹⁵ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A.

¹⁶ *Id.* ("This [Call Return] feature is available, facilities permitting, to residence and business customers as follows: (a) monthly subscription, or (b) per activation/occasion.").

¹⁷ *Id.* ("Access to the usage option [for Call Return] can be restricted at the customer's request at no charge.").

customer attempted to call.”¹⁸ An end user can pay a monthly rate for this service, or she can pay for the service on a “per-use” basis.¹⁹ Block Repeat Dialing (or Denial of Per Activation, as it is described in the AT&T Kentucky Tariff and Price List) that is at issue in this Docket prevents an end user from using the Repeat Dialing feature, and is also available without charge.²⁰

E. dPi’s Placement of the Blocks at Issue on Its End Users’ Lines

dPi places one or both of the blocks at issue on each of the basic service lines it resells to its end users.²¹ dPi automatically places these blocks when its end users order basic service,²² it does not ask its end users if they want these blocks before placing them on the lines,²³ and it does not subsequently notify its end users that these blocks are on their lines.²⁴ dPi does not charge its end users for the blocks,²⁵ AT&T Kentucky does not charge dPi for these blocks,²⁶ and AT&T Kentucky does not charge its end users for these blocks.²⁷

¹⁸ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.B.

¹⁹ *Id.* (“This [Repeat Dialing] feature is available, facilities permitting, to residence and business customers as follows: (a) monthly subscription, or (b) per activation/occasion.”)

²⁰ *Id.* (“Access to the usage option [for Repeat Dialing] can be restricted at the customer’s request at no charge.”).

²¹ O’Roark Direct at 10 (“in every situation in which dPi applied for the [LCCW] promotional credit, it ordered at least Basic service plus two or more [blocks]”); See also *Id.* at n. 4 (“dPi’s basic offering always includes the TouchStar® blocks.”); O’Roark Rebuttal at 4 (“every line that dPi orders is a basic service line with [the blocks] . . .”).

²² *Id.* See also Exhibit A, 2006 NCUC Transcript at 81; April 3, 2008 Transcript of the hearing of the companion proceedings that dPi brought, and lost, before the Florida Public Service Commission (“*Florida Transcript*”) at 89. The *Florida Transcript* was filed with the Commission on February 10, 2010 pursuant to the Commission’s February 9, 2010 Order. Copies of the relevant portions of the *Florida Transcript* that are cited in AT&T Kentucky’s Brief are attached in **Exhibit D**.

²³ See Ferguson Direct at 17-18; see also Exhibit A, 2006 NCUC Transcript at 82, and Exhibit D, *Florida Transcript* at 89.

²⁴ See Exhibit A, 2006 NCUC Transcript at 83-84, and Exhibit D, *Florida Transcript* at 90-91.

²⁵ Ferguson Direct at 15; see also Exhibit D, *Florida Transcript* at 101, and Transcript of Deposition of Brian Bollinger taken February 23, 2006 (“Bollinger Depo.”) at 21. The Bollinger deposition was filed with the Commission on February 10, 2010 pursuant to the Commission’s February 9, 2010 Order. Copies of the relevant portions of the Bollinger deposition that are cited in AT&T Kentucky’s Brief are attached in **Exhibit E**.

F. The Dispute

The LCCW Promotion waives the line connection charge for certain residential customers who purchased basic service and two features. dPi, however, is seeking promotional credits when all it has done is purchased a basic line from AT&T Kentucky for resale and placed two free blocks on that line. dPi's witness acknowledges that "the dispute is solely whether the TouchStar[®] block features²⁸ that dPi orders 'qualify' as TouchStar[®] features under the promotion because they bear no additional charge."²⁹

III. ARGUMENT

dPi is not entitled to the LCCW promotional credits it seeks for four simple reasons, any one of which, standing alone, would require a ruling in AT&T Kentucky's favor. First, the Interconnection Agreement provides that dPi is entitled to the credits it seeks only if its end users would have qualified for the LCCW Promotion had it been directly provided by AT&T Kentucky, and in this case dPi's end users would not have qualified. Second, the blocks at issue are not features that qualify for the promotion. Third, even if the blocks at issue were features (and they are not), the LCCW Promotion requires the purchase of features, and neither dPi nor its customers purchased the blocks at issue. Fourth, dPi's end users did not order the blocks at issue, and they did not even know the blocks had been placed on their lines.

²⁶ Ferguson Direct at 15; see also Exhibit A, 2006 NCUC Transcript at 82, and Exhibit D, Florida Transcript at 101.

²⁷ Ferguson Direct at 15; Exhibit PLF-4, AT&T Kentucky § A13.19.4.A.

²⁸ O'Roark Direct at 10, n.4. dPi incorrectly refers to these blocks as "features."

²⁹ *Id.* See also O'Roark Rebuttal at 3-4 (acknowledging that "this case is reduced to whether dPi is entitled to promotional credits when it orders Basic Service plus TouchStar[®] block features ...").

A. dPi's End Users Would Not Have Qualified for the LCCW Promotion if It Had Been Directly Provided by AT&T Kentucky.

The Interconnection Agreements that were in place between dPi and AT&T Kentucky during the time period at issue were negotiated by the Parties, not arbitrated.³⁰ Section 252(a) of the federal Telecommunications Act of 1996 (“the Act”) allows parties to negotiated agreements to agree to what they wish “without regard to the standards set forth in subsections (b) and (c) of section 251” – that is, without regard to the substantive requirements of the 1996 Act that govern resale, interconnection, etc. An interconnection agreement, therefore, is “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,”³¹ and once a carrier enters “into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement.”³²

Both Interconnection Agreements provide that “[w]here available for resale, promotions will be made available only to End Users [or Customers] who would have qualified for the promotion had it been provided by [AT&T Kentucky] directly.”³³ As explained by AT&T Kentucky witness Ferguson, AT&T Kentucky does not waive and would not waive the line connection charge under the LCCW Promotion for an AT&T Kentucky end user who only purchased basic local

³⁰ See fn. 7.

³¹ *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003).

³² *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev'd in part on other grounds sub nom; Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004); *Mich. Bell Tel. Co. v. MCI/metro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”).

³³ Ferguson Direct at 5; Exhibit PLF-1.

service and asked that two free blocks be placed on his or her line.³⁴ As both the NCUC and the federal district court in North Carolina found, this is the end of the inquiry, and dPi is not entitled to any relief it seeks.³⁵

B. Because the Blocks at Issue Are Not Features, dPi's Orders Do Not Qualify for the LCCW Promotion.

dPi claims that the blocks at issue constitute "features" that qualify for the LCCW Promotion.³⁶ The federal district court in Florida disagreed, affirming the Florida Commission's ruling that these blocks are not TouchStar® features and, therefore, dPi was not entitled to receive the LCCW credits:

The Commission concluded that the blocks of features were not features themselves, and thus dPi was not entitled to the promotional pricing from [AT&T Florida].... I find the Commission had a reasonable basis for making this determination. The Commission was not arbitrary or capricious in its determination that blocks of features placed on phone lines by dPi, without their customers' request or consent, were not the same as features purchased by customers. To the contrary, the blocks actually prevent features from being accessed by the customer.³⁷

The evidence before this Commission supports the same ruling that these blocks are not features.³⁸

³⁴ Ferguson Direct at 18, Ferguson Rebuttal at 11, 17. AT&T Kentucky, in Section IV.A of this Brief, addresses dPi's purported "evidence" to the contrary and explains that this "evidence" was soundly rejected by the commissions and courts in North Carolina and Florida. This Commission should do the same.

³⁵ See Exhibit PLF-6 at 7. See also, *dPi Teleconnect, L.L.C. v. Jo Anne Sanford, et al.*, United States District Court for the Eastern District of North Carolina, Western Division, 2007 U.S. Dist. LEXIS 71740, Case No. 5:06-CV-463-D, Order at 16 (Issued September 25, 2007) ("*First NC Court Order*"). A copy of the *First NC Court Order* was filed with this Commission on January 27, 2010.

³⁶ O'Roark Direct at 9-10, 15-16.

³⁷ See *dPi Teleconnect, L.L.C. v. The Florida Public Service Commission et al. and BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, United States District Court for the Northern District Court of Florida, Panama City Division, Case No. 4:08-cv-00509-RS-WCS, Order at 2 (Issued August 21, 2009) ("*Florida Court Order*"). A copy of the *Florida Court Order* was filed with the Commission on January 27, 2010.

³⁸ dPi's witness claims that AT&T Kentucky somehow "withdrew" its position that blocks are not features, see O'Roark Direct at 14. This, however, is contrary to AT&T Kentucky's witness Scot

AT&T Kentucky's Tariff and Price List make clear that the blocks at issue are separate and distinct from the features they block. These documents provide that features, on the one hand, are "offered in addition to basic telephone service."³⁹ The documents specify that "TouchStar[®] service is a group of central office call management features offered in addition to basic telephone service,"⁴⁰ and they list 15 specific features (none of which are the blocks at issue) that provide something above and beyond basic service.⁴¹ One of the 15 specific features, Call Return, allows an end user to "place a call to the telephone number associated with the most recent call received whether or not the call was answered or the number is known."⁴² Another of the 15 specific features, Repeat Dialing, "automatically redials the last number the customer attempted to call."⁴³ Both of these features provide customers with something above and beyond basic telephone service, and customers who use these features must pay a price above and beyond the price they pay for basic telephone service.⁴⁴

The Tariff and Price List treat the Call Return Block and the Repeat Dialing Block dPi relies on much differently. Far from providing anything "in addition to basic telephone service," these blocks clearly prevent the end user

Ferguson testimony that AT&T Kentucky has not "withdrawn" this valid reason for denying the LCCW promotional credits dPi is seeking. Ferguson Rebuttal at 8.

³⁹ See Ferguson Direct at 15; Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.1.A.

⁴⁰ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.1.A.

⁴¹ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A to P. The Call Block, Calling Number Delivery Blocking - Permanent, and Calling Number Delivery Blocking - Per Call are not the same things as the free blocks on which dPi relies.

⁴² See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A.

⁴³ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.B.

⁴⁴ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A. ("This feature [Call Return] is available, facilities permitting, to residence and business customers as follows: (a) monthly subscription, or (b) per activation/occasion."); *Id.*, § A13.19.2.B. ("This feature [Repeat Dialing] is available, facilities permitting, to residence and business customers as follows: (a) monthly subscription, or (b) per activation/occasion."); *Id.*, § A.13.19.4.A(1), (2) (the monthly subscription and per activation prices for these features).

from using the associated feature to receive something “in addition to basic telephone service.”⁴⁵ And that is exactly why dPi puts these blocks on its customers’ lines in the first place – to prevent its prepay clientele from incurring per-use charges that they may be unable to pay.⁴⁶ Finally, while customers must pay for the Call Return and Repeat Dialing features, the blocks that dPi relies on to prevent its end users from using those features are free of charge.⁴⁷

In other words, features are offered in addition to basic telephone service, and the customer pays a price over and above what he pays for basic service to use those features. A block of those features, on the other hand, prevents the customer from using a feature “in addition to basic telephone service,” and it helps prevent the customer from paying anything above what he pays for basic service. In light of these obvious differences, it simply defies logic for dPi to argue that a block is the same thing as a feature it blocks,⁴⁸ and the Commission should therefore reject that argument.

⁴⁵ The Call Return Block, for instance, prevents the end user from using the Call Return feature. See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A. (“Access to the [Call Return] usage option can be restricted at the customer’s request at no charge.”). Similarly, the Repeat Dialing Block prevents the end user from using the Repeat Dialing feature. *Id.*, § A13.19.2.B. (“Access to the [Repeat Dialing] usage option can be restricted at the customer’s request at no charge.”).

⁴⁶ See Exhibit A, *2006 NCUC Transcript* at 81-82 (“dPi is a prepaid company so we block all per call tolled use functionality It’s common practice in the prepaid industry.”); *Id.* at 84 (“It’s just common practice in the prepaid industry that you attempt to block all per charge toll when possible.”).

⁴⁷ See Exhibit PLF-4, AT&T Kentucky Tariff § A13.19.2.A. (“Access to the [Call Return] usage option can be restricted at the customer’s request at no charge.”) (emphasis added); § A13.19.2.B. (“Access to the [Repeat Dialing] usage option can be restricted at the customer’s request at no charge.”) (emphasis added).

⁴⁸ The thrust of dPi’s argument that blocks are features is that “they are described in the TouchStar feature portion of [AT&T Kentucky’s] tariffs,” therefore, everything included in that section must be a feature. See, e.g., *O’Roark Direct* at 15-16. This argument, however, makes no sense. What does make sense is that an option to block access to available features would be included in the section that describes those features. An apt analogy would be a situation in which a customer ordering an automobile checked off a list of desired features on a pre-printed form. Assume the form had under the heading “Air Conditioning,” three options: 1) standard air conditioning; 2) deluxe air conditioning, and 3) no air conditioning. Under dPi’s logic, checking

C. The LCCW Promotion Requires the Purchase of Features, and Neither dPi Nor Its Customers Purchased the Blocks at Issue.

To receive a waiver under the LCCW Promotion, AT&T Kentucky end users must purchase “basic service . . . and two (2) custom calling (or Touchstar) local feature(s).”⁴⁹ dPi interprets this language to require AT&T Kentucky to provide the waiver when customers purchase basic service and then ask for or receive two free blocks that prevent them from using the Call Return and Repeat Dialing features. AT&T Kentucky witness Ferguson, however, testified that AT&T Kentucky end users who only purchase basic local service and ask for two *free* blocks do not receive a waiver of the line connection charge under the LCCW Promotion.⁵⁰ That alone ends the inquiry, because as noted above, the Interconnection Agreement provides that “[w]here available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T Kentucky] directly.”⁵¹

Even if that were not the case, dPi’s interpretation is contrary to the plain language of the LCCW Promotion. The waiver applies when customers purchase “BellSouth basic service and two (2) custom calling (or Touchstar) local feature(s),”⁵² not when they purchase basic service and ask for additional items that are free of charge. dPi’s interpretation also defies common sense. The purpose of the LCCW Promotion clearly is to “provide customers with an incentive to *purchase* additional services at an *additional price*,” thereby

the “no air conditioning” box and incurring no charge to do so would be deemed the purchase of “no air conditioning.”

⁴⁹ See Exhibit PLF-2 (Letter to Commission dated December 7, 2005). See also, dPi Exhibit 2.

⁵⁰ Ferguson Direct at 18.

⁵¹ Ferguson Direct at 5; Exhibit PLF-1.

⁵² Ferguson Direct at 20 (“The promotion requires an end user customer to *order* and *purchase*, at a minimum, basic service and two features.”) (emphases in original).

generating additional revenue.⁵³ It would make no sense to encourage customers to order the blocks at issue because not only do they not generate any additional revenue themselves, they actually prevent potential revenue from per activation use.⁵⁴

Finally, the Florida Commission appropriately rejected dPi's interpretation of the LCCW Promotion. In doing so, it found that "the TouchStar[®] Service blocks that dPi orders for its resale lines that are provided by AT&T free of charge are not 'purchased' features that qualify for promotional credits."⁵⁵ For the reasons set forth above, this Commission should reject dPi's interpretation as well.

D. dPi's End Users Did Not Order the Blocks at Issue and Did Not Know the Blocks Had Been Placed on Their Lines.

The Interconnection Agreement's language that "[w]here available for resale, promotions will be made available only to End Users who would have qualified for the promotion had it been provided by [AT&T Kentucky] directly"⁵⁶ necessarily contemplates that the promotional resale order submitted by dPi must be the result of an actual order from a dPi end user. dPi, after all, does not

⁵³ Ferguson Direct at 18. dPi notes that AT&T Kentucky "gives away promotional items at sporting events" and suggests that this means AT&T Kentucky intended to give away the line connection without charge under the LCCW Promotion. O'Roark Rebuttal at 10. In doing so, dPi clearly (and intentionally) is mixing apples and oranges. Giving away promotional items at sporting events to promote brand awareness is one thing, and promotions designed to incent customers to purchase items (like features) they may not otherwise have purchased is another. The LCCW Promotion clearly was intended as the latter rather than the former, and only a twisted reading of the promotion with the goal of attaining an unwarranted financial windfall would lead to a contrary suggestion.

⁵⁴ Ferguson Direct at 18-19.

⁵⁵ *In re: Complaint by DPI-Teleconnect, L.L.C. against BellSouth Telecommunications, Inc. for dispute arising under interconnection agreement*, Florida Public Service Commission, Docket No. 050863-TP, Order No. PSC-08-0598-FOF-TP (Issued September 16, 2008) at 11 ("*Florida PSC Order*"). AT&T Kentucky filed a copy of the *Florida PSC Order* with the Commission on January 27, 2010.

⁵⁶ Ferguson Direct at 5; Exhibit PLF-1.

contend that AT&T Kentucky places features, blocks or any other type of service on the lines of its customers without an actual order from the AT&T Kentucky customer. Thus, the simple requirement of the Interconnection Agreement quoted above requires competitive local exchange carriers (“CLECs”), such as dPi, to do with their end users as AT&T Kentucky does with its customers: have an actual order by an end user underlying each request for promotional credit.

This requirement makes perfect sense. It is inconceivable that any rational incumbent local exchange carrier (“ILEC”), such as AT&T Kentucky, would negotiate a resale agreement that would allow a CLEC to manufacture promotional discounts for itself by placing items (especially free items) on its customers’ lines that its customers did not order and were not even aware of. dPi, however, automatically places these free blocks when its end users order basic service,⁵⁷ does not ask its end users if they want these blocks before placing them on the lines,⁵⁸ and does not subsequently notify its end users that these blocks are on their lines.⁵⁹ In fact, in the companion proceedings in Florida, dPi’s witness acknowledged that its end users “are not specifically placing an order for blocks.”⁶⁰ It is astounding that dPi contends in this proceeding that it should be allowed to obtain promotional discounts when even dPi admits that there are no customer orders underlying the credit requests.

⁵⁷ Ferguson Direct at 3, 17-18; PLF-5. See also Exhibit A, 2006 NCUC Transcript at 81; Exhibit D, Florida Transcript at 89.

⁵⁸ Ferguson Direct at 17-18; Exhibit A, 2006 NCUC Transcript at 82; Exhibit D, Florida Transcript at 89.

⁵⁹ Ferguson Direct at 3; Exhibit A, 2006 NCUC Transcript at 83-84; Exhibit D, Florida Transcript at 90-91.

⁶⁰ See Exhibit D, Florida Transcript at 92.

IV. RESPONSE TO DPI'S ERRONEOUS ARGUMENTS

In the face of the formidable evidence and authority against its position on the merits, dPi resorts to accusing AT&T Kentucky of a variety of things, including treating its end users differently than it treats dPi, treating other CLECs differently than it treats dPi, agreeing to dPi's erroneous interpretation of the LCCW Promotion, and manufacturing reasons for rejecting dPi's invalid LCCW promotional credit requests. For the reasons set forth below, this Commission should reject each of dPi's accusations.

A. No Evidence Supports dPi's Accusation That AT&T Kentucky Provided the LCCW Promotion to its End Users Who Merely Purchased Basic Service and Asked for Free Blocks.

Relying solely on information specific to Florida that AT&T Florida provided to dPi in discovery in Florida ("the Florida Discovery"), dPi accuses AT&T Kentucky of providing the LCCW Promotion to AT&T Kentucky end users who merely purchased basic service and asked for free blocks.⁶¹ dPi, however, knows that the Florida Discovery does not support its accusations, which dPi's witness admitted as much in the North Carolina hearing. dPi's continued reliance on the Florida Discovery, therefore, is misplaced at best and misleading at worst.

AT&T Florida answered dPi's discovery request in Florida by giving dPi the raw data that dPi requested, which was certain information showing whether retail customers who ordered basic local service and had call blocks received a waiver of the line connection charge.⁶² With its response, AT&T Florida provided a letter explaining that the information dPi requested does not indicate the reason

⁶¹ O'Roark Direct Testimony at 11-13.

⁶² See Ferguson Rebuttal at 11.

for the line connection charge waiver and specifically does not indicate that the waiver was because of the LCCW Promotion.⁶³ For instance, as AT&T Florida explained to dPi, the Florida Discovery does not show whether any of the new orders were for winback or reacquisition customers, which are the only customers who could possibly qualify for the LCCW Promotion.⁶⁴ Nor does the Florida Discovery show the reason that one or more non-recurring charges were waived; in fact, there are several explanations other than the LCCW Promotion for why such charges may have been waived.⁶⁵

As the Commission may recall, Florida was severely impacted by hurricanes during 2004 and 2005, and the service of many of AT&T Florida's end users was temporarily disconnected.⁶⁶ AT&T Florida's tariff provides for a waiver of the line connection charge when an end user whose home is destroyed establishes service (i) at his or her temporary location and (ii) then again when he or she returns to his or her permanent location and reestablishes service.⁶⁷ Additionally, an end user could receive a line connection charge waiver unrelated to the LCCW Promotion in a split-bill situation where roommates are dividing one billing account with two existing lines into two separate billing accounts,⁶⁸ or when a line is reconnected after having been disconnected in error.⁶⁹ Nothing in the Florida Discovery suggests that any given line connection charge was waived

⁶³ See October 29, 2007 Letter included as part of Exhibit KY-8 to C'Roark Direct.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Ferguson Rebuttal at 14.

⁶⁷ *Id.* See also AT&T Florida Tariff § A4.2.6A, attached hereto as **Exhibit F**, which is similar to AT&T Kentucky Tariff § A4.2.6A.

⁶⁸ Ferguson Rebuttal at 15.

⁶⁹ Ferguson Rebuttal at 14.

because of the LCCW Promotion and not because of these or other reasons unrelated to the LCCW Promotion. And dPi knows this.

In fact, dPi admitted this in the North Carolina proceedings. dPi's witness in that proceeding acknowledged that the Florida Discovery does not indicate if any line connection charge was waived because of a reconnect following a disconnect in error, because of a reconnect following a natural disaster, because of a split-billing situation, or because of some other reason.⁷⁰ The cross examination of dPi's witness on this subject culminated with the following exchange:

Q. And if I went through all of the thousands of waivers on that large stack of paper [the Florida Discovery], you wouldn't be able to tell us why any of them actually had the [line connection] charge waived individually, would you?

A. No. Not on an individual basis, I couldn't.⁷¹

Nowhere in his testimony in this Docket does dPi's witness O'Roark explain how, in light of these admissions, dPi can suggest that the Florida Discovery in any way shows that AT&T Kentucky provided the LCCW Promotion to end users who only purchased a basic line and asked for free blocks.

Although not required to do so, AT&T further investigated dPi's claims by reviewing a random sample of 136 service orders associated with accounts in the Florida Discovery for which a line connection charge was waived.⁷² Many of those orders listed a reason the line connection charge was waived, and not a

⁷⁰ See April 15, 2008 Transcript of the hearing before the North Carolina Utilities Commission in Docket No. P-55, Sub 1577 ("2008 NCUC Transcript") at 54-55. The 2008 NCUC Transcript was filed with the Commission on February 10, 2010 pursuant to the Commission's February 9, 2010 Order. Copies of the relevant portions of the 2008 NCUC Transcript that are cited in AT&T Kentucky's Brief are attached in **Exhibit G**.

⁷¹ *Id.* at 56.

⁷² Ferguson Rebuttal at 16.

single one of those orders listed the LCCW Promotion as the reason.⁷³ Clearly, dPi's reliance on the Florida Discovery is as misplaced now as it was in earlier proceedings.

The North Carolina Commission, for instance, ruled:

The fact of the matter is that dPi, by its own admission, has done nothing more than review the data and compile a set of numbers. From this compilation, dPi discerned that [AT&T North Carolina] granted a high number of waivers. It took no steps, however, to employ an economist/statistician or any other person with expertise in the field to analyze the data to draw statistically relevant conclusions from the data. Nor did it examine any of the orders individually in an attempt to find even one order in which the LCCW waiver was granted to a customer that it contends is eligible to receive the promotion and [AT&T North Carolina] contends is not.

Based upon this record and the testimony here presented, nothing more than mere conjecture supports dPi's contention that the high number of waivers granted during the period in question provides a "strong inference" that [AT&T North Carolina] granted a "significant percentage" of the line connection charge waivers to customers who only ordered basic service and two blocks. Certainly, the evidence in this record is insufficient to prove by the greater weight of the evidence that [AT&T] granted any, let alone a significant amount of, LCCW promotional waivers to the customers in question or to prove that [AT&T North Carolina's witness] provided evidence "now known to be false."⁷⁴

⁷³ *Id.* Many of those orders contained a waiver because the retail end user either had been disconnected in error, had purchased a bundled offering with two or more chargeable services and/or features, or had purchased a non-packaged offering with two or more chargeable services and/or features. *Id.*

⁷⁴ See North Carolina Utilities Commission, Docket P-55, Sub 1577, Order Denying dPi's November 19, 2007 Motion to Reconsider (Issued July 18, 2008) at 8 ("*NCUC Recon Order*"), a copy of which was filed with this Commission on January 27, 2010.

The federal district court that reviewed this ruling held that in light of these findings, dPi failed to assert “a meritorious claim,” and denied dPi’s requested relief from the ruling.⁷⁵

Similarly, the Florida Commission agreed with AT&T Florida that based on most of the same data that dPi relies on in this Docket,⁷⁶ “it cannot be confirmed that when the line connection charge was waived for some of AT&T’s retail customers, it was waived pursuant to the LCCW Promotion.”⁷⁷ The federal district court that reviewed this ruling upheld the Florida Commission’s decision.⁷⁸

B. AT&T Kentucky’s Mistaken Payment of Some LCCW Promotional Claims Does Not Entitle dPi to the Credits It Seeks.

dPi seems to suggest that it is entitled to the LCCW credits it seeks because “[f]or some of our competitors . . . , [AT&T Kentucky] paid essentially 100% of credit applied for.”⁷⁹ Some CLECs did receive LCCW credits to which they were not entitled when AT&T Kentucky relied on the “honor system” to process promotional credit requests.⁸⁰ The fact that AT&T Kentucky mistakenly provided credits to other CLECs in what now obviously was unfounded reliance on the “honor system” is not a valid basis for dPi to seek credits to which it is not entitled.

⁷⁵ *dPi Teleconnect, L.L.C. v. Jo Anne Sanford, et al.*, United States District Court for the Eastern District of North Carolina, Western Division, Case No. 5:06-CV-463-D, Order (Issued April 16, 2009) at 7 (“*Second NC Court Order*”), a copy of which was filed with this Commission on January 27, 2010.

⁷⁶ Interestingly, dPi failed to attach certain portions of the data produced in Florida to Exhibit KY-8(E). See Exhibit PLF-7, Affidavit of Pam Tipton (“Tipton Affidavit”) at ¶ 25 and Exhibit C to Tipton Affidavit. dPi’s Exhibit 8 was not attached to Mr. O’Roark’s Rebuttal Testimony, but AT&T Kentucky believes Mr. O’Roark is referring to dPi KY-8 that was attached to Brian Bollinger’s Rebuttal Testimony filed on June 2, 2008, which Mr. O’Roark’s testimony replaced.

⁷⁷ *Florida PSC Order* at 8.

⁷⁸ See *Florida Court Order*.

⁷⁹ O’Roark Direct at 11.

⁸⁰ Ferguson Direct at 7-8.

This is especially true in light of AT&T Kentucky's actions to address the issue. As soon as this issue was discovered, AT&T Kentucky stopped issuing credits for all outstanding credit requests for all CLECs while it took steps to be sure that it was applying the same qualifying criteria to CLECs' requests for promotional credits as AT&T Kentucky's retail operations were applying to AT&T Kentucky customers under the same promotions.⁸¹ Then, AT&T Kentucky applied the same criteria that would apply to its own end users to the outstanding requests of all CLECs, and it gave credits when the request satisfied those criteria.⁸²

C. AT&T Kentucky Never Agreed With dPi's Interpretation of the Promotion.

dPi's witness O'Roark suggests that AT&T Kentucky initially agreed with dPi's erroneous interpretation of the promotion "because when [dPi's billing agent] was first getting set up and running test batches together, it approved all orders configured this way."⁸³ However, AT&T Kentucky has consistently disagreed with dPi's erroneous interpretation of the promotion.⁸⁴ Moreover, dPi's billing agent's involvement in the automated verification process was very limited and any "approvals" that dPi's billing agent claims to have received were instances of confirmation that the electronic form was compatible with the automated verification process AT&T was developing.⁸⁵

⁸¹ *Id.*; Ferguson Rebuttal at 4-7; Transcript of the deposition of Kristy Seagle taken February 24, 2006 ("Seagle Depo.") at 39-40, 42-43, 51, 53. Ms. Seagle's deposition was filed with the Commission on February 10, 2010 pursuant to the Commission's February 9, 2010 Order.

⁸² Ferguson Rebuttal at 6-7; Seagle Depo. at 39-43, 51, 53.

⁸³ O'Roark Direct at 10.

⁸⁴ Ferguson Rebuttal at 8.

⁸⁵ Ferguson Rebuttal at 9.

D. AT&T Kentucky Did Not Deny dPi's Credit Requests "Because the Amounts dPi Was Entitled to Under the Promotion Were So Large."

dPi's witness O'Roark accuses AT&T Kentucky of developing a number of "excuses" over time for not granting dPi's LCCW credit requests, including the fact that the amounts requested were "so large."⁸⁶ In doing so, Mr. O'Roark takes great liberties with the deposition of AT&T employee Kristy Seagle. As demonstrated below, dPi's accusations are incorrect and unsupported by Ms. Seagle's testimony.

Ms. Seagle testified that in September 2004, AT&T received promotional credit requests from dPi and three other CLECs for eight months' worth of three promotions each.⁸⁷ Moreover, Ms. Seagle testified that it was the amount of credit (approximately \$865,000) requested by another CLEC (not dPi) that initially caught her attention.⁸⁸ This amount caught Ms. Seagle's attention because it seemed like a very high amount in a very short time for the LCCW Promotion.⁸⁹ Ms. Seagle testified that she held off on the further processing of all promotional credit requests (including those submitted by dPi and those submitted by other CLECs) so AT&T could ensure itself that the credit requests were being processed correctly.⁹⁰

Ms. Seagle explained during her deposition that AT&T's wholesale operations wanted to be sure that AT&T was applying the same qualifying criteria to CLECs' requests for promotional credits as AT&T's retail operations were

⁸⁶ See O'Roark Direct at 13-15.

⁸⁷ Seagle Depo. at 35.

⁸⁸ *Id.* at 39.

⁸⁹ *Id.*

⁹⁰ *Id.* at 39-40.

applying to its customers users under the same promotions.⁹¹ She further explained that AT&T first considered how AT&T retail went about deciding whether a retail customer was a reacquisition or win-over customer, because that was the issue that was apparent from the first (non-dPi) group of LCCW credit requests that were processed.⁹² AT&T “need[ed] a definition of reacquisition and win-over” because “we wanted to make sure that how it’s defined in the tariff is actually what happens in practice, and we’re really focusing on reacquisition or win-over at that time because that was the major issue that I saw with the accounts I looked at.”⁹³

After addressing the reacquisition and win-over question, the second qualifying criteria that AT&T considered was what the tariff said regarding the purchase of basic service and two features. Ms. Seagle testified that AT&T looked at “the words in the tariff and its basic local service. The minimum is basic local service plus two purchase features,”⁹⁴ and Ms. Seagle wanted to “make sure that what we do on [the wholesale] side of the house is a mirror for what [is done on the retail] side. . . .”⁹⁵

dPi witness O’Roark’s suggestion, therefore, that AT&T “put together a team of lawyers and retail and marketing managers to find [sic] see if there was a way to avoid paying the promotions,”⁹⁶ is simply wrong. Instead, an appropriate group of AT&T personnel carefully discussed these issues, as would be expected

⁹¹ *Id.* at 40.

⁹² *Id.* at 42-43.

⁹³ *Id.* at 43.

⁹⁴ *Id.* at 51.

⁹⁵ *Id.* at 53.

⁹⁶ See O’Roark Direct at 14.

of any responsible business. The purpose of those discussions was not to “see if there was a way to avoid paying the promotions.” Instead, as Ms. Seagle explained in her deposition, the purpose of the discussions was to ensure that AT&T’s wholesale operations were applying the same qualifying criteria to CLECs’ requests for promotional credits as AT&T’s retail operations were applying to its customers under the same promotions.⁹⁷

V. CONCLUSION

For the reasons set forth above, AT&T Kentucky respectfully requests that the Commission find that dPi is not entitled to any promotional resale credits for the Line Connection Charge Waiver, the Secondary Service Charge Waiver, or the Two Features for Free promotions.

Respectfully submitted,



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COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.,
d/b/a AT&T KENTUCKY

793100

⁹⁷ Seagle Depo at 40, 53.

Exhibit A

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: Wednesday, March 1, 2006
3 DOCKET NO.: P-55, Sub 1577
4 TIME IN SESSION: 9:22 A.M. - 2:16 P.M.
5 BEFORE: Commissioner James Y. Kerr, II, Presiding
6 Commissioner Sam J. Ervin, IV
7 Chair Jo Anne Sanford
8

9 IN THE MATTER OF:

10 BELLSOUTH TELECOMMUNICATIONS, INC. COMPLAINT OF DPI
11 TELECONNECT, LLC
12

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

14 FOR DPI TELECONNECT:

15 Ralph McDonald
16 Bailey & Dixon, LLP
17 Post Office Box 1351
Raleigh, North Carolina 27602-1351

18 Christopher Malish
19 Foster, Malish, Blair & Cowan, LLP
20 1403 West Sixth Street
Austin, Texas 78703

21 FOR THE USING AND CONSUMING PUBLIC:

22 Robert Gilliam
23 Ralph Daigneault
24 Public Staff - North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4325

1 Q. And then I asked you, "What does the customer get
2 when it buys basic telephone service from dPi in North
3 Carolina," and you answered, "I believe they get just your
4 typical local dial tone in their home, and in North
5 Carolina I'm not sure if there is any long distance
6 attached to that, but there may be, and then that's about
7 it."

8 Did I read your answer you gave at your deposition
9 accurately?

10 A. Yes.

11 Q. And then my next question was, "Do they get --
12 with basic service does the customer get any features?"
13 Can you read the answer that you gave me at your
14 deposition?

15 A. I said, "Not if they just order basic service, no,
16 unless they order them or they order a package." And then
17 I think I quantified that later on in my deposition by
18 saying when you said features, I assumed that you meant
19 call waiting, caller ID and things of that nature.

20 Q. When a dPi customer in North Carolina orders basic
21 service from dPi, dPi automatically puts the BCR and
22 BCD (sic) blocks on the line, correct?

23 A. Yes. DPi is a prepaid company and so we block all
24 per call tolled use functionality.

1 Q. I'm sorry. I didn't mean to talk over you.

2 A. That's quite all right.

3 Q. And you don't ask the customer if it wants those

4 blocks on the line before you do that, correct?

5 A. No. It's common practice in the prepaid industry.

6 Q. And BellSouth doesn't charge dPi for the BCR or

7 BRD blocks, does it?

8 A. It depends on if we're ordering reseller UNE.

9 UNE I believe we get charged a call feature package if

10 use those blocks. In resale we do not get charged for

11 those featured USOCs.

12 Q. And all the issues in this case have to do with

13 resale, correct? I want to make sure I keep it relevant.

14 A. Yes. But you asked if we got charged, and

15 sometimes we do.

16 Q. For a resale customer, you don't get charged for

17 the BCR and BRD blocks, correct?

18 A. BCR and BRD --

19 Q. BRD, yeah, I'm sorry.

20 A. Confused me for a second. No.

21 Q. Confuse myself as well. That's common practice.

22 And dPi pays BellSouth the same amount for a BRD

23 when it orders the BCR and BRD blocks than it would if

24 didn't order those blocks, correct?

1 A. Depends.

2 Q. Under resale.

3 A. It depends. Because if the customer -- if we
4 didn't put it on there and the customer began using it, we
5 would be charged \$.75 every time a customer uses it. So
6 in the areas as you put in in your tariff where facilities
7 allow, in the areas where they don't allow, we have seen
8 bills \$300, \$400, \$500 a month for customers that use Star
9 69 over and over and over again, we're not allowed to
10 block them in the switch.

11 Q. But that's for use of the call return, not for use
12 of the block, correct?

13 A. Well, the block is not allowed because allowed we
14 charge that.

15 Q. Can you turn to Page 73 of your deposition?

16 A. 73?

17 Q. Yes, sir. The very last question on Page 73 you
18 see I asked you, "dPi doesn't contend that it has to pay
19 more when it gets the BRD and BRG denials than it would if
20 it didn't get those, does it?" Can you read the answer
21 you gave me?

22 A. I'm sorry, "No, we don't."

23 Q. And dPi doesn't even tell its customers or notify
24 them in any way that it's putting these blocks on their

1 lines, does it?

2 A. No. It's just common practice in the prepaid
3 industry that you attempt to block all per charge toll
4 when possible.

5 Q. And for every customer that dPi signs up who isn't
6 paying for these blocks and who may not even know they
7 have them, you want BellSouth to give your company a
8 credit for the line connection charge of \$33.56, correct?

9 A. Actually what we want BellSouth to do is adhere to
10 their filing within the state.

11 Q. And you want BellSouth for every customer you sign
12 up in North Carolina that's got these blocks that you
13 don't charge for and the customers don't even know they
14 have them, you want BellSouth to give you credit equal to
15 the line connection charge of \$33.56; is that correct?

16 A. Yes. That is in adherence to what has been filed
17 within the state, but yes.

18 Q. And that adds up to the tune of almost \$190,000,
19 correct?

20 A. I'm sorry, can you repeat that?

21 Q. Yeah. The total amount that you're asking for for
22 those customers who've got these blocks who may or may not
23 even know they have them and they don't pay for them adds
24 up to about 185 to \$190,000, correct?

Exhibit B



RECEIVED

APR 28 2003

LEGAL DEPT. (KY.)

Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

April 25, 2003

BellSouth Telecommunications, Inc.
Attention: Ms. Dorothy Chambers
Post Office Box 32410
Louisville, Kentucky 40232

DPI-Teleconnect, LLC
Attention: David B. Dorwart
2997 LBJ Freeway, Suite 225
Dallas, Texas 75234

Re: Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc.
and DPI-Teleconnect, LLC, Pursuant to Sections 251, 252 and 271 of the
Telecommunications Act of 1996 - PSC Reference No. 00109

Gentlemen:

This is to notify you that Commission Staff has completed its review of your agreement submitted on April 17, 2003, and has concluded that it is in compliance with federal and state law and with previous Commission orders. Accordingly, it is unnecessary for Staff to refer this matter for formal Commission action. The agreement will be maintained in this office and, pursuant to 47 U.S.C. 252, shall be effective on July 16, 2003.

If you have not already done so, the Commission requests that BellSouth submit the subject agreement in Microsoft® Word 97 format on 3.5-inch high-density diskette.

If you have questions regarding this matter, please do not hesitate to contact Howell Brady at Extension 265.

Sincerely yours,

Thomas M. Dorman
Executive Director

vh/

cc: BellSouth Telecommunications, Inc.
Birmingham, Alabama 35203



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Exhibit C

Ernie Fletcher
Governor



RECEIVED

Mark David Goss
Chairman

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

APR 26 2007

John W. Clay
Commissioner

LEGAL DEPT. (KY.)

April 23, 2007

BellSouth Telecommunications, Inc.
Attention: Mary K. Keyer
Post Office Box 32410
Louisville, Kentucky 40232

dPi Teleconnect, LLC
Attention: Brian Bolinger
2997 LBJ Freeway, Suite 225
Dallas, Texas 75234

Re: Interconnection Agreement Negotiated by BellSouth Telecommunications,
Inc. and dPi Teleconnect, LLC – PSC Reference No. 00109

Sir/Madam:

This is to notify you that Commission Staff has completed its review of your agreement submitted on April 16, 2007, and has concluded that it is in compliance with federal and state law and with previous Commission orders. Accordingly, it is unnecessary for Staff to refer this matter for formal Commission action. The agreement will be maintained in this office and, pursuant to 47 U.S.C. 252, shall be effective on July 15, 2007.

If you have not already done so, the Commission requests that you submit the subject agreement in Microsoft Word Format (.doc) or Portable Document Format (.pdf) on either a CD or 3.5-inch high-density diskette.

If you have questions regarding this matter, please do not hesitate to contact Jim Stevens at Extension 238.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Beth O'Donnell", written over a circular stamp or seal.

Beth O'Donnell,
Executive Director

kg/

cc: BellSouth Telecommunications, Inc.
Birmingham, Alabama

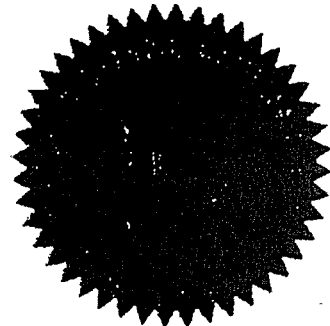
Exhibit D

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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THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

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

DOCUMENT NUMBER DATE

02855 APR 14 8

FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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 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.

Exhibit E

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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

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

DEPOSITION OF
BRIAN BOLINGER

February 23, 2006
9:31 a.m.

675 West Peachtree Street
Atlanta, Georgia

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

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

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

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

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

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

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

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

19 Q. And where is that case pending?

20 A. South Texas somewhere.

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

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

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

Exhibit F

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 4
Cancels Third Revised Page 4

ISSUED: July 12, 1999
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: July 27, 1999

A4. SERVICE CHARGES**A4.2 Application of Charges (Cont'd)****A4.2.4 Secondary Service Charge Application (Cont'd)**

- C. The Secondary Service Charge applies for: (Cont'd)
 - 5. Changing call referrals to another number at the customer's request.
- D. The Secondary service Charge is also applicable:
 - 1. When installing or changing a station line or changing a station number on ESSX-I service.
 - 2. When adding or changing the operation of a NAR on ESSX* service, Digital ESSX* service, Centrex service, MultiServ* PLUS service, or BellSouth* Centrex service. (C)
- E. (DELETED) (D)

A4.2.5 Premises Work Charge Application

- A. The appropriate Line Connection Charge, Secondary Service Charge or Line Change Charge applies in addition to the Premises Work Charge.
- B. Premises Work Charges apply per customer request, per Company employee performing billable work on the customer's premises. The sum of their time is used to determine the number of 15-minute increments to be billed. Only one initial increment is to be billed per customer request except when the customer specifically requests more employees than the Company would normally dispatch. Where additional employees are specifically requested by the customer, the initial increment charge will also apply per additional Company employee specifically requested.
- C. Premises Work Charges apply:
 - 1. For, but not limited to, rearrangement of drop wire, protector and/or network interface.
- D. The charge for a Network Interface jack applies in addition to the appropriate Premises Work Charges for installing a Network Interface at the customer's request on existing service.

A4.2.6 Service Charge Exceptions

- A. Service Charges do not apply for:
 - 1. Adding Touch-Tone Service when no other services are requested.
 - 2. Changing from a private or semiprivate listing to a listed number.
 - 3. Changing from one flat, measured or message rate basic service (including Area Plus* service and Complete Choice* options) to another.
 - 4. Changing the primary listing of a residence customer to the name of the remaining spouse in event of death or divorce of the spouse currently listed.
 - 5. Converting existing customers to Lifeline.
 - 6. Establishing Customized Code Restriction for Lifeline customers.

*Registered Service Mark of BellSouth Corporation
*BellSouth is a registered trademark of BellSouth Intellectual Property Corporation

BELLSOUTH
 TELECOMMUNICATIONS, INC.
 FLORIDA
 ISSUED: January 17, 2002
 BY: Joseph P. Lacher, President -FL
 Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Fourth Revised Page 5
 Cancels Third Revised Page 5
 EFFECTIVE: February 1, 2002

A4. SERVICE CHARGES

A4.2 Application of Charges (Cont'd)

A4.2.6 Service Charge Exceptions (Cont'd)

- A. Service Charges do not apply for: (Cont'd)
 - 7. The move from a premises which has been destroyed or made untenable by a disaster such as a hurricane, tornado, fire, flood, etc., when equivalent service is established, at the new/temporary location or for the move back into the original location.
 - 8. Changing telephone numbers when in the judgment of the Company such changes are necessary for continuation of satisfactory service.
 - 9. Requests for establishing toll credit cards.
 - 10. Requests for full or partial disconnection.
 - 11. Upgrades from Back-Up* Line service to business individual line service.
- B. When a customer's request is provided:
 - 1. In accordance with a promotional waiver, additional service subject to an equal or lesser Service Charge may be made a part of the promotional service request. Charges for Line Connection, Line Change, or Premises Work will apply, if applicable, for additional service.
 - 2. In accordance with the Service Charge waivers listed in A.2. through 7. preceding, additional features or services subject to the Secondary Service Charge may be made a part of the waiver service request.
- C. Service charges for connection, move or change do not apply to telephone service previously provided over a Government System in military housing where there is no break in the continuity of service.

A4.2.7 Installment Billing

- A. Service may be established in advance of payment of connection charges. At the customer's option, installation and Service Charges may be paid in up to twelve monthly installments meeting or exceeding the minimum monthly payment shown below. One Installment Billing arrangement is applicable per customer request as defined in A4.1. If Installment Billing is requested on additional installation and Service Charges incurred while a balance is due, the additional charges will be treated as a separate Installment Billing arrangement.
- B. Installment Billing is not available to resellers of local exchange service. (N)
- C. Installment Billing Service Fee (T)
 - 1. An Installment Billing Service Fee is applicable to Installment Billing payment arrangements established for regulated services purchased from this Tariff by residence customers and to payment arrangements made for overdue bill balances per A2.4.3.
 - (a) The fee applies for each installment arrangement billed. It is not Concession eligible.
 - (b) Multiple Installment Billing Service Fees may appear on one bill if the customer has multiple Installment Billing arrangements in effect.
 - (c) A customer paying the balance due in less than the predetermined number of installments will not be charged for unbilled installments.
 - (d) The fee will not apply to Lifeline/Link-Up customers or CPE (Customer Provided Equipment).

D. Rates and Charges (T)

- 1. Per month minimum installment payments

		Monthly Rate	USOC
	(a) Residence	\$5.00	NA
	(b) Business	5.00	NA
2.	Service Fee (T)		
	(a) Residence	1.00	NA

Exhibit G

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: Tuesday, April 15, 2008
3 DOCKET NO.: P-55, Sub 1577
4 TIME IN SESSION: 9:30 a.m. - 11:35 a.m.
5 BEFORE: Commissioner James Y. Kerr, II, Presiding
6 Commissioner Sam J. Ervin, IV
7 Chairman Edward S. Finley, Jr.

8 IN THE MATTER OF

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

11 VOLUME 1

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

13 COMPLAINANT

14 Ralph McDonald
15 Bailey & Dixon, LLP
16 P.O. Box 1351
17 Raleigh, North Carolina 27602-1351

18 Christopher Malish
19 Foster, Malish & Blair, LLP
20 1403 W. 6th Street
21 Austin, Texas 78703

22 RESPONDENT

23 Edward L. Rankin, III
24 AT&T North Carolina
P.O. Box 30188
Charlotte, North Carolina 28230

25 J. Phillip Carver
26 AT&T Southeast
27 675 W. Peachtree Street
28 Atlanta, Georgia 30375

1 A Okay.

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

7 A That's correct.

8 Q For those particular customers --

9 A Some of them that is not true on.

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

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

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

21 A That's correct.

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

24 A I don't know.

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

3 A I don't know.

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

6 A I don't know.

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

11 A No.

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

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

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

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

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

1 A That's right.

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

4 A That's correct.

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

6 A That's correct.

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

8 A Correct.

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

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

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

15 COMMISSIONER KERR: Redirect?

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

18 COMMISSIONER KERR: Commissioner Ervin?

19 EXAMINATION BY COMMISSIONER ERVIN:

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